

Indian Tribal Governments” (65 FR 67249, November 9, 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 Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.”

This 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. First, no Tribal governments have been authorized to issue NPDES permits. Second, few CAFO operations are located on Tribal lands. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

Although Executive Order 13175 does not apply to this rule, EPA has briefed Tribal communities about this rulemaking at the National Environmental Justice Advisory Committee meeting in Atlanta, Georgia in June, 2000 and through notices in Tribal publications. In addition, EPA Regional Offices discussed this rulemaking with the Tribes in their regions.

During the public comment period, the Agency received no comments from Tribes or comments relating to tribal issues.

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

This final rule is subject to Executive Order 13045 because it is an economically regulatory action as

defined by Executive Order 12866, and we believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Accordingly, we have evaluated the environmental health or safety effects of increased nutrients, pathogens, and metals in surface water on children. The results of this evaluation are contained in the proposed *Environmental Assessment*, which is part of the public record for this final rule.

EPA has established a maximum contaminate level for nitrates in drinking water at 10 micrograms/liter. There is some evidence that infants under the age of six months may be at risk from methemoglobinemia caused by nitrates in private drinking water wells when ingesting water at nitrate levels higher than 10 micrograms/liter. The Agency has estimated the reduction in the number of households that will be exposed to drinking water with nitrate levels above 10 micrograms/liter in Chapter 8 of the *Benefits Assessment* (noting that the Agency does not have information on the number of households exposed to nitrates that also have infants). The Agency estimates that there are approximately 13.5 million households with drinking water wells in counties with animal feeding operations. Of these, the Agency estimates that approximately 1.3 million households are exposed to nitrate levels above 10 micrograms/liter. The Agency further estimates that approximately 112,000 households would have their nitrate levels brought below 10 micrograms/liter under the requirements of this final rule. The Agency estimates that options more stringent than these would provide only small incremental changes in pollutant loadings to groundwater (see the *Technical Development Document*). The Agency therefore does not believe that requirements more stringent than these in the rule would provide meaningful additional protection of children’s health risks from methemoglobinemia.

The Agency received no comments on the impacts to children’s health.

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

The rule 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. EPA has concluded that this rule is not likely to have any adverse energy

effects. While there will be a minor increase in energy use from increased hauling of manure to offsite locations, EPA has estimated the increased fuel usage associated with transporting manure, litter, and other process wastewaters off site is approximately 423,000 barrels annually for all CAFOs. EPA does not believe that this will have a significant impact on the energy supply.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), (Pub L. 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.

This rulemaking does involve the use of technical standards. In this rulemaking, EPA has developed regulatory standards for controlling pollutant discharges from permitted CAFOs based on its expertise, professional judgment, and the extensive record developed, in part, through the APA’s notice and comment process. While we identified the American National Standards for Good Environmental Livestock Production Practices, developed by the National Pork Producers Council and certified by ANSI as an American National Standard on February 20, 2002 (GELPP 0001–2002; 0002–2002; 0003–2002; 0004–2002; 0005–2002), and a commenter has identified ANSI/ASCE 7–98, a separate voluntary consensus standard, as being potentially applicable, we have decided not to use them in this rulemaking. The use of these voluntary consensus standard would have been impractical because EPA’s rule establishes a regulatory framework in which decisions as to what specific best management practices must be applied at individual animal feeding operations is generally left to the State in the exercise of its authority to issue NPDES permits. In issuing permits, States may consider these ANSI-certified standards and include, or not include, various elements as they may deem appropriate. It would not have been consistent with