

US EPA ARCHIVE DOCUMENT

Note: The Administrator signed the following rule on June 14, 1999 and it is being submitted for publication in the *Federal Register*. While EPA has taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming *Federal Register* publication and/or GPO's Web Site. You can access the *Federal Register* at http://www.access.gpo.gov/su_docs/aces/aces140.html. When using this site, note that "text" files may be incomplete because they do not include graphics. Instead, select "Adobe Portable Document File" (PDF) files.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-5911-8]

Final Determination To Extend Deadline for Promulgation of Action
on Section 126 Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is extending by six months the deadline for taking final action on petitions that three States have submitted to require EPA to make findings that sources upwind of those States contribute significantly to ozone nonattainment problems in those States. Under the Clean Air Act (CAA or Act), EPA is authorized to grant this time extension if EPA determines that the extension is necessary, among other things, to meet the purposes of the Act's rulemaking requirements. By this document, EPA is making that determination. The three States that have submitted the petitions are Delaware, Maryland and New Jersey.

EFFECTIVE DATE: This action is effective as of [insert date of signature].

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SUPPLEMENTARY INFORMATION:

I. Background

Today's action is procedural, and is set in the context of a series of actions EPA is taking to address the problem of the transport of tropospheric ozone and its precursors--especially oxides of nitrogen (NO_x)--across the eastern region of the United States.

By a notice dated May 25, 1999, 64 Fed Reg. 28,250, EPA promulgated a final rulemaking concerning petitions submitted by eight northeastern States under section 126(b), which authorizes States or political subdivisions to petition EPA for a finding that major stationary sources in upwind states emit in violation of the prohibition of section 110(a)(2)(D), by contributing significantly to nonattainment problems in downwind States. The eight States submitting the petitions were Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont.

EPA has recently received additional petitions under section 126 from the States of Delaware (received on June 11, 1999), Maryland (received on May 3, 1999), and New Jersey (received on April 15, 1999). These petitions seek findings, similar to those for which EPA granted affirmative technical determinations, for specified sources in specified upwind States.

Under section 126(b), for each petition, EPA must make the requested finding, or deny the petition, within 60 days of receipt of the petition. This period would expire, for the Delaware petition, on August 10, 1999; for the Maryland petition, on July 2, 1999; and, for the New Jersey petition, on June 14, 1999.

Under section 126(c), with respect to any existing sources for which EPA makes the requested finding, those sources must cease operations within three months of the finding, except that those sources may continue to operate if they comply with emissions limitations and compliance schedules that EPA may provide to bring about compliance with the applicable requirements.

Section 126(b) provides that EPA must allow a public hearing for the submitted petitions. In addition, EPA's action under section 126 is subject to the procedural requirements of CAA section 307(d). See section 307(d)(1)(N). One of these requirements is notice-and-comment rulemaking, under section 307(d)(3).

In addition, section 307(d)(10) provides for a time extension, under certain circumstances, for rulemaking subject to section 307(d). Specifically, section 307(d)(10) provides:

Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

Section 307(d)(10) applies, by its terms, to section 126 rulemakings because the 60-day time limit under section 126(b) necessarily limits the period after proposal to less than six months. In previous rulemaking concerning the earlier section 126 petitions, EPA granted itself several time extensions for acting on those petitions. See, e.g., 62 Fed. Reg. 54,769 (Oct. 22, 1997).

In accordance with section 307(d)(10), EPA is today determining that the 60-day period afforded by section 126(b) is not adequate to allow the public and the agency adequate opportunity to carry out the purposes of the section 307(d) procedures for developing an adequate proposal on whether the sources identified in the section 126 petitions contribute significantly to nonattainment problems downwind, and, further, to allow public input into the promulgation of any controls to mitigate or eliminate those contributions. The determination of whether upwind emissions contribute significantly to downwind nonattainment areas is highly complex, although much technical work has already been accomplished in the course of other rulemakings.

EPA is in the process of determining what would be an appropriate schedule for action on the section 126 petitions, in light of the complexity of the required determinations and the other issues. The schedule must afford EPA adequate time to prepare a notice that clearly elucidates the issues so as to facilitate public comment, as well as afford the public adequate time to comment.

Accordingly, extending the date for action on the section 126 petitions for six months is necessary to determine the appropriate overall schedule for action, as well as to continue to develop the technical analysis needed to develop a proposal.

II. Final Action

A. Rule

Today, EPA is determining, under CAA section 307(d)(10), that a six-month period is necessary to assure the development of an appropriate schedule for rulemaking on the section 126 petitions, which schedule would allow EPA adequate time to prepare a notice for proposal that will best facilitate public comment, as well as allow the public sufficient time to comment.

Accordingly, EPA is granting a six-month extension to the time for rulemaking on the section 126 petitions. Under this extension, the dates for action on the section 126 petitions are:

Delaware: February 10, 2000

Maryland: January 3, 2000

New Jersey: December 14, 1999

B. Notice-and-Comment Under the Administrative Procedures Act (APA)

This document is a final agency action, but may not be subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make a determination that the deadline for action on the section 126 petitions should be extended, Congress may not have intended such a determination to be subject to notice-and-comment rulemaking. However, to the extent that this determination is subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B). Providing notice and comment would be impracticable because of the limited time provided for making this determination, and would be contrary to the public interest because it would divert agency resources from the critical substantive review of the section 126 petitions.

C. Effective Date Under the APA

Today's action will be effective on [insert date of signature]. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the Federal Register if the agency has good cause to mandate an earlier effective date. Today's action--a deadline extension--must take effect immediately because its purpose is to move back by six months the upcoming deadlines for the three section 126 petitions. Moreover, EPA

intends to use immediately the six-month extension period to continue to develop an appropriate schedule for ultimate action on the section 126 petitions, and to continue to develop the technical analysis needed to develop the notice of proposed rulemaking. These reasons support an effective date prior to 30 days after the date of publication.

D. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

E. Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 et seq., EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector or to State, local, or tribal governments in the aggregate. In addition, before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. EPA has determined that these requirements do not apply to today's action because this rulemaking (i) is not a Federal mandate--rather, it simply extends the date for EPA action on a rulemaking; and (ii) contains no regulatory requirements that might significantly or uniquely affect small governments.

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 600 et seq., EPA must propose a regulatory flexibility analysis assessing the impact on small entities of any rule subject to the notice-and-comment rulemaking requirements. Because this action is exempt from such requirements, as described above, it is not subject to RFA.

G. Submission to Congress and the General Accounting Office

Under 5 U.S.C. of the APA, 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), EPA submitted, by the date of publication of this rule, a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Final Determination To Extend Deadline for Promulgation of Action

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Accounting Office. This rule is not a "major rule" as defined by 5 U.S.C. 804(2), as amended.

H. Paperwork Reduction Act

This rule does not contain any information collection requirements which require OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

I. Judicial Review

Under CAA section 307(b)(1), a petition to review today's action may be filed in the Court of Appeals for the District of Columbia within 60 days of [insert date of publication].

Dated: June __, 1999

Carol M. Browner,
Administrator.

