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Part II

Environmental Protection Agency

40 CFR Part 52

Findings of Significant Contribution and Rulemaking on Section 126; Petitions for Purposes of Reducing Interstate Ozone Transport, Technical Correction, and Notice of Availability of Additional Technical Documents; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6305–9]

Findings of Significant Contribution and Rulemaking on Section 126; Petitions for Purposes of Reducing Interstate Ozone Transport, Technical Correction, and Notice of Availability of Additional Technical Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking (SNPR), technical correction, and notice of availability.

SUMMARY: In accordance with section 126 of the Clean Air Act (CAA), EPA is proposing action on recent requests from Maine and New Hampshire which ask EPA to now make findings of significant contribution under the 8-hour ozone standard regarding sources named in their August 1997 petitions. The EPA has previously proposed action on the petitions from these States with respect to the 1-hour ozone standard as part of a proposal on eight petitions that were submitted individually by eight Northeastern States (63 FR 52213, September 30, 1998; and 63 FR 56292, October 21, 1998). Today's action supplements that proposal.

These 8-hour petitions specifically request that EPA make a finding that nitrogen oxides (NO_X) emissions from certain stationary sources in other States significantly contribute to 8-hour ozone nonattainment problems in the petitioning State. If EPA makes such a finding of significant contribution, EPA is authorized to establish Federal emissions limits for the sources.

In this SNPR, EPA is proposing to find that portions of the Maine and New Hampshire petitions are approvable with respect to the 8-hour standard based solely on technical considerations. The EPA is proposing that the technically approvable portions of the petitions be 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 State implementation plan call (NO^X SIP call). The control requirements that would apply to sources in source categories for which a final finding will ultimately be granted were proposed in the October 21, 1998 notice of proposed rulemaking (NPR). The EPA is also proposing to deny portions of the petitions with respect to the 8-hour standard.

This SNPR also corrects inadvertent errors in Table II–1 and the part 52 regulatory text in the October 21, 1998 NPR.

In addition, today's SNPR provides notice of the availability of additional technical documents that have recently been placed in the NO_X SIP call docket.

The transport of ozone and its precursors is important because ozone, which is a primary harmful component of urban smog, has long been recognized, in both clinical and epidemiological research, to adversely affect public health.

DATES: The comment period on this SNPR ends on April 11, 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 March 12, 1999 in Washington, DC, if requested. 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 Docket Office, at the above address, between 8:00 a.m. and 5:30 p.m., Monday though Friday, excluding legal holidays. A reasonable copying fee may be charged for copying.

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

FOR FURTHER INFORMATION CONTACT: Questions concerning today's SNPR 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, email atoldham.carla@epa.gov.

SUPPLEMENTARY INFORMATION:

Public Hearing

The EPA will conduct a public hearing on the section 126 SNPR on March 5, 1999 beginning at 11:00 a.m., if requested by March 1, 1999. The EPA will not hold a hearing if one is not requested. Please check EPA's webpage at http://www.epa.gov/airlinks on March 2, 1999 for the announcement of whether the hearing will be held. If there is a hearing, it 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, email allman.joann@epa.gov no later than March 1, 1999. Oral testimony will be limited to 5 minutes each. Any member of the public may file a written statement before, during, or 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 also 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 this rulemaking, as well as the public version, has been established under docket number A–97–43 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–97–43. Electronic comments on this SNPR may be filed online at many Federal Depository Libraries.

The EPA has issued a separate rule on NO_X transport entitled, ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group

Region for Purposes of Reducing Regional Transport of Ozone'' (63 FR 57357, October 27, 1998) (see notices included in the docket for this rulemaking). The rulemaking docket for that rule (Docket No. A–96–56), hereafter referred to as the NO_X SIP call, contains information and analyses that are relied upon in the section 126 NPR and today's supplemental proposal on the Maine and New Hampshire petitions. Documents II–L–01 and II–L–02 in the docket for today's action describe which documents in the NO_X SIP call docket are included by reference. Documents related to the NO_X SIP call rulemaking are available for inspection in docket number A–96–56 at the address and times given above. In addition, the proposed NO_X SIP call and associated documents are located at http://www.epa.gov/ttn/oarpg/otagsip.html. Modeling and air quality assessment information can be obtained in electronic form at http://www.epa.gov.scram001/regmodcenter/t28.htm. Information related to the budget development can be found at http://www.epa.gov/capi.

Additional information relevant to this SNPR concerning the Ozone Transport Assessment Group (OTAG) is available on the web at http://www.epa.gov/ttn/. If assistance is needed in accessing the system, call the help desk at (919) 541–5384 in Research Triangle Park, NC. Documents related to OTAG can be downloaded directly from OTAG's webpage at http://www.epa.gov/ttn/otag. The OTAG's technical data are located at http://www.iceis.mcnc.org/OTAGDC.

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I. Background

A. Summary of Petitions

In August 1997, New Hampshire, Maine, and six other Northeastern States filed petitions under section 126 seeking to mitigate what they described as significant transport of one of the main precursors of ground-level ozone, NO_X, across State boundaries. All of the petitioning States directed their petitions at the 1-hour ozone standard. Three of the States, Massachusetts, Pennsylvania, and Vermont, also directed their petitions at the new 8-hour ozone standard. In notices dated September 30, 1998 (63 FR 52213) and October 21, 1998 (63 FR 56292), EPA proposed action on the petitions. The October 21, 1998 NPR contains the longer, more detailed version of the proposal. Familiarity with that notice is assumed for purposes of today's SNPR. In the NPR, EPA proposed action under the 1-hour and/or the 8-hour standard as specifically requested in each State's petition. At that time, the Maine and New Hampshire petitions were only directed at the 1-hour standard. Therefore, EPA believed the Agency was not authorized to evaluate impacts of the emissions of the named upwind sources on 8-hour nonattainment problems in Maine and New Hampshire.

Maine 8-Hour Petition

On November 30, 1998, Maine requested that EPA make findings of significant contribution under the 8-hour standard based on information in its 1997 section 126 petition. Maine did not request any other changes to its original petition. Therefore, the geographic scope of the petition and the named sources and source categories to be considered are the same for the 8-hour standard as the 1-hour standard.

The Maine petition identifies ''electric utilities and steam-generating units having a heat input capacity of 250 mmBtu/hr or greater'' that are located within 600 miles of Maine's ozone nonattainment areas as significantly contributing to nonattainment and maintenance problems in Maine. The geographic area covered by the Maine petition includes all or parts of Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Jersey, New York, New Hampshire, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

The Maine petition requests that EPA establish an emissions limitation of 0.15 lb/mmBtu for electric utilities and establish the Ozone Transport Commission Memorandum of Understanding's (on NO_X reductions) level of control for steam generating units, in a multistate cap-and-trade NO_X market system.

New Hampshire Petition

On November 30, 1998, New Hampshire submitted a request that EPA make findings of significant contribution with respect to the 8-hour ozone standard based on information in its 1997 petition. New Hampshire did not request any other changes in its original petition. Therefore, the geographic scope of the petition and the named sources and source categories to be considered are the same for the 8-hour standard as the 1-hour standard.

The New Hampshire section 126 petition identified ''fossil fuel-fired indirect heat exchange combustion units and fossil fuel-fired electric generating facilities which emit ten tons of NO_X or more per day'' that are located in the Ozone Transport Region (OTR) States and OTAG Subregions 1–7 as significantly contributing to nonattainment in, or interfering with maintenance by, New Hampshire. The geographic area covered includes all or parts of Connecticut, Delaware, District of Columbia, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Maryland, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

The New Hampshire petition requests that EPA establish compliance schedules and emissions limitations no less stringent than: (1) Phase III of the Ozone Transport Commission Memorandum of Understanding on NO_X reductions; and/or (2) 85 percent reductions from the projected 2007 baseline; and/or (3) an emission rate of 0.15 lb/mmBtu.

B. Rulemaking Schedule

Section 126(b) generally requires EPA to make the requested finding or deny the petition within 60 days of receipt. It also requires EPA to provide the opportunity for a public hearing for the petition. In addition, EPA's action under section 126 is subject to the procedural requirements of section 307(d) of the CAA. One of these requirements is notice-and-comment rulemaking and

providing an opportunity for public hearing.

As discussed in Section I.E. of the NPR, on February 25, 1998, the eight petitioning States filed a complaint in the U.S. District Court for the Southern District of New York to compel EPA to take action on the States' section 126 petitions that were submitted in August 1997 (*State of Connecticut* v. *Browner*, No. 98–1376). The EPA and the eight States filed a proposed consent decree to establish the rulemaking schedule. The court accepted a modified version of the consent decree on October 26, 1998.

The schedule in the consent decree requires EPA to take final action on at least the technical merits of the August 1997 petitions by April 30, 1999. The consent decree further permits EPA to structure the final action it would take by April 30, 1999 so as to defer the granting or denial of the petitions to certain later dates extending to as late as May 1, 2000, pending certain actions by EPA and the States in response to the NO_X SIP call. In the NPR, EPA proposed to take this form of alternative final action.

The consent decree does not apply to the later November 30, 1998 8-hour petitions. However, for the sake of efficiency and certainty, EPA intends to take final action on these new petitions along with the final action on the rest of the petitions. Further, EPA is proposing to structure the final action on the Maine and New Hampshire 8-hour petitions according to the same terms and schedule as was proposed for the other petitions (see Section II.A.2.c and II.F.2 of the NPR).

II. Proposed Action on the 8-Hour Petitions

In evaluating the Maine and New Hampshire petitions under the 8-hour standard, EPA is applying the analytical approach proposed in the section 126 NPR as the applicable test under section 126 (see Section II of the NPR). The approach relies on conclusions drawn in the final NO_X SIP call.

The EPA's proposed action consists of three components: (1) technical determinations of whether upwind sources or source categories named in the petitions significantly contribute to nonattainment or interfere with maintenance of the 8-hour ozone standard in the relevant petitioning State; (2) for those sources for which EPA is proposing an affirmative technical determination, action specifying when a finding that such sources emit or would emit in violation of the section 110(a)(2)(D)(i)(I) prohibition will be deemed made or not made (or made but subsequently withdrawn) and, thus, when a petition will be deemed granted or denied (or granted but subsequently denied) for purposes of section 126(b); and (3) the specific emissions-reduction requirements that will apply when such a finding is deemed made. Each of these proposed actions is described below.

A. Technical Determinations

Using the NPR approach for making determinations on the technical merits of the petitions, EPA first looked to see which States named in the petitions contribute significantly to 8-hour nonattainment or maintenance problems in the petitioning State. These linkages were established in the NO_X SIP call and are summarized in Table 1 below.

TABLE 1.—NAMED UPWIND STATES WHICH CONTAIN SOURCES THAT SIGNIFICANTLY CONTRIBUTE TO 8-HOUR NONATTAINMENT IN PETITIONING STATE

Petitioning state	Named upwind states that significantly contribute
Maine	CT, DE, DC, MD, MA, NJ, NY, NC, PA, RI, VA
New Hampshire.	CT, DE, DC, MD, MA, NJ, NY, OH PA, RI

In the next step, EPA determined which of the named major stationary NO_X sources or source categories in the linked States may emit in violation of the prohibition in section 110(a)(2)(D)(i) because they emit in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, the petitioning State. For this, EPA proposed in the NPR to use its analysis of highly cost-effective measures from the NO_X SIP call. Thus, if EPA identified highly cost-effective measures for a particular source category in the NO_X SIP call, then EPA proposed to make an affirmative ''technical determination'' for that category. The highly cost-effective control measures are discussed in Section II.C of the NPR and are summarized in Table 2 below.

TABLE 2.—SUMMARY OF FEASIBLE, HIGHLY COST-EFFECTIVE NO_x Control Measures

Subcategory	Control measures
Large EGUs[a]	State-by-State ozone season emissions level (in tons) based on applying a NO_x emission rate of 0.15 lb/mmBtu on all applicable sources
Large Non-EGUs[a]	State-by-State ozone season emissions level (in tons) based on applying a 60 percent reduction from uncontrolled emissions on all applicable sources
Large Process Heaters	No additional controls highly cost effective
Small Sources	No additional controls highly cost effective

[a] The definitions of ''large EGUs'' and ''large non-EGUs'' for purposes of this rulemaking are given in the applicability section of the proposed part 97 regulation in the NPR and clarified in a December 24, 1998 FEDERAL REGISTER notice (63 FR 71220), and a January 13, 1999 FEDERAL REGISTER notice (64 FR 2418).

In short, EPA is proposing today to make affirmative technical determinations of significant contribution (or interference) for those large electricity generating units (EGUs) and non-EGUs for which highly cost-effective controls are available (as shown in Table 2), to the extent those sources are located in one of the linked States named in the relevant petition (as shown in Table 1).

For all named sources that are located in States that are not linked to New Hampshire or Maine and for sources that are located in linked States but for which highly cost- effective controls are not available, EPA is proposing to deny the petitions. For States not linked to New Hampshire or Maine, EPA's basis for this denial is (i) for certain States, based on a proposed negative technical determination because EPA determined in the NO_x SIP call that the States are not linked to New Hampshire or Maine; and (ii) for other States, based on EPA's inability to make an affirmative technical determination due to inadequate information.

More specifically, in addition to those listed in Table 1 above (and those noted below), the New Hampshire 8-hour petition identifies all or parts of the following States: Illinois, Indiana, Kentucky, Michigan, Missouri, North

Carolina, Tennessee, West Virginia, and Wisconsin. The EPA is proposing a negative technical determination with respect to sources in these States for the New Hampshire 8-hour petition because in the NO_x SIP call, EPA determined that these States should not be linked to New Hampshire. Therefore, EPA is proposing to deny this part of the New Hampshire petition.

Similarly, in addition to those listed in Table 1 above (and those noted below), the Maine 8-hour petition identifies all or parts of the following States: Ohio and West Virginia. The EPA is proposing a negative technical determination with respect to sources in these States for the Maine 8-hour petition because in the NO_x SIP call, EPA determined that these States should not be linked to Maine. Therefore, EPA is proposing to deny this part of the Maine petition.

The New Hampshire 8-hour petition also identifies all or parts of the following States, in addition to those noted above: Iowa, Maine, and Vermont. The Maine 8-hour petition also identifies all or parts of the following States, in addition to those noted above: New Hampshire and Vermont. In the NO_x SIP call rule, EPA stated that it did not have adequate modeling information to make a final determination as to whether these States met the ''significant contribution'' standard under section 110(a)(2)(D) (63 FR 57398, October 27, 1998). In the section 126 NPR, EPA indicated that it intended to conduct further modeling for New Hampshire, Vermont, and Maine prior to taking final action on the section 126 rule (63 FR 56304, 56308, October 21, 1998). As discussed below, EPA is in the process of informing Iowa, Maine, New Hampshire, and Vermont (among others) that the Agency does not intend to do additional modeling prior to completion of this rulemaking by the required date of April 30, 1999. Accordingly, for the present, EPA is obliged to deny, on grounds of inadequate information, the portions of the New Hampshire and Maine section 126 petitions that request an affirmative finding for those four States.

The regulatory text accompanying today's SNPR sets forth each of the proposed findings and affirmative technical determinations for sources named in the Maine and New Hampshire 8-hour petitions.

All the source categories in named States for which EPA is proposing an affirmative technical determination in today's SNPR have already received a proposed affirmative technical determination of significant contribution in the section 126 NPR with respect to the New Hampshire and Maine 1-hour petitions and/or one or more of the other petitions. Appendix A to proposed part 97 in the October 21, 1998 NPR lists all existing sources for which EPA proposed to make an affirmative technical determination with respect to at least one petitioning State.

B. Action on Whether to Grant or Deny the 8-Hour Petitions

1. Portion of the Petitions for Which EPA Is Proposing an Affirmative Technical Determination

For the portions of the Maine and New Hampshire petitions for which EPA is proposing an affirmative technical determination, EPA proposes to issue the type of final action described in Section II.A.2.c. of the NPR for the reasons given in that section. Under that approach, the portions of the petitions for which EPA makes an affirmative technical determination would be 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. The schedule allows States the opportunity to develop and submit plans to reduce NO_x transport before EPA would make any final findings under section 126. The schedule and conditions under which the applicable final findings on the petitions would be triggered are discussed in Section II.F.2 of the NPR.

2. Portion of the Petitions for Which EPA Is Proposing a Denial

Consistent with the overall approach, EPA is proposing that the sources for which EPA makes a negative technical determination (as described above) do not or would not emit in violation of the section 110(a)(2)(D)(i)(I) prohibition. As a result, EPA proposes to deny the portions of the Maine and New Hampshire petitions relating to such sources. In addition, EPA is proposing to deny the portions of the Maine petition relating to sources located in New Hampshire and Vermont, as well as the New Hampshire petition relating to sources located in Iowa, Maine, and Vermont, due to the insufficiency of the data as to whether emissions from such sources emit in violation of the section 110(a)(2)(D)(i)(I) prohibition.

C. Requirements for Sources for Which EPA Makes a Section 126(b) Finding

In the NPR, EPA proposed the requirements that would apply to any new or existing major source or group of stationary sources for which a section 126(b) finding is ultimately made. The emissions control program is discussed in detail in Section III of the NPR and was proposed as a new part 97 in title 40 of the Code of Federal Regulations.

III. Corrections and Clarifications to October 21, 1998 NPR

Clarification to List of States Whose Sources Do Not Make a Significant Contribution to Nonattainment in, or Interfere with Maintenance by, the Petitioning States

In the NPR (63 FR 56303-04), EPA identified 11 States as containing sources that do not make a significant contribution to nonattainment in, or interfere with maintenance by, any of the petitioning States under the 1- hour and/or the 8-hour ozone standards. The EPA listed these States as Arkansas, Georgia, Iowa, Louisiana, Maine, Minnesota, Mississippi, New Hampshire, South Carolina, Wisconsin, and Vermont. The EPA added that it does not have the same information available for the States of Maine, New Hampshire, and Vermont; that EPA intended to conduct further analysis with respect to those States; and that if such further analyses indicated that sources in any of those States contributed significantly to a relevant petitioning State, EPA would issue a supplemental notice of proposed rulemaking based on the new information (63 FR 56304, 56308).

These statements are clarified as follows: Based on determinations made in the NO_x SIP call, the States of Georgia, South Carolina, and Wisconsin should be treated as containing sources that do not make a significant contribution to nonattainment in, or interfere with maintenance by, any of the petitioning States under the 1- hour and/or 8-hour ozone standards. As further indicated in the NO_x SIP call, for the remaining eight States of Arkansas, Iowa, Louisiana, Maine, Minnesota, Mississippi, New Hampshire, and Vermont, EPA does not, at this time, have sufficient information—that is, adequate air quality modeling studies—to make a determination as to whether or not those States make a significant contribution to, or interfere with maintenance by, any of the petitioning States under the two ozone standards. Moreover, EPA is in the process of informing those eight States (along with other States in the midwest and south), that EPA does not expect to conduct those modeling studies prior to taking final action on the petitions by April 30, 1999. Accordingly, the NPR is clarified to propose a denial for the portions of the section 126 petitions under either ozone standard that pertain to those eight States on grounds of inadequate

information to demonstrate whether or not sources in those States do contribute significantly to, or interfere with maintenance by, any of the petitioning States.

Correction to Table II–1 of the NPR [1]

When EPA published Table II–1 in the NPR, EPA inadvertently left off Ohio as being a significant contributor to New Hampshire under the 1-hour standard. In addition, asterisks were inadvertently left off of Michigan and North Carolina where the States were listed as significant contributors to Connecticut. These errors are corrected in the version of the table shown below.

TABLE II–1.—[FROM THE NPR]. NAMED UPWIND STATES WHICH CONTAIN SOURCES THAT CONTRIBUTE SIGNIFICANTLY TO 1-HR NONATTAINMENT IN PETITIONING STATES.

Petitioning State (Nonattainment Area)	Named Upwind States
New York	DE, DC, IN, KY, MD, MI, NC, NJ, OH, PA, VA, WV
Connecticut	DE, DC, IN*, KY*, MD, MI*, NC*, NJ, NY, OH, PA, VA, WV
Pennsylvania	NC, OH, VA, WV
Massachusetts	OH, WV
Rhode Island	OH, WV
Maine	CT, DE, DC, MD, MA, NJ, NY, PA, RI
New Hampshire.	CT, DE*, DC*, MA, MD*, NJ, NY, OH*, PA, RI, VA*
Vermont	None
Total	CT, DE, DC, IN, KY, MA, MD, MI, NC, NJ, NY, OH, PA, RI, VA, WV

*Upwind States marked with an asterisk are included in the table because they contribute to an interstate nonattainment area that includes part of the petitioning State. Part of New Hampshire is included in the Boston/Portsmouth nonattainment area; part of Connecticut is included in the New York City nonattainment area.

Correction to Part 52 Regulatory Text [2]

The Part 52 regulatory text in the NPR is corrected to list Ohio as a significant contributor to New Hampshire under the 1-hour standard.

Additional Notice to Reopen Comment Period

The EPA is publishing, in the **Federal Register,** a separate notice to reopen the comment period on the NPR to allow comment concerning the effect of EPA's proposed determinations that the 1-hour ozone standard no longer applies to certain areas in States that have submitted section 126 petitions (63 FR 69598, December 17, 1998). If EPA finalizes these determinations, EPA may then deny at least portions of the section 126 petitions of those States. Under these circumstances, EPA would revise Table II–1, above, and the accompanying regulatory text, accordingly.

Drafting Revisions to Proposed Part 52 Regulatory Text

The proposed part 52 regulatory text language that EPA included in the NPR contained provisions identifying EPA's proposed determinations for both affirmative technical determinations and negative technical determinations (63 FR 56327–32, October 21, 1998). Upon further consideration, EPA believes that, purely as a matter of drafting, it is not necessary to include regulatory text identifying negative technical determinations or denials. The regulatory text is revised accordingly.

IV. Notice of Availability of Additional Technical Documents

In the section 126 NPR, EPA stated that all documents in the docket for the NO_x SIP call (Docket No. A–96–56) should be considered as part of the docket for the section 126 rulemaking (Docket No. A–97–43). The EPA has recently included in the NO_x SIP call docket various technical documents, including air quality and economic modeling analyses, that had been inadvertently omitted from that docket. These documents may be found in Sections VI–D and VI–F of the NO_x SIP call docket. A list of the documents is attached as Appendix A to this notice. These documents have been incorporated by reference into the docket for the section 126 rulemaking.

V. 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 considers today's SNPR to be one piece of its overall proposal on the eight section 126 petitions. As discussed in the October 21, 1998 NPR, the EPA believes that its action on the section 126 petitions is a ''significant regulatory action'' because it raises novel legal and policy issues arising from the Agency's obligation to respond to the petitions, and because the action could have an annual effect on the economy of more than $100 million. As a result, the NPR was submitted to OMB for review, and EPA prepared a regulatory impact analysis (RIA) titled ''Regulatory Impact Analysis for the NO_x SIP Call, FIP, and Section 126 Petitions.'' This RIA assesses the costs, benefits, and economic impacts associated with federally-imposed requirements to mitigate NO_x emissions from sources contributing to downwind nonattainment of the ozone national ambient air quality standards. Any written comments from OMB to EPA and any written EPA response to those comments are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble. The RIA is available in hard copy by contacting the EPA Library at the address under ''Availability of Related Information'' and in electronic form as discussed above in that same section. All of the sources covered under the Maine and New Hampshire petitions with respect to the 8-hour standard are also covered with respect to the Maine and New Hampshire 1-hour petitions and/or one or more of the other petitions and, therefore, were considered in the RIA analyses for the NPR. This SNPR does not create any additional impacts beyond what were proposed in the NPR, therefore, no additional RIA is needed.

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

[1] *See* discussion below, in ''Additional Notice to Reopen Comment Period.''

[2] *See* discussion immediately below, in ''Additional Notice to Reopen Comment Period.''

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.''

In the process of developing the NPR, EPA worked with the Small Business Administration (SBA) and OMB and obtained input from small businesses, small governmental jurisdictions, and small organizations. On June 23, 1998, EPA's Small Business Advocacy Chairperson convened a Small Business Advocacy Review Panel under section 609(b) of the RFA as amended by SBREFA. In addition to its chairperson, the panel consists of EPA's Director of the Office of Air Quality Planning and Standards within the Office of Air and Radiation, the Administrator of the Office of Information and Regulatory Affairs within OMB, and the Chief Counsel for Advocacy of the SBA.

As described in the NPR, this panel conducted an outreach effort and completed a report on the section 126 proposal. The report provides background information on the proposed rule being developed and the types of small entities that would be subject to the proposed rule, describes efforts to obtain the advice and recommendations of representatives of those small entities, summarizes the comments that have been received to date from those representatives, and presents the findings and recommendations of the panel. The completed report, comments of the small entity representatives, and other information are contained in the docket for this rulemaking.

It is important to note that the panel's findings and discussion are based on the information available at the time this report was drafted. The EPA is continuing to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during the remainder of the rule development process. This SNPR does not affect any additional sources or source categories beyond those that are affected by the NPR. All of the sources covered by this SNPR are already being considered in the SBREFA process that was initiated for the NPR and, therefore, no separate SBREFA analysis is needed for today's SNPR.

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 under section 421(6), 2 U.S.C. 658(6), to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate.'' A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is ''a condition of Federal assistance,'' section 421(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, section 421(7)(A), 2 U.S.C. 658(7)(A).

As discussed in the NPR, the EPA is taking the position that the requirements of UMRA apply because EPA's action on the section 126 petitions could result in the establishment of enforceable mandates directly applicable to sources (including sources owned by State and local governments) that would result in costs greater than $100 million in any 1 year. 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 EPA's UMRA analysis, ''Unfunded Mandates Reform Act Analysis For the Proposed Section 126 Petitions Under the Clean Air Act Amendments Title I,'' is contained in the docket for this action and is summarized in the NPR. Because this SNPR does not create any additional mandates beyond what were proposed in the NPR, no additional UMRA analysis is needed for today's SNPR.

D. Paperwork Reduction Act

The control requirements that would apply to any sources for which a final section 126 finding is made were proposed in the October 21, 1998 NPR. This SNPR does not propose any additional control requirements. The information collection requirements related to the NPR control measures were submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1889.01), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, US Environmental Protection Agency (2137), 401 M St., SW, Washington, DC 20460 or by calling (202) 260–2740. See Section V.D. of the NPR for a discussion of the ICR document.

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

Executive Order 13045 applies to any rule that EPA determines (1) ''economically significant'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule 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 proposed rule 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 does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

In accordance with section 5(501), the Agency has evaluated the environmental health or safety effects of the rule on children and found that the rule does not separately address any age groups. However, in conjunction with the final NO_x SIP call rulemaking, the Agency has conducted a general analysis of the potential changes in ozone and PM levels experienced by children as a result of the NO_x SIP call; these findings are presented in the RIA. The findings include population-weighted exposure characterizations for projected 2007 ozone and PM concentrations. The population data includes a census-derived subdivision for the under 18 group. This analysis generally applies to the section 126 proposal because the section 126 action is a subset of the NO_x SIP call.

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 conjunction with the final NO_x SIP call

rulemaking, the Agency has conducted 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; these findings are presented in the RIA. The findings include population-weighted exposure characterizations for projected ozone concentrations and PM concentrations. The population data includes census-derived subdivisions for whites and non-whites, and for low-income groups. These findings generally apply to the section 126 proposal because the section 126 action is a subset of the NO_x SIP call.

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 the mandate is unfunded, EPA must provide 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.''

The EPA has concluded that the rulemaking on the eight section 126 petitions may create a mandate on State and local governments, and that the Federal government will not provide the funds necessary to pay the direct costs incurred by the State and local governments in complying with the mandate. In order to provide meaningful and timely input in the development of this regulatory action, EPA sent letters to five national associations whose members include elected officials. The letters provided background information, requested the associations to notify their membership of the proposed rulemaking, and encouraged interested parties to comment on the proposed actions by sending comments during the public comment period and presenting testimony at the public hearing on the proposal. Any comments will be taken into consideration as the action moves toward final rulemaking.

Furthermore, for the section 126 rulemaking, EPA published an Advance Notice of Proposed Rulemaking that served to provide notice of the Agency's intention to propose emissions limits and to solicit early input on the proposal. This process helped to ensure that small governments had an opportunity to give timely input and obtain information on compliance.

This SNPR does not affect any additional sources or source categories beyond those that are affected by the NPR. Therefore, all of the sources covered by this SNPR were already considered in the consultation process with State, local, and tribal governments that was conducted for the NPR, and no separate consultation process is needed for today's SNPR.

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 government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must 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 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 SNPR does not significantly or uniquely affect the communities of Indian tribal governments and, in any event, will not impose substantial direct compliance costs on such communities. The EPA is not aware of sources located on tribal lands that could be subject to the requirements EPA is proposing in this notice. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply.

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.

The control requirements that would apply to any sources for which a final section 126 finding is made with respect to today's action were proposed in the October 21, 1998 NPR. This SNPR does not propose any additional control requirements. As discussed in Section V.I of the NPR, the control requirements incorporate a number of voluntary consensus standards.

List of Subjects in 40 CFR Part 52

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

Dated: February 25, 1999.

Carol M. Browner,

Administrator.

Appendix A to the Preamble—Availability of Additional Technical Documents

The following tables list the documents that have recently been placed in Sections VI–D and VI–F of the NO_X SIP call docket (Docket No. A–96–56).

TABLE A–1.—ADDITIONS TO SECTION VI–D OF DOCKET NO. A–96–56

Document Number	Commenter, Addressee, Title or Description
VI–D–05	Draft—Summary of Revised 2007 Base and Budget Seasonal NO_X Emissions
VI–D–06	Technical Support Document on Development of Modeling Inventory and Budgets for the Ozone Transport SIP Call

TABLE A–1.—ADDITIONS TO SECTION VI–D OF DOCKET NO. A–96–56—Continued

Document Number	Commenter, Addressee, Title or Description
VI–D–07	Draft Appendices for Revised Budget Calculations for Electric Generation Sources
VI–D–08	Explanation of Revised Budget Calculations
VI–D–09	Draft Appendices for Revised Budget Calculations for Non-Electric Generation Point Sources
VI–D–10	Revised Draft Utilization Information for Electricity Generators Used in Budget Calculations for the Proposed SIP Call
VI–D–11	Road Map to IPM Run Files for the Proposed Ozone Transport Rulemaking
VI–D–12	Data Used to Determine State-Specific Electricity Generator Growth Used in the Ozone Transport Rulemaking
VI–D–13	Summary of State-Specific 1996–2007 Growth Factors for Electricity Generating Units in the SIP Call Region
VI–D–14	Segments of five IPM runs used to prepare the electric power industry emissions reduction and cost analysis in the Supplemental Ozone Transport Rulemaking Regulatory Analysis
VI–D–15	Estimates of Annual Incremental Costs of Combustion Control on Coal-Fired Units that are Part of EPA's Estimates of Compliance Costs for the SNPR
VI–D–16	Initial Base Case—Winter 1998 Electricity Demand Forecast, SIPJ
VI–D–17	0.15 Trading—Winter 1998 Electricity Demand Forecast, SIP2
VI–D–18	Final Base Case—Winter 1998 Electricity Demand Forecast, SIP5—2
VI–D–19	Initial Base Case—Summer 1996 Electricity Demand Forecast, SIP3
VI–D–20	0.15 Trading—Summer 1996 Electricity Demand Forecast, SIP14
VI–D–21	Incremental Cost Analyses
VI–D–22	Four additional sets of IPM run files which provide results of analysis of five cap-and-trade options
VI–D–23	EPA Utility/Non-Utility Zero-out Model Runs: emissions inputs and ozone predictions in electronic form and tabular summaries of ozone metrics in hard copy form
VI–D–24	EPA UAM–V Zero-out Model runs: emissions inputs and ozone predictions in electronic form
VI–D–25	EPA UAM–V Base Case and Strategy Model Runs: emissions inputs and ozone predictions in electronic form
VI–D–26	EPA CAM_X Base Case and Source Apportionment Model Runs: emissions inputs and ozone predictions in electronic form

TABLE A–2.—ADDITIONS TO SECTION VI–F OF DOCKET NO. A–96–56

Document Number	Commenter, Addressee, Title or Description
VI–F–01	0.12/0.15/0.20 3-zone trading beginning in 2003 (output from the IPM model)
VI–F–02	0.1 5/0.20 2-zone trading beginning in 2003 (output from the IPM model)
VI–F–03	Sensitivity Analysis of a 7-week outage period for SCR Hook-up (SIP 47)
VI–F–04	Sensitivity Analysis of a 9-week outage period for SCR Hook-up (SIP 48)
VI–F–05	Final .15 with interstate trading beginning in 2003 (SIP 80)
VI–F–06	Corrected .15 with intrastate trading beginning in 2003 (SIP 83)

For the reasons set forth in the preamble, part 52 of chapter 1 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. 7401–7671q.

Subpart A—General Provisions [Amended]

2. Section 52.34 as proposed at 63 FR 56292 on October 21, 1998, is amended by removing paragraphs (b)(3) and (4); by revising paragraphs (c)(3) and (4); by removing paragraphs (d)(3), (4), (7), and (8) and redesignating paragraphs (d)(5) and (6) as paragraphs (d)(3) and (4) respectively; by revising paragraphs (e)(3) and (4); by adding paragraph (e)(2)(xi); by removing paragraphs (f)(3) and (4); by removing paragraphs (g)(3), (4), (7), and (8) and redesignating paragraphs (g)(5) and (6) as paragraphs (g)(3) and (4) respectively; by removing paragraphs (h)(3) and (4); and by removing paragraphs (i)(3), (4), (7), and (8) and redesignating paragraphs (i)(5) and (6) as paragraphs (i)(3) and (4) respectively; to read as follows:

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

* * * * *

(c) * * *

(3) *Affirmative Technical Determinations with Respect to the 8-Hour Ozone Standard in Maine.* The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO_X in amounts that contribute significantly to nonattainment in the State of Maine, with respect to the 8-hour NAAQS for ozone if it is or will be:

(i) In a category of sources described in 40 CFR 97.4;

(ii) Located in one of the States (or portions thereof) listed in paragraph (c)(6) of this section; and

(iii) Within one of the ''Named Source Categories'' listed in the portion of Table F–1 of appendix F of this part describing the sources covered by the petition of the State of Maine.

(4) *States or Portions of States that Contain Sources for which EPA is Making an Affirmative Technical Determination with Respect to the 8-Hour Ozone Standard in Maine.* The States, or portions of States, that contain sources for which EPA is making an affirmative technical determination are:

(i) Connecticut.
(ii) Delaware.
(iii) District of Columbia.
(iv) Maryland.
(v) Massachusetts.
(vi) New Jersey.
(vii) New York.
(viii) North Carolina.
(ix) Pennsylvania.
(x) Rhode Island.
(xi) Virginia.

* * * * *

(e) * * *

(2) * * *

(xi) Ohio

* * * * *

(3) *Affirmative Technical Determinations with Respect to the 8-Hour Ozone Standard in New Hampshire.* The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO_X in amounts

that contribute significantly to nonattainment in, or interfere with maintenance by, the State of New Hampshire, with respect to the 8-hour NAAQS for ozone if it is or will be:

(i) In a category of sources described in 40 CFR 97.4;

(ii) Located in one of the States (or portions thereof) listed in paragraph (e)(6) of this section; and

(iii) Within one of the ''Named Source Categories'' listed in the portion of Table F–1 of appendix F of this part describing the sources covered by the petition of the State of New Hampshire.

(4) *States or Portions of States that Contain Sources for which EPA is Making an Affirmative Technical Determination with Respect to the 8-Hour Ozone Standard in New Hampshire.* The States, or portions of States, that contain sources for which EPA is making an affirmative technical determination are:

(i) Connecticut.
(ii) Delaware.
(iii) District of Columbia.
(iv) Maryland.
(v) Massachusetts.
(vi) New Jersey.
(vii) New York.
(viii) Pennsylvania.
(ix) Rhode Island.

* * * * *

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