

**PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES**

1. The authority citation for 21 CFR part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.14 is amended in paragraph (c), by redesignating paragraphs (c)(23) through (c)(51) as paragraphs (c)(24) through (c)(52) and adding a new paragraph (c)(23) as follows:

**§ 1308.14 Schedule IV.**

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(c) \* \* \*

(23) Fospropofol ..... 2138  
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Dated: July 16, 2009.

**Michele M. Leonhart,**  
Deputy Administrator.

[FR Doc. E9-17538 Filed 7-22-09; 8:45 am]

**BILLING CODE 4410-09-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-HQ-OAR-2003-0062: FRL-8934-3]

RIN 2060-AP65

**Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>); Proposal To Extend Administrative Stay**

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to extend for an additional nine months the existing administrative stay of the “grandfathering” provision for particulate matter less than 2.5 micrometers (PM<sub>2.5</sub>) requirements in the Federal Prevention of Significant Deterioration (PSD) program published in the **Federal Register** on May 16, 2008 as part of the final rule entitled, “Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>).” The grandfathering provision under the Federal PSD program allows the permitting authority to review PSD permit applications received before July 15, 2008 according to EPA’s 1997 policy of satisfying the requirements for particulate matter less than 10 micrometers (PM<sub>10</sub>) as a surrogate for meeting the new requirements for PM<sub>2.5</sub>.

The existing administrative stay is in effect for three months; that is, from

June 1, 2009 until September 1, 2009.

This action proposes to extend the existing administrative stay by an additional nine months, which we believe will allow for sufficient time for EPA to propose, take public comment on, and issue a final action concerning the repeal of the grandfathering provision for PM<sub>2.5</sub> in the Federal PSD program.

**DATES:** Comments must be received on or before August 24, 2009.

**Public Hearing.** If anyone contacts EPA requesting the opportunity to speak at a public hearing concerning the proposed regulation by August 3, 2009, we will hold a public hearing on August 7, 2009. If a hearing is held, the record for the hearing will remain open until September 8, 2009.

**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](mailto:a-and-r-docket@epa.gov).

- *Fax:* (202) 566-1741.

- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

- *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.

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

**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.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dan deRoek, 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: [deroek.dan@epa.gov](mailto:deroek.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](mailto:long.pam@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information****A. Does This Action Apply to Me?**

Entities affected by this proposed action are the owners and operators of proposed new sources and

modifications who submitted a complete application for a PSD permit before the July 15, 2008 effective date of the PM<sub>2.5</sub> NSR Implementation Rule, but have not yet received their permit to construct. EPA estimates that fewer than 20 proposed sources are covered by the grandfathering provision that we are proposing to repeal. At least two of the projects have already received their permit to construct prior to EPA taking action to stay the provision.

Entities also affected by this proposed rule include State and local reviewing authorities and Indian country with new and modified major stationary sources affected by this rule.

#### 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 final 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](mailto:long.pam@epa.gov).

#### E. How Is This Preamble Organized?

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K. Determination Under Section 307(d)  
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## II. This Action

On May 16, 2008, the EPA (“we”) issued a final rule amending our PSD and nonattainment NSR regulations to add requirements for the preconstruction review of PM<sub>2.5</sub>. 73 FR 28321. The amendments addressed the major source threshold, significant emissions rate and offset ratios for PM<sub>2.5</sub>; interpollutant trading for offsets; and applicability of NSR to PM<sub>2.5</sub> precursors. The rule also provided for the transition of the new requirements for PM<sub>2.5</sub> in the NSR permitting process.

On February 10, 2009, Earthjustice, on behalf of the Natural Resources Defense Council and Sierra Club, submitted a petition for reconsideration of four specific provisions of the May 2008 final rule as provided for in Clean Air Act (CAA) 307(d)(7)(B).<sup>1</sup> The specific provisions challenged by the petitioners include: (1) A transition period for PSD programs in States with approved PSD rules in their approved State Implementation Plans (SIPs) to revise and submit their new PM<sub>2.5</sub> regulations to EPA within three years of the publication of the final rule. During the transition period, the rule allows States to continue using EPA’s 1997 surrogate policy by which an analysis based on PM<sub>10</sub> can be used to meet the requirements for the otherwise required PM<sub>2.5</sub>; (2) “grandfathering” under the Federal PSD program for permit applications submitted before the July 15, 2008 effective date of the new rule, which allows the PM<sub>10</sub> surrogate policy to continue to be used as the basis for approving such permits for PM<sub>2.5</sub>; (3) a transition period, during which time EPA is re-evaluating its test methods for condensable particulate matter (CPM) emissions, whereby States are not required to account for CPM in the permitting process; and (4) use of recommended interpollutant trading ratios to facilitate the trading of PM<sub>2.5</sub> precursors emissions reductions for new emissions of PM<sub>2.5</sub> in areas designated “nonattainment” for PM<sub>2.5</sub>.

Under CAA 307(d)(7)(B), the Administrator may commence a reconsideration proceeding if the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period. In either case, the objection must be of central relevance to the outcome of the rule. The

<sup>1</sup> Paul Cort, Earthjustice, on behalf of the Natural Resources Defense Council and Sierra Club, EPA-HQ-OAR-2003-0062-0281.

Administrator may stay the effectiveness of the rule for up to three months during such reconsideration.

On April 24, 2009, we responded to the February 10, 2009 petition by letter indicating that we were convening a reconsideration proceeding for all four issues challenged in the petition and granting a three-month administrative stay of one of the provisions—the grandfathering provision for PM<sub>2.5</sub> contained in the Federal PSD program at 40 CFR 52.21(i)(1)(xi). The letter also indicated that we would publish a notice of proposed rulemaking “in the near future” to propose repealing the grandfathering provision for PM<sub>2.5</sub> in the Federal PSD program, on the grounds that it was adopted without prior public notice and is no longer substantially justified in light of the resolution of technical issues with respect to PM<sub>2.5</sub> monitoring, emissions estimation, and air quality modeling that led to the PM<sub>10</sub> surrogate policy in 1997.

The administrative stay of the grandfathering provision for PM<sub>2.5</sub> was issued and became effective on June 1, 2009. See 74 FR 26098, FR Doc. E9–12575. As noted above, our authority to stay a rule or portion thereof solely under the Administrator’s discretion is limited to three months. When we have issued similar administrative stays in the past, it has often been our practice to also propose an extension of the stay through a rulemaking process to ensure that there is no gap between the end of the stay and the completion of the final action. In this case, we believe that an extension of the administrative stay for an additional nine months would provide adequate time for EPA to propose, take comment on, and issue a final action on issues that are associated with the grandfathering provision for PM<sub>2.5</sub> that we are proposing to repeal. Therefore, we propose to extend the administrative stay of the grandfathering provision for PM<sub>2.5</sub> contained in the Federal PSD program at 40 CFR 52.21(i)(1)(xi) for an additional nine months, until June 1, 2010. As alternatives, we also solicit comment on different time periods for the extension of the stay: (1) For six months, until March 1, 2010; or (2) for twelve months, until September 1, 2010.

Note that we are not taking comment at this time on any substantive issues concerning the repeal of the grandfathering provision for PM<sub>2.5</sub> contained in the Federal PSD program, or on any of the other provisions subject to the reconsideration. This notice simply proposes to further extend the administrative stay, so comments should be limited to the issue of whether and how long to extend the

existing administrative stay. A separate **Federal Register** notice published in the near future will specifically solicit comment on issues related to the repeal of the grandfathering provision for PM<sub>2.5</sub> contained in the Federal PSD program. In yet another subsequent notice, we plan to solicit comment on issues related to the remaining three provisions of the May 2008 final rule for which the Administrator granted reconsideration.

### III. 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 an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action only proposes to extend the existing administrative stay for an additional nine months.

However, the Office of Management and Budget has previously approved the information collection requirements contained in the existing regulations under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0033 [EPA ICR No. 1230.21]. 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 rule 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 an extension of the existing administrative stay of one amendment to the regulations at 40 CFR 52.21 concerning the grandfathering provision that affects fewer than 20 major stationary sources. 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 does not contain a Federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. This action only proposes to extend the existing administrative stay of one provision of the regulations at 40 CFR 52.21 concerning the grandfathering provision that affects fewer than 20 sources. Thus, this rule is not subject to the requirements of sections 202 or 205.

This proposed rule 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

Executive Order 13132, entitled “Federalism” (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 EO 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 EO 13132. This action only proposes to extend the existing administrative stay of one provision of the regulations at 40 CFR 52.21 concerning the grandfathering provision for PM<sub>2.5</sub> that affects fewer than 20 sources. Thus, EO 13132 does not apply to this rule.

In the spirit of EO 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 EO 13175 (65 FR 67249, November 9, 2000.) This action will not impose any new obligations or enforceable duties on Tribal governments. Thus, EO 13175 does not apply to this action.

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 EO 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 EO has the potential to influence the regulation. This action is not subject to EO 13045 because this proposal only proposes to extend the existing administrative stay of one provision of the regulations at 40 CFR 52.21 concerning the grandfathering provision for PM<sub>2.5</sub> that affects fewer than 20 sources. However, EPA solicits comments on whether the proposal would result in an adverse environmental effect that would have a disproportionate effect on children.

#### *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. This proposal only proposes to extend the existing administrative stay of one provision of the regulations at 40 CFR 52.21 concerning the grandfathering provision for PM<sub>2.5</sub> that affects fewer than 20 sources.

#### *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 determined that this proposed rule will not have a disproportionately high and adverse human health or environmental effect on minority or low-income populations because it only seeks to extend the existing administrative stay on one provision in the regulations at 40 CFR 52.21 concerning the grandfathering provision for PM<sub>2.5</sub> that affects fewer than 20 sources.

#### *K. Determination Under Section 307(d)*

Pursuant to sections 307(d)(1)(f) 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.”

#### **IV. 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: July 16, 2009.

**Lisa P. Jackson,**  
Administrator.

[FR Doc. E9–17541 Filed 7–22–09; 8:45 am]

**BILLING CODE 6560–50–P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 1200**

**[EPA–HQ–OAR–2008–0201–FRL–8934–4]**

**RIN 2060–AP14**

#### **Waste Energy Recovery Registry**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to establish the criteria for including sources or sites in a Registry of Recoverable Waste Energy Sources (Registry), as required under Title IV, Subtitle D of the Energy Independence and Security Act of 2007. The Agency is also proposing the Survey processes by which EPA will collect data and populate the Registry. The rule would apply to major industrial and large commercial sources as defined by EPA in this rulemaking. This proposed rule would not require the installation of new monitoring equipment; rather it would require only that sources above certain threshold levels that wish to be included in the Registry enter specific already-monitored data points into the voluntary Survey, which is a software tool that will calculate the quantity and quality of potentially recoverable waste energy.

**DATES:** The public may comment on this proposed rule until September 21, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0201, by one of the following methods: