

implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule, that amends a regulation that is required by statute, 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 Clean Air Act requires conformity to apply in nonattainment and maintenance areas, and the U.S. Court of Appeals for the District of Columbia Circuit has determined that projects requiring federal approval and funding are affected when a nonattainment or maintenance area is unable to demonstrate conformity; specifically, under Clean Air Act section 176(c) those phases (NEPA approval, right-of-way acquisition, final design, or construction) in a federal project's development that have not received federal approval or funding prior to a conformity lapse cannot be granted approval or funding, and thus proceed, during a conformity lapse. Furthermore, the court directed EPA to establish new procedures for determining the adequacy of motor vehicle emissions estimates before such estimates can be

used in conformity determinations. Similarly, other minor amendments included in today's proposal are the result of the court's order and other related administrative matters, or have been proposed simply to make the rule more workable and/or to clarify requirements that already exist under the current conformity regulation.

In summary, this proposed rule is required primarily by the court's interpretation of the Clean Air Act, and by itself will not have a substantial impact on States. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

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

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

Today's amendments to the conformity rule do not significantly or uniquely affect the communities of Indian tribal governments, as the Clean Air Act requires transportation conformity to apply in any area that is designated nonattainment or maintenance by EPA. Specifically, this proposed rule would incorporate into the conformity rule the court's interpretation of the Act, as well as several other clarifications and improvements, that would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Accordingly, the requirements of Executive Order 13175 are not applicable to this proposal.

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.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant within the meaning of Executive Order 12866 and does not involve the consideration of relative environmental 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, "Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355; May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy. Further, we have determined that this proposed rule is not likely to have any significant adverse effects on energy supply.

I. National Technology Transfer Advancement Act

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 proposed rulemaking does not involve technical standards. Therefore, the use of voluntary consensus standards does not apply to this proposed rule.

List of Subjects in 40 CFR Part 93

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide,