

5–501 of the Executive Order has the potential to influence the regulation.

As with most rulemakings developed under section 112(d) of the CAA, the final rule is based on MACT. Risks to public health and impacts on the environment are not typically considered in the development of emissions standards under section 112(d). Rather, these risks and impacts are considered later (within 8 years after promulgation of the MACT rule) under the residual risk program as required by section 112(f) of the CAA. While we do not believe the final rule to be “economically significant,” as defined under Executive Order 12866, we do believe that it addresses environmental health or safety risks that may have a disproportionate effect on children.

Mercury has been identified as a priority pollutant under EPA’s National Agenda to Protect Children’s Health from Environmental Threats and by the Federal Children’s Health Protection Advisory Committee (CHPAC). The CHPAC was formed to advise, consult with, and make recommendations to EPA on issues associated with the development of regulations to address the prevention of adverse health effects to children. One of the CHPAC’s primary missions was to identify five existing EPA regulations, which if reevaluated, could lead to better protection for children. The CHPAC recommended the Mercury NESHAP for chlor-alkali plants as one of the regulations to be reevaluated considering impacts on children. We adopted the CHPAC recommendation. Therefore, we considered the impacts on children in the development of the final rule. A qualitative assessment of the potential impacts on children’s health due to mercury emissions from chlor-alkali plants was presented in the preamble to the proposed rule (67 FR 44693).

Because the final rule does not meet both criteria for applicability, it is not subject to Executive Order 13045. However, based on our assessment, the final rule will help reduce the mercury exposures to humans, including children.

#### *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 (Public Law 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 OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The EPA cites in the final rule EPA Methods 1, 1A, 2, 2A, 2C, 2D, 3, 3A, 3B, 4, 5, 101, 101A, 102, and any method to measure mercury (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, and 102. The search and review results have been documented and are placed in the docket (OAR–2002–0017 or A–2000–32) for the final rule.

This search for emissions monitoring procedures identified 14 voluntary consensus standards and five draft standards. The EPA determined that the 14 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 these 14 standards are in the docket.

The 14 voluntary consensus standards are as follows: ASME C00031 or PTC 19–10–1981, “Part 10 Flue and Exhaust Gas Analyses,” for EPA Method 3; ASME PTC–38–80 R85 or C00049, “Determination of the Concentration of Particulate Matter in Gas Streams,” for EPA Method 5; ASTM D3154–91 (1995), “Standard Method for Average Velocity in a Duct (Pitot Tube Method),” for EPA Methods 1, 2, 2C, 3, 3B, and 4; ASTM D3464–96, “Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer,” for EPA Method 2; ASTM D3685/D3685M–98, “Test Methods for Sampling and Determination of Particulate Matter in Stack Gases,” for EPA Method 5; ASTM D3796–90 (1998), “Standard Practice for

Calibration of Type S Pitot Tubes,” for EPA Method 2; ASTM D5835–95, “Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration,” for EPA Methods 3A; ASTM E337–84 (Reapproved 1996), “Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry-Bulb Temperatures),” for EPA Method 4; CAN/CSA Z223.1–M1977, “Method for the Determination of Particulate Mass Flows in Enclosed Gas Streams,” for EPA Method 5; CAN/CSA Z223.2–M86 (1986), “Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams,” for EPA Methods 3A; CAN/CSA Z223.26–M1987, “Measurement of Total Mercury in Air Cold Vapour Atomic Absorption Spectrophotometric Method,” for EPA Methods 101 and 101A; ISO 9096:1992 (in review 2000), “Determination of Concentration and Mass Flow Rate of Particulate Matter in Gas Carrying Ducts—Manual Gravimetric Method,” for EPA Method 5; ISO 10396:1993, “Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations,” for EPA Method 3A; ISO 10780:1994, “Stationary Source Emissions—Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts,” for EPA Method 2.

The following five 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 12M, “Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,” for EPA Method 2; ASME/BSR MFC 13M, “Flow Measurement by Velocity Traverse,” for EPA Method 2 (and possibly 1); ISO/DIS 12039, “Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,” for EPA Method 3A; PREN 13211 (1998), “Air Quality—Stationary Source Emissions—Determination of the Concentration of Total Mercury,” for EPA Methods 101, 101A (and mercury portion of EPA Method 29); and ASTM Z6590Z, “Manual Method for Both Speciated and Elemental Mercury” is a potential alternative for portions of EPA Methods 101A and Method 29 (mercury portion only).

Section 63.8232 of the final rule lists 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