



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2017-0079; FRL-9969-20-Region 4]**

**Air Plan Approval; Florida;**

**Interstate Transport (Prongs 1 and 2) for the 2010 1-hour NO<sub>2</sub> Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Florida State Implementation Plan (SIP), submitted by the Florida Department of Environmental Protection, on February 3, 2017, addressing the Clean Air Act (CAA or Act) interstate transport (prongs 1 and 2) infrastructure SIP requirements for the 2010 1-hour Nitrogen Dioxide (NO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an “infrastructure SIP.” Specifically, EPA is taking final action to approve Florida’s February 3, 2017, SIP submission addressing prongs 1 and 2 to ensure that air emissions in the State do not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour NO<sub>2</sub> NAAQS in any other state.

**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-2017-0079. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov)

web site. 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](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation 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:** Andres Febres of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Febres can be reached by telephone at (404) 562-8966 or via electronic mail at [febres-martinez.andres@epa.gov](mailto:febres-martinez.andres@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) of the CAA are to be submitted by states within three years after promulgation of a new or revised NAAQS to provide for the implementation, maintenance, and enforcement of the new or revised NAAQS. EPA has historically referred to these SIP submissions made for the purpose of satisfying the

requirements of sections 110(a)(1) and 110(a)(2) as “infrastructure SIP” submissions. Sections 110(a)(1) and (2) require states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the newly established or revised NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for infrastructure SIPs. Section 110(a)(2) lists specific elements that states must meet for the infrastructure SIP requirements related to a newly established or revised NAAQS. The contents of an infrastructure SIP submission may vary depending upon the data and analytical tools available to the state, as well as the provisions already contained in the state’s implementation plan at the time in which the state develops and submits the submission for a new or revised NAAQS.

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 from 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 from interfering with measures required to prevent significant deterioration of air quality in another state (prong 3) and from interfering with measures 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.

On January 22, 2010, EPA established a new 1-hour primary NAAQS for NO<sub>2</sub> at a level of 100 parts per billion, based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474 (February 9, 2010). This NAAQS is designed to protect against exposure to the entire group of nitrogen oxides (NO<sub>x</sub>). NO<sub>2</sub> is the component of greatest concern and is used as the indicator for the larger group of NO<sub>x</sub>. Emissions that lead to the formation of NO<sub>2</sub> generally also lead to the formation of other NO<sub>x</sub>. Therefore, control measures that reduce NO<sub>2</sub> can generally be expected to reduce population exposures to all gaseous NO<sub>x</sub> which may have the co-benefit of reducing the formation of ozone and fine particles both of which pose significant public health threats.

States were required to submit infrastructure SIP submissions for the 2010 1-hour NO<sub>2</sub> NAAQS to EPA no later than January 22, 2013. For comprehensive information on the 2010 1-hour NO<sub>2</sub> NAAQS, please refer to the Federal Register notice cited immediately above.

In a notice of proposed rulemaking published on August 10, 2017 (82 FR 37384), EPA proposed to approve Florida's February 3, 2017, SIP submission concluding that its SIP adequately addresses prong 1 and prong 2 requirements for the 2010 1-hour NO<sub>2</sub> NAAQS. Florida provided the following reasons for its determination: (1) the SIP contains state regulations that directly or indirectly control NO<sub>x</sub> emissions; (2) all areas in the United States are designated as unclassifiable/attainment for the 2010 1-hour NO<sub>2</sub> NAAQS; (3) maximum 1-hour NO<sub>2</sub> concentrations in states near Florida (Alabama, Georgia, Louisiana, Mississippi, and South Carolina) are below the 2010 standard; (4) monitored design values for NO<sub>2</sub> in the State are well below the 2010 1-hour NO<sub>2</sub> NAAQS and are trending downward; and (5) total NO<sub>x</sub> emissions in the State are also trending downward. The other applicable infrastructure SIP requirements for

Florida for the 2010 1-hour NO<sub>2</sub> NAAQS have been addressed in a separate rulemaking or will be addressed separately. On March 18, 2015 (80 FR 14019), EPA approved the portions of Florida's infrastructure SIP regarding the prevention of significant deterioration (PSD) permitting requirements of sections 110(a)(2)(C), prong 3 of D(i), and (J) for the 2010 1-hour NO<sub>2</sub> NAAQS. On November 23, 2016 (81 FR 84479), EPA approved the portions of Florida's infrastructure SIP regarding sections 110(a)(2)(A), prong 4 of section 110(a)(2)(D)(i), section 110(a)(2)(D)(ii), sections 110(a)(2)(E) - (H), and sections 110(a)(2)(K) - (M). The portion of Florida's infrastructure SIP related to the ambient air quality monitoring and data system requirements of section 110(a)(2)(B) will be acted on in a separate action.

The details of Florida's submission and the rationale for EPA's action are explained in the August 10, 2017, notice of proposed rulemaking. Comments on the proposed rulemaking were due on or before September 11, 2017. EPA did not receive any comments, adverse or otherwise.

## **II. Final Action**

As described above, EPA is taking final action to approve Florida's February 3, 2017, SIP revision addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i) for the 2010 1-hour NO<sub>2</sub> NAAQS. EPA is taking final action to approve this portion Florida's infrastructure SIP submission because Florida's SIP includes adequate provisions to prevent emissions sources within the State from significantly contributing to nonattainment or interfering with maintenance of this standard in any other state.

### III. 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 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 Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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 Clean Air Act; 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).

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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 [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, Ozone, Reporting and recordkeeping requirements.

Dated: September 28, 2017.

Onis "Trey" Glenn, III,

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 a new entry for “110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour NO<sub>2</sub> NAAQS” 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 2010 1-hour NO <sub>2</sub> NAAQS	2/3/2017	[Insert date of publication in <u>Federal Register</u> ]	[Insert citation of publication]	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i) only.

[FR Doc. 2017-22229 Filed: 10/13/2017 8:45 am; Publication Date: 10/16/2017]