



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0148; FRL-10003-33-Region 4]

Air Plan Approval; Florida; Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State Implementation Plan (SIP) submission provided by the State of Florida, through the Florida Department of Environmental Protection (FDEP), through a letter dated September 18, 2018, for inclusion into the Florida SIP. This proposal pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standards (NAAQS). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA. FDEP certified that the Florida SIP contains provisions that ensure the 2015 8-hour ozone NAAQS is implemented, enforced, and maintained in Florida. EPA is proposing to determine that Florida's SIP submission satisfies certain required infrastructure elements for the 2015 8-hour ozone NAAQS.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2019-0148 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: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9088. Ms. Bell can also be reached via electronic mail at bell.tiereny@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On October 1, 2015 (published on October 26, 2015, *see* 80 FR 65292), EPA promulgated a revised primary and secondary NAAQS for ozone revising the 8-hour ozone NAAQS from 0.075 parts per million to a new more protective level of 0.070 ppm. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised

NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an “infrastructure SIP.” States were required to submit such SIPs for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.¹

This rulemaking is proposing to approve portions of Florida’s September 18, 2018² ozone infrastructure SIP submission for the applicable requirements of the 2015 8-hour ozone NAAQS. EPA is not taking action on the interstate transport requirements of section 110(a)(2)(D)(i)(I). EPA will consider these requirements for Florida for the 2015 8-hour ozone NAAQS separately. For the aspects of Florida’s submittal proposed for approval in this rulemaking, EPA notes that the Agency is not approving any specific rule, but rather proposing that Florida’s already approved SIP meets certain CAA requirements.

II. What Elements are Required Under Sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission.

¹ In these infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

² The September 18, 2018 SIP submission provided by FDEP was received by EPA on September 26, 2018.

The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.³

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements of section 110(a)(2) are listed below and summarized in Section IV and in EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)."⁴

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources⁵
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution

³ Throughout this rulemaking, unless otherwise indicated, the term "Florida Administrative Code" or "F.A.C." indicates that the cited regulation has been approved into Florida's federally-approved SIP. The term "Florida Statutes" or "F.S." indicates cited Florida state statutes, which are not a part of the SIP unless otherwise indicated.

⁴ Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the part D nonattainment permitting requirements of 110(a)(2)(C).

⁵ As mentioned above, the Part D permit program for construction and modification of stationary sources is not relevant to this proposed rulemaking.

- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas⁶
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA’s Approach to the Review of Infrastructure SIP Submissions?

EPA is acting upon the SIP submission from Florida that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 8-hour ozone NAAQS.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS, commonly referred to as an “infrastructure SIP.” These infrastructure SIP submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a

⁶ As also mentioned above, this element is not relevant to this proposed rulemaking.

guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.⁷ Unless otherwise noted below, we are following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's implementation plan for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.⁸ The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

IV. What is EPA's Analysis of How Florida Addressed the Elements of the Sections 110(a)(1) and (2) "Infrastructure" Provisions?

The Florida infrastructure SIP submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A) *Emission Limits and Other Control Measures*: Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Several regulations within Florida's SIP are relevant to air quality control. The regulations described below include enforceable emission limitations and other control measures. Florida Administrative Code (F.A.C.) Chapters 62-204, *Air Pollution Control – General Provisions*; 62-210, *Stationary*

⁷ EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf), as well as in numerous agency actions, including EPA's prior action on Florida's infrastructure SIP to address the 2010 1-hour Sulfur Dioxide NAAQS (80 FR 51157 (Aug. 24, 2015)).

⁸ See *Mont. Env'tl. Info. Ctr. v. Thomas*, 902 F.3d 971 (9th Cir. 2018).

Sources – General Requirements; 62-212, Stationary Sources –Preconstruction Review; 62-296, Stationary Sources – Emissions Standards; and 62-297, Stationary Sources –Emissions Monitoring collectively establish enforceable emissions limitations and other control measures, means or techniques for activities that contribute to ozone concentrations in the ambient air, and provide authority for FDEP to establish such limits and measures as well as schedules for compliance through SIP-approved permits to meet the applicable requirements of the CAA.

Additionally, the following sections of the Florida Statutes provide FDEP the authority to conduct certain actions in support of this infrastructure element. Section 403.061(9), Florida Statutes, authorizes FDEP to “[a]dopt a comprehensive program for the prevention, control, and abatement of pollution of the air... of the state;” and Section 403.8055, Florida Statutes, authorizes FDEP to “[a]dopt rules substantively identical to regulations adopted in the Federal Register by the United States Environmental Protection Agency pursuant to federal law...”

EPA has made the preliminary determination that the provisions contained in these SIP-approved regulations and sections of the Florida Statutes satisfy section 110(a)(2)(A) for the 2015 8-hour ozone NAAQS in the State.

2. 110(a)(2)(B) *Ambient Air Quality Monitoring/Data System:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to: (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. SIP-approved rules at Chapters 62-204, 62-210, and 62-212 of the F.A.C. require the use of federal reference methods or equivalent monitors and also provide authority for FDEP to establish monitoring requirements through SIP-approved permits. Additionally, the following three sections of the Florida Statutes provide FDEP the authority to take specific actions in support of this infrastructure element: Section

403.061(1), Florida Statutes, authorizes FDEP to “[a]pprove and promulgate current and long-range plans developed to provide for air quality and control and pollution abatement; Section 403.061(9), Florida Statutes, authorizes FDEP to [a]dopt a comprehensive program for the prevention, control and abatement of pollution of the air ... of the State; and Section 403.061(11), Florida Statutes, authorizes FDEP to “[e]stablish ambient air quality... standards for the state as a whole or for any part thereof.” Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR Parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan, and includes a certified evaluation of the state’s ambient monitors and auxiliary support equipment.⁹ Florida submitted its monitoring network plan for 2018 to EPA on June 24, 2018. On October 22, 2019, EPA approved Florida’s monitoring network plan. Florida’s approved monitoring network plan can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-2019-0148. EPA has made the preliminary determination that Florida’s SIP and practices are adequate for the ambient air quality monitoring and data system related to the 2015 8-hour ozone NAAQS.

3. 110(a)(2)(C) *Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:*

This element consists of three sub-elements: enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (i.e., the major source

⁹ On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR Part 58.

PSD program). FDEP's 2015 8-hour ozone NAAQS infrastructure SIP submission cited a number of SIP provisions to address these requirements. EPA's rationale for its proposed action regarding each sub-element is described below.

Enforcement: FDEP cited Chapters 62-210, 62-212, F.A.C., which provide for enforcement of emission limits and control measures through permitting. Florida also cited to Section 403.061(6), Florida Statutes, which requires FDEP to “[e]xercise general supervision of the administration and enforcement of the laws, rules, and regulations pertaining to air and water pollution;” and Section 403.121, Florida Statutes, which authorizes FDEP to seek judicial and administrative remedies for violations, including civil penalties, injunctive relief, and criminal prosecution for violations of any FDEP rule or permit. These provisions provide FDEP with authority for enforcement of volatile organic compounds (VOC) and nitrogen oxides (NO_x) emission limits and control measures.

Regulation of minor sources and modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source program that regulates emissions of the 2015 8-hour ozone NAAQS. FDEP cited Chapter 62-210, F.A.C. These provisions of Florida's SIP regulate the construction of any new minor stationary source and minor modifications at an existing stationary source. These regulations enable FDEP to regulate sources contributing to the 2015 8-hour ozone NAAQS.

PSD Permitting for Major Sources: EPA interprets the PSD sub-element to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place covering the current PSD requirements for all regulated NSR pollutants. A state's PSD permitting program is complete for this sub-element (and J related to PSD) if EPA has already approved or is simultaneously approving the state's

SIP with respect to all PSD requirements that are due under the EPA regulations or the CAA on or before the date of the EPA’s proposed action on the infrastructure SIP submission. Florida’s authority to regulate new and modified sources to assist in the protection of air quality in attainment or unclassifiable areas is established in F.A.C. Chapters 62-210, *Stationary Sources – General Requirements, Section 200 – Definitions*, and 62-212, *Stationary Sources – Preconstruction Review, Section 400 - Prevention of Significant Deterioration*, of the Florida SIP. Under Florida’s SIP, new major sources and major modifications in areas of the State designated attainment or unclassifiable for a NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA to satisfy the infrastructure SIP PSD elements.

EPA has made the preliminary determination that Florida’s SIP and practices are adequate for program enforcement of control measures, regulation of minor sources and modifications, and PSD preconstruction permitting of major sources and major modifications.

4. 110(a)(2)(D)(i)(I) and (II) *Interstate Pollution Transport*: Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as “prongs,” that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (“prong 1”) and interfering with maintenance of the NAAQS in another state (“prong 2”). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent

significant deterioration of air quality in another state (“prong 3”), or to protect visibility in another state (“prong 4”).

110(a)(2)(D)(i)(I) – prongs 1 and 2: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states pursuant to section 110(a)(2)(D)(i)(I) (prongs 1 and 2). EPA will address prongs 1 and 2 in separate rulemakings.

110(a)(2)(D)(i)(II) – prong 3: With regard to section 110(a)(2)(D)(i)(II), the PSD element referred to as prong 3, this requirement may be met by a state’s confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a PSD program meeting current structural requirements of part C of title I of the CAA, or (if the state contains a nonattainment areas that has the potential to impact PSD in another state) a NNSR program. A state’s PSD permitting program satisfies prong 3 if EPA has already approved or is simultaneously approving the state’s implementation plan with respect to all PSD requirements that are due under EPA regulations or the CAA on or before the date of EPA’s proposed action on the infrastructure SIP submission.

Florida’s SIP contains provisions for the State’s PSD program that reflects the required structural PSD requirements to satisfy prong 3 of section 110(a)(2) (D)(i)(II). Florida addresses prong 3 through F.A.C. 62-204, 62-210, and 62-212 for the PSD and NNSR programs. EPA has made the preliminary determination that Florida’s SIP and practices are adequate for interstate transport for PSD permitting of major sources and major modifications related to the 2015 8-hour ozone NAAQS for section 110(a)(2)(D)(i)(II)(prong 3).

110(a)(2)(D)(i)(II) – prong 4: Section 110(a)(2)(D)(i)(II) requires that the SIP contain adequate provisions to protect visibility in other states. This requirement is satisfied for any relevant NAAQS when the state has a fully approved regional haze SIP.

Florida’s submission relied on the State’s SIP-approved regional haze program to address the prong 4 requirements of section 110(a)(2)(D)(i) for the 2015 8-hour ozone NAAQS.¹⁰ Federal regulations require that a state’s regional haze SIP contain a long-term strategy to address regional haze visibility impairment in each Class I area within the state and each Class I area outside the state that may be affected by emissions from the state.¹¹ A state participating in a regional planning process, such as Florida, must include all measures needed to achieve its apportionment of emissions reduction obligations agreed upon through that process.¹² EPA’s approval of Florida’s regional haze SIP therefore ensures that emissions from Florida are not interfering with measures to protect visibility in other states, satisfying the requirements of prong 4 of section 110(a)(2)(D)(i)(II) for the 2015 8-hour ozone NAAQS. Thus, EPA has made the preliminary determination that Florida’s infrastructure SIP submission for the 2015 8-hour ozone NAAQS meet the requirements of prong 4 of section 110(a)(2)(D)(i)(II).

5. 110(a)(2)(D)(ii): *Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to notification to neighboring air agencies and interstate and international

¹⁰ EPA approved Florida’s regional haze SIP - *see* 77 FR 71111 (November 29, 2012); 78 FR 53250 (August 29, 2013).

¹¹ *See* 40 CFR 51.308(d).

¹² *See, e.g.,* 40 CFR 51.308(d)(3)(ii). Florida participated in the Visibility Improvement State and Tribal Association of the Southeast regional planning organization, a collaborative effort of state governments, tribal governments, and various Federal agencies established to initiate, and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the Southeastern United States. Member state and tribal governments included: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the Eastern Band of the Cherokee Indians.

pollution abatement. Chapters 62-204, 62-210, and 62-212 of the F.A.C. require any new major source or major modification to undergo PSD or NNSR permitting and thereby provide notification to other potentially affected Federal, state, and local government agencies.

Additionally, Florida does not have any pending obligation under sections 115 and 126 of the CAA relating to international or interstate pollution abatement. EPA has made the preliminary determination that Florida's SIP and practices are adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2015 8-hour ozone NAAQS.

6. 110(a)(2)(E) Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies: Section 110(a)(2)(E) requires that each implementation plan provide: (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Florida's infrastructure SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii), and (iii).

In support of sub-elements 110(a)(2)(E)(i) and (iii), FDEP's infrastructure submission demonstrates that it has authority to carry out its SIP as it is responsible for a comprehensive program to address air pollution in the state as described in Section IV.1 above in reference to 110(a)(2)(A). Additionally, FDEP cites to provisions that provide assurances for adequate personnel and funding. Section 403.061(2), Florida Statutes, authorizes FDEP to "[h]ire only

such employees as may be necessary to effectuate the responsibilities of the department.”

Section 403.061(4), Florida Statutes, authorizes FDEP to “[s]ecure necessary scientific, technical, research, administrative, and operational services by interagency agreement, by contract, or otherwise.” Section 320.03(6), Florida Statutes, authorizes FDEP to establish an Air Pollution Control Trust Fund and use a \$1 fee on every motor vehicle license registration sold in the State for air pollution control purposes. Regarding the 110(a)(2)(E)(iii), Section 403.182, Florida Statutes, authorizes FDEP to approve local pollution control programs, and provides for the State air pollution control program administered by FDEP to supersede a local program if FDEP determines that an approved local program is inadequate, and the locality fails to take the necessary corrective actions.¹³

As evidence of the adequacy of FDEP’s resources with respect to sub-elements (i) and (iii), FDEP has a performance partnership agreement with EPA outlining 105 grant commitments and current status of these commitments for fiscal year 2018. Annually, the State updates this performance partnership agreement based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Florida satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2018, therefore, FDEP’s grants were finalized and closed out. EPA has made the preliminary determination that Florida has adequate resources and authority for implementation of the 2015 8-hour ozone NAAQS.

¹³ CAA Section 110(a)(2)(E)(iii) requires states to provide necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision. In the State of Florida, no local or regional areas submit implementation plans and the Department is solely responsible for the SIP. However, Florida Statute 403.061(21) authorizes the department to consult, cooperate and enter into agreements with other agencies of the State. The Department has specific operating agreements with Duval, Orange, Hillsborough, Pinellas, Sarasota, Palm Beach, Broward and Miami-Dade counties.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA. Section 128 requires that the SIP contain provisions providing that: 1) the majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and 2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed. For purposes of section 128(a)(1), Florida has no boards or bodies with authority over air pollution permits or enforcement actions. Such matters are instead handled by an appointed Secretary. As such, a “board or body” is not responsible for approving permits or enforcement orders in Florida, and the requirements of section 128(a)(1) are not applicable. For the requirements of 128(a)(2), Florida Statutes, subsections 112.3143(4), F.S., *Voting conflicts* and 112.3144, F.S, *Full and public disclosure of financial interests* address the conflict of interest provisions applicable to the head of FDEP and all public officers within the Department. On July 30, 2012 (77 FR 44485), EPA approved these Florida statutes into the SIP to comply with section 128 respecting state boards. EPA has made the preliminary determination that the State has adequately addressed the requirements of section 128(a)(2), and accordingly has met the requirements of section 110(a)(2)(E)(ii) with respect to infrastructure SIP requirements.

Therefore, EPA is proposing to approve Florida’s infrastructure SIP submission as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii) and (iii).

7. 110(a)(2)(F) Stationary Source Monitoring and Reporting: Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing: (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on

the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. EPA's rules regarding how SIPs need to address source monitoring requirements at 40 CFR 51.212 require SIPs to exclude any provision that would prevent the use of credible evidence of noncompliance. Florida meets these requirements through Chapters 62-210, 62-212, 62-296, and 62-297, F.A.C., which require emissions monitoring and reporting for activities that contribute to ozone concentrations in the air, including requirements for the installation, calibration, maintenance, and operation of equipment for continuously monitoring or recording emissions. These rules also provide authority for FDEP to establish such emissions monitoring and reporting requirements through SIP-approved permits and require reporting of ozone precursor emissions (NO_x and VOC) in a manner that allows the state to correlate such data and provide the information to EPA.

The following sections of the Florida Statutes provide FDEP the authority to conduct certain actions in support of this infrastructure element. Section 403.061(13) authorizes FDEP to “[r]equire persons engaged in operations which may result in pollution to file reports which may contain... any other such information as the department shall prescribe...” Section 90.401, Florida Statutes, defines relevant evidence as evidence tending to prove or disprove a material fact. Section 90.402, Florida Statutes, states that all relevant evidence is admissible except as provided by law. EPA is unaware of any provision preventing the use of credible evidence in the Florida SIP.

Additionally, Florida is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI) pursuant to Subpart A to 40 CFR Part 51, - “Air Emissions

Reporting Rule” (AERR). The NEI is EPA’s central repository for air emissions data. Specifically, all states are required to submit a comprehensive emission inventory every three years and report emissions for certain larger sources annually through EPA’s online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them – nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Florida made its latest update to the NEI on December 17, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the website <http://www.epa.gov/ttn/chief/eiinformation.html>. EPA has made the preliminary determination that Florida’s SIP and practices are adequate for the stationary source monitoring systems related to the 2015 8-hour ozone NAAQS.

8. 110(a)(2)(G) *Emergency Powers*: This section requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Section 303 authorizes EPA to take action seeking to immediately restrain pollution sources if such pollution is presenting an imminent and substantial endangerment to public health, welfare, or the environment. Florida’s infrastructure SIP submission addresses emergency powers as outlined in Florida Statutes Sections 403.131 and 120.569(2)(n). These sections of the Florida Statutes were submitted for inclusion in the SIP to address the requirements of section 110(a)(2)(G) of the CAA and have been approved by EPA into Florida’s SIP. Section 403.131 authorizes FDEP to: seek injunctive relief to enforce compliance with this chapter or any rule, regulation or permit certification, or order; to enjoin any violation specified in Section 403.061(1); and to seek injunctive relief to prevent irreparable injury to the air, waters, and property, including animal, plant, and aquatic life, of the State and to protect human health,

safety, and welfare caused or threatened by any violation. Section 120.569(2)(n), Florida Statutes, authorizes FDEP to issue emergency orders to address immediate dangers to the public health, safety, or welfare. EPA has made the preliminary determination that Florida's SIP, State laws, and practices are adequate to satisfy the infrastructure SIP obligations for emergency powers related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Florida's infrastructure SIP submission with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) SIP Revisions: Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan: (i) as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. As previously discussed, FDEP is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Florida has the ability and authority to respond to calls for SIP revisions and has provided a number of SIP revisions over the years for implementation of the NAAQS.

The following sections of the Florida Statutes provide FDEP the authority to conduct certain actions in support of this element. Section 403.061(35) gives FDEP the "broad authority to implement the CAA." Section 403.061(9) authorizes FDEP to "adopt a comprehensive program for the prevention, control, and abatement of pollution of the air of the state, and to review and modify such programs as necessary." EPA has made the preliminary determination that Florida adequately demonstrates a commitment to provide future SIP revisions related to the 2015 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Florida's infrastructure SIP submission with respect to section 110(a)(2)(H).

10. 110(a)(2)(J) Consultation with government officials, public notification, and PSD and visibility protection: EPA is proposing to approve Florida's infrastructure SIP for the 2015 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that complies with the applicable consultation requirements of section 121, the public notification requirements of section 127, PSD, and visibility protection. EPA's rationale for each sub-element is described below.

Consultation with government officials (121 consultation): Section 110(a)(2)(J) of the CAA requires states to meet the requirements of section 121 relating to consultation with local governments, designated organizations and federal land managers (FLMs) carrying out NAAQS implementation requirements. Florida's SIP-approved Chapters 62-204, 62-210, and 62-212, F.A.C., as well as its Regional Haze Implementation Plan (which allows for continued consultation with appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. Specifically, Florida adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development. Required partners covered by Florida's consultation procedures include Federal, state and local transportation and air quality agency officials. Also, Section 403.061(21), Florida Statutes, authorizes FDEP to "[a]dvice, consult, cooperate, and enter into agreements with other agencies of the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department." EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate consultation with government officials related to the 2015 8-hour ozone NAAQS when necessary.

Public notification (127 public notification): With respect to public notification, section 110(a)(3)(J) of the CAA requires states to notify the public of NAAQS exceedances and associated health hazards, and to enhance public awareness of measures that can prevent such exceedances. FDEP has public notice mechanisms in place to notify the public of instances or areas exceeding the NAAQS along with associated health effects through the Air Quality Index reporting system in required areas. Section 403.061(20), Florida Statutes, authorizes FDEP to “[c]ollect and disseminate information ... relating to pollution.” Accordingly, EPA is proposing to approve Florida’s infrastructure SIP submission with respect to section 110(a)(2)(J) public notification.

PSD: With regard to the PSD element of section 110(a)(2)(J), this requirement is met when a state demonstrates in an infrastructure SIP submission that its PSD program meets all the current requirements of part C of title I of the CAA. As discussed in more detail above under the section discussing 110(a)(2)(C), Florida’s SIP contains provisions for the State’s PSD program that reflect the relevant SIP revisions to satisfy the requirement of the PSD element of section 110(a)(2)(J). EPA has made the preliminary determination that Florida’s SIP is adequate for PSD permitting of major sources and major modifications related to the 2015 8-hour ozone NAAQS for the PSD element of section 110(a)(2)(J).

Visibility protection: EPA’s 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. FDEP referenced its regional haze program as germane to the visibility component of section 110(a)(2)(J). EPA recognizes that states are subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the

promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals so FDEP does not need to rely on its regional haze program to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that Florida's infrastructure SIP submission is approvable for section 110(a)(2)(J) related to the 2015 8-hour ozone NAAQS and that Florida does not need to rely on its regional haze program to address this element.

11. 110(a)(2)(K) *Air Quality Modeling and Submission of Modeling Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the EPA can be made. FDEP cites to SIP-approved sections of Chapters 62-210 and 62-212, F.A.C., for this requirement. Specific to modeling, 62-212, F.A.C. requires air quality models to meet the requirements of 52.21(l). Also, the following sections of the Florida Statutes provide FDEP the authority to conduct actions in support of this element. Section 403.061(13), Florida Statutes, authorizes FDEP to “[r]equire persons engaged in operations which may result in pollution to file reports which may contain information relating to locations, size of outlet, height of outlet, rate and period of emission, and composition and concentration of effluent and such other information as the department shall prescribe to be filed....” Section 403.061(18), Florida Statutes, authorizes FDEP to “[e]ncourage and conduct studies, investigations, and research relating to pollution and its causes, effects, prevention, abatement, and control.” These regulations and State statutes demonstrate that Florida has the authority to conduct modeling and provide relevant data for the purpose of predicting the effect on ambient air quality of the 2015 8-hour ozone NAAQS. Additionally, Florida participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS,

including the 2015 8-hour ozone NAAQS, for the Southeastern states. Florida notes in its SIP submission that the FDEP has the technical capability to conduct or review all air quality modeling associated with the NSR program and all SIP-related modeling, except that photochemical grid modeling may be performed for FDEP under contract. FDEP also states that all such modeling is conducted in accordance with the provisions of 40 CFR Part 51, Appendix W, “Guideline on Air Quality Models,” and agreed to submit any NSR or SIP modeling to EPA upon request. Taken as a whole, Florida’s submission demonstrates that FDEP has the authority to conduct air quality modeling under EPA guidelines, and to provide such information to the EPA Administrator upon request. EPA has made the preliminary determination that Florida’s SIP and practices adequately demonstrate the State’s ability to provide for air quality modeling, along with analysis of the associated data, related to the 2015 8-hour ozone NAAQS.

Accordingly, EPA is proposing to approve Florida’s infrastructure SIP submissions with respect to section 110(a)(2)(K).

12. 110(a)(2)(L) *Permitting Fees:* This section requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover: (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator’s approval of a fee program under title V. Section 403.087(6)(a), Florida Statutes, directs FDEP to “require a processing fee in an amount sufficient, to the greatest extent possible, to cover the costs of reviewing and acting upon any application for a permit....” Chapter 62-4.040(4)(a)1., F.A.C.,

requires each NSR permittee to pay a fee of \$7,500.¹⁴ Additionally, Florida has a fully approved title V operating permit program at Chapter 62-213 F.A.C.¹⁵ that covers the costs of implementation and enforcement of the title V program, including applicable requirements of the SIP. EPA has made the preliminary determination that Florida's State rules and statutes adequately provide for permitting fees related to the 2015 8-hour ozone NAAQS, when necessary. Accordingly, EPA is proposing to approve Florida's infrastructure SIP submission with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) Consultation and Participation by Affected Local Entities: This element requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP. Florida coordinates with local governments affected by the SIP. Florida has consulted with local entities for the development of transportation conformity and has worked with the FLMs as a requirement of the regional haze rule. Section 403.061(21), Florida Statutes, authorizes FDEP to “[a]dvise, consult, cooperate and enter into agreements with other agencies of the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department.” Further, Florida adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development and the requirements that link transportation planning and air quality planning in nonattainment and maintenance areas. Required partners covered by Florida's consultation procedures include Federal, state and local transportation and air quality agency officials. The state and local transportation agency officials are most directly impacted

¹⁴ This regulation is not approved into the Florida SIP.

¹⁵ Florida's title V program regulations are federally-approved but not incorporated into the SIP.

by transportation conformity requirements and are required to provide public involvement for their activities including the analysis demonstrating how they meet transportation conformity requirements. Also, FDEP has agreements with eight county air pollution control agencies (Duval, Orange, Hillsborough, Pinellas, Sarasota, Palm Beach, Broward, and Miami-Dade) that delineate the responsibilities of each county in carrying out Florida's air program, including the Florida SIP. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate consultation with affected local entities related to the 2015 8-hour ozone NAAQS when necessary.

V. Proposed Action

With the exception of interstate transport provisions of section 110(a)(2)(D)(i)(I) pertaining to the contribution to nonattainment or interference with maintenance in other states, EPA is proposing to approve Florida's infrastructure submission provided on September 18, 2018, for the 2015 8-hour ozone NAAQS for the above described infrastructure SIP requirements. EPA is proposing to approve Florida's infrastructure SIP submission for certain elements for the 2015 8-hour ozone NAAQS because the submission is consistent with section 110 of the CAA for those elements.

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, this proposed action merely

proposes to approve state law as meeting federal requirements and would not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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).

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.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 21, 2019.

Mary S. Walker,

Regional Administrator,

Region 4.

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