



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2012-0582; FRL- 9902-65-Region 4]**

Approval and Promulgation of Implementation Plans; Tennessee; Infrastructure Requirements  
for the 2008 Lead National Ambient Air Quality Standards; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** On June 18, 2013, EPA published a final rule approving certain infrastructure requirements of the Clean Air Act (CAA) for Tennessee's State Implementation Plan (SIP) for the 2008 Lead national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP.

Further, in the June 18, 2013, final rule, EPA explained that the Agency was not taking action on the prevention of significant deterioration (PSD) elements of Tennessee's infrastructure SIP, and that action on those infrastructure elements for the 2008 Lead NAAQS would occur in a subsequent action. This action corrects a typographical error in the regulatory language in paragraph (c) of EPA's June 18, 2013, final rule related to the status of EPA's action on these PSD elements for Tennessee's 2008 Lead NAAQS infrastructure SIP.

**DATES:** This action is effective [Insert date of publication in the Federal Register].

**ADDRESSES:** Copies of the documentation used in the action being corrected are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Benjamin can be reached at 404-562-9040, or via electronic mail at [benjamin.lynorae@epa.gov](mailto:benjamin.lynorae@epa.gov).

**SUPPLEMENTARY INFORMATION:** This action corrects a typographical error in the regulatory language that appears in paragraph (c) of Tennessee's Conditional Approval section at 40 CFR 52.2219. This typographical error stems from a June 18, 2013, final rule that approved in part, and conditionally approved in part, portions of Tennessee's October 19, 2009, SIP revision addressing the infrastructure requirements for the 2008 Lead NAAQS. *See* 78 FR 36440. In that June 18, 2013, final rulemaking, EPA described that no action was being taking on the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(ii) and 110(a)(2)(J) of Tennessee's 2008 Lead NAAQS infrastructure submission. Inadvertently, however, EPA included a revision to the regulatory language in paragraph (c) of Tennessee's Conditional Approval section at 40 CFR 52.2219, which incorrectly stated that EPA was conditionally approving the PSD-related elements of the 2008 Lead NAAQS. At the time of the June 18,

2013, final rulemaking, 40 CFR 52.2219(c) provided the regulatory text for the existing conditional approval of the Tennessee 2008 Ozone NAAQS infrastructure SIP for the PSD-related requirements at sections 110(a)(2)(C), 110(a)(2)(D)(ii) and 110(a)(2)(J). *See* 78 FR 14450 (finalizing conditional approval of the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(ii) and 110(a)(2)(J) for Tennessee’s 2008 Ozone NAAQS infrastructure SIP). As a result of the inadvertent inclusion of regulatory text related to a conditional approval for certain elements of Tennessee’s 2008 Lead NAAQS infrastructure SIP, the June 18, 2013, rulemaking removed the existing conditional approval regulatory text provided at paragraph (c) in reference to the 2008 Ozone NAAQS infrastructure SIP and replaced it with conditional approval of certain elements for the 2008 Lead NAAQS infrastructure SIP. This change was made in error.

As noted above, EPA did not conditionally approve the PSD-related requirements of sections 110(a)(2)(C), 110(a)(2)(D)(ii) and 110(a)(2)(J) for the 2008 Lead NAAQS infrastructure SIP, nor did it intend to remove the reference at 40 CFR 52.2219(c) to EPA’s previous conditional approval of the PSD-related elements for the 2008 Ozone NAAQS infrastructure SIP. Rather, EPA’s inclusion of paragraph (c) in the June 18, 2013 action was intended only to reference EPA’s previous conditional approval of the PSD-related elements in Tennessee’s 2008 8-Hour Ozone infrastructure SIP. Today’s action corrects the reference in paragraph (c) of 40 CFR 52.2219 to reflect the conditional approval of the PSD-related portions of Tennessee’s 2008 8-Hour Ozone NAAQS infrastructure SIP instead of the 2008 Lead NAAQS infrastructure SIP.

EPA has determined that today’s action falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public

notice and comment for this action are unnecessary because today's action to correct an inadvertent error contained in paragraph (c) of 40 CFR 52.2219 of the rulemaking and has no substantive impact on EPA's June 18, 2013, rulemaking. In addition, EPA can identify no particular reason why the public would be interested in having the opportunity to comment on the correction prior to this action being finalized, since this correction action does not change the meaning of EPA's analysis or action to approve the addition of paragraph (c) to 40 CFR 52.2219.

EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication "as otherwise provided by the Agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's action merely corrects a typographical error in paragraph (c) of 40 CFR 52.2219 by changing a reference to the 2008 Lead NAAQS back to reference the 2008 8-Hour Ozone NAAQS, for the June 18, 2013, final rulemaking. For these reasons, EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

### **Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is 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). This action merely corrects a typographical error in paragraph (c) of 40 CFR 52.2219 by changing a reference to the 2008 Lead NAAQS back to reference the 2008 8-Hour Ozone NAAQS, which EPA approved on June 18, 2013, and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely corrects an inadvertent error in paragraph (c) of a prior rule, and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will 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). This rule also does not have Federalism implications because it does 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule merely corrects a typographical error in paragraph (c) of 40 CFR 52.2219 for a prior rulemaking by changing a reference to the 2008 Lead NAAQS back to reference the 2008 8-Hour Ozone NAAQS, which EPA approved on June 18, 2013, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to

Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant. In addition, this rule 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. This rule also does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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. 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. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 CAA section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: October 28, 2013.

Beverly H. Banister,

Acting Regional Administrator,

Region 4.

40 CFR part 52 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.*

### **Subpart RR—Tennessee**

2. Section 52.2219 paragraph (c) is revised to read as follows:

§ 52.2219 Conditional approval.

\* \* \* \* \*

(c) *Conditional Approval*—Submittal from the State of Tennessee, through the Department of Environment and Conservation (TDEC), dated October 19, 2009, to address the Clean Air Act (CAA) sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) for the 2008 8-Hour Ozone National Ambient Air Quality Standards. EPA is conditionally approving TDEC's submittal with respect to the PSD requirements of CAA sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J), specifically related to the adoption of enforceable provisions for PSD increments as detailed in TDEC's October 4, 2012, commitment letter. Tennessee must submit to EPA by March 6, 2014, a SIP revision adopting specific enforceable measures related to PSD increments as described in the State's letter of commitment.

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