



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-HQ-OAR-2015-0071; FRL-9926-97-OAR]

RIN 2060-AS57

Prevention of Significant Deterioration Permitting for Greenhouse Gases: Providing Option for Rescission of EPA-Issued Tailoring Rule Step 2 Prevention of Significant Deterioration Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the federal Prevention of Significant Deterioration (PSD) program regulations to allow for rescission of certain PSD permits issued by the EPA and delegated reviewing authorities under Step 2 of the Prevention of Significant Deterioration and Title V Greenhouse Gas (GHG) Tailoring Rule (Tailoring Rule). We are proposing to take this action in order to provide a mechanism for the EPA and delegated reviewing authorities to rescind PSD permits that are no longer required in light of the United States (U.S.) Supreme Court's decision in *Utility Air Regulatory Group (UARG) v. EPA* and the amended appeals court judgment in *Coalition for Responsible Regulation (Coalition) v. EPA*, vacating that rule. These decisions determined that Step 2 of the Tailoring Rule was not required by the Clean Air Act (CAA or Act) and vacated the EPA regulations implementing Step 2. When effective, this action would authorize the EPA and delegated reviewing authorities to rescind Step 2 GHG PSD permits in response to requests from

applicants who can demonstrate that they are eligible for permit rescission. In the “Rules and Regulations” section of this *Federal Register*, we are amending the federal PSD program regulations as a direct final rule without a prior proposed rule. If we receive no adverse comment in response to the direct final rule, we will not take further action on this proposed rule.

DATES: Written comments must be received by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

Public Hearing: If anyone contacts the EPA by May 18, 2015, requesting to speak at a public hearing on this action, the EPA will hold a public hearing on May 22, 2015 in Research Triangle Park, North Carolina. The EPA will not hold a hearing if one is not requested. Please check the EPA's web page at <http://www.epa.gov/nsr> on May 19, 2015 for the announcement of whether the hearing will be held.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2015-0071, by mail to U.S. Environmental Protection Agency, EPA Docket Center, Mail Code 28221T, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. 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: Mrs. Jessica Montañez, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Planning Division, (C504-03), Research Triangle Park, NC 27711, telephone number (919) 541-3407, email at montanez.jessica@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What are the details for the potential public hearing?

If there is a public hearing, it will be held at the EPA, Building C, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina, 27709; the room number will be announced on the NSR website at <http://www.epa.gov/nsr>. If requested, the hearing will provide interested parties the opportunity to present data, views or arguments concerning this action. The EPA will make every effort to accommodate all speakers who arrive and register. Because this hearing will be held at U.S. government facilities, individuals planning to attend the hearing should be prepared to show valid picture identification to the security staff in order to gain access to the meeting room. Please note that the REAL ID Act, passed by Congress in 2005, established new requirements for entering federal facilities. These requirements took effect July 21, 2014. If your driver's license is issued by American Samoa, Arizona, Idaho, Louisiana, Maine, Minnesota, New Hampshire or New York, you must present an additional form of identification to enter the federal buildings where the public hearings will be held. Acceptable alternative forms of identification include: federal employee badges, passports, enhanced driver's licenses and military identification cards. For additional information for the status of your state regarding REAL ID, go to <http://www.dhs.gov/real-id-enforcement-brief>. In addition, you will need to obtain a property pass for any personal belongings you bring with you. Upon leaving the building, you will be required to return this property pass to the security desk. No large signs will be allowed in the building, cameras may only be used outside of the building and demonstrations will not be allowed on federal property for security reasons. If held, the public hearing will begin at 10:00 a.m. and continue until 5:00 p.m., if necessary, depending on the number of speakers. The EPA may end the hearing early if all registered speakers have had an opportunity to speak, but no earlier than 2:00 p.m. Persons wishing to present oral testimony that have not made arrangements in advance should register by 2:00 p.m. the day of the hearing. Oral testimony will

be limited to 5 minutes per commenter. The EPA encourages commenters to provide written versions of their oral testimonies either electronically (on computer disk or CD-ROM) or in paper copy. Verbatim transcripts and written statements will be included in the rulemaking docket.

If you want to request a hearing and present oral testimony at the hearing, you should notify, on or before May 18, 2015, Ms. Pamela Long, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, C504-01, Research Triangle Park, NC 27711, telephone (919) 541-0641, email *long.pam@epa.gov*. The hearing will be strictly limited to the subject matter of the proposal, the scope of which is discussed below. Any member of the public may file a written comment by the close of the comment period. Written comments should be submitted to Docket ID No. EPA-HQ-OAR-2015-0071 at the addresses given above for submittal of comments. If a hearing is held, the hearing schedule, including the list of speakers, will be posted on the EPA's web page at *http://www.epa.gov/nsr*. A verbatim transcript of the hearing, if held, and written comments will be made available for copying during normal working hours at the EPA Docket Center address given above for inspection of documents.

II. Why is the EPA issuing this proposed rule?

The EPA is proposing to take action to amend the federal PSD program regulation at 40 CFR 52.21 to allow existing PSD permits that were issued under Step 2 of the Tailoring Rule¹ for GHGs to be rescinded. This proposed action narrowly amends the permit rescission provisions in the federal PSD regulations found in 40 CFR 52.21(w) to allow for the rescission

¹ Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (75 FR 31514, June 3, 2010); 40 CFR 52.21(b)(49)(v).

of EPA-issued PSD permits² that were issued under Step 2 of the Tailoring Rule permitting regulations.

The U.S. Supreme Court determined the permitting requirements under Step 2 of the Tailoring Rule to be invalid in *UARG v. EPA*, 134 S. Ct. 2427 (2014). The Supreme Court affirmed in part and reversed in part an earlier decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102 (D.C. Cir. 2012). In further proceedings upon consideration of the Supreme Court decision, the D.C. Circuit amended its judgment in the *Coalition* case. The Amended Judgment vacated particular provisions of the EPA's regulations implementing Step 2 of the Tailoring Rule.

This proposed action does not itself rescind any permits; it only proposes the regulatory mechanism through which the EPA could then rescind, upon request of a source, an EPA-issued Step 2 PSD permit consistent with the U.S. Supreme Court decision and the amended judgment of the D.C. Circuit. Furthermore, we have published a direct final rule amending these federal PSD program regulations in the "Rules and Regulations" section of this *Federal Register* because we view this as a non-controversial amendment 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 the EPA receives adverse comment in response to the direct final rule, we will publish a timely withdrawal in the *Federal Register* informing the public that the direct final rule will not take effect. In that case, we would address all public comments in any subsequent final rule based on

² The terms "EPA-issued PSD permits that were issued under Step 2 of the Tailoring Rule" and "EPA-issued Step 2 PSD permits" both refer to PSD permits issued by the EPA as well as by delegated reviewing authorities under Step 2 of the Tailoring Rule.

this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, please see the information provided in the **ADDRESSES** section of this document.

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*.

Neither this rule or direct final rule address any issues concerning the federal PSD permit rescission regulations at 40 CFR 52.21(w) that are not related to the Supreme Court decision in *UARG v. EPA* and the amended judgment of the D.C. Circuit. The EPA is developing a separate rulemaking action that will provide an opportunity for the public to comment on others circumstances where 40 CFR 52.21(w) may limit the ability to rescind PSD permits that are no longer necessary.

III. Does this action apply to me?

The entities potentially affected by this rule include new and modified stationary sources that were required to obtain an EPA-issued Step 2 PSD permit under the federal PSD regulations found at 40 CFR 52.21 solely because the source or a modification of the source was expected to emit or increase GHG emissions over the applicable thresholds. This includes (1) sources classified as major for PSD purposes solely on the basis of their potential GHG emissions; and (2) sources emitting major amounts of other pollutants that experienced a modification resulting in an increase of only greenhouse gas emission above the applicable levels in the EPA regulations. Entities affected by this rule may also include state or local reviewing authorities

that have been delegated federal authority to implement the federal PSD regulations under 40 CFR 52.21(u) and that have issued Step 2 PSD permits to sources within their jurisdiction. This rule does not address the requirements for approval of a PSD program into a state implementation plan (40 CFR 51.166) or the rescission of PSD permits issued by states and local programs with such approved programs. Stationary sources with questions on the PSD permitting obligations arising from Step 2 PSD permits issued by state or local reviewing authorities under the permitting programs approved into state implementation plans should review the governing statutory provisions and provisions in the applicable approved state or local permitting program to determine how to address any Step 2 PSD permitting issues and consult with the EPA as necessary.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, National ambient air quality standards, New source review, Nitrogen dioxide, Ozone, Particulate matter, Permit rescissions, Preconstruction permitting, Sulfur oxides, Tailoring rule, Volatile organic compounds.

Dated: April 30, 2015.

Gina McCarthy,
Administrator.

[FR Doc. 2015-10629 Filed: 5/6/2015 08:45 am; Publication Date: 5/7/2015]