ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6364–7]

Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In today's action, EPA is proposing to amend in two respects a final rule it recently issued under section 126 of the Clean Air Act (CAA), acting on certain petitions related to interstate transport of pollutants. First, EPA is proposing to grant portions of those petitions addressed in that rule. Second, EPA is proposing to stay indefinitely certain affirmative technical determinations made in that rule related to such petitions, pending further developments in ongoing litigation. EPA recently promulgated, and is publishing elsewhere in this issue, an interim final stay of the same rule effective until November 30, 1999. This proposal takes comment on a longer-term resolution of the issues temporarily addressed by the interim final stay.

The final rule addressed petitions filed by eight Northeastern States seeking to mitigate transport of one of the main precursors of ground-level ozone, nitrogen oxides (NO_X), across State boundaries. On April 30, 1999, EPA made final determinations that portions of the petitions are technically meritorious.

Subsequently, two recent rulings of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) have affected EPA's rulemaking under section 126. In one ruling, the court remanded the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone, which formed part of the underlying technical basis for certain of EPA's determinations under section 126. In a separate action, the D.C. Circuit granted a motion to stay the State implementation plan (SIP) submission deadlines established in a related EPA action, the NO_X State implementation plan call (NO_X SIP call). In the April 30 notice of final rulemaking (NFR), EPA had deferred making final findings under section 126 as long as States and EPA stayed on schedule to meet the requirements of the NO_X SIP call.

In response to these rulings, EPA recently promulgated, and is publishing elsewhere in this issue, an interim final stay of the effectiveness of the April 30 NFR until November 30, 1999. With this action, EPA is proposing two changes to the April 30 NFR to address the issues raised by the rulings. EPA is also pursuing additional legal remedies concerning these rulings.

DATES: The comment period on this notice of proposed rulemaking (NPR) ends on August 9, 1999. Comments must be postmarked by the last day of the comment period and sent directly to the Docket Office listed in **ADDRESSES** (in duplicate form if possible). A public hearing will be held on July 8, 1999, in Washington, DC. Please refer to **SUPPLEMENTARY INFORMATION:** For additional information on the comment period and public hearing.

ADDRESSES: Comments may be submitted to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–43, U.S. Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No confidential business information (CBI) should be submitted through e-mail.

Documents relevant to this action are available for inspection at the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–43, U.S. Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548 between 8:00 a.m. and 5:30 p.m., Monday though Friday, excluding legal holidays. A reasonable fee may be charged for copying.

The public hearing will be held at the EPA Auditorium at 401 M Street SW, Washington, DC, 20460.

FOR FURTHER INFORMATION CONTACT: Questions concerning today's action should be addressed to Carla Oldham, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC, 27711, telephone (919) 541–3347, e-mail at oldham.carla@epa.gov.

SUPPLEMENTARY INFORMATION:

Public Hearing

The EPA will conduct a public hearing on this NPR on July 8, 1999, beginning at 9:00 a.m. The hearing will be held at the EPA Auditorium at 401 M Street SW, Washington, DC, 20460. The metro stop is Waterfront, which is on the green line. Persons planning to present oral testimony at the hearings should notify JoAnn Allman, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–1815, e-mail allman.joann@epa.gov, no later than July 6, 1999. Oral testimony will be limited to five minutes each. Any member of the public may file a written statement by the close of the comment period. Written statements (duplicate copies preferred) should be submitted to Docket No. A–97–43 at the above address. The hearing schedule, including lists of speakers, will be posted on EPA's webpage at http://www.epa.gov/airlinks prior to the hearing. A verbatim transcript of the hearing, if held, and written statements will be made available for copying during normal working hours at the Air and Radiation Docket and Information Center at the above address.

Availability of Related Information

The official record for the section 126 rulemaking completed April 30, 1999, as well as the public version of the record, has been established under docket number A–97–43 (including comments and data submitted electronically as described below). EPA has added new sections to that docket for purposes of the interim final stay of that rule and today's proposed rulemaking. The public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. In addition, the **Federal Register** rulemakings and associated documents are located at http://www.epa.gov/ttn/rto/126.

Outline

I. Background

A. Findings Under Section 126 Petitions To Reduce Interstate Ozone Transport

On April 30, 1999, EPA took final action on petitions filed by eight Northeastern States seeking to mitigate what they describe as significant transport of one of the main precursors of ground-level ozone, NO_X, across State boundaries (64 FR 28250, May 25, 1999). The eight States (Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Pennsylvania, and Vermont) filed the petitions under section 126 of the Clean Air Act (CAA). Section 126 provides that if EPA finds that identified stationary sources emit in violation of the section 110(a)(2)(D) prohibition on emissions that significantly contribute to ozone nonattainment or maintenance problems in a petitioning State, EPA is authorized to establish Federal emissions limits for the sources.

In the April 30 NFR, EPA made final determinations that portions of six of these petitions are technically meritorious. Specifically, with respect to the 1-hour and 8-hour NAAQS for ozone, EPA made affirmative technical determinations that certain new and existing emissions sources in certain States emit or would emit NO_X in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, one or more States that submitted petitions in 1997–1998 under section 126. The sources that emit NO_X in amounts that significantly contribute to downwind nonattainment problems are large electric generating units (EGUs) and large non-EGUs for which highly cost-effective controls are available.

All of the eight petitioning States requested findings under section 126 under the 1-hour standard, and five of the petitioning States also requested findings under the 8-hour standard. The EPA took action under the 1-hour and 8-hour standards as specifically requested in each State's petition. The EPA made independent technical determinations for each standard with respect to the individual petitions. (See the part 52 regulatory text in the April 30, 1999 NFR.) Under the 1-hour standard, in aggregate for the 8 petitions, EPA made affirmative technical determinations of significant contribution for sources located in the following States and the District of Columbia: Delaware, Indiana, Kentucky, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. Under the 8-hour standard, in aggregate for the five petitions, EPA made affirmative technical determinations of significant contribution for sources located in the same States and the District of Columbia as under the 1-hour standard plus seven additional States: Alabama, Connecticut, Illinois, Massachusetts, Missouri, Rhode Island, and Tennessee.

The EPA also provided that the portions of the petitions for which EPA made affirmative technical determinations would be automatically deemed granted or denied at certain later dates pending certain actions by the States and EPA regarding State submittals in response to the final NO_X SIP call. Interpreting the interplay between sections 110 and 126, EPA stated in the April 30 NFR that a State's compliance with the NO_X SIP call would eliminate the basis for a finding under section 126 based on these petitions for sources located in that State. See 64 FR 28271–28274. As a consequence, EPA concluded it was appropriate to structure its action on the section 126 petitions to account for the existence of the NO_X SIP call, given that it had an explicit and expeditious schedule for compliance. See 64 FR 28274–28277.

Under EPA's interpretation of section 126 of the CAA, a source or group of sources is emitting in violation of the prohibition of section 110(a)(2)(D)(i) where the applicable SIP fails to prohibit (and EPA has not remedied this failure through a FIP) a quantity of emissions from that source or group of sources that EPA has determined contributes significantly to nonattainment or interferes with maintenance in a downwind State. See 64 FR 28271–28274. Under both the section 126 petitions and the NO_X SIP call, EPA was operating on basically the same set of facts regarding the same pollutants and largely the same amounts of upwind reductions affecting the same downwind States. Thus, where a State has complied with the NO_X SIP call and EPA has approved its SIP revision, EPA would not find that sources in that State were emitting in violation of the prohibition of section 110 and therefore subject to a Federal remedy under section 126. See 64 FR 28271–28274.

In the absence of the NO_X SIP call, EPA would simply have made a finding under section 126 in the final rule as to whether sources named in the petitions were emitting in violation of the prohibition of section 110. However, under the NO_X SIP call there was both a requirement for States to reduce their contribution to downwind nonattainment problems and an explicit and expeditious schedule for States to do so. In light of this existing requirement and a reasonable expectation that States would comply with it within a short and known timeframe, EPA believed it was reasonable to make final only technical determinations as to which sources would be in violation of the prohibition of section 110 if the States or EPA failed to meet a schedule for action based on the schedule established in the NO_X SIP call. See 64 FR 28274–28277. Deferring the actual findings under section 126 allowed States subject to the NO_X SIP call an opportunity to comply with the NO_X SIP call before triggering the findings.

The EPA coordinated its section 126 findings with the NO_X SIP call compliance schedule in the following manner. EPA provided that for the sources for which EPA had made an affirmative technical determination of significant contribution, EPA would be deemed to find that the sources emit or would emit NO_X in violation of the prohibition of section 110(a)(2)(D)(i) under the following circumstances. First, the finding was deemed to be made for such sources in a State if by November 30, 1999, EPA had not either (a) proposed to approve the State's SIP revision to comply with the NO_X SIP call, or (b) promulgated a FIP for the State. Second, the finding was deemed to be made for such sources in a State if by May 1, 2000, EPA had not either (a) approved the State's SIP revision to comply with the NO_X SIP call, or (b) promulgated implementation plan provisions meeting the section 110(a)(2)(D)(i) requirements. Upon EPA's approval of a State's SIP revision to comply with the NO_X SIP call or promulgation of a FIP, the final rule provided that corresponding portions of the petitions will automatically be deemed denied. Also, if a finding is deemed to be made, it will be deemed to be withdrawn, and the corresponding portions of the petitions will also be deemed to be denied, upon EPA's approval of a State's SIP revision to

comply with the NO_X SIP call or promulgation of a FIP. See 40 CFR 52.34(i).

B. Effect of Court Decisions

1. 8-Hour NAAQS

On May, 14, 1999, the D.C. Circuit issued an opinion questioning the constitutionality of the CAA authority to review and revise the NAAQS, as applied in EPA's revision to the ozone and particulate matter NAAQS. See *American Trucking Ass'ns* v. *EPA* No. 97–1441 and consolidated cases (D.C. Cir. May 14, 1999). The Court stopped short of finding the statutory grant of authority unconstitutional, instead providing EPA with another opportunity to develop a determinate principle for promulgating NAAQS under the statute. The court continued by addressing other issues, including EPA's authority to classify and set attainment dates for a revised ozone standard. Based on the statutory provisions regarding classifications and attainment dates under sections 172(a) and 181(a), the court's ruling curtailed EPA's ability to require States to comply with a more stringent ozone NAAQS. The EPA has recommended to the Department of Justice that the government seek rehearing on this and other portions of the court's opinion. However, EPA also believes that unless and until the court's decision is revised or vacated, EPA should not continue implementation efforts with respect to the 8-hour standard that could be construed as inconsistent with the court's ruling. This reservation would not apply to any EPA actions based on the 1-hour standard.

2. Stay of Compliance Schedule for NO_X SIP Call

On May 25, 1999, the D.C. Circuit issued a partial stay of the submission of the SIP revisions required under the NO_X SIP call. The NO_X SIP call had required submission of the SIP revisions by September 30, 1999. State Petitioners challenging the NO_X SIP Call moved to stay the submission schedule until April 27, 2000. The D.C. Circuit issued a stay of the SIP submission deadline pending further order of the court. *Michigan* v. *EPA*, No. 98–1497 (D.C. Cir. May 25, 1999) (order granting stay in part).

II. Proposal

Elsewhere in this issue of the **Federal Register**, EPA is publishing an interim final stay of the April 30 NFR, effective from July 26, 1999, until November 30, 1999, to provide EPA time to address the effects of these two decisions on the April 30 NFR. As discussed below, EPA is proposing in this action to amend the April 30 NFR to address the issues raised by the court's rulings. The EPA is only soliciting comment on the specific changes proposed here in response to the court's rulings. The EPA is not reopening the remainder of the April 30 NFR for public comment and reconsideration.

The EPA expects to promulgate a final rule based on this proposal on or before November 30, 1999, when the interim stay expires. To address the possibility of any delay of this final rulemaking, however, EPA is also taking comment on an extension of the interim final stay of the April 30 NFR in the event that EPA needs more time to complete the final rule. The EPA does not expect to need to promulgate such an extension, but if it were necessary, EPA anticipates that a two- or three-month extension should suffice. Providing for a possible extension, if necessary, ensures that the automatic trigger deadlines now in place will not become effective through a lapse in the stay before EPA completes this rulemaking. Under this schedule, the 3-year compliance schedule for sources subject to an affirmative finding would still be triggered in time to ensure that the intended emissions reductions are achieved by the start of the 2003 ozone season, as described in the April 30 NFR.

A. Indefinite Stay of Technical Determinations Based on the 8-Hour NAAQS Pending Further Litigation Developments

The EPA's belief, as stated above, is that unless and until the court's decision is revised or vacated, EPA should not continue implementation efforts under section 126 with respect to the 8-hour standard that could be construed as inconsistent with the court's ruling. Given this position, EPA believes that the Agency should not now move forward with findings under section 126 based on the 8-hour standard. Thus, EPA is proposing to stay indefinitely the affirmative technical determinations based on the 8-hour standard, pending further developments in the NAAQS litigation.[1] This stay would affect the 8-hour petitions filed by the States of Maine, Massachusetts, Pennsylvania, New Hampshire, and Vermont. This stay would also affect the affirmative technical determinations under the 8-hour NAAQS made for sources located in the following States and the District of Columbia: Alabama, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, and West Virginia. EPA made affirmative technical determinations only under the 8-hour NAAQS, and not under the 1-hour NAAQS for sources located in seven of these States. The seven states are Alabama, Connecticut, Illinois, Massachusetts, Missouri, Rhode Island, and Tennessee. This proposal would not affect EPA's affirmative technical determinations under the 1-hour standard, which apply to sources located in the following twelve States and the District of Columbia: Delaware, Indiana, Kentucky, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia.

B. Findings Under Section 126 and Removal of Trigger Mechanism Based on NO_X SIP Call Compliance Deadlines

In light of the court's decision staying the compliance schedule for the NO_X SIP call, EPA believes it is no longer appropriate to link its findings under section 126 to the compliance schedule for the NO_X SIP call by deferring making final findings as long as States and EPA are meeting a schedule based on that schedule. EPA believed that, while not explicitly contemplated by the statutory language, its initial approach was a reasonable way to address the requirement to act on the section 126 petitions in the same general timeframe as that in which States were required to comply with the NO_X SIP call. Under this approach, EPA gave upwind States an opportunity to address the ozone transport problem themselves, but did not delay implementation of the remedy beyond May 1, 2003. The EPA had determined that requiring controls to be in place for the 2003 summer ozone season, i.e., by May 1, 2003, would bring about downwind compliance ''as expeditiously as practicable,'' as required by Title I, and would require sources emitting in violation of the prohibition of section 110 to reduce emissions ''as expeditiously as practicable,'' as required by section 126. Now, in the absence of any requirement that States submit SIP revisions under the NO_X SIP call by September 30, 1999, as previously required, it is highly unlikely that most States will submit such revisions in time for EPA to propose approval by November 30, 1999, and finalize approval by May 1, 2000. Because there is no schedule for compliance with the NO_X SIP call, there is no longer a basis for the automatic

[1] At this time, in light of the court's order staying the SIP submission deadline under the NO_X SIP call, EPA does not see a need to take similar action for the 8-hour portions of the NO_X SIP call rule.

trigger deadlines provided in the final rule.

The EPA also does not believe it would be appropriate to further defer action on the section 126 petitions pending resolution of the NO_X SIP call litigation. There is no specific deadline for the court to issue a decision in the litigation. It is possible that the litigation would not be resolved in time for EPA to make findings under section 126 by May 1, 2000, as EPA has determined would be necessary to require sources to comply with the remedy by May 1, 2003. The EPA has determined that sources are able to come into compliance with the section 110 requirement by May 1, 2003. Thus, delay beyond that date would not be consistent either with the section 126 requirement that sources achieve reductions as expeditiously as practicable or with the maximum three year timeframe for sources to achieve reductions contemplated by section 126. In the April 30 NFR EPA explained why it made sense to provide a short delay in making the final findings, given the NO_X SIP call deadlines. This was a practical way to address the overlap between the actions that would be required under the NO_X SIP call and under the section 126 petitions. Under the circumstances, this coordinated approach implemented two separate statutory provisions in a manner that attempted to carry out Congress' intent for each provision, without interpreting one as overriding the other. However, delaying action under section 126 without explicit and expeditious deadlines for making the findings would in effect subordinate section 126 to section 110. This approach would deny downwind States the remedy provided by section 126 within the timeframes clearly specified in that section. The EPA does not believe that the plain language of the statute supports such an approach.

In light of these circumstances, it no longer makes sense to defer final action on the petitions and provide an automatic trigger mechanism tied to a schedule for action on SIP revisions responding to the NO_X SIP call. Thus, EPA is proposing to delete the automatic trigger mechanism for making findings and instead simply take final action making findings and granting or denying the petitions.[2] Specifically, for those sources for which it has made affirmative technical determinations, EPA is proposing to find that the sources are emitting in violation of section 110(a)(2)(D)(i)(I) and grant those portions of the petitions. Consistent with these proposed findings, EPA is proposing to remove the automatic trigger mechanism that provided that EPA would have made a finding that sources were emitting in violation of section 110(a)(2)(D)(i)(I) as of November 30, 1999 or as of May 1, 2000 if EPA had not proposed and finalized approval of SIP revisions complying with the NO_X SIP call (or promulgated a FIP) by those dates.

The EPA is not proposing to change one aspect of the automatic trigger mechanism established in the April 30 NFR. This provision would apply not on any particular date, but in the situation where EPA has made a finding under section 126, but the State has subsequently submitted and EPA has approved a SIP revision complying with the NO_X SIP call (or EPA has promulgated a FIP). This situation would arise if a state voluntarily chooses to revise its SIP consistent with the NO_X SIP call, including using the compliance date of May 1, 2003. The final rule provided that after a finding has been made with respect to a particular source or group of sources, the finding will be deemed to be withdrawn, and the corresponding part of the relevant petitions denied, if EPA approves a SIP revision or promulgates a FIP for the relevant State that complies with the NO_X SIP call, including the compliance dates specified in the NO_X SIP call. The EPA is not proposing to change this provision. See 64 FR 28275 for further discussion.

III. Status of Upcoming Related Actions

A. Section 126 Control Remedy NFR

The EPA proposed to implement a new Federal NO_X Budget Trading Program as the section 126 control remedy (63 FR 56292; October 21, 1998). The program will apply to all sources for which EPA makes a final section 126 finding. The EPA intended to finalize all aspects of the section 126 remedy by April 30, 1999. However, as discussed in the April 30 NFR, EPA needed additional time to evaluate the numerous comments it received on the trading program proposal and the source-specific emission inventory data. In the April 30 NFR, EPA finalized the general parameters of the section 126 remedy, including the decision to implement a capped, market-based trading program, identification of the sources subject to the program, specification of the basis for the total tonnage cap, and specification of the compliance date. The EPA committed to finalizing the details of the trading program, including the unit-by-unit allocations by July 15, 1999.

As discussed in Section I.E. of the April 30 NFR, EPA entered into a consent decree with the petitioning States that, among other things, committed the EPA to issuing a final section 126 remedy by April 30, 1999. In order to satisfy that consent decree, EPA promulgated, on an interim basis, emission limitations that would be imposed on individual sources only in the event a finding under section 126 was automatically deemed made and EPA had not yet finalized the Federal NO_X Budget Trading Program regulations. The EPA emphasized it did not expect this default remedy, set forth in section 52.34(k), ever to be applied because the trading program would be finalized in July 1999, while the earliest a section 126 finding would be made was November 30 of the same year.

Because of the need to conduct this further rulemaking to address the impact of the recent court decisions on the section 126 rulemaking, EPA will be delaying the promulgation of the Federal NO_X Budget Trading Program for a short period of time. The EPA now intends to finalize the trading program and make the section 126 findings in the same rulemaking action. At that time, EPA would delete the default remedy from the rule. Therefore, under these new circumstances, the default remedy would also never be applied.

B. New Petitions

The EPA has recently received three additional section 126 petitions from the States of New Jersey (dated April 14, 1999), Maryland (dated April 29, 1999), and Delaware (dated June 8, 1999). (See Docket A–99–21.) These petitions seek findings under both the 1-hour and 8-hour standards for large EGUs and large non-EGUs located in specified upwind States. The EPA is currently developing a schedule to take action on at least the 1-hour portions of these new section 126 petitions. Under section 126, EPA is required to take action to grant or deny the petitions within 60 days of receipt. However, section 307(d) of the CAA authorizes EPA to extend the timeframe for action up to 6 months if EPA determines that the extension is necessary to meet the CAA's rulemaking requirements. The EPA has issued a final rule determining that a 6-month extension for action on these petitions is necessary to allow EPA adequate time to develop the proposals and to provide the public sufficient time to comment. The EPA is also evaluating these

[2] Under today's proposal, these findings would not be effective with respect to the sources in the seven states for which EPA is proposing to stay the affirmative technical determinations, i.e., those sources for which the determinations were based on the 8-hour standard.

petitions in light of the recent Court decisions.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Impact Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The 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 adversely affect in a material way the economy, a sector of 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 obligations 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.

The EPA believes that this action is not a ''significant regulatory action.''

B. Impact on Small Entities

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), provides that whenever an agency is required to publish a general notice of proposed rulemaking, it must prepare and make available an initial Regulatory Flexibility Analysis, unless it certifies that the proposed rule, if promulgated, will not have ''a significant economic impact on a substantial number of small entities.''

This proposal, if promulgated, will not have a significant impact on a substantial number of small entities because it does not create any new requirements.

With respect to the affirmative technical determinations based on the 8-hour standard, this proposal would stay the effectiveness of those determinations, thereby relieving regulatory requirements.

With respect to the deletion of the automatic trigger mechanism for making findings under section 126 for sources for which EPA has made affirmative technical determinations and the replacement of the automatic trigger with findings in the final rule, the regulatory requirements on sources would be unaffected by this proposed action. Because States are no longer subject to schedule for compliance established in the NO_X SIP call, it is extremely likely that under the April 30 NFR, the findings under section 126 for all sources for which EPA has made affirmative technical determinations would be automatically triggered on November 30, 1999. Making a final finding through a separate rulemaking by November 30, 1999, rather than an automatic finding under the existing rule, makes no practical difference whatsoever for the resulting regulatory requirements.

Therefore, because this proposal does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, 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, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that ''includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year.'' A ''Federal mandate'' is defined to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate'' (2 U.S.C. 658(6)). A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments (2 U.S.C. 658(5)(A)(i)), except for, among other things, a duty that is ''a condition of Federal assistance (2 U.S.C. 658(5)(A)(i)(I)). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions (2 U.S.C. 658(7)(A)).

The EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action does not propose any new requirements, as discussed above. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, would result from this action.

D. Paperwork Reduction Act

This action does not propose any new information collection requirements. Therefore, an Information Collection Request document is not required.

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

The Executive Order 13045 applies to any rule that EPA determines is (1) ''economically significant'' as defined under Executive Order 12866, and (2) addresses an environmental health or safety risk that has 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 proposal is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant under E.O. 12866 and does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. In the April 30 NFR, the Agency referred to an analysis it conducted in conjunction with the final NO_X SIP call rulemaking. This was a general analysis of the potential changes in ozone and PM levels that may be experienced by minority and low-income populations as a result of the NO_X SIP call. The findings from this analysis are presented in volume 2 of the RIA for the NO_X SIP call. (Office of Air & Radiation Docket, #A–96–56, VI–B–09(vvvv), Regulatory Impact Analysis for the NO_X SIP Call, FIP, and section 126 Petitions. Volume 2, Health and Welfare Benefits. December 1998. EPA–452/R–98–003.)

G. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal

government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's action does not propose a mandate on State, local or tribal governments. The action does not propose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposal does not significantly or uniquely affect the communities of Indian tribal governments. This action does not propose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rulemaking.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, 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 action does not propose any new technical standards. Therefore, NTTAA requirements are not applicable to today's proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Emissions trading, Nitrogen oxides, Ozone transport, Reporting and recordkeeping requirements.

Dated: June 15, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 52 of 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 paragraphs (i) and (k) to read as follows:

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

* * * * *

(i) *Action on petitions for section 126(b) findings.*

(1) The Administrator finds that each existing or new major source for which the Administrator has made an affirmative technical determination as described in paragraphs (c) through (h) of this section as to impacts on nonattainment or maintenance of a particular NAAQS for ozone in a particular petitioning State, emits or would emit NO_X in violation of the prohibition of Clean Air Act section 110(a)(2)(D)(i)(I) with respect to nonattainment or maintenance of such standard in such petitioning State.

(2) Notwithstanding any other provision of this paragraph (i), a finding under paragraph (i)(1) 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(s) denied, if the Administrator issues a final action putting in place implementation plan provisions that comply with the requirements of 40 CFR 51.121 and 51.122 for such State.

* * * * *

(k) *Stay of affirmative technical determinations with respect to the 8-hour standard.* Notwithstanding any other provisions of this subpart, the effectiveness of paragraphs (d), (e)(3) and (e)(4), (f), (h)(3) and (h)(4) is stayed.

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