

## Environmental Protection Agency

## § 52.34

area NSR requirements specified in 42 U.S.C. 7501-7515, as amended by the 1990 Amendments, or cease issuing permits to construct and operate major new or modified sources as defined in those requirements. For purposes of applying the offset requirement under 42 U.S.C. 7503 where EPA has not fully approved a State's NSR program as meeting the requirements of part D, the specifications of those provisions shall supersede any State requirement that is less stringent or inconsistent.

(v) For purposes of applying the emissions offset requirement set forth in 42 U.S.C. 7503, any permit required pursuant to 42 U.S.C. 7503 and issued on or after the date the offset sanction applies under paragraph (d) of this section shall be subject to the enhanced 2-to-1 ratio under paragraph (e)(1)(i) of this section.

(2) *Highway funding sanction.* The highway sanction shall apply, as provided in 42 U.S.C. 7509(b)(1), in the timeframe prescribed under paragraph (d) of this section on those affected areas subject under paragraph (d) of this section to the highway sanction, but shall apply only to those portions of affected areas that are designated nonattainment under 40 CFR part 81.

[59 FR 39859, Aug. 4, 1994]

### § 52.32 Sanctions following findings of SIP inadequacy.

For purposes of the SIP revisions required by § 51.120, EPA may make a finding under section 179(a) (1)-(4) of the Clean Air Act, 42 U.S.C. 7509(a) (1)-(4), starting the sanctions process set forth in section 179(a) of the Clean Air Act. Any such finding will be deemed a finding under § 52.31(c) and sanctions will be imposed in accordance with the order of sanctions and the terms for such sanctions established in § 52.31.

[60 FR 4737, Jan. 24, 1995]

### § 52.33 Compliance certifications.

(a) For the purpose of submitting compliance certifications, nothing in this part or in a plan promulgated by the Administrator shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable re-

quirements if the appropriate performance or compliance test had been performed.

(b) For all federal implementation plans, paragraph (a) of this section is incorporated into the plan.

[62 FR 8328, Feb. 24, 1997]

### § 52.34 Action on petitions submitted under section 126 relating to emissions of nitrogen oxides.

(a) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Administrator* means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

(2) *Large Electric Generating Units (large EGUs)* means:

(i) For units that commenced operation before January 1, 1997, a unit serving during 1995 or 1996 a generator that had a nameplate capacity greater than 25 MWe and produced electricity for sale under a firm contract to the electric grid.

(ii) For units that commenced operation on or after January 1, 1997 and before January 1, 1999, a unit serving at any time during 1997 or 1998 a generator that had a nameplate capacity greater than 25 MWe and produced electricity for sale under a firm contract to the electric grid.

(iii) For units that commence operation on or after January 1, 1999, a unit serving at any time a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale.

(3) *Large Non-Electric Generating Units (large non-EGUs)* means:

(i) For units that commenced operation before January 1, 1997, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

(ii) For units that commenced operation on or after January 1, 1997 and before January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve at any time during 1997 or 1998 a generator producing electricity for sale

under a firm contract to the electric grid.

(iii) For units that commence operation on or after January 1, 1999, a unit with a maximum design heat input greater than 250 mmBtu/hr that:

(A) At no time serves a generator producing electricity for sale; or

(B) At any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of 25 MWe or less and has the potential to use 50 percent or less of the potential electrical output capacity of the unit.

(4) *New sources* means new and modified sources.

(5) *NO<sub>x</sub>* means oxides of nitrogen.

(6) *OTAG* means the Ozone Transport Assessment Group (active 1995–1997), a national work group that addressed the problem of ground-level ozone and the long-range transport of air pollution across the Eastern United States. The OTAG was a partnership between EPA, the Environmental Council of the States, and various industry and environmental groups.

(7) *Ozone season* means the period of time beginning May 1 of a year and ending on September 30 of the same year, inclusive.

(8) *Potential electrical output capacity* means, with regard to a unit, 33 percent of the maximum design heat input of the unit.

(9) *Unit* means a fossil-fuel fired stationary boiler, combustion turbine, or combined cycle system.

(b) *Purpose and applicability.* Paragraphs (c), (e)(1) and (e)(2), (g), and (h)(1) and (h)(2) of this section set forth the Administrator's findings with respect to the 1-hour national ambient air quality standard (NAAQS) for ozone that certain new and existing sources of emissions of nitrogen oxides ("NO<sub>x</sub>") in certain States emit or would emit NO<sub>x</sub> in violation of the prohibition in section 110(a)(2)(D)(i) of the Clean Air Act (CAA) on emissions in amounts that contribute significantly to nonattainment in certain States that submitted petitions in 1997–1998 addressing such NO<sub>x</sub> emissions under section 126 of the CAA. Paragraphs (d), (e)(3) and (e)(4), (f), and (h)(3) and (h)(4) of this section set forth the Administrator's affirmative technical determinations

with respect to the 8-hour NAAQS for ozone that certain new and existing sources of emissions of NO<sub>x</sub> in certain States emit or would emit NO<sub>x</sub> in violation of the prohibition in section 110(a)(2)(D)(i) of the CAA on emissions in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, certain States that submitted petitions in 1997–1998 addressing such NO<sub>x</sub> emissions under section 126 of the CAA. (As used in this section, the term new source includes modified sources, as well.) Paragraph (i) of this section explains the circumstances under which the findings for sources in a specific State would be withdrawn. Paragraph (j) of this section sets forth the control requirements that apply to the sources of NO<sub>x</sub> emissions affected by the findings. Paragraph (k) of this section indefinitely stays the effectiveness of the affirmative technical determinations with respect to the 8-hour ozone standard.

(1) The States that submitted such petitions are Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont (each of which, hereinafter in this section, may be referred to also as a "petitioning State").

(2) The new and existing sources of NO<sub>x</sub> emissions covered by the petitions that emit or would emit NO<sub>x</sub> emissions in amounts that make such significant contributions are large electric generating units (EGUs) and large non-EGUs.

(c) *Section 126(b) findings relating to impacts on ozone levels in Connecticut—*

(1) *Section 126(b) findings with respect to the 1-hour ozone standard in Connecticut.* The Administrator finds that any existing or new major source or group of stationary sources emits or would emit NO<sub>x</sub> in violation of the Clean Air Act section 110(a)(2)(d)(i) prohibition with respect to the 1-hour ozone standard in the State of Connecticut if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (c)(2) of this section; and

(iii) Within one of the “Named Source Categories” listed in the portion of Table F-1 in appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of Connecticut.

(2) *States or portions of States that contain sources for which the Administrator is making section 126(b) findings with respect to the 1-hour ozone standard in Connecticut.* The States, or portions of States, that contain sources of NO<sub>x</sub> emissions for which the Administrator is making section 126(b) findings under paragraph (c)(1) of this section are:

- (i) Delaware.
- (ii) District of Columbia.
- (iii) Portion of Indiana located in OTAG Subregions 2 and 6, as shown in appendix F, Figure F-2, of this part.
- (iv) Portion of Kentucky located in OTAG Subregion 6, as shown in appendix F, Figure F-2, of this part.
- (v) Maryland.
- (vi) Portion of Michigan located south of 44 degrees latitude in OTAG Subregion 2, as shown in appendix F, Figure F-2, of this part.
- (vii) Portion of North Carolina located in OTAG Subregion 7, as shown in appendix F, Figure F-2, of this part.
- (viii) New Jersey.
- (ix) Portion of New York extending west and south of Connecticut, as shown in appendix F, Figure F-2, of this part.
- (x) Ohio.
- (xi) Pennsylvania.
- (xii) Virginia.
- (xiii) West Virginia.

(d) *Affirmative technical determinations relating to impacts on ozone levels in Maine—(1) Affirmative technical determinations with respect to the 8-hour ozone standard in Maine.* The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO<sub>x</sub> in amounts that contribute significantly to nonattainment in the State of Maine, with respect to the 8-hour NAAQS for ozone if it is or will be:

- (i) In a category of large EGUs or large non-EGUs;
- (ii) Located in one of the States (or portions thereof) listed in paragraph (d)(2) of this section; and

(iii) Within one of the “Named Source Categories” listed in the portion of Table F-1 of appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of Maine.

(2) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in Maine.* The States that contain sources for which EPA is making an affirmative technical determination are:

- (i) Connecticut.
- (ii) Delaware.
- (iii) District of Columbia.
- (iv) Maryland.
- (v) Massachusetts.
- (vi) New Jersey.
- (vii) New York.
- (viii) Pennsylvania.
- (ix) Rhode Island.
- (x) Virginia.

(e) *Section 126(b) findings and affirmative technical determinations relating to impacts on ozone levels in Massachusetts—(1) Section 126(b) findings with respect to the 1-hour ozone standard in Massachusetts.* The Administrator finds that any existing major source or group of stationary sources emits NO<sub>x</sub> in violation of the Clean Air Act section 110(a)(2)(d)(i) prohibition with respect to the 1-hour ozone standard in the State of Massachusetts if it is:

- (i) In a category of large EGUs or large non-EGUs;
- (ii) Located in one of the States (or portions thereof) listed in paragraph (e)(2) of this section; and

(iii) Within one of the “Named Source Categories” listed in the portion of Table F-1 in appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of Massachusetts.

(2) *States that contain sources for which the Administrator is making section 126(b) findings with respect to the 1-hour ozone standard in Massachusetts.* The portions of States that contain sources of NO<sub>x</sub> emissions for which the Administrator is making section 126(b) findings under paragraph (e)(1) of this section are:

- (i) All counties in West Virginia located within a 3-county-wide band of the Ohio River, as shown in appendix F, Figure F-4, of this part.

(ii) [Reserved]

(3) *Affirmative technical determinations with respect to the 8-hour ozone standard in Massachusetts.* The Administrator of EPA finds that any existing major source or group of stationary sources emits NO<sub>x</sub> in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, the State of Massachusetts, with respect to the 8-hour NAAQS for ozone if it is:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (e)(4) of this section; and

(iii) Within one of the “Named Source Categories” listed in the portion of Table F-1 in appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of Massachusetts.

(4) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in Massachusetts.* The portions of States that contain sources for which EPA is making an affirmative technical determination are:

(i) All counties in Ohio located within a 3-county-wide band of the Ohio River, as shown in appendix F, Figure F-4, of this part.

(ii) All counties in West Virginia located within a 3-county-wide band of the Ohio River, as shown in appendix F, Figure F-4, of this part.

(f) *Affirmative technical determinations relating to impacts on ozone levels in New Hampshire—(1) Affirmative technical determinations with respect to the 8-hour ozone standard in New Hampshire.* The Administrator of EPA finds that any existing or new major source or group of stationary sources emits or would emit NO<sub>x</sub> in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, the State of New Hampshire, with respect to the 8-hour NAAQS for ozone if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (f)(2) of this section; and

(iii) Within one of the “Named Source Categories” listed in the por-

tion of Table F-1 of appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of New Hampshire.

(2) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in New Hampshire.* The States that contain sources for which EPA is making an affirmative technical determination are:

(i) Connecticut.

(ii) Delaware.

(iii) District of Columbia.

(iv) Maryland.

(v) Massachusetts.

(vi) New Jersey.

(vii) New York.

(viii) Pennsylvania.

(ix) Rhode Island.

(g) *Section 126(b) findings relating to impacts on ozone levels in the State of New York—(1) Section 126(b) findings with respect to the 1-hour ozone standard in the State of New York.* The Administrator finds that any existing or new major source or group of stationary sources emits or would emit NO<sub>x</sub> in violation of the Clean Air Act section 110(a)(2)(d)(i) prohibition with respect to the 1-hour ozone standard in the State of New York if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (g)(2) of this section; and

(iii) Within one of the “Named Source Categories” listed in the portion of Table F-1 in appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of New York.

(2) *States or portions of States that contain sources for which the Administrator is making section 126(b) findings with respect to the 1-hour ozone standard in New York.* The States, or portions of States, that contain sources of NO<sub>x</sub> emissions for which the Administrator is making section 126(b) findings under paragraph (g)(1) of this section are:

(i) Delaware.

(ii) District of Columbia.

(iii) Portion of Indiana located in OTAG Subregions 2 and 6, as shown in appendix F, Figure F-6, of this part.

(iv) Portion of Kentucky located in OTAG Subregion 6, as shown in appendix F, Figure F-6, of this part.

(v) Maryland.

(vi) Portion of Michigan located south of 44 degrees latitude in OTAG Subregion 2, as shown in appendix F, Figure F-6, of this part.

(vii) Portion of North Carolina located in OTAG Subregions 6 and 7, as shown in appendix F, Figure F-6, of this part.

(viii) New Jersey.

(ix) Ohio.

(x) Pennsylvania.

(xi) Virginia.

(xii) West Virginia.

(h) *Section 126(b) findings and affirmative technical determinations relating to impacts on ozone levels in the State of Pennsylvania*—(1) *Section 126(b) findings with respect to the 1-hour ozone standard in the State of Pennsylvania.* The Administrator finds that any existing or new major source or group of stationary sources emits or would emit NO<sub>x</sub> in violation of the Clean Air Act section 110(a)(2)(d)(i) prohibition with respect to the 1-hour ozone standard in the State of Pennsylvania if it is or will be:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (h)(2) of this section; and (iii) Within one of the “Named Source Categories” listed in the portion of Table F-1 in appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of Pennsylvania.

(2) *States that contain sources for which the Administrator is making section 126(b) findings with respect to the 1-hour ozone standard in Pennsylvania.* The States that contain sources of NO<sub>x</sub> emissions for which the Administrator is making section 126(b) findings under paragraph (h)(1) of this section are:

(i) North Carolina.

(ii) Ohio.

(iii) Virginia.

(iv) West Virginia.

(3) *Affirmative technical determinations with respect to the 8-hour ozone standard in Pennsylvania.* The Administrator of EPA finds that any existing or new major source or group of stationary

sources emits or would emit NO<sub>x</sub> in amounts that contribute significantly to nonattainment in, or interfere with maintenance by, the State of Pennsylvania, with respect to the 8-hour NAAQS for ozone:

(i) In a category of large EGUs or large non-EGUs;

(ii) Located in one of the States (or portions thereof) listed in paragraph (h)(4) of this section; and

(iii) Within one of the “Named Source Categories” listed in the portion of Table F-1 in appendix F of this part describing the sources of NO<sub>x</sub> emissions covered by the petition of the State of Pennsylvania.

(4) *States or portions of States that contain sources for which EPA is making an affirmative technical determination with respect to the 8-hour ozone standard in Pennsylvania.* The States that contain sources for which EPA is making an affirmative technical determination are:

(i) Alabama.

(ii) Illinois.

(iii) Indiana.

(iv) Kentucky.

(v) Michigan.

(vi) Missouri.

(vii) North Carolina.

(viii) Ohio.

(ix) Tennessee.

(x) Virginia.

(xi) West Virginia.

(i) *Withdrawal of section 126 findings.* Notwithstanding any other provision of this subpart, a finding under paragraphs (c), (e)(1) and (e)(2), (g), and (h)(1) and (h)(2) of this section as to a particular major source or group of stationary sources in a particular State will be deemed to be withdrawn, and the corresponding part of the relevant petition(s) denied, if the Administrator issues a final action putting in place implementation plan provisions that comply with the requirements of §§ 51.121 and 51.122 of this chapter for such State.

(j) *Section 126 control remedy.* The Federal NO<sub>x</sub> Budget Trading Program in part 97 of this chapter applies to the owner or operator of any new or existing large EGU or large non-EGU as to which the Administrator makes a finding under section 126(b) of the Clean Air Act pursuant to the provisions of

paragraphs (c), (e)(1) and (e)(2), (g), and (h)(1) and (h)(2) of this section.

(k) *Stay of findings with respect to the 8-hour ozone standard.* Notwithstanding any other provisions of this subpart, the effectiveness of paragraphs (d), (e)(3) and (e)(4), (f), (h)(3) and (h)(4) of this section is stayed.

(l) *Temporary stay of rules.* Notwithstanding any other provisions of this subpart, the effectiveness of this section is stayed from July 26, 1999 until February 17, 2000.

[64 FR 28318, May 25, 1999, as amended at 64 FR 33961, June 24, 1999; 65 FR 2042, Jan. 13, 2000; 65 FR 2726, Jan. 18, 2000; 69 FR 31505, June 3, 2004]

**§ 52.35 What are the requirements of the Federal Implementation Plans (FIPs) for the Clean Air Interstate Rule (CAIR) relating to emissions of nitrogen oxides?**

(a)(1) The Federal CAIR NO<sub>x</sub> Annual Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions that relate to annual emissions of nitrogen oxides (NO<sub>x</sub>). Each State that is described in § 51.123(c)(1) and (2) of this chapter received a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the PM<sub>2.5</sub> NAAQS. The provisions of subparts AA through II of part 97 of this chapter, regarding the CAIR NO<sub>x</sub> Annual Trading Program, apply to the sources in each of these States that has not promulgated a SIP approved by the Administrator as correcting that deficiency. Following promulgation of an approval by the Administrator of a State's SIP as meeting the requirements of CAIR for PM<sub>2.5</sub> relating to NO<sub>x</sub> under § 51.123 of this chapter, these provisions of part 97 of this chapter will no longer apply to the sources in that State, except to the extent the Administrator's approval of the SIP is partial or conditional or unless such approval is under § 51.123(p) of this chapter.

(2) Notwithstanding any provisions of paragraph (a)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already al-

located any CAIR NO<sub>x</sub> allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO<sub>x</sub> allowances for those years shall continue to apply, unless the Administrator approves a SIP that provides for the allocation of the remaining CAIR NO<sub>x</sub> allowances for those years.

(b)(1) The Federal CAIR NO<sub>x</sub> Ozone Season Trading Program provisions of part 97 of this chapter constitute the Clean Air Interstate Rule Federal Implementation Plan provisions that relate to emissions of nitrogen oxides (NO<sub>x</sub>) during the ozone season, as defined in § 97.302 of this chapter. Each State that is described in § 51.123(c)(1) and (3) of this chapter received a finding by the Administrator that the State failed to submit a State Implementation Plan (SIP) to satisfy the requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act for the 8-hour ozone NAAQS. The provisions of subparts AAAA through IIII of part 97 of this chapter, regarding the CAIR NO<sub>x</sub> Ozone Season Trading Program, apply to sources in each of these States that has not promulgated a SIP revision approved by the Administrator as correcting that deficiency. Following promulgation of an approval by the Administrator of a State's SIP as meeting the requirements of CAIR for ozone relating to NO<sub>x</sub> under § 51.123 of this chapter, these provisions of part 97 of this chapter will no longer apply to sources in that State, except to the extent the Administrator's approval of the SIP is partial or conditional or unless such approval is under § 51.123(ee) of this chapter.

(2) Notwithstanding any provisions of paragraph (b)(1) of this section, if, at the time of such approval of the State's SIP, the Administrator has already allocated any CAIR NO<sub>x</sub> Ozone Season allowances to sources in the State for any years, the provisions of part 97 of this chapter authorizing the Administrator to complete the allocation of CAIR NO<sub>x</sub> Ozone Season allowances for those years shall continue to apply, unless the Administrator approves a SIP that provides for the allocation of the remaining CAIR NO<sub>x</sub> Ozone Season allowances for those years.