



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0148; FRL-10007-04-Region 4]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of 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. This submission 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 submission to establish that the state's implementation plan meets infrastructure requirements for the implementation, maintenance, and enforcement of each such NAAQS. FDEP made the required SIP submission to assure that the Florida SIP contains provisions that ensure the 2015 8-hour ozone NAAQS is implemented, enforced, and maintained in Florida. EPA has in this action determined that Florida's infrastructure SIP submission satisfies certain required infrastructure elements for the 2015 8-hour ozone NAAQS.

DATES: This rule is effective **[Insert 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-2019-0148. All documents in the docket are listed on the 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 or in hard copy at the 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. 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: Sean Lakeman, 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, 30303-8960. Mr. Lakeman can be reached via electronic mail at lakeman.sean@epa.gov or via telephone at (404) 562-9043.

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015 (80 FR 65292, October 26, 2015), EPA promulgated 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 make a SIP submission 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 submission is commonly referred to as an “infrastructure SIP.” EPA required states to submit these infrastructure SIP submissions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.¹

This action is approving 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 acting on the interstate transport requirements of section 110(a)(2)(D)(i)(I) related to attainment and maintenance of the NAAQS. EPA will consider these requirements for Florida for the 2015 8-hour ozone NAAQS separately.

In a notice of proposed rulemaking (NPRM) published on December 17, 2019 (84 FR 68863), EPA proposed to approve portions of Florida’s SIP submission dated September 18, 2018, intended to address the applicable infrastructure SIP requirements for the 2015 8-hour ozone NAAQS. The NPRM provides additional detail regarding the background and rationale for EPA’s action.

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.

II. Response to Comments

EPA received one comment seeking clarification and one set of adverse comments which are summarized and responded to below. The full set of comments are in the docket for this final rule.

Comment 1: A Commenter notes that EPA may have misidentified a website in the NPRM and seeks a clarification.

Response 1: EPA agrees with the Commenter. In the December 17, 2019, NPRM, EPA noted that 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.” The NEI is EPA’s central repository for air emissions data and 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. In the December 17, 2019 (84 FR 68868), NPRM, EPA indicated the website was <http://www.epa.gov/ttn/chief/eiinformation.html>. However, as identified by the Commenter, the correct website is <https://www.epa.gov/air-emissions-inventories>.

Comment 2: A Commenter asserts that EPA cannot approve Florida’s infrastructure SIP submission as demonstrating compliance with the CAA’s interstate transport requirements in 110(a)(2)(D)(i)(II) with respect to interference with prevention of significant deterioration (PSD) and visibility programs for any other state because Florida’s September 18, 2018, SIP submission did not address the interstate transport requirements of section 110(a)(2)(D)(i)(II). By way of background, CAA section 110(a)(2)(D)(i) contains two subsections: (D)(i)(I) and (D)(i)(II) that a state must address in infrastructure SIP submissions. Each of these subsections has two subparts resulting in four distinct components, commonly referred to by EPA as

“prongs.” 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 for PSD of air quality in another state (“prong 3”), or to protect visibility in another state (“prong 4”).

The Commenter asserts that Florida did not address section 110(a)(2)(D)(i)(II) for PSD and visibility in the September 18, 2018, SIP submission because the State does not “even mention the words ‘Prong 3’ or ‘Prong 4.’” As further evidence that the SIP submission does not address these requirements, the Commenter points to the fact that the State sent an email to EPA on November 13, 2019, to confirm that the State did intend the submission to meet those substantive requirements. The Commenter contends that “EPA cannot act on email messages from states and pretend they are official SIP submissions from the states” and that no state public notice was advertised on Prongs 3 or 4. As to the substance of the November 13, 2019 email, the Commenter claims that the State wrongly attempts to suggest that prong 3 and 4 are met by pointing to the prong 1 discussion in the September 18, 2018, SIP submission, and points to prior court cases pertaining to interstate transport that indicate EPA is required to give independent analysis to each prong of the interstate transport provisions of section 110(a)(2)(D). The Commenter also suggests that EPA has additional correspondence with the State related to the State’s November 13, 2019, clarification email that should be included in the docket for the rulemaking.

Response 2: EPA disagrees with the Commenter’s assertion that Florida did not address section 110(a)(2)(D)(i)(II) in its September 18, 2018, infrastructure SIP submission. In its September 13, 2013 “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” (2013 Guidance), EPA explains that a state may meet 110(a)(2)(D)(i)(II) (prong 3) by establishing in its infrastructure SIP submission that new major sources and major modifications are already subject to a comprehensive EPA-approved PSD permitting program.³ EPA also notes in the 2013 Guidance that sources in nonattainment areas are not subject to PSD permitting and that states may rely on an existing EPA-approved nonattainment new source review (NNSR) program with respect to sources located in nonattainment areas.⁴ For the visibility component of 110(a)(2)(D)(i)(II) (prong 4), EPA provides in the 2013 Guidance that states may meet this requirement by establishing in its infrastructure SIP submission that it already has an EPA-approved regional haze SIP that fully meets the requirements of 40 CFR 51.308.⁵

EPA’s analysis of Florida’s September 18, 2018, infrastructure SIP submission focused on whether the State provided relevant information to establish that Florida’s existing SIP adequately prohibits emissions activities within the State that will “interfere with measures required to be included in the applicable implementation plan for any other State...to prevent significant deterioration of air quality or to protect visibility,” consistent with the requirements of CAA section 110(a)(2)(D)(i)(II). Based on Florida’s transmittal letter for the September 18, 2018, SIP submission, and the actual content of the September 18, 2018, SIP submission, EPA believes Florida satisfied these requirements. In its September 18, 2018, transmittal letter,

³ 2013 Guidance, p. 31.

⁴ 2013 Guidance, pp. 31-32.

⁵ 2013 Guidance, p. 33.

Florida states that the submission “addresses *each* [emphasis added] of the CAA infrastructure elements for the 2015 Revised National Ambient Air Quality Standards (NAAQS) for Ozone (O₃).” The State did not identify any sections it did not intend to address and further explained the provisions that it did intend to address in the introduction section of the September 18, 2018, SIP submission: “[FDEP] hereby confirms that the requirements of sections 110(a)(1) and the infrastructure elements required by sections 110(a)(2)(A) through (M) of the CAA are adequately addressed in Florida’s existing approved SIP with respect to the implementation of the 2015 revised NAAQS.” Moreover, on page 5 of the SIP submission, the State properly describes the requirements of CAA section 110(a)(2)(D)(i) to include the provisions of subparagraph (II) requiring states to prohibit emissions activity from the State from “interfering with any other state’s required plan under Part C of the CAA for prevention of significant deterioration and protection of visibility.” Thus, though broadly worded in some cases, there are several indications in the September 18, 2018, SIP submission that the State intended the submission to address all of the applicable requirements of CAA section 110(a)(2), including the prong 3 and prong 4 requirements.

While EPA acknowledges that the September 18, 2018, SIP submission did not use the terms “prong 3” or “prong 4” to describe the requirements the State was addressing in the SIP submission, these are not statutory terms but rather EPA-developed shorthand for the two requirements in CAA section 110(a)(2)(D)(i)(II). Thus, EPA disagrees that it is a deficiency for the State not to include these specific terms in its SIP submission nor is the absence of these terms an indication that the State failed to perform the necessary analysis of these statutory requirements. Consistent with the 2013 Guidance regarding how a state may address the prong 3

requirements,⁶ the SIP submission confirms on both pages 5 and 7 of the section 110(a)(2)(D)(i) analysis that the State has both PSD and NNSR permitting programs already in its existing SIP. In particular, the State notes on those pages that the approved SIP requires “any new major source or major modification to undergo PSD or NNSR permitting and thereby demonstrate that it will not cause or contribute to a violation of any NAAQS or PSD increment in Florida *or any other state*” (emphasis added). This language from the SIP submission is consistent with the language of CAA section 110(a)(2)(D)(i)(II) requiring that a state’s plan demonstrate that emissions from the state will not interfere with another state’s PSD permitting plan, as the PSD requirements are specifically concerned with ensuring that the construction of new or modified major sources will not lead to new violations of the NAAQS or increments. *See* CAA section 165(a)(3).

Similarly, the SIP submission is consistent with the 2013 Guidance regarding how a state may address the prong 4 requirements because the SIP revision explains at page 5 that Florida has a fully-approved regional haze SIP.⁷ The State further explained on the same page that: “This plan ensures that Florida will not interfere with visibility protection in other states.” That statement is clearly in reference to the language describing the prong 4 requirements in 110(a)(2)(D)(i)(II).

EPA agrees with the Commenter that it would have been clearer if the State had provided sections in its September 18, 2018, SIP submission explicitly labeled “prong 3” and “prong 4,” or otherwise demarcated its analysis of these specific requirements in the same manner as the sections entitled “prong 1” and “prong 2,” but EPA does not agree that the

⁶ 2013 Guidance, pp. 30-32.

⁷ 2013 Guidance, pp. 32-35.

exclusion of the terms “prong 3” and “prongs 4” in the submission means that the State did not in fact make a submission that addresses the interstate transport requirements with respect to the PSD and visibility prongs for the 2015 8-hour ozone NAAQS.

EPA also agrees with the Commenter that each of the four prongs of section 110(a)(2)(D)(i) are separate requirements that states and EPA must address, and that there are prior court decisions that confirm this basic point. EPA disagrees, however, that the State has failed to address prong 3 and 4 in the September 18, 2018, SIP submission, or that EPA has failed to evaluate the submission with respect to these prongs. EPA and the State have provided independent analysis for prongs 3 and 4, as discussed above. Florida’s SIP submission satisfies the prong 3 requirements based on its SIP-approved PSD and NNSR permit programs, which require analysis and control of emissions that may impact another state’s compliance with its own PSD requirements and satisfies the prong 4 requirements based on the State’s fully-approved regional haze SIP. Not providing individual headings for each requirement of 110(a)(2)(D)(i) or prong within the submission does not support Commenter’s assertion that the State or EPA failed to address each of these prongs independently.

EPA also disagrees with the Commenter’s assertion that, by proposing to approve the September 18, 2018, SIP revision, EPA is inappropriately relying on the November 13, 2019, email from Florida instead of requiring a supplemental SIP submission. As previously acknowledged, EPA agrees that the SIP submission could have been clearer with respect to the infrastructure SIP requirements that the State was addressing, but the content of that SIP submission in fact did substantively address the requirements of section 110(a)(2)(D)(i)(II). In an abundance of caution, however, EPA requested confirmation of that fact from the State to include in the docket during EPA’s public comment period for the proposed approval of

Florida's September 18, 2018, SIP submission. The email merely confirmed Florida's intent regarding its September 18, 2018, SIP submission and did not provide new information regarding the Florida SIP or include new analysis to demonstrate that the Florida SIP meets the requirements of 110(a)(2)(D)(i)(II).

Additionally, the Commenter does not provide support for its contention that "no state public notice was advertised on Prongs 3 and 4." EPA has re-examined the notice that the State provided concerning the content of the SIP submission. The State's September 18, 2018, revision that underwent public notice clearly stated that it addressed "*each* [emphasis added] of the CAA infrastructure elements for the 2015 Revised National Ambient Air Quality Standards (NAAQS) for Ozone (O₃)," and did not exclude any infrastructure SIP requirements. EPA does not agree that use of the specific terms prong 3 or prong 4 was necessary for public notice purposes, given the broad statement concerning the subject matter of the proposed SIP submission and given the actual substantive content of that proposed SIP submission.

Finally, the Commenter asserted that EPA has "emails, records, and correspondence (including meeting minutes/notes)" related to Florida's September 18, 2018, SIP submission, and in particular, related to the interstate transport requirements for PSD and visibility, that it did not include in the rulemaking docket. In response to the comment, EPA has reviewed the docket and confirmed that it contains the appropriate documents necessary to reflect the basis for the agency's proposed and final action on the SIP submission. The relevant EPA staff have checked their individual files and have confirmed that they do not have any additional documents that should be included in the docket for this rulemaking. EPA notes that agency staff have regular communications with the states concerning SIP submissions and air quality planning generally. Such communications between a state and EPA are part of the normal SIP process.

III. Final Action

With the exception of interstate transport provisions pertaining to contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2), EPA is approving Florida's infrastructure submission provided on September 18, 2018, for the 2015 8-hour ozone NAAQS. EPA is approving 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.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and would 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).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the

rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [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 dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 13, 2020.

Mary S. Walker,

Regional Administrator,

Region 4.

Title 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 2015 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

Provision	State effective date	EPA approval date	FEDERAL REGISTER notice	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS.	9/18/2018	[Insert date of publication in Federal Register]	[Insert citation of publication]	With the exception of Prongs 1 and 2 of section 110(a)(2)(D)(i) (I).

[FR Doc. 2020-06585 Filed: 4/3/2020 8:45 am; Publication Date: 4/6/2020]