

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."

This final response to the remand, which leaves unchanged the 1997 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. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), requires Federal agencies to ensure that their policies, programs, activities, and standards identify and assess environmental health and safety risks that may disproportionately affect children. To respond to this order, agencies must explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This final response is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. However, today's final response to the remand, reaffirming the 1997 primary O₃ NAAQS, specifically takes into account children as the group most at risk to the direct inhalation-related effects of O₃ exposure, and was based on studies of effects on children's health (U.S. EPA, 1996a; U.S. EPA, 1996b) and assessments of children's exposure and risk (Johnson *et al.*, 1994; Johnson *et al.*, 1996a, b; Whitfield *et al.*, 1996;

Richmond, 1997). The 1997 revision to the primary O₃ NAAQS was promulgated to provide adequate protection to the public, especially children, against a wide range of direct O₃-induced health effects, including decreased lung function, primarily in children who are active outdoors; increased respiratory symptoms, primarily in highly sensitive individuals; hospital admissions and emergency room visits for respiratory causes, among children and adults with respiratory disease; inflammation of the lung and possible long-term damage to the lungs. This final response to the remand affirming the 1997 primary O₃ NAAQS maintains the level of protection of children's health established by the standard set in 1997. Therefore, today's final action does comply with the requirements of Executive Order 13045.

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

This final response to the remand 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. This is because this final response to the remand leaves unchanged the 1997 final rule. Thus, Executive Order 13211 does not apply to this rule.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and 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. Today's final response to the remand 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. This action is not a "major rule" as defined by 5 U.S.C. 804(2) because it is a reaffirmation of the O₃ NAAQS promulgated in 1997. Nonetheless, EPA will submit a report containing this response and other 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 response in the **Federal Register**. Although this final response is not a major rule, EPA will apply the "major rule" restrictions regarding the effective date; thus, the response will be effective 60 days after publication in the **Federal Register**.

V. References

- Altschuller, A.P. (1994) Memorandum to L.T. Cupitt re: Addendum to My Review of Your Manuscript "Calculations of the Impact of Tropospheric Ozone Changes On UV-B Flux and Potential Skin Cancers," EPA Docket A-95-58, IV-D-2694, Appendix B 17.
- American Thoracic Society. (1985) Guidelines as to what constitutes an adverse respiratory health effect, with special reference to epidemiologic studies of air pollution. American Review of Respiratory Disease. 131: 666-668.
- Brühl, C. and Creutzen, P.J. (1989) On the Disproportionate Role of Tropospheric Ozone as a Filter Against Solar UV-B Radiation. Geophys. Res. Letters, 16:703-706. Docket A-95-58, IV-D-2694, Appendix B 10.
- Childs, N. (1994) Memorandum to L. Grant re: Relationships of Reductions in Tropospheric Ozone to UV-B Penetration to Earth's Surface, EPA Docket A-95-58, IV-D-2694, Appendix B 16.
- Cupitt, L.T. (1994) Draft memorandum, Calculations of the Impact of Tropospheric Ozone Changes on UV-B Flux and Potential Skin Cancers, EPA ORD/AREAL Docket A-95-58, IV-D-2694, Appendix B 2.
- Fishman, J.; Watson, C.E.; Larsen, J.C.; and Logan, J.A. (1990) Distribution of Tropospheric Ozone Determined From Satellite Data J. Geophys. Res. 95:3599-3617. Docket A-95-58, IV-D-2694, Appendix B 1.