



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[EPA-HQ-OAR-2013-0162; FRL-9913-88-OAR]

RIN 2060-AQ71

Amendments to Compliance Certification Content Requirements for State and Federal Operating Permits Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the compliance certification requirements for state and federal operating permits programs that were published in the **Federal Register** on June 27, 2003. In that action, one sentence was removed from the rules inadvertently. This action restores the sentence to its original location in the rules.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2013-0162. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, i.e., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Docket ID No. EPA-HQ-OAR-2013-0162. EPA/DC, William Jefferson Clinton West Building,

Room 3334, 1301 Constitution Avenue, Northwest, Washington, D.C. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Air and Radiation Docket Information Center is (202) 566-1742. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at: <http://www.epa.gov/epahome/dockets.htm>.

FOR FURTHER INFORMATION CONTACT: For further general information on this rulemaking, contact Ms. Joanna Swanson, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-05), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541-5282; fax number (919) 541-5509; email address: swanson.joanna@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Does this Action Apply to Me?

Entities potentially affected by this final rulemaking include owners and operators of emission sources in all industry groups who hold or apply for a title V operating permit. Other entities potentially affected by this final rulemaking include federal, state, local and tribal air pollution control agencies who administer title V permit programs.

B. Where Can I Get a Copy of this Document and Other Related Information?

In addition to being available in the docket found on <http://www.regulations.gov>, an electronic copy of this document will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted on the EPA's title V web page at <http://www.epa.gov/nsr>.

II. Background for the Final Rulemaking

On March 29, 2013, the EPA proposed to restore a sentence that was inadvertently removed from the operating permits program rules (found in 40 CFR parts 70 and 71) due to an editing error. This error occurred in a June 27, 2003, final rule (68 FR 38517) amending the compliance certification requirements in 40 CFR 70.6(c)(5)(iii)(B) and

71.6(c)(5)(iii)(B). The final 2003 rule inadvertently removed the following sentence from the end of paragraph (c)(5)(iii)(B) of both sections: “If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information.” The EPA proposed to restore this sentence to its former position in both paragraphs.

This sentence was originally added to the operating permits rules in the context of the 1997 Compliance Assurance Monitoring (CAM) rulemaking (62 FR 54900), which clarified the use of CAM monitoring data in compliance certifications. Specifically, this sentence was intended to clarify that “other material information (i.e., information beyond required monitoring that has been specifically assessed in relation to how the information potentially affects compliance status)” (62 FR 54937) known by the owner or operator must be identified and addressed in compliance certifications consistent with section 113(c)(2) of the Clean Air Act (CAA or Act) and the 1997 Credible Evidence Revisions rule (62 FR 8314). The 2003 rulemaking that erroneously removed the subject sentence was intended to address a court remand concerning other aspects of the annual compliance certification requirements of title V.

For the reasons discussed in this document, we are finalizing the regulatory language that we proposed without change.

III. Amendments to Compliance Certification Content Requirements for State and Federal Operating Permits Programs

A. Rationale for the Final Action

As discussed in the preamble to the proposed rule (78 FR 19166), the substance of the regulatory preambles and rule text from the 2001¹ and 2003 rulemakings make it clear that the EPA did not intend to remove the missing sentence from 40 CFR 70.6(c)(5)(iii)(B) or 71.6(c)(5)(iii)(B). The EPA did not discuss or propose any revisions to these paragraphs in the 2001 direct final rulemaking or parallel proposal.² Similarly, while the EPA revised the text of 40 CFR 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B) as part of the 2003 final amendments, it did not discuss any intent to remove this sentence. To the contrary, the EPA stated clearly that “[o]ther text within [sections] 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” (68 FR 38521). The EPA did not propose to remove the deleted sentence from paragraph (c)(5)(iii)(B) of 40 CFR 70.6 and 71.6 or to make any other changes to those paragraphs in that March 2001 rulemaking. Moreover, the EPA’s response to comments on the 2001 proposed amendments reiterated the sentence’s requirement that “responsible officials must identify in [their title V compliance certifications] other material information where failure to do so would constitute a false certification of compliance.”³

¹ In 2001, the EPA published a direct final rule (66 FR 12872) and a parallel proposal (66 FR 12916) requiring title V compliance certifications to identify whether compliance during the period was continuous or intermittent as specified in CAA section 114(a)(3) per the 1990 CAA Amendments. We subsequently received adverse comments on the direct final rule and withdrew it (66 FR 55883).

²As discussed in the preamble to the proposed rule (78 FR 19166), while the 2001 preamble discussion of the proposed revisions at 66 FR 12918 mistakenly referred to changes to paragraph (c)(5)(iii)(B) of 40 CFR 70.6 and 71.6, the proposed amendments in that action addressed only 40 CFR 70.6(c)(5)(iii)(C) and 71.6(c)(5)(iii)(C). The proposed revisions to the regulatory language correctly addressed 40 CFR 70.6(c)(5)(iii)(C) and 71.6(c)(5)(iii)(C).

³ Responses to public comments prepared for the June 27, 2003, Final Rule, section 2.3, page 11, EPA Docket No. EPA-HQ-OAR-2002-0062-0008, June 2003.

Despite the inadvertent removal of the sentence in question on June 27, 2003, the EPA's actions since that time have remained consistent with the direction provided in the inadvertently removed "other material information" sentence, and with the Credible Evidence Revisions rule in general. For example, the part 71 federal operating permits program administered by the EPA includes a form for sources to use for their annual compliance certifications, and the instructions for completing the form state the following:

Compliance Status: For each permit requirement and its associated compliance methods, indicate whether there was intermittent or continuous compliance (check one) during the reporting period. *You should consider all available information or knowledge that you have when evaluating this, including compliance methods required by the permit and "credible evidence" (e.g., non-reference test methods and information "readily available" to you).* You are always free to include written explanations and other information to clarify your conclusion regarding compliance status.⁴

Similarly, the instructions for the initial compliance certification form that the EPA issued shortly after the "other material information" sentence was added to parts 70 and 71 as part of the promulgation of the CAM rule in 1997 also discussed the consideration of "all available information or knowledge" in compliance status certification.⁵ After the "other material information" language was inadvertently deleted from the part 71 rule in 2003, the EPA revised the annual compliance certification form and associated instructions in 2004 "to reflect policy decisions concerning monitoring and the data used for compliance certifications."⁶ Specifically, the form added the

⁴ Annual Compliance Certification (A-COMP), EPA Form 5900-04, at page 4 (emphasis added), available at <http://www.epa.gov/airquality/permits/pdfs/a-comp.pdf>.

⁵ Initial Compliance Plan and Compliance Certification (I-COMP), EPA Form 5900-86, at page 4, available at <http://www.epa.gov/airquality/permits/pdfs/i-comp.pdf>.

⁶ <http://www.epa.gov/airquality/permits/p71forms.html>, accessed on June 16, 2014.

requirement for sources to certify whether compliance was continuous or intermittent, but the EPA did not revise the instruction for sources to consider “all available information and knowledge” and “credible evidence” when determining compliance status.⁷ The retention of the instruction to consider all available information, including credible evidence, in the Annual Compliance Certification form clearly indicates that the EPA continues to believe that the title V rules should be implemented consistent with the “other material information” sentence that had been removed inadvertently. The EPA also has made revisions to the part 71 forms a number of times since 2003, providing ample opportunity to change this language if its policy had changed; however, the EPA has made no such changes.⁸

Title V permits issued by EPA Regional Offices since 2003 also provide evidence of the EPA’s ongoing practice of requiring sources to use “other material information” in compliance certifications. A review of a sample of recent part 71 permits reveals that they include language similar to the language in the inadvertently removed sentence. These permits include a permit issued by Region 2 in 2011, a permit issued by Region 8 in 2010, and a permit issued by Region 5 in 2012, and each permit requires the annual compliance certification to include “any other material information that must be included

⁷ See generally Annual Compliance Certification (A-COMP), EPA Form 5900-04, available at <http://www.epa.gov/airquality/permits/pdfs/a-comp.pdf>.

⁸ See generally <http://www.epa.gov/airquality/permits/p71forms.html>, accessed on June 16, 2014.

in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information.”⁹

Similarly, the EPA guidance to title V rule writers on an EPA Region 3 website concerning compliance and enforcement illustrates the EPA’s commitment to the use of credible evidence. That website includes the following guidance:

Title V permit conditions cannot limit the types of data or information (i.e., credible evidence) that may be used to prove a violation of any applicable requirement. Title V permits should contain language clarifying that any credible evidence may be used in determining a source’s compliance status (or alternatively, that nothing in the permit precludes the use of credible evidence in determining compliance or noncompliance with the terms of the permit). Such language gives fair notice to the source and the public, and prevents the source from claiming that they weren’t on notice that other credible evidence could be used to demonstrate a violation or compliance. Such language can most easily be added to Title V permits by modifying the ‘boilerplate’ provisions (i.e., general permit conditions) as in the following example....¹⁰

As illustrated by these examples, following the mistaken removal of the “other material information” sentence on June 27, 2003, the EPA has clearly articulated a position consistent with the Credible Evidence Revisions rule under all circumstances, including the annual compliance certification. In light of the EPA’s continued, consistent commitment to the use of credible evidence in compliance certifications and other title V contexts, the EPA has not previously devoted its limited resources to correcting the

⁹ See Region 2 part 71 permit issued to Turning Stone Casino Resort in Verona, New York at section V.D.(1)(iv), *available at* <http://www.epa.gov/region02/air/permit/trsc07052011.pdf>; Region 8 part 71 permit issued to Samson Resources Company at §III.C.3.(c)(ii), *available at* http://www2.epa.gov/sites/production/files/documents/Samson-HowardSWD_Initial_V-SU-0051-10.00.pdf; Region 5 part 71 permit issued for operations at the Treasure Island Resort & Casino in Red Wing, Minnesota at 4.0(D)1.(ii), *available at* [http://yosemite.epa.gov/r5/r5ard.nsf/f5d8e2e3ef9dc9c1862570430068f396/10cd79ad1a4c177386257ad0004d7bc3/\\$FILE/V-PI-2704900084-2012-10%20-%20Final.pdf](http://yosemite.epa.gov/r5/r5ard.nsf/f5d8e2e3ef9dc9c1862570430068f396/10cd79ad1a4c177386257ad0004d7bc3/$FILE/V-PI-2704900084-2012-10%20-%20Final.pdf).

¹⁰ http://www.epa.gov/reg3artd/permitting/t5_compl_enf.htm. The website states that this page was last updated on February 11, 2011.

inadvertent deletion in the regulatory text through a formal rulemaking. Nonetheless, the EPA's Office of Inspector General (OIG) has indicated that the title V rules should be amended to restore the "other material information" language to the regulatory requirements in order to improve the content of annual compliance certifications.¹¹ In concurrence with the OIG recommendation, the EPA is now taking this action to restore the language currently missing in the part 70 and 71 rules.

The restored language reflects the general prohibition on knowingly making a false certification or omitting material information that exists in the CAA, independent of any EPA policy or previous rulemaking actions. As modified in the 1990 CAA Amendments, section 113(c)(2) of the Act states that any person who knowingly "makes any false material statement, representation, or certification in, *or omits material information from*, ... any notice, application, record, report, plan, or other document required pursuant to this Act" (emphasis added) is subject to fine or imprisonment, upon conviction. The EPA believes that it is important to ensure that sources are on notice and understand the requirement to consider as part of their compliance status any material information determined by methods other than those identified in the permit. Moreover, for the sake of clarity, the EPA believes that this duty should be explicit in the part 70 and 71 compliance certification requirements.

B. Scope of Rulemaking

¹¹ EPA Office of Inspector General, *Substantial Changes Needed in Implementation and Oversight of Title V Permits If Program Goals Are To Be Fully Realized*, Report No. 2005-P-00010, pp 31-32 and p 37, Recommendation 2-2, March 9, 2005. <http://www.epa.gov/oig/reports/2005/20050309-2005-P-00010.pdf>.

The purpose of this final rulemaking is to restore language that was inadvertently deleted from the title V regulations, 40 CFR parts 70 and 71.¹² Given the passage of time, the EPA decided to make this change through a notice and comment rulemaking, rather than a correction notice. In the notice of proposed rulemaking for this action, the EPA requested comments only on whether, on the sole basis that the removal of the language in question was inadvertent, the language in question should or should not be restored. The EPA did not request comments on any other aspects of these provisions or on any other provisions of the part 70 and 71 rules. In the proposal, the EPA stated that if comments were submitted outside of this scope, the agency would not take them into consideration when finalizing the rule.

C. Comments and Responses

As stated in the previous section, the proposed rule provided an opportunity for comment on whether, on the sole basis that the removal of the language in question was inadvertent, the language in question should or should not be restored. The EPA provided a 60-day review and comment period on the proposed rulemaking, which closed on

¹² Section 70.4(i) provides that states with approved part 70 programs may need to revise their programs when the relevant federal statutes or regulations are modified or supplemented. Given that the relevant federal statute concerning representations or statements made in compliance certifications (CAA section 113(c)(2)) applies regardless of the specific language in 40 CFR 70.6(c)(5)(iii)(B), the EPA proposed that states will not need to submit part 70 program revisions in response to this rulemaking, except where a state program interferes with the implementation of the sentence the EPA proposes to restore. The EPA also proposed that permit reopenings will not be needed under 40 CFR 70.7(f)(1) or 71.7(f)(1) in response to this rulemaking, except where a permit contains language that interferes with the implementation of the sentence the EPA proposes to restore. Notwithstanding the previous statements in this footnote, the EPA may require individual states to revise their programs or reopen permits where the EPA believes such actions would be necessary to ensure the appropriate implementation of the program or its permits.

May 28, 2013. A total of seven comment letters (three industry comment letters, two citizen comment letters, one government agency comment letter, and one environmental group comment letter) were received on the proposed amendment to restore a sentence to the title V compliance certification requirements that had been inadvertently removed from the rules in June 27, 2003. Three of the commenters opposed the amendment, three were neutral about it, and one supported it. One commenter did not believe the removal was inadvertent, but provided no specific reasoning or evidence to support this general allegation; thus, we have no additional response to this comment beyond the explanation already provided here and in the proposal to support that the removal was inadvertent. Another commenter explained that they “assumed” that EPA had determined the “other material information” language was no longer necessary or appropriate and that the removal of the language was part of an overall effort to simplify rule language. However, as explained repeatedly in this preamble, as well as in the preamble to the proposal for this action, we provided no such explanation at the time the sentence was removed, nor did we even note that we were removing the sentence. In addition, the EPA’s actions since the removal demonstrate the EPA’s consistent implementation of the language restored in the rule. All these points support the EPA’s position that the removal was inadvertent.

The EPA responded to comments on the substance of the inadvertently removed text when the text was first promulgated, see “Compliance Assurance Monitoring Rulemaking (40 CFR Parts 64, 70, and 71) Responses to Public Comments (Part III),” October 2, 1997, available at <http://www.epa.gov/ttnatw01/cam/rtpart3.pdf>, page 285. The following discussion confirms our position on issues related to the substance of the

“other material information” text as explained in prior response to comments, preambles to **Federal Register** documents, and various EPA forms, permits, and guidance documents, and is consistent with the restoration of the text we are finalizing.

1. The Necessity of the Amended Language

Comment: One industry commenter states that it is not necessary or useful for the EPA to add this additional language to 40 CFR 70.6 and 71.6. In fact, the commenter believes that the inclusion of this language will be harmful in that it will create uncertainty and confusion.

The government agency commenter stated that the addition of the proposed language would be redundant and would not provide any additional clarification to the requirements under this section. The commenter claims that it would instruct the owner/operator to include items that are already required to be included by this section as currently written.

A citizen commenter was also concerned about the proposed language being redundant and stated that: (a) most title V permits already have conditions that address this issue; (b) most state agencies have been using the language whether it was/was not inadvertently left out of the rule; and (c) the certifications required now by state agencies are sufficient without additional language.

The environmental group commenter supported the EPA’s effort to remind permit owners of their obligations while cautioning that the disclosure duties discussed in the proposed rule exist independent of the EPA’s implementing regulations.

Response: As stated earlier in this preamble, as well as in the preamble to the proposal for this action, the regulatory requirement to identify “any other material information...” was

originally added to the annual compliance certification requirements of parts 70 and 71 and promulgated in the context of a Compliance Assurance Monitoring rulemaking on October 22, 1997 (62 FR 54900). Restoring the language at issue to the regulatory text through this action only seeks to correct what was an inadvertent error in the 2003 final rulemaking. As explained, the EPA has not reversed or weakened this position in subsequent actions. The restored language reflects the general prohibition on knowingly making a false certification or omitting material information that exists in the CAA, independent of any EPA policy or previous rulemaking actions. As modified in the 1990 CAA Amendments, section 113(c)(2) of the Act states that any person who knowingly “makes any false material statement, representation, or certification in, or omits material information from, ... any notice, application, record, report, plan, or other document required pursuant to this Act” (emphasis added) is subject to fine or imprisonment, upon conviction. The EPA believes that it is important to ensure sources are on notice and understand the requirement to consider as part of their compliance status any material information determined by methods other than those identified in the permit. Moreover, for the sake of ensuring clarity, the EPA believes that this duty should be included explicitly in the part 70 and 71 compliance certification requirements.

As also discussed earlier in this preamble and in the preamble to the proposed rule, the EPA’s OIG has indicated that the title V rules should be amended to restore the “other material information” language to the regulatory requirements in order to improve

the content of annual compliance certifications.¹³ Therefore, the decision to restore the regulatory text is responsive to the OIG's recommendation.

2. The Use of Material Information

Comment: The environmental group requested that the agency clarify that “material” information includes information known to the permit-holder and pertinent to compliance status, “whether or not that information necessarily demonstrates a violation.” An industry commenter stated that including “other material information” in a certification does not constitute a concession that the information is “credible evidence” of a violation. An industry commenter requested that the agency acknowledge that nothing in the revised language prohibits a responsible official from disputing the relevance or “materiality” of any identified information or reserving all rights to challenge use of that information in an enforcement proceeding. Another industry commenter made a similar comment and stated that the EPA should acknowledge that companies may clarify the meaning of “other material information” included in a compliance certification document and may dispute its materiality in subsequent proceedings.

Response: In terms of the first and last comment, the agency agrees that material information is not limited to information that conclusively demonstrates a violation. The sentence restored states that “[i]f necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information.” As the EPA explained in the preamble to the final 1997 CAM rulemaking, any other material information known to the source owner/operator

¹³ See footnote 9, *supra*.

and relevant to the source's compliance status – “i.e., information beyond required monitoring that has been specifically assessed in relation to how the information potentially affects compliance status” – must be identified and addressed in the compliance certification submitted by the responsible official, and in providing this explanation, the EPA did not state that the information is limited to that which indicates non-compliance (62 FR 54937). As explained in the Response to Comments document accompanying the 1997 Compliance Assurance Monitoring Rule, the owner or operator of a source must consider any other material information in order to avoid submitting an incomplete, inaccurate, or false certification.¹⁴ Thus, this other material information could help in documenting whether compliance was continuous or intermittent for the relevant certification period, consistent with §§ 70.6(c)(5)(iii)(C) and 71.6(c)(5)(iii)(C).

In response to industry commenters, the agency agrees that a responsible official may provide an explanation concerning the relevance of other material information when it is submitted as part of the compliance certification for the source. At the time of the submittal, the responsible official can explain the relevance of any such information, including, but not limited to, cases in which the responsible official believes the “other material information” may be seen as in conflict with his conclusion regarding whether compliance was continuous or intermittent.¹⁵ For example, we have explained that the

¹⁴ “Compliance Assurance Monitoring Rulemaking (40 CFR parts 64, 70, and 71) Responses to Public Comments (Part I), (Comments Submitted in Response to Enhanced Monitoring Proposal),” dated October 2, 1997, *available at* <http://www.epa.gov/ttnatw01/cam/rtcpart1.pdf> (hereinafter, CAM Responses to Public Comments) Section 7.2.3 “Use of Other Monitoring Data for Compliance Certifications,” page 192.

¹⁵ CAM Response to Public Comments, Section 7.2.3 “Use of Other Monitoring Data for Compliance Certifications,” pages 192-193 and Section 7.11.2 “Deviations,” page 208.

requirements of the Credible Evidence Revisions rule “continue[s] to rely on the established compliance method as the benchmark for measuring compliance with the standard. The use of other evidence to document a violation must take into account the averaging requirements related to the data collected by such method, the pollutant constituents measured by such method (*e.g.*, the definition of particulate matter included in Method 5), and any limitations as to the conditions under which such tests may be conducted.”¹⁶

The agency further agrees that merely including other material information in a compliance certification does not constitute a concession that the information is credible evidence of a violation.

Comment: The government agency expressed concern that if the proposed sentence is readopted, the interpretation of what is additional information necessary for compliance - - outside of what is required by the permit -- becomes arbitrary and up to interpretation by the regulatory agency without recourse for the permitted entity. The commenter further states that any inadvertent omission of additional information (whether by oversight or not being aware of its relevance), even though not required by the permit, would subject the facility to enforcement action and imply the responsible official made a false certification, holding him/her both criminally and civilly liable.

A citizen commenter also expressed concern about the possibility of criminal prosecution and monetary penalties as a result of knowingly making a false certification.

¹⁶ “Credible Evidence Rule Revisions: Response to Comments,” Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, dated February 1997, Section 2.1.6 “Necessity for a Rulemaking to Establish Compliance Test Methods,” page 17.

Response: As explained in the 2013 proposal and throughout this preamble, the title V operating permits program functioned with this language in place for some time before it was inadvertently removed and has operated similarly since its removal. Moreover, the underlying statutory language in section 113(c)(2) of the CAA has not changed. Thus, restoring this language in the regulatory text does not change what is required of permitted entities.

Additionally, as previously explained in the 1997 Compliance Assurance Monitoring rulemaking, the requirement to consider other material information “does not impose a duty on the owner or operator to assess every possible piece of information that may have some undetermined bearing on compliance” (62 FR 54937). Under the existing title V regulations, any application form, report, or compliance certification is required to contain a certification by a responsible official.¹⁷ This certification is required to state that based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete. See 40 CFR 70.5(d) and 71.5(d). It is important to emphasize that, consistent with this requirement, the agency has already explained that it does not expect a certification to be based on absolute knowledge, but rather reasonable inquiry. For example, the EPA has stated that

¹⁷ In the Part 70 proposal (56 FR 21712, May 10, 1991), we stated that “the certification, as well as all other documents required under Part 70, must state that ‘to the best of the signer's knowledge, information and belief formed after reasonable inquiry, the statements and information in the compliance certification are true, accurate and complete.’ This language is similar to that in Rule 11 of the Federal Rules of Civil Procedure, upon which it was modeled. The provision makes clear that the signer must make a reasonable (under the circumstances) inquiry before attesting to the truth, accuracy, and completeness of the information and statements.” (56 FR 21734).

the compliance certification “will be based on available information, including monitoring and/or other compliance terms required in the permit.”¹⁸

Nothing in the current regulations precludes the submission of material information discovered after a compliance certification is filed. Additionally, the responsible official is encouraged to include written explanations, graphs, and other information to clarify his/her conclusions regarding the source’s compliance status.

In an explanation of the use of credible evidence in compliance certifications in the Credible Evidence Revisions rule, the agency emphasized that sources may not ignore obviously relevant information in developing their compliance certifications (62 FR 8320). However, in the same preamble, the agency also explained that it does not view compliance certification requirements as imposing a duty on a source to search out and review every possible document to determine its relevance to a source’s compliance (*id.*).

3. Scope of Compliance Certifications

Comment: The environmental group requested that the agency confirm in the final rule that the compliance certification obligation applies to all applicable requirements under the CAA – not just the specific emissions limitations enumerated in a title V operating permit.

Response: As discussed earlier in this preamble and in the preamble to the proposal, the purpose of this rulemaking is to restore a sentence to the compliance certification requirements that was inadvertently removed from the rule language on June 27, 2003.

¹⁸ “White Paper Number 2 for Improved Implementation of The Part 70 Operating Permits Program,” Memorandum from Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, U. S. Environmental Protection Agency, to Air Division Directors, March 5, 1996, page 33.

The EPA requested comment on whether, on the sole basis that the removal of the language in question was inadvertent, the language in question should or should not be restored. The comment raises an issue that is beyond the scope of this rulemaking, and, consistent with the approach already described, the EPA did not take this comment into consideration when finalizing the rule. However, we note that the text restored is a part of the existing regulation requiring annual (or more frequent) certification addressing compliance of the source “with terms and conditions contained in the permit, including emission limitations, standards, or work practices.” 40 CFR 70.6(c)(5), 71.6(c)(5).

4. Rule Language Clarification Requested

Comment: A citizen recommended that the proposed language be revised to be more specific as to the information that needs to be included.

Response: As discussed earlier in this preamble and in the preamble to the proposal, the purpose of this rulemaking is to restore a sentence to the compliance certification requirements that was inadvertently removed from the rule language on June 27, 2003. The EPA requested comment on whether, on the sole basis that the removal of the language in question was inadvertent, the language in question should or should not be restored. The comment raises an issue that is beyond the scope of this rulemaking, and, consistent with approach already described, the EPA did not take this comment into consideration when finalizing the rule. However, we note that the EPA provides guidance on the information to be included in compliance certification in several places, including in the instructions to the Annual Compliance Certification form¹⁹ and as further

¹⁹ Annual Compliance Certification (A-COMP), EPA Form 5900-04, at pages 4-6, available at <http://www.epa.gov/airquality/permits/pdfs/a-comp.pdf>.

summarized in the recently issued memo regarding annual compliance certification reporting.²⁰

D. Final Action

On March 29, 2013, the EPA proposed to restore the “other material information” sentence that was inadvertently removed from the operating permits program rules (found in 40 CFR parts 70 and 71) due to an editing error. This error occurred in a June 27, 2003, final rule (68 FR 38517) amending the compliance certification requirements in 40 CFR 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B). The final 2003 rule removed the following sentence from the end of paragraph (c)(5)(iii)(B) of both sections: “If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information.” This final rule restores this sentence to its former position in both paragraphs.

IV. Statutory and Executive Order Reviews

This final rule implements a technical correction to the Code of Federal Regulations by adding a sentence that was inadvertently removed in a prior rulemaking. It will not otherwise impose or amend any requirements. The analysis below is consistent with the limited nature of this rulemaking.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

²⁰ Memorandum from Stephen D. Page, OAQPS Director, to Regional Air Division Directors, Regions 1-10, Implementation Guidance on Annual Compliance Certification Reporting and Statement of Basis Requirements for Title V Operating Permits (April 30, 2014), available at <http://www.epa.gov/Region7/air/title5/t5memos/20140430.pdf>.

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The EPA is simply correcting the CFR to reinstate a sentence that was inadvertently removed. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR parts 70 and 71 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control numbers 2060-0243 and 2060-0336, respectively. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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 governmental jurisdictions.

For purposes of assessing the impacts of this final action on small entities, small entity is defined as: (1) a small business as defined in the U.S. Small Business Administration size standards at 13 CFR 121.201; (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; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. As explained above, this final rule merely restores a sentence that was removed from the rules inadvertently, and that reflects a requirement of the CAA; thus, the final rule does not impose any new requirements on any entities, either large or small.

D. Unfunded Mandates Reform Act

This final rule contains no federal mandates under the provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for state, local or tribal governments or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector; it simply restores a sentence removed from the rules because of erroneous amendatory language contained in the June 27, 2003, amendments. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The sentence restored in this action reflects a requirement of the CAA and was removed inadvertently and, therefore, it does not impose new regulatory requirements.

E. Executive Order 13132: Federalism

This action 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. As explained previously, this final rule merely restores a sentence removed from the rules inadvertently. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). As explained previously, this final rule merely restores a sentence that reflects a requirement of the CAA and was removed from the rules inadvertently. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. 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, 12(d) (15 U.S.C. 272 note) directs the 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 standards bodies. The NTTAA directs the EPA to provide Congress, through the OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and as permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or

the environment. As explained previously, this final rule merely restores a sentence that reflects a requirement of the CAA and was removed from the rules inadvertently.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the U.S. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days from the date this action is published in the **Federal Register**. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of this action.

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

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

Dated: July 21, 2014.

Gina McCarthy,
Administrator.

Therefore, 40 CFR parts 70 and 71 are amended as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

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

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

2. In §70.6, revise paragraph (c)(5)(iii)(B) to read as follows:

§70.6 Permit content.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(B) 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. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

* * * * *

PART 71—FEDERAL OPERATING PERMIT PROGRAMS

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

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

4. In §71.6, revise paragraph (c)(5)(iii)(B) to read as follows:

§71.6 Permit content.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(B) 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. Such methods and other means shall include, at a minimum, the methods and means required under paragraph (a)(3) of this section. If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

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[FR Doc. 2014-17680 Filed 07/25/2014 at 8:45 am; Publication Date: 07/28/2014]