



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2009-0805; EPA-HQ-OAR-2009-0491; FRL-9763-3]

**Approval and Promulgation of Air Quality Implementation Plans;
Illinois; Infrastructure SIP Requirements for the 2006 PM_{2.5}
NAAQS; Revisions to FIPs To Reduce Interstate Transport of PM_{2.5} and
Ozone; Correction**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects errors in the codification of final rules published on July 13, 2011, August 8, 2011, February 21, 2012, and October 29, 2012. The July 13, 2011, and October 29, 2012, actions pertain to State Implementation Plan (SIP) submissions by Illinois regarding the infrastructure requirements of the Clean Air Act (CAA) for the 1997 eight-hour ground level ozone national ambient air quality standards (NAAQS), the 1997 fine particle (PM_{2.5}) NAAQS, and the 2006 24-hour PM_{2.5} NAAQS. The August 8, 2011, and February 21, 2012, actions pertain to Federal Implementation Plans (FIPs) to reduce interstate transport of PM_{2.5} and ozone.

DATES: This correcting amendment is effective on [FEDERAL REGISTER OFFICE: INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION: On August 8, 2011, (76 FR 48208), EPA published FIPs to reduce interstate transport of PM_{2.5} and ozone. It codified the regulation, "Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?", at 40 CFR 52.745. In so doing, EPA had not realized that this section had already been reserved by a previous rulemaking action, titled "Section 110(a)(2) Infrastructure Requirements," and created on July 13, 2011, (76 FR 41075). EPA attempted to correct this error on February 21, 2012, (77 FR 10324). What resulted, however, is that the interstate pollutant transport provision disappeared entirely.

We are now correcting this error by codifying the provision titled "Section 110(a)(2) Infrastructure Requirements" at 40 CFR 52.745; and codifying the provision titled "Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?" at 40 CFR 52.731. As a result of this correction, the rulemaking action published on October 29, 2012, (77 FR 65478) is now codified at 40 CFR 52.745.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or

contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making this rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b) (B).

Statutory and Executive Order Reviews

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 et seq), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule

also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of

Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq).

The Congressional Review Act (5 U.S.C. 801 et seq.), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 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 public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of [FEDERAL REGISTER OFFICE: INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This correction to 40 CFR 52 for Illinois is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 10, 2012

Susan Hedman,
Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, title 40, chapter I of the Code of the Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

§52.731 [Redesignated as §52.745]

2. Redesignate §52.731 as §52.745.

3. A new §52.731 is added to read as follows:

§52.731 Interstate pollutant transport provisions; What are the FIP requirements for decreases in emissions of nitrogen oxides?

(a) (1) The owner and operator of each source and each unit located in the State of Illinois and for which requirements are set forth under the TR NO_x Annual Trading Program in subpart AAAAA of part 97 of this chapter must comply with such requirements. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Illinois' State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the TR Federal Implementation Plan under §52.38(a), except to the extent the Administrator's approval is partial or conditional.

(2) Notwithstanding the provisions of paragraph (a) (1) of this section, if, at the time of the approval of Illinois' SIP

revision described in paragraph (a) (1) of this section, the Administrator has already started recording any allocations of TR NO_x Annual allowances under subpart AAAAA of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart AAAAA of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of TR NO_x Annual allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

(b) (1) The owner and operator of each source and each unit located in the State of Illinois and for which requirements are set forth under the TR NO_x Ozone Season Trading Program in subpart BBBB of part 97 of this chapter must comply with such requirements. The obligation to comply with such requirements will be eliminated by the promulgation of an approval by the Administrator of a revision to Illinois' State Implementation Plan (SIP) as correcting the SIP's deficiency that is the basis for the TR Federal Implementation Plan under §52.38(b), except to the extent the Administrator's approval is partial or conditional.

(2) Notwithstanding the provisions of paragraph (b) (1) of this section, if, at the time of the approval of Illinois' SIP revision described in paragraph (b) (1) of this section, the Administrator has already started recording any allocations of

TR NO_x Ozone Season allowances under subpart BBBBB of part 97 of this chapter to units in the State for a control period in any year, the provisions of subpart BBBBB of part 97 of this chapter authorizing the Administrator to complete the allocation and recordation of TR NO_x Ozone Season allowances to units in the State for each such control period shall continue to apply, unless provided otherwise by such approval of the State's SIP revision.

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