



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0105; FRL- 10008-27-Region 4]

Air Plan Approval; Florida: Public Notice Procedures for Minor Operating Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of a State Implementation Plan (SIP) revision submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP), on February 27, 2013, that change the State's public notice and comment rule for air permitting by modifying the public comment period for minor source operating permitting and making administrative edits.

DATES: 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-2017-0105 at 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 www2.epa.gov/dockets/commenting-epa-dockets.

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

SUPPLEMENTARY INFORMATION:

I. What Action is EPA Proposing?

EPA is proposing to approve certain changes to the Florida SIP that were provided to EPA by FDEP via a letter dated February 27, 2013.¹ EPA has previously approved portions of the February 27, 2013 submittal,² and FDEP has withdrawn other portions from EPA consideration.³ In this action, EPA is proposing to approve the remaining portions of this SIP revision. These remaining portions make changes to Rule 62-210.350, Florida Administrative Code (F.A.C.), *Public Notice and Comment* (hereinafter “Rule”) by modifying the length of the public notice period for federally enforceable state operating permits (FESOPs) and making

¹ EPA received the submittal on March 6, 2013.

² EPA approved portions of the February 27, 2013, SIP revision making changes to Rule 62-210.200, *Definitions*, 62-210.310, *Air General Permits*, and portions of 62-210.350, *Public Notice and Comment*, specifically portions of 62-210.350(1) and (4), on October 6, 2017 (82 FR 46682).

³ FDEP withdrew portions of the February 27, 2013, SIP revision as follows: FDEP withdrew certain changes to Rule 62-210.200, *Definitions*, Rule 62-210.350, *Public Notice and Comment*, and Rule 62-296.401, *Incinerators*, on June 28, 2017; and FDEP withdrew the changes to 62-210.300, *Permits Required*, on December 5, 2019. These letters are located in the docket for this notice of proposed rulemaking (NPRM).

several minor administrative edits to the Rule. The changes subject to this proposed action and EPA's rationale for proposing approval are described in more detail in Section II of this notice of proposed rulemaking (NPRM).

II. EPA's Analysis of the State's Submittal

FESOPs are federally enforceable permits issued by a state under a minor source operating permit program that EPA has approved into the SIP as meeting criteria published by the Agency on June 28, 1989. *See* 54 FR 27274 (June 28, 1989) (hereinafter FESOP Guidance). Among other things, these criteria include timely public notice of the proposal and issuance of FESOPs. The FESOP program is a voluntary mechanism for states to create federally enforceable restrictions on potential to emit (PTE) to avoid major source permitting requirements, such as the title V operating permit program, and there are no specific Clean Air Act (CAA) or federal regulations regarding the issuance of minor source operating permits.⁴ EPA originally approved Florida's FESOP program, including a 30-day public comment period, on February 1, 1996. *See* 61 FR 3572. EPA's rationale for approval of Florida's program was based on the program's consistency with EPA's FESOP Guidance.

In its February 27, 2013, SIP revision, the State seeks to reduce its 30-day comment period for FESOPs in Rule 62-210.350 to a 14-day period by: 1) adding subparagraph (4)(a)2., which states a 14-day period for public comments is required prior to final State action to issue a new, renewed, or revised FESOP, and 2) revising the time at paragraph (4)(b) between publication of the notice for review and comment and final agency action on the FESOP from 30 days to 14 days. The State also seeks to make the following administrative edits to the Rule:

⁴ Florida has an approved title V program pursuant to 40 CFR Part 70. *See* 40 CFR 70, Appendix A.

renumbering subparagraph (4)(a)2. to (4)(a)3. and updating a cross-reference to administrative procedures in the State at paragraph (4)(b). All major sources remain subject to the title V operating permit program, and action on the proposed SIP revision will not impact the public notice requirements under the State's title V program.

The FESOP Guidance does not establish a 30-day public notice and comment period as a requirement for program approval. EPA instead noted the flexibility that states have in determining the appropriate level of public engagement by indicating that states need to “provide EPA and the public with timely notice of the proposal and issuance” of FESOPs and that EPA would consider the programs sufficient as long as “ample opportunity is provided for comment on permits prior to their final issuance” *See* 54 FR 27274 at 27282, 27283. However, EPA did not provide exacting requirements for how long such opportunity must be. Based on its experience, Florida believes that 14 days is adequate time for EPA and the public to review and comment on its FESOPs.

Florida provided a CAA section 110(l) noninterference analysis to support the change to the public comment period for FESOPs.⁵ Section 110(l) states that EPA cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment or reasonable further progress (RFP), or any other applicable requirement of the CAA. FDEP notes that the change in the public comment period does not interfere with any applicable requirement concerning attainment or reasonable further progress or any other applicable requirement because this change does not affect emissions limitations or authorize any increase in emissions,

⁵ The 110(l) demonstration was part of a June 28, 2017, letter, which is included in the docket for this NPRM.

and there are no specific requirements in the CAA or its implementing regulations regarding the duration of the public notice period for FESOPs.

In a May 10, 2019 email to EPA, FDEP stated that the Department may provide an extension of the public comment period provided in Rule 62-210.350 if requested for good cause during the public comment period.⁶ Specifically, FDEP noted that the Florida rules provide for revised, increased time for public comments to be submitted in certain circumstances at 62-110.106, F.A.C., *Decisions Determining Substantial Interests*, which is cross-referenced in 62-210.350, at paragraph (4), *Enlargement of Time*. FDEP included a copy of 62-110.106 in the February 27, 2013, submittal for reference.⁷ Rule 62-110.106 is generally applicable to various programs, including non-air programs, and is not part of the SIP. This rule and FDEP's email indicate that the State may go beyond the 14-day comment period when a third-party commenter requests an extension for good cause. Therefore, even with the proposed SIP revision, the State may provide for a longer comment period on FESOPs.

EPA is proposing to approve the change to the public comment period for minor source FESOPs in the SIP-approved version of Rule 62-210.350 because the change is not inconsistent with the FESOP Guidance or the CAA, and because the change will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other requirements in the Act. EPA is also proposing to approve the aforementioned edits to paragraph 4(b) and subparagraph (4)(a)2. These edits meet the requirements of 110(l) because they are administrative in nature and therefore have no impact on air quality.

III. Incorporation by Reference

⁶ FDEP's May 10, 2019, email is included in the docket for this NPRM.

⁷ Florida did not ask EPA to incorporate this rule into the SIP in its February 27, 2013 SIP revision.

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Rule 62-210.350, F.A.C., entitled “Public Notice and Comment,” state effective October 12, 2008, consisting of changes to the public comment period regarding FESOPs as well as administrative edits.⁸ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

IV. Proposed Action

For the reasons discussed above, EPA is proposing to approve the portions of Florida’s February 27, 2013, SIP revision that consist of changes to the public comment period regarding FESOPs and administrative edits not previously incorporated into the SIP by EPA at Rule 62-210.350.

V. 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 proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

⁸ Except for 62-210.350(1)(c) which was withdrawn from EPA consideration on June 28, 2017.

- 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Reporting and recordkeeping requirements.

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

Mary Walker,
Regional Administrator,
Region 4.