

(i) The draw of the Belleair Beach Drawbridge, mile 131.8, Clearwater, FL shall open on signal, except that from 7 a.m. to 7 p.m., the bridge shall open on the hour and half-hour.

\* \* \* \* \*

Dated: December 10, 2007.

**William D. Lee,**

*Captain, U.S. Coast Guard, Acting  
Commander, Seventh Coast Guard.*

[FR Doc. E8-191 Filed 1-8-08; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 50

[EPA-HQ-OAR-2001-0017; FRL-8502-3]

RIN 2060-AO59

### Interpretation of the National Ambient Air Quality Standards for PM<sub>2.5</sub>— Correcting and Simplifying Amendment

**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA recently finalized changes to the data handling conventions and computations necessary for determining when the annual and 24-hour national ambient air quality standards (NAAQS) for fine particles (generally referring to particles less than or equal to 2.5 micrometers (µm) in diameter, PM<sub>2.5</sub>) are met. These changes were made in support of revisions to the NAAQS for particulate matter (PM) that were finalized in the same rulemaking. After publication, EPA discovered an inadvertent omission in the rule text explaining the procedures for calculating the key statistic (98th percentile) involved with determining compliance with the 24-hour PM<sub>2.5</sub> standard in locations where extra samples of PM<sub>2.5</sub> in ambient air were taken above the specified sampling frequency. If the error in the regulatory text is left unchanged, the resulting statistic for calculating compliance with the 24-hour PM<sub>2.5</sub> standard would be biased low at some samplers, leading to potentially incorrect determinations that an area was attaining the NAAQS. In this direct final action, EPA is correcting this error. The correction involves the replacement of the currently used statistical formula and instructions with a simpler look-up table approach which is easier for readers to understand and which retains the intended numerical consistency with EPA's historic practice.

**DATES:** This rule is effective on April 8, 2008 without further notice, unless EPA receives adverse comment by February 8, 2008. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2001-0017 by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).
- *Fax:* (202) 566-9744.
- *Mail:* Review of the National Ambient Air Quality Standards (NAAQS) for Particulate Matter (PM), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue, NW., EPA Headquarters Library, Room 3334, EPA West Building, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2001-0017. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at: <http://www.regulations.gov> including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact

you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Review of the National Ambient Air Quality Standards (NAAQS) for Particulate Matter (PM) Docket, EPA/DC, EPA West Building, EPA Headquarters Library, Room 3334, 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:** For general questions, please contact Mr. Lewis Weinstock, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Ambient Air Monitoring Group (C304-06), Research Triangle Park, North Carolina 27711; telephone number: (919) 541-3661; fax number: (919) 541-1903; e-mail address: [weinstock.lewis@epa.gov](mailto:weinstock.lewis@epa.gov). For technical questions, please contact Mr. Mark Schmidt, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Air Quality Analysis Group (C304-04), Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2416; fax number: (919) 541-1903; e-mail address: [schmidt.mark@epa.gov](mailto:schmidt.mark@epa.gov).

## SUPPLEMENTARY INFORMATION:

### Table of Contents

- I. Why Is EPA Using a Direct Final Rule?
- II. Does This Action Apply to Me?
- III. Authority
- IV. Judicial Review
- V. Overview of the October 17, 2006 NAAQS Rule Changes
- VI. This Action
- VII. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act

C. Regulatory Flexibility Act  
 D. Unfunded Mandates Reform Act  
 E. Executive Order 13132: Federalism  
 F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments  
 G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks  
 H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use  
 I. National Technology Transfer Advancement Act  
 J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations  
 K. Congressional Review Act

### I. Why Is EPA Using a Direct Final Rule?

The EPA is publishing this rule to correct and simplify 40 CFR part 50 to Appendix N, Interpretation of the National Ambient Air Quality Standards for PM<sub>2.5</sub>, without a prior proposed rule because we view this as a non-controversial action and anticipate no adverse comment. The change does not alter the regulatory requirements on affected entities that were promulgated in the final rule that was published in the **Federal Register** on October 17, 2006 (71 FR 61144). The amended rule also expresses EPA's actual intentions, as explained in that rulemaking. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that

will serve as a proposed rule if EPA receives significant adverse comments on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

### II. Does This Action Apply to Me?

Categories and entities potentially regulated by this action include:

| Category                                        | NAICS code <sup>1</sup> | Examples of regulated entities                                                                                                                                                                                                                                                                                                               |
|-------------------------------------------------|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Federal government .....                        | 924110                  | Federal agencies that conduct ambient air monitoring similar to that conducted by States under 40 CFR part 58 and that wish EPA to use their monitoring data in the same manner as State data.                                                                                                                                               |
| State/territorial/local/tribal government ..... | 924110                  | State, territorial, and local, air quality management programs that are responsible for ambient air monitoring under 40 CFR part 58. The proposal also may affect Tribes that conduct ambient air monitoring similar to that conducted by States and that wish EPA to use their monitoring data in the same manner as State monitoring data. |

<sup>1</sup> North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware of that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### III. Authority

Two sections of the Clean Air Act (CAA) govern the establishment and revision of the NAAQS and supporting appendices detailing associated Federal Reference Methods and NAAQS interpretation (data handling) procedures.

Section 108 (42 U.S.C. 7408) directs the Administrator to identify and list "air pollutants" that "in his judgment, may reasonably be anticipated to endanger public health and welfare" and whose "presence \* \* \* in the ambient air results from numerous or diverse mobile or stationary sources" and to issue air quality criteria for those that are listed. Air quality criteria are

intended to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in ambient air \* \* \*."

Section 109 (42 U.S.C. 7409) directs the Administrator to propose and promulgate "primary" and "secondary" NAAQS for pollutants listed under section 108. Section 109(b)(1) defines a primary standard as "the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health." A secondary standard, as defined in section 109(b)(2), must "specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [the] pollutant in the ambient air."

### IV. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this direct final rule is available only by

filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 10, 2008. Under section 307(d)(7)(B) of the CAA, only an objection to this direct final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by this action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

### V. Overview of the October 17, 2006 NAAQS Rule Changes

On October 17, 2006 (71 FR 61144), EPA amended the primary and secondary NAAQS for PM to provide increased protection of public health and welfare by revising the NAAQS for PM<sub>2.5</sub> and PM<sub>10</sub> (generally referring to particles less than or equal to 10 micrometers (µm) in diameter). The rule amendments also modified the data handling procedures associated with the PM<sub>10</sub> and PM<sub>2.5</sub> NAAQS (Appendices K and N of part 50, respectively). Appendix K and N describe the procedures and equations for determining whether a monitoring site

meets the PM<sub>10</sub> and PM<sub>2.5</sub> NAAQS, respectively. Appendix N of part 50 (Interpretation of the National Ambient Air Quality Standards for PM<sub>2.5</sub>) was revised to incorporate the revised 24-hour NAAQS level (i.e., 35 µg/m<sup>3</sup>), and also to make several notable enhancements to the previous data handling conventions and computations (adopted at 62 FR 38755, July 18, 1997). These enhancements expanded the existing instructions to include relevant details for certain special cases previously addressed only in a 1999 EPA guidance document.<sup>2</sup> EPA meant to make the rule text more explicit in order to avoid regulatory ambiguity in these special cases. The special cases addressed in the 1999 EPA guidance are situations in which a monitoring agency has performed “make-up” or “supplemental” sampling of PM<sub>2.5</sub>. The 1999 guidance, but not the previous version of Appendix N, provided details about how these samples could be taken into account in the calculation of design values used for determining whether areas are in compliance with the 24-hour PM<sub>2.5</sub> NAAQS.

The monitoring network used for determining compliance with the PM<sub>2.5</sub> NAAQS is currently based solely on filter-based samplers that typically operate on a 1-in-3 day sampling frequency.<sup>3</sup> Such filter-based samplers can malfunction resulting in missed or invalidated samples. The 1999 guidance encouraged monitoring agencies to collect make-up samples<sup>4</sup> for such lost data, and to use the make-up data in the calculation of the design values for the monitoring site. Monitoring agencies may also collect supplemental samples on days falling between required sampling days for local purposes, such as to better understand the nature and causes of a multi-day PM<sub>2.5</sub> episode. The original (1997) Appendix N did not

provide explicit procedures addressing make-up or supplemental samples. The 1999 guidance suggested procedures for calculating design values in these cases which would ensure the appropriate treatment of such make-up and supplemental samples in the calculation of PM<sub>2.5</sub> 24-hour standard design values.

As noted in the preamble to the October 17, 2006 NAAQS rulemaking, EPA intended to incorporate into regulation PM<sub>2.5</sub> data handling procedures that previously had only been stated in guidance. 71 FR at 61211. In the course of making these intended changes, however, an error was made in section 4.5 of Appendix N dealing with procedures and equations for calculating the 24-hour PM<sub>2.5</sub> NAAQS under certain conditions. As described in the following section, this action was inadvertent, contrary to EPA’s stated intentions, and necessitates correction.

## VI. This Action

EPA is amending Appendix N in this action to correct the Agency’s inadvertent error. As a result, the procedures in Appendix N will give results that will be identical to the intended formula (instead of the formula that was misstated in the October 2006 rulemaking) and also to the previous method that had been recommended in EPA guidance. In addition, this action simplifies the procedures for calculating 24-hour PM<sub>2.5</sub> design values.

As noted, EPA intended in the October 2006 final rule to codify the 1999 guidance’s procedure for avoiding a bias that could be introduced into calculations of the 98th percentile concentration if supplemental samples are unaccounted for in the statistical calculations. For example, if supplemental ambient samples were taken during periods of low PM<sub>2.5</sub> concentrations, the annual<sup>5</sup> 98th percentile value could be biased low using the previous (1997) Appendix N procedures compared with the statistic that would have been generated (using that same procedure) if supplemental samples were not taken or considered. To minimize this bias, the 1999 guidance and the October 2006 version of Appendix N based the annual 98th percentile calculation on the creditable<sup>6</sup>

number of monitoring samples as defined in section 1(c) of the October 2006 version of Appendix N to 40 CFR part 50.<sup>7</sup>

In the 2006 rule, EPA intended to encompass certain relevant details previously addressed only in the 1999 guidance by expanding the existing instructions in the text of Appendix N. The EPA’s 1999 guidance document recommended procedures for calculating regular annual PM<sub>2.5</sub> 98th percentile values for two distinct situations. Chapter 1 of the guidance document addressed a monitoring site which had sampled solely on official required sample days. One method for this situation simply reiterated the formula finalized in 1997 accompanied by an example. This formula utilized a generic sample count (“n”) which was only appropriate when no “extra” (non-scheduled) samples were taken at the monitoring site during the year. An alternate method for the same situation used a table look-up approach, but again specified the generic “n” and, hence, was also only accurate when there were no extra samples taken during the year. Chapter 2 of the guidance document explained that modifications should be made to the stated techniques if there were extra samples present for a site-year. The guidance document recommended: (1) Utilizing a sample count that accounted for (specifically, subtracted) extra samples, and, (2) incorporating a term (specifically, adding) into the equation accounting for the extra sample count. This formula, which was misstated in the October 2006 rulemaking, also produced accurate results when no extra samples were present since the total “n” was the same as “n” minus “extra samples” or zero, and also the extra sample term in the equation was zero. Chapter 2 in the guidance document also noted that the table look-up approach in Chapter 1 still produced the desired result when extra samples were present if only the adjusted sample count (“n minus extra samples”) were used in lieu of the total sample count (“n”). This approach also produced accurate results whether extra samples were present or not.

In the October 2006 revisions to Appendix N, EPA intended to incorporate the “extra sample”

<sup>2</sup> Guideline on Data Handling Conventions for the PM NAAQS, EPA-454/R-99-008, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC, April 1999. <http://www.epa.gov/ttn/oarpg/t1/memoranda/pmfinal.pdf>.

<sup>3</sup> 40 CFR 58.12(d) describes the required operating schedules for manual PM<sub>2.5</sub> samplers. Although the majority of such samplers must operate on a 1-in-3 day operating schedule, a subset of samplers is required to operate on a daily schedule, and samplers that are collocated with a continuous operating PM<sub>2.5</sub> monitor may be eligible for a reduction to 1-in-6 days sampling if approved by the Regional Administrator.

<sup>4</sup> Make-up samples are samples taken to replace missed or invalidated required scheduled samples. Make-up samples can be made by either the primary or the collocated instruments. Make-up samples are either taken before the next required sampling day or exactly one week after the missed (or voided) sampling day. The guidance also made other suggestions regarding make-up sampling practices.

<sup>5</sup> The term “annual 98th percentile value” refers to a single-year statistic required for the calculation of 24-hour PM<sub>2.5</sub> design values and should not be confused with procedures required for calculation of the annual form of the PM<sub>2.5</sub> standard that are not referenced or modified by this rulemaking.

<sup>6</sup> Creditable samples are samples that are given credit for data completeness. They include valid samples collected on required sampling days and valid “make-up” samples taken for missed or invalidated samples on required sampling days.

<sup>7</sup> The EPA notes that most sites do not take supplemental samples; hence, the total number of samples is generally equal to the creditable number of samples. Also, EPA notes that the collection of supplemental samples has a negligible impact on the determination of attainment for the annual PM<sub>2.5</sub> NAAQS since the metric for that standard is weighted by quarter. Furthermore, data completeness, an integral consideration for evaluating attainment of a NAAQS, is based solely on creditable samples.

adjustment logic into the existing equation method (71 FR at 61211). The sample count reference was modified (essentially changing “n” to “n minus extra samples”) but the “extra sample” term was inadvertently omitted from equation 5 of section 4.5 (71 FR at 61229). That omission would cause significant miscalculations to the annual 98th percentile value when extra samples are present if the procedure were explicitly followed. The presence of extra samples with the misstated formula would result in a low bias in ascertaining the single-year 98th percentile statistic, as well as in determining the resulting PM<sub>2.5</sub> NAAQS comparison metric (24-hour design value) based on the three-year average of 98th percentile statistics. If implemented as explicitly stated, the misstated formula would improperly weaken the stringency of the 24-hour PM<sub>2.5</sub> NAAQS by showing sites and areas to be in attainment of the NAAQS when they were actually violating the standard. This situation would result in the 24-hour standard no longer being sufficiently stringent in those areas to provide requisite protection to public health and welfare, in violation of the fundamental requirement for establishing NAAQS in section 109(b) of the Act.

For this direct final rule, EPA considered two possible approaches to correct Appendix N. The first would be to correct equation 5 in Appendix N, section 4.5 by adding a term and footnote indicating that the number of extra samples, if taken, would have to be added to the current equation result (i.e., 1 plus the integer part of the product of 0.98 and the creditable number of samples) to determine where in the ascending data distribution to select the 98th percentile value. Such a correction would have restored EPA’s intention of preserving numerical consistency with previous practice in calculating the related metrics for 24-hour PM<sub>2.5</sub> design values, but would also have preserved a set of procedures that is sensitive to the presence of extra samples and is hard to apply without providing relatively complex instructions.

The second possible approach would be to incorporate a table look-up method into Appendix N instead of using an equation. The direct final rule uses this approach. The EPA believes that the incorporation of a table look-up method into the Appendix N procedures provides a simpler means for calculating 98th percentile values by employing a more intuitive descending sort procedure that is unaffected by the presence of extra samples in the data

distribution being examined. For example, if the annual number of creditable samples at a 1-in-3 day monitor is 125, then the appropriate 98th percentile value is the third maximum value in the descending sort distribution as noted in the table. If a 1-in-6 day monitor has recorded 50 creditable samples in a year, then the 98th percentile value is the first maximum value in the descending sort distribution.

Accordingly, the rule language of section 4.5(a)(1) of 40 CFR part 50, Appendix N is amended to replace equation 4.5 with a data look-up table (table 1) that determines where in the descending sorted data distribution the 98th percentile value is located. EPA is also adding rule text to 4.5(a)(1) (labeled “Regular procedure for identifying annual 98th percentile values” in the rule) to describe the procedures for performing the descending sort distribution and for determining the appropriate range for selecting the correct 98th percentile value based on the creditable number of samples.

To reiterate, this direct final rule both eliminates the erroneous terms in the equation, and replaces the equation-based procedure for determining the 98th percentile concentration with a table look-up approach that is equivalent to the intended equation-based procedure, because the table look-up approach is both correct and much easier to understand and execute. In fact, several public comments received on the proposed Appendix N procedure (the proposal underlying the 2006 final rule) for determining 98th percentiles noted that the treatment of extra samples (within that procedure) was complex, confusing, and difficult to program. Moreover, EPA believes that the equation-based procedure itself, especially when the extra sample adjustment is properly incorporated, is more indirect and hence more confusing than necessary. EPA’s 1999 guidance perhaps contributed to the confusion by describing multiple methods which could be used for calculating the statistical metric. Also, the equation-based procedure promulgated in 1997 and described in the 1999 guidance utilized an ascending sorted data distribution which created another source of confusion. Descending sorts are generally utilized more frequently than ascending ones when characterizing air quality; for example, other criteria pollutant NAAQS focus on a fourth maximum concentration or a second maximum concentration. The alternate 98th percentile calculation method outlined in the 1999 guidance—the table look-up approach—utilizes

this more intuitive descending sort. EPA based the 1999 guidance on a descending sort since it was thought to be more comprehensible. In addition (as outlined in the 1999 guidance), when extra samples were present at a site in a given year, the promulgated equation-based procedure for the 98th percentile calculation required a critical adjustment (an added term) to the associated equation. (As noted earlier, this critical adjustment is what was omitted from equation 4.5 of Appendix N in the 2006 amendments.) However, as correctly stated in the 1999 guidance, when extra samples are present and the table look-up approach is utilized, no such adjustment is necessary. Thus, in conclusion and in retrospect, it would have been better if EPA had proposed and promulgated the table look-up approach. Now afforded a second opportunity because of the need to address the error of the missing term in the equation-based procedure, EPA is opting to switch to the table look-up approach in this rulemaking.

EPA notes the retention of an equation-based procedure (equation 5 of section 4.5(a)(2) of 40 CFR part 50, Appendix N) to account for sites that operate on an approved seasonal sampling schedule. An equation-based approach is necessary to account for the different number of days present in “High” and “Low” seasons.

## VII. Statutory and Executive Order Reviews

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

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 the Executive Order.

### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* There is no information collection requirement directly associated with revisions to a NAAQS or supporting appendices under section 109 of the CAA.

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 (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, or fewer than 4 billion kilowatt-hr per year of electricity usage, depending on the size definition for the affected North American Industry Classification System code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this direct 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 direct final rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

#### *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 rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply 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 rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, 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 proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector.

The correcting and simplifying change does not create additional regulatory requirements on affected entities compared to those that were promulgated in the final rule that was published in the **Federal Register** on October 17, 2006. The rule change only corrects and simplifies one error in Appendix N of part 50 (Interpretation of the National Ambient Air Quality Standards for PM<sub>2.5</sub>). Thus, this final rule is not subject to the requirements of section 202 and 205 of the UMRA.

EPA has determined that this direct final rule contains no regulatory requirements that might significantly or uniquely affect small governments. The correcting and simplifying change does not create additional regulatory requirements.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132 (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 direct final rule 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. The change being made only corrects and simplifies one error in Appendix N of part 50 (Interpretation of the National Ambient Air Quality Standards for PM<sub>2.5</sub>); thus, Executive Order 13132 does not apply to this final rule.

#### *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 direct final rule does not have tribal implications, as specified in Executive Order 13175. The change being made only corrects and simplifies one error in Appendix N of part 50 (Interpretation of the National Ambient Air Quality Standards for PM<sub>2.5</sub>). Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (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 a disproportionate effect on children. If the regulatory action meets both criteria,

the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This direct final rule is not subject to Executive Order 13045 because, while it is based on the need for monitoring data to characterize risk, this direct final rule itself does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer Advancement Act*

As noted in the proposed rule, Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve any new technical standards for environmental monitoring and measurement. Ambient air concentrations of PM<sub>2.5</sub> are currently measured by the Federal reference method in 40 CFR part 50, Appendix L (Reference Method for the Determination of Fine Particulate as PM<sub>2.5</sub> in the Atmosphere) or by Federal Reference Method or Federal Equivalent Method that meet the requirements in 40 CFR part 53.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and 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.

EPA has determined that this direct 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. The rule merely amends the October 17, 2006, final PM NAAQS rule (71 FR 61144) by correcting and simplifying existing PM<sub>2.5</sub> data handling conventions and computations.

#### *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**.

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 April 8, 2008.

#### **List of Subjects in 40 CFR Part 50**

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

Dated: November 29, 2007.

**Stephen L. Johnson**,  
Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 50 of the Code

of Federal Regulations is amended as follows:

#### **PART 50—[AMENDED]**

■ 1. The authority citation for part 50 continues to read as follows:

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

■ 2. Appendix N is amended by:

- a. Revising section 2.0(c);
- b. Revising section 4.2(c); and
- c. Revising section 4.5, as follows:

#### **Appendix N to Part 50—Interpretation of the National Ambient Air Quality Standards for PM<sub>2.5</sub>**

\* \* \* \* \*

##### *2.0 Monitoring Considerations*

\* \* \* \* \*

(c) Section 58.12 of this chapter specifies the required minimum frequency of sampling for PM<sub>2.5</sub>. Exceptions to the specified sampling frequencies, such as a reduced frequency during a season of expected low concentrations (i.e., “seasonal sampling”), are subject to the approval of EPA. Annual 98th percentile values are to be calculated according to equation 5 in section 4.5 of this appendix when a site operates on a “seasonal sampling” schedule.

\* \* \* \* \*

##### *4.2 24-Hour PM<sub>2.5</sub> NAAQS*

\* \* \* \* \*

(c) The procedures and equations for calculating the 24-hour standard design values are given in section 4.5 of this appendix.

\* \* \* \* \*

##### *4.5 Procedures and Equations for the 24-Hour PM<sub>2.5</sub> NAAQS*

(a) When the data for a particular site and year meet the data completeness requirements in section 4.2 of this appendix, calculation of the 98th percentile is accomplished by the steps provided in this subsection. Table 1 of this appendix shall be used to identify annual 98th percentile values, except that where a site operates on an approved seasonal sampling schedule, equation 5 of this appendix shall be used instead.

(1) *Regular procedure for identifying annual 98th percentile values.* Identification of annual 98th percentile values using the regular procedure (table 1) will be based on the creditable number of samples (as described below), rather than on the actual number of samples. Credit will not be granted for extra (non-creditable) samples. Extra samples, however, are candidates for selection as the annual 98th percentile. [The creditable number of samples will determine how deep to go into the data distribution, but all samples (creditable and extra) will be considered when making the percentile assignment.] The annual creditable number of samples is the sum of the four quarterly creditable number of samples.

*Procedure:* Sort all the daily values from a particular site and year by descending value. (For example: (x[1], x[2], x[3], \* \* \*, x[n]).

In this case,  $x[1]$  is the largest number and  $x[n]$  is the smallest value.) The 98th percentile is determined from this sorted series of daily values which is ordered from the highest to the lowest number. Using the left column of table 1, determine the appropriate range (i.e., row) for the annual creditable number of samples for year  $y$  ( $cn_y$ ). The corresponding “ $n$ ” value in the right column identifies the rank of the annual 98th percentile value in the descending sorted list of daily site values for year  $y$ . Thus,  $P_{0.98, y}$  = the  $n$ th largest value.

TABLE 1

| Annual creditable number of samples for year “ $y$ ” ( $cn_y$ ) | $P_{0.98, y}$ is the $n$ th maximum value of the year, where $n$ is the listed number |
|-----------------------------------------------------------------|---------------------------------------------------------------------------------------|
| 1–50 .....                                                      | 1                                                                                     |
| 51–100 .....                                                    | 2                                                                                     |
| 101–150 .....                                                   | 3                                                                                     |
| 151–200 .....                                                   | 4                                                                                     |
| 201–250 .....                                                   | 5                                                                                     |
| 251–300 .....                                                   | 6                                                                                     |
| 301–350 .....                                                   | 7                                                                                     |
| 351–366 .....                                                   | 8                                                                                     |

(2) Formula for computing annual 98th percentile values when sampling frequencies are seasonal.

*Procedure:* Calculate the annual 98th percentiles by determining the smallest measured concentration,  $x$ , that makes  $W(x)$  greater than 0.98 using equation 5 of this appendix:

Equation 5

$$W(x) = \frac{d_{\text{High}}}{d_{\text{High}} + d_{\text{Low}}} F_{\text{High}}(x) + \frac{d_{\text{Low}}}{d_{\text{High}} + d_{\text{Low}}} F_{\text{Low}}(x)$$

Where:

$d_{\text{High}}$  = number of calendar days in the “High” season;

$d_{\text{Low}}$  = number of calendar days in the “Low” season;

$d_{\text{High}} + d_{\text{Low}}$  = days in a year; and

$$F_a(x) = \frac{\text{number of daily values in season a that are } \leq x}{\text{number of daily values in season a}}$$

Such that “ $a$ ” can be either “High” or “Low”; “ $x$ ” is the measured concentration; and “ $d_{\text{High}}/(d_{\text{High}} + d_{\text{Low}})$  and  $d_{\text{Low}}/(d_{\text{High}} + d_{\text{Low}})$ ” are constant and are called seasonal “weights.”

(b) The 24-hour standard design value is then calculated by averaging the annual 98th percentiles using equation 6 of this appendix:

Equation 6

$$P_{0.98} = \frac{\sum_{y=1}^3 P_{0.98, y}}{3}$$

(c) The 24-hour standard design value (3-year average 98th percentile) is rounded according to the conventions in section 4.3 of this appendix before a comparison with the standard is made.

[FR Doc. 07–5954 Filed 1–8–08; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA–HQ–OPP–2007–0541; FRL–8343–5]

### Difenoconazole; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes, increases, and removes tolerances for

residues of difenoconazole and also establishes tolerances for combined residues of difenoconazole and its metabolite, CGA-205375, in or on various commodities. In addition, this regulation revokes tolerances for secondary residues in poultry, fat, meat, and meat byproducts. Syngenta Crop Protection, Inc., requested these tolerances under the Federal, Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective January 9, 2008. Objections and requests for hearings must be received on or before March 10, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0541. To access the electronic docket, go to <http://www.regulations.gov>, select “Advanced Search,” then “Docket Search.” Insert the docket ID number where indicated and select the “Submit” button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business

Information (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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

#### FOR FURTHER INFORMATION CONTACT:

Janet Whitehurst, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6129; e-mail address: [whitehurst.janet@epa.gov](mailto:whitehurst.janet@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