



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 51, 52, 70, and 71**

**[EPA-HQ-OAR-2015-0414; FRL-9932-11-OAR]**

**Prevention of Significant Deterioration and Title V Permitting for Greenhouse Gases:  
Removal of Certain Vacated Elements**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is amending its Prevention of Significant Deterioration (PSD) and title V regulations to remove from the Code of Federal Regulations portions of those regulations that were initially promulgated in 2010 and that the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) specifically identified as vacated in the April 10, 2015, amended judgment, *Coalition for Responsible Regulation v. EPA*. This action is exempt from notice-and-comment rulemaking because it is ministerial in nature.

**DATES:** This rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2015–0414. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center, Room 3334, EPA William Jefferson Clinton West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, D.C. 20004. 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) 566-1744 and the telephone number for the Office of Air and Radiation Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this final rule should be addressed to 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:** The information in this section of the preamble is organized as follows:

- I. Does this action apply to me?
- II. Background and Rationale for this Action
- III. Final Action
- IV. Implementation
- V. Environmental Justice Considerations
- VI. Statutory and Executive Order Reviews
- VII. Judicial Review

**I. Does this action apply to me?**

Entities potentially affected by this final action include new and modified stationary sources in all industry groups. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in §§51.166 and 52.21 of title 40 of the Code of Federal Regulations (CFR). Entities potentially affected by this final action also include state, local and tribal governments that are authorized to implement the PSD program through an EPA-approved State Implementation Plan (SIP) or Tribal Implementation Plan (TIP) or that have been authorized to implement the PSD program through a delegation of the federal PSD regulations.

**II. Background and Rationale for this Action**

Part C of title I of the Clean Air Act (CAA or the Act) contains the requirements for a component of the major New Source Review (NSR) program known as the PSD program. This program sets forth procedures for the preconstruction review and permitting of new and modified stationary sources of air pollution locating in areas meeting the National Ambient Air Quality Standards (NAAQS) (“attainment” areas) and areas for which there is insufficient information to classify an area as either attainment or nonattainment (“unclassifiable” areas). The applicability of PSD to a particular source must be determined in advance of construction of a new source or major modification of an existing source and is pollutant-specific. Once a source is determined to be subject to PSD, among other requirements, the source must demonstrate that it will not cause or contribute to a violation of any NAAQS or PSD increment,<sup>1</sup> and that it will use the Best Available Control Technology (BACT).<sup>2</sup> The EPA regulations for the PSD program are contained in 40 CFR 51.166 (applicable to air agencies that issue permits under EPA-approved SIPs) and 40 CFR 52.21 (the federal PSD program applicable to permits issued by the EPA or air agencies that have received delegation to implement the federal PSD program).

Title V of the CAA, on the other hand, requires all major stationary sources of air pollution and certain other sources to apply for a title V operating permit that includes emission limitations and other conditions as necessary to assure compliance with applicable requirements of the CAA.<sup>3</sup> The title V operating permit program is a vehicle for ensuring that air quality control requirements are appropriately applied to facility emission units and for assuring compliance with such requirements. The title V program does not generally impose new substantive air quality control requirements, but does require permits to contain adequate

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<sup>1</sup> CAA section 165(a)(3).

<sup>2</sup> CAA section 165(a)(4).

<sup>3</sup> CAA sections 502(a) and 504(a).

monitoring, recordkeeping, reporting and other requirements to assure sources' compliance. The title V program is implemented through regulations contained in 40 CFR part 70 (for programs implemented by state or local agencies and tribes) and 40 CFR part 71 (for programs generally implemented by the EPA).

On June 3, 2010, the EPA published a final rule, known as the Tailoring Rule, which phased in permitting requirements for greenhouse gas (GHG) emissions from stationary sources under the CAA PSD and title V permitting programs (75 FR 31514). Under its interpretation of the CAA at the time, the EPA believed the Tailoring Rule was necessary to avoid a sudden and unmanageable increase in the number of sources that would be required to obtain PSD and title V permits under the CAA because the sources emitted or had the potential to emit GHGs above the applicable major source and major modification thresholds. In Step 1 of the Tailoring Rule, which began on January 2, 2011, the EPA limited application of PSD and title V requirements to sources only if they were subject to PSD or title V "anyway" due to their emissions of non-GHG pollutants. These sources are referred to as "anyway sources." In Step 2 of the Tailoring Rule, which began on July 1, 2011, the EPA applied the PSD and title V permitting requirements under the CAA to sources that were classified as major, and, thus, required to obtain a permit, based solely on their GHG emissions or potential to emit GHGs, and to modifications of otherwise major sources that required a PSD permit because they increased only GHG emissions above the level in the EPA regulations.

On June 23, 2014, the U.S. Supreme Court issued a decision in *Utility Air Regulatory Group (UARG) v. EPA*, 134 S. Ct. 2427, addressing the application of stationary source permitting requirements to GHGs. The U.S. Supreme Court held that the EPA may not treat GHGs as an air pollutant for the specific purpose of determining whether a source is a major

source (or a modification thereof) and thus required to obtain a PSD or title V permit. However, the U.S. Supreme Court also said that the EPA could continue to require that PSD permits, otherwise required based on emissions of pollutants other than GHGs pollutants, contain limitations on GHG emissions based on the application of GHG BACT. That is, with respect to PSD, the ruling effectively upheld PSD permitting requirements for GHG emissions under Step 1 of the Tailoring Rule for “anyway sources,” and invalidated PSD permitting requirements for Step 2 sources.

Because the Supreme Court decision affirmed in part and reversed in part an earlier decision of the D.C. Circuit in *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102 (D.C. Cir. 2012), on April 10, 2015, the D.C. Circuit issued an Amended Judgment (Nos. 09-1322, 10-073, 10-1092 and 10-1167), which reflects the *UARG v. EPA* Supreme Court decision. The D.C. Circuit simultaneously issued its mandate, which means that the *Coalition* Amended Judgment became final and effective upon issuance.

In the *Coalition* Amended Judgment, the D.C. Circuit ordered that the EPA regulations under review (including 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v)) be vacated to the extent they require a stationary source to obtain a PSD permit if GHGs are the only pollutant (i) that the source emits or has the potential to emit above the applicable major source thresholds, or (ii) for which there is a significant emissions increase from a modification. The D.C. Circuit also ordered that the regulations under review be vacated to the extent they require (i) a stationary source to obtain a title V permit solely because the source emits or has the potential to emit GHGs above the applicable major source thresholds and (ii) the EPA to consider further phasing-in the GHG permitting requirements at lower GHG emission thresholds (in particular 40 CFR 52.22 and 40 CFR 70.12, 71.13).

Consistent with the *Coalition* Amended Judgment, this action removes from the PSD regulations certain regulatory provisions that require a stationary source to obtain a PSD permit solely on the basis of the source's GHG emissions and the regulations that require the EPA to consider further phasing-in GHG permitting requirements into the PSD and title V permitting programs at lower GHG emissions thresholds. The EPA intends to further revise the PSD and title V regulations to fully implement the *Coalition* Amended Judgment in a separate rulemaking. This future rulemaking will include revisions to additional definitions in the PSD regulations. It will also include further revising the title V regulations to remove portions of the title V regulations that were vacated in the *Coalition* Amended Judgment case -- those that require a stationary source to obtain a title V permit solely because the source emits or has the potential to emit GHGs above the applicable major source thresholds. Those additional revisions to the PSD and title V regulations, although necessary to implement the *Coalition* Amended Judgment, are not purely ministerial in nature and will be addressed in this separate notice-and-comment rulemaking, which would give the public an opportunity to comment on how the EPA proposes to address those portions of the *Coalition* Amended Judgment.

### **III. Final Action**

This final action removes from the CFR several provisions of the PSD and title V permitting regulations that were originally promulgated as part of the Tailoring Rule and that the D.C. Circuit specifically identified as vacated in the *Coalition* Amended Judgment. Because the D.C. Circuit specifically identified the Tailoring Rule Step 2 PSD permitting requirements in 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v) and the regulations that require the EPA to consider further phasing-in the GHG permitting requirements at lower GHG emission thresholds

in 40 CFR 52.22, 70.12, and 71.13 as vacated, the EPA is taking the ministerial action of removing these provisions from the CFR.

Furthermore, and since the D.C. Circuit's *Coalition* Amended Judgment further ordered "the EPA to take steps to rescind and/or revise the applicable provisions of the CFR as expeditiously as practicable" to reflect its vacatur of certain provisions from the Tailoring Rule, this rulemaking addresses only those provisions specifically identified in the *Coalition* Amended Judgment that can be removed from the CFR without the need for any further changes. In a subsequent notice-and-comment rulemaking, the EPA will need to make additional changes to its PSD and title V permitting regulations in order to fully implement the *Coalition* Amended Judgment.

The EPA is taking this action as a final rule without providing an opportunity for public comment or a public hearing because the EPA finds that the Administrative Procedure Act (APA) good cause exemption applies here. In general, the APA requires that general notice of proposed rulemaking shall be published in the *Federal Register*. Such notice must provide an opportunity for public participation in the rulemaking process. However, the APA also provides a way for an agency to directly issue a final rulemaking in certain specific instances. This may occur, in particular, when an agency for good cause finds (and incorporates the finding and a brief statement of reasons in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B). The EPA has determined that it is not necessary to provide a public hearing or an opportunity for public comment on this action because the removal of the affected PSD and title V Tailoring Rule provisions from the CFR is a necessary ministerial act. The D.C. Circuit specifically identified as vacated the PSD and title V regulations this rule removes, and ordered that the EPA

take steps to rescind and/or revise the applicable provisions of the CFR as expeditiously as practicable. The EPA no longer has the authority to require any source to obtain a PSD or title V permit based solely on the source having GHG emissions above applicable thresholds. Thus, EPA may not implement the vacated provisions at 40 CFR 51.166(b)(48)(v) and 52.21(b)(49)(v) that applied PSD to this population of sources. Further, the EPA is no longer required to take the actions specified in the vacated regulations at 40 CFR 52.22, 70.12, and 71.13 to consider further phasing in GHG PSD and title V permitting requirements at lower GHG emissions thresholds. Therefore, removing the affected regulatory text simply implements the decision of the Supreme Court and D.C. Circuit and it would serve no useful purpose to provide an opportunity for public comment or a public hearing on this issue.

In addition, notice-and-comment would be contrary to the public interest because it would unnecessarily delay the removal from the CFR of the Tailoring Rule Step 2 PSD permitting provisions that the Supreme Court held were invalid and the regulations that require the EPA to consider further phasing-in the GHG permitting requirements for lower GHG emissions thresholds in 40 CFR 52.22, 70.12, and 71.13 that the D.C. Circuit's *Coalition Amended Judgment* specifically identified as vacated. Such delay could result in confusion on the part of the regulated industry and state, local and tribal air agencies about how the D.C. Circuit's decision affects the PSD and title V regulations as well as PSD permitting. Promulgation of this rule soon after the D.C. Circuit decision serves to clarify that sources are no longer required to obtain PSD permits under the preconstruction permitting regulations associated with Step 2 of the Tailoring Rule and that the EPA will not be required under 40 CFR 52.22, 70.12, and 71.13 to take further steps to consider further phasing in PSD and title V permitting requirements at lower GHG emissions thresholds. Given the substantial costs to the

owner/operator of projects associated with delays and uncertainty, it is in the public interest for the EPA to amend the CFR without delay. Furthermore, and as stated previously, the D.C. Circuit's *Coalition* Amended Judgment ordered the EPA to take steps to undertake these revisions as expeditiously as practicable.

For these reasons, the EPA finds good cause to issue a final rulemaking pursuant to section 553 of the APA, 5 U.S.C. 553(b)(3)(B). The requirements of CAA section 307(d), including the requirement for public comment and hearing on proposed rulemakings, do not apply to this action because 5 U.S.C. 553(b)(3)(B) applies. In addition, this rule relieves a restriction on construction of some stationary sources and therefore is not subject to the requirement for a 30-day delay in effective date. 5 U.S.C. 553(d)(1). Moreover, the agency finds that the problems outlined above regarding the effects of delaying issuance of the rule also provide good cause for not delaying its effective date. 5 U.S.C. 553(d)(3). Accordingly, the requirement for a delay in effective date does not apply and the rule will take effect upon publication in the *Federal Register*. 5 U.S.C. 553(d).

#### **IV. Implementation**

The D.C. Circuit's vacatur of the Tailoring Rule Step 2 PSD permitting requirements in 40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v) and the provisions that required further action to consider phasing-in GHG permitting requirements into the PSD and title V programs at lower GHG emission thresholds at 40 CFR 52.22, 70.12, and 71.13 means that these provisions can no longer be relied upon by the EPA, permit applicants or permitting authorities as a basis for issuing PSD permits. Further, this means that the EPA will not be required to take the actions specified in the regulations at 40 CFR 52.22, 70.12, and 71.13 to consider further phasing in GHG PSD and title V permitting requirements at lower GHG emissions thresholds.

Permit reviewing authorities with EPA-approved SIPs containing any or all of the affected provisions previously allowed by 40 CFR 51.166(b)(48)(v) may request to remove their corresponding Tailoring Rule Step 2 provisions as soon as feasible, which may be in conjunction with the next otherwise planned SIP revision. Permit reviewing authorities also have the option to retain the Tailoring Rule Step 2 permitting requirements solely as a requirement of state law, but these requirements will not be approved as part of their federally-enforceable SIP. As we explained in a memorandum issued by the agency on July 24, 2014, titled, “Next Steps and Preliminary Views on the Application of Clean Air Act Permitting Programs to Greenhouse Gases Following the Supreme Court’s Decision in *UARG v. EPA*” (Preliminary Views Memo),<sup>4</sup> we again note that the “[EPA does] not read the [U.S.] Supreme Court decision to preclude states from retaining permitting requirements for sources of GHG emissions that apply independently under state law even where those requirements are no longer required under federal law.”

With regard to PSD Step 2 permits already issued, the Preliminary Views Memo explained that the EPA “will no longer require PSD ... permits for Step 2 sources” (Preliminary Views Memo at 2) and that the EPA expected “to provide additional views in the future with respect to Step 2 sources that had already obtained a PSD permit ...” (Preliminary Views Memo at 4). The EPA provided additional views regarding EPA-issued Step 2 PSD permits<sup>5</sup> when it issued two memoranda on December 19, 2014. In the first memorandum issued by the Office of Air and Radiation (OAR) and titled, “Next Steps for Addressing EPA-Issued Step 2 Prevention of Significant Deterioration Greenhouse Gas Permits and Associated Requirements” (OAR Next

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<sup>4</sup> <http://epa.gov/nsr/documents/20140724memo.pdf>.

<sup>5</sup> For purposes of this rule, the phrases “EPA-issued PSD permits that were issued under Step 2 of the Tailoring Rule” and “EPA-issued Step 2 PSD permits” are intended to have the same meaning. The use of the term “EPA-issued” in both phrases includes PSD permits issued by the EPA as well as permits issued by state or local reviewing authorities exercising federal law authority delegated by an EPA Regional Office under 40 CFR 52.21(u).

Steps Memo),<sup>6</sup> the EPA explained that it intended to complete a rulemaking “authorizing the rescission of Step 2 PSD permits.” In the second memorandum, which was issued by the Office of Enforcement and Compliance Assurance (OECA) and titled, “No Action Assurance Regarding EPA-Issued Step 2 Prevention of Significant Deterioration Permits and Related Title V Requirements Following *Utility Air Regulatory Group v. Environmental Protection Agency*” (OECA No Action Assurance Memo),<sup>7</sup> OECA issued a narrowly tailored No Action Assurance for sources with EPA-issued Step 2 PSD permits. The OECA No Action Assurance Memo establishes that the EPA will exercise its enforcement discretion not to pursue enforcement of the terms and conditions relating to GHGs in a source’s EPA-issued Step 2 PSD permit, and for related GHG terms and conditions that are contained in the source’s title V permit, if any, until 11:59 PM EDT, September 30, 2016. The No Action Assurance ceases to apply to a source once its EPA-issued Step 2 PSD permit is rescinded, and, if applicable, its title V permit is accordingly revised, whichever is later.

Consistent with the plan described in the OAR Next Steps Memo, the EPA completed the rulemaking that allows for rescission of Step 2 permits. “Prevention of Significant Deterioration Permitting for Greenhouse Gases: Providing Option for Rescission of EPA-Issued Tailoring Rule Step 2 Prevention of Significant Deterioration Permits” (80 FR 26183; May 7, 2015). This rule provides a mechanism for the EPA and delegated reviewing authorities to rescind EPA-issued Step 2 PSD permits in response to requests from applicants who can demonstrate that they are eligible for permit rescission and as further discussed in that rule. EPA received no comments on this rule, and it is now in effect. Sources with questions on PSD permitting obligations arising from Step 2 PSD permits issued by state, local or tribal permitting authorities under permitting

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<sup>6</sup> [http://www.epa.gov/nsr/ghgdocs/Step2PermitRescissionMemoFinal\\_12-19-14.pdf](http://www.epa.gov/nsr/ghgdocs/Step2PermitRescissionMemoFinal_12-19-14.pdf).

<sup>7</sup> [http://epa.gov/nsr/ghgdocs/OECANoActionAssuranceMemo\\_December192014.pdf](http://epa.gov/nsr/ghgdocs/OECANoActionAssuranceMemo_December192014.pdf).

programs approved into the state or tribal implementation plans should review the governing statutory provisions and the provisions in the applicable state or tribal implementation plans to determine how to address these Step 2 permits and consult with the EPA, states and tribes, as necessary.

In the case of sources that trigger PSD based on emissions of pollutants other than GHG (“anyway sources”), the PSD BACT requirement continues to apply to GHG emissions from such sources. This rulemaking does not change §§51.166(j), 51.166(b)(48)(iv), 52.21(j), or 52.21(b)(48)(iv) of EPA’s regulations, which remain in effect. Under these provisions, the BACT requirement applies to GHG emissions from “anyway sources” when a new source emits or has the potential to emit 75,000 tons per year (tpy) or more of GHG on a carbon dioxide equivalent (“CO<sub>2</sub>e”) basis. When an anyway source is modified, under these provisions, the BACT requirement applies to GHGs if (1) the modification is otherwise subject to PSD for a pollutant other than GHG; and (2) the modification results in a GHG emissions increase and a net GHG emission increase equal to or greater than 75,000 tpy or more on a CO<sub>2</sub>e basis and greater than zero on a mass basis.

With respect to title V, the D.C. Circuit’s Amended Judgment in *Coalition* means that the provisions at 40 CFR 70.12 and 71.13 addressing further consideration of phasing-in of title V permitting program requirements at lower GHG emission thresholds are no longer in effect. The obligations that they contain for the EPA to further study and take further action to consider regulating GHGs at lower GHG emissions thresholds under the title V program no longer exist.

## **V. Environmental Justice Considerations**

This action removes sections and paragraphs of the PSD and title V GHG Tailoring Rule regulations that the D.C. Circuit specifically identified as vacated in the *Coalition* Amended

Judgment. In accordance with the changes made by this action, permit applicants are no longer required to request PSD permits if GHGs are the only pollutant (i) that the source emits or has the potential to emit above the major source thresholds, or (ii) for which there is a significant emissions increase and a significant net emissions increase from a modification. In addition, the EPA will not be required to take the actions specified in the regulations at 40 CFR 52.22, 70.12, and 71.13 to consider further phasing in GHG PSD and title V permitting requirements at lower GHG emissions thresholds. Therefore, this action itself does not compel any specific permit action that will affect the fair treatment and meaningful involvement of all people. Rather, it makes clear that a portion of the *Coalition* Amended Judgment is efficiently implemented and permit applicants are no longer required to submit PSD permit applications if GHGs are the only pollutant that the sources emits above the applicable major source thresholds.

## **VI. Statutory and Executive Order Reviews**

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

### *B. Paperwork Reduction Act (PRA)*

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060-0003. To the extent this rule has any substantive effect, it relieves regulatory burdens by removing regulations that purport to require permit applicants to request PSD permits if GHGs are the only pollutant emitted by the new source or modification to an existing source above the applicable major source thresholds and

regulations that required the EPA to consider further phasing-in the GHG permitting requirements at lower GHG emission thresholds. This action is taken in light of the D.C. Circuit's *Coalition* Amended Judgment that vacated those regulations.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. To the extent this rule has any substantive effect, it relieves regulatory burdens by removing regulations that purport to require permit applicants to request PSD permits if GHGs are the only pollutant emitted by the new source or modification to an existing source above the applicable major source thresholds and regulations that required the EPA to consider further phasing-in the GHG permitting requirements at lower GHG emission thresholds. This action is taken in light of the D.C. Circuit's *Coalition* Amended Judgment that vacated those regulations. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*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.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175.

Although the Tribal Air Rule (76 FR 38748, July 1, 2011) under the CAA gives tribes the opportunity to request and be granted delegation of the federal PSD program found at 40 CFR 52.21 to issue PSD permits, there are no tribal agencies currently implementing the federal PSD permitting program. As a result, the removal of the PSD provisions that the D.C. Circuit vacated will not affect any tribal reviewing authorities and any tribally-owned sources with EPA-issued Step 2 PSD permits have the discretion to request the EPA to rescind their permit. In addition, the D.C. Circuit vacatur of the requirements for the EPA to consider further phasing in GHG permitting requirements into the PSD and title V programs at lower GHG emission thresholds provides relief to tribally-owned sources that could have been subject to GHG permitting regulations at lower GHG emission thresholds if the EPA would have taken steps to apply GHG permitting requirements to such sources at such thresholds. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The results of this evaluation are contained in the section V titled, “Environmental Justice Considerations” for this action.

*K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice-and-comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this rule as discussed in the Final Action section of this rulemaking, including the basis for that finding.

*L. Determination under Section 307(d)*

Pursuant to CAA section 307(d)(1)(V), the Administrator determines that this action is subject to provisions of section 307(d). Section 307(d) establishes procedural requirements

specific to rulemaking under the CAA. Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to “such other actions as the Administrator may determine.”

## **VII. Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the D.C. Circuit within 60 days from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2) of the CAA).

## **List of Subjects**

### *40 CFR Parts 51 and 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, Preconstruction permitting, Prevention of significant deterioration, Reviewing authorities, Sulfur oxides, Tailoring rule, Volatile organic compounds.

### *40 CFR Parts 70 and 71*

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Intergovernmental relations, Lead, National ambient air quality standards, Nitrogen dioxide, Operating permits, Ozone, Particulate matter, Permitting authorities, Sulfur oxides, Tailoring rule, Title V, Volatile organic compounds.

Dated: August 12, 2015.

Gina McCarthy,  
Administrator.

For the reasons stated in the preamble, title 40, Chapter I of the Code of Federal Regulations is amended as follows:

**PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS**

1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401-7671q.

**Subpart I—Review of New Sources and Modifications**

**§ 51.166 [Amended]**

2. Section 51.166 is amended by removing paragraph (b)(48)(v).

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart A—General Provisions**

**§ 52.21 [Amended]**

4. Section 52.21 is amended by removing paragraph (b)(49)(v).

**§ 52.22 [Removed]**

5. Section 52.22 is removed.

**PART 70—STATE OPERATING PERMIT PROGRAMS**

6. The authority citation for part 70 continues to read as follows:

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

**§70.12 [Removed]**

7. Section 70.12 is removed.

**PART 71—FEDERAL OPERATING PERMIT PROGRAMS**

8. The authority citation for part 71 continues to read as follows:

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

**§71.13 [Removed]**

9. Section 71.13 is removed.

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