



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R04-OAR-2018-0184; FRL-12577-01-R4]

Florida; Approval of State Plan for Control of Emissions from Commercial and Industrial Solid Waste Incineration Units

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is taking final action to approve a state plan submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP) on May 31, 2017, that was supplemented on December 19, 2017, and February 2, 2018, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incineration (CISWI) units. The State plan provides for implementation and enforcement of the EG, as finalized by the EPA on February 7, 2013, and amended on June 23, 2016, applicable to existing CISWI units for which construction commenced on or before June 4, 2010, or for which modification or reconstruction commenced after June 4, 2010, but no later than August 7, 2013. The Florida State plan establishes emission limits, monitoring, operating, recordkeeping, and reporting requirements for affected CISWI units.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register as of **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R04-OAR-2018-0184. All documents in the docket are listed on the *regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information (CBI) 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 through <https://www.regulations.gov>, or in hard copy form at the Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, GA 30303-8960. The EPA requests that, if at all possible, you contact the person identified 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: Mark Bloeth, Regulatory and Communities Air Toxics Section, Air Analysis and Support Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth St., SW, Atlanta, Georgia 30303, telephone number: (404) 562-9013, email address: bloeth.mark@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 129 of the Clean Air Act (CAA or the Act) directs the Administrator to develop regulations under that section and section 111(d) of the Act to limit emissions of nine air pollutants (particulate matter, carbon monoxide, dioxins/furans, sulfur dioxide, nitrogen oxides, hydrogen chloride, lead, mercury, and cadmium) from four categories of solid waste incineration units: municipal solid waste incinerators; hospital, medical, and infectious solid waste incinerators; commercial and industrial solid waste incinerators; and other solid waste incinerators.

On December 1, 2000, the EPA promulgated new source performance standards

(NSPS) and EG to reduce air pollution from CISWI units, which are codified at 40 CFR part 60, subparts CCCC and DDDD, respectively. *See* 65 FR 75338. The EPA revised the NSPS and EG for CISWI units on March 21, 2011. *See* 76 FR 15704. Following promulgation of the 2011 CISWI rule, the EPA received petitions requesting that it reconsider numerous provisions in the rule. The EPA granted reconsideration on certain issues and, subsequently, on February 7, 2013, it promulgated a CISWI reconsideration rule. *See* 78 FR 9112. Subsequently, the EPA received petitions to reconsider certain provisions of the NSPS and EG for CISWI units. On January 21, 2015, the EPA granted reconsideration on four specific issues and subsequently, on June 23, 2016, it finalized reconsideration of the CISWI NSPS and EG. *See* 81 FR 40956.

Following promulgation of the June 23, 2016, final action, the EPA received requests from industry stakeholders and implementing agencies to clarify various issues with implementation of the standards. In addition, the EPA identified certain procedural issues, including testing and monitoring issues and inconsistencies within the rules, that required further clarification or correction. To address the issues, the EPA proposed amendments on June 15, 2018, to several provisions of the 2016 CISWI NSPS and EG. *See* 83 FR 28068. On April 16, 2019, the EPA finalized technical amendments to the June 15, 2018, proposal by promulgating clarifying changes and corrections to the 2016 CISWI rule. *See* 84 FR 15846.¹

Section 129(b)(2) of the CAA requires states to submit to the EPA for approval state plans and revisions that implement and enforce the EG — in this case, 40 CFR part 60, subpart DDDD. State plans and revisions must be at least as protective as the EG and become federally enforceable upon approval by the EPA. The procedures for submittal and adoption of state plans and revisions are codified in 40 CFR part 60, subpart B.

On May 31, 2017, Florida submitted a state plan to implement and enforce the EG for

¹ FDEP's July 2, 2020, supplement to its CISWI State Plan requested, in part, an incorporation by reference of the April 16, 2019, technical amendments to the CISWI EGs. The EPA is not acting on the changes requested in that supplemental submission and will address them in a future rulemaking.

existing CISWI units in the State, and submitted supplements on December 19, 2017, and February 2, 2018.² In a notice of proposed rulemaking published on June 4, 2018 (83 FR 25633), the EPA proposed to approve Florida's State plan. Additional information concerning Florida's State plan submission and the rationale for the EPA's actions for this final rule are explained in the June 4, 2018, proposed rulemaking. Comments on the proposed rulemaking were due on or before July 2, 2018. The EPA received one comment on the proposed action that is not relevant. The comment is included in the docket to this action.

II. Final Action

The EPA is finalizing approval of Florida's section 129 State plan for CISWI units in the State, as submitted on May 31, 2017, and supplemented on December 19, 2017, and February 2, 2018. The State plan was submitted in full compliance with the requirements of sections 111(d) and 129 of the CAA, and 40 CFR part 60, subparts B and DDDD.³ This approval is based on the rationale provided in the NPRM associated with this rulemaking. The EPA's approval is in accordance with the general provisions of plan approval found in 40 CFR part 60, subpart B and 40 CFR part 62, subpart A, and is pursuant to the Agency's role under 42 U.S.C. Sections 7411(d) and 7429(b). The EPA's approval of Florida's State plan is limited to those CISWI units that meet the criteria established in 40 CFR part 60, subpart DDDD, and grants the State authority to implement and enforce the performance standards and source requirements of the EG, except in those cases where authorities are specifically reserved for the EPA Administrator or his designee. Authorities retained by the EPA Administrator are those listed in 40 CFR 60.2542.

² FDEP submitted an additional supplement on July 2, 2020, to its CISWI State Plan. The EPA is not acting on the changes requested in that supplemental submission in this rulemaking.

³ CAA section 502(a) requires sources subject to CAA section 111 standards or regulations to operate in compliance with title V permits. *See also* 40 CFR 70.1(b). Further, FDEP's approved operating permit program is required to provide for title V permitting for "any source...subject to a standard, or limitation, or other requirement under section 111 of the Act." *See* 40 CFR 70.3(a)(2) and 66 FR 49837 (October 1, 2001). CAA section 502(a) allows the EPA Administrator to exempt nonmajor source categories from title V through rulemaking. Therefore, unless exempt, sources in Florida subject to section 111 standards must obtain title V permits.

III. Incorporation by Reference

In accordance with requirements of 1 CFR 51.5, the EPA is finalizing regulatory text that includes incorporation by reference of Florida Administrative Code (FAC) Chapter 62-204.800(9)(f), Commercial and Industrial Solid Waste Incineration (CISWI) Units, which became effective in the State of Florida on December 21, 2017. This incorporation establishes emission standards and compliance times for the control of air pollutants from certain CISWI units that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010, but no later than August 7, 2013. FAC Chapter 62-204.800(9)(f), Commercial and Industrial Solid Waste Incineration (CISWI) Units, provides details regarding Florida's adoption of the applicability provisions, compliance times, emission guidelines, operational standards, test methods, compliance provisions, monitoring requirements, reporting guidelines, recordkeeping guidelines, and definitions contained in the EPA's emission guidelines for existing CISWI units (40 CFR part 60, subpart DDDD). The emissions standards and compliance times established within the Florida State plan are at least as stringent as those required by the EG for existing CISWI units subject to Subpart DDDD. The EPA has made, and will continue to make, these materials generally available through the docket for this action, EPA-R04-OAR-2018-0184, at <https://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). This incorporation by reference has been approved by the Office of the Federal Register as of **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and the plan is federally enforceable under the CAA as of the effective date of this final rulemaking.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a 111(d)/129 plan submission that complies with the provisions of the CAA and applicable Federal regulations. In reviewing 111(d)/129 plan submissions, the EPA's role is to approve State choices, provided they meet

the criteria of the CAA and the EPA's implementing regulations. 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:

- 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);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because state plan approval actions are exempt from review under Executive Order 12866;
- 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 Florida State plan for existing CISWI units is not approved to apply on any Indian reservation land or in any other area where the 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).

This action is subject to the Congressional Review Act (CRA), and the 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 CAA, 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 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Incorporation by reference, Industrial facilities, Intergovernmental relations, Methane, Ozone, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds, Waste treatment and disposal.

Kevin McOmber,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 62 as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

1. The authority citation for part 62 continues to read as follows:

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

Subpart K —Florida

2. Revise § 62.2380 to read as follows:

§ 62.2380 Identification of sources.

(a) *Identification of plan.* Florida's State Plan for Existing Commercial and Industrial Solid Waste Incineration Units in the State, as submitted on May 31, 2017, and supplemented on December 19, 2017, and February 2, 2018. The plan includes the regulatory provisions cited in paragraph (d) of this section, which the EPA incorporates by reference.

(b) *Identification of sources.* The plan applies to each existing commercial and industrial solid waste incineration unit and air curtain incineration unit in the State of Florida that commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010, but no later than August 7, 2013, as such incineration units are defined in 40 CFR 60.2875 and 40 CFR part 60.

(c) *Effective date.* The effective date of the plan is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(d) *Incorporation by reference.* Material listed in this paragraph (d) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the EPA and at the National Archives and Records Administration (NARA). Contact the EPA at: EPA Region 4 office, 61 Forsyth St., SW, Atlanta, Georgia 30303, 404-562-9900. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. The material may be obtained from the State of Florida – Department of State, Division of Administrative Services, R. A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250; phone: (850) 245-6550; email: AdministrativeCode@dos.myflorida.com; website: <https://flrules.org/gateway/ruleNo.asp?id=62-204.800>.

(1) Florida Administrative Code (FAC) Chapter 62-204.800(9)(f), Commercial and Industrial Solid Waste Incineration (CISWI) Units, effective December 21, 2017.

(2) [Reserved].