

in the section 126 rulemaking, and hence documents in that docket are part of the rulemaking record for this rule. Documents related to the NO<sub>x</sub> SIP Call rulemaking are available for inspection in docket number A-96-56 at the address and times given above.

### Submitting Electronic Comments

Electronic comments are encouraged and can be sent directly to EPA at *A-and-R-Docket@epa.gov*. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket number A-97-43. Electronic comments may be filed online at many Federal Depository Libraries.

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### I. What Is the Relationship Between the Section 126 Rule and the NO<sub>x</sub> SIP Call?

In the past several years, EPA has been engaged in two separate rulemakings to address the interstate ozone transport problem in the eastern half of the United States. These rules, known as the NO<sub>x</sub> SIP Call and the Section 126 Rule, both require reductions in NO<sub>x</sub> emissions, which are precursors to ground-level ozone formation.

On October 27, 1998 (63 FR 57356), EPA promulgated the NO<sub>x</sub> SIP Call thereby requiring 22 Eastern States and the District of Columbia to reduce statewide NO<sub>x</sub> emissions to a specified level (NO<sub>x</sub> budget).<sup>1</sup> The States have the flexibility to choose the particular mix of control measures necessary to meet the NO<sub>x</sub> budget. The primary statutory provision for the NO<sub>x</sub> SIP Call is CAA section 110(a)(2)(D)(i), under which, in general, each SIP is required to include provisions to assure that sources within the State do not emit pollutants in amounts that significantly contribute to nonattainment or interfere with maintenance problems downwind.

In 1997, while EPA was in the process of developing the NO<sub>x</sub> SIP Call, eight Northeastern States submitted petitions under section 126 of the CAA seeking to mitigate significant interstate transport of NO<sub>x</sub> and ozone. Section 126 refers to State obligations under CAA section 110(a)(2)(D)(i) as does the NO<sub>x</sub> SIP Call. Section 126 authorizes a State to petition EPA to make a finding that any major source or group of stationary sources in upwind States are significantly contributing to nonattainment, or interfering with maintenance, in the petitioning State. If EPA makes such a finding, EPA is authorized to establish Federal emission limits for the affected sources. The petitions requested that EPA make such findings and establish control requirements for certain sources in about 30 States.

The EPA took action on the Section 126 petitions in final rules issued on May 25, 1999 and January 18, 2000 (together known as the Section 126 Rule) (64 FR 28250 and 65 FR 2674). In acting on the section 126 petitions, EPA relied on analyses and information used in the NO<sub>x</sub> SIP Call rulemaking, including the linkages it drew between specific upwind States and nonattainment and maintenance problems in specific downwind States. The EPA determined that large EGUs and large industrial boilers and turbines

(non-EGUs) in 12 States and the District of Columbia were significantly contributing to nonattainment problems in four of the petitioning States under the 1-hour ozone national ambient air quality standard.<sup>2</sup> The EPA required these sources to reduce their NO<sub>x</sub> emissions through a Federal NO<sub>x</sub> cap-and-trade program.

The Section 126 Rule overlaps considerably with the NO<sub>x</sub> SIP Call. Both the Section 126 Rule and the NO<sub>x</sub> SIP Call are based on much the same set of facts regarding the same pollutants. Both rely on section 110(a)(2)(D)(i) of the CAA. All of the sources affected by the Section 126 Rule are located in States that are covered by the NO<sub>x</sub> SIP Call. Therefore, as discussed below, EPA coordinated its actions under the two transport rules. (See the May 25, 1999 and January 18, 2000 Section 126 Rules for a detailed history of the relationship between the NO<sub>x</sub> SIP Call and the Section 126 Rule.)

### II. What Is the History of the Section 126 Rule Withdrawal Provision?

When EPA issued the May 25, 1999 Section 126 Rule, there was an existing requirement under the NO<sub>x</sub> SIP Call for States to reduce their NO<sub>x</sub> emissions and an explicit and expeditious schedule to do so. Therefore, EPA was able to coordinate, or harmonize, the Section 126 Rule with the NO<sub>x</sub> SIP Call. The EPA established the same compliance date, May 1, 2003 for both rules. Then, EPA structured its action on the section 126 petitions to give a State the opportunity to address its NO<sub>x</sub> transport first under the NO<sub>x</sub> SIP Call before EPA would directly regulate sources in the State under the Section 126 Rule. Thus, in the May 25, 1999 Section 126 Rule, EPA made technical determinations as to which sources were significantly contributing to the petitioning States but deferred making the Section 126 findings, which would trigger the control requirements, as long as States and EPA stayed on track to meet the NO<sub>x</sub> SIP Call obligations. The EPA included a withdrawal provision in the Section 126 Rule under which the Section 126 Rule for sources in a State would be automatically withdrawn if that State submitted and EPA approved a NO<sub>x</sub> SIP fully meeting the NO<sub>x</sub> SIP Call (see 64 FR 28271-28274; May 25, 1999). Thus, the section 126 control requirements would not go into place if

<sup>2</sup> Several of the petitions also requested that EPA also make findings under the 8-hour ozone standard. The EPA made technical determinations under the 8-hour standard in the May 25, 1999 rule but later stayed that portion of the rule in light of litigation on the 8-hour standard (65 FR 2674; January 18, 2000).

<sup>1</sup> As a result of a court decision, EPA will now only be including 21 States and the District of Columbia in the SIP Call.