



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2022-0355; FRL-10157-01-R4]

Air Plan Approval; Florida; Removal of Odor, Fluorides, and Total Reduced Sulfur Rules and Related Definitions from the Florida SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to correct the erroneous incorporation of several rules and related definitions into the Florida State Implementation Plan (SIP). The rules being proposed for removal from the SIP, which are identified by Florida in letters to EPA dated March 16, 2021, and July 2, 2021, regulate odor, fluoride, and total reduced sulfur (TRS) emissions. EPA is proposing to remove these rules and definitions from the Florida SIP because they are not related to implementation, maintenance, or enforcement of the national ambient air quality standards (NAAQS) or otherwise required to be included in the SIP.

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-2022-0355 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: Evan Adams, 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) 562-9009. Mr. Adams can also be reached via electronic mail at adams.evan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A SIP is a federally enforceable collection of regulations and documents used by a state, territory, or local air district to implement, maintain, and enforce the NAAQS and to fulfill other requirements of the Clean Air Act (CAA or Act) that require SIP measures (e.g., measures addressing regional haze under CAA section 169A). The NAAQS currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies.

EPA has incorporated several rules related to odor, fluorides, and TRS into the Florida SIP. In letters to EPA dated March 16, 2021, and July 2, 2021, Florida identifies some of those rules as inappropriate for inclusion in the SIP, provides the bases for its conclusions, and asks EPA to remove them pursuant to CAA section 110(k)(6).

Section 110(k)(6) provides EPA with the authority to make corrections to prior SIP actions that are subsequently found to be in error in the same manner as the prior action, and to

do so without requiring any further submission from the state.¹ While section 110(k)(6) provides EPA with the authority to correct its own “error,” nowhere does this provision or any other provision in the CAA define what qualifies as “error.” Thus, EPA believes the term should be given its plain language, everyday meaning, which includes all unintentional, incorrect, or wrong actions and mistakes. Each provision proposed for removal from Florida’s SIP is discussed below along with EPA’s analysis.

II. EPA’s Analysis

A. Rule 62-210.200, F.A.C.² - *Definitions*

In the July 2, 2021, letter from FDEP, the State requests that EPA remove the following terms and their definitions in Rule 62-210.200 from the Florida SIP: (66) Calciner, (109) Cross Recovery Furnace, (117) Digester System, (157) Green Liquor Sulfidity, (182) Lime Kiln, (207) Multiple Effect Evaporator System, (211) Neutral Sulfite Semichemical (NSSC) Pulping Operation, (212) New Design Direct-Fired Kraft Recovery Furnace, (213) New Design Direct-Fired Suspension-Burning Kraft Recovery Furnace, (214) New Design Kraft Recovery Furnace, (221) Objectionable Odor, (222) Odor, (223) Old Design Kraft Recovery Furnace, (241) Plant Section, (286) Smelt Dissolving Tank, (299) Straight Kraft Recovery Furnace, and (307) Tall Oil Plant.³

In the Florida SIP, these defined terms are only used in Rules 62-210.310(4), 62-296.320, 62-296.403, 62-296.404(4) through (6), and 62-297.440(2)(f), which are all being proposed for removal in this 110(k)(6) error correction notice. If EPA removes these rules from the Florida SIP, these terms will no longer be needed in the SIP because they are not used in any other SIP rules. EPA is proposing to remove these terms and their definitions from the Florida SIP for this

¹ Section 110(k)(6) states that “Whenever the Administrator determines that the Administrator’s action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.”

² F.A.C. stands for Florida Administrative Code.

³ EPA last updated the SIP-approved version of Rule 62-210.200 on September 16, 2020 (85 FR 57707).

reason and because they are not related to implementation, maintenance, or enforcement of the NAAQS or otherwise required to be included in the SIP.

B. Rule 62-210.310, F.A.C. - *Air General Permits*

In the July 2, 2021, letter from FDEP, the State requests that EPA remove subparagraphs (4)(d)2.b, (4)(e)2.b, and (4)(f)2.c. of Rule 62-210.310, *Air General Permits* from the Florida SIP.⁴ These subparagraphs serve only to require compliance with the objectionable odor prohibition of Rule 62-296.320(2), which, as discussed below, is also proposed for removal from the SIP. If EPA removes Rule 62-296.320(2) from the SIP, these provisions of Rule 62-210.310 will no longer have meaning. EPA is proposing to remove these subparagraphs from the Florida SIP for this reason and because they are not related to implementation, maintenance, or enforcement of the NAAQS or otherwise required to be included in the SIP.

C. Rule 62-296.320, F.A.C. - *General Pollutant Emission Limiting Standards*

In the March 16, 2021, letter from FDEP, the State requests that EPA remove Rule 62-296.320(2), *Objectionable Odor Prohibited* from the Florida SIP.⁵ This SIP-approved rule provides that “No person shall cause, suffer, allow or permit the discharge of air pollutants which cause or contribute to objectionable odor.” EPA is proposing to remove this rule from the Florida SIP because it is not related to implementation, maintenance, or enforcement of the NAAQS or otherwise required to be included in the SIP.

D. Rule 62-296.403, F.A.C. - *Phosphate Processing*

In the March 16, 2021, letter from FDEP, the State requests that EPA remove Rule 62-296.403, *Phosphate Processing*, in its entirety, from the Florida SIP.⁶ This rule requires certain phosphate processing plants and plant sections to meet emissions limitations on the pounds of fluoride emitted per ton of phosphate material input and to comply with specified test methods. EPA is proposing to remove this rule from the Florida SIP because it is not related to

⁴ EPA last updated the SIP-approved version of Rule 62-210.310 on October 6, 2017 (82 FR 46682).

⁵ EPA last updated the SIP-approved version of Rule 62-296.320 on June 16, 1999 (64 FR 32346).

⁶ EPA last updated the SIP-approved version of Rule 62-296.403 on June 16, 1999 (64 FR 32346).

implementation, maintenance, or enforcement of the NAAQS or otherwise required to be included in the SIP.

E. Rule 62-296.404, F.A.C. - *Kraft (Sulfate) Pulp Mills and Tall Oil Plants*

In the March 16, 2021, letter from FDEP, the State requests that EPA remove the portions of Rule 62-296.404, *Kraft (Sulfate) Pulp Mills and Tall Oil Plants*, regarding TRS from the Florida SIP.⁷ Specifically, EPA is proposing to remove Rule 62-296.404(1)(b) and Rules 62-296.404(4)(a)3, (4)(b)3, (4)(c)3, (4)(d), and (4)(e), which outline different testing methods and procedures for TRS processes, as well as Rules 62-296.404(5) and 62-296.404(6), which outline monitoring and reporting requirements for sources of TRS. EPA is proposing to remove these provisions from the Florida SIP because they are not related to implementation, maintenance, or enforcement of the NAAQS or otherwise required to be included in the SIP.

F. Rule 62-297.440, F.A.C. - *Supplementary Test Procedures*

In the July 2, 2021, letter from FDEP, the State requests that EPA remove paragraph (2)(f) of Rule 62-297.440, *Supplementary Test Procedures* from the Florida SIP.⁸ Rule 62-297.440(2)(f) provides that when determining whether a kraft recovery furnace is a straight kraft or cross recovery furnace the procedure in 40 CFR 60.285(d)(3) of Subpart BB shall be used. This provision is used only to determine which type of recovery furnace a specific unit is, as defined in Rule 62-210.200, in order to establish what TRS emission limit applies. If EPA removes all TRS provisions in 62-210.200, as described elsewhere in this notice, Rule 62-297.440(2)(f) will be unnecessary. EPA is proposing to remove this paragraph from the Florida SIP for this reason and because it is not related to implementation, maintenance, or enforcement of the NAAQS or otherwise required to be included in the SIP.

EPA's prior approval into the Florida SIP of the rules and definitions identified by the State in its March 16, 2021, and July 2, 2021, letters to EPA, was in error because these rules and

⁷ EPA last updated the SIP-approved version of Rule 62-296.404 on June 16, 1999 (64 FR 32346).

⁸ EPA last updated the SIP-approved version of Rule 62-297.440, *Supplementary Test Procedures*, on April 2, 2018 (83 FR 13875).

definitions are not related to implementation, maintenance, or enforcement of the NAAQS or otherwise required to be included in the SIP. EPA is therefore proposing to remove them from the Florida SIP.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. EPA is proposing to remove certain provisions and defined terms from the following rules in the Florida SIP: 62-210.200, F.A.C. - *Definitions*, 62-210.310, F.A.C. - *Air General Permits*, 62-296.320, F.A.C. - *General Pollutant Emission Limiting Standards*, 62-296.403, F.A.C. - *Phosphate Processing*, 62-296.404, F.A.C. - *Kraft (Sulfate) Pulp Mills and Tall Oil Plants*, and 62-297.440, F.A.C. - *Supplementary Test Procedures*. From Rule 62-210.200, *Definitions*, EPA is proposing to remove the following defined terms and their definitions: (66) Calciner, (109) Cross Recovery Furnace, (117) Digester System, (157) Green Liquor Sulfidity, (182) Lime Kiln, (207) Multiple Effect Evaporator System, (211) Neutral Sulfite Semichemical (NSSC) Pulp Operation, (212) New Design Direct-Fired Kraft Recovery Furnace, (213) New Design Direct-Fired Suspension-Burning Kraft Recovery Furnace, (214) New Design Kraft Recovery Furnace, (221) Objectionable Odor, (222) Odor, (223) Old Design Kraft Recovery Furnace, (241) Plant Section, (286) Smelt Dissolving Tank, (299) Straight Kraft Recovery Furnace, and (307) Tall Oil Plant. From Rule 62-210.310, *Air General Permits*, EPA is proposing to remove the following provisions: 62-210.310(4)(d)2.b, (4)(e)2.b, and (4)(f)2.c. From Rule 62-296.320, *General Pollutant Emission Limiting Standards*, EPA is proposing to remove provision 62-296.320(2). From Rule 62-296.404, *Kraft (Sulfate) Pulp Mills and Tall Oil Plants*, EPA is proposing to remove the following provisions: 62-296.404(1)(b), (4)(a)3, (4)(b)3, (4)(c)3, (4)(d), (4)(e), (5) and (6). From Rule 62-297.440, *Supplementary Test Procedures*, EPA is proposing to remove provision 62-297.440(2)(f). Finally, EPA is proposing to remove Rule 62-296.403, *Phosphate Processing*, in its entirety. The remaining portions of these rules will remain incorporated in the Florida SIP, as incorporated by reference in

accordance with the requirements of 1 CFR part 51. EPA has made, and will continue to make, the SIP generally available 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

EPA is proposing to remove portions of Rules 62-210.200, F.A.C. - *Definitions*, 62-210.310, F.A.C. - *Air General Permits*, 62-296.320, F.A.C. - *General Pollutant Emission Limiting Standards*, 62-296.404, F.A.C. - *Kraft (Sulfate) Pulp Mills and Tall Oil Plants*, and 62-297.440, F.A.C. - *Supplementary Test Procedures* and all of Rule 62-296.403, F.A.C. - *Phosphate Processing* from the Florida SIP because EPA's incorporation of these rules and definitions into the SIP was in error as they are not related to implementation, maintenance, or enforcement of the NAAQS or otherwise required to be included in the SIP.

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 proposed action merely proposes to correct errors in previous rulemakings approving SIP submissions 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 proposed 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.*

Dated: September 15, 2022.

Daniel Blackman,
Regional Administrator,
Region 4.

[FR Doc. 2022-20423 Filed: 9/22/2022 8:45 am; Publication Date: 9/23/2022]