

FACT SHEET

“Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})” – Final Rule to Repeal Grandfather Provision

ACTION

- On May 10, 2011 EPA issued a final rule to repeal the grandfather provision for PM_{2.5} contained in the federal PSD permit program.
- EPA originally proposed also to end early the 1997 PM₁₀ Surrogate Policy that may be used by states with EPA-approved PSD programs until May 2011; however, EPA has decided to take no action on the latter action.

PM_{2.5} New Source Review (NSR)

- NSR is a national preconstruction clean air permitting program that provides important public health and environmental protection. NSR is comprised of several preconstruction review permitting regulations for major stationary sources locating in attainment or nonattainment areas. The part of NSR that applies to sources locating in attainment areas is called the Prevention of Significant Deterioration (PSD) program.
- The grandfather provision for PM_{2.5} was added to the federal PSD program by the final rule entitled “Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})” (PM_{2.5} NSR Implementation Rule) published in the Federal Register on May 16, 2008. The 2008 rule also allowed states that have PSD programs as part of their approved State Implementation Plan to continue using the 1997 PM₁₀ Surrogate Policy to satisfy the new PM_{2.5} requirements until May 2011—when amendments to their existing PSD programs were required to be submitted to EPA for approval.
- The grandfather provision allows PSD applicants that submitted their complete permit application prior to the July 15, 2008 effective date of the PM_{2.5} NSR Implementation Rule to continue to rely on the 1997 PM₁₀ Surrogate Policy rather than amend their application to demonstrate compliance directly with the new PM_{2.5} requirements.
- The PM₁₀ Surrogate Policy has been in place since 1997, and is designed to enable sources to demonstrate compliance with PSD requirements for PM₁₀ as a surrogate for requirements for PM_{2.5}, in light of various technical issues associated with undertaking a PM_{2.5} analysis. EPA has now determined that these technical issues have largely been resolved and it is no longer appropriate to rely on the 1997 policy to protect the PM_{2.5} NAAQS. Therefore, we are taking this action to repeal the grandfather provision for any grandfathered sources that have still not received their final PSD permit under the federal PSD program.
- Because EPA is taking no action to end the 1997 PM₁₀ Surrogate Policy early for state PSD programs, the use of the policy will end as originally scheduled on May 16, 2011.

- EPA’s 2008 PM_{2.5} NSR Implementation Rule addressed several NSR program requirements for sources that emit PM_{2.5} and the pollutants that contribute to its formation, i.e., precursors. The requirements addressed include:
 - SIPs outlining modifications to state NSR programs to account for emissions of fine particle pollution are due to EPA in 3 years.
 - Timing for implementation of the rule:
 - On July 15, 2008—the effective date of the final rule—the new PM_{2.5} provisions applied immediately:
 - in states where the federal PSD program applies (either EPA implements the program directly or has delegated that responsibility to the state); and
 - in nonattainment areas of states, through the ‘transitional’ NSR provisions until EPA approves a revised SIP.
 - States with EPA-approved PSD programs, may (but are not required to) continue to use the interim approach of relying on PM₁₀ (inhalable particles smaller than, or equal to, 10 micrometers in diameter) as a surrogate for PM_{2.5} (known as the “PM₁₀ Surrogate Policy”) for up to 3 years (May 2011), or until their revised SIPs are approved, whichever occurs first.
 - The PM_{2.5} NSR Implementation Rule does not require states to account for gases that could condense to form particles (called “condensables”) in PM_{2.5} emissions limits in PSD or nonattainment area NSR permits until January 1, 2011.
 - For nonattainment areas, interpollutant offset trading which will allow reductions in direct PM_{2.5} to offset precursor emissions increases, emissions reductions of one precursor to offset emissions increases of another precursor, and reductions in precursor emissions to offset direct PM_{2.5} emissions increases.
- On July 15, 2008, and then again on February 10, 2009, the Natural Resources Defense Council and the Sierra Club (the petitioners) petitioned EPA to reconsideration and administratively stay specific parts of this final rule. The Petition objected to four parts of the final rule described above, including:
 1. providing the new transition schedule, including the use of the PM₁₀ Surrogate Policy, for PSD programs in states with PSD programs that EPA has approved;
 2. “grandfathering” permit applications that were complete, before the rule’s July 15, 2008 effective date and that rely on EPA’s 1997 PM₁₀ Surrogate Policy, so as to continue reviewing the permit application using PM₁₀ emissions as a surrogate for satisfying the new PM_{2.5} requirements;
 3. allowing states to exclude condensable particulate matter from NSR applicability and emission control requirements until January 1, 2011; and
 4. allowing states to use EPA-recommended PM_{2.5} precursor trading ratios to offset PM_{2.5} emissions increases in PM_{2.5} nonattainment areas

PM_{2.5} NSR Actions

- On January 16, 2009, EPA denied the first petition. However, on April 24, 2009, EPA responded to the second petition by reversing its decision, i.e., granting the petition for reconsideration and agreeing to stay one of the challenged provisions—the grandfathering provision for PM_{2.5} in the federal PSD program—for three months.

- On June 1, 2009, EPA published a notice in the Federal Register announcing the April 24 letter to the petitioners, agreeing to grant the petition for reconsideration and to administratively stay the grandfathering provision for PM_{2.5}. The June 1 notice established the effective date of the administrative stay as June 1, 2009.
- The Agency issued two stays of the grandfather provision for PM_{2.5}. The stays are no longer in effect at this time.
- During the second stay, on February 11, 2010, EPA proposed to repeal the grandfathering provision for PM_{2.5} in the federal PSD program and to end early the 1997 PM₁₀ Surrogate Policy currently allowed in SIP-approved states. Thus, the proposal addressed two of the issues challenged by the petitioners.
- This final action will repeal the grandfather provision for PM_{2.5} under the federal PSD program. Thus, affected grandfathered (those that have not yet received their final PSD permit) generally must meet the PM_{2.5} requirements with a PM_{2.5} analysis or, alternatively, use a surrogate analysis (other than the 1997 PM₁₀ Surrogate Policy) that includes a case-specific demonstration of surrogacy in the permit record.

BACKGROUND

- Congress established the NSR program as part of the 1977 Clean Air Act Amendments and modified it in the 1990 Amendments. NSR is a preconstruction permitting program that serves two important purposes.
 1. It ensures the maintenance of air quality standards when factories, industrial boilers and power plants are modified or added. In areas that do not meet the national air quality standards, NSR ensures that new emissions do not slow progress toward cleaner air. In areas that meet the standards, especially pristine areas like national parks, NSR ensures that new emissions fall within protective air quality standards.
 2. The NSR program ensures that state of the art control technology is installed at new plants or at existing plants that are undergoing a major modification.

FOR ADDITIONAL INFORMATION

- Interested parties can download information on this action from EPA's Web site at: www.epa.gov/nsr.
- The notice of proposed rulemaking to extend the administrative stay and other background information are also available either electronically in www.regulations.gov, EPA's electronic public docket and comment system. Docket ID No. is EPA-HQ-OAR-2003-0062.