

determined that the final rule amendments contain no regulatory requirements that might significantly or uniquely affect small governments. Thus, the final rule amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires 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” is 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 rule amendments do not have federalism implications. They 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. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule amendments.

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.” These final rule amendments do not have tribal implications, as specified in Executive Order 13175. They 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. No tribal governments own facilities subject to the benzene waste national emission standard. Thus, Executive Order 13175 does not apply to the final rule amendments.

G. Executive Order 13045: Protection of Children From Environmental Health 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 EPA 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 EPA.

The EPA interprets Executive Order 13045 as applying only to 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 national emission standard for benzene waste operations is based on protection of the public health with an ample margin of safety. However, the amendments to the benzene waste national emission standard have no effect on the level of emissions from benzene waste operations or associated risk and are not subject to Executive Order 13045.

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

The final rule amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 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 impracticable. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) 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 EPA does not use available and applicable VCS.

This 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 has submitted a report containing the final rule 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 final rule amendments in today’s **Federal Register**. The final rule amendments are not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 25, 2003.

Michael O. Leavitt,
Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 61 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart FF—[AMENDED]

- 2. Section 61.343 is amended by:
- a. Revising paragraph (a)(2);
- b. Adding paragraph (e) introductory text; and
- c. Adding paragraph (e)(2).

The revisions and additions read as follows:

§ 61.343 Standards: Tanks.

(a) * * *

(2) The owner or operator must install, operate, and maintain an enclosure and closed-vent system that routes all organic vapors vented from the tank, located inside the enclosure, to a control device in accordance with the requirements specified in paragraph (e) of this section.

* * * * *

(e) Each owner or operator who controls air pollutant emissions by using an enclosure vented through a closed-vent system to a control device must meet the requirements specified in paragraphs (e)(1) through (4) of this section.