



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2012-0166; FRL-9964-35-Region 4]

### Air Plan Approval; FL: Revisions to New Source Review, Definitions and

### Small Business Assistance Programs

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve changes to the Florida State Implementation Plan (SIP) to update definitions and make administrative edits to regulations for the Plantwide Applicability Limits (PALs) and Florida's Small Business Assistance program (SBA). EPA is proposing to approve portions of a SIP revision submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP) on July 1, 2011, to update definitions and make administrative edits to PALs and the SBA. This action is being taken pursuant to 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-2012-

0166 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** D. Brad Akers, 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. Mr. Akers can be reached via telephone at (404) 562-9089 or via electronic mail at [akers.brad@epa.gov](mailto:akers.brad@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. What Action is EPA Taking?**

On July 1, 2011, FDEP submitted to EPA for approval a SIP revision that involves changes to Florida's regulations related to permitting and administrative procedures, among other changes. In this action, EPA is approving the portions of the Florida submission that make changes to definitions affecting the major New Source Review (NSR) program, changes to other

miscellaneous definitions, and administrative changes to Florida's NSR PAL provisions and SBA program. Florida's NSR program, which applies to the construction and modification of any major stationary source in areas designated as attainment or unclassifiable as required by part C and part D of title I of the CAA, is modified with this direct final action at Rule 62-210.200, Florida Administrative Code (F.A.C.), "Definitions," and 62-212.720, "Actuals Plantwide Applicability Limits (PALs)." EPA is also approving miscellaneous changes to definitions. Finally, EPA is approving the portion of the July 1, 2011, submission that revises Rule 62-210.220, "Small Business Assistance Program," which provides for compliance assistance for qualifying small business stationary sources.

Changes in the July 1, 2011, submission made to Rule 62-212.400, "Prevention of Significant Deterioration," were approved on June 15, 2012 (77 FR 35862). The June 15, 2012, final rule also approved the NSR definition of "major modification," at Rule 62-210.200(186) included in the July 1, 2011, SIP submission.

At this time, the Agency is not acting on the following changes included in the July 1, 2011, submission at Rule 62-210.200, "Definitions": (28), "animal crematory," (41), "biological waste," (42), "biological waste incinerator," (44), "biomedical waste," and (158), "human crematory." EPA is also not acting on the changes made to rules in Chapter 62-296, "Stationary Sources – Emission Standards," included in the July 1, 2011, submission. EPA will consider these remaining portions of the July 1, 2011, submission in a separate action.

## **II. Background**

This direct final action will update Florida's definitions and make changes to rules approved into the SIP. Changes made to definitions are related to basic definitions of criteria air

pollutants and their precursors and minor edits to permitting and NSR terms. Definitions are also partly renumbered with the July 1, 2011, submission. The changes made to the regulations, other than definitions, are administrative in nature, including updating internal references.

### **III. Analysis of Florida's SIP Revision**

#### **A. Rule 62-210.200 – Definitions**

Florida's July 1, 2011, SIP revision makes changes to definitions for criteria air pollutants and their precursors. Florida adds a definition at Rule 62-210.200(211) for "nitrogen oxides" to be consistent with EPA regulations, referencing test methods at 40 Code of Federal Regulations part 60 (40 CFR part 60). The July 1, 2011, SIP submittal revises the definition of "PM<sub>10</sub>," or "particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers," at Rule 62-210.200(235), renumbered from (221), correcting a typographical error to reference EPA test methods at 40 CFR part 51, subpart M. Finally, the July 1, 2011, SIP revision changes the definition of "Volatile Organic Compounds (VOC)" at Rule 62-210.200(326), renumbered from (306). This change for VOC incorporates the federal definition of VOC at 40 CFR 51.100(s) by reference rather than requiring the State to periodically incorporate individual changes to the federal definition. These changes to definitions became state effective on October 12, 2008.

The July 1, 2011, SIP revision made changes to definitions related to NSR to correct typographical errors, to make internal references consistent, renumber definitions, and make minor administrative edits. Florida changed the definition of "best available control technology," at Rule 62-210.200(40), by correcting a typographical error carried over from a previous revision. No substantive change was made to the SIP-approved definition, and the

minor edits became state effective on October 12, 2008. The July 1, 2011, SIP revision also changed the definition of “federally enforceable,” at Rule 62-210.200(136), renumbered from (124), to clarify citations to rules under which federally enforceable permits are issued or were historically issued. This change to “federally enforceable” became state effective on February 11, 1999. Florida also revised the definition of “modification” at Rule 62-210.200(199), renumbered from (183), to remove references to non-SIP related uses of the term. In addition to removing references to 40 CFR part 60 (New Source Performance Standards), 40 CFR part 61 (National Emission Standards for Hazardous Air Pollutants), and CAA section 112 (Hazardous Air Pollutants), a reference to 40 CFR part 52 (Approval and Promulgation of Implementation Plans) is removed from this definition. However, the remaining portion of the SIP-approved definition is nonetheless consistent with the definition as used under 40 CFR part 52. This change became state effective on February 11, 1999. The Florida submittal revises the definition of “net emissions increase” at Rule 62-210.200(204), renumbered from (179) and state effective on October 12, 2008, to correct typographical errors and to remove numbered citations to other definitions within Rule 62-210.200, adding explicit references for “actual emissions” and “baseline actual emissions” within the definition instead. No substantive changes are made to the definition of “net emissions increase.” Florida also modifies the definition of “regulated air pollutant” at Rule 62-210.200(255), renumbered from (237), to make an administrative edit that corrected “any volatile organic compound” to “volatile organic compounds” to be consistent with EPA use of the collective term. This change to “regulated air pollutant” became state effective on October 12, 2008. Finally, the July 1, 2011, submittal revises the definition of “significant impact” at Rule 62-210.200(275), renumbered from (253) and state effective on

November 13, 1997, to correct a typographical error. Florida's definition of "significant impact" largely corresponds with EPA's provisions for significant impact levels (SILs) for pollutants impacting nonattainment areas at 40 CFR 51.165(b)(2), but Florida includes a SIL for lead, which has never been included in the federal provision. With this SIP revision, Florida is removing SILs under lead for 1-hour periods and 8-hour periods, which were carried over in error from the carbon monoxide SIL, as well as an additional typographical error. No substantive change is made to the SIP-approved definition.

EPA is approving these changes to definitions in the Florida SIP, which became state effective at the following dates as described above: November 13, 1997, February 11, 1999, and October 12, 2008. The renumbering of definitions, which is the final change to Rule 62-210.200 included in the SIP revision, became state effective on March 11, 2010.

**B. Rule 62-210.220 – Small Business Assistance Program**

The July 1, 2011, submittal makes changes to Florida's SBA program at Rule 62-210.220(2)(c) by updating obsolete references to State rules and updating the reference to Chapter 28-106, F.A.C. The SBA program previously referenced Florida Chapter 62-103, "Rules of Administrative Procedure," for sources responding to determinations or petitioning for determinations to be included in the SBA program. The State adopted new rules at Chapter 28-106, "Decisions Determining Substantial Interests," on April 1, 1997. The new Chapter repealed Rule 62-103 and made these types of administrative procedures standard across all Florida state agencies. The SIP revision is administrative in nature and became state effective on February 11, 1999. EPA is approving this change to make references to State rules consistent in the SIP.

### **C. Rule 62-212.720 – Plantwide Applicability Limits**

The July 1, 2011, submittal revises the PAL provisions only to correct an error at Rule 62-212.720(1). The introductory paragraph affected previously referenced a non-existent definition at Rule 62-210.200, and the reference was deleted. This revision is administrative in nature and became state effective on October 6, 2008. EPA is approving this change into the Florida SIP.

### **IV. 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 incorporation by reference of Florida Rule 62-210.200, F.A.C. entitled “Definitions,” effective March 11, 2010, to add definitions and make administrative updates, Rule 62-210.220, F.A.C., entitled “Small Business Assistance Program,” effective October 6, 2008, to correct internal references, and Rule 62-210.720, F.A.C., entitled “Actuals Plantwide Applicability Limits (PALs),” which corrects an error effective December 17, 2013.<sup>1</sup> Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>2</sup> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA

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<sup>1</sup> The state effective date of the change to Rule 62-210.720, F.A.C. made in Florida’s July 1, 2011, SIP revision is October 6, 2008. However, for purposes of the state effective date included at 40 CFR 52.520(c), that change to Florida’s rule is captured and superseded by Florida’s update in a December 19, 2013, SIP revision, state effective on December 17, 2013, which EPA previously approved on May 19, 2014. *See* 78 FR 28607.

<sup>2</sup> 62 FR 27968 (May 22, 1997).

Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

## **V. Final Action**

EPA is approving the aforementioned changes to the SIP because they are consistent with the CFR and the CAA. Because these changes are administrative and insignificant in nature, they are in accordance with section 110(l) of the CAA because they will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. 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 from the date of publication] without further notice unless the Agency receives adverse comments by [Insert date 30 days from date of publication].

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 public 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 from date of publication] 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.

## **VI. 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, these actions merely approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- are not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are 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.*);
- do 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);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are 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
- do 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).

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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. 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, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: June 15, 2017.

V. Anne Heard,

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 under Chapter 62-210 and 62-212 by revising entries for “62-210.200,” “62-210.220,” and “62-212.720” to read as follows:

**§ 52.520 Identification of plan.**

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(c) \* \* \*

**EPA-Approved Florida Regulations**

<b>State citation (section)</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Explanation</b>
**	**	*	*	*
<b>Chapter 62-210 Stationary Sources – General Requirements</b>				
**	**	*	*	*
62-210.200	Definitions	3/11/10	[Insert date of publication in Federal Register] [Insert citation of publication]	
62-210.220	Small Business Assistance Program	10/6/08	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	

**	**	*	*	*
<b>Chapter 62-212 Stationary Sources – Preconstruction Review</b>				
**	**	*	*	*
62-212.720	Actuals Plantwide Applicability Limits (PALs)	12/17/13	[Insert date of publication in <u>Federal Register</u> [Insert citation of publication]	
**	**	*	*	*

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[FR Doc. 2017-13862 Filed: 6/30/2017 8:45 am; Publication Date: 7/3/2017]