

for Section 101.311 under Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, followed by new entries for

sections 101.330, 101.331, 101.332, 101.333, 101.334, 101.335, 101.336, 101.338 and 101.339. The additions read as follows:

**§ 52.2270 Identification of plan.**  
\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED REGULATIONS IN THE TEXAS SIP**

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
<b>Chapter 101—General Air Quality Rules</b>				
* * * * *				
<b>Subchapter H—Emissions Banking and Trading</b>				
* * * * *				
Section 101.311	Program Audits and Reports	11/10/04	9/6/06, 71 FR 52698.	
<b>Division 2—Emissions Banking and Trading of Allowances</b>				
Section 101.330	Definitions	12/16/1999	November 16, 2010 [Insert FR page number where document begins].	
Section 101.331	Applicability	12/16/1999	November 16, 2010 [Insert FR page number where document begins].	
Section 101.332	General Provisions	12/16/1999	November 16, 2010 [Insert FR page number where document begins].	
Section 101.333	Allocation of Allowances	08/09/2000	November 16, 2010 [Insert FR page number where document begins].	
Section 101.334	Allowance Deductions	12/16/1999	November 16, 2010 [Insert FR page number where document begins].	
Section 101.335	Allowance Banking and Trading	12/16/1999	November 16, 2010 [Insert FR page number where document begins].	
Section 101.336	Emission Monitoring, Compliance Demonstration, and Reporting.	12/16/1999	November 16, 2010 [Insert FR page number where document begins].	
Section 101.338	Emission Reductions Achieved Outside the United States.	10/04/2006	November 16, 2010 [Insert FR page number where document begins].	
Section 101.339	Program Audits and Reports	10/04/2006	November 16, 2010 [Insert FR page number where document begins].	
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-HQ-OAR-2010-0473; FRL-9227-6]

**Extension of Deadline for Action on the Second Section 126 Petition From New Jersey**

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

**ACTION:** Final rule.

**SUMMARY:** In this action, EPA is determining that 60 days is insufficient time to complete the technical and other analyses and the public notice and comment process required for our review of a petition submitted by the State of New Jersey Department of Environmental Protection (New Jersey) pursuant to section 126 of the Clean Air Act (CAA). The petition requests that EPA make a finding that the coal-fired Portland Generating Station in Upper Mount Bethel Township, Northampton County, Pennsylvania, is emitting air pollutants that significantly contribute to nonattainment or interfere with maintenance of the 1-hour sulfur

dioxide (SO<sub>2</sub>) national ambient air quality standards (NAAQS). Under the CAA, EPA is authorized to grant a time extension for responding to the petition if EPA determines that the extension is necessary, among other things, to meet the purposes of the CAA's rulemaking requirements. By this action, EPA is making that determination. EPA is therefore extending the deadline for acting on the petition to no later than May 16, 2011.

**DATES:** The effective date of this action is November 16, 2010.

**ADDRESSES:** EPA has established a docket for this rulemaking under Docket ID number EPA-HQ-OAR-2010-0473.

All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The 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 Docket Center is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:**

General questions concerning this final rule should be addressed to Ms. Gobeail McKinley, Office of Air Quality Planning and Standards, Geographic Strategies Group, Mail Code C539-04, Research Triangle Park, NC 27711; telephone (919) 541-5246; e-mail address: [mckinley.gobeail@epa.gov](mailto:mckinley.gobeail@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

This is a procedural action to extend the deadline for EPA to respond to a petition from New Jersey filed under CAA section 126. EPA received the petition and a link to the supporting documentation via e-mail on September 17, 2010. The petition requests that EPA make a finding under section 126 of the CAA that the coal-fired Portland Generating Station (Portland Plant) in Upper Mount Bethel Township, Northampton County, Pennsylvania, is emitting air pollutants in violation of the provisions of section 110(a)(2)(D)(i) of the CAA with respect to the 1-hour SO<sub>2</sub> NAAQS. New Jersey stated that the petition provided additional documentation to supplement a section 126 petition submitted by New Jersey on May 12, 2010.

*A. Legal Requirements for Interstate Air Pollution*

The Clean Air Act provides, in Section 110(a)(2)(D)(i), that each State's State Implementation Plan (SIP) shall contain adequate provisions prohibiting emissions of any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any NAAQS. Section 126(b) of the CAA in turn authorizes States or political subdivisions to petition EPA to find that a major source or group of stationary sources in upwind States emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D)(i)<sup>1</sup> by contributing significantly to nonattainment or maintenance problems in downwind States. If EPA makes such a finding, the source must cease operation or comply with emission limits established by EPA.

Under section 126(b), EPA must make the finding requested in the petition, or must deny the petition within 60 days of its receipt. Under section 126(c), any existing sources for which EPA makes the requested finding must cease operations within three months of the finding, except that the source may continue to operate if it complies with emission limitations and compliance schedules that EPA may provide to bring about compliance with the applicable requirements as expeditiously as practical but no later

<sup>1</sup>The text of section 126 codified in the United States Code cross references section 110(a)(2)(D)(ii) instead of section 110(a)(2)(D)(i). The courts have confirmed that this is a scrivener's error and the correct cross reference is to section 110(a)(2)(D)(i), *See Appalachian Power Co. v. EPA*, 249 F.3d 1032, 1040-44 (DC Cir. 2001).

than 3 years from the date of the finding.

Section 126(b) further provides that EPA must hold a public hearing on the petition. EPA's action under section 126 is also subject to the procedural requirements of CAA section 307(d). *See* section 307(d)(1)(N). One of these requirements is notice-and-comment rulemaking, under section 307(d)(3).

In addition, section 307(d)(10) provides for a time extension, under certain circumstances, for rulemaking subject to section 307(d). Specifically, section 307(d)(10) provides:

Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of the subsection.

Section 307(d)(10) applies to section 126 rulemakings because the 60-day time limit under section 126(b) necessarily limits the period after proposal to less than six months.

*B. New Jersey's September 2010 Submittal*

EPA has determined that the September 17, 2010, petition submitted by New Jersey is a new petition and not a supplement to the May 12, 2010, petition. The first petition submitted by New Jersey on May 12, 2010, alleged that emissions from the Portland Plant significantly contribute to nonattainment or interfere with maintenance of the 2006 24-hour fine particulate (PM<sub>2.5</sub>) NAAQS and the 3-hour and 24-hour SO<sub>2</sub> NAAQS. Subsequently, EPA promulgated the revised primary SO<sub>2</sub> NAAQS on June 2, 2010 (75 FR 35520). Specifically, EPA established the new 1-hour SO<sub>2</sub> NAAQS at a level of 75 parts per billion (ppb), based on the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. The second petition submitted by New Jersey on September 17, 2010, alleges that emissions from the Portland Plant significantly contribute to nonattainment or interfere with maintenance of the newly promulgated 1-hour SO<sub>2</sub> NAAQS. Because the 1-hour SO<sub>2</sub> NAAQS did not exist at the time New Jersey filed its first petition, the 1-hour SO<sub>2</sub> NAAQS could not constitute a basis for that petition. For this reason, EPA believes it is more appropriate to treat the second petition as a new section 126 petition instead of as a supplement to the first petition. EPA is reviewing the first petition and the

current deadline for a response to that petition is January 12, 2011 (75 FR 39633).

## II. Final Action

### A. Rule

In accordance with section 307(d)(10), EPA is determining that the 60-day period afforded by section 126(b) for responding to the second petition from New Jersey is not adequate to allow the public and the Agency the opportunity to carry out the purposes of section 307(b). Specifically, the 60-day period is insufficient for EPA to complete the necessary technical review, develop an adequate proposal, and allow time for notice and comment on whether the Portland Plant identified in the section 126 petition contributes significantly to nonattainment or maintenance problems in New Jersey. EPA is currently reviewing the second petition and supporting technical information provided by New Jersey. The supporting information being reviewed includes modeling that New Jersey asserts supports a finding that the Portland Plant significantly contributes to exceedances of the 1-hour SO<sub>2</sub> NAAQS in New Jersey. In addition, New Jersey has begun providing monitoring data from a recently established monitor in Warren County. Based on preliminary data from the site, there are indications that ground level concentrations are approaching or exceeding the 1-hour SO<sub>2</sub> NAAQS levels. EPA notes that these data are preliminary in nature and have not been validated. If, after reviewing the available technical information, EPA concludes that the Portland Plant significantly contributes to exceedances of the 1-hour SO<sub>2</sub> NAAQS in New Jersey, it would propose to grant the petition and make a positive finding pursuant to section 126. EPA currently intends to propose a response to the second petition in February 2011.

EPA considers this extension of the deadline for action on the second petition essential to afford adequate time to fully review and evaluate the basis for the petition, develop a proposed remedy, if necessary, prepare a proposal that clearly explains the issues so as to facilitate public comment, and provide adequate time for the public to comment prior to issuing the final rule. As a result of this extension, the deadline for EPA to act on the petition is no later than May 16, 2011.

### B. Notice-and-Comment Under the Administrative Procedures Act (APA)

This document is a final agency action, but may not be subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). The EPA believes that, because of the limited time provided to make a determination that the deadline for action on the section 126 petition should be extended, Congress may not have intended such a determination to be subject to notice-and-comment rulemaking. However, to the extent that this determination otherwise would require notice and opportunity for public comment, there is good cause within the meaning of 5 U.S.C. 553(b)(3)(B) not to apply those requirements here. Providing for notice and comment would be impracticable because of the limited time provided for making this determination, and would be contrary to the public interest because it would divert Agency resources from the substantive review of the section 126 petition.

### C. Effective Date Under the APA

This action is effective on November 16, 2010. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to mandate an earlier effective date. This action—a deadline extension—must take effect immediately because its purpose is to extend by 6 months the deadline for action on the petition. It is important for this deadline extension action to be effective before the original 60-day period for action elapses. As discussed above, EPA intends to use the 6-month extension period to develop a proposal on the petition and provide time for public comment before issuing the final rule. It would not be possible for EPA to complete the required notice-and-comment and public hearing process within the original 60-day period noted in the statute. These reasons support an immediate effective date.

## III. Statutory and Executive Order Reviews

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

This action is not a “significant regulatory action” under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review by the Office of Management and Budget under the EO.

### 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.* Burden is defined at 5 CFR 1320(b). This action simply extends the date for EPA to take action on a petition and does not impose any new obligations or enforceable duties on any State, local or Tribal governments or the private sector. Therefore, it does not impose an information collection burden.

### C. Regulatory Flexibility Act

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the APA or any other statute. This rule is not subject to notice-and-comment requirements under the APA or any other statute because, although the rule is subject to the APA, the Agency has invoked the “good cause” exemption under 5 U.S.C. 553(b). Therefore, it is not subject to the notice-and-comment requirement.

### D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (URMA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. This action imposes no enforceable duty on any State, local, or Tribal governments or the private sector.

This action simply extends the deadline for EPA to take action on a petition and does not impose any new obligations or enforceable duties on any State, local or Tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA. This action is also not subject to the requirements of section 203 of URMA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action simply extends the date for EPA to take action on a petition and does not impose any new obligations or enforceable duties on any small governments.

### 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.”

This 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. This rule simply extends the date for EPA to take action on a petition and does not impose any new obligations or enforceable duties on any State, local or Tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have Tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). 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. This action does not significantly or uniquely affect the communities of Indian Tribal governments. As discussed above, this action imposes no new requirements that would impose compliance burdens. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because the Agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action is not subject to executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule simply extends the deadline for EPA to take action on a petition and does not impose any regulatory requirements.

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

This action is not a “significant energy action” as defined in Executive Order

13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse effects because this action simply extends the deadline for EPA to take action on a petition.

*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, 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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their 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 in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it simply extends the deadline for EPA to take action on a petition and does not impose any regulatory requirements.

*K. Congressional Review Act*

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides

that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 of the CRA provides an exception to this requirement. For any rule for which an agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest, the rule may take effect on the date set by the Agency. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*L. Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 18, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

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

Environmental protection, Administrative practice and procedure, Air pollution control, Electric utilities, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: November 10, 2010.

**Lisa P. Jackson,**  
Administrator.

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**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 67**

[Docket ID FEMA–2010–0003]

**Final Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.