



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0814 & EPA-R04-OAR-2012-0692; FRL-9915-65-Region 4]

Approval and Promulgation of Implementation Plans; Florida; Infrastructure Requirement (Visibility) for the 1997 and 2006 PM, and 2008 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On April 18, 2008, and September 23, 2009, the Environmental Protection Agency (EPA) received state implementation plan (SIP) submissions from the State of Florida, through the Florida Department of Environmental Protection (FDEP), regarding the infrastructure elements for the 1997 annual Fine Particulate Matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS) and 2006 24-hour PM_{2.5} NAAQS, respectively. On October 31, 2012, EPA received a SIP submission from FDEP regarding the infrastructure elements for the 2008 8-hour ozone NAAQS. Additionally, on October 22, 2013, FDEP supplemented the three aforementioned infrastructure SIP submissions. The Clean Air Act (CAA or Act) requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA. These plans are commonly referred to as “infrastructure” SIPs. Specifically, EPA is taking final action to approve the submissions for Florida as they relate to the 1997 annual and 2006 24-hour PM_{2.5} and 2008 8-hour ozone NAAQS infrastructure SIP requirements to protect visibility in other states. All other applicable infrastructure requirements for these NAAQS have been addressed in separate rulemakings. EPA is approving the elements

of these infrastructure SIP submissions, as supplemented on October 22, 2013, as they relate to the protection of visibility in other states.

DATES: This rule will be 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-2012-0814 for the 1997 and 2006 PM_{2.5} SIP submissions and EPA-R04-OAR-2012-0692 for the 2008 8-hour ozone SIP submission. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not 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 Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, 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: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can be reached via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997 (62 FR 38652), EPA established an annual PM_{2.5} NAAQS of 15.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$), based on a 3-year average of annual mean PM_{2.5} concentrations, and a 24-hour NAAQS of 65 $\mu\text{g}/\text{m}^3$. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual PM_{2.5} NAAQS at 15.0 $\mu\text{g}/\text{m}^3$ based on a 3-year average of annual mean PM_{2.5} concentrations and promulgated a new 24-hour NAAQS of 35 $\mu\text{g}/\text{m}^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. On March 27, 2008 (77 FR 16436), EPA revised the 8-hour ozone NAAQS to 0.075 parts per million. On March 21, 2014, EPA proposed to approve SIP submissions from Florida as they relate to section 110(a)(2)(D)(i)(II) infrastructure SIP requirements to protect visibility in other states for the 1997 annual PM_{2.5} NAAQS, 2006 24-hour PM_{2.5} NAAQS, and 2008 8-hour ozone NAAQS. A summary of the background for today's final action is provided below. See EPA's March 21, 2014, proposed rulemaking at 79 FR 15718 for more detail.

Section 110(a)(2)(D) has two components: 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in

section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and interfering with maintenance of the NAAQS in another state (prong 2). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) and to protect visibility in another state (prong 4). Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

EPA has previously taken action to address SIP submissions from Florida related to prongs 1 through 3 of section 110(a)(2)(D)(i) and the requirements of section 110(a)(2)(D)(ii) for the 1997 annual PM_{2.5} NAAQS, 2006 24-hour PM_{2.5} NAAQS, and 2008 8-hour ozone NAAQS. Today's final rulemaking relates only to prong 4 of section 110(a)(2)(D)(i)(II), which as previously described, requires that infrastructure SIPs contain adequate provisions to protect visibility in other states.

II. Response to Comments

On March 21, 2014 (79 FR 15718), EPA published a proposed rule to approve SIP submissions from Florida as they relate to the section 110(a)(2)(D)(i)(II) infrastructure SIP requirements to protect visibility in other states for the 1997 annual PM_{2.5} NAAQS, 2006 24-hour PM_{2.5} NAAQS, and 2008 8-hour ozone NAAQS. EPA received comments and questions on the rulemaking from two members of the general public (collectively referred to as the "Commenter"). A summary of these comments and EPA's response is provided below.

Comment: The Commenter contends that EPA must disapprove the infrastructure SIP

submissions as they relate to prong 4 of section 110(a)(2)(D)(i) because, according to the Commenter, regional haze at the St. Marks Wildlife Refuge (St. Marks Class I Area) is caused by prescribed burning; the Smoke Management Plan (SMP) attached to Florida's regional haze SIP submittal is "largely ignored" by the Florida Forest Service (FFS); the FFS has not designated the St. Marks Class I Area as a Smoke Sensitive Area/Receptor and "regularly approves burns that engulf" the St. Marks Class I Area and the Gulf of Mexico; Georgia and Florida "regularly send smoke from prescribed burning to the other state;" the FFS should disapprove prescribed burns on days when the wind direction will likely send smoke in the direction of the St. Marks Class I Area; and Florida's regional haze SIP is "never enforced."

Response: EPA disagrees that the concerns raised by the Commenter require the Agency to disapprove Florida's infrastructure SIP submissions under prong 4. The regional haze regulations at 40 CFR 51.308(d)(3)(v)(E) require that each state consider smoke management techniques and plans for agricultural and forestry management purposes in developing the long-term strategy (LTS) included in its regional haze SIP. In reviewing Florida's regional haze SIP, EPA agreed with the State's determination that elemental carbon associated with prescribed fires was not a significant contributor to visibility in the Class I areas in Florida or Georgia.¹ Florida evaluated the impact of emissions from within the State on Class I areas in neighboring states and consulted with those states through a regional planning process.² In its formal correspondence with Florida, Georgia supported Florida's approach to identifying and evaluating emissions sources that contribute significantly to visibility impairment in Georgia's Class I areas

¹ See 77 FR 31240, 31251, 31260-31261 (May 25, 2012).

² Id. at 31260.

and did not identify prescribed fires in Florida as a source that significantly impacts those areas.³ EPA concluded that Florida had satisfied the requirements of 40 CFR 51.308(d)(3)(v)(E) to consider the need for smoke management techniques in Florida's LTS for ensuring reasonable progress towards improving visibility, but had reasonably concluded that such techniques were not needed in its regional haze SIP for the first planning period.⁴ We note that the Commenter has not provided any information unavailable at the time that EPA finalized action on Florida's regional haze SIP that warrants a different conclusion. More importantly, given that the visibility requirements of section 110(a)(2)(D)(i)(II) are directed toward the protection of visibility in downwind states, the comments do not show that the impacts from prescribed burning in Florida are interfering with the reasonable progress goals set by Georgia or other nearby states for their Class I areas. As such, the comments relating to visibility impacts at the St. Marks Class I Area in Florida do not provide a basis for disapproving FDEP's SIP submissions addressing the requirements of section 110(a)(2)(D)(i)(II) with respect to visibility.

Regarding the comments concerning enforcement, the Commenter has not identified any specific instances in which the State has failed to implement or enforce any elements of its regional haze SIP. Florida included the SMP as Appendix N to its regional haze SIP submittal, but as noted in the transmittal document associated with Florida's August 31, 2010 regional haze SIP submission, the appendices to that submission were included to provide background information and "were not proposed to be incorporated into the SIP."⁵ Because the SMP is not

³ Id. at 31260-61; Letter from James P. Johnson, Georgia Department of Natural Resources, to Thomas G. Rogers, FDEP (May 26, 2009) (attached as Exhibit 3 to Florida's regional haze SIP and available in Docket ID No. EPA-R04-OAR-2010-0935).

⁴ 77 FR at 31250-31251.

⁵ FDEP, Proposed Revision to State Implementation Plan, Number 2010-01, Regional Haze Plan (Amended), SIP Transmittal (August 31, 2010), p.3. This document can be found in Docket ID No. EPA-R04-OAR-2010-0935.

part of Florida's SIP, it is not federally enforceable. Concerns regarding the implementation of the SMP by the FFS should be addressed to the State.

III. Final Action

As described above, EPA is approving the infrastructure SIP submissions from FDEP as addressing prong 4 of section 110(a)(2)(D)(i)(II) of the CAA for the 1997 and 2006 PM_{2.5} NAAQS and for the 2008 8-hour ozone NAAQS. Specifically, EPA is approving FDEP's April 18, 2008, and September 23, 2009, submissions for the 1997 and 2006 PM_{2.5} NAAQS, and FDEP's October 31, 2011, submission for the 2008 8-hour ozone NAAQS, as supplemented on October 22, 2013, as they pertain to prong 4 of section 110(a)(2)(D)(i)(II) because they are consistent with section 110 of 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 Act 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 final 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);
- 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);
- 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; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. 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 [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document 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, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 14, 2014.

Heather McTeer Tony
Regional Administrator,
Region 4.

40 CFR part 52 is amended 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. Section 52.520(e) is amended by adding three new entries for “110(a)(1) and (2)

Infrastructure Requirements for the 1997 Fine Particulate Matter National Ambient Air Quality Standards”, “110(a)(1) and (2) Infrastructure Requirements for the 2006 Fine Particulate Matter National Ambient Air Quality Standards” and “110(a)(1) and (2) Infrastructure Requirements for the 2008 Ozone National Ambient Air Quality Standards” at the end of the table to read as follows:

§ 52.520 Identification of plan.

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(e) * * *

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register notice	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 1997 Fine Particulate Matter National Ambient Air Quality Standards	4/18/2008	[Insert date of publication in <u>Federal Register</u>]	[Insert Federal Register citation]	Addressing prong 4 of section 110(a)(2)(D)(i) only

110(a)(1) and (2) Infrastructure Requirements for the 2006 Fine Particulate Matter National Ambient Air Quality Standards	9/23/2009	[Insert date of publication in <u>Federal Register</u>]	[Insert Federal Register citation]	Addressing prong 4 of section 110(a)(2)(D)(i) only
110(a)(1) and (2) Infrastructure Requirements for the 2008 Ozone National Ambient Air Quality Standards	10/31/2011	[Insert date of publication in <u>Federal Register</u>]	[Insert Federal Register citation]	Addressing prong 4 of section 110(a)(2)(D)(i) only

[FR Doc. 2014-20053 Filed 08/22/2014 at 8:45 am; Publication Date: 08/25/2014]