Supply Contracts for a Specified Portion of an Entity's Physical Need for a Commodity (e.g., peaking supply contracts)

As noted above, concerns have also been raised about the appropriate treatment of peaking supply contracts which are often used by companies to manage the risks attendant to their need for physical commodities that may be used to generate electricity, run an operating plant, or manufacture or supply other goods and services.

Market participants have raised concerns about whether or not these contracts could be considered commodity options. In instances where these contracts represent a reservation of a portion of supplier's capacity to provide a particular commodity and not a transaction for the commodity itself, it seems possible these contracts may not be commodity options. One test that has been proposed to determine whether or not such contracts are commodity options is whether:

1. The subject of the agreement, contract or transaction is a binding, sole-source, obligation of a supplier of a physical commodity to stand ready to meet a specified portion of a commercial consumer's physical need for a commodity through providing for the physical delivery of that commodity to the specified commercial consumer or its designee in connection with the physical obligation,

2. The payment provided by the commercial consumer to the commercial supplier for such agreement, contract or transaction is in the nature of a reservation charge to provide the service of standing ready to meet the physical needs of the commercial consumer,

3. Payment for any commodity delivered under such agreement, contract or transaction is at the market price for that commodity at the time of delivery (*i.e.,* the agreement, contract, or transaction is not used to hedge price risk), and

4. The agreement, contract or transaction is necessary to meet the commercial consumer's projected physical needs or is required by regulation.

I think the Commission would benefit from receiving comments on this proposed test and peaking supply contracts more generally as it appears to be one of the significant outstanding issues regarding instruments that may or may not be trade options.

Together, these two additional items may help address outstanding concerns that have been expressed by commercial market participants, and I think the Commission would benefit by getting comment upon them.

Appendix 4—Statement of Commissioner J. Christopher Giancarlo

I support the Commission's proposed amendments to the interim final trade options rule. These are common sense reforms that will alleviate certain recordkeeping and reporting burdens that § 32.3 currently imposes on end-users that use trade options to manage commercial risk. The deletion of the reference in § 32.3(c)(2) to part 151 position limits is also appropriate in light of the fact that part 151 was vacated by the court in *Int'l Swaps & Derivatives Ass'n* v. *U.S. Commodity Futures Trading Comm'n,* 887 F. Supp. 2d 259 (D.D.C. 2012).

I strongly disagree, however, with the Commission's statement that it preliminarily believes that any future application of position limits would be best addressed in the context of the pending position limits rulemaking. Simply put, position limits for trade options are not ''necessary to diminish, eliminate, or prevent'' excessive speculation. Section 4a(a)(1) of the Commodity Exchange Act (CEA). The final trade options rule should make clear that trade options are exempt from position limits.

As the Commission recognized in promulgating the interim final rule establishing the trade options exemption, ''position limits apply only to speculative positions. . . . Trade options, which are commonly used as hedging instruments or in connection with some commercial function, would normally qualify as hedges, exempt from the speculative position limit rules.'' *Commodity Options,* 77 FR 25320, 25328 n.50 (Apr. 27, 2012).

By definition, the offeree to a trade option ''must be a producer, commercial user of, or a merchant handling the commodity that is the subject of the commodity option transaction, or the products or by-products thereof,'' and must restrict the use of trade options ''solely for purposes related to its business as such.'' § 32.3(a)(2). Moreover, the ''option must be intended to be physically settled, so that, if exercised, [it] would result in the sale of an exempt or agricultural commodity for immediate or deferred shipment or delivery.'' § 32.3(a)(3). Given these parameters, the risk that trade options could be used to engage in speculation, much less excessive speculation, is so remote as to be virtually non-existent.

Applying a position limits regime to trade options and requiring commercial end-users to seek bona fide hedge treatment for those transactions, which was floated as a possibility in the pending proposed position limits rule, would not be an acceptable outcome. *See Position Limits for Derivatives,* 78 FR 75680, 75711 (Dec. 12, 2013). As commenters to the proposed position limits rule have pointed out, there is no regulatory benefit to imposing position limits on instruments that inherently are not speculative in nature, and doing so ''will distort commodity markets and impede economically efficient behavior'' by discouraging the use of trade options. Natural Gas Supply Association Comment Letter dated Aug. 4, 2014 at 13. A comment letter filed by the Edison Electric Institute and the Electric Power Supply Association (Joint Associations) cites persuasive examples of how application of the proposed position limits rule would eliminate the ability of market participants to enter into multi-month and multi-year trade options. *See* Joint Associations Comment Letter dated Feb. 7, 2014 at 6–7; *see also* American Gas Association Comment Letter dated Feb. 10, 2014 at 5 (the lack of a contractual upper limit in the way that natural gas options are structured make position limit reporting impossible).

The Commission has the authority in section 4a(a)(7) of the CEA to exempt ''any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish . . . with respect to position limits.''

As long as the specter of position limits hangs over trade options, market participants that have used these instruments for decades as a cost effective means of ensuring a reliable supply of a physical commodity and to hedge commercial risk will be reluctant to use them. As I have said before, commercial end-users, including commercial end-users of everyday trade options, were not the cause of the financial crisis and the federal government should stop treating them like they were.

I urge my fellow Commissioners to eliminate this regulatory uncertainty sooner, rather than later, by exercising our section 4a(a)(7) authority in connection with this trade options rulemaking. I encourage further public comment on the issue.

[FR Doc. 2015–11020 Filed 5–6–15; 8:45 am]

BILLING CODE 6351–01–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 June 8, 2015.

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, DC 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 Web site 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 Rule [1] 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 of EPA-issued PSD permits [2] 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

[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).

[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.

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 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 5–6–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2014–0905; FRL 9927–15–OAR]

RIN 2060–AS58

Relaxation of the Federal Reid Vapor Pressure Gasoline Volatility Standard for Birmingham, Alabama

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a request from the state of Alabama for the EPA to relax the Reid Vapor Pressure (RVP) standard applicable to gasoline introduced into commerce from June 1 to September 15 of each year for Jefferson and Shelby counties (''the Birmingham area''). Specifically, the EPA is proposing to amend the regulations to change the RVP standard for the Birmingham area from 7.8 pounds per square inch (psi) to 9.0 psi for gasoline. The EPA has preliminarily determined that this change to the federal RVP regulation is consistent with the applicable provisions of the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 8, 2015 unless a public hearing is requested by May 22, 2015. If the EPA receives such a request, we will publish information related to the timing and location of the hearing and a new deadline for public comment.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2014–0905, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.*
- *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2014–0905. Please include a total of two copies.
- *Hand Delivery:* Air and Radiation Docket, EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. Attention Docket ID No. EPA–HQ–OAR–2014–0905. Please include two copies. Such deliveries are accepted only during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2014–0905. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means that the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made