



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0500; FRL-9969-39-Region 4]

Air Plan Approval; Florida; Stationary Sources Emissions Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a portion of a State Implementation Plan (SIP) revision submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP) on February 1, 2017, for the purpose of revising Florida's requirements and procedures for emissions monitoring at stationary sources. Florida's February 1, 2017, SIP submittal includes amendments to three Florida Administrative Code (F.A.C.) rule sections, as well as the removal of one F.A.C. rule section from the Florida SIP in order to eliminate redundant language and make updates to the requirements for emissions monitoring at stationary sources. Additionally, this action includes a correction to remove an additional F.A.C. rule that was previously approved for removal from the SIP in a separate action but was never removed. EPA is taking action on Florida's February 1, 2017, SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. 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 DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice, unless EPA receives adverse comment by [INSERT DATE 30 DAYS AFTER DATE OF 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-2017-0500 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: Andres Febres of 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. Mr. Febres can be reached via telephone at (404) 562-8966 or via

electronic mail febres-martinez.andres@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What actions is EPA taking today?

On February 1, 2017, FDEP submitted to EPA for adoption a SIP revision for the purpose of updating Florida's requirements and procedures for emissions monitoring at stationary sources. Florida's February 1, 2017, SIP submittal included amendments to three F.A.C. rule sections and the removal of one F.A.C. rule section from the Florida SIP.¹ Specifically, these changes to Florida's rules included the amendments of Rule 62-297.310, F.A.C. – “General Emissions Test Requirement;”² Rule 62-297.440, F.A.C. – “Supplementary Test Procedures;” and Rule 62-297.450, F.A.C. – “EPA VOC Capture Efficiency Test Procedures.” In addition, Florida's February 1, 2017, SIP submittal includes the removal of one of Florida's rule sections from the SIP. Specifically, Florida requested to remove Rule 62-297.401, F.A.C. – “Compliance Test Methods” from the State's implementation plan because it has been repealed at the state level, and, according to the submittal, the section is unnecessary, obsolete or duplicative of other F.A.C. Rules.

Through this rulemaking, EPA is approving the portions of Florida's February 1, 2017, SIP submittal regarding amendments to Rule 62-297.440, F.A.C., and Rule 62-297.450, F.A.C., as well as the removal of Rules 62-297.401, F.A.C., from the State's implementation plan. The

¹ Florida Administrative Code, “62-297,” for example, is a rule chapter, and “62-297.310” is a rule section, commonly written as “Chapter 62-297, F.A.C.” and “Rule 62-297.310, F.A.C.,” respectively. Throughout this rulemaking, we will use this nomenclature to refer to rule chapter and rule sections.

² Although referenced in the February 1, 2017, SIP submittal by the title of “General Emissions Test Requirements,” the current SIP-approved Rule 62-297.310, F.A.C., is titled “General Test Requirements.” The renaming of this Rule is included in the February 1, 2017, SIP submittal and is being acted on in a separate rulemaking.

portion of the SIP regarding Rule 62-297.310 is being discussed in a separate rulemaking that is proposing approval of portions of several SIP submittals making administrative and recodification changes to Florida's SIP. *See* 82 FR 37379 (August 10, 2017).

In addition to the removal of Rule 62-297.401, F.A.C., EPA is removing Rule 62-297.400, F.A.C. – “EPA Methods Adopted by Reference” from the Florida SIP. The removal of this rule section was previously approved by EPA, but was never reflected in Florida's SIP-approved rules table in 40 CFR 52.520(c). For more detail on the approval to remove Rule 62-297.400, F.A.C., see the June 16, 1999, rulemaking (64 FR 32346).

II. Analysis of State Submittal

As mentioned in Section I above, Florida submitted to EPA a SIP revision on February 1, 2017, which includes amendments to three of its rules to address requirements for emissions monitoring at stationary sources and proposed to remove one of its SIP-approved rules. Specifically, Florida proposed amendments to Rules 62-297.310, 62-297.440, and 62-297.450, F.A.C., and proposed to remove Rule 62-297.401, F.A.C., from the State's implementation plan. A description of the changes proposed to these Rules and our analyses of these changes is included below.

A. Rule 62-297.401, F.A.C. – “Compliance Test Methods”

In its February 1, 2017, SIP submittal, Florida requested that Rule 62-297.401, F.A.C. – “Compliance Test Methods” be removed from the State's implementation plan. This rule section listed the air emissions test methods that were to be used whenever a compliance test was required by another rule or a permit. These test methods are now prescribed in each individual rule that requires a compliance test, and as a result, Rule 62-297.401 is no longer needed as its

own separate list. In addition, Florida incorporates by reference all the necessary EPA test methods in Rule 62-204.800, F.A.C – “Federal Regulations Adopted by Reference.”

Consequently, Florida has since repealed Rule 62-297.401, F.A.C., state effective on July 10, 2014. EPA is approving the removal of the aforementioned rule from Florida’s SIP because the requirements are still in place in other state rules, and we believe this repealed rule is no longer necessary.

B. Rule 62-297.440, F.A.C. – “Supplementary Test Procedures”

In Florida’s February 1, 2017, SIP submittal the State proposed several revisions to Rule 62-297.440, F.A.C. – “Supplementary Test Procedures,” which became state effective on July 10, 2014. This rule section listed additional testing methods that could be used in conjunction and as a supplement to all other required test methods. In its February 1, 2017, SIP submittal, Florida is requesting the removal of several subsections because they contain test methods that are either adopted by reference in other rule sections or are now obsolete. Florida proposed to remove the following subsections from Rule 62-297.440, F.A.C.: (1) – “ASTM Methods,” (3) – “American Conference of Governmental Industrial Hygienists, Recommended Practices – Industrial Ventilation: A Manual of Recommended Practice – Equipment Specifications,” (5) – “Technical Association of Pulp and Paper Industry (TAPPI), Test Methods,” (6) – “Sulphur Development Institute of Canada (SUDIC) Sampling and Testing Sulphur Forms,” and (7) – “EPA VOC Capture Efficiency Test Procedures.”

With the exception of the language from subsection (7) – “EPA VOC Capture Efficiency Test Procedures” (which are now included in Rule 62-297.450, F.A.C. - “EPA VOC Capture Efficiency Test Procedures”), all other subsections mentioned in the paragraph above were

repealed because they are obsolete and unnecessary. Given that these test methods were supplementary and that all required test methods are still in place and prescribed in each section or permit that requires testing, as mentioned in Section II.B. above, EPA agrees with the amendments and is approving the removal of these five subsections from Rule 62-297.440, F.A.C.

C. Rule 62-297.450, F.A.C. – “EPA VOC Capture Efficiency Test Procedures”

In its February 1, 2017, SIP submittal, Florida proposed several revisions to Rule 62-297.450, F.A.C – “EPA VOC Capture Efficiency Test Procedures,” which became state effective on July 10, 2014. This rule section lists procedures for determining the capture efficiency of a VOC capture system. The February 1, 2017, SIP submittal makes clarifying changes to this rule by reformatting the rule, but did not change the requirements that had to be met in order to determine the capture efficiency of a VOC capture system. Some subsections of the rule were removed, and instead, the State references EPA’s Emissions Measurement Technical Information Center Guideline Document GD-035 - “Guideline for Determining Capture Efficiency,” January 9, 1995.³ In addition, amendments to Rule 62-297.450, F.A.C., add language removed from subsection 62-297.440(7) mentioned above.

EPA is approving the changes provided in Florida’s February 1, 2017, SIP submittal to Rule 62-297.450, F.A.C., on the basis that these changes are simply to clarify and simplify the language in the rule, and are consistent with EPA’s VOC capture efficiency test procedure guidelines, as established in the agency’s GD-035 guideline.

³ EPA document GD-035, “Guidelines for Determining Capture Efficiency,” dated January 9, 1995, is available at: <https://www3.epa.gov/ttn/emc/guidlnd/gd-035.pdf>.

III. Removal of 62-297.400 from the Florida SIP

In an April 15, 1996, SIP submittal, Florida requested, among other things, the removal of several Rule sections from the State's SIP. Specifically, Florida requested to remove fourteen sections from Rule Chapter 62-297, F.A.C., including Rules 62-297.400, 62-297.411, 62-297.412, 62-297.413, 62-297.414, 62-297.415, 62-297.416, 62-297.417, 62-297.418, 62-297.419, 62-297.421, 62-297.422, 62-297.423, and 62-297.424, F.A.C. In a June 16, 1999 (64 FR 32346), rulemaking, EPA approved the removal of these Florida rule sections from the State's SIP at the same time that the agency added a table of SIP-approved rules at 40 CFR 52.520.⁴ However, when creating this table, EPA inadvertently included some of the rules that were being removed from Florida's SIP. The rules that were mistakenly left in the table under Chapter 62-297, F.A.C., are Rules 62-297.400, 62-297.411, 62-297.412, 62-297.413, 62-297.415, 62-297.416, 62-297.417, and 62-297.423, F.A.C.

On November 29, 2012, Florida submitted to EPA a letter requesting that corrections be made to the table at 40 CFR 52.520(c), including the removal of those rules that were approved for removal but left in the table. As a response to the November 29, 2012, letter, EPA published a Correcting Amendments rulemaking on June 20, 2013 (78 FR 37132), to make the requested corrections to Rule Chapter 62-297 in table 52.520(c) of the Florida SIP. In the June 20, 2013, correction, EPA removed all remaining rules that were previously approved for removal with the exception of Rule 62-297.400, F.A.C.

Although not requested by Florida in their February 1, 2017, SIP submittal, EPA is

⁴ The list of EPA-approved regulations in Florida's SIP can be found in Table (c) of 40 CFR part 52, Subsection 520 [40 CFR 52.520(c)].

making the correction to the table at 40 CFR 52.520 regarding Rule 62-297.400, F.A.C., at this time. At the time of the repeal of this rule, the latest SIP-approved version of Rule 62-297.400, F.A.C., included references to Rule 62-297.401, F.A.C., and Rules 62-297.411 through 62-297.424, F.A.C., which are either removed from the SIP or are being approved for removal in this rulemaking. If Rule 62-297.400, F.A.C., was left in the Florida SIP, it would continue to make reference to SIP-approved rules that no longer exist in the State's implementation plan and could lead to confusion. Since this rule was previously approved for removal in the June 16, 1999, rulemaking, EPA is now removing the aforementioned rule from 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 Rule 62-297.440, F.A.C., entitled "Supplementary Test Procedures" and Rule 62-297.450, F.A.C., entitled "EPA VOC Capture Efficiency Test Procedures," both state effective on July 19, 2014. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

Therefore, these materials have been approved by EPA for inclusion in the State's implementation plan, 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.⁵

V. Final Action

EPA is taking direct final action to approve the aforementioned changes to the SIP, as submitted to us in Florida's February 1, 2017, SIP revision. Specifically, EPA is approving the amendments to Rule 62-297.440, F.A.C., and Rule 62-297.450, F.A.C., both state effective on July 19, 2014, as well as the removal of Rule 62-297.401, F.A.C., from Florida's SIP. In addition, EPA is removing Rule 62-297.400, F.A.C., from Florida's SIP as approved in a previous rulemaking.⁶ This action is limited to the two rule revisions and two rule removals mentioned above and does not act on other portions of the February 1, 2017, submittal that are covered under a separate rulemaking.

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.

⁵ 62 FR 27968 (May 22, 1997).

⁶ See Section III of this rulemaking for details on Rule 62-297.400.

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 we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we 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. 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 Orders 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).

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 [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION 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 this 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, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 29, 2017.

Onis “Trey” Glenn, III,
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 62-297 Stationary Sources–Emissions Monitoring” by removing the entries for “62-297.400” and “62-297.401” and revising the entries for “62-297.440” and “62-297.450” to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

EPA-Approved Florida Regulations

| State citation (Section) | Title/subject | State effective date | EPA approval date | Explanation |
|--|--|----------------------|---|-------------|
| ** | ** | * | * | * |
| Chapter 62-297 Stationary Sources – Emissions Monitoring | | | | |
| ** | ** | * | * | * |
| 62-297.440 | Supplementary Test Procedures | 7/10/2014 | [Insert date of publication in <u>Federal Register</u>], [Insert citation of publication] | |
| 62-297.450 | EPA VOC Capture Efficiency Test Procedures | 7/10/2014 | [Insert date of publication in <u>Federal Register</u>], [Insert citation of publication] | |
| ** | ** | * | * | * |

* * * * *

[FR Doc. 2017-22114 Filed: 10/12/2017 8:45 am; Publication Date: 10/13/2017]