

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the 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" are 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."

These final amendments do not have federalism implications and 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. Nevertheless, in the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA, State and local governments, EPA specifically solicited comment on the rule amendments from State and local officials.

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

Executive Order 13175 (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" are 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 Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

These final rule amendments do not have tribal implications. They will not have substantial direct effects on tribal governments, or 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. There are currently no tribal governments that have approved title V permit programs to which sources would submit permit applications on May 15, 2002. Accordingly, Executive

Order 13175 does not apply to this action.

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 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 reasonable alternatives considered by the Agency.

The 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 Executive Order has the potential to influence the regulation. The final amendments to the General Provisions are not subject to Executive Order 13045 because the provisions provide general technology performance and compliance guidelines for section 112(d) standards, which are not based on health or safety risks. Likewise, the final amendments to the section 112(j) rule are not subject to Executive Order 13045 because they establish the process for developing case-by-case MACT, and thus are based on technology performance and not on safety or health risks.

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

These final amendments are not subject to Executive Order 13211 (66 FR 26355, May 22, 2001), because they are 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 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 the EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final amendments to the General Provisions do not include any technical standards; they consist primarily of revisions to the generally applicable procedural and administrative requirements that the General Provisions overlay on NESHAP. The final amendments to the section 112(j) rule, which establishes requirements and procedures for owners or operators of major sources of HAP and permitting authorities to follow if the EPA misses the deadline for promulgation of section 112(d) standards, clarify and amend current procedural and administrative provisions to establish equivalent emissions limitations by permit. Therefore, section 112(j) is also not a vehicle for the application of voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the SBREFA, 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. Therefore, we will submit a report containing the final amendments 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**. These final amendments are not a "major rule" as defined by 5 U.S.C. 804(2), and therefore will be effective May 30, 2003.

List of Subjects in 40 CFR Part 63

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

Dated: May 8, 2003.

Christine Todd Whitman,
Administrator.

■ For the reasons cited in the preamble, part 63, title 40, chapter I of the Code of Federal Regulations is amended as follows: