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6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 52

[EPA-HQ-OAR-2015-0782; FRL-9954-88-OAR]

RIN 2060-AS56

Rescission of Preconstruction Permits Issued Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating amendments to the EPA's federal Prevention of Significant Deterioration (PSD) regulations to remove a date restriction from the Permit Rescission provision. Other than removing the date restriction, this final rule does not alter the criteria under which a new source review (NSR) permit may be rescinded. This final rule also clarifies that a rescission of a permit is not automatic and corrects an outdated cross-reference to another part of the PSD regulations. The EPA is also adding a corresponding Permit Rescission provision in the federal regulations that apply to major sources in nonattainment areas of Indian country.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2015-0782. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly

available only in hard copy. Publicly available docket materials are available electronically in *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For further general information on this rulemaking, contact Ms. Jessica Montanez, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency (C504-03), Research Triangle Park, NC 27711, by phone at (919) 54l-3407, or by email at *montanez.jessica@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated entities. The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA or Act) section 307(d). CAA section 307(d)(1)(V) (the provisions of CAA section 307(d) apply to "such other actions as the Administrator may determine"). These are amendments to existing regulations and could affect any facility that is eligible for a PSD permit rescission for any such permit issued by the EPA, reviewing authorities that implement the EPA's regulations through delegation or reviewing authorities that incorporate the federal PSD regulations by reference.

I. General Information

A. Does this action apply to me?

Entities potentially affected by this final rulemaking include reviewing authorities responsible for the permitting of stationary sources of air pollution, including the following: the EPA Regional offices; air agencies that have delegated authority to implement the EPA regulations; and air agencies that administer EPA-approved air programs that incorporate the federal NSR rules by reference. Entities also potentially affected by this final rulemaking include owners and operators of stationary sources subject to NSR permitting programs under the CAA that are administered by the entities described previously.

B. 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 notice will be posted at: *https://www.epa.gov/nsr/nsr-regulatory-actions.* Upon publication in the *Federal Register*, only the published version may be considered the final official version of the notice, and will govern in the case of any discrepancies between the *Federal Register* published version and any other version.

C. How is this document organized?

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II. Background for Final Rulemaking

On June 14, 2016, the EPA proposed revisions to the Permit Rescission provision in the EPA's federal PSD regulations at 40 CFR 52.21(w). The proposed revisions remove a date restriction from this provision, clarify that a rescission of a permit is contingent on the reviewing authority's concurrence with a rescission applicant's demonstration that the PSD permit provisions "would not apply to the source or modification," and correct an outdated cross-reference to another part of the PSD regulations. The EPA also proposed to add a corresponding Permit Rescission provision in the federal regulations that apply to major sources in nonattainment areas of Indian country.

The preamble to the proposal provided an overview of the NSR permitting program and a brief history of the previous revisions to the Permit Rescission provision regulations. The preamble also explained the EPA's basis for the proposed changes and rationale. Because the EPA is finalizing this rule as it was proposed, this final rulemaking notice does not repeat that discussion.

The 30-day public comment period for the proposed rule closed on July 14, 2016. In Section III of this document, we summarize and respond to the comments received and explain the basis for the regulatory text revisions made by this final rule.

III. Overview of the Final Revisions

A. What are the final revisions to the 40 CFR part 52 Permit Rescission provision?

In this final rule, we are making three specific revisions to the Permit Rescission provision in the PSD regulations at 40 CFR part 52. First, we are revising 40 CFR 52.21(w)(2) to remove the July 30, 1987, date restriction. Second, we are revising 40 CFR 52.21(w)(3) to

change the word “shall” to “may” to make clear that this provision does not create a mandatory duty on the Administrator to grant a rescission request. Lastly, we are revising 40 CFR 52.21(w)(1) to appropriately cross reference paragraph (r) and not paragraph (s) of our PSD regulations.

The PSD Permit Rescission provision is applicable for the EPA Regions and other reviewing authorities that are delegated authority by the EPA to issue PSD permits on behalf of the EPA (via a delegation agreement). The provision also applies to reviewing authorities that have their own PSD rules approved by the EPA in a State Implementation Plan (SIP) where the SIP incorporates 40 CFR 52.21(w) by reference.

B. What are the final revisions to the 40 CFR part 49 Indian country nonattainment NSR provisions?

This final rule adds a provision to 40 CFR 49.172(f) to provide authority to rescind nonattainment new source review (NA NSR) permits in Indian country. This provision mirrors the provision being finalized at 40 CFR 52.21(w) by providing the EPA and delegated permit reviewing authorities the authority to rescind NA NSR permits where the application for rescission adequately shows that the NA NSR rules for Indian country at 40 CFR 49.166 through 49.173 would not apply to the source or modification. This provision also includes methods for adequate notice of the rescission determination in accordance with the public noticing requirements for NA NSR permits in Indian country.

C. What is the basis for the EPA's final revisions?

1. Removal of the July 30, 1987, Date Restriction in 40 CFR 52.21(w)(2)

a. Summary of the EPA's Basis for this Action

As stated in the proposal, experience has shown that there can be circumstances where the EPA believes rescission of a permit issued under the PSD rules in effect after July 30, 1987, may be appropriate under the criteria in paragraph (w)(3) of the Permit Rescission provision. In one recent instance, the EPA determined a need for rescission authority after the Supreme Court of the United States (Supreme Court) determined that the EPA may not treat greenhouse gases (GHGs) as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD permit. *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S.Ct. 2427 (2014) ("*UARG*"). However, because of the date restriction in the former PSD Permit Rescission provision, the EPA had to revise this Permit Rescission regulation to expressly allow rescission of permits granted for sources based solely on the emissions of GHGs. May 7, 2015; 80 FR 26183. The EPA believes removal of the date restriction is appropriate to improve implementation efficiency and eliminate the need to conduct similar targeted rulemakings in the future.

b. Summary of Comments

Two commenters generally supported the removal of the date restriction. One commenter believes that the right for a source to request a permit rescission should be ongoing. The other commenter noted that the amendment is intended to allow a CAA permit holder the ability to request that the EPA rescind permits that would no longer be required under the current regulations. Nevertheless, another commenter questioned why the revision was necessary since (1) the EPA already amended the Permit Rescission provision to accommodate rescission of

permits affected by the *UARG* decision and (2) the EPA has made only two other minor adjustments to rescind certain permits over the past 36 years.

c. EPA Response

We agree with those commenters that support removal of the July 30, 1987, date restriction from the PSD Permit Rescission provision. As we discussed in the proposed rule preamble, the EPA has periodically found a need to amend this provision. Although the instances under which PSD permit rescissions are appropriate are limited and the EPA has made a limited number of amendments to 40 CFR 52.21(w) since it was initially adopted, the purpose for these rule amendments is forward-looking. We expect future instances under which rescission of PSD permits issued after July 30, 1987, would be appropriate under the criteria in paragraph (w)(3) of the current Permit Rescission provision. Therefore, in this final rule the EPA is finalizing the removal of the July 30, 1987, date to obviate the need to make further changes to this regulation in the future.

2. Revision to 40 CFR 52.21(w)(3) to Clarify that the EPA Administrator Does Not Have a Mandatory Duty to Grant a Rescission Request

a. Summary of the EPA's Basis

The EPA proposed to revise 40 CFR 52.21(w)(3) to make it clear that the provision does not create a mandatory duty on the Administrator to grant a rescission request. Specifically, the EPA proposed to replace the word "shall" with the word "may" in this provision to make clear that the Administrator may deny a permit rescission request if he or she does not concur with the analysis by the permit applicant that 40 CFR 52.21 "would not apply to the source or modification."

b. Summary of Comments

One commenter recommended that we retain the existing language in 40 CFR 52.21(w)(3) as "shall" instead of "may." The commenter believed that the existing language in the regulation provides the Administrator discretion to grant a rescission request since the "if" in that regulatory text shows that a source has the burden of proof to establish that a source is eligible for the permit rescission and there is no guaranteed EPA approval.

c. EPA Response

The EPA continues to believe that it is appropriate to change the word "shall" to "may" in this provision to clarify that the Administrator may deny a permit rescission request if he or she does not concur with the analysis by the permit applicant that 40 CFR 52.21 "would not apply to the source or modification." The word "shall" is commonly used in statutes and regulations to describe a mandatory requirement. Even if other words in 40 CFR 52.21(w)(3) convey that a reviewing authority has discretion to deny a request, the EPA believes the regulation should be clear. We believe it is clearer to use discretionary language that conveys the meaning more directly so one does not have to rely on context to determine the meaning. As stated in the proposal, the EPA does not believe this revision changes the meaning or intent of the existing provision, but rather clarifies the discretion held by the Administrator. Thus, the EPA is finalizing this revision in this final rule.

3. Corrected Cross-Reference in 40 CFR 52.21(w)(1)

a. Summary of the EPA's Basis

We proposed to correct 40 CFR 52.21(w)(1) because it currently references 40 CFR 52.21(s), which pertains to environmental impact statements. 40 CFR 52.21(w)(1) pertains to

permit expiration and rescission, so the correct reference should be 40 CFR 52.21(r), which pertains to permit expiration in our federal PSD regulations.

b. Summary of Comments and Final EPA Action

The EPA received no comments on this proposed correction and is finalizing this correction as proposed. We believe 40 CFR 52.21(r) is the correct reference for 40 CFR 52.21(w)(1).

4. Addition of Permit Rescission Authority to the Nonattainment NSR Regulations for Indian Country

a. Summary of the EPA's Basis

We also proposed to add a provision in 40 CFR 49.172(f) to provide rescission authority for major NA NSR permits in Indian country. This new regulatory text includes public notice requirements consistent with the noticing requirements applicable to major NA NSR permits in Indian country. 40 CFR 49.171. The EPA has determined it is appropriate to allow rescission of NA NSR permits in Indian country in limited, case-specific circumstances for the same reasons it is appropriate to allow rescission of PSD permits in narrow circumstances. Creating a Permit Rescission provision in 40 CFR part 49 for major NA NSR permits in Indian country would ensure that all federal programs for major source permitting have permit rescission authority.

b. Summary of Comments and Final EPA Action

The EPA received no comments on this proposed provision. The EPA is finalizing the addition of permit rescission authority for major NA NSR permits in Indian country as proposed.

5. Other Issues Raised in Comments

a. Establishing Specific Criteria for Granting or Denying a Permit Rescission Request

i. Summary of Comments

Various commenters requested that the EPA establish specific criteria under which the EPA would grant or deny a permit rescission request. Commenters noted that without such criteria, implementation of the Permit Rescission provision may be inconsistent between reviewing authorities with EPA-approved SIPs incorporating 40 CFR 52.21(w) and reviewing authorities that, for example, implement the federal PSD rules through delegation.

One commenter stated that the EPA should withdraw its proposal and re-propose the amendment to the PSD Permit Rescission provision and the addition of this provision to the major NA NSR program in Indian country with specific criteria for when a permittee would be eligible for rescission

Another commenter argued that in the preamble and through other discussions between the EPA and the National Association of Clean Air Agencies members, the EPA staff have indicated that our intent is to limit permit rescissions to cases in which court decisions have changed the PSD rules or situations in which the PSD rules have changed and gone through all comment periods and reconsiderations. The commenter added that the proposed rule language does not state this.

ii. EPA Response

As stated in the proposal, the EPA believes there are a limited number of circumstances where a permit rescission is justified and that permit rescission requests are very case-specific. Review of a rescission request requires an in-depth evaluation of the source, the rules in place at the time, and the court decisions or other events affecting the source before it can be determined that the requirements of 40 CFR 52.21 “would not apply to the source or modification.” 40 CFR

52.21(w)(3). The principal aim of this targeted rulemaking action is to remove an unnecessary impediment to rescissions of permits issued after the date specified in the existing version of 40 CFR 52.21(w) and therefore avoid the need for future revisions to 40 CFR 52.21(w). Although the EPA generally believes permit rescissions are warranted in a limited category of circumstances, specifically defining that category of circumstances would be contrary to the goals of this rule to provide flexibility going forward to address circumstances that may not have been previously anticipated or experienced. Therefore, we do not believe it is appropriate to develop specific *a priori* criteria for when a permit rescission would be granted or denied, nor do we agree with the commenter that argued that permit rescissions are limited only to cases in which court decisions have changed the PSD rules or situations in which the PSD rules have changed and gone through all comment periods and reconsiderations. Thus, the EPA is not including specific criteria for PSD permit rescissions and NA NSR permit rescissions in Indian country in this final rule.

b. Clarifying Whether the EPA Would Grant Permit Rescission Requests under Specific Circumstances

i. Summary of Comments

A few commenters provided specific examples of circumstances where they believe PSD permit rescissions or rescission of PSD related terms and conditions in other types of air permits could qualify for permit rescission. These circumstances include:

1. Requesting PSD permit rescissions when situations such as energy efficiency improvements and changes in operations cause a source to no longer be a major PSD stationary source.

2. Allowing a permit rescission when a pollutant is no longer regulated under the PSD program because the EPA established a CAA section 112 emission limitation, as long as existing limitations in the PSD permits are less restrictive than the applicable section 112 limitations and no increase in emission of another NSR regulated pollutant would be caused by the rescission.
3. Allowing PSD permits to be rescinded after a source takes limits at a future date to restrict emissions below the major source thresholds.

One commenter also stated that the EPA should allow a source to request removal of related obligations including synthetic minor PSD permit limits or no longer applicable or obsolete PSD conditions in its federal or PSD-approved state or local construction permit(s) and/or title V operating permits.

ii. EPA Response

The EPA's longstanding policy has been to evaluate permit rescission requests on a case-by-case basis since there are multiple factors that need to be considered when evaluating whether a source is eligible for a PSD permit rescission. As we stated previously, PSD permit rescissions require an in-depth evaluation of the source, the rules in place at the time, and the court decisions or other events affecting the source before it can be determined that the requirements of 40 CFR 52.21 "would not apply to the source or modification." 40 CFR 52.21(w)(3). As such, the EPA cannot say *a priori* whether the circumstances raised by the commenters would always be eligible or not for permit rescission. In addition, based on past experience, the EPA believes that it would not be typical for major sources to seek PSD permit rescissions.

Furthermore, the scope of this rule is limited to PSD and NA NSR permitting and does not address the revision or rescission of permits that are not major NSR permits. Therefore,

whether to allow a source to request removal of related obligations in non-major NSR permits, such as synthetic minor permits or title V operating permits, is outside the scope of this rulemaking.

c. Specifying that PSD Permits Issued before the Promulgation of the 2007 Final Ethanol Rule can be Rescinded under the Revised Permit Rescission Provision

i. Summary of Comments

A couple of commenters asked the EPA to clarify that the revised PSD Permit Rescission provision would apply to PSD permits for fuel ethanol plants that were issued before July 2, 2007, specifically fuel ethanol plants that are no longer considered "major" under the revised major source applicability threshold for "chemical processing plants." According to one of these commenters, the EPA acknowledged in the Ethanol Rule that PSD permits issued under the 100 tons per year (tpy) major source threshold for sources that would not trigger the revised 250 tpy threshold would be eligible to take advantage of the PSD Permit Rescission provision. 72 FR 24060, 24071.

In addition, this same commenter claims that the situation presented by the Ethanol rule is analogous to the situations described in the preamble where the EPA previously revised the Permit Rescission provision to respond to the United States District of Columbia Circuit (D.C. Circuit) Court decision in *Alabama Power* and when the EPA transitioned from the Total Suspended Particulates to the Particulate Matter 10 micrometers in diameter or less indicator for the Particulate Matter National Ambient Air Quality Standard.

Finally, the commenter claims that the equal protection clause, found in 14th Amendment of the United States Constitution and Article I, Section I of the Wisconsin State Constitution, supports rescission of pre-2007 PSD permits issued for fuel ethanol facilities. According to the

commenter, treating ethanol facilities built prior to the adoption of the Ethanol Rule ("Pre-2007) and those built after the adoption of the Ethanol Rule differently is a disparity between two similarly situated classes distinguished only by year.

ii. EPA Response

For the reasons stated in Sections III.C.5.a and III.C.5.b of this rule, we do not believe it is appropriate in this rule to address specific circumstances when a permit rescission may be granted or denied. In addition and as one commenter argues, the EPA did not acknowledge in the Ethanol Rule that PSD permits issued under the 100 tpy major source threshold for sources that would not trigger the revised 250 tpy threshold would be eligible to take advantage of the PSD Permit Rescission provision discussed in this rule.

Historically, corn milling facilities that produced ethanol only for fuel use were considered by the EPA to be part of the "chemical process plants" category while facilities that produced ethanol only for human consumption were not considered by the EPA to be in that category. Under the PSD definition of major stationary source, "chemical process plants" is one of the source categories listed in 40 CFR 52.21(b)(1)(i) for which a source with a potential to emit a regulated NSR pollutant[1] in an amount equal to or higher than 100 tpy is subject to PSD permitting. All other non-listed source categories are subject to permitting if the source has the potential to emit a regulated NSR pollutant in an amount equal to or higher than 250 tpy. On May 1, 2007, the EPA modified the definition of the "chemical process plants" category of sources by removing corn milling facilities that produce ethanol only for fuel use from this definition. This change established the same 250 tpy major source applicability threshold for

[1] As defined in 40 CFR 52.21(b)(50).

ethanol producing facilities regardless of whether a source produces ethanol for human consumption, for fuel, or for an industrial purpose.

On July 2, 2007, the EPA received a petition for reconsideration pursuant to section 307(d)(7)(B) of the CAA, which the EPA denied in its entirety on March 27, 2008.[2] On March 2, 2009, the EPA received a second petition for reconsideration, and we are currently in the process of considering that petition. Furthermore, this rule and the EPA's denial of the first petition for reconsideration have been challenged in the D.C. Circuit. That litigation is currently being held in abeyance pending the outcome of the second petition for reconsideration.

Since this second petition for reconsideration is currently under evaluation by the EPA, we believe it is premature to say in this rule whether pre-2007 fuel ethanol PSD permits would meet the regulatory criteria for a permit rescission under 40 CFR 52.21(w)(3).

d. Comments on the Scope of the Proposed Revisions to the Permit Rescission Provision

i. Summary of Comments

One commenter would like the EPA to confirm that the amendment does not allow either the EPA or other reviewing authorities to use the Permit Rescission provision to unilaterally rescind or suspend a duly issued CAA NSR permit without the request of the permittee. Specifically, the commenter would like the EPA to clarify that officials do not intend for the proposed amendment to authorize any permit reviewing authority to: (1) Use this provision to either require updates of state SIPs, or rescind existing SIPs or disapprove future updates of SIPs (i.e., there is no obligation based on this rule change for states to modify SIPs); (2) Use the proposed amendment to rescind any permit without a written request from the owner/operator of

[2] Details of the EPA's denial of the petition for reconsideration can be found at: *https://www.epa.gov/sites/production/files/2015-12/documents/20080327letter.pdf.*

the source; (3) Use the proposed amendment to trigger any changes to existing permitted emission limits (e.g., Potential to Emit, Plantwide Applicability Limits, applicable New Source Performance Standards, or unit-specific permit limits); or (4) Use the proposed amendment provision in any way that would alter the calculation (for an affected source) of significant emissions increase or net significant emission increase.

ii. EPA Response

The amended regulatory text in the Permit Rescission provision does not allow either the EPA or any other reviewing authorities to unilaterally rescind or suspend a duly issued CAA NSR permit without the request of the permittee. These provisions also do not alter other CAA requirements, such as state SIP provisions on topics other than NSR permitting. As discussed in the next section, the revisions also should not affect NSR permitting requirements in approved SIPs unless those SIPs incorporate §52.21(w) by reference. The Permit Rescission provision in 40 CFR 49.172(f) and 40 CFR 51.21(w) only applies for the rescission of PSD permits under the federal PSD permitting regulations and NA NSR permits in Indian country, respectively, upon request for rescission application of a permittee when the Administrator deems such rescission is consistent with the regulatory terms.

e. Comments on State Requirements for PSD Permit Rescissions

i. Summary of Comments

One commenter would like the EPA to clarify if this final action applies to states with EPA-approved SIPs. A different commenter argued that the EPA should allow states with EPA-approved SIP programs to use existing EPA-approved permitting procedures to rescind PSD permits and not require states with EPA-approved SIP programs to develop new rules that mirror 40 CFR 51.21(w)(2).

ii. EPA's Response

As we stated in the proposal, this final action does not apply to states with EPA-approved SIPs unless they incorporate 40 CFR 52.21(w) by reference. We did not propose amendments to 40 CFR part 51 to revise the permitting provisions applicable to state and local programs. Therefore, these revisions to the PSD Permit Rescission provision do not apply to SIP-approved programs unless they incorporate the federal PSD Permit Rescission provision by reference. States will not be required to make any changes to their SIP-approved programs as a result of this rule.

IV. Environmental Justice Considerations

The revisions being finalized in this rule improve implementation efficiency for the Permit Rescission provision by eliminating the date restriction, correcting an outdated cross-reference and clarifying that a rescission of a permit is not automatic (the Administrator may grant a PSD permit rescission only if the application shows that the PSD rules would not apply to the source or modification). In addition, we are adding a provision in 40 CFR 49.172(f) to provide rescission authority for major NA NSR permits in Indian country for the same reasons it is appropriate to allow rescission of PSD permits and to ensure that all federal programs for major source permitting have permit rescission authority. Reviews of permit rescission requests after the finalization of this rule will continue to require an in-depth evaluation of the source, the rules in place at the time, and the court decisions or other events affecting the source before it can be determined that the requirements of 40 CFR 49.166 through 49.173 for the NA NSR program in Indian country or 40 CFR 52.21 for the PSD program "would not apply to the source or modification." Thus, we do not believe that these revisions and additions to the rescission of federal major NSR permits will have any effect on environmental justice communities.

V. 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 PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060-0003 for the PSD and NA NSR permit programs. We believe that the burden associated with rescinding federal NSR permits is already accounted for under the approved information collection requests.

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. This action will not impose any requirements on small entities. Entities potentially affected directly by this proposal include state, local and tribal governments and none of these governments would qualify as a small entity. Other types of small entities are not directly subject to the requirements of this action.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded federal 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. Specifically, these revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. This action only extends the EPA's permit rescission authority to the EPA regions that currently implement the NA NSR program in Indian country or tribes that would like to implement the NA NSR program through a delegation of these federal rules. 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 directly involve 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 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This action 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 that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

The documentation for this decision is contained in Section IV of this document titled, "Environmental Justice Considerations."

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. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under CAA section 307(b)(1), petitions for judicial review of any nationally applicable regulation, or any action the Administrator "finds and publishes" as based on a determination of nationwide scope or effect must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days of the date the promulgation, approval, or action appears in the *Federal Register*. This action is nationally applicable, as it adds Permit Rescission provisions to 40 CFR part 49 and revises the rules governing procedures permit rescissions in 40 CFR part 52. As a result, petitions for review of this final action must be filed in the United States Court of Appeals for the District of Columbia Circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the

Administrator of this final action 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 must be filed, and shall not postpone the effectiveness of this action.

VI. Statutory Authority

The statutory authority for this action is provided by 42 U.S.C. 7401, *et seq*.

List of Subjects

40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference.

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference.

Dated: October 26, 2016.

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 49–INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

1. The authority citation for part 49 continues to read as follows:

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

Subpart C–General Federal Implementation Plan Provisions

2. Section 49.172 is amended by adding paragraph (f) to read as follows:

§49.172 Final permit issuance and administrative and judicial review.

*** * * * ***

(f) *Can my permit be rescinded?* (1) Any permit issued under this section or a prior version of this section shall remain in effect until it is rescinded under this paragraph (f).

(2) An owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirement in paragraph (f)(3) of this section may request that the reviewing authority rescind the permit or a particular portion of the permit.

(3) The reviewing authority may grant an application for rescission if the application shows that §§49.166 through 49.173 would not apply to the source or modification.

(4) If the reviewing authority rescinds a permit under this paragraph (f), the public shall be given adequate notice of the rescission determination in accordance with one or more of the following methods:

(i) The reviewing authority may mail or email a copy of the notice to persons on a mailing list developed by the reviewing authority consisting of those persons who have requested to be placed on such a mailing list.

(ii) The reviewing authority may post the notice on its Web site.

(iii) The reviewing authority may publish the notice in a newspaper of general circulation in the area affected by the source. Where possible, the notice may also be published in a Tribal newspaper or newsletter.

(iv) The reviewing authority may provide copies of the notice for posting at one or more locations in the area affected by the source, such as Post Offices, trading posts, libraries, Tribal environmental offices, community centers or other gathering places in the community.

(v) The reviewing authority may employ other means of notification as appropriate.

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

4. Section 52.21 is amended by revising paragraphs (w)(1) through (3) to read as follows:

§52.21 Prevention of significant deterioration of air quality.

*** * * * ***

(w) * * *

(1) Any permit issued under this section or a prior version of this section shall remain in effect, unless and until it expires under paragraph (r) of this section or is rescinded under this paragraph (w).

(2) An owner or operator of a stationary source or modification who holds a permit issued under this section for the construction of a new source or modification that meets the requirement in paragraph (w)(3) of this section may request that the Administrator rescind the permit or a particular portion of the permit.

(3) The Administrator may grant an application for rescission if the application shows that this section would not apply to the source or modification.

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