

Washington, DC 20420, (202) 632-4603. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On April 18, 2012, VA published in the **Federal Register**, 77 FR 23128, a direct final rule to amend, in 38 CFR part 3, § 3.103(a) and (c)(1), and, in 38 CFR part 20, § 20.706 and Appendix A to repeal amendments made by RIN 2900-AO06, “Rules Governing Hearings Before the Agency of Original Jurisdiction and the Board of Veterans’ Appeals; Clarification,” a final rule that had been published in the **Federal Register** on August 23, 2011. As discussed in the preamble to the direct final rule, RIN 2900-AO06 altered language upon which the United States Court of Appeals for Veterans Claims (Veterans Court) relied in *Bryant v. Shinseki*, 23 Vet. App. 488 (2010), which applied the provisions of § 3.103(c)(2) to a Board hearing. The *Bryant* Court held that the provisions of § 3.103(c)(2) require a “Board hearing officer” to “fully explain the issues still outstanding that are relevant and material to substantiating the claim” and to “suggest that a claimant submit evidence on an issue material to substantiating the claim when the record is missing any evidence on that issue or when the testimony at the hearing raises an issue for which there is no evidence in the record.” *Id.* at 496-97.

VA determined that RIN 2900-AO06 should have followed the notice-and-comment procedure of 5 U.S.C. 553(b) and (c) of the Administrative Procedure Act and published the direct final rule to return the regulations to the language in effect before August 23, 2011. The direct final rule provided a 30-day comment period that ended on May 18, 2012. No significant adverse comment was received. VA received only one comment on May 17, 2012, from the National Organization of Veterans’ Advocates, Inc. (NOVA). In pertinent part, NOVA stated, “[T]he full, retroactive repeal of the invalid [amendments made by RIN 2900-AO06] should move forward regardless of whether the ‘VA receives a significant adverse comment by May 18, 2012.’ \* \* \* VA has a responsibility to repeal the rule as quickly as possible. Doing so will help ensure that any veterans harmed by the invalid rule will be able to obtain appropriate relief.” Accordingly, under the direct final rule procedures that were described in RIN 2900-AO43, the direct final rule became effective on June 18, 2012, because no significant adverse comment was received within the comment period.

We take this opportunity to address three points made by NOVA in its

comment. NOVA criticized the direct final rule procedure because it was “conditional rather than mandatory.” As we anticipated when we published the direct final rule, no significant adverse comment was received by VA, and the direct final rule became effective on June 18, 2012. Accordingly, NOVA’s concern about the action being conditional is moot.

NOVA also urged that the “repeal of [the amendments made by RIN 2900-AO06 be] retroactive to August 23, 2011.” In the direct final rule, we stated that we were “repealing” those amendments but provided only an effective date—June 18, 2012. We did not provide an applicability date. Accordingly, in this document we have added, in the **DATES** section above, an *Applicability Date* paragraph, stating, “This final rule shall apply to decisions issued by the Board on or after August 23, 2011.”

Finally, NOVA also encouraged VA to “clarify that any veteran who suffered any harm as a result of the invalid rule is now entitled to obtain relief.” In this regard, appellants have a statutory right to appeal a Board decision to the Veterans Court within 120 days after the date on which the appellant is notified of the Board’s decision. *See* 38 U.S.C. 7266(a). Additionally, VA regulations permit appellants whose claims have been denied by the Board to file with the Board at any time a motion for reconsideration of the decision. *See* 38 CFR 20.1001. If the Chairman of the Board denies a motion for reconsideration, that denial and the underlying Board decision may be appealed to the Veterans Court if a timely appeal was previously filed with the Veterans Court with respect to that underlying Board decision. *See Mayer v. Brown*, 37 F.3d 618, 620 (Fed. Cir. 1994), *overruled in part by Bailey v. West*, 160 F.3d 1360 (Fed. Cir. 1998) (en banc). Also, the Board’s decision may be appealed to the Veterans Court if the appellant filed the motion for reconsideration not later than 120 days after being notified of the Board’s decision and then appeals to the Veterans Court not later than 120 days after reconsideration is denied. *Rosler v. Derwinski*, 1 Vet. App. 241, 249 (1991); *see also Linville v. West*, 165 F.3d 1382, 1385-86 (Fed. Cir. 1999). Additionally, the 120-day period to appeal a Board decision to the Veterans Court is subject to the doctrine of equitable tolling within certain parameters. *See Bove v. Shinseki*, 25 Vet. App. 136, 140 (2011). These procedures provide adequate avenues of relief to any claimants who may have been adversely affected by the repealed rule.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, Department of Veterans Affairs, approved this document on November 20, 2012, for publication.

Dated: November 20, 2012.

### Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012-28621 Filed 11-26-12; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2011-0809; FRL-9754-5]

### Approval and Promulgation of Implementation Plans; Florida; Section 128 and 110(a)(2)(E)(ii) and (G) Infrastructure Requirements for the 1997 8-hour Ozone National Ambient Air Quality Standards; Correction

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

**ACTION:** Final rule, correction.

**SUMMARY:** EPA published in the **Federal Register** of July 30, 2012, a final rule approving portions of the State Implementation Plan (SIP) revision submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP) on May 24, 2012, as demonstrating that the State met the SIP requirements of the Clean Air Act (CAA or the Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). In that final rule, EPA approved Florida’s infrastructure submission, provided to EPA on May 24, 2012, which included state statutes to be incorporated into the SIP to address infrastructure requirements regarding state boards and emergency powers. While EPA discussed in the final rulemaking that it was taking action to approve certain state statutes into the Florida SIP to address the state board requirements and emergency powers, EPA inadvertently did not list these state statutes in the regulatory text of the July 30, 2012, final rule. Accordingly, this rulemaking corrects that inadvertent regulatory text omission.

**DATES:** Effective November 27, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Nacosta C. Ward, 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) 562–9140. Ms. Ward can be reached via electronic mail at [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov).

**SUPPLEMENTARY INFORMATION:** This action corrects an inadvertent omission in the regulatory language in a July 30, 2012, final rulemaking where EPA approved certain state statutes into the Florida SIP to address section 110(a)(2)(E)(ii) regarding state boards and 110(a)(2)(G) regarding emergency powers for the 1997 8-hour ozone NAAQS. See 77 FR 29581. In the July 30, 2012, final rule, EPA inadvertently did not list these state statutes in the regulatory text. Accordingly, this rulemaking corrects that inadvertent regulatory text omission.

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 is unnecessary because today's action to correct an inadvertent regulatory text omission included with EPA's July 30, 2012, final rule is consistent with the substantive revisions to the Florida SIP described in the May 18, 2012, proposed rule for the July 30, 2012, final rule. See 77 FR 29581. As such, public notice and comment has been provided for these revisions and additional notice and comment procedures are unnecessary. In addition, EPA can identify no particular reason why the public would be interested in being notified of the correction, 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 EPA's analysis or action to approve certain state statutes as addressing the state board and emergency episode requirements for 1997 8-hour ozone NAAQS into the Florida SIP. 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 an inadvertent omission for the regulatory text of a prior rulemaking by listing these state statutes in the regulatory text for the Florida SIP. 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 an inadvertent omission for the regulatory text of EPA's July 30, 2012, final rule to approve certain state statutes as addressing the state board and emergency episode requirements for 1997 8-hour ozone NAAQS into the Florida SIP, 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 omission for the regulatory text of EPA's July 30, 2012, final rule to approve certain state statutes as addressing the state board and emergency episode requirements for 1997 8-hour ozone NAAQS into the Florida SIP, 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 omission for the regulatory text of EPA's July 30, 2012, final rule to approve certain state statutes as addressing the state board and emergency episode requirements for 1997 8-hour ozone NAAQS into the Florida SIP, 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 January 28, 2013.

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).

Dated: November 14, 2012.

A. Stanley Meiburg,

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 K—Florida**

■ 2. Section 52.520(c), is amended by adding in numerical order a new entry for “State Statutes,” at the end of the table to read as follows:

**§ 52.520 Identification of plan.**

\* \* \* \* \*  
(c) \* \* \*

**EPA-APPROVED FLORIDA REGULATIONS**

State citation (Section)	Title/subject	State effective date	EPA approval date	Explanation
* * * * *	<b>State Statutes</b>			
112.3143(4) .....	Voting Conflict .....	4/19/2012	7/30/2012 77 FR 44485 .....	To satisfy the requirements of sections 128 and 110(a)(2)(E)(ii).
112.3144 .....	Full and Public Disclosure of Financial Interests.	4/19/2012	7/30/2012 77 FR 44485 .....	To satisfy the requirements of sections 128 and 110(a)(2)(E)(ii).
403.131 .....	Injunctive relief, remedies .....	4/19/2012	7/30/2012 77 FR 44485 .....	To satisfy the requirements of section 110(a)(2)(G).
120.569 .....	Decisions which affect substantial interests.	4/19/2012	7/30/2012 77 FR 44485 .....	To satisfy the requirements of section 110(a)(2)(G).

\* \* \* \* \*  
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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R04–OAR–2009–0786; FRL–9752–5]

**Approval and Promulgation of Implementation Plans; Tennessee; Regional Haze State Implementation Plan; Best Available Retrofit Technology Requirements for Eastman Chemical Company**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing approval of the Best Available Retrofit Technology (BART) requirements for the Eastman Chemical Company (Eastman) that were provided in a revision to the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee, through the Tennessee Department Environment and Conservation (TDEC), on April 4, 2008, as later modified and supplemented on May 14, 2012, and May 25, 2012. EPA previously proposed action on the BART requirements for Eastman in association with action on Tennessee’s April 4, 2008, regional haze SIP revision. On April 24, 2012, EPA took final action on all aspects of the

April 4, 2008, SIP revision to address regional haze in the State’s and other states’ Class I areas except for the BART requirements for Eastman. The May 14, 2012, SIP revision (as clarified in a May 25, 2012, SIP revision) changed the compliance date for the Eastman BART determination included in Tennessee’s April 4, 2008, SIP revision and provided a BART alternative determination option for Eastman. EPA is finalizing approval of the BART requirements for Eastman, as provided in Tennessee’s April 4, 2008, May 14, 2012, and May 25, 2012, SIP revisions because these SIP revisions are consistent with the regional haze provisions of the Clean Air Act (CAA) and EPA’s regulations.

**DATES:** *Effective Date:* This rule will be effective December 27, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2009–0786. All documents in the docket are listed on the [www.regulations.gov](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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the 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. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 a.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Michele Notarianni, 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. Michele Notarianni can be reached at telephone number (404) 562–9031 and by electronic mail at [notarianni.michele@epa.gov](mailto:notarianni.michele@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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