

Dated: December 19, 2007.

**J.R. Whitehead,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 50**

[EPA-HQ-OAR-2001-0017; FRL-8502-4]

RIN 2060-A059

**Interpretation of the National Ambient Air Quality Standards for PM<sub>2.5</sub>—Correcting and Simplifying Amendment**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA recently finalized changes to the data handling conventions and computations necessary for determining when the annual and 24-hour national ambient air quality standards (NAAQS) for fine particles (generally referring to particles less than or equal to 2.5 micrometers (µm) in diameter, PM<sub>2.5</sub>) are met. These changes were made in support of revisions to the NAAQS for particulate matter (PM) that were finalized in the same rulemaking. Following the publication of this rule, an omission was discovered in the rule text explaining the procedures for calculating the key statistic (98th percentile) involved with determining compliance with the 24-hour PM<sub>2.5</sub> standard in locations where extra samples of PM<sub>2.5</sub> in ambient air were taken above the intended sampling frequency. If the error in the regulatory text is left unchanged, the resulting statistic for calculating compliance with the 24-hour PM<sub>2.5</sub> standard would be biased low at some samplers, leading to potentially incorrect determinations that

an area was attaining the NAAQS. The EPA is proposing to correct this error. The proposed correction involves the replacement of the currently used statistical formula and instructions with a simpler look-up table approach which is easier for readers to understand and which retains the originally intended numerical consistency with EPA’s historical practice.

**DATES:** Written comments must be received by February 8, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2001-0017, by mail to: Review of the National Ambient Air Quality Standards (NAAQS) for Particulate Matter (PM), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies. 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 and Regulations” section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For general questions, please contact Mr. Lewis Weinstock, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Ambient Air Monitoring Group (C304-06), Research Triangle Park, North Carolina 27711; telephone number: (919) 541-3661; fax number: (919) 541-1903; e-mail address: [weinstock.lewis@epa.gov](mailto:weinstock.lewis@epa.gov). For technical questions, please contact Mr. Mark Schmidt, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Air Quality Analysis Group (C304-04), Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2416; fax number: (919) 541-1903; e-mail address: [schmidt.mark@epa.gov](mailto:schmidt.mark@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Why Is EPA Issuing This Proposed Rule?**

This document proposes to take corrective action on 40 CFR part 50, Appendix N, Interpretation of the National Ambient Air Quality Standards for PM<sub>2.5</sub>. We have published a direct final rule identical to this proposal in the “Rules and Regulations” section of this **Federal Register**. This direct final rule will correct and simplify parts of a recent final rule published on October 17, 2006 that finalized changes to the data handling conventions and computations necessary for determining when the annual and 24-hour national ambient air quality standards (NAAQS) for fine particles (generally referring to particles less than or equal to 2.5 micrometers (µm) in diameter, PM<sub>2.5</sub>), are met. We view this as a non-controversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If EPA receives relevant adverse comment on the amendments included in this proposal, we will publish a timely withdrawal in the **Federal Register**. We will address these public comments in a subsequent final rule based on this proposal. We will not institute a second comment period on this action. Any persons interested in commenting must do so at this time.

The regulatory text for the proposal is identical to that for the direct final rule published in the “Rules and Regulations” section of this **Federal Register**. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule published in a separate part of this **Federal Register**.

**II. Does This Action Apply to Me?**

Categories and entities potentially regulated by this action include:

Category	NAICS code <sup>1</sup>	Examples of regulated entities
Federal government .....	924110	Federal agencies that conduct ambient air monitoring similar to that conducted by States under 40 CFR part 58 and that wish EPA to use their monitoring data in the same manner as State data.
State/territorial/local/tribal government .....	924110	State, territorial, and local, air quality management programs that are responsible for ambient air monitoring under 40 CFR part 58. The proposal also may affect Tribes that conduct ambient air monitoring similar to that conducted by States and that wish EPA to use their monitoring data in the same manner as State monitoring data.

<sup>1</sup> North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware of that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### 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 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

#### 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. There is no information collection requirement directly associated with revisions to a NAAQS or supporting appendices under section 109 of the CAA.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. 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 today’s rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, or fewer than 4 billion kilowatt-hr per year of electricity usage, depending on the size definition for the affected North American Industry Classification System code; (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 requirements on small entities because it does not impose any additional regulatory requirements. 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

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least

costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. The proposed correcting and simplifying change does not create additional regulatory requirements on affected entities compared to those that were promulgated in the final rule that was published in the **Federal Register** on October 17, 2006. The proposed rule change only corrects and simplifies one error in Appendix N of part 50 (Interpretation of the National Ambient Air Quality Standards for PM<sub>2.5</sub>). Thus, this proposed rule is not subject to the requirements of section 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The proposed rule change only corrects and simplifies one error in Appendix N of part 50.

#### E. Executive Order 13132: Federalism

Executive Order 13132 (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 proposed rule 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. The proposed change only corrects and simplifies one error in Appendix N of part 50 (Interpretation of the National Ambient Air Quality Standards for PM<sub>2.5</sub>); 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*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. The proposed change only corrects and simplifies one error in Appendix N of part 50 (Interpretation of the National Ambient Air Quality Standards for PM<sub>2.5</sub>). Thus, Executive Order 13175 does not apply to this proposed rule.

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

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has

the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because, while it is based on the need for monitoring data to characterize risk, this proposed rule itself does not establish an environmental standard intended to mitigate health or safety risks.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104-113, section 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. The 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 any new technical standards for environmental monitoring and measurement. Ambient air concentrations of PM<sub>2.5</sub> are currently measured by the Federal reference method in 40 CFR part 50, Appendix L (Reference Method for the Determination of Fine Particulate as PM<sub>2.5</sub> in the Atmosphere) or by Federal Reference Method or Federal Equivalent Method that meet the requirements in 40 CFR part 53.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary standards and to explain why such standards should be used in this regulation.

*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 determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposed rule merely amends the October 17, 2006, final PM NAAQS rule (71 FR 61144) by correcting and simplifying existing PM<sub>2.5</sub> data handling conventions and computations.

**List of Subjects in 40 CFR Part 50**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 29, 2007.

**Stephen L. Johnson,**  
*Administrator.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R05-OAR-2007-1043; FRL-8514-4]

**Approval and Promulgation of Air Quality Implementation Plans; Michigan; PSD Regulations**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to conditionally approve revisions to Michigan's State Implementation plan (SIP) to add the prevention of significant deterioration (PSD) construction permit program under the Federal Clean Air Act (CAA). This program affects major stationary sources in Michigan that are subject to or potentially subject to the PSD construction permit program.

**DATES:** Comments must be received on or before February 8, 2008.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-