

6/15/99

**FACT SHEET**  
**THREE ACTIONS REGARDING SECTION 126 PETITIONS FOR PURPOSES OF**  
**REDUCING INTERSTATE OZONE TRANSPORT**

**TODAY'S ACTIONS**

- ◆ The Environmental Protection Agency (EPA) is taking three related actions regarding the section 126 petitions filed by northeastern states seeking to reduce ozone across state boundaries through reductions in emissions of nitrogen oxides (NO<sub>x</sub>), a primary precursor for ground-level ozone or smog. These 11 states filed petitions under section 126 of the Clean Air Act requesting that EPA make a finding that NO<sub>x</sub> emissions from certain stationary sources in particular states significantly contribute to their ozone nonattainment problems: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.
  
- ◆ EPA is issuing a final rule extending the timeframe for consideration and action on the section 126 petitions submitted by New Jersey (dated April 14, 1999), Maryland (dated April 29, 1999) and Delaware (dated June 08, 1999).
  - The six month extension will allow EPA adequate time to develop its proposed action and to provide the public sufficient time to comment.
  - These petitions seek findings under both the 1-hour and 8-hour standards for sources located in specified upwind states.
  - The other eight states submitted section 126 petitions in August 1997 and EPA issued a final rule on them in April 1999.
  
- ◆ The EPA is also issuing an interim final rule staying the effectiveness of an April 30 rulemaking on the section 126 petitions submitted by the eight northeastern states.
  - The stay is effective until November 30, 1999.
  - This action effectively separates the section 126 petitions from recent court decisions so that EPA can proceed with regional reductions of ozone based on the 1-hour standard.
  - EPA is issuing this interim final rule without prior proposal provide to immediate relieve to certain sources from anticipated compliance obligations, and to ensure that states do not perceive an obligation to meet the NO<sub>x</sub> SIP call deadlines necessary to avoid imposition of a federal remedy under section 126.
  - In the April 30 rule, EPA made final determinations that portions of some of the section 126 petitions are technically approvable, thereby agreeing that sources in 19 states and the District of Columbia interfere with the ability of one or more petitioning states to maintain clean air.

- However, in this same April action, EPA deferred final action on the petitions and instead arranged for them to be automatically granted or denied at certain later dates pending certain actions by the states and EPA regarding state submittals in response to the final NO<sub>x</sub> state implementation plan call (NO<sub>x</sub> SIP call).
  - On May 25, 1999, the District of Columbia Circuit Court of Appeals granted a motion to stay the deadlines for state submittals established in the NO<sub>x</sub> SIP call. Now that there is no longer a schedule in effect for compliance with the NO<sub>x</sub> SIP call and it is no longer appropriate to link EPA's findings of significant contribution for the 126 petitions to the NO<sub>x</sub> SIP call compliance deadlines.
- ◆ In conjunction with the stay on the section 126 petitions described above, EPA is proposing to amend two aspects of the April 30, 1999 rule.
- First, EPA is proposing to remove the automatic trigger mechanism, which is based on the NO<sub>x</sub> SIP call deadlines, for granting or denying the section 126 petitions from the eight northeastern states. EPA is proposing instead to simply grant the technically approvable portions of the petitions based on the finding that NO<sub>x</sub> emissions from certain stationary sources in particular states significantly contribute to ozone nonattainment problems in the petitioning state.
  - Second, EPA is proposing to indefinitely stay the affirmative technical determinations based on the 8-hour ozone standard, pending further developments in the litigation of the National Ambient Air Quality Standards (NAAQS) for ozone.
  - EPA plans to finalize action on these proposed changes by November 30, 1999.
  - EPA will conduct a public hearing on this section 126 proposal on July 8, 1999, beginning at 9 a.m. The hearing will be held at the EPA Auditorium at 401 M Street, SW, Washington, DC.

## **BACKGROUND**

- ◆ In August 1997, eight northeastern states (Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Pennsylvania, and Vermont), citing section 126 of the Clean Air Act, filed petitions with EPA to reduce the transport of ground-level ozone pollution. The petitions requested that EPA make a finding that certain utilities and other sources of nitrogen oxides significantly contribute to ozone problems in the eight petitioning states. The states identified by the petitioning states as containing sources that significantly contribute to ozone transport included all of the 22 states and the District of Columbia that are subject to the NO<sub>x</sub> SIP call (EPA's rule calling for NO<sub>x</sub> reductions to address ozone transport), plus other states as well.
- ◆ On November 7, 1997, building on the recommendations of Ozone Transport Assessment Group (OTAG), EPA proposed the NO<sub>x</sub> SIP Call requiring 22 states and the District of Columbia to submit state implementation plans that address the regional transport of ground-level ozone, the main component of smog.

- ◆ In February 1998, in response to litigation, the eight states that submitted section 126 petitions and EPA developed a proposed consent decree that established a schedule for acting on the petitions. The schedule was designed to ensure that EPA would take timely action on the states' petitions while recognizing that the Agency was simultaneously examining regional transport of ozone in the NO<sub>x</sub> SIP call. The court accepted a modified consent decree on October 26, 1998, which required EPA to finalize action on the petitions by April 30, 1999.
- ◆ On April 30, 1998, EPA published an advance notice of proposed rulemaking for the section 126 petitions. The notice included EPA's schedule for action and a preliminary technical review of the eight petitions.
- ◆ In September 1998, EPA proposed action on the section 126 petitions in conjunction with the final NO<sub>x</sub> SIP Call rule. EPA proposed to find that seven of the eight section 126 petitions had technical merit and that sources in 19 states and the District of Columbia significantly contribute to nonattainment, or interfere with the ability of states to maintain clean air in, in one or more of the petitioning states. In addition, EPA proposed a federal NO<sub>x</sub> budget trading program as the control requirement that would apply if the Agency makes a final finding on the petitions. Finally, EPA proposed to defer granting the approvable portions of the petitions until a later date to allow state submittals in response to the NO<sub>x</sub> SIP call (due September 1999) to address the ozone transport identified by the petitioning state.
- ◆ On October 28, 1998, EPA held a public hearing on its proposed action on section 126 petitions.
- ◆ On November 30, 1998, Maine and New Hampshire submitted requests asking that EPA evaluate their 1997 petitions under the 8-hour ozone standard. EPA published a supplemental notice of proposed rulemaking on March 3, 1999. The agency held a public hearing on these additional petitions on March 12, 1999.
- ◆ On January 13, 1999, EPA reopened the comment period for emissions inventory revisions to take comments on source-specific emission inventory data.
- ◆ In March, EPA reopened the public comment period on the Section 126 petitions in response to two requests to consider the effect of air quality data showing attainment of the one-hour ozone standard in areas of Massachusetts, Maine, New Hampshire and Rhode Island on those states' petitions.
- ◆ On April 30, 1999, EPA took several actions on the initial eight section 126 petitions. EPA did not include action on the section 126 petitions from Maryland and New Jersey in this action.

- EPA made final determinations that six of the eight section 126 petitions are partially approvable based on technical considerations and, correspondingly, that sources in 19 states and the District of Columbia significantly contribute to nonattainment, or interfere with the ability of states to maintain clean air, in one or more of the petitioning states. EPA made this affirmative technical determination for the petitions from Connecticut, Maine, Massachusetts, New Hampshire, New York, and Pennsylvania.
  - However, EPA deferred final action (fully granting the approvable portions of the petitions) until a later date to give the affected states an opportunity to submit plans in response to the NO<sub>x</sub> SIP call. These state plans, which were due in September 1999, are required to achieve NO<sub>x</sub> reductions determined by EPA to be necessary to address ozone transport. This deferral was intended to allow the affected states and the District of Columbia to respond to the NO<sub>x</sub> SIP call before EPA makes any final finding on the petitions.
  - EPA also finalized the fundamental aspects of the NO<sub>x</sub> emissions control requirements that would apply if any section 126 remedy is ultimately needed. This action also committed EPA to promulgate the complete NO<sub>x</sub> trading program and specific source allocations by July 15, 1999. Finally, EPA included interim final emission limits for affected sources that would apply if EPA fails to issue the trading program and source-specific allocations.
- ◆ Two recent rulings of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) have affected certain elements of EPA's rulemaking under section 126.
- On May 14, 1999, the court ruled the 8-hour national ambient air quality standard (NAAQS) for ozone to be unenforceable. The 8-hour ozone standard formed part of the underlying technical basis for certain of EPA's determinations on the section 126 petitions.
  - On May 25, 1999, the court granted a motion to stay the SIP submission deadlines established under the NO<sub>x</sub> SIP call.

**WHAT ARE THE HEALTH AND ENVIRONMENTAL BENEFITS OF REDUCING EMISSIONS OF NO<sub>x</sub> ?**

- ◆ Reducing NO<sub>x</sub> will significantly reduce ground-level ozone across the eastern U.S. Ground-level ozone is rarely emitted directly into the atmosphere. It is formed predominantly when emissions of nitrogen oxides and volatile organic compounds react in the presence of sunlight. While beneficial in the upper atmosphere, ozone in the lower atmosphere can cause a variety of health problems because it damages lung tissue, reduces lung function, and adversely sensitizes the lungs to other irritants.

- ◆ Children, especially asthmatic children, are at special risk for adverse health effects from the dangers of ozone pollution. Children playing and exercising outside in the summertime, the season when concentrations of ground-level ozone are the greatest, may suffer from coughing and decreased lung function, and may have trouble catching their breath.
- ◆ Asthmatic children and adults are much more likely to have asthma attacks - or have more severe attacks - when ozone levels in the air are high. Medical studies have shown that ozone can aggravate asthma, leading to more asthma attacks, increased use of medication, more medical treatment and more visits to hospital emergency rooms.
- ◆ Ground-level ozone also interferes with the ability of plants to produce and store food making them more susceptible to disease, insect attack, and other pollutants. Ground-level ozone has been shown to reduce agricultural yields for many economically important crops (e.g., soybeans, kidney beans, wheat, cotton).
- ◆ Air pollution accounts for up to a quarter of total nitrogen loadings into the Chesapeake Bay. These loadings accelerate "eutrophication" -- an over-enrichment of the eco-system that results in significant oxygen depletion, die-back of underwater plants, and reduced populations of fish and shellfish. Eutrophication is a significant and widespread problem in the nation's Atlantic and Gulf of Mexico coastal waters, in estuaries and in some freshwater lakes.
- ◆ Excessive nitrogen from air pollution can result in the acidification of lakes, streams and soils. Nitrates can leach into surface waters, accelerating the process of long-term chronic acidification.
- ◆ Nitrogen oxides also contribute to airborne particulate matter, and regional haze (visibility) problems.

### **FOR MORE INFORMATION**

- ◆ Interested parties can download this notice from EPA's web site on the Internet at the following address: (<http://www.epa.gov/ttn/rto/126>). Information about the OTAG process can also be found on the Internet at: (<http://www.epa.gov/ttn/otag>). For additional information about EPA's final action on the section 126 petitions, contact Carla Oldham of 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 about many air pollution programs and issues. The Office of Air and Radiation's home page address is: (<http://www.epa.gov/oar/>).