ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 70, and 71

[FRL–7669–6]

RIN 2060–AJ36

Rulemaking on Section 126 Petitions From New York and Connecticut Regarding Sources in Michigan; Revision of Definition of Applicable Requirement for Title V Operating Permit Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In today's action, EPA is revising one element of a final rule published on January 18, 2000, regarding petitions filed by four Northeastern States under section 126 of the Clean Air Act (CAA). The petitions seek to mitigate interstate transport of nitrogen oxides (NO_X), one of the main precursors of ground-level ozone pollution. The final rule partially approved the four petitions under the 1-hour ozone national ambient air quality standard, thereby requiring certain types of sources located in 12 States and the District of Columbia to reduce their NO_X emissions.

Subsequently, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision on a related EPA regulatory action, the NO_X State implementation plan call (NO_X SIP Call), that has relevance to the Section 126 Rule. Although the court decision did not directly address the State of Michigan, the reasoning of the court regarding the significance of NO_X emissions from sources in two other States called into question the inclusion of a portion of Michigan in the area covered by the NO_X SIP Call. In response, the EPA is removing that portion of Michigan, known as the "coarse grid'' portion, from the NO_X SIP Call. The Section 126 Rule is based on many of the same analyses and information used for the NO_X SIP Call and covers part of Michigan. Thus, in light of EPA's response to the court ruling on the NO_X SIP Call, EPA is also withdrawing its section 126 findings and denying the petitions under the 1-hour ozone standard with respect to sources located in the coarse grid portion of Michigan. The EPA has not identified any existing section 126 sources located in the affected portion of the coarse grid.

The EPA is also revising the definition of the "applicable requirement'' for title V operating permit programs by providing expressly that any standard or other requirement under section 126 is an applicable requirement and must be included in operating permits issued under title V of the CAA.

DATES: This final rule is effective July 6, 2004.

ADDRESSES: Documents relevant to this action are available for public inspection at the EPA Docket Center, Attention: Docket OAR–2001–2009, located at 1301 Constitution Avenue, NW., Room B102, Washington, DC, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number is (202) 566–1742. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions concerning today's action should be addressed to Carla Oldham, EPA Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–02, Research Triangle Park, NC, 27711, telephone (919) 541–3347, e-mail at *oldham.carla@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Get Copies of This Document and Other Related Information?

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2001–2009. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Air Docket is (202) 566–1742. A reasonable fee may be charged for copying documents.

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,'' hereafter referred to as the NO_X SIP Call. The rulemaking docket for that rule (Docket ID No. OAR–2001–0008) contains information and analyses that EPA has relied upon in the section 126 rulemaking, and hence documents in that docket are part of the rulemaking record for this rule.

Electronic Access. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search,'' then key in the appropriate docket identification number.

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* In addition, the **Federal Register** rulemaking actions and certain associated documents are located at *http://www.epa.gov/ttn/naaqs/ozone/rto/126/index.html.*

Outline

I. Background

A. What Action Did EPA Take in the January 18, 2000 Section 126 Rule?

In a final rule published on January 18, 2000 (65 FR 2674) (January 2000 Rule), EPA took action on petitions filed by four Northeastern States under section 126 of the CAA. Each petition requested that EPA make a finding that certain stationary sources located in other specified States are emitting NO_X in amounts that significantly contribute to ozone nonattainment and maintenance problems in the petitioning State. The petitions targeted electric utilities, industrial boilers and turbines, and certain other stationary sources of NO_X. The four States that submitted petitions are Connecticut, Massachusetts, New York, and Pennsylvania.

In the January 2000 Rule, EPA found that sources in 12 upwind States and the District of Columbia were significantly contributing to ozone nonattainment problems in the petitioning States under the 1-hour ozone standard. The EPA promulgated the Federal NO_X Budget Trading Program as the control remedy. Only a portion of Michigan was affected by the rule.

To determine whether emissions from States named in the petitions were significantly contributing to 1-hour nonattainment problems in the petitioning States, EPA relied on the technical analyses from the final NO_X SIP Call rulemaking (63 FR 57356; October 27, 1998). The technical analyses used to support the Section 126 Rule are discussed in detail in previous section 126 rulemaking actions (63 FR 56292; October 21, 1998 and 64 FR 28250; May 25, 1999) and in the final NO_X SIP Call.

Section 126 of the CAA authorizes a downwind State to petition EPA for a finding that any new (or modified) or existing major stationary source or group of stationary sources upwind of the State emits or would emit in violation of the prohibition of section 110(a)(2)(D)(i) because their emissions contribute significantly to nonattainment, or interfere with maintenance, of a national ambient air quality standard in the State. Sections 110(a)(2)(D)(i), 126(b)–(c). If EPA makes the requested finding, the sources must shut down within 3 months from the finding unless EPA directly regulates the sources by establishing emissions limitations and a compliance schedule, extending no later than 3 years from the date of the finding, to eliminate the prohibited interstate transport of pollutants as expeditiously as possible. See sections 110(a)(2)(D)(i) and 126(c).

B. What Was the Geographic Scope of the 1-Hour Findings for Michigan Sources?

In the January 2000 Section 126 Rule, the 1-hour findings for sources in Michigan were linked to the petitions from Connecticut and New York. Both States defined the geographic scope of their petitions in terms of the Ozone Transport Assessment Group (OTAG) Subregions. The OTAG was a group of 37 States in the Eastern half of the United States that was active in the 1995–1997 timeframe. The OTAG assessed ozone transport affecting member States and submitted recommendations to EPA on control strategies to mitigate the ozone transport.[1] These Subregions were delineated by OTAG for use in some of the early air quality modeling analyses to determine the spatial scale of transport. The Subregional divisions were not used for the purpose of evaluating various control strategies. (See 62 FR 60318; November 7, 1997.) Both the New York and Connecticut petitions targeted sources located in OTAG Subregion 2, among other areas. Part of Michigan is included in Subregion 2 (see Figure 1 below).

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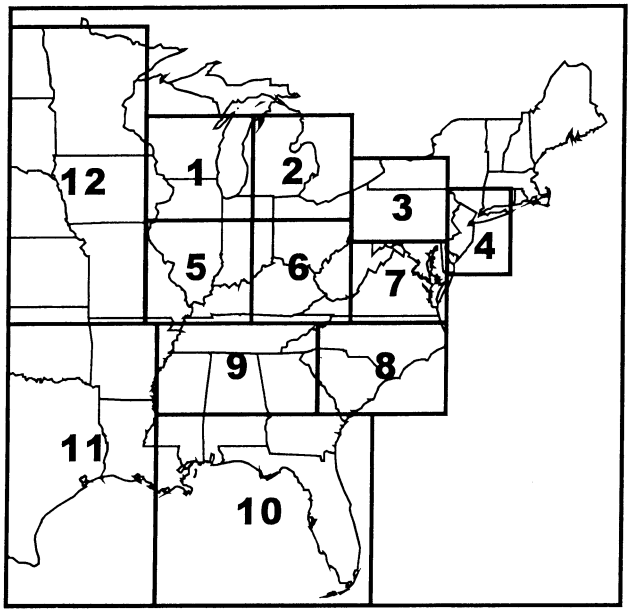
[1] The OTAG recommendations are provided in appendix B of the November 7, 1997 NO_X SIP Call propoosal (62 FR 60376).

Figure 1. Location of Ozone Transport Assessment Group (OTAG) Subregions



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As part of the January 2000 Rule, EPA made findings that large electric generating units (EGUs) and large industrial boilers and turbines (non-EGUs) located in the OTAG Subregion 2 portion of Michigan are significantly contributing to both Connecticut and New York under the 1-hour ozone standard. The Subregion 2 portion of Michigan covers the area south of 45 degrees latitude and east of 86 degrees longitude. The rest of Michigan was not covered by the section 126 findings because the New York and Connecticut petitions did not target any other areas.

C. What Was the March 3, 2000 Court Decision on the NO_X SIP Call?

1. What Is the Relevance of the NO_X SIP Call Court Decision to the Section 126 Rule?

On March 3, 2000, the United States Court of Appeals for the District of Columbia Circuit Court issued its decision on the NO_X SIP Call, largely upholding the rule. *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir., 2000).

However, the Court ruled against EPA on several points, one of which is relevant to today's rulemaking. Specifically, the court vacated the inclusion of Georgia and Missouri in the NO_X SIP Call in light of the OTAG's conclusions that emissions from coarse grid portions of States did not merit controls. The court remanded this issue concerning Georgia and Missouri to EPA for further consideration. The Section 126 Rule is based on NO_X SIP Call analyses and also affects a coarse grid area, in this case, in Michigan. (See the following section for an explanation of coarse grid versus fine grid areas of States.) Therefore, EPA's response to the NO_X SIP Call court decision related to coarse grid sources is being taken into consideration in the Section 126 Rule.

2. What Is the NO_X SIP Call Court Decision Regarding Coarse Grid Sources?

In the NO_X SIP Call, Georgia and Missouri industry litigants challenged EPA's decision to calculate NO_X budgets for these two States based on NO_X emissions throughout the entirety of each State. The litigants maintained that the record supports including only eastern Missouri and northern Georgia as contributing to downwind ozone problems.

The challenge from these litigants generally stems from the recommendations of the OTAG. The OTAG recommended NO_X controls to reduce transport for areas within the "fine grid'' of the air quality modeling domain, but recommended that areas within the "coarse grid'' not be subject to additional controls, other than those required by the CAA.[2]

In its modeling, OTAG used grids drawn across most of the eastern half of the United States. The "fine grid'' has grid cells of approximately 12 kilometers on each side (144 square kilometers). The "coarse grid'' extends beyond the perimeter of the fine grid and has cells with 36 kilometer resolution. As shown in Figure F–10, appendix F of part 52.34, the fine grid includes the area encompassed by a box with the following geographic coordinates: Southwest Corner: 92 degrees West longitude, 32 degrees North latitude; Northeast Corner: 69.5 degrees West longitude, 44 degrees North latitude (OTAG Final Report, Chapter 2). The OTAG could not include the entire Eastern U.S. within the fine grid because of computer hardware constraints.

It is important to note that there were two key factors directly related to air quality that OTAG considered in determining the location of the fine grid-coarse grid line.[3] (See OTAG Technical Supporting Document, Chapter 2, page 6; *http://www.epa.gov/*

[2] The OTAG recommendations on Utility NO_X Controls approved by the Policy Group, June 3, 1997 (62 FR 60318, appendix B, November 7, 1997).

[3] In addition to these two factors, OTAG considered three other factors in establishing the geographic resolution, overall size, and the extent of the fine grid. These other factors dealt with the computer limitations and the resolution of available model inputs.

ttn/otag/finalrpt/.) Specifically, the fine grid-coarse grid line was drawn to: (1) Include within the fine grid as many of the 1-hour ozone nonattainment problem areas as possible and still stay within the computer and model run time constraints, (2) avoid dividing any individual major urban area between the fine grid and coarse grid, and (3) be located along an area of relatively low emissions density. As a result, the fine grid-coarse grid line did not track State boundaries, and Missouri and Georgia were among several States that were split between the fine and coarse grids. Eastern Missouri and northern Georgia were in the fine grid while western Missouri and southern Georgia were in the coarse grid.

The analysis OTAG conducted found that emissions controls examined by OTAG, when modeled in the entire coarse grid (*i.e.*, all States and portions of States in the OTAG region that are in the coarse grid) had little impact on high 1-hour ozone levels in the downwind ozone problem areas of the fine grid.[4]

The Court vacated EPA's determination of significant contribution for all of Georgia and Missouri. *Michigan* v. *EPA,* 213 F.3d at 685. The Court did not seem to call into question the proposition that the fine grid portion of each State should be considered to make a significant contribution downwind. However, the Court emphasized that "EPA must first establish that there is a measurable contribution,'' id., at 684, from the coarse grid portion of the State before determining that the coarse grid portion of the State significantly contributes to ozone nonattainment downwind.

3. What Is EPA's Response to the NO_X SIP Call Court Decision Regarding Coarse Grid Sources?

In a separate rulemaking on the NO_X SIP Call, known as the Phase 2 rulemaking, EPA is addressing several issues remanded by the court in its March 3, 2000 decision. (The Phase 2 rule was proposed on February 22, 2002 (67 FR 8396) and is being finalized in the same time frame as today's section 126 action). One of the Phase 2 issues is the geographic applicability of the NO_X SIP Call for States located partially in the coarse grid. With regard to Georgia and Missouri, EPA is retaining the existing determination that sources in the fine grid parts of these States contribute significantly to nonattainment downwind but is not including the coarse grid portions of States. The EPA explained that the reasoning of the court regarding control requirements for Georgia and Missouri also calls into question the inclusion of the coarse grid portions of Michigan and Alabama in the NO_X SIP Call. Therefore, EPA is extending this rationale to the States of Michigan and Alabama and EPA is revising the NO_X SIP Call to exclude the coarse grid portions of Michigan and Alabama.

II. Final Rule Regarding Michigan Sources

A. What Is Today's Rule Regarding Michigan Coarse Grid Sources Under the 1-Hour Standard?

In a February 22, 2002 action, EPA proposed to withdraw the section 126 findings made in response to the petitions from Connecticut and New York under the 1-hour standard for sources that are or will be located in the coarse grid portion of Michigan (67 FR 8386). The EPA proposed this action to be consistent with EPA's action regarding coarse grid sources under the NO_X SIP Call. As discussed above, the Section 126 Rule is based on many of the same analyses and information from the NO_X SIP Call. In today's action, EPA is finalizing the rulemaking as proposed. Under today's rule, any existing or new sources located in that affected segment of the coarse grid (north of 44 degrees latitude, south of 45.0 degrees latitude, and east of 86.0 degrees latitude) are no longer subject to the control requirements of the Section 126 Rule.[5] The EPA has not identified any existing section 126 sources located in that area. There are no coarse grid areas in other States covered by the Section 126 Rule under the 1-hour standard. The EPA will address the coarse grid sources under the 8-hour standard in a separate rulemaking.

The EPA received only one short comment via e-mail on the proposal. The commenter asserted that many utilities want a "level playing field'' with regard to emissions standards and that as a result of the proposed action, utilities could be planned for one area with a different set of rules. He stated that the proposal would also be a deterrent to developing new emissions technologies if new plants could be built without having emissions controls installed. The commenter also suggested that many power plants could be built in a 70 by 120 mile area. He was concerned that an emissions plume from the affected area could affect Ontario and States in the northeast.

The commenter appears not to be aware that the Section 126 Rule under the 1-hour standard never covered the whole State of Michigan because the relevant section 126 petitions only targeted sources in a specific portion of the State. Under section 126, EPA must limit its action to addressing the sources within the geographical boundaries specified in the petitions. Today's rule shifts the boundary between the area that is affected by the Section 126 Rule and the area that is not affected. Only a small portion of the State is at issue and, as mentioned above, EPA is not aware of any existing section 126 sources in that area. The commenter did not provide any evidence that new large EGU's are planned for the area or on what effect emissions from such sources might have on downwind States.

The EPA disagrees with the commenter that today's action would be a deterrent to the development of new emissions control technologies. Only a very small portion of the Section 126 Rule is affected by today's action. The control remedy for the Section 126 Rule is a NO_X budget trading program. Trading programs are one of the most cost-effective means to reduce emissions. They provide the flexibility and incentive for technology development. The EPA notes that although the Section 126 Rule does not cover the whole State, Michigan has adopted a statewide trading NO_X rule. Any new sources locating in the affected area, that as a result of today's rule would no longer be subject to the Section 126 Rule, would be subject to Michigan's statewide NO_X rule. In addition, there are a number of other emissions control requirements that sources locating in the affected portion of Michigan would have to meet, such as new source performance standards, new source review technology standards, and title V acid rain

[4] The OTAG recommendation on Major Modeling/Air Quality Conclusions approved by the Policy Group, June 3, 1997 (62 FR 60318, appendix B, November 7, 1997)

[5] The EPA is taking a different approach to interpreting the fine-coarse grid split for purposes of the Phase 2 NO_X SIP Call rule. The $_X$ SIP Call establishes State emissions budget rather than regulating individual sources. Because of the uncertainties with accurately dividing emissions between the fine and coarse grid portions of individual counties, EPA is basing the Phase 2 NO_X SIP Call emissions budgets on all counties that are wholly contained within the fine grid. That is, counties that are in the coarse grid or that straddle the fine-coarse grid line are excluded. Because the section 126 action regulates specific stationary sources, the issue of how to apportion a full NO_X inventory on a partial-county basis does not arise. Therefore, today's section 126 action to remove the coarse grid of Michigan follows the fine-coarse grid line exactly. Sources located in the fine grid portion of a county that straddles the fine-coarse grid line are covered by the Section 126 Rule. the EPA notes that the Section 126 Rule has already covered partial counties for Michigan in its January 2000 Rule. In that rule, only sources east of 86 degrees longitude and south of 45 degrees latitude were affected.

requirements. Thus, today's action does not result in sources being built without emissions control requirements.

As discussed above, in the *Michigan* v. *EPA* decision on the NO_X SIP Call, the court indicated that "EPA must first establish that there is a measurable contribution'' from the coarse grid portion of the State before holding the coarse grid portion of the State partly responsible for the significant contribution of downwind ozone nonattainment in another State. *Michigan* v. *EPA,* 213 F.3d at 684. Elsewhere, the Court seemed to identify the standard as "material contribution []''. *Id.* In response to the court opinion, EPA is revising the NO_X SIP Call to include only the fine grid portion, and not the coarse grid portion, of Michigan at this time. The EPA is applying the same reasoning to the Section 126 Rule because the Section 126 Rule relies on the technical record for the NO_X SIP Call. Therefore, EPA is finalizing the February 22, 2002 action as proposed: EPA is revising the Section 126 Rule and denying the New York and Connecticut petitions under the 1-hour standard with respect to sources that are or will be located in the coarse grid portion of Michigan.

B. Does Today's Rule Affect the Section 126 Requirements for Michigan Fine Grid Sources or Sources Located in Other States?

Today's rule does not affect the NO_X allowance allocations for Michigan sources located in the fine grid that were established in the January 2000 Rule. In addition, today's rule does not affect the section 126 trading budget for Michigan or the compliance supplement pool. Because EPA has not identified any existing large EGUs and large non-EGUs in the coarse grid portion of Michigan affected by today's rule, the NO_X allowance calculations in the January 2000 Rule were already based only on fine grid emissions. This rule does not affect any of the Section 126 Rule requirements for sources located in other States. Therefore, today's rule does not affect the ability of any sources located in the fine grid to comply with the section 126 requirements by the compliance deadline.

III. What Is Today's Revision to the Definition of "Applicable Requirement'' for Title V Operating Permit Programs?

In the February 22, 2002 action, EPA proposed to revise the definitions of the "applicable requirement'' in 40 CFR 70.2 and 71.2 by providing expressly that any standard or other requirement under section 126 of the CAA is an applicable requirement and must be included in operating permits issued under title V of the CAA. The EPA did not receive any public comments on that proposal. Therefore, EPA is finalizing the definitions as proposed.

Section 504(a) of the CAA explicitly requires that each permit include "enforceable emission limitations and standards, a schedule of compliance, * * * and such other conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan.'' 42 U.S.C. 7661c(a). Previously, the § 70.2 and § 71.2 definitions of "applicable requirement'' did not include requirements that are imposed under section 126, even though section 126 authorizes the Administrator to adopt standards and requirements under certain circumstances as discussed above. Today's action remedies this omission and clarifies the treatment, in title V operating permits, of section 126 requirements promulgated by the Administrator. Therefore, the requirements of the Section 126 NO_X Budget Trading Program promulgated on January 18, 2000 must be included in the title V operating permits for units subject to the program.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the 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.

Under Executive Order 12866, today's action is not a "significant regulatory action'' and is therefore not subject to review by OMB. In the January 2000 Rule titled "Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport,'' (65 FR 2674), EPA partially approved four section 126 petitions under the 1-hour ozone standard. Today's action withdraws the section 126 findings and denies the petitions under the 1-hour ozone standard with respect to sources located in a small portion of Michigan.

This action does not create any additional impacts beyond what was promulgated in the January 2000 Rule. This rule also does not raise novel legal or policy issues. Therefore, EPA believes that this action is not a "significant regulatory action.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Today's rule does not create new requirements. Instead, this action withdraws the section 126 requirements for sources that are or would be located in a specified portion of Michigan.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial

number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as: (1) A small business according to the U.S. Small Business Administration size standards for the NAIAS codes listed in the following table;

NAIAS code	Economic activity or industry	Size standard in number of employees, millions of dollars of revenues, or output
322121, 322122	Pulp mills	750
325211	Plastics materials, synthetic resins, and nonvulcanized elastomers	750
325188, 325199	Industrial organic chemicals	1,000
324110	Petroleum refining	1,500
331111	Steel works, blast furnaces, and rolling mills	1,000
333611	Steam, gas, and hydraulic turbines	1,000
333618	Stationary internal combustion engines	1,000
333415	Air-conditioning and warm-air heating equipment and commercial and industrial refrigeration equipment.	750
222111, 222112	Electric utilities	4 million megawatt hrs.
486210	Natural gas transmission	$6.0
221330	Steam and air conditioning supply	$10.5

(2) A small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Today's rule does not create new requirements for small entities or other sources. Instead, this action withdraws the section 126 requirements for sources that are or would be located in a specified portion of Michigan. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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 rules with ''Federal mandates'' that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 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)). 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 for either State, local, or Tribal governments in the aggregate, or for the private sector. This Federal action does not establish any new requirements, as discussed above. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Today's action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's action imposes no additional burdens beyond those imposed by the January 2000 Rule. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' ''Policies that have Tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on

the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's action does not significantly or uniquely affect the communities of Indian Tribal governments. As discussed above, today's action imposes no new requirements that would impose compliance burdens beyond those that would already apply under the January 2000 Rule. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

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

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have 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.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because this action is not ''economically significant'' as defined under Executive Order 12866 and the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355; May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Today's action does not establish any new regulatory requirements.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (''NTTAA,'' Public Law 104–113, section 12(d), 15 U.S.C. 272 note) 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 NTTAA does not apply because today's action does not establish any new technical standards. This action amends the January 2000 Rule by reducing the portion of Michigan that is covered by the rule.

J. 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). This action does not impose any additional costs and compliance burdens under the Section 126 Rule. Instead, this action withdraws the section 126 requirements for sources that are or would be located in a specified portion of Michigan. This rule will be effective July 6, 2004.

K. 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 May 25, 1999 final rule (64 FR 28250), 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**.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 71

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: May 27, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set forth in the preamble, chapter I 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 revising paragraphs (c)(2)(vi) and (g)(2)(vi) to read as follows:

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

* * * * *

(c) * * *

(2) * * *

(vi) Portion of Michigan located south of 44 degrees latitude in OTAG Subregion 2, as shown in appendix F, Figure F–2, of this part.

* * * * *

(g) * * *

(2) * * *

(vi) Portion of Michigan located south of 44 degrees latitude in OTAG Subregion 2, as shown in appendix F, Figure F–6, of this part.

* * * * *

Appendix F—[Amended]

■ 3. Appendix F is amended by adding a new figure F–10 in numerical order to read as follows:

APPENDIX F TO PART 52—CLEAN AIR ACT SECTION 126 PETITIONS FROM EIGHT NORTHEASTERN STATES: NAMED SOURCE CATEGORIES AND GEOGRAPHIC COVERAGE

* * * * *

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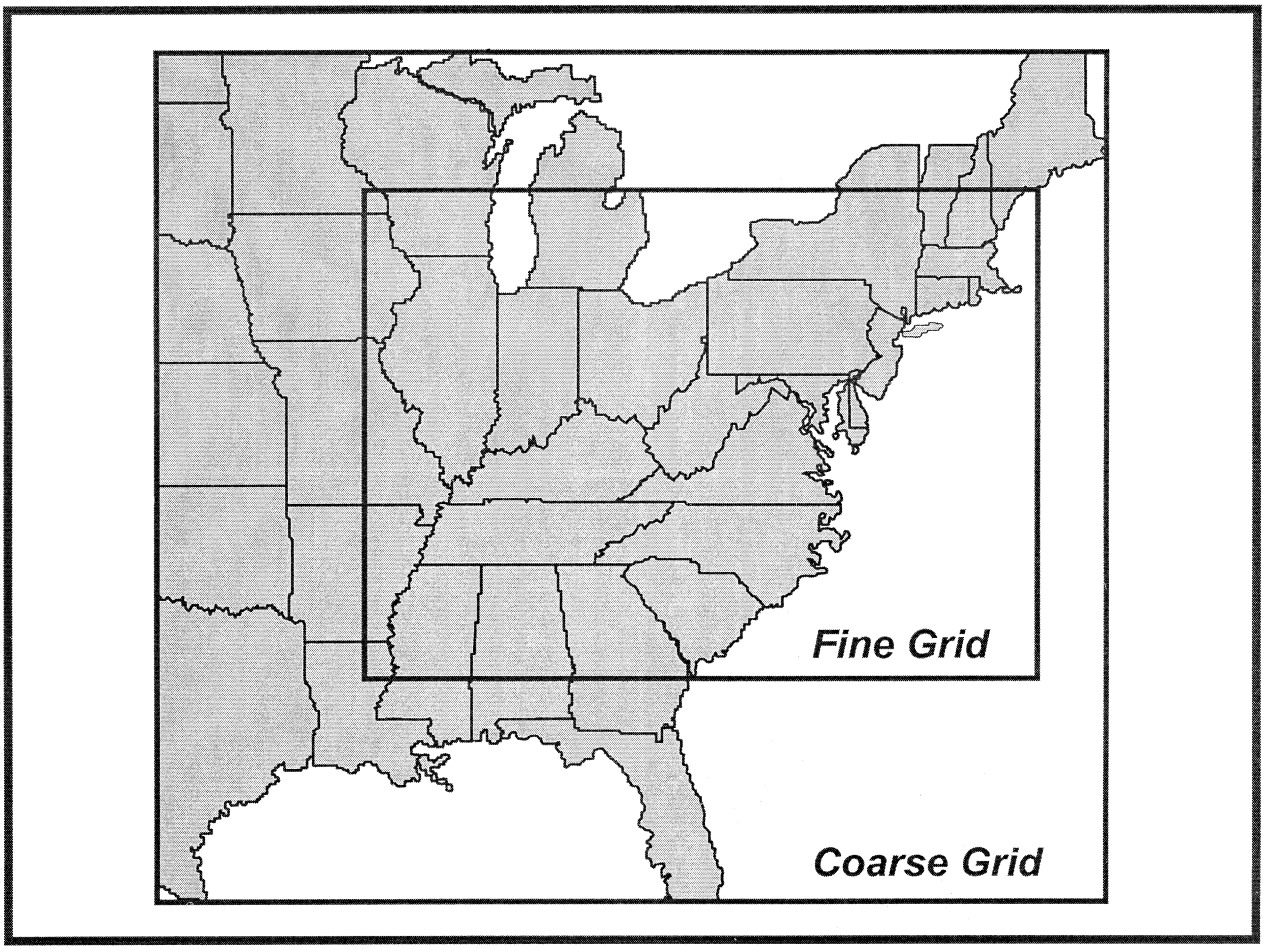
Figure F-10. Ozone Transport Assessment Group Modeling Domain



PART 70—STATE OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. Section 70.2 is amended by renumbering paragraphs (7) through (12) of the definition of ''applicable requirement'' as paragraphs (8) through (13) and adding a new paragraph (7) to read as follows:

§ 70.2 Definitions.

* * * * *

Applicable requirement * * *

(7) Any standard or other requirement under section 126(a)(1) and (c) of the Act;

* * * * *

PART 71—FEDERAL OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. Section 71.2 is amended by renumbering paragraphs (7) through (12) of the definition of ''applicable requirement'' as paragraphs (8) through (13) and adding a new paragraph (7) to read as follows:

§ 71.2 Definitions.

* * * * *

Applicable requirement * * *

(7) Any standard or other requirement under section 126(a)(1) and (c) of the Act;

* * * * *

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