

Carolina, Pennsylvania, Ohio, Virginia, and West Virginia.<sup>6</sup> All of these States are required to submit Phase 1 SIPs under the NO<sub>x</sub> SIP Call. To date, EPA has given final approval to NO<sub>x</sub> SIPs from ten of the thirteen jurisdictions (all but Michigan, Ohio, and Virginia).

The District of Columbia, Maryland, New Jersey, and New York voluntarily adopted SIPs that meet the original full NO<sub>x</sub> SIP Call budgets (65 FR 11222; March 2, 2000) and include a May 1, 2003 compliance date. Therefore, these SIPs meet the criteria for the current Section 126 withdrawal provision and the Section 126 Rule already has been automatically withdrawn for sources in those four jurisdictions.<sup>7</sup>

North Carolina adopted a SIP meeting the original full NO<sub>x</sub> SIP Call budget with a May 31, 2004 compliance date. If EPA finalizes today's action as proposed, the Section 126 Rule under the 1-hour standard will be automatically withdrawn for sources in that State upon the effective date of the final rule.

The EPA is today proposing that the approved Phase 1 SIPs from Delaware, Indiana, Kentucky, Pennsylvania, and West Virginia regulate the total group of section 126 sources in the respective States to the same stringency as the Section 126 Rule and include a compliance date no later than May 31, 2004. If EPA finalizes today's rule revision as proposed, the Section 126 Rule under the 1-hour standard will be withdrawn for sources in those States upon the effective date of the final rule.

The EPA proposed to conditionally approve the Virginia and Ohio SIPs. In today's action, EPA is proposing that once Virginia and Ohio satisfy the conditions identified in their respective SIP proposal actions and EPA fully approves the SIPs, each SIP would regulate the total group of section 126

sources in the respective State to the same stringency as the Section 126 Rule. If EPA finalizes today's rule revision as proposed and fully approves the Virginia and Ohio SIPs, the Section 126 Rule under the 1-hour standard will be withdrawn for sources in those States upon the later of the effective date for the final rule based on today's proposal and the effective date for final SIP approval.

We expect Michigan to submit a Phase 1 SIP shortly. The EPA will address the removal of the Section 126 Rule in Michigan in a separate rulemaking action once EPA receives and proposes action on the Michigan SIP.

The EPA notes that this proposal to withdraw the Section 126 Rule only affects the portion of the Section 126 Rule based on the 1-hour ozone standard. In evaluating the section 126 petitions, EPA made separate determinations under the 1-hour and 8-hour standards. In light of the litigation on the 8-hour standard, EPA previously stayed the 8-hour portion of the Section 126 Rule. Recently, EPA issued its final response to a U.S. Court of Appeals for the D.C. Circuit remand of the 8-hour standard. After a careful review, EPA has reaffirmed the 8-hour ozone standard and is moving forward to implement the standard. Therefore, EPA will be initiating a rulemaking to lift the 8-hour stay on the Section 126 Rule. In that rulemaking, EPA will complete its action on the 8-hour petitions.

## VI. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the 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.

Under Executive Order 12866, this proposed action is not a "significant regulatory action" and is therefore not subject to review by OMB. The January 2000 Section 126 Rule (65 FR 2674) establishes control requirements for certain sources in 12 States and the District of Columbia. The Section 126 Rule contains a provision under which EPA would withdraw the control requirements in a State if EPA approves a State plan to control the NO<sub>x</sub> transport in response to the NO<sub>x</sub> SIP Call. As the result of court actions, the compliance dates for the Section 126 Rule and the NO<sub>x</sub> SIP Call have now been delayed until May 31, 2004. In addition, the NO<sub>x</sub> SIP Call has been divided into two phases. Therefore, EPA is proposing to revise and update the Section 126 withdrawal provision so that it will operate under these new circumstances.

This proposed action would not create any additional impacts beyond what was promulgated in the January 2000 Rule. This proposed rule also does not raise novel legal or policy issues. Therefore, EPA believes that this action is not a "significant regulatory action."

### B. Paperwork Reduction Act

Today's action does not propose any new information collection request requirements. Therefore, an information collection request document is not required.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the 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.

For purposes of assessing the impacts of the proposed rule on small entities, small entity is defined as: (1) A small business according to the U.S. Small Business Administration size standards for the NAICS codes listed in the following table; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-

<sup>6</sup> Indiana, Kentucky, Michigan, and New York were only partially covered by the Section 126 Rule.

<sup>7</sup> The EPA is currently revising certain portions of the NO<sub>x</sub> SIP Call in response to a March 3, 2000 decision by the U.S. Court of Appeals for the D.C. Circuit. See *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000). In this decision, the court upheld the NO<sub>x</sub> SIP Call on all major issues, but remanded four narrow issues to EPA for further rulemaking. The EPA expects to complete the rulemaking by the end of the year, which will slightly modify the NO<sub>x</sub> SIP budgets based on the court's holding. In light of the changes necessary to respond to the court decision, EPA anticipates that the final NO<sub>x</sub> SIP budgets would be no more stringent than the original SIP budgets as modified by the March 2, 2000 technical amendment (65 FR 11222). Therefore, a SIP meeting the March 2, 2000 budgets and providing for reductions by May 1, 2003, should fully address the significant NO<sub>x</sub> transport from that State, and the current section 52.34(i) withdrawal provision applies to automatically withdraw the section 126 requirements for sources in that State.