minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation as the rule extends a temporary safety zone. Under figure 2–1, paragraph (34)(g), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are required for this rule because it concerns a safety zone for an emergency situation of longer than 1 week in duration. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01–1272 to read as follows:

§ 165.T01–1272 Safety Zone: Underwater Object, Massachusetts Bay, MA.

(a) *Location*. The following area is a safety zone: All navigable waters, from surface to bottom, of Massachusetts Bay within a 500 yard radius of underwater object, in approximate position 42°24′27″ N, 70°24′14″ W.

(b) *Definitions.* The following definition applies to this section: *Designated representative* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port Boston.

(c) *Regulations.* (1) The general regulations contained in 33 CFR § 165.23 apply.

(2) In accordance with the general regulations in § 165.23 of this part, all vessels and persons are prohibited from entering the safety zone without permission from the Captain of the Port Boston. In addition all vessels and persons are prohibited from anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations in this zone except as authorized by the Coast Guard Captain of the Port Boston.

(3) All persons and vessels shall comply with the Coast Guard Captain of the Port Boston or designated representative.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) Persons desiring to enter the safety zone may request permission from the Captain of the Port Boston via VHF Channel 16 or via telephone at (617) 223–3201.

(d) *Enforcement period.* This rule will be enforced from 12:00 a.m. January 15, 2009, until 11:59 p.m. March 14, 2009.

Dated: January 14, 2009.

G.P. Kulisch,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. E9–3670 Filed 2–19–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2009–0017; FRL–8774–6]

Extension of Deadline for Action on Section 126 Petition From Delaware

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 the Delaware Department of Natural Resources and Environmental Control (DNREC). The petition requests that EPA make a finding under section 126(b) of the Clean Air Act (CAA) that electric generating units (EGUs) in nine upwind states are emitting air pollutants in violation of the provisions of section 110(a)(2)(D)(i) of the CAA. 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 February 20, 2009.

ADDRESSES: EPA has established a docket for this rulemaking under Docket ID number EPA–HQ–OAR–2009–0017. 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 further information, contact Tim Smith, 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: 919–541–4718; fax number: 919–541–0824; e-mail address: *smith.tim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This is a procedural action to extend the deadline for EPA to respond to a petition from Delaware filed under CAA section 126. EPA received the section 126 petition on December 18, 2008. The petition requests that EPA make a finding that EGUs in Maryland, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia, and West Virginia are emitting air pollutants in violation of the provision of section 110(a)(2)(D)(i) of the CAA. That section provides that each state's State Implementation Plan (SIP) shall contain adequate provisions prohibiting 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 national ambient air quality standard (NAAQS). The petition asserts that EGUs in the nine named states have a significant impact on Delaware's air quality and that this impact would be mitigated by further regulation of nitrogen oxide and sulfur dioxide emissions from those sources.

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 three 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 six 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 the Delaware DNREC is not adequate to allow the public and the Agency adequate opportunity to carry out the purposes of section 307(b). Specifically, the 60-day period is insufficient for EPA to develop an adequate proposal and allow time for notice and comment on whether the EGUs identified in the section 126 petition contribute significantly to nonattainment or maintenance problems in Delaware.

EPA is in the process of determining what would be an appropriate schedule for action on the section 126 petition from Delaware. 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 August 13, 2009.

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 February 20, 2009. 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 (EO) 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 simply extends the date for EPA to take action on a petition and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. Therefore, it does not impose an information collection burden.

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

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (URMA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector. This action simply extends the date for EPA to take action on a petition and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of URMA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action simply extends the date for EPA to take action on a petition and does not impose any new obligations or enforceable duties on any small governments.

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 the various levels of government, as specified in Executive Order 13132. This rule simply extends the date for EPA to take action on a petition and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the federal government and indian tribes, or on the distribution of power and responsibilities between the federal government and indian tribes, as specified in Executive Order 13175. This action does not significantly or uniquely affect the communities of indian tribal governments. As discussed above, this action imposes no new requirements that would impose compliance burdens. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because the Agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. 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 action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse effects because this action simply extends the deadline for EPA to take action on a petition.

I. National Technology Transfer and Advancement Act

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 (Feb. 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 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 of the CRA provides an exception to this requirement. For any rule for which an agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest, the rule may take effect on the date set by the Agency. The 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 February 20, 2009.

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: February 12, 2009.

Lisa P. Jackson,

Administrator.

[FR Doc. E9–3660 Filed 2–19–09; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Part 1652

RIN 3206–AL66

Federal Employees Health Benefits Program Acquisition Regulation: Miscellaneous Clarifications and Corrections

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a final rule to amend the Federal Employees Health Benefits Acquisition Regulations (FEHBAR). The rule clarifies the rate-setting process for community-rated carriers with respect to Similarly Sized Subscriber Groups (SSSG) and removes the ban on adjustments based on rate reconciliation for the final year of Federal Employees Health Benefits Program (FEHBP) contracts.

DATES: *Effective Date:* March 23, 2009.

FOR FURTHER INFORMATION CONTACT: Edward M. DeHarde, Senior Policy Analyst at 202–606–0004, or e-mail *Edward.DeHarde@opm.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this regulation is to clarify requirements with respect to the rate-setting process for community-rated carriers and to require rate reconciliation for the final contract term for community-rated carriers that leave the FEHBP.

In prior years, carriers were not subjected to rate reconciliation in the final year of their contracts. Information technology and electronic transmission and storage of data now make it possible to efficiently perform rate reconciliation for the final contract year. Therefore, OPM will begin conducting such rate reconciliation on community-rated contracts that terminate after January 1, 2009.

A proposed rule was published to amend 48 CFR part 1652 in the **Federal Register** at 73 FR 51260, September 2, 2008. OPM requested comments by October 2, 2008. We received one set of comments by that date, from an FEHBP carrier. The issues raised by the commenter are discussed below.

The commenter did not have issue with our change at § 1652.216–70(b)(2) but suggested that we change ''methodology'' in the second sentence to ''established policy'' to be consistent with the language used earlier in the section. We have made this clarifying edit in the final rule.

The commenter indicated that the rule at § 1652.216–70(b)(7) would encourage carriers to reduce the discounts given to OPM or eliminate them entirely. The commentator stated that some carriers offer discounts to prevent against errors and changing assumptions in the rate proposal, such as changes in assumed Medicare Advantage or Medicare Part D rates. To offset these changes or errors, the carrier can then lower the discount it originally offered to OPM. The commenter suggested that we strike the word ''guaranteed'' from our regulation and indicate that discounts may be adjusted only ''if the adjustment results in no change to the net to carrier rate agreed to by OPM before the beginning of the contract year.''

The proposed rule at § 1652.216–70(b)(7) is consistent with the requirements of a fixed price health benefits contract established under the principles of community rating. That is, a plan's premium as agreed to at time of proposal may change only to the extent that it reflects a change that occurs in the plan's community. Discounts that are offered to OPM and guaranteed by the carrier cannot be adjusted after the start of the contract period.

Finally, the commenter indicated that the proposed regulation was too broad at § 1652.216–70(b)(8), because OPM sometimes purchases benefits that are greater than those that the carrier prices in its community using its ''established rating method.''

Nothing in the proposed rule precludes a carrier from rating for FEHB-specific provisions or requirements. The carrier must utilize a consistent rating method for any FEHB-specific provisions and requirements, and would need to apply this same method to its community if such provisions or requirements are extended to its community.

Therefore, for the reasons explained above and in the supplementary information of the proposed rule, the proposed rule amending 48 CFR part 1652 published in the **Federal Register** at 73 FR 51260, September 2, 2008, is adopted as final with a minor clarification at § 1652.216–70(b)(2) to change ''methodology'' to ''established policy.''

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because all the small plan FEHBP contracts fall below the threshold for submitting cost or pricing data.