Executive Order 13132. Thus, Executive Order 13132 does not apply to the proposal.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (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.'' The proposed rule does not have tribal implications, as specified in Executive Order 13175. The proposed action will eliminate control requirements for two subcategories from the combustion turbine source category and, therefore, reduces control costs and reporting requirements for any tribal entity operating a turbine contained in either of these subcategories. Thus, Executive Order 13175 does not apply to the proposed rule.

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 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 Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This determination is based on the fact that the noncancer human health values we used in this analysis (*e.g.*, RfC) are determined to be protective of sensitive sub-populations, including children. Also, while the cancer human health values do not always expressly account for cancer effects in children, the cancer risks posed by turbines in these two subcategories are sufficiently low so as not to be concern for anyone in the population, including children. In addition, the public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assesses results of early life exposure to the HAP emitted by lean premix gas-fired combustion turbines and diffusion flame gas-fired combustion turbines.

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

The proposed rule is not subject to Executive Order 13211 (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

Section 112(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), (Public Law No. 104–113, section 12(d) 915 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials, the National Fire Protection Association A), and the Society of Automotive Engineers. The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards. The proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 63

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

Dated: March 31, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–7775 Filed 4–6–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0196; FRL–7643–9]

RIN: 2060–AK73

National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 5, 2004, EPA published final national emission standards for hazardous air pollutants (NESHAP) for stationary combustion turbines. As part of the NESHAP, EPA established eight subcategories of stationary combustion turbines. Elsewhere in this **Federal Register**, EPA is publishing a proposed rule to delete four of these subcategories from the source category list required by section 112(c)(1) of the Clean Air Act (CAA). The EPA has made an initial determination that the four subcategories satisfy the criteria for deletion from the source category list established by section 112(c)(9)(B).

In this companion action, EPA is proposing to stay the effectiveness of the combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories, which are the two principal subcategories we are proposing to delist. This action is necessary to avoid wasteful and unwarranted expenditures on installation of emission controls which will not be required if the subcategories are delisted.

DATES: *Comments.* Written comments on the proposed rule must be received by EPA no later than May 24, 2004.

Public Hearing. A public hearing regarding the proposed rule will be held if requests to speak are received by the EPA on or before April 14, 2004. If requested, a public hearing will be held on April 21, 2004.

ADDRESSES: *Comments.* Comments may be submitted electronically, by mail, or through hand delivery/courier. Electronic comments may be submitted on-line at *http://www.epa.gov/edocket/.* Written comments sent by U.S. mail should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (Mail Code 6102T), Attention Docket Number OAR–2003–0196, Room B108, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. Written comments delivered in person or by courier (*e.g.,* FedEx,

Airborne, and UPS) should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (Mail Code 6102T), Attention Docket Number OAR–2003–0196, Room B102, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is requested by April 14, 2004, the public hearing will be held in our EPA Office of Administration Auditorium, Research Triangle Park, NC on April 21, 2004. Persons interested in presenting oral testimony should contact Ms. Kelly A. Rimer, Risk and Exposure Assessment Group, Emission Standards Division (C404–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2962. Persons interested in attending the public hearing should also contact Ms. Rimer to verify the time of the hearing.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly A. Rimer, Risk and Exposure Assessment Group, Emission Standards Division (C404–01), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2962, electronic mail address *rimer.kelly@epa.gov.*

SUPPLEMENTARY INFORMATION:

Docket. The EPA has established an official public docket for this action under Docket ID Number OAR–2003–0196. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Avenue, NW., Washington, DC 20004. The Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select "search'' and key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

Comments. You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked "late.'' The EPA is not required to consider these late comments.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search'' and key in Docket ID No. OAR–2003–0196. The system is an "anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. OAR–2003–0196. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments (in duplicate, if possible) to: EPA Docket Center (Air Docket), U.S. EPA West, (MD–6102T), Room B–108, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Attention Docket ID No. OAR–2003–0196.

By Hand Delivery or Courier. Deliver your comments (in duplicate, if possible) to: EPA Docket Center, Room B–108, U.S. EPA West, 1301 Constitution Avenue, NW, Washington, DC 20004, Attention Docket ID No. OAR–2003–0196. Such deliveries are

only accepted during the Docket Center's normal hours of operation.

By Facsimile. Fax your comments to: (202) 566–1741, Docket ID No. OAR–2003–0196.

CBI. Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Kelly Rimer, c/o Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, 109 TW Alexander Drive, Research Triangle Park, NC 27709, Attention Docket ID No. OAR–2003–0196. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Applicable Law. Pursuant to CAA section 307(d)(1)(V), the Administrator has determined that it is appropriate to conduct this rulemaking according to the procedures established by CAA section 307(d).

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC	NAICS	Examples of regulated entities
Any industry using a stationary combustion turbine as defined in the regulation.	4911	2211	Electric power generation, transmission, or distribution.
	4922	486210	Natural gas transmission.
	1311	211111	Crude petroleum and natural gas production.
	1321	211112	Natural gas liquids producers.
	4931	221	Electric and other services combined.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.6085 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Description of the Proposed Rule

Elsewhere in today's **Federal Register**, EPA is proposing a rule to amend the list of categories of sources that was developed pursuant to CAA section 112(c)(1). The EPA is proposing to delete four subcategories from the Combustion Turbines source category. Final MACT standards creating these subcategories was published on March 5, 2004. The standards will be published soon and will be codified at 40 CFR part 63, subpart YYYY. The subcategories, as defined in 40 CFR 63.6175, are: (1) Lean premix gas-fired stationary combustion turbines (also referred to herein as "lean premix gas-fired turbines''), (2) diffusion flame gas-fired stationary combustion turbines (also referred to herein as "diffusion flame gas-fired turbines''), (3) emergency stationary combustion turbines, and 4) stationary combustion turbines located on the North Slope of Alaska.

The proposed rule to amend the source category list is being issued in part to respond to a petition submitted by the Gas Turbine Association (GTA) and in part upon the Administrator's own motion. Petitions to remove a source category from the source category list are permitted under section 112(c)(9) of the CAA. The proposed rule to delete the four subcategories is based on an initial determination by EPA that the subcategories satisfy the substantive criteria for deletion set forth in section 112(c)(9)(B). The proposed rule to delete the subcategories that appears elsewhere in today's **Federal Register** contains a detailed description of the technical basis for the initial determination.

Although EPA is proposing to delete from the source category list four subcategories established by the final MACT standards for Stationary Combustion Turbines, CAA section 112(d)(10) provides that the standards for the four subcategories will take effect upon publication of the standards. All turbines in the lean premix gas-fired turbine and the diffusion flame gas-fired turbine subcategories which were constructed or reconstructed after January 14, 2003, will then be required to comply immediately with the emission standards for new sources. This may cause some sources in the two subcategories to make immediate expenditures on installation and testing of emission controls, even though such controls will not be required if we adopt a final rule to delete these subcategories. In view of our initial determination that the statutory criteria for delisting have been met for all sources in the four subcategories, we consider it inappropriate and contrary to statutory intent to mandate such expenditures until after a final determination has been made whether or not these subcategories should be delisted. Such expenditures would be wasteful and unwarranted if we take final action to delist these subcategories. Moreover, if we take final action to delist the subcategories, sources constructed or reconstructed while the rulemaking to delist is pending would bear a regulatory burden not placed on identical sources constructed or reconstructed thereafter. Accordingly, we are proposing this rule to stay the effectiveness of the emission standards for new sources for the lean premix gas-fired turbine and diffusion flame gas-fired turbine subcategories during the pendency of the rulemaking to delete these subcategories.

We are mindful that there would be no need to stay the effectiveness of the standards for new sources in the two subcategories if a rulemaking to delist the affected sources had been completed before promulgation of the final MACT standards for combustion turbines. However, we note that the GTA petition was not submitted until quite late in the regulatory process. Moreover, we generally do not make a definite determination concerning the characteristics of subcategories until promulgation of final MACT standards. In these circumstances, we do not believe it would be fair to make certain affected sources bear the burden of a delay in our determination that a subcategory meets the statutory criteria for delisting.

The proposed stay is consistent with the precedents we have established in similar circumstances in the past. In 1991, we issued a final rule staying the effective date of the National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licenses and not covered by Subpart H (40 CFR part 61, Subpart H) (40 CFR part 61, Subpart I) for commercial nuclear power reactors during the pendency of another rulemaking to rescind the standards for those facilities (56 FR 37158 August 5, 1991). The rescission was authorized by section 112(d)(9) of the CAA (the ''Simpson amendment''), which provides that we may decline to regulate Nuclear Regulatory Commission (NRC) licensees under CAA section 112 if the Administrator determines that the regulatory program established by the NRC for a category or subcategory provides an ample margin of safety to protect the public health. We had made an initial determination that the NRC program for commercial nuclear power reactors met this test, and we reasoned that ''it would frustrate the evident purpose of Section 112(d)(9) if EPA were to permit Subpart I to take effect for this subcategory during the pendency of the rulemaking on rescission'' (56 FR 37159). That action was not challenged.

In 1995, we acted to provide another type of interim relief during a delisting rulemaking. We suspended the listing of caprolactam, during a rulemaking to delete caprolactam from the list of HAP established by CAA section 112(b)(1) for purposes of determining the applicability of title V permitting requirements (60 FR 081, September 18, 1995). We based that action on our determination that ''retention, during the rulemaking to delist caprolactam, of permit application requirements which will no longer exist after the delisting process has been completed would result in unnecessary private and public expenditures on preparation, submission, and processing of such applications, and would yield no environmental benefits'' (60 FR 084–85). That interim relief action also was not challenged.

We are proposing to stay the effectiveness of the combustion turbines emission standards for new sources in the lean premix gas-fired turbines and the diffusion flame gas-fired turbines subcategories, but only during the pendency of the rulemaking to delist the subcategories. It is not our intention by staying the effectiveness of the standards to change the definition of new sources within these subcategories or to alter the status of any individual source. If the subcategories are not ultimately delisted, the stay will be lifted, and all sources in the subcategories constructed or reconstructed after January 14, 2003 will then be subject to the final standards. The sources will then be given the same time to make the requisite demonstration of compliance they would have had if there had been no stay.

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adverse affect in a material way the economy, a sector to the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the proposed action constitutes a ''significant regulatory action'' because it may raise novel policy issues and is therefore subject to OMB review. Changes made in response to OMB suggestions or recommendations are documented in the public record (see **ADDRESSES** section of this preamble).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The proposed action will stay the effectiveness of the combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories until a conclusion is reached regarding deletion and therefore eliminate the need for information collection toward regulatory compliance under the CAA. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small business, small organizations, and small governmental jurisdictions. For the purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that meets the definitions for small business based on the Small Business Association (SBA) size standards which, for this proposed action, can include manufacturing (NAICS 3999–03) and air transportation (NAICS 4522–98 and 4512–98) operations that employ less 1,000 people and engineering services (NAICS 8711–98) operations that earn less than $20 million annually; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's proposed rule on small entities, I certify that this

proposed action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The proposed rule will stay the effectiveness of the combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. This will stay the requirements to apply controls and will also stay associated operating, monitoring and reporting requirements. These burdens will be permanently lifted if EPA ultimately removes the four source categories from the stationary combustion turbine source category, and temporarily lifted if EPA does not ultimately delist the subcategories. We have, therefore, concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 1044, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates for State, local, or tribal governments or the private sector. The proposed rule imposes no enforceable duty on any State, local or tribal governments or the private sector. In any event, EPA has determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 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.''

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Today's action proposes to stay the effectiveness of the combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. It does not impose any additional requirements on the States and does not affect the balance of power between the States and the Federal government. Thus, the requirements of section 6 of the Executive Order do not apply to the proposed rule.

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 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.'' The proposed rule does not have tribal implications, as specified in Executive Order 13175. The proposed action will stay the effectiveness of the combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. Executive Order 13175 does not apply to the proposed rule.

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.

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 Executive Order has the potential to influence the regulation. The proposed rule is not subject to Executive Order 13045 because it is not economically

significant as defined in Executive Order 12866, and because this action is not based on health or safety risks. Thus, Executive Order 13045 does not apply to this rule.

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

Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' The proposed rule is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 112(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) 915 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards. The proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR part 63

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

Dated: March 31, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–7776 Filed 4–6–04; 8:45 am]

BILLING CODE 6560–50–P