

*Other Laws and Executive Orders Affecting Rulemaking*

When a state submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment.

We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and Executive orders governing the rulemaking process and include them in the final rule.

**List of Subjects in 30 CFR Part 950**

Required program amendments, State-Federal cooperative agreement, State regulatory program approval, Surface mining.

David A. Berry,

Regional Director Unified Regions 5, 7–11.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R04–OAR–2023–0273; FRL–12121–01–R4]

**Air Plan Approval; FL; Surface Coating of Miscellaneous Metal Parts and Products 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 October 12, 2022. The State is requesting amendments to allow the option for aerospace parts and products coating operations in Florida to comply with the Federal National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements in lieu of the volatile organic compound (VOC) standards in Florida’s Surface Coating of Miscellaneous Metal Parts and Products (MMPP) rule (hereinafter referred to as FL MMPP Rule) in the Florida SIP. The State has provided information in its October 12, 2022, submission to support the amendments to the FL MMPP Rule

in the Florida SIP pursuant to the Clean Air Act (CAA or Act). EPA is proposing to determine that the changes included in Florida’s October 12, 2022, submission are consistent with the applicable provisions of the CAA.

**DATES:** Comments are due on or before August 29, 2024.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2023–0273, at [www.regulations.gov](http://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:**

Simone Jarvis, Air Regulatory Management 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. Ms. Jarvis can be reached via phone number (404) 562–8393 or via electronic mail at [Jarvis.Simone@epa.gov](mailto:Jarvis.Simone@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The FL MMPP Rule—Rule 62–296.513, *Surface Coating of Miscellaneous Metal Parts and Products*—provides specific reasonably available control technology (RACT) requirements for sources in Broward, Duval, Hillsborough, Miami-Dade, Orange, Palm Beach, or Pinellas Counties that apply surface coatings to any number of metal parts and products, to limit their VOC emission rates, including surface coating at aerospace manufacturing operations.<sup>1</sup> However, sources are exempt from regulation under this rule if they emit no more

than 15 pounds in any one day and no more than three pounds in any one hour. The FL MMPP Rule was incorporated into the Florida SIP to address the RACT requirements for areas that were designated nonattainment for the 1979 1-hour ozone standard.<sup>2</sup> EPA redesignated these areas to attainment in 1995.<sup>3</sup>

In September 1995, EPA promulgated a NESHAP for Aerospace Manufacturing and Rework Facilities at 40 CFR part 63, subpart GG (Aerospace NESHAP). EPA subsequently amended the Aerospace NESHAP in 1996, 1998, 2006, 2015, and 2016. In Florida’s October 12, 2022, SIP revision, the State seeks to amend the FL MMPP Rule by exempting certain aerospace parts and products coating operations from this rule if such operations comply with requirements of the applicable provisions of the Aerospace NESHAP. Area sources<sup>4</sup> of hazardous air pollutants (HAPs) previously subject to the FL MMPP Rule that elect to comply with specific provisions of the Aerospace NESHAP related to the “primer, topcoat, and specialty coating VOC control requirements” would not be subject to the requirements of the FL MMPP Rule. Major sources of HAPs,<sup>5</sup> which are required to comply with the NESHAP would also not be subject to the FL MMPP Rule.

Some specialty coatings operations that use surface coatings with VOC contents allowed under the Aerospace NESHAP may be allowed to use coatings that have higher VOC contents, which FDEP states could contribute to de minimus increases in the potential to

<sup>2</sup> On November 6, 1991, EPA designated and classified the Miami-Fort Lauderdale-W. Palm Beach Area (*i.e.*, Broward, Dade, and Palm Beach Counties) as moderate nonattainment for the 1979 1-hour ozone NAAQS; the Jacksonville Area (*i.e.*, Duval County) as transitional nonattainment; the Tampa-St. Petersburg-Clearwater Area (*i.e.*, Hillsborough and Pinellas Counties) as marginal nonattainment; and Orange County as attainment. See 56 FR 56694. Among the requirements applicable to nonattainment areas for the 1-hour ozone NAAQS was the requirement to amend the SIPs for areas to satisfy the requirements of Section 183 of the CAA.

<sup>3</sup> See 60 FR part 41 for the Jacksonville, FL (Duval County) redesignation. See 60 FR 10325 for the Miami-Fort Lauderdale-W. Palm Beach, FL (Miami-Dade, Broward, and Palm Beach Counties) redesignation. See 60 FR 62748 for the Tampa-St. Petersburg-Clearwater, FL (Hillsborough and Pinellas Counties) redesignation.

<sup>4</sup> Area source means any stationary source of hazardous air pollutants that is not a major source as defined in 40 CFR 63.2.

<sup>5</sup> Major source means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants defined in 40 CFR 63.2.

<sup>1</sup> See Rule 62–296.500(3)(a).

emit VOCs at those facilities, but FDEP does not expect that actual VOC emissions will increase to any measurable extent. FDEP states that the cumulative VOC emissions increases potentially occurring at any existing facility subject to the FL MMPP Rule and proposed for exemption when complying with the Aerospace NESHAP would be well below levels that could, as precursors to ozone formation, significantly impact local or regional air quality. EPA is proposing to approve this revision to the Florida SIP for the reasons discussed in section II of this preamble.

## II. EPA's Analysis of Florida's October 12, 2022, SIP Revision

As noted above, the Aerospace NESHAP regulates VOC emissions from the aerospace industry. EPA evaluated the proposed revision under section 110(l) of the CAA. Section 110(l) specifies that EPA may not approve a SIP revision if it would interfere with any applicable requirement concerning attainment of any of the National Ambient Air Quality Standards (NAAQS) and reasonable further progress, or any other applicable requirements of the CAA.

The State is seeking to revise the SIP to provide that aerospace parts and products coating operations classified as area sources of HAPs may, in lieu of complying with the VOC requirements of the FL MMPP Rule, instead comply with specified elements of EPA's Aerospace NESHAP, as adopted by reference in Rule 62–204.800.<sup>6</sup> The changes would also exempt major sources of HAP emissions that are required to comply with the NESHAP from the FL MMPP Rule. Thus, area sources that are currently subject to the FL MMPP Rule, and instead opt to comply with the primer, topcoat, and specialty coating VOC control requirements in the NESHAP, as well as major sources of HAP emissions that are required to comply with the NESHAP, would no longer be subject to the requirements of the FL MMPP Rule. Applying the VOC control requirements of the Aerospace NESHAP to aerospace parts and products coating operations in Florida, in lieu of the FL MMPP rule, is not expected to result in emission increases that would interfere with attainment of the NAAQS.

On June 4, 2018,<sup>7</sup> EPA designated all counties, except Duval County in Florida as attainment/unclassifiable for

the 2015 ozone NAAQS. On November 21, 2019,<sup>8</sup> EPA redesignated Duval County from unclassifiable to attainment/unclassifiable for the 2015 ozone NAAQS. With all counties in Florida attaining the 1997, 2008, and 2015 ozone NAAQS, as well as the 2006 and 2012 PM<sub>2.5</sub> NAAQS, and anticipated to attain the 2024 PM<sub>2.5</sub> NAAQS based on preliminary monitoring data,<sup>9</sup> it is unlikely that any de minimis increases in the potential to emit VOCs from aerospace coatings operations facilities would impact any NAAQS.<sup>10</sup>

Table 4–1 of the EPA Modeled Emissions Rates for Precursors (MERPs) guidance depicts the lowest, median, and highest illustrative MERP values (tons/year) of VOC emissions necessary to increase ozone by 1 part per billion (ppb).<sup>11</sup> Properly-supported MERPs provide a simple way to relate modeled downwind impacts with an air quality threshold that is used to determine if such an impact can cause or contribute to a violation of the appropriate NAAQS. These values are derived from photochemical modeling and indicate the precursor emissions levels required to result in the formation of pollutants, such as ozone. The lowest illustrative MERP value for VOC in the Southeast is 1,936 tons/year, meaning 1,936 tons/year is the amount of VOC emissions increase needed to increase ambient ozone by 1 ppb.

EPA further reviewed the National Emissions Inventory (NEI) data, excluding biogenic sources and focusing solely on anthropogenic impacts, to provide a better picture of VOC emissions from sources potentially impacted by this rule change. Within the NEI, there is an aerospace source category. State-wide VOC emissions

from Aerospace Industrial Surface Coating & Solvent Use in Florida were 480 tons in 2020, 338 tons in 2021, and 426 tons in 2022. Possible VOC increases associated with this proposed SIP revision would only be expected to potentially increase VOC emissions from this source category by a small fraction of the total VOC emissions from these facilities and, thus, would not approach the 1,936 tons/year level of VOC emissions, referenced above, that would be expected to impact the ozone NAAQS. EPA's NEI analysis is included in the docket for this proposed action.

Additionally, the significance level for Prevention of Significant Deterioration (PSD) permitting is 40 tons/year of VOCs as a precursor for ozone. Any modification at a major source resulting in projected VOC emissions increases exceeding significance thresholds would be subject to PSD permitting for ozone,<sup>12</sup> including an air quality analysis demonstrating that new or increased emissions will not cause or contribute to a violation of a NAAQS or PSD increment, long before any emissions from the modification could interfere with the NAAQS.

For the reasons discussed above, these proposed changes the proposed to the Florida SIP would not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement.<sup>13</sup> Therefore, EPA is proposing to approve the aforementioned changes to Rule 62–296.513 into the Florida SIP.

## 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. In accordance with requirements of 1 CFR 51.5, and as described in sections I and II of this preamble, EPA is proposing to incorporate by reference Florida Rule 62–296.513, F.A.C., *Surface Coating of Miscellaneous Metal Parts and Products*, State effective June 16, 2022. 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).

<sup>12</sup> Under PSD rules, VOCs are presumed not to be a precursor to PM<sub>2.5</sub> in any attainment or unclassifiable area (see the definition of “regulated NSR pollutant” at 40 CFR 52.21(b)(50)(i)(b)(4)), and do not have a significance threshold as a precursor for PM<sub>2.5</sub> (see 40 CFR 52.21(b)(23)(i)).

<sup>13</sup> See CAA section 110(l).

<sup>8</sup> See 84 FR 64206.

<sup>9</sup> See Monitor Value Report. <https://www.epa.gov/outdoor-air-quality-data/monitor-values-report>. Please note, this report includes weighted annual means, not annual design values. Additionally, the values in this report have not yet been subject to the Teledyne data correction. Once released, corrected 2023 design values will be accessible on the EPA Air Quality Design Values web page: <https://www.epa.gov/air-trends/air-quality-design-values>.

<sup>10</sup> There are six NAAQS established to protect human health and the environment. These NAAQS are carbon monoxide (CO), lead, nitrogen dioxide (NO<sub>2</sub>), ozone, particulate matter (PM)—including PM<sub>2.5</sub> and PM<sub>10</sub>, and sulfur dioxide (SO<sub>2</sub>). EPA does not believe that there would be any changes in emissions of CO, lead, NO<sub>2</sub>, or SO<sub>2</sub> from this proposed change to the FL SIP.

<sup>11</sup> See Guidance on the Development of the Modeled Emission Rates for Precursors (MERPs) as a Tier 1 Demonstration Tool for Ozone and PM<sub>2.5</sub> under the PSD Permitting Program, Table 4–1. <https://www.epa.gov/nsr/guidance-development-modeled-emission-rates-precursors-merps-tier-1-demonstration-tool-ozone>.

<sup>6</sup> Rule 62–204.800 adopts and incorporates by reference Federal rules cited throughout FDEP's air pollution rules.

<sup>7</sup> See 83 FR 25776.

#### IV. Proposed Action

EPA is proposing to approve the October 12, 2022, Florida SIP revision consisting of amendments to Rule 62–296.513, F.A.C., *Surface Coating of Miscellaneous Metal Parts and Products*, in the Florida SIP. EPA has evaluated Florida’s October 12, 2022, SIP revision, and has preliminarily determined that the changes to the FL MMPP Rule meet the applicable requirements of the CAA.

#### 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. 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 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 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.”

The Department 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 proposed action, and there is no information in the record inconsistent with the stated goal of E.O. 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, 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: July 23, 2024.

**Jeaneanne Gettle,**

*Acting Regional Administrator, Region 4.*

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