



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2018-0542; FRL-9991-96-Region 4]

#### Air Plan Approval; Florida; 2008 8-hour Ozone Interstate Transport

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve Florida's October 3, 2017, State Implementation Plan (SIP) submission pertaining to the "good neighbor" provision of the Clean Air Act (CAA or Act) for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). The good neighbor provision requires each state's implementation plan to address the interstate transport of air pollution in amounts that contribute significantly to nonattainment or interfere with maintenance of a NAAQS in any other state. In this action, EPA is making a determination that Florida's SIP contains adequate provisions to prohibit emissions within the state from contributing significantly to nonattainment or interfering with maintenance of the 2008 8-hour ozone NAAQS in any other state.

**DATES:** This rule will be effective **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2018-0542. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://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:** Evan Adams, 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. Adams can also be reached via telephone at (404) 562-9009 and via electronic mail at [adams.evan@epa.gov](mailto:adams.evan@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On March 27, 2008 (73 FR 16436), EPA promulgated an ozone NAAQS that revised the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm. Pursuant to CAA section 110(a)(1), within three years after promulgation of a new or revised NAAQS (or shorter, if EPA prescribes), states must submit SIPs that meet the applicable requirements of section 110(a)(2). EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of sections 110(a)(1) and

110(a)(2) as “infrastructure SIP” submissions. One of the structural requirements of section 110(a)(2) is section 110(a)(2)(D)(i), which generally requires SIPs to contain adequate provisions to prohibit in-state emissions activities from having certain adverse air quality effects on neighboring states due to interstate transport of air pollution. There are four sub-elements, or “prongs,” within section 110(a)(2)(D)(i) of the CAA. CAA section 110(a)(2)(D)(i)(I), also known as the “good neighbor” provision, requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two provisions of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance). Section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions to prohibit emissions that will interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4).

On October 3, 2017, Florida submitted a SIP submittal containing a certification that the State’s SIP meets the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS. Florida’s certification is based on available emissions data, air quality monitoring and modeling data, and SIP-approved and state provisions regulating emissions of ozone precursors within the State. In a notice of proposed rulemaking (NPRM) published on February 15, 2019 (84 FR 4403), EPA proposed to approve Florida’s SIP as meeting the requirements of prongs 1

and 2 for the 2008 8-hour ozone NAAQS.<sup>1</sup> In that notice, EPA discussed the final determination made in the update to the Cross-State Air Pollution Rule ozone season program that addresses good neighbor obligations for the 2008 8-hour ozone NAAQS (known as the “CSAPR Update”)<sup>2</sup> that emissions activities within Florida will not significantly contribute to nonattainment or interfere with maintenance of that NAAQS in any other state. The NPRM provides additional detail regarding the background and rationale for EPA’s action. Comments on the NPRM were due on or before March 18, 2019. EPA received no comments on the proposed action.

## **II. Final Action**

EPA is taking final action to approve Florida’s October 3, 2017, SIP submission addressing the good neighbor infrastructure SIP requirements, section 110(a)(2)(D)(i)(I) (prongs 1 and 2), for the 2008 8-hour ozone NAAQS. EPA is taking final action to approve the SIP submission because it is consistent with section 110 of the CAA.

## **III. 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,

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<sup>1</sup> This action addresses only prongs 1 and 2 of section 110(a)(2)(D)(i). All other infrastructure SIP elements for Florida for the 2008 8-hour ozone NAAQS were addressed in separate rulemakings. *See* 78 FR 65559 (November 1, 2013); 79 FR 50554 (August 25, 2014).

<sup>2</sup> *See* 81 FR 74504 (October 26, 2016). The CSAPR Update establishes statewide nitrogen oxide (NO<sub>x</sub>) budgets for certain affected electricity generating units in 22 eastern states for the May–September ozone season to reduce the interstate transport of ozone pollution in the eastern United States, and thereby help downwind states and communities meet and maintain the 2008 8-hour ozone NAAQS. The rule also determined that emissions from 14 states (including Florida) will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states. Accordingly, EPA determined that it need not require further emission reductions from sources in those states to address the good neighbor provision as to the 2008 ozone NAAQS. *Id.*

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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

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

Environmental protection, Air pollution control, Incorporation by reference,  
Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements,  
Volatile organic compounds.

Dated: March 29, 2019.

Mary S. Walker,  
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(e), is amended by adding the entry “110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS” at the end of the table to read as follows:

**§ 52.520 Identification of plan.**

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(e) \* \* \*

**EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS**

<b>Provision</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>FEDERAL REGISTER, notice</b>	<b>Explanation</b>
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS	10/3/2017	[Insert date of publication in <u>Federal Register</u> ]	[Insert Federal Register citation]	Addressing prongs 1 and 2 of section 110(a)(2)(D)(i)(I) only.