6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2022-0608; FRL-10387-01-R4]

Air Plan Approval; FL; Noninterference Demonstrations for Removal of CAIR and Obsolete Rules in the Florida SIP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a portion of a State Implementation Plan (SIP) revision submitted by the Florida Department of Environmental Protection (FDEP) on April 1, 2022, for the purpose of removing several rules from the Florida SIP. EPA is proposing to remove the State's Clean Air Interstate Rule (CAIR) rules from the Florida SIP as well as several Reasonably Available Control Technology (RACT) rules for particulate matter (PM) because these rules have become obsolete. The State has provided a non-interference demonstration to support the removal of these rules from the Florida SIP pursuant to the Clean Air Act (CAA or Act).

DATES: Comments are due 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-2022-0608 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 https://www.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 on 62-296.470, F.A.C., *Implementation of Federal Clean Air Interstate Rule*

Under CAA section 110(a)(2)(D)(i)(I), which EPA has traditionally termed the good neighbor provision, States are required to address the interstate transport of air pollution. Specifically, the good neighbor provision requires that each State's implementation plan contain adequate provisions to prohibit air pollutant emissions from within the State that will contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any national ambient air quality standard (NAAQS).

In 2005, EPA published CAIR to limit the interstate transport of ozone and fine particulate matter ($PM_{2.5}$) under the CAA's good neighbor provision. *See* 70 FR 25162 (May 12, 2005). CAIR originally required twenty-eight eastern States, including Florida, to submit SIPs prohibiting emissions that exceeded:

(1) Annual budgets specific to each State for nitrogen oxides (NO_X)—an ozone precursor;

(2) ozone season budgets specific to each State for NO_X; and

(3) annual budgets specific to each State for sulfur dioxide (SO_2)—a $PM_{2.5}$ precursor.

CAIR also established several[1] trading programs for these pollutants that EPA implemented through Federal implementation plans (FIPs) for electric generating units (EGUs) greater than 25 megawatts in each affected State.[2] However, these trading programs did not apply to large non-EGUs. States could then submit SIPs to replace the FIPs to achieve the required emission reductions from EGUs and could choose to opt in non-EGU sources.

On October 12, 2007, EPA approved a SIP revision for Florida implementing the requirements of CAIR. *See* 72 FR 58016. That revision to Florida's SIP included Rule 62-296.470, which, as discussed later in this notice, EPA is now proposing to remove from Florida's SIP as obsolete.

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR in 2008, but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR. *See North Carolina v. EPA,* 531 F.3d 896, *modified on rehearing*, 550 F.3d 1176 (D.C. Cir. 2008). The ruling allowed CAIR to remain in effect temporarily until a replacement rule consistent with the court's opinion was developed. While EPA worked on developing a replacement rule, the CAIR program continued to be implemented with the NO_X annual and ozone season trading programs beginning in 2009 and the SO_2 annual trading program beginning in 2010.

In response to the D.C. Circuit's remand of CAIR, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to address the good neighbor provision for the 1997 ozone NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS. *See* 76 FR 48208 (August 8, 2011). CSAPR requires EGUs in many eastern States to meet annual and ozone season NO_X emission budgets and annual SO_2 emission budgets implemented through new trading programs.

CSAPR also contained provisions that would sunset CAIR-related obligations on a

[1] CAIR had separate trading programs for annual SO_2 emissions, ozone season NO_X emissions, and annual NO_X emissions.
[2] For additional background regarding these FIPs, including details specific to Florida, see Proposed Approval of Implementation Plans of Florida: Clean Air Interstate Rule, 72 FR 42344 (August 2, 2007).

schedule coordinated with the implementation of CSAPR compliance requirements. CSAPR was to become effective January 1, 2012; however, the timing of CSAPR's implementation was impacted by a number of court actions.

On December 30, 2011, the D.C. Circuit stayed CSAPR prior to its implementation, and EPA was ordered to continue administering CAIR on an interim basis.[3] In a subsequent decision on the merits, the court vacated CSAPR based on a subset of petitioners' claims.[4] However, on April 29, 2014, the U.S. Supreme Court reversed that decision and remanded the case to the D.C. Circuit for further proceedings.[5] Throughout the initial round of D.C. Circuit proceedings and the ensuing Supreme Court proceedings, the stay on CSAPR remained in place, and EPA continued to implement CAIR.

Following the April 2014 Supreme Court decision, EPA filed a motion asking the D.C. Circuit to lift the stay in order to allow CSAPR to replace CAIR in an equitable and orderly manner while further D.C. Circuit proceedings were held to resolve remaining claims from petitioners. Additionally, EPA's motion requested to toll, by three years, all CSAPR compliance deadlines that had not passed as of the approval date of the stay. On October 23, 2014, the D.C. Circuit granted EPA's request, and on December 3, 2014 (79 FR 71663), in an interim final rule, EPA set the updated effective date of CSAPR as January 1, 2015, and tolled the implementation of CSAPR Phase 1 to 2015 and CSAPR Phase 2 to 2017.

In accordance with the interim final rule, the sunset date for CAIR was December 31, 2014, and EPA began implementing CSAPR on January 1, 2015.[6] However, EPA determined that CSAPR does not apply to Florida after demonstrating that Florida does not contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect

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[3] Order of December 30, 2011, in *EME Homer City Generation, L.P. v. EPA*, D.C. Cir. No. 11-1302.
[4] *EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), cert. granted 133 U.S. 2857 (2013).
[5] *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584, 1600-01 (2014).
[6] *See* 40 CFR 51.123(ff) (sunsetting CAIR requirements related to NO_X); 40 CFR 51.124(s) (sunsetting CAIR requirements related to SO_2).

to the covered NAAQS. *See* 81 FR 74505, 74506.[7] Because CSAPR replaced CAIR and EPA previously determined that CSAPR does not apply to Florida, neither of these rules have any applicability in Florida today.

II. EPA's analysis of the Removal of 62-296.470, F.A.C., *Implementation of Federal Clean Air Interstate Rule*

Rule 62-296.470 was approved by EPA into the Florida SIP on October 12, 2007 (72 FR 58016). Florida repealed this rule on August 14, 2019, through a State regulatory action because CAIR has sunset and, under CSAPR, EPA determined that sources in Florida do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to the covered NAAQS. The State has now requested that EPA remove Rule 62-296.470 from the SIP.[8] EPA proposes to remove this rule from Florida's SIP because CAIR was remanded and eventually replaced by the CSAPR which does not apply to Florida. For these reasons, EPA believes the removal of this rule is appropriate and consistent with all applicable requirements, including CAA section 110(l).[9]

III. Background on 62-296.701, F.A.C., *Portland Cement Plants*; 62-296.703, F.A.C., *Carbonaceous Fuel Burners*; 62-296.706, F.A.C., *Glass Manufacturing Process*; 62-296.709, F.A.C., *Lime Kilns*; and 62-296.710, F.A.C., *Smelt Dissolving Tanks*

On March 3, 1978, EPA designated all areas of the country for the 1971 total suspended particulates (TSP) NAAQS. Duval, Seminole, Polk, and Hillsborough Counties in Florida were designated as not meeting the secondary TSP standards. *See* 43 FR 8962, 8980 (March 3, 1978). After several modifications to the designations, EPA determined that portions of Seminole and

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[7] Additional updates were made to the CSAPR trading program following its original approval on August 8, 2011, including the CSAPR Update on October 26, 2016 (81 FR 74504) and Revised CSAPR Update on April 30, 2021 (86 FR 23054) for ozone interstate transport. These subsequent CSAPR rules continued to demonstrate that sources in Florida were not significantly contributing to any maintenance or nonattainment area, therefore, the CSAPR Update and the Revised CSAPR Update do not apply for the State.

[8] In Florida's April 1, 2022, submittal, the State includes other requested SIP revisions that EPA will address in subsequent rulemakings.

[9] CAA section 110(l) provides that EPA cannot "approve a [SIP revision] if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress … or any other applicable requirement" of the CAA. EPA has reviewed Florida's CAA section 110(l) demonstration and preliminarily agrees that removal of Rule 62-296.470 is compliant with CAA section 110(l).

Polk Counties were two full-county nonattainment areas for the 1971 TSP standard.[10] Because these two areas were in nonattainment for the 1971 TSP standard, the State was required to develop and submit to EPA plans to attain the standard, including reasonably available control technology (RACT) regulations in the Florida SIP to control TSP. Five of those RACT rules were the predecessor rules to F.A.C. 62-296.701, 62-296.703, 62-296.706, 62-296.709, and 62-296.710, which were approved into the Florida SIP on May 2, 1983 (48 FR 19715).[11]

On February 1, 1990, as part of implementation of the PM_{10} NAAQS, EPA approved portions of Florida's PM_{10} SIP. *See* 55 FR 3403. Additionally, and of relevance to this Notice, EPA explained that regarding Rule 17-2.650—Reasonably Available Control Technology (RACT) (state effective May 30, 1988), "[r]evisions have been made such that RACT for existing sources will continue to be applied in the areas which are presently nonattainment for TSP. The portion addressing RACT for new and modified sources has been rescinded since the areas where this has been applied will have no classification for PM_{10}." *Id.* at 3406. Rule 17-2.650 was later recodified to become Rules 62-296.700 through 62-296.712.[12] In that same February 1, 1990 rulemaking, EPA designated all remaining TSP nonattainment areas within Florida as unclassifiable.[13] As FDEP notes elsewhere in its SIP submittal in support of proposed revisions to Rule 62-296.700,[14] Florida's PM RACT rules only apply to emission units that have

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[10] On September 11, 1978 (43 FR 40412), EPA completed a modified designation following comment on the March 3, 1978, final rule, revising the TSP nonattainment areas for Duval and Hillsborough Counties to be partial counties and changing the designation of Polk County to "cannot be classified." On April 27, 1979 (44 FR 24845), EPA changed the designation of Seminole County to "cannot be classified" for the TSP NAAQS. On November 18, 1982 (47 FR 51866), EPA changed the designation of part of Duval County to attainment for the TSP NAAQS.

[11] EPA later promulgated standards more stringent than the prior TSP standards when it adopted the PM_{10} NAAQS and the $PM_{2.5}$ NAAQS. PM_{10} is particulate matter with an aerodynamic diameter of 10 microns or less, also referred to as coarse PM; $PM_{2.5}$ is particulate matter with an aerodynamic diameter of 2.5 microns or less, also referred to as fine PM. All areas in Florida have been designated unclassifiable/attainment for the primary and secondary 1987 annual and 24-hour PM_{10} NAAQS, 1997 annual and 24-hour $PM_{2.5}$ NAAQS, 2006 annual and 24-hour $PM_{2.5}$ NAAQS, and 2012 annual and 24-hour $PM_{2.5}$ NAAQS. The 2012 $PM_{2.5}$ NAAQS is the most recent revision to the suite of PM NAAQS, published on January 15, 2013. The primary annual standard was strengthened from 15.0 micrograms per cubic meter (µg/m3) to 12.0 µg/m3. *See* 78 FR 3086.

[12] For additional detail, please see the Florida rule history posted at https://www.flrules.org/. For example, the historical notes for Rule 62-296.701 are available at https://www.flrules.org/gateway/ruleno.asp?id=62-296.701; *see also* 64 FR 32346 (June 16, 1999).

[13] EPA approved a recodification to the 62-296.700 rules on October 20, 1994 (59 FR 52916).

[14] EPA will address revisions to this rule in a separate notice.

been issued an air permit on or before May 30, 1988.[15,16]

IV. EPA's Analysis of the Removal of 62-296.701, F.A.C., *Portland Cement Plants*; 62-296.703, F.A.C., *Carbonaceous Fuel Burners*; 62-296.706, F.A.C., *Glass Manufacturing Process*; 62-296.709, F.A.C., *Lime Kilns*; and 62-296.710, F.A.C., *Smelt Dissolving Tanks*

According to Florida's submittal, there are no longer any units in the State still in operation covered by Rules 62-296.701, 62-296.703, 62-296.706, 62-296.709, and 62-296.710. Because these rules only apply to existing sources permitted on or before May 30, 1988, and FDEP determined that there are no longer any existing sources subject to these rules, FDEP likewise determined that removing these rules from the SIP will not interfere with attainment or maintenance of the NAAQS, prevention of significant deterioration increments, reasonable further progress, or protection of visibility. FDEP repealed these rules at the State level, effective on February 8, 2017. Because these rules only apply to units that were permitted on or before May 30, 1988, and there are no longer any existing sources subject to these rules, removing these rules from the SIP will have no air quality impacts and is consistent with CAA section 110(l). Therefore, EPA proposes to remove these obsolete rules from the Florida SIP.

V. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule amended regulatory text that includes incorporation by reference. EPA is proposing to remove Rules 62-296.470, F.A.C., *Implementation of Federal Clean Air Interstate Rule*, 62-296.701, F.A.C., *Portland Cement Plants*, 62-296.703, F.A.C., *Carbonaceous Fuel Burners*, 62-296.706, F.A.C., *Glass Manufacturing Process*, 62-296.709, F.A.C., *Lime Kilns*, and 62-296.710, F.A.C., *Smelt Dissolving Tanks* from the Florida SIP which are incorporated by reference in accordance with the requirements of 1 CFR part 51, and as discussed in Sections I through IV of this preamble.

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[15] On May 19, 1988, Florida submitted revisions to the SIP regarding particulate matter. The rules submitted under the May 19, 1988, date were state effective on May 30, 1988. In these revisions, which were approved by EPA on February 1, 1990 (55 FR 3403), EPA approved Florida's changes to its particulate matter SIP that clarify what areas of the state were covered by the PM RACT rules and the location of PM (TSP) air quality maintenance areas and areas of influence (areas within 50 kilometers outside the boundary of an air quality maintenance area).

[16] EPA will address Florida's proposed updates to F.A.C. 62-296.700 in a separate rulemaking.

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).

VI. Proposed Action

EPA is proposing to approve that portion of the April 1, 2022, Florida SIP revision consisting of the removal of Rules 62-296.470, F.A.C., *Implementation of Federal Clean Air Interstate Rule*, 62-296.701, *Portland Cement Plants*, 62-296.703, *Carbonaceous Fuel Burners*, 62-296.706, *Glass Manufacturing Process*, 62-296.709, *Lime Kilns*, and 62-296.710, *Smelt Dissolving Tanks*, from the Florida SIP.

VII. Statutory and Executive Language

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 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 Clean Air Act. Accordingly, this proposed 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); and
- 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.

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 and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." EPA further defines the term fair treatment to mean that "no group of people should bear a disproportionate burden of environmental harms and risks,

including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies."

The FDEP did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this proposed action. Consideration of EJ is not required as part of this proposal, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Jeaneanne Gettle,
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