



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2023-0096; FRL-11663-02-R4]

Air Plan Approval; Revisions to the Florida State Implementation Plan Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Florida Department of Environmental Protection (FDEP) through a letter dated August 12, 2022. The revision updates the general conformity portion of the conformity rule in Florida's SIP. EPA is approving these changes because they are consistent with the Clean Air Act (CAA or Act).

DATES: This rule is effective [INSERT DATE 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-2023-0096. All documents in the docket are listed on the www.regulations.gov website. 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 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: Josue Ortiz Borrero, 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. Ortiz can be reached via phone number (404) 562-8085 or via electronic mail at ortizborrero.josue@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

General conformity is a requirement of CAA section 176(c). General conformity prohibits Federal actions within nonattainment and maintenance areas unless the emissions from the actions conform to the applicable SIP, Tribal Implementation Plan (TIP), or Federal Implementation Plan (FIP) for the area.¹ Conformity to an implementation plan means conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards (NAAQS or standards) and achieving expeditious attainment of such standards. *See* section 176(c)(1). Under general conformity, Federal actions cannot: (1) Cause or contribute to any new violation of any standard in any area; (2) increase the frequency or severity of any existing violation of any air quality standard in any area; or (3) delay timely attainment of any standard, any required interim emission reductions, or any other milestones, in any area. *Id.*

EPA promulgated two sets of conformity regulations in November 1993 to implement section 176(c) of the CAA. First, EPA promulgated transportation conformity regulations, which apply to highways and mass transit, on November 24, 1993. *See* 58 FR 62188. These regulations establish the criteria and procedures for determining whether transportation plans,

¹ "Federal action" is defined at 40 CFR 93.152 as "any activity engaged in by a department, agency, or instrumentality of the Federal government, or any activity that a department, agency or instrumentality of the Federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*). Where the Federal action is a permit, license, or other approval for some aspect of a non-Federal undertaking, the relevant activity is the part, portion, or phase of the non-Federal undertaking that requires the Federal permit, license, or approval."

programs, and projects funded under 23 U.S.C. or the Federal Transit Act (40 U.S.C. chapter 53) conform with implementation plans. EPA subsequently revised the transportation conformity regulations several times. *See* 69 FR 40004 (July 1, 2004); 70 FR 24280 (May 6, 2005); 71 FR 12468 (March 10, 2006); and 73 FR 4420 (January 24, 2008). Second, on November 30, 1993, EPA promulgated the general conformity regulations at 40 CFR part 51, subpart W and 40 CFR part 93, subpart B, which applied to all other Federal actions to ensure they conformed with implementation plans. *See* 58 FR 63214. EPA has revised its general conformity regulations twice. *See* 71 FR 40420 (July 17, 2006) and 75 FR 17254 (April 5, 2010). As part of the 2010 revisions, EPA revised its general conformity regulations to remove rules from 40 CFR part 51, subpart W that were duplicative of those in 40 CFR part 93, subpart B. *See* 75 FR 17254 (April 5, 2010).²

Florida Rule 62-204.500, Florida Administrative Code (F.A.C.), *Conformity*, addresses general conformity in paragraph (1). EPA incorporated Rule 62-204.500 into the Florida SIP in a direct final rule on August 11, 2003. *See* 68 FR 47468. Since then, Florida has amended Rule 62-204.500, and those changes are the subject of this rulemaking.³

Through a notice of proposed rulemaking (NPRM), published on February 1, 2024 (89 FR 6475), EPA proposed to approve Florida's August 12, 2022, SIP revision to Rule 62-204.500. The details of the submission, as well as EPA's rationale for changing this rule, are described in more detail in EPA's February 1, 2024, NPRM. Comments on the February 1, 2024, NPRM were due on or before March 4, 2024. EPA did not receive any comments on the February 1, 2024, NPRM.

II. Incorporation by Reference

² For more information on general conformity, see <https://www.epa.gov/general-conformity>.

³ The August 12, 2022, submittal transmits several changes to other Florida SIP-approved rules. These changes are not addressed in this rulemaking and will be considered by EPA in separate rulemakings. In addition, EPA is not acting on paragraphs 62-204.500(1)(a)-(1)(d), F.A.C., because they were withdrawn from EPA consideration in a letter dated January 5, 2024, which is in the docket for this rulemaking.

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Section I of this preamble, EPA is finalizing the incorporation by reference of Rule 62-204.500, F.A.C., *Conformity*, state effective on October 23, 2016, except for paragraphs 62-204.500(1)(a), 62-204.500(1)(b), 62-204.500(1)(c), and 62-204.500(1)(d).⁴ 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). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.⁵

III. Final Action

EPA is finalizing approval, with the exceptions noted, the changes to Rule 62-204.500, *Conformity*, into the Florida SIP. EPA is approving these changes because they are consistent with the CAA.

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 CAA 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 does not impose additional requirements beyond those imposed by State law. For that reason, this action:

⁴ EPA is also correcting the explanation associated with the entry for Rule 62-204.500 at 40 CFR 52.520(c) by removing the language “Except for the incorporation by reference of 40 CFR 93.104(e) of the Transportation Conformity Rule” because it is erroneous as no reference to 40 CFR 93.104(e) exists in Rule 62-204.500.

⁵ 62 FR 27968 (May 22, 1997).

- 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 14094 (88 FR 21879, April 11, 2023);
- 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 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- 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, February 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.”

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 action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, 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, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 21, 2024.

Jeananne Gettle,
Acting Regional Administrator,
Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 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. In § 52.520(c), amend the table by revising the entry for “62-204.500” to read as follows:

§ 52.520 Identification of plan.

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(c) * * *

EPA-Approved Florida Laws and Regulations

State citation (section)	Title/subject	State effective date	EPA approval date	Explanation
Chapter 62-204 Air Pollution Control – General Provisions				
**	**	*	*	*
62–204.500	Conformity	10/23/2016	[Insert date of publication in Federal Register], [Insert citation of publication]	Except for paragraphs 62-204.500(1)(a), (1)(b), (1)(c), and (1)(d).
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