

Executive Order 13132. The standards apply only to flexible polyurethane foam fabricators and do not pre-exempt States from adopting more stringent standards or otherwise regulate State or local governments. Thus, Executive Order 13132 does not apply to the final rule.

Although section 6 of Executive Order 13132 does not apply to the final rule, EPA did consult with State and local officials in developing the final rule. No concerns were raised by these officials during this consultation.

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 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.”

The 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. This is because no tribal governments own or operate a flexible polyurethane foam fabrication facility. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045—Protection of Children From Environmental Health Risks 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 rule is

preferable to other potentially effective and reasonably feasible alternatives that we considered.

The final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The 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 Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The final 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 and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272 note) directs 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 the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. The EPA cites in the final rule the EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 4, 26A, 311, and any method to measure hydrogen cyanide from flame lamination sources (validated with EPA Method 301). Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 311, and a method to measure hydrogen cyanide.

The search and review results have been documented and are placed in the docket (OAR–2002–0080 or A–2000–43) for the final rule.

Five voluntary consensus standards: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94 are incorporated by reference in EPA Method 311.

The search for emission measurement procedures identified seven voluntary consensus standards potentially applicable to the final rule. The EPA determined that five of these seven standards were impractical alternatives to EPA test methods for the purposes of this rulemaking. Therefore, EPA will not adopt these standards today. The reasons for this determination for the five methods are in the docket.

The following two voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this rulemaking because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, “Flow Measurement by Velocity Traverse,” for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, “Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,” for EPA Method 2.

Sections 63.8800 and 63.8802 and Table 3 to subpart M list 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 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). The final rule will be effective on April 14, 2003.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure,