



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2023-0211; FRL-11927-01-R4]

Air Plan Approval; FL; General Provisions Repeals and Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Florida Department of Environmental Protection (FDEP) on August 12, 2022, for the purpose of removing several obsolete, duplicative, or unnecessary rules from the general provisions portion of the Florida SIP. EPA is proposing to approve this revision 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-2023-0211, 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: Sarah LaRocca, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. LaRocca can be reached via phone number (404) 562-8994 or via electronic mail at larocca.sarah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is proposing to approve changes to the Florida SIP submitted by the State on August 12, 2022, to remove several obsolete, duplicative, or unnecessary rules from the Florida SIP. Specifically, the changes address Rules 62-204.100, Florida Administrative Code (F.A.C.), *Purpose and Scope*; 62-204.200, F.A.C., *Definitions*; 62-204.220, F.A.C., *Ambient Air Quality Protection*; 62-204.240, F.A.C., *Ambient Air Quality Standards*; 62-204.260, F.A.C., *Prevention of Significant Deterioration Maximum Allowable Increases (PSD Increments)*; and 62-204.400, F.A.C., *Public Notice and Hearing Requirements for State Implementation Plan Revisions*.¹ To support the removal of these rules from the SIP, Florida's August 12, 2022, submittal provides justifications to demonstrate, pursuant to CAA section 110(l), that the removal would not interfere with any applicable requirement concerning attainment of the National Ambient Air Quality Standards (NAAQS) and reasonable further progress (RFP) or any other applicable requirement of the CAA. EPA's analysis of Florida's August 12, 2022, submission, and the Agency's rationale for proposing to approve removal of these rules from the Florida SIP are provided in section II, below.

II. EPA's Analysis

A. Rule 62-204.100, Purpose and Scope

In Florida's August 12, 2022, submission, the State requests that EPA remove Rule 62-204.100, *Purpose and Scope*, from the Florida SIP. The State repealed this rule on February 16,

¹ FDEP's August 12, 2022, SIP Revision also included changes to Rules 62-204.320, 62-204.340, 62-204.360, and 62-204.500. Florida subsequently withdrew the changes to Rules 62-204.320, 62-204.340, and 62-204.360 from EPA's consideration. EPA intends to address the changes to Rule 62-204.500 in separate rulemakings.

2012. Rule 62-204.100 was first approved by EPA into the Florida SIP on June 16, 1999, with a state-effective date of March 13, 1996. *See* 64 FR 32346. However, the State has since determined that this rule is unnecessary because it does not contain any requirements and merely explains the purpose of Chapter 62-204. EPA agrees with the State's rationale and is therefore proposing to remove Rule 62-204.100 from the Florida SIP because removal would not interfere with any applicable requirement concerning attainment of any NAAQS and RFP or any other applicable CAA requirement.

B. Rule 62-204.200, Definitions

In Florida's August 12, 2022, submission, the State requests that EPA remove Rule 62-204.200, *Definitions*, from the Florida SIP. The State repealed this rule on February 16, 2012. Rule 62-204.200 was first approved by EPA into the Florida SIP on June 16, 1999, with a state-effective date of March 13, 1996. *See* 64 FR 32346. The SIP-approved rule was last updated in 2008. *See* 73 FR 36435 (June 27, 2008). However, the State has determined that the lists of definitions are either unnecessary or are redundant in the Florida SIP due, in part, to subsequent changes in the SIP. Most of the definitions in this rule are also listed in SIP-approved Rule 62-210.200. The only definitions not duplicated in Rule 62-210.200 are Rule 62-204.200(21), *Marginal Nonattainment Area for Ozone*; Rule 62-204.200(23), *Moderate Nonattainment Area*; Rule 62-204.200(25), *Nonattainment Area*; and Rule 62-204.200(28), *Redesignation of an Area*. These definitions are not required to be part of the Florida SIP because they define terms related to designating and redesignating areas for compliance with the NAAQS, the authority for which rests with EPA.

EPA agrees with Florida that Rules 62-204.200 (21), (23), (25) and (28), are not necessary in the Florida SIP and agrees that the rest of Rule 62-204.200 is redundant to Rule 62-210.200 in the Florida SIP. Therefore, EPA is proposing to remove the rule from the SIP because removal would not interfere with any applicable requirement concerning attainment of any NAAQS and RFP or any other applicable CAA requirement.

C. *Rule 62-204.220, F.A.C., Ambient Air Quality Protection*

In Florida's August 12, 2022, submission, the State requests that EPA remove Rule 62-204.220, *Ambient Air Quality Protection*, from the Florida SIP. The State repealed this rule on February 16, 2012. Rule 62-204.220 was first approved by EPA into the Florida SIP on June 16, 1999, with a state-effective date of March 13, 1996. *See* 64 FR 32346. Rule 62-204.220(1) prohibits the Department from issuing an air permit which would cause or contribute to a violation of an ambient air quality standard, except as provided in Rule 62-212.500, which pertains to preconstruction permitting in nonattainment areas.² Rule 62-204.220(2) prohibits the Department from issuing air quality permits that would authorize the construction or modification of any emissions unit or facility that would cause or contribute to an ambient concentration at any point within a baseline area that exceeds either the appropriate baseline concentration for the point plus the appropriate maximum allowable increase or the appropriate ambient air quality standard, whichever is less, except as provided in Rule 62-212.400, which pertains to PSD permitting. "Baseline Area" is defined in SIP-approved Rule 62-210.200 as "all of the state" for sulfur dioxide, nitrogen dioxide, and particulate matter (i.e., PM₁₀ and PM_{2.5}). "Baseline concentration" is also defined in Rule 62-210.200 and is the ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date.

The language in Rule 62-204.220(1) and (2) is unnecessary because SIP-approved Rule 62-212.300(1)(b) and (1)(c) also prohibit a source from constructing or modifying any emissions unit or facility if it would either 1) cause or contribute to a violation of any ambient air quality standard, except as provided in Rule 62-212.500 or 2) cause or contribute to an ambient concentration at any point within a baseline area that exceeds either the appropriate baseline concentration for the point plus the appropriate maximum allowable increase or the appropriate ambient air quality standard, whichever is less.

² Florida currently does not have any nonattainment areas. *See* 40 CFR 81.310.

The State is also seeking to remove Rule 62-204.220(3), which requires that ambient air quality monitors used to establish violations of an ambient air quality standard meet the requirements of 40 CFR part 58 (part 58). The relevant sections of part 58 apply directly to any State or local air pollution control agency which has a delegated authority to operate a portion of the State's State or Local Air Monitoring Station (SLAMS)³ network. Among other requirements, part 58 prescribes detailed collection methodologies, quality assurance procedures, and data handling and reporting requirements for ambient air monitoring network operations. Because Rule 62-204.220(3) only applies to Florida's SLAMS monitors, the rule is unnecessary in Florida's SIP as those monitors are directly regulated by part 58.

Finally, the State is seeking to remove Rule 62-204.220(4), which states that any rule which requires modeling would need to be consistent with 40 CFR part 51, appendix W. SIP-approved Rule 62-212.400, *Prevention of Significant Deterioration (PSD)*, paragraph (6) references appendix W, and Rule 62-212.400(6) is the only rule in the Florida SIP that addresses modeling. That rule requires air quality modeling under Rule 62-212.400 to meet Federal requirements in 40 CFR 52.21(l), which references appendix W of 40 CFR part 51. Therefore, the State has determined that the language in Rule 62-204.220(4) is not necessary in the Florida SIP.

For the foregoing reasons, EPA agrees with the State that the entirety of Rule 62-204.220 is not necessary. EPA is therefore proposing to remove Rule 62-204.220 from the Florida SIP because removal would not interfere with any applicable requirement concerning attainment of any NAAQS and RFP or any other applicable CAA requirement.

D. Rule 62-204.240, Ambient Air Quality Standards

In Florida's August 12, 2022, submission, the State requests that EPA remove Rule 62-

³ SLAMS include the ambient air quality monitoring sites and monitors that are required by 40 CFR part 58, appendix D, and are needed to meet the regulatory air monitoring objectives, including NAAQS comparisons, but may serve other data purposes. The SLAMS network is defined by the State or local air pollution control agency in the annual ambient air monitoring network plan required by 40 CFR 58.10(a)(1).

204.240, *Ambient Air Quality Standards*, from the Florida SIP. The State repealed this rule on February 16, 2012. Rule 62-204.240 was first approved by EPA into the Florida SIP on June 16, 1999, with a state-effective date of March 13, 1996. *See* 64 FR 32346. The rule identifies ambient air quality standards for the six criteria pollutants addressed by the NAAQS: sulfur dioxide, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead. Florida states that the standards identified in Rule 62-204.240 are outdated and obsolete, have not functioned as state-only standards for any purpose, and were intended to reference the Federal ambient air quality standards. Rule 62-204.240 is unnecessary because the term “Ambient Air Quality Standard” is defined in the SIP at Rule 62-210.200 and references the Federal standards in 40 CFR part 50, National Primary and Secondary Ambient Air Quality Standards, which is adopted and incorporated by reference in Rule 62-204.800. EPA agrees with the State and is therefore proposing to remove Rule 62-204.240 from the Florida SIP because removal would not interfere with any applicable requirement concerning attainment of any NAAQS and RFP or any other applicable CAA requirement.

E. Rule 62-204.260, Prevention of Significant Deterioration Maximum Allowable Increases (PSD Increments)

In Florida’s August 12, 2022, submission, the State requests that EPA remove Rule 62-204.260, *Prevention of Significant Deterioration Maximum Allowable Increases (PSD Increments)*, from the Florida SIP. The State repealed this rule on February 16, 2012. Rule 62-204.260 was first approved by EPA into the Florida SIP on June 16, 1999, with a state-effective date of March 13, 1996. *See* 64 FR 32346. The rule establishes the PSD maximum allowable increases for particulate matter, sulfur dioxide, and nitrogen dioxide in Class I, II, and III Areas, which are found in Federal regulations. The State has determined that Rule 62-204.260 is unnecessary and redundant because SIP-approved Rule 62-210.200 includes a definition for “PSD Increment” which points to the Federal PSD increments at 40 CFR 52.21(c), which is adopted and incorporated by reference in Rule 62-204.800. EPA agrees with the State and is

therefore proposing to remove Rule 62-204.260 from the Florida SIP because removal would not interfere with any applicable requirement concerning attainment of any NAAQS and RFP or any other applicable CAA requirement.

F. Rule 62-204.400, Public Notice and Hearing Requirements for State Implementation Plan Revisions

In Florida's August 12, 2022, submission, the State requests that EPA remove Rule 62-204.400, *Public Notice & Hearing Requirements for State Implementation Plan Revisions*, from the Florida SIP. The State repealed this rule on February 16, 2012. Rule 62-204.400 was first approved by EPA into the Florida SIP on June 16, 1999, with a state-effective date is November 30, 1994. *See* 64 FR 32346. The rule contains internal State administrative requirements that require FDEP to notice and hold a public hearing prior to adopting any proposed revision to the SIP and make available the proposed revision for public inspection; furnish a record of the public hearing to the EPA Administrator upon request; and include a certification that the hearing was held with each proposed SIP revision. While the CAA does require public hearings to be held on prospective SIP revisions, those requirements are found in 40 CFR 51.102 and apply directly to the State. Therefore, EPA agrees with the State and is proposing to remove Rule 62-204.260 from the Florida SIP because removal would not interfere with any applicable requirement concerning attainment of any NAAQS and RFP or any other applicable CAA requirement.

III. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule amended regulatory text that includes incorporation by reference. As described in sections I and II of this preamble, EPA is proposing to remove Rules 62-204.100, *Purpose and Scope*; 62-204.200, *Definitions*; 62-204.220, *Ambient Air Quality Protection*; 62-204.240, *Ambient Air Quality Standards*; 62-204.260, *Prevention of Significant Deterioration Maximum Allowable Increases (PSD Increments)*; and 62-204.400, *Public Notice and Hearing Requirements for State Implementation Plan Revisions*, from the Florida SIP, which were 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. To obtain a copy, 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 in Section III, EPA is proposing to approve the August 12, 2022, Florida SIP revision consisting of the removal of Rules 62-204.100, *Purpose and Scope*; 62-204.200, *Definitions*; 62-204.220, *Ambient Air Quality Protection*; 62-204.240, *Ambient Air Quality Standards*; 62-204.260, *Prevention of Significant Deterioration Maximum Allowable Increases (PSD Increments)*; and 62-204.400, *Public Notice and Hearing Requirements for State Implementation Plan Revisions*, from the Florida SIP.

V. Statutory and Executive Language

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 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 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 proposed action. Due to the nature of the action being proposed here, this proposed 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 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.*

Dated: April 30, 2024.

Jeananne Gettle,
Acting Regional Administrator,
Region 4.

[FR Doc. 2024-09734 Filed: 5/14/2024 8:45 am; Publication Date: 5/15/2024]