DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN64

Clothing Allowance; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; correcting amendment.

SUMMARY: The Department of Veterans Affairs (VA) published a final rule on November 16, 2011, amending its adjudication regulations governing eligibility for clothing allowances. VA has since determined that certain language added to the final rule could be construed to impose a restriction that VA did not intend. This document corrects that error.

DATES: This correction is effective June 11, 2012.

FOR FURTHER INFORMATION CONTACT: Tom Kniffen, Chief, Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9725. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On February 2, 2011, VA published a proposed rule (76 FR 5733) to revise 38 CFR 3.810 to clarify the circumstances under which a veteran may be entitled to more than one clothing allowance. Proposed paragraph (a)(2)(ii) explained that a veteran who uses more than one prosthetic or orthopedic appliance or medication would be eligible for a clothing allowance for each such appliance or medication if each appliance or medication ''[a]ffects a distinct article of clothing or outergarment.''

On November 16, 2011, VA published the final rule (76 FR 70883). In the final rule, VA stated that it was revising proposed paragraph (a)(2)(ii) in order to ''clarify that the references to garments or clothing in this regulation are to types of garments, such as shirts, rather than to individual garments, such as a specific shirt'' and to make clear that ''more than one clothing allowance is payable when more than one type of article of clothing or outergarment is affected.'' The final rule revised paragraph (a)(2)(ii) to state that a veteran who uses more than one appliance or medication would be eligible for a clothing allowance for each such appliance or medication if each appliance or medication ''[a]ffects more than one type of article of clothing or outergarment.''

VA has determined that the language of the final rule could be construed to mean that each individual appliance or medication used by a veteran must affect more than one type of article of clothing or outergarment in order to qualify for a clothing allowance. As explained in the final-rule notice, however, VA did not intend to impose such a requirement, but intended only to clarify that each appliance or medication must affect a distinct type of article of clothing or outergarment, such as shirts, in order to qualify for a clothing allowance. Requiring each appliance or medication to affect more than one type of article of clothing or outergarment would impose an unintended restriction on eligibility for the clothing allowance and would create significant inconsistencies in VA's clothing-allowance regulation. To correct this inadvertent error, VA is amending 38 CFR 3.810(a)(2)(ii) by replacing the words ''more than one type'' with the words ''a distinct type''. This change will make clear that an appliance or medication only needs to affect a distinct type of clothing or outergarment in order to qualify for a clothing allowance. This change does not alter the intended meaning of the regulation as explained in the proposed rule and the final rule notice, but would eliminate the potential for confusion or misinterpretation created by the ambiguous language included in the final rule.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), VA has determined that notice and prior opportunity for comment on this correcting amendment are unnecessary and contrary to public interest. As stated above, this correction is needed to accurately reflect the intent of the final rule and codified regulation and ensure that the inadvertent error does not adversely affect claimants. We previously provided public notice in the **Federal Register** and considered public comments on the proposed rule. See 76 FR 5733 and 76 FR 70883. VA's intent and interpretation of § 3.810(a)(2)(ii) has not changed. This correction merely ensures clarity of VA's intent and interpretation regarding the eligibility for a clothing allowance. For these reasons, VA has also determined pursuant to 5 U.S.C. 553(d) that there is good cause to make this change effective on the date of its publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: June 6, 2012.

Robert C. McFetridge,

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

For the reasons set out in the preamble, 38 CFR part 3 is corrected by making the following correcting amendment:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.810(a)(2)(ii) by removing ''more than one type'' and adding, in its place, ''a distinct type''.

[FR Doc. 2012–14108 Filed 6–8–12; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0080; FRL–9683–3]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval of revisions to the Indiana State Implementation Plan (SIP) submitted by the Indiana Department of Environmental Management (IDEM) on January 14, 2011, and March 10, 2011, addressing regional haze for the first implementation period that ends 2018. This action is being taken in accordance with the requirements of the Clean Air Act (CAA) and EPA's rules for states to prevent and remedy future and existing anthropogenic impairment of visibility in mandatory Class I areas through a regional haze program. As part of this action, EPA is also approving limits for the Alcoa facility that EPA finds satisfy the requirements for best available retrofit technology (BART).

DATES: This final rule is effective on July 11, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2011–0080. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some

information is not publicly available, i.e., Confidential Business Information (CBI) 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* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov*.

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

I. Synopsis of Proposed Rule

Indiana submitted a plan to address regional haze on January 14, 2011, and supplemented it on March 10, 2011. This plan was intended to address the requirements in CAA section 169A, and EPA's Regional Haze Rule as codified at 40 CFR 51.308. This rule was promulgated on July 1, 1999 (64 FR 35713). Further significant provisions were promulgated on July 6, 2005, providing further guidance on provisions related to BART.

EPA proposed a limited approval of Indiana's submittal on January 26, 2012 (77 FR 3975). That action described the nature of the regional haze problem and the statutory and regulatory background for EPA's review of Indiana's regional haze plan. The proposal provided a lengthy delineation of the requirements that Indiana intended to meet, including requirements for mandating BART, consultation with other states in establishing goals representing reasonable further progress in mitigating anthropogenic visibility impairment, and adoption of limitations as necessary to implement a long term strategy (LTS) for reducing visibility impairment. Indiana's control strategy addresses the regional haze rule for the first implementation period that ends 2018.

Of particular interest were EPA's findings regarding BART. Using modeling performed by the Lake Michigan Air Directors Consortium (LADCO), Indiana identified one non-electric generating unit (non-EGU) source, Alcoa in Warrick County, as having sufficient impact to warrant being subject to a requirement representing BART.

Indiana developed source-specific limits to mandate BART for Alcoa to comply with EPA's regional haze rule. These limits are adopted into regulation 326 of the Indiana Administrative Code (IAC), Article 26, Rule 2, of which include sulfur dioxide (SO_2), nitrogen oxide (NO_X), and particulate matter (PM) emission limits applicable to the Alcoa facility in Warrick County. In the proposed rulemaking, EPA proposed to conclude that the emission reductions from 326 IAC 26–2 would suffice to address the BART requirement for non-EGUs.

II. Public Comments and EPA's Responses

The publication of EPA's proposed rule on January 26, 2012 (77 FR 3975) initiated a 30-day public comment period that ended on February 27, 2012. During the public comment period on the proposed rulemaking on the Indiana regional haze plan we received comments from the United States Forest Service (FS) and the United States National Park Service (NPS). These comments and EPA's responses are addressed in detail below.

Comment #1: FS continues to disagree with the alternative BART scenario for the Alcoa facility. FS believes that emission reductions that could be used for reasonable progress purposes should not be creditable for alternative measures/BART purposes. FS further comments that requiring emission controls for Boilers 2 and 3, which are subject to BART, would be more appropriate for reasonable progress purposes instead of taking credit for emission reductions from Boiler 1, which is not subject to BART.

Response #1: As stated in 40 CFR 51.308(e)(2)(iv), the pertinent requirement is that the emission reductions of the alternative measure be ''surplus to reductions resulting from measures adopted to meet requirements of the CAA as of the baseline date of the SIP.'' This point is explained in the preamble of the BART guidelines. 70 FR 39143. Therefore, EPA finds the reductions at Boiler 1 to be a creditable part of Indiana's alternative BART limits in lieu of full BART control of boilers 2 and 3 and the potlines.

The BART guidelines state that ''(2) The EPA does not believe that anything in the CAA or relevant case law prohibits a State from considering emissions reductions required to meet other CAA requirements when determining whether source by source BART controls are necessary to make reasonable progress.'' This rule further states, ''(3) * * * in lieu of BART programs be based on emissions reductions 'surplus to reductions resulting from measures adopted to meet requirements as of the baseline date of the SIP.' The baseline date for regional haze SIPs is 2002 * * *'' 70 FR 39143.

Comment #2: For the Alcoa facility, FS comments that there is no technical reason that the controls for Boilers 2 and 3 cannot achieve 92 percent or greater efficiency with wet Flue Gas Desulfurization (FGD) to meet BART.

Response #2: EPA agrees with FS that wet FGD emission control technology commonly achieves a 92 percent or higher emission reduction. Alcoa used the 92 percent reduction level for the BART analysis for Boilers 2 and 3. However, Indiana is applying flexibility authorized in the regional haze rule to require less control of Boilers 2 and 3 than the control equipment can achieve, requiring 90 percent control of these Boilers, while requiring additional, compensating control of Boiler 1, which still results in an overall improvement in visibility.

Comment #3: FS comments that the increase in the sulfur content of coke for the BART-subject potlines (#2–#6), actually results in increased SO_2 emissions with no control technology or alternative to offset the increase. The FS accepts that low sulfur coke may not be available after 2013, but asserts that if increased emissions from the facility occur, then Alcoa should look for an alternative to either control emissions from the potlines or offset those emissions if control technologies are too expensive.

Response #3: The FS comment appears to reflect a misunderstanding of the situation. Indiana's plan describes a BART determination that reflects an increase in sulfur content of coke used in the potlines, but Indiana's submittal does not actually increase the SO_2 emission limits that apply to these units. EPA did not agree with Indiana's rationale for determining BART to reflect an increase in potline emissions, but EPA's proposed, and now final, approval of Indiana's BART determination for the potlines is based on the fact that the actual SO_2 limits in

Indiana's plan do not allow the SO_2 emissions increase that the FS asserts to be allowed by Indiana's plan.

Comment #4: FS comments that ''Indiana continues to disagree with the need for a factor analysis of additional NO_X control technologies.'' FS notes Indiana's comparison of its proposed BART limits against new source performance standards (NSPS) limits, but finds that this comparison does not address BART requirements in lieu of conducting a full analysis of all feasible control technologies.

Response #4: Alcoa in fact did conduct a five factor BART analysis, as required by the Indiana BART rule and the BART guidelines. Alcoa identified low NO_X burners (LNB), LNB combined with over-fire air, selective catalytic reduction (SCR) and selective non-catalytic reduction (SNCR) systems as feasible technologies to control NO_X from boilers. Alcoa concluded that SCR and SNCR were not cost effective. Indiana reached the same conclusions regarding these controls, and EPA agrees. Indiana set limits that are significantly tighter than the NSPS, and notes the state did not conduct a complete and adequate analysis of BART for the Alcoa facility.

Comment #5: NPS believes that EPA should apply its economic incentive policy to Indiana's regional haze SIP in accordance with policy stated in a letter to Wisconsin regarding Wisconsin's regional haze SIP. NPS provides what it considers to be quotes from EPA's letter that advise Wisconsin not to take credit for various reductions that are or will be required by other regulatory requirements.

Response #5: EPA's letter to Wisconsin does not include the statements that NPS attributes to EPA. EPA finds the reductions that Indiana takes credit for to be fully creditable. The primary applicability of the economic incentive policy to the Wisconsin plan related to the question of whether the baseline emissions of a subsequently shutdown boiler should be included in determining a limit on the combined emissions of multiple boilers. This situation does not apply in Indiana, and so the actual comments in EPA's letter to Wisconsin are not germane to Indiana.

III. What action is EPA taking?

EPA is finalizing the limited approval of Indiana's regional haze plan submitted by IDEM on January 11, 2011, and March 10, 2011, addressing regional haze for the first implementation period. The revisions seek to address CAA and regional haze rule requirements for states to remedy any existing anthropogenic and prevent future impairment of visibility at Class I areas.

Indiana's plan satisfies a number of elements of the regional haze requirements. Most notably, EPA concludes that Indiana has satisfied the requirements for BART in 40 CFR 51.308(e) for non-EGUs and for PM from EGUs. Indiana's plan identifies the Class I areas that the state's emissions affect. Indiana demonstrates that the state has consulted with other states as appropriate in establishing reasonable progress goals and identifying the reductions need in Indiana to meet those goals. For these reasons, and for the SIP strengthening effect of Indiana's plan, EPA is granting limited approval of Indiana's plan.

In conjunction with the above actions, EPA is approving regulation 326 IAC 26–2 for incorporation into the state implementation plan. These limits on Alcoa's emissions of SO_2, NO_X, and PM are state enforceable and, with this SIP approval, are now Federally enforceable. It should be noted that rule 326 IAC 26–2 contains an erroneous citation, citing limits in 326 IAC 7–4–10(a)(4) rather than 326 IAC 7–4–10(a)(3). EPA nevertheless approves the rule for several reasons: (1) The pertinent limits are already an approved part of Indiana's SIP and are therefore already enforceable; (2) the State's intent is clear; and (3) Indiana intends to correct this reference.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 August 10, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 29, 2012.

Susan Hedman,

Regional Administrator, Region 5.

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 P—Indiana

■ 2. Section 52.770 is amended by adding a new entry at the end of the table in paragraph (c) for ''Article 26. Regional Haze'' and by adding a new entry in alphabetical order in the table in paragraph (e) for ''Regional Haze Plan'' to read as follows:

§ 52.770 Identification of plan.

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(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA approval date	Notes
*	*	*	*	*
Article 26. Regional Haze				
Rule 2. Best Available Retrofit Technology Emission Limitations				
26–2–1	Applicability	3/09/2011	6/11/2012, [Insert page number where the document begins].	
26–2–2	Alcoa emission limitations and compliance methods.	3/09/2011	6/11/2012, [Insert page number where the document begins].	

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(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
*	*	*	*
Regional Haze Plan	01/14/2011 and 03/10/2011	6/11/2012, [Insert page number where the document begins].	
*	*	*	*

[FR Doc. 2012–13955 Filed 6–8–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2008–0476; FRL 9682–2]

RIN 2060–AR56

Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards for Several Counties in Illinois, Indiana, and Wisconsin; Corrections to Inadvertent Errors in Prior Designations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule completes the initial air quality designations for the 2008 primary and secondary national ambient air quality standards (NAAQS) for ozone. On April 30, 2012, the EPA promulgated the initial ozone air quality designations for all areas in the United States except for 12 counties in Illinois, Indiana and Wisconsin, which the EPA was still evaluating. This action designates those counties. The EPA is designating all or parts of 11 counties as the Chicago-Naperville, IL-IN-WI nonattainment area. The EPA is designating the remaining county and parts of counties as unclassifiable/attainment. The Chicago-Naperville, IL-IN-WI nonattainment area is being classified by operation of law as a Marginal area according to the severity of its air quality problem. This rule also corrects inadvertent errors in the regulatory text regarding the designation of three areas in the ozone designation rule signed on April 30, 2012.

DATES: The effective date of this rule is July 20, 2012.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0476. All documents in the docket are listed in the index at *http://www.regulations.gov.* 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 in the docket or in hard copy at the Docket, EPA/DC, EPA West,