because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 9, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 02–23589 Filed 9–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[FRL–7374–5]

RIN 2060–AK29

Proposed Revisions To Clarify the Scope of Sufficiency Monitoring Requirements for Federal and State Operating Permits Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing this rule to clarify the scope of the monitoring required in operating permits issued by State and local permitting authorities or by EPA under title V of the Clean Air Act (Act). Specifically, this proposed rule would clarify that under the sufficiency monitoring rules, all title V permits must contain monitoring sufficient to assure compliance as required under sections 504(a), 504(b), 504(c), and 114(a)(3) of the Act, in cases where the periodic monitoring rules are not applicable. The EPA believes this proposed rule is necessary to address claims of confusion on the part of some source owners and operators, permitting authorities and citizens as to the scope of EPA's title V monitoring regulations.

DATES: *Comments.* We must receive written comments on or before October 17, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–93–50, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–93–50, U.S. EPA, 401 M St., SW., Room M–1500, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Docket. Documents relevant to this action are available for inspection at the Docket Office, Attention: Docket Number A–93–50, U.S. Environmental Protection Agency, 401 M Street, SW., Room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 7:30 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. Copies also may be mailed on request form the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying. Documents relevant to the promulgation of the operating permit program regulations at parts 70 and 71 are available for inspection at the same location under docket numbers A–90–33 and A–93–50 for part 70, and A–93–51 for part 71.

FOR FURTHER INFORMATION CONTACT: For further information, contact Mr. Jeff Herring, U.S. EPA, Information Transfer and Program Implementation Division (C304–04), Research Triangle Park, North Carolina 27711, telephone number (919) 541–3195, facsimile number (919) 541–5509, electronic mail (e-mail) address: *herring.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov.* Comments submitted by e-mail must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments also will be accepted on disks in WordPerfect® version 5.1, 6.1 or 8 file format. All comments and data submitted in electronic form must note the docket number: A–93–50. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Officer, U.S. EPA, Information Transfer and Program Implementation Division (C304–04), Research Triangle Park, North Carolina 27711, Attention: Mr. Jeff Herring. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or final rules at *http://www.epa.gov/ttn/oarpg/t5pfpr.html.* The TTN provides information and technology exchange in various areas of air pollution control. For more information, call the TTN help line at (919) 541–5384.

Regulated Entities. Categories and entities potentially affected by this action include facilities currently required to obtain title V permits by State, local, tribal, or Federal operating permits programs.

Outline. The contents of the preamble are listed in the following outline:

I. Background

A. The Legal Basis for Requiring Title V Monitoring

By enacting title V as part of the 1990 Act Amendments, Congress sought to enhance sources' compliance with the Act in two important ways. First, Congress required that every major stationary source of air pollution and certain other sources obtain a single, comprehensive operating permit to assure compliance with all emission limitations and other substantive Act requirements that apply to the source. 42 U.S.C. 7661a(a), 7661c(a). Second, Congress required that all title V sources conduct monitoring of their emissions that is sufficient to assure compliance with applicable requirements under the Act and also certify compliance with such applicable requirements. 42 U.S.C. 7661c(a), 7661c(c). The Senate Report summarized: ''EPA must require reasonable monitoring * * * requirements that are adequate to assure compliance.'' S. Rep. No. 101–228, at 350 (1989) (reprinted in 1990 U.S.C.C.A.N. 3385, 3733).

Three provisions of title V set forth Congress' requirements for monitoring by title V sources. Section 504(c) of the Act requires that each permit ''shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions.'' 42 U.S.C. 7661c(c). Section 504(a) requires that each permit ''shall include enforceable emission limitations and standards * * * and such other conditions as are necessary to assure compliance with applicable requirements.'' 42 U.S.C. 7661c(a). Section 504(b) contains discretionary authority for EPA to prescribe by rule ''procedures and methods for determining compliance and for monitoring * * *'' 42 U.S.C. 7661(b). In addition, section 114(a)(3) directs EPA to require ''enhanced monitoring'' at all major stationary sources. 42 U.S.C. 7414(a)(3).

The EPA's title V regulations at §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B) require that

> [w]here the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), [each permit must contain] periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to [§ 70.6(a)(3)(iii) or § 71.6(a)(3)(iii)]. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of [§ 70.6(a)(3)(i)(B) or § 71.6(a)(3)(i)(B)].

Furthermore, §§ 70.6(c)(1) and 71.6(c)(1) require that each part 70 and 71 permit contain, ''[c]onsistent with paragraph (a)(3) of this section, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.'' 40 CFR part 64, the Compliance Assurance Monitoring (CAM) rule, as well as the title V regulations discussed above, implements the statutory ''enhanced monitoring'' requirement. *See* 62 FR 54900, October 22, 1997.

B. Court Rulings About Title V Monitoring

Two opinions issued by the United States Court of Appeals for the District of Columbia Circuit (DC Circuit) have addressed the monitoring required of title V sources. Specifically, the Court reviewed EPA's CAM rule in *Natural Resources Defense Council* v. *EPA*, 194 F.3d 130 (DC Cir. 1999) (*NRDC*), and reviewed EPA's periodic monitoring guidance under title V in *Appalachian Power Co.* v. *EPA*, 208 F.3d 1015 (DC Cir. 2000) (*Appalachian Power*). In *NRDC*, the Natural Resources Defense Council argued that the CAM rule was inadequate to meet the statutory mandate that *all* major sources be subject to enhanced monitoring because it excluded units without control devices, units below a 100-ton cutoff, and certain other categories. 194 F.3d at 135.[1] The court disagreed, and upheld the CAM rule and EPA's general enhanced monitoring program. 194 F.3d at 135–37. The court pointed out that certain sources exempt from CAM were subject to ''other specific rules.'' *Id.*[2] The court then reasoned that all other major sources were subject to one of two ''residual rules'' under part 70: Either the periodic monitoring rule at § 70.6(a)(3)(i)(B), or the sufficiency rule at § 70.6(c)(1). *Id.* at 135–36. The court recognized that ''[w]hile the Part 70 rules are not as specific as CAM, they have the same bottom line—a major source must undertake 'monitoring * * * sufficient to assure compliance.'' *Id.* at 136.[3]

In *Appalachian Power*, a different panel of the D.C. Circuit set aside EPA's ''Periodic Monitoring Guidance'' [4] after finding that it had in effect amended part 70's periodic monitoring rule at § 70.6(a)(3)(i)(B) by interpreting that rule too broadly to cover situations where the underlying applicable requirement called for some kind of ''periodic'' testing or monitoring, but such monitoring was not sufficient to assure compliance. 208 F.3d at 1028. The *Appalachian Power* court held that in its current form, the periodic monitoring rule authorized sufficiency reviews of monitoring and testing in an existing emissions standard, and enhancement of that monitoring or testing through the

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[1] For example, CAM exempts acid rain program requirements under title IV of the Act. See § 64.2(b)(1)(iv).

[2] For example, sources exempt from acid rain requirements under CAM (see supra n. 1) are subject to state-of-the-art monitoring under section 412 of the Act and 40 CFR part 75.

[3] The entire relevant passage reads as follows:

> Specifically, EPA demonstrated that many of the major stationary sources exempt from CAM are subject to other specific rules, and if they are not, they are subject to the following two residual rules: (1) ''[The permit shall contain] periodic monitoring sufficient to yield reliable data * * * that are representative of the source's compliance with the permit.* * *'' 40 CFR 70.6(a)(3)(i)(B); (2) ''All part 70 permits shall contain the following elements with respect to compliance: (1) Consistent with paragraph (a)(3) of this section, compliance certification, testing, [and] monitoring * * * requirements sufficient to assure compliance with the terms and conditions of the permit.'' *Id.* § 70.6(c)(1).
>
> While the part 70 rules are not as specific as CAM, they have the same bottom line—a major source must undertake ''monitoring * * * sufficient to assure compliance.'' Like CAM, the monitoring protocols will be developed on a unit-by-unit basis. Such monitoring is sufficiently ''enhanced'' over the pre-1990 situation to satisfy the statutory requirement. See Compliance Assurance Monitoring, 62 FR 54900, 54904, October 22, 1997. *Id.*

[4] ''Periodic Monitoring Guidance,'' signed by Eric V. Schaeffer, Director, Office of Regulatory Enforcement, and John S. Seitz, Director, Office of Air Quality Planning and Standards, September 15, 1998.

permit, only when that standard ''requires no periodic testing, specifies no frequency, or requires only a one-time test.'' *Id.* The panel did not address the separate ''sufficiency'' requirement of § 70.6(c)(1) or the earlier decision in *NRDC*, except to note that it disagreed with EPA's argument that the court in the earlier decision read the periodic monitoring rule in the same way as the Agency. *Id.* at 1027 n. 26. The *Appalachian Power* court set aside the Periodic Monitoring Guidance, reasoning that the Guidance was ''final agency action'' that broadened the scope of the periodic monitoring rule without complying with the rulemaking procedures required by 42 U.S.C. 7607(d). *Id.* at 1023, 1028.

C. The EPA's Adjudicatory Orders in Pacificorp and Fort James

Following the *NRDC* and *Appalachian Power* decisions, EPA was called upon to clarify the scope of the title V monitoring requirements in two adjudicatory orders responding to petitions requesting that the Administrator object to title V permits under section 505(b)(2) of the Act.[5] *In the Matter of Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants*, Petition No. VIII–00–1 (November 16, 2000) (*Pacificorp*) (available on the Internet at *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/woc020.pdf); In the Matter of Fort James Camas Mill*, Petition No. X–1999–1 (December 22, 2000) (*Fort James*) (available on the Internet at: *http://www.epa.gov/region07/ programs/artd/air/title5/petitiondb/petitions/fortjamesdecision1999.pdf).* Notice of these decisions was published in the **Federal Register**. See 66 FR 85, January 2, 2001 (*Pacificorp*); 66 FR 13529, March 6, 2001 (*Fort James*).

The first order, *Pacificorp*, responded to a petition in which Wyoming Outdoor Council requested that the Administrator object to two title V permits issued by the State of Wyoming. The petition alleged, in relevant part, that the permits, which required only a quarterly Method 9 visual observation, were deficient because they failed to assure compliance with the 20 percent opacity limit in the Wyoming State Implementation Plan (SIP). The Administrator's response summarized the monitoring requirements of the Act and part 70, quoting from sections 114(a)(3), 504(a) and 504(c), and from §§ 70.6(a)(3)(i)(B) and 70.6(c)(1). *Id.* The response then summarized the *NRDC* and *Appalachian Power* decisions. *Pacificorp* at 16–18. In particular, the Administrator observed that the *NRDC* panel had based its holding that EPA had satisfied the statutory mandates to require adequate monitoring for all permits at major sources on the two ''residual rules'' in part 70: §§ 70.6(a)(3)(i)(B) and 70.6(c)(1). *Id.* at 16–17 (citing *NRDC*, 194 F.3d at 135–37). She also observed that the *Appalachian Power* panel had held that § 70.6(a)(3)(i)(B) must be read narrowly to apply only when the underlying emission standard ''requires no periodic testing, specifies no frequency, or requires only a one-time test.'' *Pacificorp* at 18 (quoting *Appalachian Power*, 208 F.3d at 1028). Finally, she observed that the *Appalachian Power* panel did not address § 70.6(c)(1), or the earlier decision in *NRDC* (except to note that it disagreed with EPA's contention that the *NRDC* panel had read § 70.6(a)(3)(i)(B) in the same broad fashion as had EPA). *Pacificorp* at 18 (citing *Appalachian Power*, 208 F.3d at 1028 n. 26).

The Administrator then set forth her understanding of the current monitoring requirements by harmonizing the *NRDC* and *Appalachian Power* decisions. Specifically, the Administrator stated that in light of those decisions, where an applicable requirement requires no ''periodic'' testing or monitoring at all, ''section 70.6(c)(1)'s requirement that monitoring be sufficient to assure compliance will be satisfied'' by meeting the more substantive requirements of § 70.6(a)(3)(i)(B). Where, in accordance with *Appalachian Power*, the latter periodic monitoring provision does not apply because there is some ''periodic'' monitoring but it is not sufficient to assure compliance, the ''separate regulatory standard'' in § 70.6(c)(1) governs instead and requires enhancement of existing monitoring ''as necessary to be sufficient to assure compliance.'' *Pacificorp* at 18–19.

Based on this understanding, the Administrator found that since the Wyoming SIP called for quarterly Method 9 visual readings, and this was ''periodic,'' then in accordance with *Appalachian Power* ''the provisions of 40 CFR 70.6(a)(3)(i)(B) do not apply.'' She then found that such monitoring: is not sufficient to ''assure compliance'' with the 20 [percent] opacity limit in the Wyoming SIP within the meaning of § 70.6(c)(1) and sections 504(a) and 504(c) of the Clean Air Act, and does not constitute enhanced monitoring within the meaning of section 114(a)(3) of the Act. *Id.* at 19. The Administrator granted the petition in part and denied it in part. (*See* 66 FR 85, January 2, 2001).

The Administrator subsequently responded to another citizen petition to object alleging numerous monitoring deficiencies in a permit issued by the State of Washington, the *Fort James* order. As in *Pacificorp*, the petition raised monitoring issues, and the Administrator ruled similarly. She explained that where it was clear that there was no underlying monitoring of a ''periodic'' nature, § 70.6(a)(3)(i)(B) applied and decided the claims accordingly. Where there was some underlying monitoring that could be considered periodic, she applied the general sufficiency standard in § 70.6(c)(1) and decided the claims on that basis. The petition was granted in part and denied in part. *See Fort James* at 5–9; 66 FR 13529, March 6, 2001.

II. Proposed Revisions to the Title V Monitoring Requirements

A. Why Is EPA Proposing To Revise §§ 70.6(c)(1) and 71.6(c)(1)?

This proposed rule responds to assertions by some industry representatives that the *NRDC* and *Appalachian Power* court decisions have created uncertainty and confusion on the part of some source owners and operators, permitting authorities and citizens as to the scope of the title V monitoring requirements. The EPA also is proposing this rule and undertaking the related actions described below consistent with the defense of pending litigation, *Utility Air Regulatory Group* v. *EPA*, No. 01–1204 (DC Cir.) (UARG).[6] While EPA has harmonized the *NRDC* and *Appalachian Power* decisions to clarify the title V monitoring requirements in the *Pacificorp* and *Fort James* orders, some industry representatives and others have maintained that EPA's understanding as

[5] Section 505(b)(2) authorizes any person to petition the Administrator to object to a title V permit within 60 days after the expiration of EPA's 45-day review period and directs the Administrator to grant or deny such petitions and to issue an objection if the petitioner demonstrates that the permit is not in compliance with the applicable requirements of the Act. 42 U.S.C. 7661d(b)(2).

[6] The EPA's interpretation of §§ 70.6(c)(1) and 71.6(c)(1) as they are currently written has been challenged in litigation pending before the DC Circuit. Specifically, the Utility Air Regulatory Group (UARG) has sought judicial review of the interpretation set out by EPA in the *Fort James* order and restated in an ''Instruction Manual'' dated January 2001 that was posted on EPA's web site to assist those completing permit application forms under the part 71 federal operating permit program. Pursuant to section 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), The UARG also has sought review of the final part 70 and part 71 regulations by alleging ''grounds arising after'' the time allowed for seeking judicial review. In its brief defending its current interpretation, EPA informed the court of its intention to issue this proposed rule and the companion interim final rule described below. See *UARG.*

stated in the orders is based on an overbroad reading of §§ 70.6(c)(1) and 71.6(c)(1). Under EPA's current title V regulations, these parties have asserted that §§ 70.6(c)(1) and 71.6(c)(1) cannot be read to require ''sufficient'' monitoring where § 70.6(a)(3)(i)(B) or § 71.6(a)(3)(i)(B) does not apply (e.g., where the permit already contains some monitoring that can be considered ''periodic'' but that is not sufficient to assure compliance with the permit's terms and conditions) because §§ 70.6(c)(1) and 71.6(c)(1) as currently written expressly provide that monitoring sufficient to assure compliance be ''[c]onsistent with [§ 70.6(a)(3) or § 71.6(a)(3)].'' In short, these parties interpret this prefatory language to mean that §§ 70.6(c)(1) and 71.6(c)(1) must have the same limited meaning as §§ 70.6(a)(3) and 71.6(a)(3), respectively, because ''consistent with [§ 70.6(a)(3) or § 71.6(a)(3)]'' means ''identical to the scope and content of [§ 70.6(a)(3) or § § 71.6(a)(3)].'' Under this view, §§ 70.6(a)(3) and 71.6(a)(3) require that inadequate but ''periodic'' monitoring must be accepted without enhancement.

The EPA disagrees with these assertions that the prefatory ''consistent with'' language limits the scope of §§ 70.6(c)(1) and 71.6(c)(1). Indeed, interpreting ''consistent with'' to mean ''identical to'' as some parties have suggested would render the second clause of §§ 70.6(c)(1) and 71.6(c)(1), which requires monitoring ''sufficient to assure compliance,'' superfluous, and would imply that the *NRDC* court's discussion of § 70.6(c)(1) was redundant. By contrast, EPA has reasonably interpreted ''consistent with'' to mean ''compatible with [§ 70.6(a)(3) or § 71.6(a)(3)].'' Under EPA's interpretation, §§ 70.6(c)(1) and 71.6(c)(1) are separate sources of regulatory authority from §§ 70.6(a)(3) and 71.6(a)(3), and §§ 70.6(c)(1) and 71.6(c)(1) independently require that all monitoring in title V permits be sufficient to assure compliance with the permits' terms and conditions. As EPA explained in the *Pacificorp* and *Fort James* orders, EPA believes that the ''consistent with'' language means that the broadly applicable, but bare sufficiency provisions at § 70.6(c)(1) [or § 71.6(c)(1)] will be satisfied by compliance with the substantive monitoring requirements of § 70.6(a)(3)(i)(B) [or § 71.6(a)(3)(i)(B)] where the latter periodic monitoring provision applies. In other words, where § 70.6(a)(3)(i)(B) [or § 71.6(a)(3)(i)(B)] applies, its more specific requirements (e.g., reliable data from the relevant time period that are representative of the source's compliance) are deemed sufficient to assure compliance, and where § 70.6(a)(3)(i)(B) or [§ 71.6(a)(3)(i)(B)] does not apply, the general sufficiency requirement at § 70.6(c)(1) [or § 71.6(c)(1)] comes into play. *See Pacificorp* at 18–19; *Fort James* at 9.

The EPA's interpretation of the prefatory ''consistent with'' language in §§ 70.6(c)(1) and 71.6(c)(1) is a reasonable one and is indeed the better interpretation, because it gives meaning to the second clause of §§ 70.6(c)(1) and 71.6(c)(1), advances the statutory monitoring requirements, and harmonizes the *NRDC* and *Appalachian Power* decisions with each other. Nonetheless, EPA recognizes that further clarification through rulemaking would be useful. In addition, EPA has received numerous requests from permitting authorities and citizens requesting clarification of the title V monitoring requirements, including a letter from eighty-one environmental and public health organizations asking EPA to revise the part 70 regulations to address monitoring in light of the court's decision in *Appalachian Power.*

B. What Revisions Are Being Proposed?

The EPA is proposing to remove the underscored prefatory language to §§ 70.6(c)(1) and 71.6(c)(1) providing that all title V permits contain, ''*[c]onsistent with paragraph (a)(3) of this section*, compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.'' The removal of the prefatory language would expressly uncouple the sufficiency monitoring provisions, §§ 70.6(c)(1) and 71.6(c)(1), from the periodic monitoring provisions, §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), and make more clear the regulatory distinction between the two sets of provisions. Specifically, the removal would clarify the respective scopes of the periodic monitoring and sufficiency monitoring provisions, eliminating any possible confusion under the current regulations as to when a title V permit must contain monitoring sufficient to assure compliance. The EPA notes that despite this proposed change, EPA would retain its interpretation, set forth in the *Pacificorp* and *Fort James* orders, that where § 70.6(a)(3)(i)(B) or § 71.6(a)(3)(i)(B) applies, it satisfies the general sufficiency requirement of § 70.6(c)(1) or § 71.6(c)(1).

The removal of the prefatory language would codify the understanding set forth in the *Pacificorp* and *Fort James* orders, where the Administrator characterized § 70.6(c)(1) as a ''separate regulatory standard'' from § 70.6(a)(3)(i)(B). The removal also would be consistent with the court's holding in *NRDC* that §§ 70.6(a)(3)(i)(B) and 70.6(c)(1) together ensure that a major source must undertake ''monitoring * * * sufficient to assure compliance'' where the CAM rule or other more specific rules governing major sources do not require such monitoring. 194 F.3d at 136. Finally, the removal would be consistent with the court's decision in *Appalachian Power*, which, as noted above, did not construe § 70.6(c)(1). See 208 F.3d at 1027 n.26.

Under this proposed rule, the periodic monitoring and sufficiency monitoring provisions would work together as follows. Where an applicable requirement did not require any periodic testing or monitoring, permit conditions would be required to establish ''periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit.'' Sections 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B). In contrast, where the applicable requirement already required ''periodic'' testing or monitoring but that monitoring was not sufficient to assure compliance, the separate regulatory standard at § 70.6(c)(1) or § 71.6(c)(1) would apply instead to require monitoring ''sufficient to assure compliance with the terms and conditions of the permit.'' Furthermore, where § 70.6(a)(3)(i)(B) or § 71.6(a)(3)(i)(B) applied, it would satisfy the general sufficiency requirement of § 70.6(c)(1) or § 71.6(c)(1).

C. How Would This Proposed Rule Affect the Scope of the Current Title V Monitoring Requirements?

This proposed rule would not affect the scope of the title V monitoring requirements as previously construed by the DC Circuit in *NRDC* and *Appalachian Power,* or as set forth in EPA's *Pacificorp* and *Fort James* orders. Rather, the purpose of this proposed rule is simply to clarify that under §§ 70.6(c)(1) and 71.6(c)(1), all title V permits must include monitoring sufficient to assure compliance with the permits' terms and conditions, as required by sections 504(a), 504(b), 504(c), and 114(a)(3) of the Act. As stated above, the purpose is to eliminate any possible confusion about the scope of the sufficiency monitoring provisions at §§ 70.6(c)(1) and 71.6(c)(1) that may arise due to their prefatory references to

the periodic monitoring provisions at §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B).

III. Related Actions

Two separate rulemakings are related to this proposed rule. First, elsewhere in today's **Federal Register**, in the rules section, EPA is promulgating an interim final rule to suspend, for sixty days, the same prefatory phrase in §§ 70.6(c)(1) and 71.6(c)(1) as would be removed by this proposed rule. The EPA intends that this proposed rule will be promulgated as a final rule and will become effective when the interim final rule sunsets. In addition, EPA intends to initiate a second, notice-and-comment rulemaking process to consider more comprehensively means of meeting the statutory monitoring requirements.

IV. Scope of This Proposed Rule and Solicitation of Public Comments and Public Participation

This proposed rule is limited to the removal of the prefatory phrase ''[c]onsistent with paragraph (a)(3) of this section'' from §§ 70.6(c)(1) and 71.6(c)(1) in order to clarify the scope of these provisions. This proposed rule does not address any other issues related to title V monitoring, such as the type of monitoring required under the periodic monitoring provisions, §§ 70.6(a)(3)(i)(B) and 71.6(a)(3)(i)(B), or under the sufficiency monitoring provisions, §§ 70.6(c)(1) and 71.6(c)(1). As indicated above, EPA elsewhere in today's **Federal Register** is promulgating an interim final rule, effective immediately, to revise §§ 70.6(c)(1) and 71.6(c)(1) to suspend, for sixty days, the same prefatory phrase as this proposed rule would remove.

The EPA seeks full public participation in arriving at final decisions and is soliciting public comment on this proposed rule from all interested parties. The EPA expects to consider comments on other issues relating to title V monitoring during the separate, more comprehensive rulemaking that is also planned and described above.

V. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines a ''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, adversely affecting 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.

Under Executive Order 12866, it has been determined that this proposed rule is a ''significant regulatory action'' and is therefore subject to OMB review. Today's proposed rule raises important legal and policy issues associated with the court's decisions in *Appalachian Power* and *NRDC* and EPA's adjudicatory orders in *Pacificorp* and *Fort James.* Therefore, this action is a ''significant regulatory action.'' Prior to promulgation of this rule, EPA will perform a regulatory impact analysis.

B. 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, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more * * * in any one year.'' A ''Federal mandate'' is defined to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate.'' 2 U.S.C. 658(6). A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is ''a condition of Federal assistance.'' 2 U.S.C. 658(5)(A)(i)(I). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions [2 U.S.C. 658(7)(A)].

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply where they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, EPA must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined under the regulatory provisions of title II of the UMRA that today's proposed rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Today's proposed rule imposes no new requirements but rather clarifies existing requirements. Thus, today's proposed rule is not subject to the requirements of sections 202 or 205 of the UMRA.

In addition, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it imposes no new requirements and imposes no additional obligations beyond those of existing regulations. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

C. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, or on the distribution of power and

responsibilities among the various levels of government.''

Today's proposal does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's proposal will not impose any new costs or requirements over those considered during the original promulgation of the rules because it will merely clarify those existing requirements. (See original promulgations at 57 FR 32250, July 21, 1992 for part 70, and 61 FR 34202, July 1, 1996 for part 71.) Accordingly, it will not alter the overall relationship or distribution of powers between governments for the part 70 and part 71 operating permits programs. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive order 13132, and consistent with EPA policy to promote communication between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

D. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's proposed rule revisions do not have tribal implications because they will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's action does not significantly or uniquely affect the communities of Indian tribal governments. As discussed above, today's action imposes no new requirements that would impose compliance burdens beyond those that would already apply. Accordingly, the requirements of Executive Order 13175 do not apply to these proposed rule revisions.

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

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small government jurisdictions.

For purposes of assessing the impacts of today's proposal on small entities, a small entity is defined as: (1) A small business that has fewer than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, 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.

Today's proposed rule would merely clarify existing requirements and would not create a new burden for regulated entities, such as small entities. The EPA has determined there will be no additional costs on any small entities associated with today's proposed revisions to part 70 and part 71. After considering the economic impact of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines is (1) ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risk, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. Today's proposed rule is not subject to Executive Order 13045 because it is not ''economically significant'' under Executive Order 12866 and it does not establish an environmental standard intended to mitigate health or safety risks.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The NTTAA does not apply to this proposed rule because it does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Paperwork Reduction Act

The information collection requirements for parts 70 and 71 were previously approved by OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The existing ICR for part 70 is assigned ICR number 1587.05 and OMB number 2060–0243; for part 71, the ICR number is 1713.04 and the OMB number is 2060–0336. A copy of these ICRs may be obtained by mail to: Director, Collection Strategies Division (2822), Office of Environmental Information, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

Today's proposed revision to the current part 70 and 71 rules will have no impact on the information collection burden estimates made previously for these rules because it would not impose any new information collection requirements beyond those already required under the existing rules

because the proposed rule would merely clarify existing requirements. Therefore, the existing Information Collection Request (ICR) documents for these rules have not been revised. In developing the final rule, this will be analyzed again and, if it is determined that there are new information collection requirements resulting from the final rule, the ICR for these rules will be revised.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a ''significant energy action,'' as defined in to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. As noted earlier, this action would simply clarify existing requirements and would not impose any new requirements, and thus would not affect the supply distribution, or use of energy.

List of Subjects

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 71

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirement.

Dated: September 4, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. In § 70.6(c)(1) by revising the first sentence to read as follows:

§ 70.6 Permit content.

* * * * *

(c) * * *

(1) Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. * * *

* * * * *

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. In § 71.6(c)(1) by revising the first sentence to read as follows:

§ 71.6 Permit content.

* * * * *

(c) * * *

(1) Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. * * *

* * * * *

[FR Doc. 02–23588 Filed 9–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPPT–2002–0013; FRL–7176–1]

RIN 2070–AB20

Polychlorinated Biphenyls; Manufacturing (Import) Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: With certain exceptions, section 6(e)(3) of the Toxic Substances Control Act (TSCA) bans the manufacture (including import), processing, and distribution in commerce of polychlorinated biphenyls (PCBs). One of these exceptions is TSCA section 6(e)(3)(B), which gives EPA authority to grant petitions to perform these activities for a period of up to 12 months, provided EPA can make certain findings by rule. In January and April 2001, the United States Defense Logistics Agency (DLA), a component of the Department of Defense (DoD), submitted two petitions to EPA to import foreign-manufactured PCBs that DoD currently owns in Japan and Wake Island for disposal in the United States. In this document, EPA is proposing to grant both of DLA's petitions and is soliciting public comment on this decision; if finalized, this decision to grant would allow DLA to engage in the import of these PCBs for disposal.

DATES: Comments, identified by the docket ID number OPPT–2002–0013, must be received by EPA on or before October 17, 2002.

If requested by October 11, 2002, an informal hearing will be held in Washington, DC on a date to be announced later in the **Federal Register**.

ADDRESSES: Comments and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0013 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Peter Gimlin, Environmental Protection Specialist, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0515; fax number: (202) 566–0473; e-mail address: gimlin.peter@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. To Whom Does this Action Apply?

Primarily, this action applies to the petitioner, the DLA. However, you may be potentially affected by this action if you process, distribute in commerce, or dispose of PCB waste generated by others, i.e., you are an EPA-permitted PCB waste handler. Potentially affected categories and entities include, but are not necessarily limited to:

Categories	NAICS codes	Examples of potentially affected entities
Public Administration	92	Petitioning Agency (i.e., DLA)