

be the benefit of the added certainty and flexibility provided by that rule. For the reasons stated above, we do not believe that today's action, which clarifies two aspects of the December 31, 2002 final rule, would increase burden for tribal governments. In addition, we do not anticipate that today's action would have substantial direct effects on sources located in or near Indian country or sources owned or operated by tribal governments.

In our July 30, 2003 notice, EPA specifically solicited additional comment on today's final action from tribal officials.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled "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.

Today's action is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. We believe that the December 31, 2002 final rule as a whole will result in equal or better environmental protection than provided by earlier regulations, and do so in a more streamlined and effective manner. Similarly, today's action merely clarifies two aspects of the December 31, 2002 final rule and does not change substantially the level of environmental protection provided by that rule. As a result, today's action is not expected to present a disproportionate environmental health or safety risk for children.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Today's action is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning

Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The December 31, 2002 final rule improves the ability of sources to undertake pollution prevention or energy efficiency projects, switch to less polluting fuels or raw materials, maintain the reliability of production facilities, and effectively utilize and improve existing capacity. That rule also includes a number of provisions to streamline administrative and permitting processes so that facilities can quickly accommodate changes in supply and demand. It provides several alternatives that are specifically designed to reduce administrative burden for sources that use pollution prevention or energy efficient projects. Today's action merely clarifies two aspects of the December 31, 2002 final rule and thus is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 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 (for example, 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.

Today's action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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 final rule and other required information to the United States Senate, the United States

House of Representatives, and the Comptroller General of the United States prior to publication of the final 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). The rule will be effective November 7, 2003.

V. Statutory Authority

The statutory authority for this action is provided by sections 101, 111, 114, 116, 301, and 307 of the CAA as amended (42 U.S.C. 7401, 7407, 7411, 7414, 7416, and 7601).

VI. Judicial Review

Under section 307(b)(1) of the Act, judicial review of the December 31, 2002 final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 3, 2003. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Under section 307(b)(2) of the Act, the requirements that are the subject of the December 31, 2002 final rule may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

List of Subjects in 40 CFR Parts 51 and 52

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 30, 2003.

Marianne Horinko,
Acting Administrator.

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

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

Subpart I—[Amended]

- 2. Section 51.165 is amended:
- a. By revising paragraph (a)(1)(vii)(B).
- b. By adding paragraph (a)(1)(xxi).
- c. By revising paragraph (f)(6).

The revisions read as follows:

§ 51.165 Permit requirements.

(a) * * *