

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R04-OAR-2005-AL-0001-200520c; FRL-8205-2]

Approval and Promulgation of Implementation Plans; Alabama; Nitrogen Oxides Budget and Allowance Trading Program, Phase II; Correcting Amendment**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule; correcting amendment.

SUMMARY: This action corrects the state effective date for an Alabama regulation that was approved by EPA on December 28, 2005, in connection with our approval of Alabama's Nitrogen Oxide State Implementation Plan (NO_x SIP Call) Phase II submittal, and that appears in Alabama's Identification of Plan section of the Code of Federal Regulations (CFR).

DATES: This action is effective August 3, 2006.

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: Stacy DiFrank, 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. The telephone number is (404) 562-9042. Ms. DiFrank can also be reached via electronic mail at difrank.stacy@epa.gov.

SUPPLEMENTARY INFORMATION: This action corrects the state effective date for an Alabama regulation that appears in Alabama's Identification of Plan section at 40 CFR 52.50(c). The regulation, Alabama Chapter 335-3-8-.04 (control of nitrogen oxide emissions), was approved by EPA on December 28, 2005, in connection with our approval of Alabama's NO_x SIP Call Phase II submittal (70 FR 76694). However, in the regulatory text of the final rule approving this regulation, EPA inadvertently omitted the state effective date for the regulation (70 FR 76697). Today, EPA is correcting this

inadvertent error by inserting the state effective date for the regulation into Alabama's Identification of Plan section of the Code of Federal Regulations at 40 CFR 52.50(c).

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 identify, in the Code of Federal Regulations, the state effective date of Alabama's regulation has no substantive impact on EPA's December 28, 2005, approval of this regulation in connection with our approval of Alabama's NO_x SIP Call Phase II submittal. The omission of the state effective date for the regulation in the regulatory text of EPA's final rule published on December 28, 2005, makes no substantive difference to EPA's analysis as set out in that rule because EPA was aware at the time of our approval that the state regulation at issue was effective on March 22, 2005. In addition, EPA can identify no particular reason why the public would be interested in being notified of the correction of this omission, or 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 the regulation at issue or otherwise change EPA's analysis of Alabama's NO_x SIP Call Phase II submittal. See, 70 FR 76694.

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 rule merely corrects an inadvertent error of omission in the regulatory text of a prior rule by identifying the state effective date for the Alabama regulation which EPA approved on December 28, 2005. 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.

IV. 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 an inadvertent error of omission in the regulatory text of a prior rule by identifying the state effective date for a Alabama regulation which EPA approved on December 28, 2005, and it 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 of omission in the regulatory text of a prior rule by identifying the state effective date for an Alabama regulation which EPA approved on December 28, 2005, 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 (Pub. L. 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 an inadvertent error of omission in the regulatory text of a prior rule by identifying the state effective date for an Alabama regulation which EPA approved on December 28, 2005, and does not alter the relationship or the distribution of power and

responsibilities established in the Clean Air Act (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. 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 October 2, 2006. 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 14, 2006.

J.I. Palmer, Jr.,
Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart B—Alabama

■ 2. Section 52.50(c) is amended by revising entry for "Section 335-3-8.04" to read as follows:

§ 52.50 Identification of plan.

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(c) * * *

EPA—APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* * * * *	Chapter 335-3-8 Control of Nitrogen Oxide Emissions			
Section 335-3-8-.04	Standards for Stationary Reciprocating Internal Combustion Engines.	03/22/05	12/28/05 (70 FR 76694).	
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ENVIRONMENTAL PROTECTION AGENCY
40 CFR Part 52
[EPA-R09-OAR-2006-0571, FRL-8204-8]

Approval and Promulgation of Implementation Plans for Arizona; Nonattainment Area; Serious Area Plan for Attainment of the 24-Hour and Annual PM-10 Standards

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: EPA is taking final action under the Clean Air Act (CAA) to approve the Best Available Control Measure (BACM) and the Most Stringent

Measure (MSM) demonstrations in the serious area particulate matter (PM-10) plan for the Maricopa County portion of the metropolitan Phoenix (Arizona) nonattainment area (Maricopa County area). EPA is also granting Arizona's request to extend the attainment deadline from 2001 to 2006. EPA originally approved these demonstrations and granted the extension request on July 25, 2002. Thereafter EPA's action was challenged in the U.S. Court of Appeals for the Ninth Circuit. In response to the Court's remand, EPA has reassessed the BACM demonstration for the significant source categories of on-road motor vehicles and nonroad engines and equipment exhaust, specifically regarding whether or not California Air Resources Board (CARB) diesel is a BACM. EPA has also reassessed the MSM demonstration.

DATES: *Effective Date:* This rule is effective on September 5, 2006.

ADDRESSES: You can inspect copies of the docket for this action at EPA's Region IX office during normal business hours by appointment at the following locations: Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901. Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B-102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Doris Lo, EPA Region IX, (415) 972-3959, lo.doris@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Summary of Proposed Action

On July 1, 2005, EPA proposed to reapprove the BACM and MSM demonstrations in the Maricopa County