Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it has only a domestic impact.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312(d) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Alcoholism, Aviation safety, Charter flights, Drug abuse, Drug testing, Safety, Transportation.

The Amendment

For the reasons set forth above, the Federal Aviation Administration is delaying the compliance date for the final rule published January 10, 2006 (71 FR 1666) from April 10, 2006 until October 10, 2006. The effective date of the January 10, 2006, final rule remains April 10, 2006.

Issued in Washington, DC, on March 31, 2006.

Marion C. Blakey,

Administrator.

[FR Doc. 06–3277 Filed 3–31–06; 3:16 pm]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[EPA–HQ–OAR–2004–0491; FRL–8055–3]

RIN 2060–AN60

$PM_{2.5}$ De Minimis Emission Levels for General Conformity Applicability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: The EPA is taking direct final action to amend its regulations relating to the Clean Air Act (CAA) requirement that Federal actions conform to the appropriate State, Tribal or Federal implementation plan for attaining clean air (''general conformity'') to add *de minimis* emissions levels for particulate matter with an aerodynamic diameter equal or less than 2.5 microns ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) and its precursors.

DATES: The direct final rule amendments are effective on June 5, 2006 without further notice, unless EPA receives adverse comment by May 5, 2006. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take place.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0491. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. 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 Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Coda, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–3037 or by e-mail at *coda.tom@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Today's action applies to all Federal agencies and Federal activities.

II. Background

A. What Is General Conformity and How Does It Affect Air Quality?

The intent of the General Conformity requirement is to prevent the air quality impacts of Federal actions from causing or contributing to a violation of the NAAQS or interfering with the purpose of a State implementation plan (SIP). For the purpose of this rule, the term ''State implementation plan (SIP)'' refers to all approved applicable and enforceable State, Federal and Tribal implementation plans (TIPs).

In the CAA, Congress recognized that actions taken by Federal agencies could affect States, Tribes, and local agencies' abilities to attain and maintain the NAAQS. Section 176(c) (42 U.S.C. 7506) of the CAA requires Federal agencies to

ensure that their actions conform to the applicable SIP for attaining and maintaining the NAAQS. The CAA Amendments of 1990 clarified and strengthened the provisions in section 176(c). Because certain provisions of section 176(c) apply only to highway and mass transit funding and approvals actions, EPA published two sets of regulations to implement section 176(c). The Transportation Conformity Regulations, first published on November 24, 1993 (58 FR 62188) and recently revised on July 1, 2004 (69 FR 40004) and May 6, 2005 (70 FR 24280), address Federal actions related to highway and mass transit funding and approval actions. The General Conformity Regulations, published on November 30, 1993 (58 FR 63214) and codified at 40 CFR 93.150, cover all other Federal actions. This action applies only to the General Conformity Regulations.

When the applicability analysis shows that the action must undergo a conformity determination, Federal agencies must first show that the action will meet all SIP control requirements such as reasonably available control measures, and the emissions from the action will not interfere with the timely attainment of the standard, the maintenance of the standard or the area's ability to achieve an interim emission reduction milestone. Federal agencies then must demonstrate conformity by meeting one or more of the methods specified in the regulation for determining conformity:

1. Demonstrating that the total direct [1] and indirect [2] emissions are specifically identified and accounted for in the applicable SIP;

2. Obtaining written statement from the State or local agency responsible for the SIP documenting that the total direct and indirect emissions from the action along with all other emissions in the area will not exceed the SIP emission budget;

3. Obtaining a written commitment from the State to revise the SIP to include the emissions from the action;

4. Obtaining a statement from the metropolitan planning organization (MPO) for the area documenting that any on-road motor vehicle emissions are included in the current regional emission analysis for the area's transportation plan or transportation improvement program;

5. Fully offset the total direct and indirect emissions by reducing emissions of the same pollutant or precursor in the same nonattainment or maintenance area; or

6. Where appropriate, in accordance with 40 CFR 51.858(4), conduct air quality modeling that can demonstrate that the emissions will not cause or contribute to new violations of the standards, or increase the frequency or severity of any existing violations of the standards.

B. Applicability Analysis for General Conformity

The National Highway System Designation Act of 1995, (Pub. L. 104–59) added section 176(c)(5) to the CAA to limit applicability of the conformity programs to areas designated as nonattainment under section 107 of the CAA and areas that had been redesignated as maintenance areas with a maintenance plan under section 175A of the CAA only. Therefore, only Federal actions taken in designated nonattainment and maintenance areas are subject to the General Conformity regulation. In addition, the General Conformity Regulations (58 FR 63214) recognize that the vast majority of Federal actions do not result in a significant increase in emissions and, therefore, include a number of regulatory exemptions, such as de minimis emission levels based on the type and severity of the nonattainment problem in an area.

In carrying out this type of applicability analysis, the Federal agency determines whether the total direct and indirect emissions from the action are below or above the de minimis levels. If the action is determined to have total direct and indirect emissions for a given pollutant that are at or above the de minimis level for that pollutant, Federal agencies must conduct a conformity determination for the pollutant unless the action is presumed to conform under the regulation or the action is otherwise exempt. If the action's emissions are below an applicable de minimis level, a Federal agency does not have to conduct a conformity determination.

C. Why is EPA Establishing De Minimis Levels for $PM_{2.5}$ Emissions at This Time?

The EPA has not revised the General Conformity Regulations since they were promulgated in 1993, although EPA expects to promulgate, in a separate rulemaking, proposed revisions to the General Conformity Regulations in the near future. For the purposes of general conformity, the General Conformity Regulations (58 FR 63214) define NAAQS as ''those standards established pursuant to section 109 of the Act and include standards for carbon monoxide (CO), Lead (Pb), nitrogen dioxide (NO_2), ozone, particulate matter (PM–10) and sulfur dioxide (SO_2).'' Since 1993, EPA has reviewed and revised the NAAQS for particulate matter to include a new $PM_{2.5}$ standard ($PM_{2.5}$ is particulate matter with an aerodynamic diameter of up to 2.5 μm, referred to as the fine particle fraction). Since $PM_{2.5}$ was established pursuant to section 109 of the CAA, general conformity requirements are applicable to areas designated nonattainment for this standard although it is not explicitly included in the examples of criteria pollutants in 58 FR 63214.

In July 1997, EPA promulgated two new NAAQS (62 FR 38652), one for an 8-hour ozone standard and one established pursuant to section 109 of the CAA for fine particulate matter known as $PM_{2.5}$. The new 8-hour and old 1-hour ozone NAAQS address the same pollutant but differ with respect to the averaging time, therefore, EPA retained the existing de minimis emission levels for ozone precursors.

The EPA designated areas as nonattainment for $PM_{2.5}$ on April 5, 2005. Subsequently, EPA has proposed regulations to implement the new particulate matter standard (70 FR 65984; November 1, 2005). Currently, there are no de minimis emission levels for $PM_{2.5}$. Although $PM_{2.5}$ is a subset of PM_{10}, it differs from the rest of PM_{10}. While the majority of ambient PM_{10} results from direct emissions of the pollutant, a significant amount of the ambient $PM_{2.5}$ can result not only from direct emissions but also from transformation of precursors and condensing of gaseous pollutants in the atmosphere. In the preamble to the proposed regulation to implement the new particulate matter standard, EPA discussed that the key pollutants potentially contributing to $PM_{2.5}$ concentrations in the atmosphere are direct $PM_{2.5}$ emissions, SO_2, NO_X, VOC and ammonia (70 FR 65998). The discussion also included EPA's intent to issue a separate rulemaking to establish de minimis levels for Federal actions covered by the General Conformity program (70 FR 66033). At that time, EPA said it expected the levels would be identical to the nonattainment area major source levels for the New Source Review (NSR) program.

Section 176(c)(6) states that the general conformity requirements of

[1] Direct emissions are emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and occur at the same time and place as the action.

[2] Indirect emissions are emissions of a criteria pollutant or its precursors that: (1) Are caused by the Federal action, but may occur later in time and/or may be further removed in distance from the action itself but are still reasonably foreseeable; and (2) the Federal agency can practically control or will maintain control over due to the controlling program responsibility of the Federal action.

section 176(c) do not apply to an area newly designated nonattainment for a new NAAQS until 1 year after such designation. The EPA made $PM_{2.5}$ designations on April 5, 2005; thus, the applicable general conformity requirements will not be effective in these areas until April 5, 2006. Many Federal actions result in little or no direct or indirect emissions, and EPA believes that non-exempt Federal actions that have covered emissions below the equivalent major source thresholds should not be required to prepare an applicability analysis under the general conformity rule. The general conformity rule should only apply to major sources, not de minimis sources. A different interpretation could result in an extremely wasteful process that generates vast numbers of useless applicability analyses with no environmental benefit.

D. How Does EPA Determine the De Minimis Threshold?

The EPA has previously considered options and taken comment on how to set de minimis levels to determine applicability of general conformity requirements. The following is a summary of the options previously considered and the methodology used in setting de minimis levels. In this direct final rule, the EPA is using the same methodology to set $PM_{2.5}$ de minimis levels that the Agency previously used for other NAAQS pollutants.

In the preamble to the proposal for General Conformity Regulations (58 FR 13841), EPA recognized that the very broad definition of Federal action in the statute and the number of Federal agencies subject to the conformity requirements could create a requirement for individual conformity decisions in the thousands per day. To avoid creating an unreasonable administrative burden, EPA considered options for mechanisms to focus the efforts of affected agencies on key actions with significant environmental impact, rather than all actions. Prior to that proposal, EPA consulted with numerous Federal agencies, environmental groups, State and local air quality agencies, building industry representatives, and others. Following consultation, EPA initially proposed a de minimis level similar to that specified by EPA for modifications to major stationary sources under the CAA preconstruction review programs. Consequently, the de minimis levels proposed for general conformity were chosen to correspond to the emission rates defined in 40 CFR 51.165 (NSR) and 51.166 (prevention of significant deterioration) as ''significant.'' Activities with emissions impacts below the proposed de minimis levels would not require conformity determinations.

After EPA received comments on this proposal, we responded in the preamble to the final General Conformity Regulations (58 FR 63228) and stated: ''Given the need to choose a threshold based on air quality criteria and one that avoids coverage of less significant projects, and in response to certain comments, the de minimis levels for conformity analyses in the final rule are based on the Act's major stationary source definitions—not the significance levels as proposed—for the various pollutants. Use of the de minimis levels assures that the conformity rule covers only major Federal actions. Under the major source definition, for example, the levels for ozone would range from 10 tons/year (VOC and NO_X) for an extreme ozone nonattainment area to 100 tons/year for marginal and moderate areas, not from 10 tons/year to 40 tons/year as proposed. The de minimis levels proposed were generally those used to define when modifications to existing stationary sources require preconstruction review. It was pointed out to EPA in comments on the proposal that these thresholds would result in the need to perform a conformity analysis and determination for projects that constituted a 'modification' to an existing source but not a 'major' source in some cases. The EPA agrees that conformity applies more appropriately to 'major' source and after careful consideration has decided to revise its original proposal in the final rule to use the emissions levels that define a major source, except as described above for lead. The definition of a major source under the amended Act is explained in more detail in the April 16, 1992 **Federal Register** in the EPA's General Preamble to Title I (57 FR 13498). Section 51.853(b)(3) of the rule has also been revised to remove the provisions that would automatically lower the de minimis levels to that established for stationary sources by the local air quality agency. In keeping with its conclusion that only major sources should be subject to conformity review, EPA agrees that a zero emissions threshold as established by some local agencies, should not be required by this rule.'' EPA adopts this rationale for the de minimis levels we are setting for $PM_{2.5}$ in this direct final action.

This mechanism of relying on the major stationary source levels in the statute as de minimis levels for conformity has worked well over the last 12 years to lessen the administrative burden of Federal agencies for actions that emit relatively low emissions while addressing actions with significant emissions that could affect attainment of the NAAQS. The EPA believes it is appropriate to continue to use major stationary source levels as de minimis levels for the $PM_{2.5}$ NAAQS in line with past practice and recognizing that Congress generally concluded it was appropriate to apply more stringent air quality review requirements on such sources. For this reason, EPA has decided to use this reasonable and effective mechanism for setting de minimis levels for $PM_{2.5}$.

The EPA proposed regulations to implement the new particulate matter standard (70 FR 65984) on November 1, 2005). In the preamble to that proposal, EPA discussed that the key pollutants potentially contributing to $PM_{2.5}$ concentrations in the atmosphere are direct $PM_{2.5}$ emissions, SO_2, NO_X, VOC and ammonia (70 FR 65998). While EPA recognized that SO_2, NO_X, VOC and ammonia are precursors of $PM_{2.5}$ in the scientific sense because these pollutants can contribute to the formation of $PM_{2.5}$ in the ambient air, the degree to which these individual precursors and pollutants contribute to $PM_{2.5}$ formation in a given location is complex and variable. For ammonia, there is uncertainty about emissions inventories and the potential efficacy of control measures from location to location. For VOC, the role and relationship of gaseous organic material in the formation of organic PM remains complex and further research and technical tools are needed to better characterize emissions inventories for specific VOC compounds. In light of these factors, EPA proposed in its rule to implement the $PM_{2.5}$ NAAQS that States are not required to address VOC's or ammonia as $PM_{2.5}$ nonattainment plan precursors, unless the State or EPA makes a finding that VOC's or ammonia significantly contribute to a $PM_{2.5}$ nonattainment problem in the State or to other downwind air quality concerns. For NO_X EPA proposed that States are required to address NO_X under all aspects of the program, unless the State and EPA makes a finding that NO_X emissions from sources in the State do not significantly contribute to the $PM_{2.5}$ problem in a given area or to other downwind air quality concerns.

Therefore, for the purposes of general conformity applicability, VOC's and ammonia emissions are only considered $PM_{2.5}$ precursors in nonattainment areas where either a State or EPA has made a finding that they significantly contribute to the $PM_{2.5}$ problem in a given area or to other downwind air quality concerns. In addition, NO_X emissions are considered a $PM_{2.5}$

precursor unless the State and EPA make a finding that NO_X emissions from sources in the State do not significantly contribute to the $PM_{2.5}$ problem in a given area or to other downwind air quality concerns.

III. Summary of the Action

The EPA is revising the tables in subparagraphs (b)(1) and (b)(2) of 40 CFR 51.853 and 40 CFR 93.153 by adding the de minimis emission levels for $PM_{2.5}$. The EPA is establishing 100 tons per year as the de minimis emission level for direct $PM_{2.5}$ and each of its precursors as defined in revised section 91.152. Since EPA did not propose any classifications for the $PM_{2.5}$ nonattainment areas, EPA is not establishing $PM_{2.5}$ de minimis emission levels for higher classified nonattainment areas. If, in the future, EPA classifies the $PM_{2.5}$ nonattainment areas, it will establish de minimis emission levels for the areas based upon the classifications as appropriate. This action will maintain the consistency between the conformity de minimis emission levels and the size of a major stationary source under the NSR program (70 FR 65984). These levels are also consistent with the levels proposed for VOC and NO_X emissions in subpart 1 areas under the 8-hour ozone implementation strategy (68 FR 32843).

We are publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal should adverse comments be filed. This action will be effective June 5, 2006, without further notice unless the EPA receives relevant adverse comments by May 5, 2006. If we receive such comments, then we will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 5, 2006 and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the 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 ''significant regulatory action'' as one that is likely to result in a regulation that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or 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 entitlements, grants, user fees, or loan programs or 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.

Pursuant to the terms of Executive Order 12866, it has been determined that these revisions to the regulations are considered a ''significant regulatory action'' because they may interfere with actions taken or planned by other Federal agencies. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations can be found in the public docket.

B. Paperwork Reduction Act

This action does not directly impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, on non-Federal entities. The General Conformity Regulations require Federal agencies to determine that their actions conform to the SIPs or TIPs. However, depending upon how Federal agencies implement the regulations, non-Federal entities seeking funding or approval from those Federal agencies may be required to submit information to that agency.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for 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 regulation subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies 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 today's action on small entities, small entity is defined as:

1. A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.201);
2. A 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 action will not impose any requirements on small entities and therefore, will not have a significant economic impact on a substantial number of small entities. The General Conformity Regulations require Federal agencies to conform to the appropriate State, Tribal or Federal implementation plan for attaining clean air. We continue to be interested in the potential impacts of the regulations on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local,

and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final regulations with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA regulation 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 to adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the regulation. The provisions of section 205 do not apply when 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 regulations 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, it 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 EPA regulatory actions with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these revisions to the regulations do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's regulation revisions are not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that these regulation revisions contain no regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments.

E. 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, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This action does not have Federalism implications. The regulations 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. Previously, EPA determined the costs to States to implement the General Conformity Regulations to be less than $100,000 per year. Thus, Executive Order 13132 does not apply to these regulation revisions.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 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.'' This determination is stated below.

These regulation revisions do not have Tribal implications as defined by Executive Order 13175. They do not have a substantial direct effect on one or more Indian Tribes, since no Tribe has to demonstrate conformity for their actions. Furthermore, these regulation revisions do not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the Tribal Air Rule establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Because these regulation revisions do not have Tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to these regulations, EPA encourages Tribal input and specifically solicits comment on this regulation from Tribal officials.

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

Executive Order 13045: ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''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 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.

These revisions to the regulations are not subject to Executive Order 13045 because they are not economically significant as defined in Executive Order 12866 and because EPA does not have reason to believe the environmental health or safety risk addressed by the General Conformity Regulations present a disproportionate risk to children. The General Conformity Regulations ensure that Federal agencies comply with the SIP, TIP or FIP for attaining and maintaining the NAAQS. The NAAQS are promulgated to protect the health and welfare of sensitive populations, including children.

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

These revisions to the regulations are not considered a ''significant energy action'' as defined in Executive Order 13211, ''Actions 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.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This revision to the regulations does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

However, EPA will encourage the Federal agencies to consider the use of such standards, where appropriate, in the implementation of the General Conformity Regulations.

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

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA believes that these revisions to the regulations should not raise any environmental justice issues. The revisions to the regulations would, if promulgated revise procedures for other Federal agencies to follow. They do not disproportionately affect the health or safety of minority or low income populations. The EPA encourages other agencies to carefully consider and address environmental justice in their implementation of their evaluations and conformity determinations.

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 United States. 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 United States prior to publication of the rule 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 June 5, 2006.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedures, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 93

Environmental protection, Administrative practice and procedures, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: March 31, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—[Amended]

■ 2. Section 51.852 is amended by adding paragraph (3) to definition of ''Precursors of criteria pollutant'' to read as follows:

§ 51.852 Definitions.

* * * * *

Precursors of a criteria pollutant are:

* * * * *

(3) For $PM_{2.5}$:

(i) Sulfur dioxide (SO_2) in all $PM_{2.5}$ nonattainment and maintenance areas,

(ii) Nitrogen oxides in all $PM_{2.5}$ nonattainment and maintenance areas unless both the State and EPA determine that it is not a significant precursor, and

(iii) Volatile organic compounds (VOC) and ammonia (NH_3) only in $PM_{2.5}$ nonattainment or maintenance areas where either the State or EPA determines that they are significant precursors.

* * * * *

■ 3. Section 51.853 is amended by revising paragraph (b) to read as follows:

§ 51.853 Applicability analysis.

* * * * *

(b) For Federal actions not covered by paragraph (a) of this section, a conformity determination is required for each criteria pollutant or precursor where the total of direct and indirect emissions of the criteria pollutant or precursor in a nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates in paragraphs (b)(1) or (2) of this section.

(1) For purposes of paragraph (b) of this section, the following rates apply in nonattainment areas (NAA's):

	Tons/ year
Ozone (VOC's or NO_X):	
Serious NAA's	50
Severe NAA's	25
Extreme NAA's	10
Other ozone NAA's outside an ozone transport region	100
Other ozone NAA's inside an ozone transport region:	
VOC	50
NO_X	100
Carbon monoxide: All NAA's	100
SO_2 or NO_2: All NAA's	100
PM–10:	
Moderate NAA's	100
Serious NAA's	70
$PM_{2.5}$:	
Direct emissions	100
SO_2	100
NO_X (unless determined not to be significant precursors)	100
VOC or ammonia (if determined to be significant precursors)	100
Pb: All NAA's	25

* * * * *

(2) For purposes of paragraph (b) of this section, the following rates apply in maintenance areas:

	Tons/ year
Ozone (NO_X, SO_2 or NO_2): All Maintenance Areas	100
Ozone (VOC's):	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide: All Maintenance Areas	100
PM–10: All Maintenance Areas	100
$PM_{2.5}$:	
Direct emissions	100
SO_2	100
NO_X (unless determined not to be significant precursors)	100
VOC or ammonia (if determined to be significant precursors)	100
Pb: All Maintenance Areas	25

* * * * *

PART 93—[AMENDED]

■ 4. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart B—[Amended]

■ 5. Section 93.152 is amended by adding paragraph (3) to definition of ''Precursors of criteria pollutant'' to read as follows:

§ 93.152 Definitions.

* * * * *

Precursors of a criteria pollutant are:

* * * * *

(3) For $PM_{2.5}$:

(i) Sulfur dioxide (SO_2) in all $PM_{2.5}$ nonattainment and maintenance areas,

(ii) Nitrogen oxides in all $PM_{2.5}$ nonattainment and maintenance areas unless both the State and EPA determine that it is not a significant precursor, and

(iii) Volatile organic compounds (VOC) and ammonia (NH_3) only in $PM_{2.5}$ nonattainment or maintenance areas where either the State or EPA determines that they are significant precursors.

* * * * *

■ 6. Section 93.153 is amended by revising paragraph (b) to read as follows:

§ 93.153 Applicability analysis.

* * * * *

(b) For Federal actions not covered by paragraph (a) of this section, a conformity determination is required for each criteria pollutant or precursor where the total of direct and indirect emissions of the criteria pollutant or precursor in a nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates in paragraphs (b)(1) or (2) of this section.

(1) For purposes of paragraph (b) of this section, the following rates apply in nonattainment areas (NAA's):

	Tons/ year
Ozone (VOC's or NO_X):	
Serious NAA's	50
Severe NAA's	25
Extreme NAA's	10
Other ozone NAA's outside an ozone transport region	100
Other ozone NAA's inside an ozone transport region:	
VOC	50
NO_X	100
Carbon monoxide: All NAA's	100
SO_2 or NO_2: All NAA's	100
PM–10:	
Moderate NAA's	100
Serious NAA's	70
$PM_{2.5}$:	
Direct emissions	100
SO_2	100
NO_X (unless determined not to be significant precursors)	100
VOC or ammonia (if determined to be significant precursors)	100
Pb: All NAA's	25

* * * * *

(2) For purposes of paragraph (b) of this section, the following rates apply in maintenance areas:

	Tons/ year
Ozone (NO_X, SO_2 or NO_2): All Maintenance Areas	100
Ozone (VOC's):	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide: All Maintenance Areas	100
PM–10: All Maintenance Areas	100
$PM_{2.5}$:	
Direct emissions	100
SO_2	100
NO_X (unless determined not to be significant precursors)	100
VOC or ammonia (if determined to be significant precursors)	100
Pb: All Maintenance Areas	25

* * * * *

[FR Doc. 06–3311 Filed 4–4–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0525; FRL–7756–8]

Novaluron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of novaluron in or on brassica, head and stem, subgroup 5A. Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective April 5, 2006. Objections and requests for hearings must be received on or before June 5, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2005–0525. All documents are listed on the www.regulations.gov web site. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.)Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address:*brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *http://www.epa.gov/edocket/*, you may access