

PM2.5 NSR - NOTICE OF PROPOSED RULEMAKING TO REPEAL THE GRANDATHERING PROVISION AND END THE PM-10 SURROGATE POLICY

On February 11, 2010, EPA proposed to repeal the “grandfathering” provision for PM2.5 contained in the federal PSD program, and proposed to end early the PM10 Surrogate Policy applicable in states that have an approved PSD program in their SIP (75 FR 6827). Comments on the proposal are due on or before March 15, 2010.

PM-10 Surrogate Policy

The PM-10 Surrogate Policy originated from an October 1997 memorandum from the EPA entitled Interim Implementation for the New Source Review Requirements for PM2.5. This guidance states that sources are allowed to use implementation of a PM10 program as a surrogate for meeting PM2.5 NSR requirements until difficulties surround PM2.5 are resolved. The difficulties surrounding PM2.5 include lack of data necessary for calculating PM2.5, lack of modeling techniques and lack of monitoring sites.

In the May 2008 final PM2.5 NSR rules, the rule became effective immediately in states where the federal PSD program applies, and in nonattainment areas of states through the transitional NSR provisions until EPA approves a revised SIP. In states with EPA-approved PSD programs, the states could continue to use the interim approach of relying on the PM10 Surrogate Policy for up to 3 years (until May 2011) or until individual revised state PSD programs for PM2.5 are approved by EPA, whichever comes first.

In the February 2010 proposed rulemaking, EPA is proposing to end early the PM10 Surrogate Policy in SIP-approved states because EPA believes the complexities surrounding PM2.5 have been resolved to a sufficient degree. If EPA decides to end the PM10 Surrogate Policy before the end of the transition period, EPA is proposing that new and modified major sources seeking permits would be thereafter required to conduct permit-related analyses based on PM2.5 rather than PM10.

Grandfathering Provision

The “grandfathering” provision for PM2.5 applies exclusively to the permitting requirements under the federal PSD program in states lacking EPA-approved PSD permits. This provision allows federal PSD permit applications to meet permitting requirements for both fine and coarse PM by relying solely on the coarse PM requirements, if they applied for the permit before July 15, 2008 and have not yet received their permit, exempting them from the new PSD requirements that would otherwise have applied. The “grandfathering” provision was part of the final rule for PM2.5 NSR, published on May 16, 2008.

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The Natural Resources Defense Council and the Sierra Club submitted a petition seeking reconsideration of the grandfathering provisions for PM_{2.5} in July 2008. EPA denied the petition on January 14, 2009, but on April 24, 2009, EPA responded to the second petition agreeing to reconsider aspects of the rule and stay the grandfathering provision for 3 months, until September 1, 2009. A second stay was then issued for an additional nine months, until June 22, 2010, to allow for additional time to finalize the rulemaking.

In the February 2010 proposed rulemaking, EPA proposes to repeal the grandfathering provision. If the rule becomes final, any PSD permit application covered by the grandfathering provision that have not yet been approved and issued a final and effective PSD permit will not be able to rely on the PM₁₀ Surrogate Policy, but will have to satisfy the PSD requirements for PM_{2.5}. EPA does not propose to interpret the repeal to have any effect on permits that became final and effective before the stay.