

US EPA ARCHIVE DOCUMENT

Findings of Significant Contribution and Rulemaking on Section 126 Petitions from Eight Northeastern States For Purposes of Reducing Interstate Ozone Transport (Summary of Rulemaking on Section 126 Petitions)

In August 1997, eight northeastern States (Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont) submitted individual petitions to EPA under section 126 of the Clean Air Act. Each petition requests that EPA make a finding that certain major stationary sources in upwind States contribute significantly to ozone nonattainment problems in the petitioning State. The petitions target sources in the eastern half of the United States. If EPA grants the requested findings, EPA must establish Federal emission control requirements for the affected sources. Sources would have to comply with the emissions limits within three years from the finding.

It is important to note that these sources may also be subjected to State-adopted emission limitations and control schedules in response to a separate EPA rulemaking action on regional ozone transport that EPA proposed on November 7, 1997 (often referred to as the "OTAG SIP Call"). In this related action, EPA made a proposed finding that emissions from 22 eastern States and the District of Columbia significantly contribute to nonattainment problems in downwind States. EPA proposed that these States and DC must revise their State implementation plans to include provisions that will reduce State-wide nitrogen oxide emissions (an ozone precursor) to a specified level.

Because this OTAG SIP Call rulemaking overlaps considerably with the section 126 petition process, EPA believes it is important to coordinate the two actions as much as possible. To this end, on December 17, 1997, EPA signed a memorandum of agreement (MOA) with the eight petitioning States concerning the schedule for EPA action on the petitions. The petitioning States have brought a lawsuit against EPA to formalize the schedule, and the petitioning States and EPA have submitted to the court a proposed Consent Decree that incorporates the schedule in the MOA. EPA is accepting public comment on this Consent Decree and its recommended schedule. According to this recommended schedule, EPA would have additional time beyond the statutory deadline for analyzing the technical merits of the petitions and carrying out the rulemaking process. It is designed to ensure that EPA will take timely action on the petitions while recognizing that EPA is simultaneously examining ozone transport through a State-based process. Under the recommended schedule, EPA would: publish an advanced notice of proposed rulemaking in the Federal Register by April 30, 1998; publish a notice of proposed rulemaking in the Federal Register by September 30, 1998; and take final action by April 30, 1999.

In the final action, EPA will grant the requested findings or deny the petitions, in whole or in part, unless EPA chooses an alternative schedule. The alternative schedule would allow the States affected by the OTAG SIP Call an opportunity to respond to that rule with a State implementation plan addressing transport before EPA would make a final finding on the section 126 petitions. Under this approach, the findings would be deferred pending certain actions by the States and EPA regarding the OTAG SIP Call SIPs. If EPA does not propose approval of the SIP by November 30, 1999, the section 126 finding would be deemed granted for sources in that State. In addition, if EPA proposes approval of the SIP by November 30, 1999, but does not

issue a final approval of the SIP by May 1, 2000, the section 126 finding would be deemed granted for sources in that State as of May 1, 2000. If EPA finally approves the SIP by May 1, 2000, then EPA will take any further actions, if necessary, to complete its action regarding the section 126 petitions by that same date. EPA has the authority to revise or amend the control requirements promulgated under section 126 in light of the controls that might be required under a SIP or FIP for the OTAG SIP Call.

In accord with the aforementioned MOA, EPA intends to propose the 126 rulemaking, entitled "Findings of Significant Contribution and Rulemaking on Section 126 Petitions from Eight Northeastern States For Purposes of Reducing Interstate Ozone Transport," by September 30, 1998. Preliminary EPA analysis shows that this proposal might have a significant impact on a substantial number of small entities. If further analysis and outreach confirms this, EPA will convene a small-entity review panel under SBREFA. To prepare for that possibility, EPA intends to begin a process of outreach to representatives of potentially affected small entities. A proposed list of small-entity representatives is attached. EPA hopes to begin outreach in April 1998. Should a SBREFA panel prove to be required, we would hope to convene it in early summer of 1998.