

certification. The final rule differs from its March 1, 2001, proposal in that responsible officials are no longer required to certify whether the methods used for determining compliance provide continuous or intermittent data. Although the requirement to identify whether the methods used provide continuous or intermittent data was derived for the 1997 amendments to parts 70 and 71, we kept this requirement and the corresponding preamble explanation, in the March 1, 2001, proposal because we sought to address the direction of the Court in a manner that we believed was both simple and direct and we did not believe at that time that this requirement would impose additional burden on sources; therefore, we simply added, to the language already in the rule, regulatory language directing responsible officials to identify, in the certification, whether compliance was continuous or intermittent. In concurring with comments stating that the Court disagreed with us that the requirement to identify whether the methods provide continuous or intermittent data derives from a correct interpretation of the Statutory provision and that this requirement adds unnecessary burden upon sources, we removed the requirement in the final rule.

The Agency is withdrawing section III. B. of the March 1, 2001, proposal's preamble, which would have explained what must be included in the compliance certification, to address comments that the section's depiction of how the certification must be completed is confusing and that this explanation is also ambiguous because it references an invalidated discussion from the preamble of another rule (*see* section II. B. for comments). In addition, we provide the following clarification in regard to the comment on the discussion of the elements of the certification. While agreeing that periodic reporting of monitoring deviations is covered under a separate requirement, the Agency disagrees that compliance with permit terms and conditions that are the basis of the certification can be addressed separately from monitoring deviations or that identifying permit deviations in the compliance certification duplicates other reporting. *See* § 70.6(c)(5)(iii). In regard to the permit terms and conditions that constitute the "basis of the certification," we agree that these are the substantive regulatory requirements of the Act (such as standards, emission limits or work practices) referred to in Section 114 (a)(3) as "applicable

requirements." This conclusion, however, does not in any way alter the sources' compliance certification obligations. First, § 70.6(c)(5)(iii) clearly requires that permit terms that are the basis of the certification as well as permit terms that are the methods be identified in the certification. Second, in order to establish whether the compliance status was continuous or intermittent, for any permit term that is the basis of the certification, responsible officials must first determine whether there were instances of deviations for each of the corresponding monitoring, recordkeeping and reporting permit terms, during periods when compliance was required.

Finally, we agree that our explanation of a certification of "continuous" or "intermittent" compliance contained in the preamble to the March 1, 2001, is unclear since core portions of the explanation adopted by reference are invalidated by the Court's decision. Following is our explanation of when a source may certify "continuous" or "intermittent" compliance, according to the final rule, which includes background information. Sections 504(c) and 114(a)(3) of the Act require that each permit contain conditions establishing compliance certification requirements with permit terms and conditions including a requirement for responsible officials to identify the status of compliance and whether compliance, for the covered period, is continuous or intermittent. Additionally, section 504(f) provides that compliance with the permit may be deemed compliance with the underlying applicable requirements. Within this statutory scheme we believe that the determination of the compliance status made by the responsible official, for the purpose of the compliance certification, is simply an evaluation of whether or not the source is, at the time of the certification, and was, during the covered period, in compliance with those permit terms and conditions that establish practically enforceable obligations on the part of the source. Absent evidence to the contrary, the responsible official for a source that is in compliance according to the monitoring results in the permit may certify "continuous" compliance, provided that the responsible official did not fail to monitor, or report, or collect the minimum data required by the permit; if there were any deviations, these should have been excused by the permit. If any possible exceptions to compliance occurred, the permit would have provided for additional action that shows the underlying requirement was

not violated. Any failure to meet the permit terms or conditions during a period when the permit required compliance would mean that compliance was not continuous, and the responsible official must identify the permit deviation (or possible exception to compliance in the context of part 64) in the certification and certify that compliance for the permit term or condition (that is the basis of the certification) was intermittent. If the source's circumstances are such that the status of compliance with a particular term or condition is undetermined at the time the compliance certification is submitted (such as when the source is awaiting for test results), the responsible official may indicate so in the certification together with the reason, and the date when the source was last found in continuous compliance with the permit term. A responsible official is always free to include any written explanation and other material information that helps clarify the responsible official's conclusion regarding the compliance status.

Responsible officials that used any monitoring method not specified in the permit (regardless of whether the monitoring was performed voluntarily, to comply with a State only requirement, or to track compliance with an applicable requirement that is not yet addressed by the permit), would need to identify the method(s), and take the monitoring results into account when determining the compliance status of the term or condition that is the basis of the certification (applicable requirement).

The final rule takes effect today, June 27, 2003. State permitting authorities who did not revise their operating program rules to conform to the 1997 part 70 revisions, need to take no action, to the extent their rules are consistent with this final rule. Except as described in the following paragraph, other permitting authorities must revise their programs by June 28, 2004 to add a requirement for compliance certifications to identify whether compliance with each permit term and condition that is the basis of the certification was continuous or intermittent during the covered period. The Administrator specifies a deadline of 12 months for submittal of program revisions in light of the narrow scope of the revision required of State programs. Authority for this deadline is provided in 40 CFR 70.4(i)(1), which specifies that the deadline for submittal of revisions to State part 70 programs following revision of relevant Federal regulations is 180 days or "such other period as the Administrator may