

circumstances described above. Perhaps it is explained by the common-sense notion that the Agency's and the public's limited experience with the Rule would make such a petition glaringly premature. See 5 U.S.C. 553(e).<sup>15</sup>

The only remaining asserted justification for considering revisiting the Rule at this early stage is the majority's express reliance on the change in the composition of the Board.<sup>16</sup> This certainly is not a "good reason" for revisiting a past administrative action, particularly in the context of rulemaking. See generally *Motor Vehicles Manufacturers v. State Farm*, 463 U.S. 29 (1983). Yet, I fear this is the origin of the RFI, and regrettably so. The Board has long and consistently rejected motions to reconsider its decisions based on a change in the composition of the Board. See, e.g., *Brown & Root Power & Mfg.*, 2014 WL 4302554 (Aug. 29, 2014); *Visiting Nurse Health System, Inc.*, 338 NLRB 1074 (2003); *Wagner Iron Works*, 108 NLRB 1236 (1954). We should continue to exercise such restraint with respect to the Rule, unless and until a day comes when we discover or are presented with a legitimate basis for taking action. Today, however, is manifestly not that day.

As a result, it should come as no surprise to the majority if a court called upon to review any changes ultimately made to the Rule looks back skeptically at the origins of the rulemaking effort. The RFI is easily viewed as simply a scrim through which the majority is attempting to project a distorted view of the Rule's current functioning and thereby justify a partisan effort to roll it back. Cf. *United Steelworkers v. Pendergrass*, 819 F.2d 1263, 1268 (3d Cir. 1987) ("Some of the questions [in an ANPRM] could hardly have been posed with the serious intention of obtaining meaningful information, since the answers are self-evident."). Such opportunism is wholly inconsistent with the principles of reasoned Agency decision-making. It is equally

inconsistent with our shared commitment to administer the Act in a manner designed to fairly and faithfully serve Congressional policy and to protect the legitimate interests of the employees, unions, and employers covered by the Act. Whatever one thinks of the Rule, the Agency, its staff, and the public deserve better.

## VI. Conclusion

The Board invites interested parties to submit responses during the public response period and welcomes pertinent information regarding the above questions.

**Roxanne Rothschild,**

*Deputy Executive Secretary, National Labor Relations Board.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2017-0500; FRL-9971-71-Region 4]

### Air Plan Approval; Florida; Stationary Sources Emissions Monitoring; Reopening of Comment Period

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

**ACTION:** Proposed rule; reopening of public comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is reopening the comment period for a proposed rulemaking notice published in the **Federal Register** on October 13, 2017, which accompanied a direct final rulemaking published on the same date. The direct final rulemaking has been withdrawn due to the receipt of an adverse comment. In the October 13, 2017, proposed rulemaking, EPA proposed to approve a portion of a State Implementation Plan (SIP) revision submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP) on February 1, 2017, for the purpose of revising Florida's requirements and procedures for emissions monitoring at stationary sources. Additionally, the October 13, 2017, document included a proposed correction to remove a Florida Administrative Code (F.A.C.) rule that was previously approved for removal from the SIP in a separate action but was never removed. It was brought to EPA's attention that the February 1, 2017, state submittals and related materials were not accessible to the public through the electronic docket.

The materials are now accessible in the electronic docket. EPA is reopening the comment period for an additional 30 days.

**DATES:** The comment period for the proposed rule published October 13, 2017 (82 FR 47662), reopened. Comments must be received on or before January 16, 2018. In a future final action based on the proposed rule, EPA will address all public comments received, including the adverse comment received on the direct final rule.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0500 at <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 <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Andres Febres, 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 via telephone at (404) 562-8966 or via electronic mail at [febres-martinez.andres@epa.gov](mailto:febres-martinez.andres@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA published a proposed rulemaking on October 13, 2017 (82 FR 47662), which accompanied a direct final rulemaking published on the same date (82 FR 47636). The proposed revision includes amendments to three F.A.C. rule sections, as well as the removal of one F.A.C. rule section from the Florida SIP, in order to eliminate redundant language and make updates to the requirements for emissions monitoring

<sup>15</sup> Indeed, another argument to defer any examination of the Rule's effectiveness until a later date is that a longer timeframe would yield a larger body of cases that presumably would provide more representative and meaningful insights into its performance.

<sup>16</sup> I reject the majority's implied suggestion that my joining the Board since the Rule was enacted somehow supports today's effort to revisit the Rule. I begin with the proposition that the Rule, promulgated under notice-and-comment and upheld by the courts, is governing law—whether or not particular Board members disagreed with its adoption or would have disagreed, had they been on the Board at the time. As explained, I would support revisiting the Rule only if there were some reasoned basis to do so.

at stationary sources. Additionally, the October 13, 2017, proposed rulemaking included a correction to remove an additional F.A.C. rule that was previously approved for removal from the SIP in a separate action but was never removed. It was brought to EPA's

attention that the February 1, 2017, state submittals and related materials were not accessible to the public through the electronic docket. The materials are now accessible in the electronic docket. EPA is reopening the comment period for an additional 30 days.

Dated: November 21, 2017.

**Onis "Trey" Glenn, III,**

*Regional Administrator, Region 4.*

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