

FACT SHEET
PM_{2.5} NSR Implementation Response to Petition for Reconsideration

ACTION

- On January 15, 2009, the Environmental Protection Agency (EPA) announced that it has denied a petition from the Natural Resources Defense Council (NRDC) and Sierra Club (SC) requesting reconsideration and a stay of certain parts of the May 16, 2008, final rule: Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}).
- On July 15, 2008, EPA received a Petition for Reconsideration and request for an administrative stay from NRDC and SC. The Petition objected to four parts of the final rule described above:
 - (1) using the new transition scheme for PSD programs in states with PSD programs that EPA has approved;
 - (2) submitting complete source permit applications before July 15, 2008 that rely on EPA PM₁₀ guidance may be “grandfathered” so as to continue 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
- The petition also asked EPA to consider the staff time and other resources that would be expended to reconsider this final rule in light of the many responsibilities of the Agency and its limited resources.
- EPA’s response to the NRDC/SC petition explains that for each issue, EPA had adequately provided for public comment before reaching a final decision. In the case of precursor emissions, public comment is built into the process of developing a state plan. Because the issues are already addressed in the final rule, reconsideration is not necessary.
- Specifically, EPA determined that:
 - consistent with past practice, it is reasonable to allow states up to three years to submit SIP revisions containing new requirements for the fine particle PSD program;
 - re-evaluating the very few sources relying upon the coarse particle surrogate policy is not necessary and would disrupt state permitting programs;
 - despite the temporary exclusion of condensable particulate matter (CPM), many states and sources are addressing CPM through the permitting process, and control technologies used to reduce particle pollution also can control CPM; and
 - the Clean Air Act contains the necessary authority for us to regulate precursor emissions, including allowing offset trading.
- In its response, EPA also denied the NRDC/SC request for a stay of the May 16, 2008, final rule.

- A separate challenge of the rule before the DC Circuit Court of Appeals is still pending.

BACKGROUND

- The May 16, 2008, final rule, addressed several NSR program requirements for sources that emit PM_{2.5} and the pollutants that contribute to its formation, including the following requirements:

Revised SIP Submittal Deadlines

- States with EPA-approved Prevention of Significant Deterioration (PSD) programs and those with PM_{2.5} nonattainment areas have up to three years from the publication of this final rule to submit revised state implementation plans (SIPs) incorporating these new NSR requirements for PM_{2.5}.

Timing of Implementation of the Rule

- Upon the effective date of this rule, this rule will apply immediately:
 - in states that implement EPA's PSD rule through delegation (delegated states); and
 - in nonattainment areas of the states, through the 'transitional' NSR provisions (contained in Appendix S of 40 CFR 51) until a revised SIP is approved by EPA.
- States with EPA-approved PSD programs, should continue to use the existing interim approach of relying on PM₁₀ (inhalable particles smaller than, or equal to, 10 micrometers in diameter) as a surrogate for PM_{2.5} until their revised SIPs are approved.

Accounting for Condensable Particulate Matter Emissions

- This rule does not initially require states to account for gases that could condense to form particles (called "condensables") in PM_{2.5} emissions limits in PSD or nonattainment NSR permits until the transition period ends or January 1, 2011, whichever happens first. EPA has adopted a transition period for the collaborative validation of test methods used to measure emissions of these particles.

Interpollutant Offset Trading

- This final rule allows interpollutant trading under the PM_{2.5} nonattainment NSR program only based on a trading ratio established in the State Implementation Plan (SIP) approved for a specific nonattainment area, on a regional or statewide basis, but precludes the approval of ratios on a permit-by-permit basis.
- The permissible interpollutant offset trading allows 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.
- To facilitate these trading provisions, EPA has provided recommended trading ratios that specify the amount of each pollutant which may be traded for any other. States may elect to use EPA's trading ratios or develop their own subject to EPA approval.

FOR ADDITIONAL INFORMATION

- The response to NRDC/SC petition and today's notice of EPA's decision denying the petition may be found at EPA's website at <http://www.epa.gov/nsr> under Regulations & Standards.
- The final PM_{2.5} NSR Implementation rule published in the Federal Register on May 16, 2008 (73 FR 28321) is also available at EPA's website at <http://www.epa.gov/nsr> under Regulations & Standards.
- Background information on the PM_{2.5} NSR Implementation rulemaking is available either electronically at <https://www.regulations.gov>, EPA's electronic public docket and comment system, or in hardcopy at the EPA Docket Center's Public Reading Room.
 - The Public Reading Room is located in the EPA Headquarters, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW, Washington, DC. Hours of operation are 8:30 a.m. to 4:30 p.m. eastern standard time, Monday through Friday, excluding Federal holidays.
 - Visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.
 - Supporting information for this action can be accessed under Docket ID No. EPA-HQ-OAR-2003-0062.
- For general information about the petition for reconsideration or the final ethanol rule, please contact Dan deRoeck of EPA's Office of Air Quality Planning and Standards at (919) 541-5593, or deroeck.dan@epa.gov.