



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2015-0336; FRL-9932-25-Region 4]

Approval and Promulgation of Implementation Plans; Florida;

Miscellaneous Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State Implementation Plan (SIP) revision submitted by the State of Florida through the Florida Department of Environmental Protection (FDEP) on May 1, 2015. This SIP revision seeks to make changes to the SIP to remove certain Stage I vapor control requirements and to make administrative changes to the SIP that would remove gasoline vapor control rules that no longer serve a regulatory purpose, including rules related to the Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in Broward, Miami-Dade, and Palm Beach Counties (hereinafter referred to as the “Southeast Florida Area”). EPA has determined that Florida’s May 1, 2015, SIP revision is approvable because it is consistent with the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective **Insert date 60 days after publication in the**

Federal Register] without further notice, unless EPA receives adverse comment by **[Insert date 30 days after publication in the Federal Register]**. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2015-0336, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: R4-ARMS@epa.gov.
3. Fax: (404) 562-9019.
4. Mail: "EPA-R04-OAR- 2015-0336," Air Regulatory Management Section (formerly Regulatory Development Section), Air Planning and Implementation Branch (formerly Air Planning Branch), Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Ms. Lynorae Benjamin, Chief, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. “EPA-R04-OAR- 2015-0336” EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information may not be publicly available, i.e., 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 in www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation 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 to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Sheckler's phone number is (404) 562-9222. She can also be reached via electronic mail at sheckler.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 6, 1991, EPA designated and classified the Southeast Florida Area as a moderate ozone nonattainment area for the 1-hour ozone national ambient air quality standards (NAAQS). The nonattainment designation was based on the Area's design value for the 1987-1989 three-year period. The "moderate" classification triggered various statutory requirements

for this Area, including the requirement pursuant to section 182(b)(3) of the CAA for the Area to require all owners and operators of gasoline dispensing systems to install and operate a system for gasoline vapor recovery of emissions from the fueling of motor vehicles known as “Stage II.”¹ On January 8, 1993, FDEP submitted a SIP revision to address the Stage II requirements for the Area. EPA approved that SIP revision, containing Florida’s Stage II rules in a notice published on March 24, 1994. *See* 59 FR 13883. At that time, the State had a SIP-approved Stage I program (*see* 47 FR 19992 (May 10, 1982)) in place for ozone nonattainment areas to recover gasoline vapors that would otherwise be released when gasoline is transferred from a gasoline tanker truck to a storage tank.²

On November 8, 1993, FDEP submitted to EPA a request to redesignate the Southwest Florida Area to attainment for the 1-hour ozone standard and an associated maintenance plan. The maintenance plan, as required under section 175A of the CAA, showed that nitrogen oxides and volatile organic compounds emissions in the Area would remain below the 1990 “attainment year” levels through the ten-year period from 1995-2005. In making these projections, FDEP factored in the emissions benefit of the Area’s Stage II program, thereby maintaining this program as an active part of its 1-hour ozone SIP. The redesignation request and maintenance plan was approved by EPA, effective April 25, 1995. *See* 60 FR 10325 (February 24, 1995).

¹ Stage II is a system designed to capture displaced vapors that emerge from inside a vehicle’s fuel tank when gasoline is dispensed into the tank. There are two basic types of Stage II systems, the balance type and the vacuum assist type.

² The State later revised its Stage I program to cover the entire state and provided this change to EPA on May 31, 2007, as a SIP revision. EPA approved Florida’s expansion of the Stage I program on June 1, 2009. *See* 74 FR 26103.

Subsequently, the maintenance plan was extended by FDEP to 2015 and this extension was approved by EPA, effective April 13, 2004. *See* 69 FR 7127 (February 13, 2004).

On May 31, 2007, FDEP submitted a SIP revision for the purpose of removing Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the Area; phasing out Stage II requirements for existing facilities in the Area by December 31, 2009; requiring new and upgraded gasoline dispensing facilities and new bulk gasoline plant statewide to employ Stage I; and phasing in Stage I requirements for existing gasoline dispensing facilities. This SIP revision included a demonstration pursuant to section 110(l) of the CAA that the removal of the Stage II requirements from the SIP would not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the CAA.³ EPA approved Florida's May 31, 2007, SIP revision on June 1, 2009.⁴ *See* 74 FR 26103.

II. Analysis of the State's Submittal

Florida's May 1, 2015, SIP revision seeks to make changes to the SIP to remove certain Stage I requirements and to make administrative changes to the SIP that would remove gasoline

³ Section 110(l) requires that a revision to the SIP not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. EPA evaluates each section 110(l) noninterference demonstration on a case-by-case basis considering the circumstances of each SIP revision. EPA interprets 110(l) as applying to all NAAQS that are in effect, including those that have been promulgated but for which the EPA has not yet made designations. The degree of analysis focused on any particular NAAQS in a noninterference demonstration varies depending on the nature of the emissions associated with the proposed SIP revision.

⁴ On September 16, 2008, EPA originally published a direct final rule approving the phasing out the Stage II gasoline vapor recovery requirements for the Southeast Florida Area (see 73 FR 53378); however, EPA subsequently withdrew this direct final rule due to adverse comments (see 73 FR 63639, October 27, 2008). On June 1, 2009, after responding to the adverse comment for EPA's September 16, 2008, direct final rule, EPA finalized its approval to phase out the Stage II gasoline vapor recovery requirements for the Southeast Florida Area by December 31, 2009. *See* 74 FR 26103.

vapor control rules that no longer serve a regulatory purpose, including the rules related to the Stage II program that ended on December 31, 2009. Specifically, Florida's May 1, 2015, SIP revision requests the removal of the following rules from the Florida SIP:

- Rule 62-252.100, "Purpose and Scope" – this section contains introductory language that serves no regulatory purpose.
- Rule 62-252.200, "Definitions" – this section contains definitions that are rendered unnecessary as they exist in Federal regulations at 40 CFR part 63, subpart CCCCCC – National Emissions Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities, or are otherwise no longer needed.⁵
- Rule 62-252.400, "Gasoline Dispensing Facilities-Stage II Vapor Recovery" – this section contains requirements for Stage II vapor recovery systems. This section is obsolete because the rule phased itself out on December 31, 2009.
- Rule 62-252.500, "Gasoline Tanker Trucks" – this section contains Stage I gasoline vapor control requirements that apply to gasoline tanker trucks or trailers. The individual requirements of this section are superseded by 40 CFR part 63, subpart CCCCCC, addressed by requirements in 62-252.300, or do not have an air quality impact such that removal would interfere with attainment or maintenance of the NAAQS in any area in Florida.
- Rule 62-252.800, "Penalties" – this section contains language describing the penalty for violation of Chapter 62.252. The rule is duplicative of language in section 403.062 of the

⁵ EPA promulgated subpart CCCCCC on January 10, 2008, after the statewide implementation of the State's Stage I program.

Florida Statutes and therefore is unnecessary.

- Rule 62-252.900, “Form” – this section contains the form adopted under 62-252.500 for annual reporting of pressure and vacuum testing to the State for gasoline cargo tanks.

The form is no longer necessary with the removal of 62-252.500.

EPA is also approving an amendment to Rule 62-252.300, Gasoline Dispensing Facilities-Stage I Vapor Recovery, to remove obsolete and duplicative language and reorganize the rule accordingly. The specific changes that Florida is requesting are as follows:

- Remove subsection 62-252.300(1)(b) because the Stage II Program was phased out by December 31, 2009.
- Remove subsections 62-252.300(4)(a) and (c) because these compliance schedules duplicate the prohibition and control technology requirements in subsections 62-252.300(2) and (3).
- Remove subsection 62-252.300(4)(b) because the Stage II Program was phased out by December 31, 2009.
- Remove the outdated compliance schedules in subsections 62-252.300(4)(d) and (e) because these compliance dates have passed. Stage I Vapor Recovery at gasoline dispensing facilities throughout Florida was completed as of January 2010.
- Renumber the remaining subsections in section 62-252.300 to reflect the changes identified above.

To the extent that any of the rule changes identified above relate to the Stage II program, EPA is proposing to approve those changes because, as previously mentioned, EPA approved the phase out of the Stage II program by December 31, 2009, along with the State’s demonstration

that the removal of the Stage II program from the SIP would not interfere with air quality or any other applicable requirement of the CAA. *See* 74 FR 26103. To the extent that the changes relate to the Stage I program, EPA has preliminarily determined that these changes will not interfere with any applicable requirement concerning attainment or any other applicable requirement of the CAA, and therefore satisfy section 110(l), because they remove obsolete language due, in part, to superseding Federal requirements in 40 CFR part 63, subpart CCCCCC; remove requirements that are addressed in 62-252.300; or remove requirements that do not have an air quality impact such that removal would interfere with attainment or maintenance of the NAAQS in any area in Florida.⁶

III. Incorporation By Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporate by reference of FDEP Regulation 62-252.300 entitled “Gasoline Dispensing Facilities-Stage I Vapor Recovery” effective September 24, 2013. EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

⁶ EPA has also evaluated the applicability of CAA section 193 to the proposed SIP revision. Section 193 is a general savings clause stating that no control requirement in effect before November 15, 1990, in any nonattainment area for any air pollutant may be modified after November 15, 1990 in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant. Although EPA incorporated portions of Florida’s Stage I program into the SIP in 1982 to comply with a previous ozone standard (47 FR 19992 (May 10, 1982)), EPA has determined that section 193 is not applicable to this proposed action because Florida does not currently have any ozone nonattainment areas. Furthermore, EPA did not incorporate Florida’s Stage II program into the SIP until March 24, 1994.

IV. Final Action

EPA is approving Florida's May 1, 2015, SIP revision which makes changes to the SIP identified in Section II, above, to certain remove Stage I requirements and to make administrative changes to the SIP that would remove gasoline vapor control rules that no longer serve a regulatory purpose, including the rules related to the Stage II program that ended on December 31, 2009.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective [Insert date 60 days after the date of publication in the Federal Register] without further notice unless the Agency receives adverse comments by [Insert date 30 days after date of publication in the Federal Register].

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All adverse comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on [Insert date 60 days after date of publication in the Federal Register] and no further action will be taken on the proposed rule.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the Agency may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 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) and 13563 (76 FR 3821, January 21, 2011);
- 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 (Public Law 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 CAA; 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, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 [FEDERAL REGISTER OFFICE: 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 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 30, 2015.

Heather McTeer Toney
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 under Chapter 62-252 by:

a. Removing the entries for “62-252-.100,” “62-252-.200,” “62-252-.400,” “62-252-.500,” “62-252-.800”, and “62-252-.900” and

b. Revising the entry for “62-252-.300.”

The revision reads as follows:

§52.520 Identification of plan.

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(c) * * *

EPA-Approved Florida Regulations

State citation (Section)	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
62-252.300	Gasoline Dispensing Facilities Stage I Vapor Recovery	5/1/2015	[Insert date of publication in <u>Federal Register</u>] [Insert citation of publication]	
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[FR Doc. 2015-19721 Filed: 8/11/2015 08:45 am; Publication Date: 8/12/2015]