Reg	Title/subject	EPA approval date	Federal Register notice	District effective date	Explanation
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Reg 3—Ambient Air Quality Standards					
3.01	Ambient Air Quality Standards.	5/11/2018	[Insert citation of publication]	02/15/17	
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[FR Doc. 2018–09991 Filed 5–10–18; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2018–0170; FRL–9977–90–OAR]

RIN 2060–AU02

Extension of Deadline for Action on the Section 126(b) Petition From New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) is determining that 60 days is insufficient time to complete the technical and other analyses and public notice-and-comment process required for our review of a petition dated March 12, 2018, submitted by the state of New York pursuant to section 126(b) of the Clean Air Act (CAA). The petition requests that the EPA make a finding that emissions from the collection of identified sources in nine states (Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia) significantly contribute to and interfere with maintenance of the 2008 and 2015 ozone national ambient air quality standards (NAAQS) in New York State. Under section 307(d)(10) of the CAA, the EPA is authorized to grant a time extension for responding to a petition if the EPA determines that the extension is necessary to afford the public, and the Agency, adequate opportunity to carry out the purposes of the section 307(d) notice-and-comment rulemaking requirements. By this action, the EPA is making that determination. The EPA is, therefore, extending the deadline for acting on the petition from May 13, 2018, to no later than November 9, 2018.

DATES: This final rule is effective on May 11, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0170. All documents in the docket are listed on the *http://www.regulations.gov* website. 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 form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Lev Gabrilovich, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–01, Research Triangle Park, NC 27711, telephone (919) 541–1496; email at *gabrilovich.lev@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Legal Standard

This is a procedural action to extend the deadline for the EPA to respond to a petition from the state of New York filed pursuant to CAA section 126(b). The EPA received the petition on March 14, 2018. The petition requests that the EPA make a finding under section 126(b) of the CAA that emissions from the collection of identified sources in nine states (Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia) significantly contribute to and interfere with maintenance of the 2008 and 2015 ozone NAAQS in New York in violation of the provisions of section 110(a)(2)(D)(i) of the CAA, also known as the ''good neighbor'' provisions.

Section 126(b) of the CAA authorizes states to petition the 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 CAA section 110(a)(2)(D)(i) [1] by contributing significantly to nonattainment or interfering with maintenance problems in downwind states. Section 110(a)(2)(D)(i)(I) of the CAA prohibits 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. Under CAA section 126(c), any existing sources for which the EPA makes the requested finding must cease operations within 3 months of the finding, except that the source may continue to operate if it complies with emission limitations and compliance schedules (containing increments of progress) that the EPA may provide to bring about compliance with the applicable requirements as expeditiously as practical but no later than 3 years from the date of the finding.

The CAA section 126(b) petition from the state of New York requests that the EPA make a finding that, within each of the identified nine upwind states, certain sources within the electric generating unit (EGU) and non-EGU sectors collectively emit air pollutants in violation of CAA section 110(a)(2)(D)(i) with respect to the 2008 8-hour ozone NAAQS, set at 0.075 parts per million (ppm), and the revised 2015 8-hour ozone NAAQS, set at 0.070 ppm.[2]

Pursuant to CAA section 126(b), the EPA must make the finding requested in the petition or must deny the petition within 60 days of its receipt and after holding a public hearing. In addition to the public hearing provisions in CAA section 126(b), the EPA's action under

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

[2] On October 1, 2015, the EPA strengthened the ground-level ozone NAAQS, based on extensive scientific evidence about ozone's effects on public health and welfare. *See* 80 FR 65291 (October 26, 2015).

CAA section 126 is also subject to the procedural requirements of CAA section 307(d). *See* CAA section 307(d)(1)(N). One of these requirements is notice-and-comment rulemaking, under section 307(d)(3)–(6). Section 307(d)(3) of the CAA provides minimum requirements for the contents of a proposed action subject to 307(d), including summarizing the methodology used in analyzing data on which the proposed action is based and the major legal interpretations and policy considerations underlying the proposal. CAA section 307(d)(6) requires that the final action be equally detailed and include an explanation of any major changes from proposal and a response to each significant comment received.

With respect to the public hearing, the EPA must provide sufficient notice to the public. The Federal Register Act identifies 15 days' notice as the timeframe presumed to be sufficient notice to the public in advance of a public hearing. *See* 44 U.S.C. Section 1508. CAA section 307(d)(5) also provides specific direction for the conduct of public hearings, requiring at (iv), that ''the Administrator shall keep the record of [the public hearing] open for thirty days after the completion of the proceeding to provide for an opportunity for submission of rebuttal and supplementary information.''

In sum, the statutory requirements governing the EPA's action on a CAA section 126(b) petition necessitate the following procedural steps: Conducting technical, legal, and policy review of a submitted petition; developing an adequate proposal; providing sufficient notice of a public hearing; holding the public hearing; allowing sufficient time for notice and comment on both the proposal and public hearing record and developing responses to comments received and a final action on the petition.

Section 307(d)(10) of the CAA provides for a time extension, under certain circumstances, for a rulemaking subject to section 307(d). Specifically, CAA 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.

The EPA believes that the plain language of this provision allows the EPA to extend statutory deadlines for rulemakings enumerated in CAA section 307(d)(1) that are subject to deadlines with less than 6 months between a proposed and final action. The phrase ''which requires promulgation less than six months after date of proposal'' clearly specifies the type of deadline that may be extended, while the phrase ''may be extended to not more than six months after date of proposal'' limits the duration of an extension invoked under this provision. Notably, neither of these phrases, nor the provision in its entirety, impose any predicate steps on the EPA for invoking an extension other than determining that such an extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of CAA section 307(d).

To the extent the terms of this provision are ambiguous, the EPA believes its interpretation of these terms is reasonable. The stated purpose of this provision is to provide both the public and the EPA adequate opportunity to effectuate the objectives of CAA section 307(d) regarding rulemaking. Interpreting CAA section 307(d)(10) to require the EPA to take some substantive predicate rulemaking step in a shorter timeframe to invoke the 6-month extension would contradict the stated purpose of the extension, as taking a predicate action within such shorter timeframe risks undermining the same reasons for invoking the extension. For example, were the EPA required to issue a proposed action on a CAA section 126(b) petition within 60 days of receipt to invoke the 6-month extension, the EPA may risk inadequately meeting the requirements of CAA section 307(d)(3) governing the minimum contents of such proposal depending on the technical complexity of the petition and other factors involved in developing an adequate proposal. Given that the purpose of an extension under CAA section 307(d)(10) is, in part, to provide the EPA with adequate opportunity to meet the requirements of section 307(d), it follows that the extension should be available for both the EPA's proposed and final action on a section 126(b) petition.

Additionally, the EPA notes that CAA section 307(d)(1) does not speak to *when* the EPA must determine that an extension is necessary. The EPA acknowledges that the timeframes set out under CAA sections 126(b) and 307(d)(10) indicate Congress's clear intent that the EPA act quickly on a section 126 petition. Considering this intent, the EPA reasonably interprets CAA section 307(d)(10) to require the EPA to make the necessary determination in invoking a 6-month extension no later than the end of the original response time provided by section 126(b) for acting on a petition, which is 60-days from receipt. Such interpretation ensures that that the overall legal deadline for the EPA's action on a CAA section 126(b) petition does not exceed the aggregate eight-month deadline provided under the CAA (*i.e.,* 60 days provided under section 126(b) plus 6 months provided under section 307(d)(10)). Finally, under the EPA's reasonable reading of CAA section 307(d)(10), this extension may be invoked only once.

The EPA believes its reading of the extension provision under CAA section 307(d)(10) is consistent with Congress's dual intent of ensuring that the EPA acts expeditiously on a CAA section 126(b) petition and ensuring that the public has adequate opportunity to participate in the EPA's rulemaking process on such a petition. As described previously, the extension will allow the EPA to undertake the appropriate and necessary public participation processes, such as holding a public hearing on a proposed action on New York's petition.

Based on either a plain reading of the language, or, in the alternative, a reasonable reading of the provision in the event of ambiguity, CAA section 307(d)(10), therefore, may be applied to CAA section 126(b) rulemakings because the 60-day time limit under CAA section 126(b) necessarily limits the period for promulgation of a final rule after proposal to less than 6 months.

II. Final Rule

A. Rule

In accordance with CAA section 307(d)(10), the EPA is determining that the 60-day period afforded by CAA section 126(b) for responding to the petition from the state of New York is not adequate time to allow the public, and the agency, the opportunity to carry out the purposes of CAA section 307(d). In making this determination, the EPA has met the necessary steps to invoke a 6-month extension for acting on New York's CAA section 126(b) petition. Specifically, the 60-day period is insufficient time for the EPA to complete the necessary technical review of the petition, develop an adequate proposal, and allow time for notice and comment, including an opportunity for public hearing, on a proposed finding regarding whether emissions from the collection of identified EGU and non-EGU sources in nine states (Illinois, Indiana, Kentucky, Maryland, Michigan, Ohio, Pennsylvania, Virginia and West Virginia) significantly contribute to and interfere with maintenance of the 2008 and 2015 ozone NAAQS in New York

State. Moreover, the 60-day period is insufficient for the EPA to review and develop responses to any public comments on a proposed finding, or testimony supplied at a public hearing, and to develop and promulgate a final finding in response to the petition. Particularly, the timeframes for notice of the public hearing and duration of comment period after the hearing itself would consume 45 days (presuming 15 days' notice of the hearing, and a 30-day comment period thereafter), leaving a total of 15 days of the 60-day period to complete the previously identified steps needed to review the petition, develop a proposal, review and develop responses to any public comments on a proposed finding or testimony supplied at a public hearing, and to develop and promulgate a final finding in response to the petition. An appropriate schedule for action on the CAA section 126(b) petition must afford the EPA adequate time to prepare a proposal that clearly elucidates the issues to facilitate public comment, and must provide adequate time for the public to comment and for the EPA to review and develop responses to those comments prior to issuing the final rule. With this extension, the deadline for the EPA to act on the petition is revised from May 13, 2018, to November 9, 2018. The EPA does not intend to grant itself any further extension under this provision if upon expiration of this extension the EPA has not yet acted on New York's section 126(b) petition.

B. Notice and Comment Under the Administrative Procedure 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 the EPA to make a finding, the deadline for action on the CAA section 126(b) 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 CAA section 126(b) petition.

C. Effective Date Under the APA

This action is effective on May 11, 2018. 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. As discussed earlier, the 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. These reasons support an immediate effective date.

III. Statutory and Executive Order Reviews

A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget because it simply extends the date for the EPA to act on a petition.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This good cause final action simply extends the date for the EPA to act on a petition and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. It does not contain any recordkeeping or reporting requirements.

D. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. This rule is not subject to notice-and-comment requirements because the agency has invoked the APA good cause exemption under 5 U.S.C. 553(b).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

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.

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

This action does not have tribal implications, as specified in Executive Order 13175. This good cause final action simply extends the date for the EPA to act on a petition. Thus, Executive Order 13175 does not apply to this rule.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This good cause final action simply extends the date for the EPA to act on a petition and does not have any impact on human health or the environment.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice-and-comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in Section II.B of this document, including the basis for that finding.

IV. Statutory Authority

The statutory authority for this action is provided by sections 110, 126 and 307 of the CAA as amended (42 U.S.C. 7410, 7426 and 7607).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practices and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone.

Dated: May 3, 2018.

E. Scott Pruitt,

Administrator.

[FR Doc. 2018–09892 Filed 5–8–18; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–1687–IFC]

RIN 0938–AT21

Medicare Program; Durable Medical Equipment Fee Schedule Adjustments To Resume the Transitional 50/50 Blended Rates To Provide Relief in Rural Areas and Non-Contiguous Areas

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period makes technical amendments to the regulation to reflect the extension of the transition period from June 30, 2016 to December 31, 2016 that was mandated by the 21st Century Cures Act for phasing in fee schedule adjustments for certain durable medical equipment (DME) and enteral nutrition paid in areas not subject to the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP). In addition, this interim final rule with comment period amends the regulation to resume the transition period's blended fee schedule rates for items furnished in rural areas and non-contiguous areas (Alaska, Hawaii, and United States territories) not subject to the CBP from June 1, 2018 through December 31, 2018. This interim final rule with comment period also makes technical amendments to existing regulations for DMEPOS items and services to reflect the exclusion of infusion drugs used with DME from the DMEPOS CBP.

DATES:

Effective date: The provisions of this interim final rule with comment period are effective on June 1, 2018.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 9, 2018.

ADDRESSES: In commenting, please refer to file code CMS–1687–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1687–IFC, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1687–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Laurence Wilson, 410–786–4602 and *DMEPOS@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that website to view public comments.

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