

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.”

Today’s final amendments do 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. Thus, the requirements of section 6 of the Executive Order do not apply to today’s amendments.

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.”

Today’s final amendments do not have tribal implications. 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to today’s final amendments.

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

We interpret 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. Today’s final amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health and safety risks.

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

Today’s final 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

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) 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 requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when the agency does not use available and applicable VCS.

The final amendments involve technical standards. The EPA cites DOT railcar procedures that reference the AAR Tank Car Manual bubble test. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to that method. The search and review results have been documented and are placed in the docket for the final amendments, Docket Nos. A–92–38 and OAR–2002–0029.

Two VCS are cited in the final amendments as alternatives to DOT’s bubble test. The two standards are British Standard (BS) EN–1593:1999, “Non-destructive Testing: Leak Testing-Bubble Emission Techniques,” and ASTM E515–95 (Reapproved 2000), “Standard Test Method for Leaks Using Bubble Emission Techniques.” These two standards are discussed below.

The VCS BS EN–1593 cited in the final amendments is a detailed method that contains procedures that are either

equivalent to those of DOT bubble test specifications or that provide additional quality control, including: certification of personnel, creating a pressure differential, type of liquids to be used, preparation of the surface, dwell time appropriate for the establishment of bubble emissions, required surface temperature range, and specifications for direct and indirect visual examination procedures.

The VCS ASTM E515 cited in the final amendments is also an acceptable method that contains procedures that are either equivalent to those of DOT bubble test specifications or provide additional quality control, including: the type of liquids to be used; application of fluid; creating a pressure differential; applying pressure before liquid is applied; and accuracy, repeatability, and reproducibility of locating leaks of 0.0001 standard cubic centimeters per second or greater.

The methods that are included in the final amendments are listed in 40 CFR 63.425(i)(2). Under 40 CFR 63.7(f) of subpart A (General Provisions), a source may apply to EPA for permission to use alternative test methods in place of any EPA testing methods.

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 these 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 amendments 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 final amendments become effective on December 19, 2003.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedures,