

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.”

The direct final rule does not have tribal implications. It will 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. We do not know of any stationary gas turbines owned or operated by Indian tribal governments. However, if there are any, the effect of the direct final rule on communities of tribal governments would not be unique or disproportionate to the effect on other communities. Thus, Executive Order 13175 does not apply to the direct final rule.

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

Executive Order 13045 (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 we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we 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.

We interpret 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 Executive Order has the potential to influence the regulation. The direct final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

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

The direct final rule is not subject to Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” because it is not a significant regulatory action under Executive Order 12866.

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

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement 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, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The direct final rule involves technical standards. The EPA cites the following standards in the direct final rule: EPA Methods 3, 3A, 7E, and 20 of 40 CFR part 60, appendix A; PS 2 and 3 of 40 CFR part 60, appendix B.

In addition, the direct final rule cites the following voluntary consensus standards: ASTM D129–00 (incorporated by reference (IBR) in 40 CFR part 60, section 17), ASTM D1072–80 or –90 (Reapproved 1999) (IBR in 40 CFR part 60, section 17), ASTM D1266–98 (IBR in 40 CFR part 60, section 17), ASTM D1552–01 (IBR in 40 CFR part 60, section 17), ASTM D2597–94 (Reapproved 1999), ASTM D2622–98 (IBR in 40 CFR part 60, section 17), ASTM D3246–81 or –92 or –96 (IBR in 40 CFR part 60, section 17), ASTM D4084–82 or –94 (IBR in 40 CFR part 60, section 17), ASTM D4294–02, ASTM D4468–85 (Reapproved 2000), ASTM D4629–02, ASTM D5453–00, ASTM D5504–01, ASTM D5762–02, ASTM D6228–98, ASTM D6366–99, ASTM D6522–00, ASTM D6667–01; and Gas Processors Association Standard 2377–86.

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to the EPA methods. No applicable voluntary consensus standards were identified for EPA PS 3. The search and review results have been documented and are placed in the docket (OAR–2002–0053) for the direct final rule.

One voluntary consensus standard was found acceptable as an alternative to EPA test methods for the purposes of the direct final rule. The voluntary consensus standard ASTM D6522–00, “Standard Test Method for the Determination of Nitrogen Oxides,

Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers and Process Heaters Using Portable Analyzers” was identified as an acceptable alternative to EPA Methods 3A, 7E, and 20 for identifying nitrogen oxide and oxygen concentration for the direct final rule when the fuel is natural gas.

In addition to the voluntary consensus standards EPA uses in the direct final rule, the search for emissions measurement procedures identified six other voluntary consensus standards. The EPA determined that these six standards identified for measuring emissions subject to emission standards were impractical alternatives to EPA test methods for the purposes of the direct final rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for this determination for the six methods are in the docket.

Section 60.335 to 40 CFR part 60, subpart GG, lists the EPA testing methods included in the final rule. Under 40 CFR 63.7(f) and 63.8(f), a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

#### *J. 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. The EPA will submit a report containing the direct final 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 direct final rule in the **Federal Register**. The direct final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 60**

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Sulfur oxides.