

Categorical Exclusion Determination is available for inspection or copying where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Temporary Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. Sec. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.225 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 8 a.m. on December 30, 1999, through 8 a.m. on March 1, 2000, a new § 117.T408 is added to read as follows:

##### § 117.T408 Upper Mississippi River.

Rock Island Railroad & Highway Drawbridge, Mile 482.9, Upper Mississippi River. From 8 a.m. on December 30, 1999, through 8 a.m. on March 1, 2000, the drawspan may be maintained in the closed to navigation position and need not open for vessel traffic.

Dated: December 27, 1999.

**K.J. Eldridge,**

Captain, United States Coast Guard, Acting Commander, Eighth Coast Guard District.  
[FR Doc. 00–758 Filed 1–12–00; 8:45 am]

**BILLING CODE 4910–15–P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[FRL–6522–9]

**RIN: 2060–AH88**

#### Final Rule To Extend the Stay of Action on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Today, EPA is taking final action to extend the temporary stay of the effective date of the May 25, 1999 final rule (64 FR 28250) regarding petitions filed under section 126 of the Clean Air Act (CAA) until February 17, 2000. This action to extend the temporary stay will prevent the section 126 findings from being triggered automatically under the mechanism

EPA established in the May 25, 1999 rule. The EPA revised the May 25, 1999 rule in a final rule signed on December 17, 1999. Today's action extends the stay of the May 25, 1999 rule until the revised rule becomes effective on February 17, 2000.

**EFFECTIVE DATE:** This final rule is effective January 10, 2000.

**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 through 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, 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). 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 on EPA's website at <http://www.epa.gov/ttn/rto/126>.

#### I. Background

##### A. Temporary Stay of May 25, 1999 Final Rule on the Section 126 Petitions

On May 25, 1999 (64 FR 28250), EPA made final determinations that portions of the petitions filed by eight Northeastern States under section 126 of the CAA are technically meritorious. The petitions sought to mitigate what they described as significant transport of one of the main precursors of ground-level ozone, nitrogen oxides (NO<sub>x</sub>), across State boundaries. Each petition

specifically requested that EPA make a finding that certain stationary sources emit NO<sub>x</sub> in violation of the CAA's prohibition on emissions that significantly contribute to nonattainment problems in the petitioning State.

On June 24, 1999 (64 FR 33956), EPA issued an interim final rule to temporarily stay the effectiveness of the May 25, 1999 final rule until November 30, 1999. The purpose of the interim final rule was to provide EPA time to conduct notice-and-comment rulemaking to address issues raised by two rulings of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). In one ruling in *American Trucking Assn., Inc., v. EPA*, 175 F.3d 1027 (D.C. Cir. 1999), 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. On October 29, 1999, the D.C. Circuit granted in part EPA's Petition for Rehearing and Rehearing En Banc (filed on June 28, 1999) in *American Trucking*, and modified portions of its opinion addressing EPA's ability to implement the 8-hour standard. See *American Trucking*, 1999 WL 979463 (Oct. 29, 1999). The court denied the remainder of EPA's rehearing petition. *Id.* The EPA continues to evaluate the effect of *American Trucking*, as modified by the D.C. Circuit's October 29, 1999 opinion and order. The EPA expects, however, that the status of the 8-hour standard will be uncertain for some time to come. In a separate action, on May 25, 1999, the D.C. Circuit granted a motion to stay the State implementation plan (SIP) submission deadlines established in a related EPA action, the NO<sub>x</sub> SIP call (October 27, 1998, 63 FR 57356).

In the interim final rule staying the May 25, 1999 rule, EPA explained why it would be contrary to the public interest for the May 25, 1999 rule to remain in effect while EPA conducted rulemaking to respond to issues raised by the court rulings. The reader should refer to the June 24, 1999 interim final rule (64 FR 33956) and May 25, 1999 final rule (64 FR 28250) for further details and background information. On November 30, 1999, EPA extended the temporary stay until January 10, 2000 because EPA had not yet finalized the revisions to the May 25, 1999 final rule (64 FR 67781; December 3, 1999). In that action to extend the stay, EPA indicated that the stay should remain in place until the effective date of the revised rule, which would be 30 days after the date the revised rule was published in

the **Federal Register**. Thus, EPA noted that it would further extend the stay for a few additional weeks, if necessary.

#### *B. Revisions to the May 25, 1999 Final Rule*

On June 24, 1999 (64 FR 33962), EPA proposed to revise two aspects of the May 25, 1999 final rule. The EPA proposed to stay indefinitely the affirmative technical determinations based on the 8-hour standard pending further developments in the NAAQS litigation. The EPA also proposed to remove the trigger mechanism for making section 126 findings that was based on the NO<sub>x</sub> SIP call deadlines and to instead make the findings under the 1-hour standard in a final rule to be issued in November 1999. In the proposal, EPA indicated that it expected to promulgate the final rule based on the proposal by November 30, 1999, when the interim final rule would expire. To address the possibility that there could be a delay in amending the May 25, 1999 final rule, EPA requested comments in the June 24, 1999 proposal on extending the temporary stay beyond November 30 until EPA completed the final rule. The EPA noted that if additional time were needed, it would likely not be more than 2 or 3 months. Two commenters agreed that it would be appropriate for EPA to further extend the stay under such circumstances, while one commenter expressed concern that an extension of time would increase the likelihood of delay.

In a rule signed on December 17, 1999, EPA finalized the revisions to the May 25, 1999 final rule. The revised rule removes the trigger mechanism and instead directly makes the section 126 findings based on the 1-hour standard. The revised rule also indefinitely stays the portion of the May 25, 1999 rule that is based on the 8-hour standard. In addition, the revised rule includes a Federal NO<sub>x</sub> Budget Trading Program as the control remedy for sources subject to section 126 findings under the 1-hour standard. The revised rule will be published in the **Federal Register** on January 18, 2000, and hence will become effective 30 days later on February 17, 2000.

#### **II. Today's Final Rule To Extend the Temporary Stay**

Today's final rule, which is effective January 10, 2000, temporarily extends the stay of the May 25, 1999 rule until February 17, 2000. This action will prevent the section 126 findings from being automatically triggered under the mechanism in the May 25, 1999 rule. The EPA signed the final rule to modify the May 25, 1999 rule on December 17,

1999. However, the stay needs to apply until the effective date of the final section 126 rule. As the revised final section 126 rule will not become effective until February 17, 2000, EPA is extending the stay until that date.

This extension of the stay does not affect the compliance date of May 1, 2003 for emissions reductions under the section 126 rule. Also, the affected entities have had notice of the requirements under section 126 as of the date that EPA signed and released the final section 126 rule to the public. The rule was signed on December 17, 1999 and immediately placed on EPA's website listed above.

#### **III. Rulemaking Procedures**

As noted above, this rule will be effective on January 10, 2000. Providing for a delay of the effective date of this final rule (either 30 or 60 days after publication) would be unnecessary and contrary to the public interest. Because the final rule relieves a regulatory burden that would otherwise be imposed, there is no need to provide time for education and compliance with a new regulatory requirement.

Moreover, the current stay expires January 10, 2000. Allowing the stay to lapse before the final rule becomes effective would allow the section 126 findings to be automatically triggered for sources potentially subject to the section 126 findings in all States that had not submitted SIPs in compliance with the NO<sub>x</sub> SIP call and for which EPA had not proposed approval of such SIPs. As explained in the June 24, 1999 proposal (64 FR 33962), EPA believes it is no longer appropriate to link the section 126 findings with compliance with the NO<sub>x</sub> SIP call, in light of the judicial stay of the compliance dates under the NO<sub>x</sub> SIP call. Thus, allowing the findings to be triggered automatically would be contrary to the purposes of the ongoing section 126 rulemaking and contrary to the public interest. In addition, under the automatic trigger mechanism, findings would be made based on both the 1-hour and 8-hour standards. The EPA believes it is appropriate in light of the court's decision in *American Trucking Ass'n v. EPA* to stay the findings based on the 8-hour standard at this time. Given the lack of burden upon affected parties and the need to make this final rule effective on January 10, 2000, EPA finds good cause for expediting the effective date of this portion of today's rule. The EPA believes that this is consistent with 5 U.S.C. 553(d)(1) and (3).

#### **IV. Administrative Requirements**

##### *A. Executive Order 12866: Regulatory Planning and Review*

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 final rule is not a "significant regulatory action" because it relieves, rather than imposes, regulatory requirements, and raises no novel legal or policy issues.

##### *B. Regulatory Flexibility*

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this 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. Today's action does not create any new requirements. Thus, this rule 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), 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 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 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*

Executive Order 13045 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 rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not "economically significant" as defined under Executive Order 12866 and because 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.

#### *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 will result from this action.

#### *G. 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.

This final rule 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 rule does not create a mandate on State, local or Tribal governments. The rule does not impose any enforceable duties on these entities. Thus, the requirements of

section 6 of the Executive Order 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), Public Law 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 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 May 25, 1999 final rule, 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. 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 this rule going into effect. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

#### **List of Subjects in 40 CFR Part 52**

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

Dated: January 7, 2000.

**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 revising paragraph (l) to read as follows:

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

\* \* \* \* \*

##### *(1) Temporary stay of rules.*

Notwithstanding any other provisions of this subpart, the effectiveness of this section is stayed from July 26, 1999 until February 17, 2000.

[FR Doc. 00-849 Filed 1-10-00; 4:02 pm]

**BILLING CODE 6560-50-P**

### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

[WV026-6012; FRL-6505-1]

#### **Approval and Promulgation of Air Quality Implementation Plans; Approval Under Section 112(l) of the Clean Air Act; West Virginia; Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving in part, and disapproving in part, a State Implementation Plan (SIP) revision submitted by the State of West Virginia. This SIP revision changes portions of West Virginia's minor new source review permit program and establishes new provisions for permitting existing stationary sources. Specifically, this action approves in part, and disapproves in part, changes to West Virginia's minor new source review permit program; and approves West Virginia's minor new source review and existing stationary source operating permit program as meeting federal criteria for permit programs that can limit a source's potential to emit criteria pollutants and hazardous air pollutants (HAPs).

**EFFECTIVE DATE:** This final rule is effective on February 14, 2000.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal

business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 2531.

**FOR FURTHER INFORMATION CONTACT:** Jennifer M. Abramson, (215) 814-2066 or by e-mail at Abramson.Jennifer@epa.gov.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On February 3, 1998 (63 FR 5484), EPA published a notice of proposed rulemaking (NPR) regarding West Virginia's minor new source review and existing stationary source operating permit program. The NPR proposed approval in part, and disapproval in part, of changes to West Virginia's minor new source review permit program. Specifically, the NPR proposed to disapprove a new exemption from minor new source review for sources that have been issued permits under the State's federally approved major source operating permit program (developed pursuant to Title V of the Clean Air Act) as such exemption does not comport with the federal requirements for scope of 40 CFR 51.160. The NPR also proposed to disapprove new provisions governing the issuance of temporary construction or modification permits with only a fifteen day public comment period as such provisions do not satisfy the federal requirements for public participation of 40 CFR 51.161(b). The NPR proposed to approve all other provisions of West Virginia's minor new source review program under section 110 of the Clean Air Act (the Act) as a revision to the West Virginia SIP. The formal SIP revision, submitted by West Virginia on August 26, 1994 applies statewide.

The NPR also proposed to approve West Virginia's minor new source review and existing stationary source operating permit program under section 110 of the Act as meeting the criteria set forth in a June 28, 1989 **Federal Register** document (54 FR 27274) for state permit programs that can limit a source's potential to emit criteria pollutants. The NPR also proposed to approve West Virginia's minor new source review and stationary existing source operating permit program under section 112(l) of the Act as meeting the statutory criteria