ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6364–4]

RIN 2060–AH88

Interim Final Stay of Action on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: In today's action, EPA is temporarily staying, until November 30, 1999, the effectiveness of a final rule regarding petitions filed under section 126 of the Clean Air Act (CAA). Eight Northeastern States filed the petitions 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 remained on schedule to meet the requirements of the NO_X SIP call.

In response to these rulings, EPA is today staying the effectiveness of the April 30 NFR for a short period while EPA conducts a notice-and-comment rulemaking to address further issues arising from the court rulings.

EFFECTIVE DATE: This interim final rule is effective on July 26, 1999, until November 30, 1999.

ADDRESSES: 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.

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:

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 is adding a new section to that docket for purposes of today's interim final rule. 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 official 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 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: Delaware, Indiana, Kentucky, Maryland, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, and the District of Columbia. 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 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 believes that a State's compliance with the NO_X SIP call would eliminate the basis for a finding under section 126 for sources located in that State, under these petitions. See 64 FR 28271–28274. As a consequence, EPA concluded that 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 would not subject those sources 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 time frame, 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 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 each source for which EPA had made an affirmative technical determination of significant contribution, EPA would be deemed to find that the source emits 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 a 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 a 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 would automatically be deemed denied. Also, if a finding is deemed to be made, it would be deemed to be withdrawn, and the corresponding portions of the petitions would 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 Ozone 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. 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. Interim Final Stay

In light of the change in circumstances created by the court rulings, EPA believes it is appropriate to stay temporarily the section 126 April 30 NFR, while proceeding with a notice-and-comment rulemaking to address the issues raised by the rulings. In particular, with respect to the ruling on the 8-hour NAAQS, although EPA continues to believe that the 8-hour NAAQS has a compelling basis in public health protection, EPA believes that the court decision creates substantial uncertainty concerning the statutory authority both for revising the NAAQS and for implementing any such revised NAAQS. Accordingly, EPA believes that the portion of the section 126 April 30 NFR that requires sources in upwind States to implement controls for the purpose of reducing their impact on downwind 8-hour nonattainment areas should be stayed on an interim basis while EPA takes public comment on, and further considers, the matter.

With respect to the court's decision staying the SIP submission 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 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 time frame 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 unlikely that States will submit such revisions in time for EPA to propose approval by November 30, 1999, and finalize approval by May 1, 2000. It is not possible or appropriate to coordinate the section 126 action with the requirements of the NO_X SIP call without a schedule for compliance with the NO_X SIP call. Absent such action, deferring final action on the petitions and providing an automatic trigger mechanism tied to specific dates for action on the SIP revisions no longer makes sense.

In its upcoming proposal, EPA plans to address the concerns raised by the court rulings in the following manner. First, EPA plans to propose to stay indefinitely the affirmative technical determinations with respect to sources implicated on the basis of the 8-hour standard, pending further developments in the NAAQS litigation.[1] Second, EPA plans to propose to delete the automatic trigger mechanism and simply take final action granting or denying the petitions with respect to the sources for which EPA has made affirmative technical determinations. EPA intends to take final action on proposed changes by November 30, 1999. If necessary, however, as EPA plans to discuss in the proposal, EPA intends to extend this stay to the extent needed to ensure that the stay does not expire before EPA completes final action on the proposed changes.

[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 NAAQS portions of the NO_X SIP call rule.

III. Rulemaking Procedures

The EPA is taking this action as an interim final rule without benefit of prior proposal and public comment because EPA finds that the Administrative Procedure Act (APA) good cause exception to the requirement for notice-and-comment rulemaking applies here. See 5 U.S.C. 553(b)(B). EPA believes that providing for notice-and-comment rulemaking before taking this action is impracticable and contrary to the public interest. In light of the impact that the court rulings have on key elements of the April 30 NFR, it would be contrary to the public interest for the rule to remain in effect while EPA conducts rulemaking to address the consequences of the court rulings on the April 30 NFR.

In particular, the April 30 NFR imposes a potential compliance burden on a number of sources based on the 8-hour ozone standard. While EPA disagrees with the holding and expects to take further action to address it, the form of the court's ruling on that standard and the status of the litigation have created substantial uncertainty as to whether and when these sources may become subject to control requirements under section 126 based on the 8-hour standard. Thus, EPA believes it is important to immediately inform these sources of the Agency's intent regarding their potential control obligations. In addition, States may view the automatic trigger mechanism now in place as pressuring them to comply with the NO_X SIP call schedule, even though that schedule has been stayed by the court. The EPA believes that preserving the linkage with the NO_X SIP call deadlines is inappropriate in light of the court's decision staying the submission deadlines, and might be viewed by the court as placing improper pressure on States. Today's action is necessary to immediately eliminate any such concerns. It would be impracticable to achieve these purposes of immediate clarification, and hence, would also be contrary to the public interest, if this action were delayed by providing for prior public notice-and-comment.

In addition, this interim final stay will expire in approximately five months and this action will not have any effect on the ultimate deadlines for control of emissions. EPA will soon follow this action with a proposal requesting comment on changes to the April 30 NFR consistent with the approach taken here to address the court decisions. In light of the short time period that this interim stay is in effect and the imminent rulemaking to take comment on a long-term resolution of the issues this interim stay is intended to address, EPA believes that providing for prior public comment is unnecessary.

This interim final stay is effective as of July 26, 1999. Given the need to provide immediate clarification regarding the effects of the court decisions and the fact that this action relieves a potential burden on certain affected parties, EPA finds good cause to make this rule effective July 26, 1999, which is the effective date of the rule stayed by this action. The EPA believes this is consistent with 5 U.S.C. 553(d)(1) and (3), as well as with 5 U.S.C. 801 and 808. While this interim final stay is effective for a limited period, EPA will also conduct full notice-and-comment rulemaking on similar changes to the April 30 NFR to address the court decisions.

IV. 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 § 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 a 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 two additional section 126 petitions from the States of New Jersey (dated April 14, 1999) and Maryland (dated April 29, 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 is issuing a final rule determining that a 6-month extension is necessary for both of the new petitions to allow EPA adequate time to develop the proposals and to provide the public sufficient time to comment. The EPA is also evaluating these petitions in light of the recent court decisions.

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 believes that this interim final stay of pre-existing regulatory requirements is not a ''significant regulatory action'' because it relieves, rather than imposes, regulatory requirements, and raises no novel legal or policy issues.

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 final rulemaking, it must prepare and make available a final 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 rule will not have a significant impact on a substantial number of small entities because it does not create any new requirements. Therefore, because this rule 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 imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Paperwork Reduction Act

This interim final rule does not impose 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) addressed 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 interim final 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 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. This Federal action imposes no new requirements and will not delay achievement of emissions reductions under existing requirements. Accordingly, no disproportionately high or adverse effects on minorities or low-income populations result from this action.

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 the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, 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 rule does not create a mandate on State, local or tribal governments. The rule does not impose 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 the Office of Management and Budget, 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 rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

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 interim final rule does not involve the promulgation of any new technical standards. Therefore, NTTAA requirements are not applicable to today's rule.

J. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This Section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

For the reasons discussed in the April 30 NFR, the Administrator determined that final action regarding the section 126 petitions is of nationwide scope and effect for purposes of section 307(b)(1). Thus, any petitions for review of final actions regarding the section 126 rulemaking must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

K. Congressional Review Act

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 of the CRA provides an exception to this requirement. For any rule for which an agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest, the rule may take effect on the date set by the Agency. The EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. § 804(2). As EPA is finding good cause to promulgate this rule without prior notice and comment, this rule will be effective July 26, 1999.

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 11, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 52 of chapter 1 of title 40 of the Code of Federal Regulations is 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 adding paragraph (l) to read as follows:

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

* * * * *

(l) *Temporary stay of rules.* Notwithstanding any other provisions of this subpart, the effectiveness of 40 CFR 52.34 is stayed from July 26, 1999 until November 30, 1999.

[FR Doc. 99–15712 Filed 6–23–99; 8:45 am]

BILLING CODE 6560–50–P