notice is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects

40 CFR Part 51

Administrative practices and procedures, Air pollution control, Carbon monoxide, Fugitive emissions, Intergovernmental relation, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

40 CFR Part 52

Administrative practices and procedures, Air pollution control, Carbon monoxide, Fugitive emissions, Intergovernmental relation, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

Dated: February 4, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–2965 Filed 2–10–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0569; FRL–9112–2]

Approval of Air Quality Implementation Plans; New Mexico; Albuquerque/ Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing revisions to the State Implementation Plan submitted by the Governor of New Mexico on May 24, 2006. The revisions address Title 20 of the New Mexico Administrative Code, Chapter 11, Part 102 (denoted 20.11.102 NMAC), which apply to oxygenated fuels in the Albuquerque/Bernalillo County area. The revisions include editorial and substantive changes that clarify the requirements under 20.11.102 NMAC. We are proposing to approve these revisions in accordance with the requirements of section 110 of the Clean Air Act.

DATES: Written comments must be received on or before *March 15, 2010.*

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/ courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carrie Paige, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6521; fax number 214–665–7263; e-mail address *paige.carrie@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: January 15, 2010.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2010–2791 Filed 2–10–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2003–0062: FRL–9113–2]

RIN 2060–AP75

Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$); Notice of Proposed Rulemaking To Repeal Grandfathering Provision and End the PM_{10} Surrogate Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, in response to a petition for reconsideration, EPA is proposing two actions that would end EPA's 1997 policy that allows sources and permitting authorities to use a demonstration of compliance with the prevention of significant deterioration (PSD) requirements for particulate matter less than 10 micrometers (PM_{10}) as a surrogate for meeting the PSD requirements for particulate matter less than 2.5 micrometers ($PM_{2.5}$). First, in accordance with the Administrator's commitment to the petitioners in a letter dated April 24, 2009, the EPA is proposing to repeal the "grandfathering" provision for $PM_{2.5}$ contained in the Federal PSD program. Second, EPA is proposing to end early the PM_{10} Surrogate Policy applicable in States that have an approved PSD program in their State Implementation Plan ("SIP-approved States").

DATES: *Comments.* Comments must be received on or before March 15, 2010.

Public Hearing. If anyone contacts EPA requesting the opportunity to speak at a public hearing concerning the proposed regulation by February 22, 2010, EPA will hold a public hearing on February 26, 2010. If a hearing is held, the record for the hearing will remain open until March 29, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0062, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW.,

Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to the applicable docket. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: 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.,* CBI 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 form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. 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) 566–1742, and the telephone number for the Air Docket is (202) 566–1744.

Public Hearing. If a public hearing is held, it will be held at the U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Dan deRoeck, Air Quality Policy Division, (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711; telephone number (919) 541–5593; fax number (919) 541–5509; or e-mail address: *deroeck.dan@epa.gov.*

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–0641; fax number (919) 541–5509; e-mail address: *long.pam@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities affected by this proposed action include: (1) Those proposed new and modified major stationary sources subject to the Federal PSD program that submitted a complete application for a PSD permit before the July 15, 2008 effective date of the $PM_{2.5}$ New Source Review (NSR) Implementation Rule, but have not yet received a final and effective permit authorizing the source to commence construction, and (2) those proposed new and modified major stationary sources, subject to a PSD program in SIP-approved States, that have not yet received a final and effective permit authorizing the source to commence construction.

EPA estimates that about twenty-one proposed new sources or modifications would be affected by the proposed repeal of the grandfathering provision. At least two projects known to have been grandfathered have already received final permits to construct (that are effective) prior to EPA taking action to stay the provision, but EPA is not proposing that this repeal would apply retroactively to such permits.

The entities potentially affected by a proposal to end early the use of the PM_{10} Surrogate Policy in SIP-approved States include proposed new and modified major stationary sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups:

Industry group	NAICS [a]
Electric services	221111, 221112, 221113, 221119, 221121, 221122.
Petroleum refining	32411.
Industrial inorganic chemicals	325181, 32512, 325131, 325182, 211112, 325998, 331311, 325188.
Industrial organic chemicals	32511, 325132, 325192, 325188, 325193, 32512, 325199.
Miscellaneous chemical products	32552, 32592, 32591, 325182, 32551.
Natural gas liquids	211112.
Natural gas transport	48621, 22121.
Pulp and paper mills	32211, 322121, 322122, 32213.
Paper mills	322121, 322122.
Automobile manufacturing	336111, 336112, 336712, 336211, 336992, 336322, 336312, 33633, 33634, 33635, 336399, 336212, 336213.
Pharmaceuticals	325411, 325412, 325413, 325414.

[a] North American Industry Classification System.

Entities affected by this proposal also include State and local reviewing authorities, and Indian country, where affected new and modified major stationary sources would locate.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit information containing CBI to EPA through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, *Attention:* Docket

ID EPA–HQ–OAR–2003–0062. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting your comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this proposed rule will be posted in the regulations and standards section of our NSR home page located at *http://www.epa.gov/nsr.*

D. How can I find information about a possible Public Hearing?

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–0641; fax number (919) 541–5509; e-mail address: *long.pam@epa.gov.*

E. How is this preamble organized?

II. Background

A. Prevention of Significant Deterioration (PSD) Program

The NSR provisions of the Clean Air Act (Act) are a combination of air quality planning and air pollution control technology program requirements for new and modified major stationary sources of air pollution. Section 109 of the Act requires EPA to promulgate primary national ambient air quality standards (NAAQS or standards) to protect public health and secondary NAAQS to protect public welfare. Once we [1] have set these standards, States must develop, adopt, and submit to us for approval SIPs that contain emission limitations and other control measures to attain and maintain the NAAQS and to meet the other requirements of section 110(a) of the Act.

Part C of title I of the Act contains the requirements for a component of the major NSR program known as the PSD program. The PSD program sets forth procedures for the preconstruction review and permitting of new and modified major stationary sources of air pollution locating in areas meeting the NAAQS ("attainment" areas) and areas for which there is insufficient information to classify an area as either attainment or nonattainment ("unclassifiable" areas). In most States, EPA has approved a PSD permit program that is part of the applicable SIP. The Federal PSD program at 40 CFR 52.21 applies in States that lack a SIP-approved PSD permit program, and in Indian country.[2] The applicability of the PSD program to a new major stationary source or major modification must be determined in advance of construction and is a pollutant-specific determination. Once a major new source or major modification is determined to be subject to the PSD program (*i.e.,* a PSD source), among other requirements, it must undertake a series of analyses for each NSR regulated pollutant subject to review to demonstrate that it will use the best available control technology (BACT) and will not cause or contribute to a violation of any NAAQS or increment. In cases where the source's emissions of any NSR regulated pollutant may adversely affect an area specially classified as "Class I,"

[1] In this proposal, the terms "we," "us," and "our," refer to the EPA.

[2] We have delegated our authority to some States that lack an approved PSD program in their SIPs but have requested the authority to implement the Federal PSD program. The EPA remains the reviewing authority in non-delegated States lacking SIP-approved programs and in Indian country.

additional review must be conducted to protect the Class I area's increments and special attributes referred to as "air quality related values."

Under certain circumstances, EPA has previously allowed proposed new major sources and major modifications that have submitted a complete PSD permit application before the effective date of an amendment to the PSD regulations, but have not yet received a final and effective PSD permit, to continue relying on information already in the application rather than immediately having to amend applications to demonstrate compliance with the new PSD requirements. In such a way, these proposed sources and modifications were "grandfathered" or exempted from the new PSD requirements that would otherwise have applied to them.

For example, the Federal PSD regulations at 40 CFR 52.21(i)(1)(x) provide that the owners or operators of proposed sources or modifications that submitted a complete permit application before July 31, 1987, but did not yet receive the PSD permit, are not required to meet the requirements for PM_{10}, but could instead satisfy the requirements for total suspended particulate matter that were previously in effect.

In addition, EPA has allowed some grandfathering for permit applications submitted before the effective date of an amendment to the PSD regulations establishing new maximum allowable increases in pollutant concentrations (also known as PSD increments). The Federal PSD regulations at 40 CFR 52.21(i)(10) provide that proposed sources or modifications that submitted a complete permit application before the effective date of the increment in the applicable implementation plan are not required to meet the increment requirements for particulate matter less than 10 microns, but could instead satisfy the increment requirements for total suspended particulate matter that were previously in effect. Also, 40 CFR 52.21(b)(i)(9) provides that sources or modifications that submitted a complete permit application before the provisions embodying the maximum allowable increase for nitrogen oxides (the NO_2 increments) took effect, but did not yet receive a final and effective PSD permit, are not required to demonstrate compliance with the new increment requirements to be eligible to receive the permit.

When the reviewing authority reaches a preliminary decision to authorize construction of a proposed major new source or major modification, the authority must provide notice of the preliminary decision and an opportunity for comment by the general public, industry, and other persons that may be affected by the emissions of the proposed major source or major modification. After considering these comments, the reviewing authority may issue a final determination on the construction permit in accordance with the PSD regulations. However, under EPA regulations at 40 CFR part 124 and similar State regulations, an administrative appeal of a permitting determination may prevent the permit from becoming final and effective until the appeal is resolved.

B. Fine Particulate Matter and the NAAQS for $PM_{2.5}$

Fine particles in the atmosphere are made up of a complex mixture of components. Common constituents include sulfate (SO_4); nitrate (NO_3); ammonium; elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as "crustal" material, although it may contain material from other sources. Airborne particulate matter with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair) is considered to be "fine particles," and is also known as $PM_{2.5}$. "Primary" particles are emitted directly into the air as a solid or liquid particle (*e.g.,* elemental carbon from diesel engines or fire activities, or condensable organic particles from gasoline engines). "Secondary" particles (*e.g.,* SO_4 and NO_3) form in the atmosphere as a result of various chemical reactions.

The health effects associated with exposure to $PM_{2.5}$ are significant. Epidemiological studies have shown a significant correlation between elevated $PM_{2.5}$ levels and premature mortality. Other important effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.

On July 18, 1997, we revised the NAAQS for PM to add new standards for fine particles, using $PM_{2.5}$ as the indicator. We established health-based (primary) annual and 24-hour standards for $PM_{2.5}$. *See* 62 FR 38652. We set an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$) and a 24-hour standard at a level of 65 $\mu g/m^3$. At the time we established the primary standards in 1997, we also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of $PM_{2.5}$ such as visibility impairment, soiling, and materials damage.

On October 17, 2006, we revised the primary and secondary NAAQS for $PM_{2.5}$ and PM_{10}. In that rulemaking, we reduced the 24-hour NAAQS for $PM_{2.5}$ to 35 $\mu g/m^3$ and retained the existing annual $PM_{2.5}$ NAAQS of 15 $\mu g/m^3$. In addition, we retained PM_{10} as the indicator for coarse PM, retained the existing PM_{10} 24-hour NAAQS of 150 $\mu g/m^3$, and revoked the annual PM_{10} NAAQS (which had previously been set at 50 $\mu g/m^3$). *See* 71 FR 61236.

C. How is the PSD program for $PM_{2.5}$ implemented?

After we promulgated the NAAQS for $PM_{2.5}$ in 1997, we issued a guidance document entitled "Interim Implementation for the New Source Review Requirements for $PM_{2.5}$" (John S. Seitz, EPA, October 23, 1997).[3] That guidance was designed to help States implement the Act requirements for PSD pertaining to the new $PM_{2.5}$ NAAQS and $PM_{2.5}$ as a regulated pollutant in light of known technical difficulties to addressing $PM_{2.5}$. Specifically, section 165(a)(1) of the Act provides that no new or modified major source may be constructed without a PSD permit that meets all of the section 165(a) requirements with respect to the regulated pollutant. Moreover, section 165(a)(3) provides that the emissions from any such source may not cause or contribute to a violation of any NAAQS. Also, section 165(a)(4) requires BACT for each pollutant subject to PSD regulation. The 1997 guidance states that sources are allowed to use implementation of a PM_{10} program as a surrogate for meeting $PM_{2.5}$ NSR requirements until certain difficulties concerning $PM_{2.5}$ are resolved, including the lack of necessary tools to calculate the emissions of $PM_{2.5}$ and related precursors, the lack of adequate modeling techniques to project ambient impacts, and the lack of $PM_{2.5}$ monitoring sites.

On May 16, 2008, EPA published a final rule containing requirements for

[3] Available in the docket for this rulemaking, ID No. EPA–HQ–OAR–2003–0062, and at *http://www.epa.gov/region07/programs/artd/air/nsr/nsrmemos/pm25.pdf.*

State and Tribal plans to implement the Act's preconstruction review provisions for the 1997 $PM_{2.5}$ NAAQS in both attainment and nonattainment areas. 73 FR 28321. The rule, with two exceptions, requires that major stationary sources seeking permits must begin directly satisfying the $PM_{2.5}$ requirements as of the effective date of the new rule, rather than relying on the 1997 PM_{10} Surrogate Policy. First, in $PM_{2.5}$ attainment (or unclassifiable) areas, the new PSD requirements under 40 CFR 51.166 set forth the $PM_{2.5}$ requirements for States with SIP-approved programs to include in their State PSD programs; similar requirements were added to 40 CFR 52.21—the Federal PSD program—for EPA (or, where applicable, delegated State agencies) to use for implementing the new $PM_{2.5}$ requirements in States lacking approved PSD programs in their SIPs.

Second, in $PM_{2.5}$ nonattainment areas, new requirements were added to 40 CFR 51.165 to enable States to address the $PM_{2.5}$ NAAQS as part of a nonattainment NSR program. During the period of time allowed for States to amend their existing nonattainment NSR programs to address the new $PM_{2.5}$ requirements, States are allowed to rely on the procedures under 40 CFR part 51 appendix S ("The Interpretative Rule") to issue permits to new or modified major stationary sources proposing to locate in a $PM_{2.5}$ nonattainment area. In the preamble to the May 2008 final rule, EPA indicated that, in any State that was unable to apply the $PM_{2.5}$ requirements of appendix S, EPA would act as the reviewing authority for the relevant $PM_{2.5}$ portions of the nonattainment NSR permit. *See* 73 FR at 28342.

As mentioned, there were two exceptions to the imposition of new $PM_{2.5}$ requirements to replace the use of the 1997 PM_{10} Surrogate Policy for issuing construction permits. The May 2008 final rule included a grandfathering provision for $PM_{2.5}$ in the Federal PSD program at 40 CFR 52.21. This grandfathering provision applied to sources that had applied for, but had not yet received, a final and effective PSD permit before the July 15, 2008 effective date of the May 2008 final rule. The relevant grandfathering provision is described in greater detail in section III.A of this preamble. This grandfathering provision had not been proposed for comment in the November 1, 2005 notice of proposed rulemaking. Instead, the November 2005 proposal provided that the revised $PM_{2.5}$ requirements when final would take effect immediately in States where the Federal PSD program applies. 70 FR 65986, November 1, 2005 at 66043.

For States with SIP-approved PSD programs, the preamble to the May 2008 final rule stated that SIP-approved States may continue to implement a PM_{10} program as a surrogate to meet the PSD program requirements for $PM_{2.5}$ pursuant to the 1997 [PM_{10} Surrogate Policy]" for up to three years (until May 2011) or until the individual revised State PSD programs for $PM_{2.5}$ are approved by EPA, whichever comes first. *See* 73 FR 28341.

D. Case Law Relevant to the Use of the PM_{10} Surrogate Policy

When EPA issued the PM_{10} Surrogate Policy in 1997, we stated that meeting the NSR program requirements for PM_{10} may be used as a surrogate for meeting the NSR program requirements for $PM_{2.5}$ until certain technical difficulties concerning $PM_{2.5}$ are resolved. At that time, we did not identify criteria to be applied before the policy could be used for satisfying the $PM_{2.5}$ requirements. However, courts have issued a number of opinions that should be read as establishing guidelines for the use of an analysis based on PM_{10} as a surrogate for meeting the PSD requirements for $PM_{2.5}$. Applicants and State permitting authorities seeking to rely on the PM_{10} Surrogate Policy should consider these opinions in determining whether PM_{10} serves as an adequate surrogate for meeting the $PM_{2.5}$ requirements in the case of the specific permit application at issue.

First, courts have held that a surrogate may be used only after it has been shown to be reasonable to do so. *See, e.g., Sierra Club* v. *EPA,* 353 F.3d 976, 982–984 (D.C. Cir. 2004) (stating general principle that EPA may use a surrogate if it is "reasonable" to do so and applying analysis from *National Lime Assoc.* v. *EPA,* 233 F.3d 625, 637 (D.C. Cir. 2000) that is applicable to determining whether use of a surrogate is reasonable in setting emissions limitations for hazardous air pollutants under section 112 of the Act); *Mossville Environmental Action Now* v. *EPA,* 370 F. 3d 1232, 1242–43 (D.C. Cir. 2004) (EPA must explain the correlation between the surrogate and the represented pollutant that provides the basis for the surrogacy.); *Bluewater Network* v. *EPA,* 370 F. 3d 1, 18 (D.C. Cir. 2004) ("The Agency reasonably determined that regulating [hydrocarbons] would control PM pollution both because HC itself contributes to such pollution, and because HC provides a good proxy for regulating fine PM emissions."). Though these court opinions all addressed when it was reasonable to use a surrogate in contexts different from the use of the PM_{10} Surrogate Policy, EPA believes that the overarching legal principle from these decisions is that a surrogate may be used only after it has been shown to be reasonable (such as where the surrogate is a reasonable proxy for the pollutant or has a predictable correlation to the pollutant) and that this principle applies where an applicant or permitting authority seeks to rely upon the PM_{10} Surrogate Policy in lieu of a $PM_{2.5}$ analysis to obtain a PSD permit.

Second, with respect to PM surrogacy in particular, there are specific issues raised in the case law that bear on whether PM_{10} can be considered a reasonable surrogate for $PM_{2.5}$. The D.C. Circuit concluded that PM_{10} was an arbitrary surrogate for a PM pollutant that is one fraction of PM_{10} where the use of PM_{10} as a surrogate for that fraction is "inherently confounded" by the presence of the other fraction of PM_{10}. *ATA* v. *EPA,* 175 F.3d 1027, 1054 (D.C. Cir. 1999) (PM_{10} is an arbitrary indicator for coarse PM ($PM_{10–2.5}$) because the amount of coarse PM within PM_{10} will depend arbitrarily on the amount of fine PM ($PM_{2.5}$)). In another case, however, the D.C. Circuit held that the facts and circumstances in that instance provided a reasonable rationale for using PM_{10} as a surrogate for a fraction of PM_{10}. *American Farm Bureau* v. *EPA,* 559 F.3d 512, 534–35 (D.C. Cir. 2009) (where the record demonstrated that (1) $PM_{2.5}$ tends to be higher in urban areas than in rural areas, and (2) evidence of health effects from coarse PM in urban areas is stronger, EPA reasoned that setting a single PM_{10} standard for both urban and rural areas would tend to require lower coarse PM concentrations in urban areas. The court considered the reasoning from the *ATA* case and accepted that the presence of $PM_{2.5}$ in PM_{10} will cause the amount of coarse PM in PM_{10} to vary, but on the specific facts before it held that such variation was not arbitrary.) EPA believes that these cases demonstrate the need for permit applicants and permitting authorities to determine whether PM_{10} is a reasonable surrogate for $PM_{2.5}$ under the facts and circumstances of the specific permit at issue, and not proceed on a general presumption that PM_{10} is always a good surrogate for $PM_{2.5}$.

Thus, based on this case law, rather than simply assuming that using the 1997 PM_{10} Surrogate Policy is always an adequate alternative for satisfying the $PM_{2.5}$ PSD requirements, permit applicants and permitting authorities seeking to apply the 1997 PM_{10}

Surrogate Policy must ensure that the record for each permit supports using PM_{10} as a surrogate for $PM_{2.5}$ under the circumstances.

Finally, this case law suggests that any person attempting to show that PM_{10} is a reasonable surrogate for $PM_{2.5}$ would need to address the differences between PM_{10} and $PM_{2.5}$. For example, emission controls used to capture coarse particles in some cases may be less effective in controlling $PM_{2.5}$. 72 FR 20,586, 20,617 (April 25, 2007). As a further example, the particles that make up $PM_{2.5}$ may be transported over long distances while coarse particles normally travel shorter distances. 70 FR 65,984, 65,997–98 (November 1, 2005). Under the principles in the case law, any source or permitting authority seeking to use the PM_{10} Surrogate Policy properly would need to consider the differences between PM_{10} and $PM_{2.5}$ and demonstrate that PM_{10} is nonetheless an adequate surrogate for $PM_{2.5}$.[4]

III. Transition to the $PM_{2.5}$ Requirements for States Lacking EPA–Approved PSD Programs

A. What is the existing grandfathering provision for $PM_{2.5}$?

As described in section II.C of this preamble, new and modified major stationary sources applying for permits under the Federal PSD program after the July 15, 2008 effective date of the May 2008 final rule must directly satisfy the requirements for $PM_{2.5}$ rather than rely on the PM_{10} Surrogate Policy to satisfy those requirements. However, until the EPA recently stayed the provision for three months, the grandfathering provision contained in the Federal PSD program at 40 CFR 52.21(i)(1)(xi) allowed sources that had not yet received final and effective permits, but had submitted a complete PSD permit application before the effective date of the final rule for $PM_{2.5}$, to continue having their application reviewed on the basis of the PM_{10} Surrogate Policy.

In the preamble to the final rule, EPA indicated that it believed that the $PM_{2.5}$ grandfathering provision was consistent with the existing provision under 40 CFR 52.21(i)(1)(x) whereby EPA grandfathered new and modified major stationary sources with permit applications based on PM from the then-new PM_{10} increment requirements established in 1987. Thus, applicants would not be expected to perform new analyses to establish compliance with the BACT and air quality requirements for $PM_{2.5}$ in cases where they had submitted their complete applications on the basis of the PM_{10} Surrogate Policy before the effective date of the new regulations.

At the time the grandfathering provision for $PM_{2.5}$ was put into effect, we estimate that less than twenty proposed new or modified major stationary sources were covered. Of these, at least two projects subsequently received final and effective PSD permits after the July 15, 2008 effective date of the final rule.

B. Petitioners' 2008 Challenge to the Grandfathering Provision for $PM_{2.5}$

On July 15, 2008, the Natural Resources Defense Council and the Sierra Club jointly submitted a petition to the Administrator seeking reconsideration of four provisions of the May 16, 2008 final rule, including the grandfathering provision for $PM_{2.5}$ under the Federal PSD program. In the petition, the petitioners argued that "EPA unlawfully failed to present this grandfathering provision and accompanying rationale to the public for comment." July 15 Petition at 6. Thus, petitioners argued, EPA had not given interested parties any notice of and the opportunity to comment on the grandfathering provision that EPA adopted in 40 CFR 52.21(i)(1)(xi) in the final rule. Moreover, with regard to the grandfathering provision itself, the petitioners questioned EPA's authority to waive statutory requirements by establishing such a provision and argued that "Congress specifically addressed the issue of grandfathering in section 168(b) and again allowed for the grandfathering of only those sources on which 'construction has commenced' before enactment of the 1997 Clean Air Act Amendments." July 15 Petition at 7. Finally, petitioners argued that the technical difficulties with respect to $PM_{2.5}$ monitoring, emissions estimation and modeling that led to the adoption of the 1997 PM_{10} Surrogate Policy no longer exist, and that those sources not falling within the grandfathering provision must conduct the required analyses for $PM_{2.5}$ directly without relying on the PM_{10} Surrogate Policy, and so there was no justification for the grandfathering provision. July 15 Petition at 8. In sum, petitioners asserted that the grandfathering provision in § 52.21(i)(1)(xi) was illegal and arbitrary, and requested that EPA stay the provision.

On January 14, 2009, EPA responded in a letter to the petitioners that the Agency was denying all aspects of the petition for reconsideration.

C. Petitioners' 2009 Petition Seeking Reconsideration and a Stay of the Grandfathering Provision for $PM_{2.5}$

On February 10, 2009, the same petitioners submitted a second petition similar to the first to EPA. The second petition made the same arguments that were presented in the July 15, 2008 petition seeking reconsideration and an administrative stay and sought reconsideration of both the May 2008 final rule and the January 2009 denial of petitioners' first petition for reconsideration. In response to the February 2009 petition, on April 24, 2009, the Administrator reversed the Agency's earlier decision and agreed to reconsider each of the four challenged provisions. In addition, the Administrator indicated that the Agency intended to propose repealing the grandfathering provision "on the grounds that it was adopted without prior public notice and is no longer substantially justified in light of the resolution of the technical issues with respect to $PM_{2.5}$ monitoring, emissions estimation, and air quality modeling that led to the PM_{10} Surrogate Policy in 1997." Finally, the Administrator announced that she was administratively staying the grandfathering provision for three months under the authority of section 307(d)(7)(B) of the Act. That three-month administrative stay became effective on June 1, 2009—the date the notice announcing the stay was published in the **Federal Register**—and ended on September 1, 2009. (74 FR 26098). In order to allow additional time necessary to finalize this rulemaking, EPA proposed and promulgated a second stay that will keep the grandfathering provision stayed until June 22, 2010. *See* 74 FR 48153, September 22, 2009.

D. Why is EPA proposing to repeal the grandfathering provision for $PM_{2.5}$?

In this notice, consistent with the Administrator's April 24, 2009 letter to the petitioners, we are proposing to repeal the grandfathering provision in the Federal PSD program at 40 CFR 52.21(i)(1)(xi). As described above, the November 1, 2005, proposal provided that the revised $PM_{2.5}$ requirements would take effect immediately in States where the Federal PSD program applies (*see* 70 FR 66043), and did not propose or seek comment on the continued application of the PM_{10} Surrogate Policy to sources that submitted an application before the effective date of the new rule but had not yet received a final and

[4] Additional discussion about the relevant case law and EPA's position on the use of PM_{10} as a surrogate for $PM_{2.5}$ for PSD permitting is contained in an Administrative Order issued on August 12, 2009 responding to petitioners' concerns about the use of the PM_{10} Surrogate Policy in a PSD permit issued to Louisville Gas and Electric Company.

effective PSD permit. On review of the reconsideration petition, we agree with the petitioners that it was not appropriate to adopt the grandfathering provision without providing for public notice and comment on the concept of allowing certain sources covered by the Federal PSD program to continue to use the PM_{10} Surrogate Policy after the effective date of the final rule. Moreover, we find that there is sufficient justification to propose repealing the grandfathering provision. The impact of a repeal will be to require sources that submitted a permit application before the effective date (July 15, 2008) of the May 16, 2008, final rule to satisfy the PSD requirements for $PM_{2.5}$ without reliance on the PM_{10} Surrogate Policy. However, EPA does not propose to interpret this proposed repeal to have any effect on permits that became final and effective before the stay of section 52.21(i)(1)(xi) by the Administrator.

Our proposal to repeal the grandfather provision rests primarily on the fact that the $PM_{2.5}$ implementation issues that led to the adoption of the PM_{10} Surrogate Policy in 1997 have been largely resolved to a degree sufficient for the owners and operators of sources and permitting authorities to conduct meaningful permit-related $PM_{2.5}$ analyses. For example, adequate procedures for the collection of ambient $PM_{2.5}$ are now well established throughout the country and provide data useful for the purpose of PSD permitting. Also, air quality modeling of direct $PM_{2.5}$ emissions can be accomplished using an EPA-approved model to predict ambient $PM_{2.5}$ impacts caused by new and modified sources of $PM_{2.5}$ emissions. Emissions factors for calculating $PM_{2.5}$ emissions from various source categories and equipment are available, as are national inventories of $PM_{2.5}$ emissions.

While direct analysis of $PM_{2.5}$ impacts may now be conducted, not all technical difficulties have been resolved. For example, EPA has not approved any models that can reliably predict the localized ambient $PM_{2.5}$ impacts of precursors (*e.g.,* SO_2 and NO_X) emitted from individual stationary sources. Some regional-scale photochemical transport models have been modified to provide the capability to track the transport and formation of primary and secondarily-formed $PM_{2.5}$ from either single or multiple sources. The EPA is currently evaluating whether such source apportionment implementations in photochemical models are an appropriate option to estimate downwind transport and formation of $PM_{2.5}$ from individual sources.

However, for the present, regional-scale models available for considering chemical transformations associated with the impacts of $PM_{2.5}$ and its precursors are designed to account for impacts of multiple sources over relatively wide distances, and have not been approved by EPA for localized permitting purposes. This limitation results in underestimating the ambient impact of a single source that is emitting $PM_{2.5}$ precursors in addition to direct $PM_{2.5}$ emissions. However, this limitation does not preclude a permit applicant from determining whether the direct emissions of $PM_{2.5}$ from the proposed source or modification will cause or contribute to a violation of the NAAQS for $PM_{2.5}$, and is not a valid basis for using a PM_{10} analysis as a surrogate to satisfy the $PM_{2.5}$ requirements.

E. What are the effects of repealing the grandfathering provision for $PM_{2.5}$?

If EPA adopts a final rule to repeal the grandfathering provision, any PSD permit applications 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 PM_{10} Surrogate Policy to satisfy the $PM_{2.5}$ requirements. Such applications will need to be evaluated for $PM_{2.5}$ to ensure that the applicable administrative record for the permit application is sufficient to demonstrate compliance with the PSD requirements for $PM_{2.5}$, including analyses necessary to (a) demonstrate that the emissions increase from the proposed new or modified major stationary source will not cause or contribute to a violation of the $PM_{2.5}$ NAAQS, as required by § 165(a)(3) of the Act, and (b) establish a BACT emissions limitation for $PM_{2.5}$ in the permit, as required by § 165(a)(4) of the Act. For any permit that previously was relying on a PM_{10} surrogate analysis, additional information is likely to be required to fulfill these requirements.

The EPA is aware of twenty-seven sources that had submitted PSD permit applications under the Federal PSD program prior to July 15, 2008—the effective date of the $PM_{2.5}$ NSR Implementation Rule—but did not receive their permits by that date. Thus, these applications were eligible to be grandfathered to use the PM_{10} Surrogate Policy to satisfy the $PM_{2.5}$ requirements. For at least six of these applications, the permit was either issued or denied, or the project was cancelled, prior to June 1, 2009, when the administrative stay became effective. For most of the remaining twenty-one applications, the sources have already directly addressed, or are planning to directly address, the applicable $PM_{2.5}$ requirements in order to obtain a permit. At least two of the sources are reportedly planning to take enforceable emissions limitations on their $PM_{2.5}$ emissions in order to avoid the PSD requirements for $PM_{2.5}$ altogether.

Should the additional information that these sources acquire and analyze for $PM_{2.5}$ result in the need to tighten the conditions pertaining to the control of $PM_{2.5}$ emissions in any of the yet-issued permits, then direct environmental benefits would result. In any event, ending the use of the PM_{10} Surrogate Policy will provide desired certainty to the $PM_{2.5}$ permitting process by ensuring that all permit applicants show that their source does not cause or contribute to a violation of the $PM_{2.5}$ NAAQS and otherwise meets all of the requirements for $PM_{2.5}$, and not use PM_{10} surrogacy as means of avoiding a real analysis demonstrating that the $PM_{2.5}$ requirements are met. We believe this certainty would outweigh any burdens caused by any delay to the permit applicants that would be affected. Nevertheless, we are herein soliciting comments concerning any such burdens that may be incurred by the affected sources to help us evaluate this proposed repeal of the grandfathering provision for $PM_{2.5}$.

A repeal of the grandfathering provision in a subsequent final rule would not impact any PSD permits that became final and effective in reliance on the PM_{10} Surrogate Policy under the policy itself or the grandfathering provision that incorporated that policy by reference before the stay of that provision.

IV. Ending the PM_{10} Surrogate Policy in SIP-Approved States

A. What is the current status of the PM_{10} Surrogate Policy in SIP-approved States?

As described in section II.C of this preamble, the preamble to the May 2008 final NSR rule for $PM_{2.5}$ stated that SIP-approved States may continue to implement a PM_{10} program as a surrogate to meet the PSD program requirements for $PM_{2.5}$ pursuant to the 1997 PM_{10} Surrogate Policy. This continued use of the PM_{10} Surrogate Policy was a transition measure, provided for SIP-approved States in conjunction with the three-year period provided under 40 CFR 51.166(a)(6)(i) to adopt and submit SIP revisions following the May 2008 rule. *See* 73 FR 28340–28341.

Although the PM_{10} Surrogate Policy is in effect, in light of the various relevant

court decisions discussed above, it is prudent to conclude that the policy should not be read as allowing the automatic use of a PM_{10} analysis as a surrogate for satisfying $PM_{2.5}$ requirements. Moreover, the PM_{10} Surrogate Policy contains limits within the policy itself. As stated in the 1997 Seitz Memorandum, the PM_{10} Surrogate Policy provided that, in view of significant technical difficulties that existed in 1997, EPA believed that PM_{10} may properly be used as a surrogate for $PM_{2.5}$ in meeting NSR requirements "until these difficulties are resolved." Seitz Memorandum at 1. In the May 2008 final rule, EPA noted that "these difficulties have largely been resolved." *See* 73 FR at 28340 (col. 2–3). Thus, in addition to the case law demonstration discussed previously, a source or permitting authority seeking to rely on the PM_{10} Surrogate Policy should identify any technical difficulties that exist to justify the application of the policy in each specific case.

B. Petitioners' 2009 Petition Seeking Reconsideration of the Continued Use of the PM_{10} Surrogate Policy During the Three-year Transition Period

In their February 10, 2009, petition for reconsideration, the Natural Resources Defense Council and the Sierra Club argued, among other things, that the continued use of the PM_{10} Surrogate Policy had the effect of waiving for up to three years the requirement to assure compliance with the $PM_{2.5}$ NAAQS, and that applicants, States and EPA have the technical ability to address the $PM_{2.5}$ requirements directly rather than relying on a PM_{10} analysis as a surrogate. February 2009 Petition at 4–6. As we noted previously, the Administrator granted the February 2009 petition for reconsideration in her April 24, 2009, letter.

C. Why is EPA proposing to end the PM_{10} Surrogate Policy in SIP-approved States?

In this action, EPA is proposing to end the PM_{10} Surrogate Policy before the end of the three-year transition period for revising SIPs (May 2011). The grounds for this proposal are that the $PM_{2.5}$ implementation issues that led to the adoption of the PM_{10} Surrogate Policy in 1997 have been largely resolved to a degree sufficient for sources and permitting authorities to conduct meaningful permit-related $PM_{2.5}$ analyses. EPA had previously concluded that these difficulties had been resolved to a degree sufficient for all Federal PSD permit reviews to begin direct $PM_{2.5}$-based assessments as of the July 15, 2008, effective date of the May 2008 final rule. Section III.D of this preamble, which discusses our proposal to repeal the grandfathering provision in the Federal PSD program, provides a more thorough discussion of the status of technical difficulties associated with $PM_{2.5}$ analyses. The EPA is seeking comments on whether the technical issues that gave rise to the PM_{10} Surrogate Policy in 1997 are sufficiently resolved that the policy is no longer needed either for Federal or State permitting actions.

As mentioned earlier, in the May 2008 final rule, EPA allowed States to continue using the PM_{10} Surrogate Policy on the grounds that States would need time to update their State laws and make SIP submissions to EPA. 73 FR at 28340–28341. In the final rule preamble, we said that "if a SIP-approved State is unable to implement a PSD program for the $PM_{2.5}$ NAAQS based on these final rules, the State may continue to implement a PM_{10} program as a surrogate to meet the PSD program requirements for $PM_{2.5}$ pursuant to the 1997 guidance." 73 FR at 28341.

The existing provisions in many State implementation plans may already provide sufficient legal authority for several SIP-approved States to begin addressing $PM_{2.5}$ directly when issuing PSD permits. For example, if the State has adopted EPA's definition of "regulated NSR pollutant," then $PM_{2.5}$ falls within this definition, because $PM_{2.5}$ is a "pollutant for which a national ambient air quality standard has been promulgated." 40 CFR 51.166(b)(49)(i); 40 CFR 52.21(b)(50)(i). Therefore, such States may already have an EPA-approved SIP that authorizes the State to establish BACT limits for $PM_{2.5}$ and to demonstrate that a source will not cause or contribute to a violation of the $PM_{2.5}$ NAAQS using direct air quality modeling of the proposed unit's direct emissions of $PM_{2.5}$ to project the impact on the $PM_{2.5}$ NAAQS.

One complication for States that seek to implement a full $PM_{2.5}$ analysis immediately under their existing SIPs may be the absence of a significant emissions rate for $PM_{2.5}$. *See,* 73 FR at 28340. Assuming a State that has adopted EPA's definition of "regulated NSR pollutant" also applies EPA's definition of "significant emissions rate," then under the latter definition, any increase in emissions of $PM_{2.5}$ will be deemed significant. 40 CFR 51.166(b)(23)(ii); 40 CFR 52.21(b)(23)(ii). The most significant implication of the latter may be that some sources making modifications that increase $PM_{2.5}$ emissions in amounts less than 10 tons per year may have to undertake additional PSD review that would not be required if the State's SIP included the significant emissions rate for $PM_{2.5}$ set forth in EPA's May 2008 final rule.

The EPA requests comments on whether SIP-approved States should be considered "unable to implement a PSD program for the $PM_{2.5}$ NAAQS" because they lack the legal authority to implement the PSD program for $PM_{2.5}$. In this context it would be helpful to hear commenters' views on whether the legal authority of SIP-approved States to implement a $PM_{2.5}$ program is impeded by the absence of a significant emissions rate for $PM_{2.5}$ or whether other factors present significant complications for States.

The EPA also recognizes that there are other issues that could impact the decision to end the PM_{10} Surrogate Policy. To help EPA consider these issues, we are specifically seeking comment on several additional questions. These questions are as follows:

—What are the environmental benefits or harms that will result from ending the policy before May 2011, and what are the environmental benefits or harms that will result if the PM_{10} Surrogate Policy is left in place until May 2011?

—What implementation difficulties for State permitting authorities or PSD applicants seeking permits will result from ending the PM_{10} Surrogate Policy before the three-year transition period?

In addition, EPA invites comments on any other points that interested parties believe are relevant to whether the PM_{10} Surrogate Policy continues to be necessary for implementing the Act's $PM_{2.5}$ requirements.

D. What are the effects of ending the PM_{10} Surrogate Policy in SIP-approved States?

When the PM_{10} Surrogate Policy ends in SIP-approved States, the effects will be the same as those described previously in section III.E of this preamble, which discusses the effects of the proposed repeal of the grandfathering provision in States where the Federal PSD program applies. If EPA decides to end the PM_{10} Surrogate Policy before the end of the original transition period in States with SIP-approved PSD programs, EPA is proposing that new and modified major sources seeking permits in such States would be thereafter required to conduct permit-related analyses based on $PM_{2.5}$ rather than PM_{10}. EPA is taking comment on what kind of transition process, if any, should be allowed if

EPA decides to end the PM_{10} Surrogate Policy in the final rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden that is not already accounted for in the approved information collection request (ICR) for the NSR program. We are not proposing any new paperwork requirements (*e.g.,* monitoring, reporting, recordkeeping) as part of this proposed action. This action proposes to amend one part of the regulations at 40 CFR 52.21 by repealing the grandfathering provision that affects about twenty-one sources, and to end the use of the 1997 PM_{10} Surrogate Policy in SIP-approved States. However, the approved ICR for the NSR program was prepared as if the 2008 rule that added $PM_{2.5}$ to the NSR program would be fully implemented immediately upon the effective date of the rule, without any phase-in period during which the grandfathering provision or 1997 PM_{10} Surrogate Policy would apply. Thus, while this action will result in increased permitting burden for those sources who would have otherwise been able to use the grandfathering provision or PM_{10} Surrogate Policy, this burden is already included in the approved ICR. The OMB previously approved the information collection requirements contained in the existing regulations (40 CFR parts 51 and 52) under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.,* and assigned OMB control number 2060–0003. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposal on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any new requirements on small entities. We have determined that small businesses will not incur any adverse impacts because EPA is taking this action to propose one amendment to the regulations at 40 CFR 52.21 (by repealing the grandfathering provision that affects about twenty-one sources), and to end early our policy of allowing SIP-approved States to use the PM_{10} Surrogate Policy. This does not create any new requirements or burdens. No costs are associated with this amendment.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 ("URMA"), 2 U.S.C. 1531–1538 for State, local, and tribal governments or the private sector. This action only proposes to amend one part of the regulations at 40 CFR 52.21 (by repealing the grandfathering provision that affects about twenty-one sources), and to end early our policy of allowing SIP-approved States to use the PM_{10} Surrogate Policy. Therefore, this action is not subject to the requirements of sections 202 or 205 of UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

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 action only proposes to amend one part of the regulations at 40 CFR 52.21 (by repealing the grandfathering provision for $PM_{2.5}$ that affects about twenty-one sources), and to end early our policy allowing SIP-approved States to use the PM_{10} Surrogate Policy. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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.) This action will not impose any new obligations or enforceable duties on tribal governments.

EPA specifically solicits additional comment on this proposed action from tribal officials.

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 those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has 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. In fact, this action will help ensure that the health-based national standards for $PM_{2.5}$ are adequately protected against the adverse effects of $PM_{2.5}$ emissions from new and modified sources of air pollution by ending the use of a surrogate analyses for $PM_{2.5}$ impacts.

H. Executive Order 13211: Actions Concerning Regulations 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. EPA is proposing to amend one part of the regulations at 40 CFR 52.21 (expected to affect about twenty-one regulated entities), and to end early the use of the PM_{10} Surrogate Policy in SIP-approved States. In both instances, only a portion of the affected sources are involved in the production or distribution of energy.

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, 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 applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering 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 their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has concluded that it is not practicable to determine whether there would be disproportionately high and adverse human health or environmental effects on minority and/or low income populations from this proposed rule. The rule proposes only to amend to one part of the regulations at 40 CFR 52.21 (by repealing the grandfathering provision that affects about twenty-one sources), and to end early the PM_{10} Surrogate Policy in SIP-approved States. The affected sources, after further analysis and data collection, may receive permitted emissions limits that are equally or more protective of public health than would be likely in the absence of this proposed rule change.

K. Determination Under Section 307(d)

Pursuant to sections 307(d)(1)(J) and 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to "such other actions as the Administrator may determine."

VI. Statutory Authority

The statutory authority for this action is provided by section 301(a) of the CAA as amended (42 U.S.C. 7601(a)). This notice is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects in 40 CFR Part 52

Administrative practices and procedures, Air pollution control, Environmental protection, Intergovernmental relations.

Dated: February 4, 2010.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

§ 52.21 [Amended]

2. In § 52.21, remove paragraph (i)(1)(xi).

[FR Doc. 2010–2983 Filed 2–10–10; 8:45 am]

BILLING CODE 6560–50–P