

April 28, 1998

FACT SHEET

Advanced Notice of Proposed Rulemaking for the Section 126 Petitions

- # The Environmental Protection Agency (EPA) plans to take rulemaking action on petitions filed by eight northeastern States seeking to mitigate what they describe as significant transport of nitrogen oxides (NO_x), one of the main precursors of ground level ozone, across State boundaries. These petitions were filed under section 126 of the Clean Air Act, a legal mechanism which authorizes States to petition the EPA to address air pollution transported from upwind States.

- # The eight northeastern States that filed petitions are Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont.

- # Each petition specifically requests that the EPA make a finding that NO_x emissions from certain major stationary sources significantly contribute to ozone nonattainment problems in the petitioning State. If the EPA makes such a finding, the Agency would be authorized to establish Federal emissions limits for the sources. The petitions recommend control levels for the EPA to consider.

- # This Advanced Notice of Proposed Rulemaking includes:
 1. The EPA's schedule for proposing and finalizing action on the section 126 petitions, including a public hearing in October 1998 in Washington, D.C.
 - # The EPA intends to take final action on the petitions by April 1999, except that under certain circumstances, the EPA final action may occur as late as May 2000.

 2. Preliminary identification of upwind sources that may significantly contribute to 1-hour and 8-hour ozone nonattainment problems in the petitioning States. The EPA used information developed for the Agency's proposal for reducing the regional transport of ozone (November 7, 1997 62 FRL 60317), known as the NO_x SIP call, for this preliminary analysis of the technical merits of the section 126 petitions.
 - # Based on the EPA's preliminary technical review of the petitions and ozone transport modeling conducted for the NO_x SIP call, sources in the following states may be significantly contributing to

ozone nonattainment problems in at least one of the petitioning States:

1-Hour Nonattainment

Connecticut, Delaware, District of Columbia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, and West Virginia.

Only three of the petitions reference the 8-hour ozone standard.

8-Hour Nonattainment

Delaware, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, North Carolina, Ohio, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin

3. Preliminary assessment of the types of recommended emission limitations and compliance schedules set forth in the section 126 petitions.
4. Description of legal and policy issues raised under section 126 of the Clean Air Act, and request for comment on these issues. The four major issue areas are:
 - Approach for determining significant contribution of upwind sources to nonattainment in the petitioning States,
 - NOx trading program remedy -- scope and integration with a NOx SIP call trading program,
 - Cost-effective considerations in determining any proposed remedy
 - Legal issues regarding the interpretation of section 126

The EPA intends to be consistent with the approaches taken in the NOx SIP call.

BACKGROUND

In August 1997, Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Pennsylvania and Vermont, citing Section 126 of the Clean Air Act, filed petitions with the EPA to reduce the transport of ground-level ozone pollution. The petitions ask the EPA to make a finding that certain utilities and other sources of nitrogen oxides (NOx)--a precursor to ozone-smog--exacerbate ozone problems in the eight petitioning states. All the petitions target sources in

the Midwest; some of the petitions target additional sources in the south, southeast, and northeast. If the EPA agrees and makes the requested finding, the EPA would establish federal emissions controls for the targeted sources.

- # In a related action dated November 7, 1997, the EPA published, in the Federal Register, a proposed determination that NOx emissions from twenty-two States and the District of Columbia are contributing significantly to region-wide ozone pollution in the eastern United States. This EPA action -- the NOx SIP call -- proposes that each of the 22 States and the District of Columbia revise its State implementation plan (termed, "SIP," which is the set of state rules controlling air pollution under the Clean Air Act) to impose tighter limits on NOx emissions. The final NOx SIP call is scheduled to be issued by September 1998.
- # The section 126 petitions and the Agency's proposed NOx SIP call are both designed to reduce NOx emissions that travel across the eastern United States and contribute to regional ozone problems. The section 126 petitions request that the EPA establish emission limitations and compliance schedules for groups of stationary sources that may also be subject to controls by States and the District of Columbia in their response to the EPA's NOx SIP call.
- # On February 25, 1998, the eight states that submitted section 126 petitions and the EPA filed a proposed consent decree that would establish a schedule for acting on the petitions. The schedule is designed to ensure that the EPA will take timely action on the States' petitions while recognizing that the Agency is simultaneously examining regional transport of ozone in the NOx SIP call.
- # The schedule described in today's action harmonizes the time frame for action on the section 126 petitions with the EPA's anticipated schedule for action on the NOx SIP call.
- # Specifically, the EPA will publish a notice of proposed rulemaking for section 126 petitions by September 30, 1998. The EPA will take a final action, granting or denying the petitions, by April 30, 1999, unless, by that date, the EPA establishes the following schedule for action on the petitions:
- # By April 1999, the EPA may determine that the section 126 petitions are technically meritorious; in other words, the petitions accurately identify utilities or other major stationary sources whose NOx emissions exacerbate ozone problems in the petitioning states. The Agency would then determine an appropriate remedy, but postpone making any final finding or imposing control requirements.

- # This schedule would allow the 22 states and the District of Columbia an opportunity to respond to the final NOx SIP call before the EPA makes any final finding under section 126.
- # If those States affected by the NOx SIP call submit SIPs for EPA review, and if the EPA proposes to approve those SIPs, the EPA may delay taking any necessary final action on the Section 126 petitions until May 1, 2000.
- # However, if the EPA does not propose to approve the SIPs submitted by the States in response to the NOx SIP call by November 1, 1999, or grant final approval to those plans by May 1, 2000, then the 126 petitions determined to be technically meritorious would be automatically granted as of November 1, 1999 or May 1, 2000 (as appropriate) for those sources in upwind states covered by those SIPs.
- # Approval of the section 126 petitions--automatic or otherwise--would mean that the affected sources would be required to reduce NOx emissions that significantly contribute to interstate transport of ozone.

FOR MORE INFORMATION

- # Interested parties can download this advanced notice of proposed rulemaking from the EPA's web site on the Internet at the following address: (<http://www.epa.gov/airlinks>). For further information, contact Carla Oldham of the EPA's Office of Air Quality Planning and Standards at (919) 541-3347.
- # The EPA's Office of Air and Radiation's homepage on the Internet contains a wide range of information many air pollution programs and issues. The Office of Air and Radiation's home page address is: (<http://www.epa.gov/oar/>).
- # The attached timeline outlines the schedule for action by the EPA.

Timeline for EPA Action on Section 126 Petitions

August 14-15, 1997	Citing Section 126 of the Clean Air Act, Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Pennsylvania and Vermont filed petitions requesting that the EPA examine the transport of ozone pollution from upwind sources.
November 7, 1997	EPA proposed NOx SIP call under Section 110 of the Clean Air Act.
February 25, 1998	EPA and petitioning States filed a consent decree for a schedule to take action on the section 126 petitions.
April 30, 1998	EPA published an advance notice of proposed rulemaking.
September 30, 1998	EPA will publish a notice of proposed rulemaking on the 126 petitions.
October 28-29, 1998	Public hearing on the proposed rulemaking.
April 30, 1999	EPA will take a final action on Section 126 petitions. The EPA could determine that the 126 petitions are technically meritorious in that they accurately identify sources whose NOx emissions exacerbate ozone problems in the petitioning states, and determine an appropriate remedy, but postpone making a final finding that would impose control requirements.
November 30, 1999	If the EPA so chooses, the April 30, 1999 rule may provide that the Section 126 petitions will be automatically granted if the EPA does not propose to approve SIPs submitted in response to the NOx SIP call by the states whose sources are targeted by the Section 126 petitions. The petitions would only be automatically granted to the extent that the EPA had determined in April 1999 that the petitions were technically meritorious.
May 1, 2000	If the EPA so chooses, the April 30, 1999 rule may further provide that the Section 126 petitions will be automatically granted if the EPA does not take final action approving SIPs submitted in response to the NOx SIP call by the states whose sources are targeted by the Section 126 petitions. The petitions would only be automatically granted to the extent that EPA had determined in April 1999 that the petitions were technically meritorious. If EPA has taken the appropriate proposed and final actions by the appropriate dates for the NOx SIP call SIPs, then EPA will take whatever final action on the Section 126 Petitions that EPA considers necessary by May 1, 2000.