

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 335-3-14 Air Permits				
* Section 335-3-14-.04	* Air Permits Authorizing Construction in Clean Air Areas (Prevention of Significant Deterioration (PSD)).	* 07/11/2006	* 05/01/2008 [Insert citation of publication].	* EPA is not approving Section 335-3-14.04(2)(w)1.
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-HQ-OAR-2008-0314; FRL-8559-9]

Extension of Deadline for Action on Section 126 Petition From Warrick County, IN, and the Town of Newburgh, IN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is extending by 6 months the deadline for EPA to take action on a petition submitted by Warrick County, Indiana and the Town of Newburgh, Indiana under section 126 of the Clean Air Act (CAA). The petition requests that EPA make a finding that a power plant (Cash Creek) proposed to be built in Henderson County, Kentucky will emit air pollutants that will significantly contribute to Warrick County and Newburgh, Indiana's nonattainment with the national ambient air quality standards (NAAQS) for ozone and fine particulate matter, or will significantly interfere with Warrick County and Newburgh, Indiana's ability to maintain its attainment of those standards. The petition requests that EPA establish emission limitations for the proposed power plant as a result of those findings. 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.

DATES: This action is effective on April 24, 2008.

ADDRESSES: EPA has established a docket for this rulemaking under Docket

ID number EPA-HQ-OAR-2008-0314. 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: For general information and policy questions, contact Carla Oldham, Air Quality Planning Division, Office of Air Quality Planning and Standards, mail code C539-04, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: 919-541-3347; fax number: 919-541-0824; e-mail address: oldham.carla@epa.gov. For legal questions contact Steven Silverman, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564-5523, e-mail at silverman.steven@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

This is a procedural action to extend the deadline for EPA to respond to a petition from Warrick County, Indiana and the Town of Newburgh, Indiana filed under CAA section 126. EPA received the section 126 petition on March 6, 2008. The petition requests that EPA make a finding that the Cash

Creek power plant proposed to be built in Henderson County, Kentucky will emit air pollutants that will significantly contribute to Warrick County and Newburgh, Indiana's nonattainment with the NAAQS for ozone and fine particulate matter or will significantly interfere with Warrick County and Newburgh, Indiana's ability to maintain its attainment of those standards. The petition requests that EPA establish emission limitations for the proposed power plant as a result of those findings.

Section 126(b) 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), by contributing significantly to nonattainment or maintenance problems in downwind states. If EPA makes such a finding, EPA is authorized to establish Federal emissions limits for the sources which so contribute.

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 3 months of the finding, except that those sources may continue to operate if they comply with emission limitations and compliance schedules that EPA may provide to bring about compliance with the applicable requirements.

Section 126(b) further provides that EPA must allow a public hearing for 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 6 months.

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 petition from Warrick County, Indiana and the Town of Newburgh, Indiana is not adequate to allow the public and the Agency adequate opportunity to carry out the purposes of section 307(d). Specifically, the 60-day period is insufficient for EPA to develop an adequate proposal on whether the source identified in the section 126 petition will contribute significantly to nonattainment or maintenance problems in Warrick County or the Town of Newburgh, and, if so, to allow adequate time for public input into the promulgation of any controls to address those significant contributions.

EPA is in the process of determining what would be an appropriate schedule for action on the section 126 petition from Warrick County, Indiana and the Town of Newburgh, Indiana. This schedule must afford 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 prior to issuing the final rule.

As a result of this extension, the deadline for EPA to act on the petition is November 5, 2008.

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 April 24, 2008. 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. 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 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review 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 does not create new requirements and is not subject to the Paperwork Reduction Act.

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

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rules with “Federal mandates” that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule simply extends the deadline for EPA to take action on a petition.

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 various levels of government, as specified in Executive Order 13132. It imposes no regulatory burdens. Thus, the requirements of section 6 of the Executive Order do not apply to this action.

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

Executive Order 13175, entitled “Consultation and Coordination with

Indian Tribal Governments” (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications. This rule does not have tribal implications, as specified in Executive Order 13175. Thus Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order had the potential to influence the regulation. 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 That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, “Actions That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355; May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This action does not establish any new regulatory requirements.

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, section 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 applicably 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 (February 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 does not affect the level of protection provided to human health or the environment. This rule 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 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 public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of April 24, 2008. 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

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides,

in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.”

Under CAA section 307(b)(1), a petition to review this action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days of May 1, 2008.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: April 24, 2008.

Stephen L. Johnson,
Administrator.

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9904

Cost Accounting Standards Board; Accounting for the Costs of Employee Stock Ownership Plans (ESOPs) Sponsored by Government Contractors

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Final rule.

SUMMARY: The Cost Accounting Standards Board (the Board), Office of Federal Procurement Policy, has adopted a final rule to amend Cost Accounting Standard (CAS) 412, “Cost Accounting Standard for composition and measurement of pension cost,” and CAS 415, “Accounting for the cost of deferred compensation.” These amendments address issues concerning the recognition of the costs of Employee Stock Ownership Plans (ESOPs) under Government cost-based contracts and subcontracts. These amendments provide criteria for measuring the costs of ESOPs and their assignment to cost