

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 proposed rule does not have tribal implications. If promulgated, 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. Today’s action does not significantly or uniquely affect the communities of Indian tribal governments. As discussed above, today’s proposed action would not impose any new requirements that would impose compliance burdens beyond those that would already apply under the January 2000 rule. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Executive Order 13045: “Protection of Children from Environmental Health Risks and Safety Risks” (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.

The EPA interprets 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 Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because this action is not “economically significant” as defined under Executive Order 12866 and the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

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

This rule is not subject to Executive Order 13211, “Actions 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. Today’s action does not propose any new regulatory requirements.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National 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.

The National Technology Transfer and Advancement Act of 1997 does not apply because today’s action does not propose any new technical standards. This action is proposing to amend the January 2000 Rule by specifying circumstances under which the Section 126 requirements would be withdrawn.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, trading, Intergovernmental Relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: March 27, 2003.

Christine Todd Whitman,
Administrator.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

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

Subpart A—General Provisions

2. Section 52.34 is amended by revising paragraph (i) to read as follows:

§ 52.34 Action on petitions submitted under section 126 relating to emissions of nitrogen oxides.

* * * * *

(i) *Withdrawal of section 126 findings.* Notwithstanding any other provision of this subpart, a finding under paragraphs (c), (e)(1) and (e)(2), (g), and (h)(1) and (h)(2) of this section as to a particular major source or group of stationary sources in a particular State will be deemed to be withdrawn, and the corresponding part of the relevant petition denied, if the Administrator issues a final action approving implementation plan provisions that:

(1) Comply with the applicable requirements of §§ 51.121 and 51.122 of this chapter for such State, modified to require achievement of the emission reductions under § 51.121 of this chapter starting no later than May 31, 2004; or

(2)(i) Comply with the applicable requirements of §§ 51.121 and 51.122 of this chapter, except for § 51.121(e) of this chapter, for such State, modified to require achievement of the emission reductions under § 51.121 of this chapter starting no later than May 31, 2004, and

(ii) Achieve emissions reductions, from the large EGUs and large non-EGUs subject to paragraph (j) of this section in such State, that equal or exceed the emissions reductions otherwise required under Part 97 of this chapter for such State.

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[FR Doc. 03–8152 Filed 4–3–03; 8:45 am]

BILLING CODE 6560–50–P