



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2020-0459; FRL-10017-93-Region 4]

#### **Air Plan Approval; FL; Prevention of Significant Deterioration Infrastructure Elements**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Florida State Implementation Plan (SIP), submitted by the Florida Department of Environmental Protection (FDEP), Division of Air Resources Management, to EPA on August 26, 2020. The Clean Air Act (CAA or Act) requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each national ambient air quality standard (NAAQS) promulgated by EPA, commonly referred to as an “infrastructure SIP.” This submission addresses certain greenhouse gas (GHG) Prevention of Significant Deterioration (PSD) permitting requirements for the 2008 and 1997 8-hour ozone and the 1997 annual and 2006 24-hour fine particulate matter (PM<sub>2.5</sub>) NAAQS. Additionally, EPA is proposing to convert the previous disapprovals of Florida’s infrastructure SIPs related to the CAA GHG PSD permitting requirements for the above NAAQS to full approvals.

**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-2020-0459 at [www.regulations.gov](https://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](http://www2.epa.gov/dockets/commenting-epa-dockets).

**FOR FURTHER INFORMATION CONTACT:** Pearlene Williams, 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) 562-9144. Ms. Williams can also be reached via electronic mail at [williams.pearlene@epa.gov](mailto:williams.pearlene@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

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. States were previously required to submit such SIPs for the 2008 and 1997 8-hour ozone and the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS to EPA within three years of promulgation of the respective NAAQS. This action only pertains to sections 110(a)(2)(C), (D)(i)(II), and (J) as they relate to GHG under a SIP-approved PSD permitting program.<sup>1</sup>

On July 30, 2012 (77 FR 44485), EPA disapproved portions of Florida's 1997 8-hour ozone infrastructure SIP submission related to GHG PSD permitting requirements under section 110(a)(2)(C) and section 110(a)(2)(J). The disapproval action was a result of Florida not

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<sup>1</sup> See section II for a description of these CAA infrastructure SIP elements.

submitting a SIP revision to adopt the appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for their GHG emissions as promulgated in the GHG Tailoring Rule. *See* 75 FR 31514 (June 3, 2010).

On April 3, 2013 (78 FR 19998), EPA disapproved the portion of Florida's infrastructure SIP submission for both the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS related to GHG PSD permitting requirements under the section 110(a)(2)(D)(i)(II) provision that prohibits emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state. The Florida SIP for these two standards did not provide adequate legal authority to address the GHG PSD permitting requirements at or above the levels of emissions set forth in the June 3, 2010, GHG Tailoring Rule.

On November 1, 2013 (78 FR 65559), EPA disapproved portions of Florida's 2008 8-hour ozone infrastructure SIP submission related to GHG PSD permitting requirements under section 110(a)(2)(C), the section 110(a)(2)(D)(i)(II) provision that prohibits emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state, and section 110(a)(2)(J). The disapproval was a result of Florida not submitting a SIP revision to adopt the appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for their GHG emissions as promulgated in the June 3, 2010, GHG Tailoring Rule.

In summary, for the 2008 and 1997 8-hour ozone and the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS, Florida's SIP did not address or provide adequate legal authority for the implementation of a GHG PSD program in Florida.

On May 19, 2014 (79 FR 28607), EPA approved Florida's December 19, 2013, SIP revision that amended the State's definition of "PSD pollutant" to provide Florida with the authority to regulate GHG under its PSD program to establish PSD applicability thresholds for GHG emissions at the same emissions thresholds and in the same timeframes as those specified

by EPA in the June 3, 2010, GHG Tailoring Rule. Based on this May 19, 2014 approval, the Florida SIP addressed the GHG requirements for PSD as specified in the June 3, 2010, GHG Tailoring Rule.

## **II. Analysis of Florida's Submission**

### *A. Section 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 new 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 PSD program).

This proposed action pertains to the PSD permitting for new major sources and major modifications for the 2008 and 1997 8-hour ozone NAAQS. 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 (D)(i)(II) and (J) related to PSD) if EPA has already approved or is simultaneously approving the state's implementation plan with respect to all PSD requirements that are due under the EPA regulations or the CAA.

FDEP's August 26, 2020, submission cited a number of SIP provisions to address the major source PSD program. 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 Chapter 62-210 and Chapter 62-212 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. With

EPA's May 19, 2014 approval of Florida's SIP revision to address GHG under its PSD program in accordance with the GHG Tailoring Rule, Florida's SIP satisfied current CAA requirements for PSD. Therefore, EPA has made the preliminary determination that Florida's SIP and practices are adequate for PSD permitting related to GHGs for major sources and major modifications as required by section 110(a)(2)(C) for the 2008 and 1997 8-hour ozone NAAQS.

*B. Section 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").

This proposed action pertains to 110(a)(2)(D)(i)(II) — prong 3 for the 2008 8-hour ozone and the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS. 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 nonattainment areas that have the potential to impact PSD in another state, a nonattainment new source review (NNSR) program.<sup>2</sup> 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

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<sup>2</sup> Florida's NNSR program is not relevant to this proposed action as it is limited to the regulation of GHGs under the State's PSD program.

regulations or the CAA on or before the date of EPA's proposed action on the infrastructure SIP submission.

As explained in the discussion of section 110(a)(2)(C), Florida's SIP contains provisions for the State's PSD program that reflect the required structural PSD requirements to satisfy prong 3 of section 110(a)(2)(D)(i)(II). Florida addresses prong 3 for PSD through Chapters 62–204, 62–210, and 62–212. 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 GHGs for the 2008 8-hour ozone and the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS for section 110(a)(2)(D)(i)(II) (prong 3).

*C. 110(a)(2)(J) Consultation With Government Officials, Public Notification, and PSD and Visibility Protection*

This element consists of four sub-elements: Consultation requirements of section 121, the public notification requirements of section 127, PSD, and visibility protection. This action pertains to the PSD element of section 110(a)(2)(J) for GHGs for the 2008 and 1997 8-hour ozone NAAQS.

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 explained in the discussion of section 110(a)(2)(C), Florida's SIP contains provisions in Chapters 62–210 and 62–212 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 GHGs for the 2008 and 1997 8-hour ozone NAAQS for section 110(a)(2)(J).

### **III. Proposed Action**

EPA is proposing to approve revisions to the Florida SIP, submitted on August 26, 2020, related to sections 110(a)(2)(C), (D)(i) (prong 3), and (J) as they relate to new major sources and

major modifications in areas of the State designated attainment or unclassifiable. EPA has made the preliminary determination that Florida's SIP and practices are adequate for GHG PSD permitting of major sources and major modifications related to the 2008 8-hour ozone NAAQS for sections 110(a)(2)(C), (D)(i) (prong 3), and (J); the 1997 8-hour ozone NAAQS for sections 110(a)(2)(C) and (J); and the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS for section 110(a)(2)(D)(i)(ii) prong 3. Consequently, EPA is proposing to convert the previous disapprovals of Florida's infrastructure SIPs related to the CAA GHG PSD permitting requirements for the 2008 and 1997 8-hour ozone and the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS to full approvals.

#### **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. 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:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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



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

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Particulate matter, Reporting and recordkeeping requirements and Volatile organic compounds.

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

Dated: February 23, 2021.

John Blevins,

*Acting Regional Administrator,*

*Region 4.*

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