

■ 3. Section 52.777 is amended by:

■ a. Redesignating paragraphs (bb), (dd), (ee), and (ff) as paragraphs (bb)(1), (dd)(1), (ee)(1), and (ff)(1); and

■ b. Adding paragraphs (bb)(2), (dd)(2), (ee)(2), and (ff)(2).

The additions read as follows:

**§ 52.777 Control strategy: photochemical oxidants (hydrocarbons).**

\* \* \* \* \*

(bb) \* \* \*

(2) Approval—On July 8, 2013, Indiana submitted a request to revise the approved MOBILE6.2 motor vehicle emission budgets (budgets) in the 1997 8-hour ozone maintenance plan for the Greene County, Indiana area. The budgets are being revised with budgets developed with the MOVES2010a model. The 2015 budgets for Greene County, Indiana are 0.90 tons per day VOC and 2.31 tons per day NO<sub>x</sub>.

\* \* \* \* \*

(dd) \* \* \*

(2) Approval—On July 2, 2013, Indiana submitted a request to revise the approved MOBILE6.2 motor vehicle emission budgets (budgets) in the 1997 8-hour ozone maintenance plan for the Vigo County, Indiana area. The budgets are being revised with budgets developed with the MOVES2010a model. The 2015 budgets for Vigo County, Indiana are 2.17 tons per day VOC and 5.07 tons per day NO<sub>x</sub>.

(ee) \* \* \*

(2) Approval—On July 2, 2013, Indiana submitted a request to revise the approved MOBILE6.2 motor vehicle emission budgets (budgets) in the 1997 8-hour ozone maintenance plan for the Vanderburgh and Warrick Counties, Indiana area. The budgets are being revised with budgets developed with the MOVES2010a model. The 2015 budgets for Vanderburgh and Warrick Counties, Indiana are 5.02 tons per day VOC and 12.61 tons per day NO<sub>x</sub>.

(ff) \* \* \*

(2) Approval—On July 2, 2013, Indiana submitted a request to revise the approved MOBILE6.2 motor vehicle emission budgets (budgets) in the 1997 8-hour ozone maintenance plan for the Allen County, Indiana area. The budgets are being revised with budgets developed with the MOVES2010a model. The 2020 budgets for Allen County, Indiana are 4.52 tons per day VOC and 9.72 tons per day NO<sub>x</sub>.

\* \* \* \* \*

[FR Doc. 2014-03170 Filed 2-24-14; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-HQ-OAR-2014-0032; FRL-9906-80-OAR]

**Finding of Failure To Submit State Implementation Plans Required for the 2008 Lead National Ambient Air Quality Standards (NAAQS)**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action finding that the Commonwealth of Pennsylvania has not submitted state implementation plans (SIPs) for three nonattainment areas in Berks and Beaver Counties to meet the requirements of the Clean Air Act (CAA) for attaining the 2008 Lead National Ambient Air Quality Standards (NAAQS). Pennsylvania has not yet submitted SIPs for three nonattainment areas—the Lyons and North Reading nonattainment areas in Berks County and the Lower Beaver Valley nonattainment area in Beaver County—that demonstrate how each nonattainment area would attain the 2008 Lead NAAQS as expeditiously as practicable. These plans were due by June 30, 2012. If Pennsylvania has not submitted and the EPA has not approved the required attainment plans for its nonattainment areas by no later than 2 years after the effective date of this finding, the EPA must promulgate a federal implementation plan (FIP) for the affected nonattainment area. In addition, the CAA provides for the imposition of sanctions if the state does not submit the required attainment SIP within specific timeframes.

**DATES: Effective Date:** This action is effective on February 25, 2014. Under the Administrative Procedure Act (APA), 5 U.S.C. 553(d)(3), an agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to specify an earlier effective date. This action concerns SIP submissions that were due by June 30, 2012. In addition, this action simply starts a “clock” that will not result in sanctions for 18 months, and which Pennsylvania may avoid by submitting complete SIPs to the EPA. The EPA finds these reasons provide good cause for an immediate effective date.

**FOR FURTHER INFORMATION CONTACT:** General questions concerning this rule should be addressed to Ms. Mia South, Office of Air Quality Planning and

Standards, Air Quality Policy Division, U.S. Environmental Protection Agency, Mail Code: C504-2, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711; telephone (919) 541-5550. For questions related to Pennsylvania, please contact the EPA’s Region 3, Cristina Fernandez, Associate Director, Office of Air Program Planning (3AP30), Air Protection Division, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, PA 19103-2023; telephone (215) 814-2178.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Notice-and-Comment Under the APA*

Section 553 of the APA, 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. The EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions to meet the requirement. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). As the EPA has explained in prior rulemakings, *see e.g.*, 58 FR 51270, 51272, n.7 (October 1, 1993), under section 110(k)(1), the CAA provides the EPA with a 60-day period after receiving a submittal from a state in which to determine whether a submittal is complete. If no plan is submitted, the CAA requires the EPA to make a determination to that effect within 6 months of the deadline for submittal. Since Congress provided the EPA only 60 days to determine whether a state that has made some submittal failed to submit a complete SIP, and it is generally impossible to assess a submittal for completeness and then provide notice-and-comment before making a final determination within 60 days, the EPA believes that Congress clearly intended that the EPA should not go through notice-and-comment rulemaking prior to making findings of failure to submit a complete SIP when the state has made some submittal. In this case, the EPA is making findings that the state has made no submittal, and therefore no complete submittal, more than 6 months after the deadline for submittal, but the EPA similarly

believes that Congress did not intend that the EPA go through notice-and-comment rulemaking in this case.

*B. How can I get copies of this document and other related information?*

The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2014-0032. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center, EPA/DC, William Jefferson Clinton Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566-1742.

*C. How is this preamble organized?*

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**II. Background and Overview**

Subpart 5, part D of title I of the CAA requires states with areas that are designated nonattainment for the 2008 Lead NAAQS to develop a SIP

providing how the state will attain the air standards. Section 172 of the CAA specifies the required elements of a SIP for an area designated nonattainment for the 2008 Lead NAAQS. These requirements include, but are not limited to, an attainment demonstration, reasonably available control measures (RACM) and reasonably available control technology (RACT), annual emissions reductions as necessary to ensure reasonable further progress (RFP) and contingency measures. Most states with lead nonattainment areas designated in 2010 have submitted SIPs addressing these requirements as required under the CAA. However, one state, Pennsylvania, has not yet submitted SIPs for three nonattainment areas—the Lyons and North Reading nonattainment areas in Berks County and the Lower Beaver Valley nonattainment area in Beaver County. These SIPs were due on June 30, 2012. By this action, the EPA is making a finding that Pennsylvania has failed to submit the required complete SIPs for these three nonattainment areas.

*A. Statutory Requirements*

On October 15, 2008, the EPA promulgated revised NAAQS for lead.<sup>1</sup> The agency revised the level of the primary lead standard from 1.5 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) to 0.15  $\mu\text{g}/\text{m}^3$ , and also revised the averaging time and form of the lead standards. The calculation method for the averaging time is a “rolling” 3-month period with a maximum (not-to-be-exceeded) form, evaluated over a 3-year period. The EPA also revised the secondary NAAQS to make it identical to the revised primary standard. In conjunction with strengthening the lead standards, the EPA improved the existing lead monitoring network by requiring monitors to be placed in areas with sources, such as certain industrial facilities, and at other sites.

On November 16, 2010, the EPA identified or “designated” 16 areas, consisting of 17 partial counties, as “nonattainment areas” not meeting the 2008 NAAQS for lead. In this first round, the EPA designated areas nonattainment based on 2007–2009 air quality monitoring data. These designation actions were effective on December 31, 2010. On November 8, 2011, the EPA completed a second round of designations, based on monitoring data from 2008–2010, including monitors newly established under the 2008 Lead NAAQS Rule. In

this second round, the EPA designated five areas, including five partial counties, as nonattainment and designated the remaining areas in the country as attainment/unclassifiable or unclassifiable for the 2008 Lead NAAQS. These designation actions were effective on December 31, 2011. For the full listing of areas designated nonattainment for the 2008 Lead NAAQS (15 states, 21 nonattainment areas and 22 partial counties) see <http://www.epa.gov/leaddesignations/2008standards/documents/2011-11-08/LeadNAAreaList.pdf>.

The three areas in Pennsylvania were designated nonattainment in the first round, effective December 31, 2010. In accordance with the CAA, attainment SIPs for these areas were required to be submitted no later than June 30, 2012. As explained in further detail in the 2008 Lead NAAQS Rule, the key required elements of the attainment SIP include the attainment demonstration, RACM/RACT, RFP and contingency measures. The attainment demonstration provides details on how a nonattainment area will reduce pollution and provides a plan for the area to meet the lead NAAQS. Under subpart 5 part D of title I of the CAA, an attainment demonstration for these areas is required to show how the nonattainment area will attain the 2008 Lead NAAQS as expeditiously as practicable, but no later than 5 years after the effective date of designation, or December 31, 2015, for the areas designated in the first round for which Pennsylvania failed to submit an attainment SIP. The attainment demonstration takes into account projected emission reductions from existing federal and state measures, plus any additional RACM/RACT that are adopted by the state to attain “as expeditiously as practicable.” Air quality modeling of these projected emissions reductions in future years is an important element of the attainment demonstration.

Each nonattainment SIP must include RACM/RACT as necessary for the area to attain the 2008 Lead NAAQS. The CAA requires the state to demonstrate that it has adopted all RACM, considering economic and technical feasibility and other factors, that are needed to show that the area will attain the lead standards as expeditiously as practicable. The 2008 Lead NAAQS Rule sets forth more specific guidance for making RACM and RACT determinations.

Each plan must also ensure that the area is making RFP in terms of emission reductions and air quality improvements toward attainment. The

<sup>1</sup> See 73 FR 66964, November 12, 2008, National Ambient Air Quality Standards for Lead, Final Rule.

2008 Lead NAAQS Rule provides that the RFP element of a SIP include a detailed schedule for the implementation of RACM (including RACT) that accurately indicates the corresponding annual emission reductions to be achieved.

SIPs must also include contingency measures, which are emission reduction measures to be undertaken if the area fails to satisfy the RFP requirement or fails to attain the 2008 Lead NAAQS by the attainment date. These measures are to take effect without significant further action by the state or the EPA. As discussed in the 2008 Lead NAAQS Rule, the EPA generally expects that contingency measures will be implemented as expeditiously as practicable, and will be fully implemented within 60 days of the EPA notifying the state that contingency measures are necessary.

#### *B. The EPA's Clean Data Policy*

The Clean Data Policy represents the EPA's interpretation that certain requirements of subpart 1 of part D of title I of the Act are by their terms not applicable to areas that are attaining the NAAQS.<sup>2</sup> The specific requirements that are inapplicable to an area attaining the standard are the requirements to submit a SIP that provides for: attainment of the NAAQS, implementation of all RACM, RFP and implementation of contingency measures for failure to meet deadlines for RFP and attainment. The EPA has previously applied the Clean Data Policy to the 2008 Lead NAAQS. *See e.g.*, 77 FR 35653 (June 14, 2012) (proposed determination of attainment of the 2008 lead standards for Bristol, TN); 77 FR 52232 (August 29, 2012) (final rule). For more information about the history, rationale and application of the Clean Data Policy, *see* 77 FR 35653–35654.

We note that several lead nonattainment areas currently have air quality that attains the 2008 Lead NAAQS, but have not yet completed the process for redesignating the area to attainment. Where the EPA has published in the **Federal Register** a clean data determination for an area, a state's obligation to submit RACM/RACT, contingency measures, RFP and attainment demonstrations for that area are suspended as of the effective date of the clean air determination. This suspension will remain in effect unless the EPA subsequently determines, after notice-and-comment rulemaking, that

the area has again violated the 2008 Lead NAAQS, in which case the requirements are again due or the area is redesignated to attainment, in which case the requirements are permanently no longer applicable. Thus, states with areas that have received final clean data determinations and have not submitted SIPs for these areas are not subject to the final action in this rule.

#### **III. Findings of Failure To Submit for Pennsylvania for Attainment SIPs for the 2008 Lead NAAQS**

Section 179(a)(1) of the CAA establishes specific consequences if the EPA finds that a state has failed to submit a SIP or, with regard to a submitted SIP, if the EPA determines it is incomplete or if the EPA disapproves it. Additionally, any of these findings also triggers an obligation for the EPA to promulgate a FIP if the state has not submitted, and the EPA has not approved, the required SIP within 2 years of the finding.

The EPA is finding that Pennsylvania has failed to make the required nonattainment SIP submissions for the Lyons and North Reading nonattainment areas in Berks County and the Lower Beaver Valley nonattainment area in Beaver County. If the EPA has not affirmatively determined that Pennsylvania has made the required complete nonattainment SIP submissions within 18 months of the effective date of this action then, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) will apply in any area subject to the findings for which a complete submission has not been made. If the EPA has not affirmatively determined that Pennsylvania has made a complete submission for each area subject to the findings within 6 months after the emission offset sanction is imposed, then the highway funding sanction will also apply in any area subject to the finding for which a complete submission has not been made, in accordance with CAA section 179(b)(1) and 40 CFR 52.31. The 18-month clock will stop and the sanctions will not take effect, within 18 months after the date of this finding, if the EPA finds that Pennsylvania has made a complete nonattainment SIP submission for each area for which the finding is being made or if the EPA makes a determination the area is attaining the standard consistent with the EPA's Clean Data Policy. In addition, the EPA is not required to promulgate a FIP if Pennsylvania makes the required SIP submittal, and the EPA takes final action to approve the submittal, or if EPA makes a final

determination the area is attaining the standard consistent with the Clean Data Policy, within 2 years of the EPA's finding. Contemporaneous with the signing of this rule, the EPA Region 3 Regional Administrator is sending a letter to the governor of Pennsylvania informing the governor that the EPA is determining that Pennsylvania has failed to make the required SIP submissions for the specified areas. This letter and any accompanying enclosures have been included in the docket for this action.

#### **IV. This Action**

In this action, the EPA is making a finding of failure to submit for Pennsylvania with regard to areas designated nonattainment for lead in 2010. Pennsylvania has not yet submitted attainment SIPs for three nonattainment areas—the Lyons and North Reading nonattainment areas in Berks County and the Lower Beaver Valley nonattainment area in Beaver County.

In accordance with CAA section 179, this finding starts the 18-month emission offset sanctions clock, the 24-month highway funding sanctions clock and a 24-month clock for the promulgation by the EPA of a FIP. This action will be effective on February 25, 2014.

#### **V. Statutory and Executive Order (EO) Reviews**

##### *A. Executive Order 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a “significant regulatory action” under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under EO 12866 and 13563 (76 FR 3821, January 21, 2011).

##### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This final action does not establish any new information collection requirement apart from that already required by law. This action makes a finding that Pennsylvania failed to submit attainment SIPs for the 2008 Lead NAAQS as required by the CAA. Burden means the total time, effort or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire,

<sup>2</sup> This discussion refers to subpart 1 because subparts 1 and 5 contain the requirements relating to attainment of the lead NAAQS.

install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for the EPA's regulations in the CFR are listed in 40 CFR Part 9.

#### C. *Regulatory Flexibility Act (RFA)*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the APA or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions. For the purpose of assessing the impacts of this final action on small entities, small entity is defined as: (1) A small business that is a small industry entity as defined in the U.S. Small Business Administration (SBA) size standards (See 13 CFR 121); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final action will not impose any requirements on small entities. This action makes a finding that Pennsylvania failed to submit attainment SIPs for the 2008 Lead NAAQS as required by the CAA.

#### D. *Unfunded Mandates Reform Act of 1995 (UMRA)*

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538 for state, local and tribal governments and the

private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector, because the requirement to submit an attainment SIP is established in the Clean Air Act. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action makes a finding that Pennsylvania failed to submit attainment SIPs for the 2008 Lead NAAQS as required by the CAA.

#### E. *Executive Order 13132: Federalism*

EO 13132, titled "Federalism" (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the EO to include regulations that have "substantial direct effects on the states or the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." This final action does not have federalism implications. It will 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. The CAA establishes the scheme whereby states take the lead in developing plans to meet the NAAQS. This action will not modify the relationship of the states and the EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this action.

#### F. *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

EO 13175, titled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." This final action does not have Tribal implications, as specified in EO 13175. This action responds to the requirement in the CAA for states to submit nonattainment SIPs for the 2008 Lead NAAQS.

#### G. *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is subject to Executive Order 13045 because it is making findings that Pennsylvania failed to submit nonattainment SIPs for the 2008 Lead NAAQS as required by the CAA. The enforceable measures in the attainment SIPs will ensure that the areas will attain the NAAQS for lead, which was established to protect public health, including the health of children, with an adequate margin of safety.

#### H. *Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use*

This action is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

#### I. *National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA of 1995 Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by VCS bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS. This action does not involve technical standards. Therefore, the EPA did not consider the use of any VCS.

#### J. *Executive Order 12898: Federal Actions To Address Environmental Justice in Minority and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high

and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States. The EPA has determined that this final action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not directly affect the level of protection provided to human health or the environment. This rule is making a finding that Pennsylvania failed to submit nonattainment SIPs for the 2008 Lead NAAQS as required by the CAA. The enforceable measures in the attainment SIPs will ensure that the areas will attain the NAAQS for lead, which was established to protect public health, including the health of minority and low income populations, with an adequate margin of safety.

#### K. Congressional Review Act

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. The 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 action 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). This action will be effective February 25, 2014.

#### L. Judicial Review

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 Third Circuit within 60 days from the date this action is published in the **Federal Register**. Filing a petition for reconsideration by the Administrator of this final action 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 must be filed, and shall not postpone the effectiveness of this action.

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

Environmental protection, Approval and promulgation of implementation plans, Administrative practice and procedures, Air pollution control,

Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: February 7, 2014.

**Janet G. McCabe,**

*Acting Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 2014-03329 Filed 2-24-14; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 482

[CMS-3244-F2]

RIN-0938-AQ89

#### Medicare and Medicaid Program; Correcting Amendment

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

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

**SUMMARY:** This document corrects a technical error that appeared in the final rule published in the **Federal Register** (77 FR 29034) on May 16, 2012, entitled "Reform of Hospital and Critical Access Hospital Conditions of Participation."

**DATES:** This correcting amendment is effective February 25, 2014.

**FOR FURTHER INFORMATION CONTACT:** Ronisha Davis, (410) 786-6882.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In FR Doc. 2012-11548 (77FR 29034) of May 16, 2012, the final rule entitled "Reform of Hospital and Critical Access Hospital Conditions of Participation," there were technical errors that are identified and corrected in the regulations text of this correcting amendment.

##### II. Summary of Errors in the Regulations Text

On page 29075 of the May 16, 2012 **Federal Register** final rule, in the amendatory instructions for 42 CFR 482.42, we revised the introductory text of paragraph (a) to include the provisions of paragraph (a)(1). However, we inadvertently neglected to omit paragraph (a)(1) from the regulations text. In addition, we proposed to remove the burdensome requirement for an infection log at paragraph (a)(2), but inadvertently omitted the removal of paragraph (a)(2) from the regulations text.

### III. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. The provision finalized in the final rule noted above has previously been subjected to notice and comment procedures. These corrections do not make substantive changes to the requirement that was finalized in the final rule. In addition, we believe it is important for the public to have the correct information as soon as possible and find no reason to delay the dissemination of it.

For the reasons stated above, we find that both notice and comment and the 30-day delay in effective date for the correction notice are unnecessary. Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in effective date for this correction notice.

#### List of Subjects in 42 CFR Part 482

Grant programs, Health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments to part 482:

#### PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

■ 1. The authority citation for part 482 continues to read as follows:

**Authority:** Secs. 1102, 1871 and 1881 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr), unless otherwise noted.