



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2024-0049; FRL-12620-01-R4]

## Air Plan Approval; Florida; Revisions to Stationary Sources – Removal of Clean Air Interstate Rule Provisions

**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 15, 2023. The revision seeks to remove certain Clean Air Interstate Rule (CAIR)-related definitions, and CAIR-related portions of certain definitions, in the Stationary Sources—General Requirements chapter of the Florida SIP because they have become obsolete. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

**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-2024-0049 at [regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.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:** Mr. Steven Scofield, Multi-Air Pollutant Coordination 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) 562-9034. Mr. Scofield can also be reached via electronic mail at [scofield.steve@epa.gov](mailto:scofield.steve@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under CAA section 110(a)(2)(D)(i)(I), also called 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 significantly contribute to nonattainment of the national ambient air quality standards (NAAQS), or that will interfere with maintenance of the NAAQS, in any other state.

In 2005, EPA published CAIR to limit the interstate transport of ozone and fine particulate matter (PM<sub>2.5</sub>) under the CAA’s good neighbor provision. *See* 70 FR 25162 (May 12, 2005). CAIR originally required 28 eastern states, including Florida, to submit SIPs prohibiting emissions that exceeded certain limits. CAIR also established several trading programs for nitrogen oxides (NO<sub>x</sub>), an ozone precursor, and sulfur dioxide (SO<sub>2</sub>), a PM<sub>2.5</sub> precursor. The trading programs were implemented through Federal Implementation Plans (FIPs) for electric generating units (EGUs) greater than 25 megawatts in each affected State.<sup>1</sup> These trading

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<sup>1</sup> 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).

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 published a SIP revision for Florida implementing the requirements of CAIR, incorporating former Florida Administrative Code (F.A.C.) Rule 62-296.470, *Implementation of Federal Clean Air Interstate Rule* into the SIP and making CAIR-related changes to the SIP-approved general definitions rule at Rule 62-62-210.200, *Definitions*. See 72 FR 58016. 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 of 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<sub>x</sub> annual and ozone season trading programs beginning in 2009 and the SO<sub>2</sub> annual trading program beginning in 2010.

In response to the D.C. Circuit's remand of CAIR, EPA published the Cross-State Air Pollution Rule (CSAPR) to address the good neighbor provision for the 1997 ozone NAAQS, the 1997 PM<sub>2.5</sub> NAAQS, and the 2006 PM<sub>2.5</sub> NAAQS. See 76 FR 48208 (August 8, 2011). Through subsequent litigation over CSAPR, EPA continued to implement CAIR until December 31, 2014. CSAPR became effective on January 1, 2015. 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 to the covered NAAQS. See 81 FR 74504, 74506 (October 26, 2016).<sup>2</sup> Because CSAPR replaced CAIR and EPA previously

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<sup>2</sup> 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.

determined that CSAPR does not apply to Florida, neither of these rules have any applicability in Florida today. EPA removed Florida's former CAIR rule – Rule 62-296.470, *Implementation of Federal Clean Air Interstate Rule* – from the SIP on October 3, 2023. See 88 FR 67963.

In this proposed action, EPA is proposing to approve the SIP revision submitted by FDEP on August 15, 2023, seeking to remove certain CAIR-related definitions, and CAIR-related portions of certain definitions, from Chapter 62-210, *Stationary Sources—General Requirements*, of the Florida SIP.<sup>3</sup> Specifically, this proposed action addresses definitional changes adopted by the State, effective July 3, 2018, to SIP-approved Rule 62-210.200, *Definitions*. These definitions are referenced throughout Chapter 62-210 and in other parts of the SIP. Approval of these changes would improve consistency with Federal and State regulations.

The following definitions are proposed to be removed from the SIP: 62-210.200(52) “CAIR”; 62-210.200(53) “CAIR NO<sub>x</sub> Allowance”; 62-210.200(54) “CAIR NO<sub>x</sub> Annual Trading Program”; 62-210.200(55) “CAIR NO<sub>x</sub> Ozone Season Allowance”; 62-210.200(56) “CAIR NO<sub>x</sub> Ozone Season Trading Program”; 62-210.200(57) “CAIR NO<sub>x</sub> Ozone Season Unit”; 62-210.200(58) “CAIR NO<sub>x</sub> Unit”; 62-210.200(59) “CAIR Part” or “CAIR Permit”; 62-210.200(60) “CAIR Program”; 62-210.200(61) “CAIR SO<sub>2</sub> Allowance”; 62-210.200(62) “CAIR SO<sub>2</sub> Trading Program”; 62-210.200(63) “CAIR SO<sub>2</sub> Unit”; 62-210.200(64) “CAIR Source”; and 62-210.200(65) “CAIR Unit”. The SIP revision also removes the CAIR-related portions of 62-210.200(91) “Commence Operation” (removing paragraph (b)) and 62-210.200(115) “Designated Representative” (removing paragraph (b) and moving paragraph (c) to paragraph (b)).

These changes to Rule 62-210.200 were state-effective on July 3, 2018, and remove multiple definitions and portions of definitions that are obsolete. Florida specifically removed the CAIR programmatic definitions, as well as references to CAIR in the Rule because CAIR is

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<sup>3</sup> The August 15, 2023, submittal contains revisions to other Florida SIP-approved rules that are not addressed in this document. EPA will act on those rule changes in separate rulemakings.

no longer operative as a rule and it repealed its State CAIR rule as discussed above.<sup>4</sup> The removal of other CAIR-related definitions was also requested as part of this August 15, 2023, SIP submission; however, EPA will address these changes in a separate rulemaking.

## **II. EPA’s Analysis of Florida’s August 15, 2023, SIP Revision**

Florida’s August 15, 2023, SIP submission, encompasses several changes to Rule 62-210.200, *Definitions*, that were made state-effective at different times. In this proposed action, EPA is only proposing to approve the following changes that became state-effective on July 3, 2018.

### *1. F.A.C. Changes Effective July 3, 2018*

Florida’s August 15, 2023, submission removes or revises several definitions as they are no longer necessary since the removal of the CAIR provisions under State and Federal rules.<sup>5</sup>

The following definitions are being removed entirely: 62-210.200(52) “CAIR”; 62-210.200(53) “CAIR NO<sub>x</sub> Allowance”; 62-210.200(54) “CAIR NO<sub>x</sub> Annual Trading Program”; 62-210.200(55) “CAIR NO<sub>x</sub> Ozone Season Allowance”; 62-210.200(56) “CAIR NO<sub>x</sub> Ozone Season Trading Program”; 62-210.200(57) “CAIR NO<sub>x</sub> Ozone Season Unit”; 62-210.200(58) “CAIR NO<sub>x</sub> Unit”; 62-210.200(59) “CAIR Part” or “CAIR Permit”; 62-210.200(60) “CAIR Program”; 62-210.200(61) “CAIR SO<sub>2</sub> Allowance”; 62-210.200(62) “CAIR SO<sub>2</sub> Trading Program”; 62-210.200(63) “CAIR SO<sub>2</sub> Unit”; 62-210.200(64) “CAIR Source”; and 62-210.200(65) “CAIR Unit.”

The following definitions are being modified by removing CAIR-related paragraphs but continue to apply to the Acid Rain Program (ARP): 62-210.200(91) “Commence Operation” (removing paragraph (b)); and 62-210.200(115) “Designated Representative” (removing paragraph (b) and moving paragraph (c) to paragraph (b)).

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<sup>4</sup> A summary and timeline of the federal and State alterations to the CAIR regulations can be found in Appendix A of Florida’s August 15, 2023, SIP submission, starting on page 1147. The submission can be found in the docket for this rulemaking, Docket ID No. EPA-R04-OAR-2024-0049 at [regulations.gov](https://www.regulations.gov).

<sup>5</sup> Some of the defined terms proposed to be removed remain in other SIP-approved Florida rules outside of Rule 62-210.200; such rules are not proposed to be revised at this time. Any references to these defined terms do not affect the implementation of any Florida rules.

## 2. *Justification for SIP Revision Approval*

As discussed above, on October 12, 2007, EPA published a SIP revision for Florida implementing the requirements of CAIR. *See* 72 FR 58016. Subsequently, CAIR was replaced by CSAPR (a rule that does not apply to Florida), Florida removed its CAIR rule, and EPA removed the State's CAIR rule from the SIP. Therefore, the proposed changes to the CAIR-related definitions in the SIP would not interfere with any applicable requirement concerning attainment of the NAAQS or any other applicable requirement of the Act.<sup>6</sup>

### **III. Incorporation by Reference**

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, and as discussed in Sections I and II of this preamble, EPA is proposing to incorporate by reference Florida Rule 62-210.200, *Definitions*, state-effective on October 23, 2013, except for 62-210.200(52) "CAIR"; 62-210.200(53) "CAIR NO<sub>x</sub> Allowance"; 62-210.200(54) "CAIR NO<sub>x</sub> Annual Trading Program"; 62-210.200(55) "CAIR NO<sub>x</sub> Ozone Season Allowance"; 62-210.200(56) "CAIR NO<sub>x</sub> Ozone Season Trading Program"; 62-210.200(57) "CAIR NO<sub>x</sub> Ozone Season Unit"; 62-210.200(58) "CAIR NO<sub>x</sub> Unit"; 62-210.200(59) "CAIR Part" or "CAIR Permit"; 62-210.200(60) "CAIR Program"; 62-210.200(61) "CAIR SO<sub>2</sub> Allowance"; 62-210.200(62) "CAIR SO<sub>2</sub> Trading Program"; 62-210.200(63) "CAIR SO<sub>2</sub> Unit"; 62-210.200(64) "CAIR Source"; 62-210.200(65) "CAIR Unit"; 62-210.200(91) "Commence Operation"; and 62-210.200(115) "Designated Representative".<sup>7</sup> EPA is also proposing to incorporate by reference

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<sup>6</sup> See CAA section 110(l) which prohibits EPA from approving a SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA Section 171), or any other applicable requirement of the Act.

<sup>7</sup> These definitions were removed from the state-effective version of Rule 62-210.200 on July 3, 2018. EPA is also not incorporating by reference the definitions of "animal crematory"; "biological waste"; "biological waste incinerator"; "biomedical waste"; "capture efficiency"; "cast polymer operation"; "human crematory"; "major source of air pollution," "major source," or "title V source"; "printed interior panels"; "unit-specific applicable

the definitions of 62-210.200(79) “Commence Operation” and 62-210.200(103) “Designated Representative,” which became state-effective on July 3, 2018.<sup>8</sup> EPA has made and will continue to make these materials generally available through [www.regulations.gov](http://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).

#### **IV. Proposed Action**

EPA is proposing to approve the August 15, 2023, Florida SIP revision that removes Rules 62-210.200(52) “CAIR”; 62-210.200(53) “CAIR NO<sub>x</sub> Allowance”; 62-210.200(54) “CAIR NO<sub>x</sub> Annual Trading Program”; 62-210.200(55) “CAIR NO<sub>x</sub> Ozone Season Allowance”; 62-210.200(56) “CAIR NO<sub>x</sub> Ozone Season Trading Program”; 62-210.200(57) “CAIR NO<sub>x</sub> Ozone Season Unit”; 62-210.200(58) “CAIR NO<sub>x</sub> Unit”; 62-210.200(59) “CAIR Part” or “CAIR Permit”; 62-210.200(60) “CAIR Program”; 62-210.200(61) “CAIR SO<sub>2</sub> Allowance”; 62-210.200(62) “CAIR SO<sub>2</sub> Trading Program”; 62-210.200(63) “CAIR SO<sub>2</sub> Unit”; 62-210.200(64) “CAIR Source”; and 62-210.200(65) “CAIR Unit”; and modifies Rules 62-210.200(91) “Commence Operation” and 62-210.200(115) “Designated Representative.”

#### **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 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 proposed action merely

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requirement”; and “waste-to-energy facility” as identified in the regulatory table entry for Rule 62-210.200 at 40 CFR 52.520(c). If this proposed rule is finalized, the table entry for Rule 62-210.200 at 40 CFR 52.520(c) will retain these exclusions; identify the CAIR-related exclusions discussed above; identify the incorporation by reference of “Commence Operation” and “Designated Representative,” state-effective on July 3, 2018; and retain the note that “The ethanol production facility exclusion within the definition of “major stationary source” at 62-210.200 does not apply to 62-212.500.”

<sup>8</sup> These definitions are numbered 62-210.200(91) and 62-210.200(115), respectively, in the current SIP. If this proposed rule is finalized, the SIP will contain two definitions numbered 62-210.200(79) and two definitions numbered 62-210.200(103). The August 15, 2023, submittal requests that EPA remove all definition numbers from 62-210.200 in the SIP, retaining the alphabetical order of the definitions. EPA will act on that change in a separate rulemaking.

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 Order 12866 (58 FR 51735, October 4, 1993);
- 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).

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

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 13, 2025.

**Kevin McOmber,**  
*Regional Administrator,*  
*Region 4.*

[FR Doc. 2025-05382 Filed: 3/27/2025 8:45 am; Publication Date: 3/28/2025]