

specify, following notification\* \* \* Today's action is the notification that triggers the 12-month deadline.

If a State can demonstrate that additional legal authority is needed, the deadline for submittal of a revised program to add a requirement for compliance certifications to identify whether compliance with each permit term and condition during the covered period was continuous or intermittent is June 27, 2005. Authority for this deadline is the same provision in 40 CFR 70.4(i)(1) described in the preceding paragraph for the 12-month deadline.

We believe that this final rule amending the 1997 revisions to part 70 and part 71 rules adequately address the Court's direction expressed in the remand.

#### *B. What Are the Regulatory Revisions to the Proposal?*

In response to the comments, we have deleted the second clause after the comma in the first sentence from §§ 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B). This removes the requirement that the responsible official for the affected facility identify in the annual (or more frequent) compliance certification whether the methods provide continuous or intermittent data. The current language in paragraph (5)(iii)(B) for both sections states: "The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether such methods or other means provide continuous or intermittent data." The revised text for both sections reads: "The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period." Other text within §§ 70.6(c)(5)(iii)(B), 71.6(c)(5)(iii)(B), 70.6(c)(5)(iii)(C), and 71.6(c)(5)(iii)(C) remains as proposed in March 2001. The language in this final rule requires responsible officials to identify in the compliance certification whether compliance during the covered period was continuous or intermittent, but responsible officials do not need to state whether the methods used for determining compliance provide continuous or intermittent data. We believe these revisions respond directly and adequately to the Court's decision to remand the compliance certification requirements to us and are consistent with the requirements of the Act.

## **IV. Administrative Requirements**

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether this final rule is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this final rule amendment would be significantly less than \$100 million and would not meet any of the other criteria specified in the Executive Order, we have determined that this final rule is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review.

### *B. Paperwork Reduction Act*

This amendment does not include or create any information collection activities subject to the Paperwork Reduction Act, and therefore we will submit no information collection request (ICR) to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

### *C. Regulatory Flexibility Act Compliance as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The Regulatory Flexibility Act generally requires an Agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For

purposes of assessing the impacts of today's rule on small entities, small entity is defined as (1) a small business that meets the Small Business Administration size standards for small businesses found in 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, country, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. We determined and hereby certify that these revisions to parts 70 and 71 will not have a significant economic impact on a substantial number of small entities. The 1992 part 70 and the 1996 part 71 rules imposed the requirement to submit periodic compliance certification reports identifying the compliance status with permit terms and conditions, including a statement of whether compliance was continuous or intermittent. The 1997 part 70 and 71 revisions interpreted that the requirement to address, in the certification, whether the status of compliance was continuous or intermittent could be met implicitly. Although this interpretation did not change the substance of the requirement, it would have adjusted the existing way to comply with the requirement. However, in NRDC the court held that the compliance certification must address explicitly whether compliance was continuous or intermittent. The amendments to parts 70 and 71 in this final rule merely revert the implementation of this requirement according to EPA's original position under the 1992 part 70 and the 1996 part 71 rules; therefore, today's amendments add no burden on responsible officials for any small entities.

### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before we promulgate a rule for which a written statement is needed, section 205 of the UMRA requires us to identify and consider a reasonable number of regulatory