



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2013-0241; FRL-9913-26-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans;
Pennsylvania; Control of Commercial Fuel Oil Sulfur Limits for Combustion Units**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision will implement low-sulfur fuel oil provisions that will reduce the amount of sulfur in fuel oils used in combustion units, which will aid in reducing sulfur dioxide (SO₂) emissions and the formation of sulfates that cause decreased visibility. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on [insert date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2013-0241. All documents in the docket are listed in the <http://www.regulations.gov> website. Although listed in the electronic docket, some information is not 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 either electronically through <http://www.regulations.gov> or in hard copy for public

inspection during normal business hours at the Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814-2036, or by e-mail at becoat.gregory@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 20, 2014 (79 FR 9701), EPA published a notice of proposed rulemaking (NPR) seeking comment on EPA's proposed approval of Pennsylvania's SIP revision that incorporates the Commonwealth's low-sulfur fuel oil provisions into the SIP. The SIP revision was submitted by the Commonwealth of Pennsylvania on February 25, 2013, adopting revisions to 25 Pennsylvania Code (Pa. Code) Chapters 121, 123, and 139. In response to the NPR, EPA received one comment, dated March 24, 2014, from Ms. Jane Kozinski, Assistant Commissioner for the State of New Jersey Department of Environmental Protection (NJDEP). A summary of the NJDEP comment and EPA's response is provided in Unit III. (Summary of Public Comment and EPA Response) of this final rulemaking action.

II. Summary of SIP Revision

The SIP revision incorporates Pennsylvania's low-sulfur fuel oil provisions which apply to the owners and/or operators of the following: 1) Refineries; 2) pipelines; 3) terminals; 4) retail outlet fuel storage facilities and ultimate consumers; 5) commercial and industrial facilities; and 6) facilities with a unit burning regulated fuel oil to produce electricity and domestic home

heaters. The SIP revision implements low-sulfur fuel oil provisions that will reduce the amount of sulfur in fuel oils used in combustion units and amends associated definitions, sampling and test methods, and recordkeeping and recording provisions. The low-sulfur fuel oil provisions will aid in reducing SO₂ emissions and the formation of sulfates that cause decreased visibility. EPA believes that these regulations will decrease SO₂ emissions in the Commonwealth from certain fuel combustion sources and therefore strengthen the Pennsylvania SIP. EPA also believes that the additional SO₂ emission reductions and reductions in sulfates from Pennsylvania sources will assist the Commonwealth in achieving further reasonable progress towards reducing regional haze.¹ The rationale for EPA's proposed action is explained in the NPR and will not be restated here. Relevant support documents for this action are available online at <http://www.regulations.gov>, Docket number EPA-R03-OAR-2013-0241.

III. Summary of Public Comment and EPA Response

Comment: NJDEP commented that Pennsylvania's SIP revision, which incorporates low-sulfur fuel oil regulations to reduce the sulfur content of distillate fuel oil to 500 parts per million (ppm), is not consistent with standards adopted by nearby states, which limit sulfur content to 15 ppm. NJDEP stated that a sulfur-content standard of 15 ppm would be consistent with the standard set in the Mid-Atlantic/Northeast Visibility Union (MANE-VU)'s agreement on measures to control air pollutants that contribute to regional haze. NJDEP expressed concern that Pennsylvania's adoption of a higher sulfur-content standard of 500 ppm may jeopardize

¹ EPA originally finalized a limited approval of the Pennsylvania regional haze SIP on July 13, 2012. 77 FR 41279. Our approval was limited due to Pennsylvania's reliance upon the Clean Air Interstate Rule (CAIR) for certain emission requirements for electric generating units. In response to a petition for review of that final action in the United States Court of Appeals for the Third Circuit, EPA successfully moved for a voluntary remand without vacatur. On April 30, 2014, EPA reissued its final limited approval of the Pennsylvania SIP to implement the Commonwealth's regional haze program for the first planning period through 2018. 79 FR 24340. EPA is approving Pennsylvania's SIP revision to incorporate the low-sulfur fuel oil regulations as a SIP strengthening measure and not to address any specific regional haze requirements in the CAA or in 40 CFR 51.308.

continued progress to improve visibility levels at the Brigantine Wilderness Area (Brigantine). NJDEP stated that a sulfur-content standard of 15 ppm for distillate fuel oil is a reasonable, cost-effective air pollution control measure necessary to ensure that the reasonable progress goals (RPGs) at Brigantine are met in the future. NJDEP also stated that a lower sulfur-content standard of 15 ppm is a reasonable, cost-effective control measure for SO₂ and fine particulates and “would make for a more widely-marketable fuel across the northeastern and mid-Atlantic United States.” Further, NJDEP stated that in EPA’s proposed approval of the Pennsylvania regional haze SIP, “Pennsylvania reports that sulfur dioxide emission reductions from the closure of the Portland Power [P]lant in northeastern Pennsylvania will offset sulfur dioxide emissions expected from a 500 ppm sulfur content in distillate fuel oil in Pennsylvania.” NJDEP commented that, on the contrary, lowering the sulfur content in distillate oil to 15 ppm would have a greater impact on visibility at Brigantine than reductions at Portland because emission reductions would occur over a widespread area from a large number of sources, especially from fuel-burning sources in metropolitan Philadelphia, which is frequently upwind of Brigantine.

Response: EPA appreciates NJDEP’s comment on the SIP revision and acknowledges that Pennsylvania is a member state in MANE-VU. Pennsylvania participated fully in the MANE-VU consultation process, which resulted in a course of action for all participating states to reduce emissions to collectively meet the RPGs in the MANE-VU region.² The MANE-VU “Ask” provided the MANE-VU states, including Pennsylvania, with up to ten years to pursue adoption and implementation of reasonable and cost-effective nitrogen oxides (NO_x) and SO₂ emissions

² See “Statement of the Mid-Atlantic/Northeast Visibility Union (MANE-VU) Concerning a Course of Action within MANE-VU toward Assuring Reasonable Progress” (January 20, 2007), also known as the MANE-VU “Ask,” in Appendix M of the December 20, 2010 Pennsylvania regional haze SIP submission available in the docket for EPA’s rulemaking approving the Pennsylvania regional haze SIP at <http://www.regulations.gov>, Docket ID Number EPA-R03-OAR-2012-0002.

reduction measures. In its regional haze SIP, Pennsylvania stated that it “will pursue these measures, as appropriate and necessary, and in five years at the time of Pennsylvania’s first periodic SIP report, expects to report on progress toward adoption of these measures by 2018.” With respect to the low-sulfur fuel strategy, the MANE-VU “Ask” established two sets of goals, one for the “inner zone” states of the MANE-VU region (Delaware, New Jersey, New York, and Pennsylvania, or portions thereof) and one goal for the “outer zone” states. The “inner zone” goals contained more aggressive compliance schedules and sulfur-content limits than the “outer zone” goals. Nevertheless, states in the “inner zone” could choose to comply with the “outer zone” goals if they experienced supply disruption issues, and the “Ask” effectively provided all states until 2018 to complete the implementation of their low-sulfur fuel strategies. Consistent with this approach, Pennsylvania indicated in its regional haze SIP that, “[b]ased on supply concerns, Pennsylvania will pursue a strategy that will not be less stringent than the outer zone strategy and would meet the sulfur content emission limits listed above by 2018.”

On July 13, 2012, EPA finalized a limited approval of the Pennsylvania regional haze SIP (77 FR 41279). Subsequently, Pennsylvania submitted its February 25, 2013 SIP revision to EPA that included low-sulfur fuel regulations that met the “outer zone” strategy requirements and therefore do not require the sulfur content of distillate oil be reduced to 15 ppm.³ As EPA explained in detail in the technical support document (TSD)⁴ that accompanied our July 13, 2012

³ Pennsylvania’s low-sulfur fuel oil regulations include a compliance date in 2016. The MANE-VU “Ask” provided for “outer zone” states to implement a low-sulfur fuel oil strategy by 2014 and “to further reduce the sulfur content of distillate oil to 15 ppm by 2018, depending on supply availability.” See Pennsylvania’s December 20, 2010 regional haze SIP, Appendix M (MANE-VU “Ask”). Pennsylvania cited concerns with desulfurization capacity at refineries when publishing its low-sulfur fuel oil regulations with the 500 ppm sulfur limit for distillate oil and 2016 compliance date. See 43 Pa. B. 806 (February 9, 2013).

⁴ See “Technical Support Document (TSD) for the Pennsylvania Regional Haze State Implementation Plan – Mid Atlantic and Northeast Visibility Union (MANE-VU) ‘Asks’ Reasonable Progress Goals” (January 17, 2012) available in the docket for EPA’s rulemaking approving the Pennsylvania regional haze SIP at

limited approval of the Pennsylvania regional haze SIP, Pennsylvania had secured an additional 23,051 tons in SO₂ reductions that were not anticipated at the time of the MANE-VU “Ask.” When these reductions are considered in combination with reductions that will result from Pennsylvania’s low-sulfur fuel regulations, EPA believes that a 15 ppm limit on distillate oil is no longer “appropriate and necessary” to achieve the goals of the MANE-VU “Ask” during the first planning period ending in 2018. Consequently, EPA believes that the Pennsylvania regional haze SIP includes all measures necessary to obtain its share of the emission reductions needed to meet the RPGs of downwind states including New Jersey’s and therefore has met the requirements of 40 CFR 51.308(d)(3)(ii). See 79 FR 24340 (April 30, 2014) (reissuing limited approval of Pennsylvania’s regional haze SIP). However, EPA recognizes that a 15 ppm sulfur content limit for distillate oil, if subsequently implemented, would provide further SO₂ emissions reductions from Pennsylvania sources and further reasonable progress towards the national goal of remedying visibility impairment in Class I areas.

As EPA explained in the NPR for this rulemaking action, EPA believes these regulations strengthen the Pennsylvania SIP and provide additional SO₂ and sulfate reductions that supplement reductions from the Pennsylvania regional haze SIP. Therefore, EPA concludes that the adoption of a low-sulfur fuel oil strategy will provide Pennsylvania additional emission reductions furthering progress towards reducing emissions that contribute to visibility impairment and furthering reasonable progress in the first implementation period towards RPGs for Class I areas outside the Commonwealth affected by emissions from Pennsylvania’s sources. While EPA appreciates NJDEP’s comment that 15 ppm distillate fuel oil is a reasonable, cost-effective control measure, EPA has concluded that a 15 ppm limit on distillate oil is no longer

“appropriate and necessary” for Pennsylvania to achieve the goals of the MANE-VU “Ask” during the first planning period ending in 2018.

While it is possible that a 15 ppm distillate fuel oil standard may result in greater visibility improvement at Brigantine than the closure of Portland as NJDEP alleges, EPA previously concluded in its TSD supporting approval of Pennsylvania’s regional haze SIP that Pennsylvania’s delay in implementing low-sulfur fuel oil regulations was not anticipated to interfere with the ability of other states to meet their respective RPGs.⁵ Based on our previous approval of Pennsylvania’s regional haze SIP, and particularly upon our conclusion that a 15 ppm limit on distillate oil is no longer “appropriate and necessary” to achieve the goals of the MANE-VU “Ask,” EPA believes the approved Pennsylvania regional haze SIP adequately addresses visibility impacts from Pennsylvania emission sources on Class I areas outside the Commonwealth, including Brigantine, for the first implementation period and ensures sufficient emission reductions for Class I area states to meet their RPGs. See 77 FR 41279 and 79 FR 24340. Any significant changes in emissions of visibility-impairing pollutants or impacts at Class I areas can be addressed when Pennsylvania evaluates its progress made in the first implementation period towards RPGs for the Class I areas outside the Commonwealth affected by emissions from Pennsylvania’s sources as required by 40 CFR 51.308(g). If Pennsylvania’s assessment determines an adjustment to its SIP is necessary to ensure reasonable progress, EPA regulations require a SIP revision within a year of the five-year progress report. See 40 CFR 51.308(h)(4).

⁵ EPA notes that it was our conclusion in the TSD supporting approval of Pennsylvania’s regional haze SIP, and not Pennsylvania’s, that additional SO₂ emission reductions from Federally enforceable measures at point sources such as the Portland Power Plant supported our conclusion that the delay in implementing a low-sulfur fuel oil strategy was not anticipated to interfere with the ability of other states to meet their respective RPGs.

Finally, EPA appreciates NJDEP's comment regarding potential increased availability and marketability of lower sulfur distillate fuel oil if Pennsylvania were to implement a 15 ppm sulfur-content standard. However, this comment is not relevant to this rulemaking action and no further response is required.

IV. Final Action

EPA has determined that the revisions made to 25 Pa. Code Chapters 121, 123, and 139 meet the SIP revision requirements of the CAA and is approving the amendments to Pennsylvania's regulations for commercial fuel oil sulfur limits for combustion units.

V. Statutory and Executive Order Reviews

A. General Requirements

This action, which makes a determination of attainment based on air quality, will result in the suspension of certain Federal requirements and/or will not impose any 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 rulemaking action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the determination 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.

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

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, approving the implementation of low-sulfur fuel oil provisions that will reduce the amount of sulfur in fuel oils used in combustion units in Pennsylvania, 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, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 11, 2014.

W. C. Early, Acting
Regional Administrator,
Region III.

Therefore, 40 CFR part 52 is amended as follows:

PART 52--[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

2. In §52.2020, the paragraph (c)(1) table is amended by revising the entries for Title 25, Chapters 121, 123, and 139, Sections 121.1, 123.22, 139.4, and 139.16 and adding entries for Title 25, Chapter 123, Sections 123.22(f) and 123.22(g) to read as follows:

§52.2020 Identification of plan.

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(c) ***

(1) ***

| State citation | Title/subject | State effective date | EPA approval date | Additional explanation/ § 52.2063 citation |
|--|--|-----------------------------|---|---|
| Title 25--Environmental Protection | | | | |
| Article III--Air Resources | | | | |
| Chapter 121--General Provisions | | | | |
| Section 121.1 | Definitions | 02/09/13 | [insert the date of publication in the Federal Register] [insert Federal Register citation] | Added and amended definitions. |
| * * * * * | | | | |
| Chapter 123--Standards for Contaminants | | | | |
| * * * * * | | | | |
| Section 123.22 | Combustion units. [General provisions—air basins and non-air basins | 02/09/13 | [insert the date of publication in the Federal Register] [insert Federal Register citation] | Amended sections 123.22(a), 123.22(b), 123.22(c), 123.22(d), and 123.22(e). |
| * * * * * | | | | |
| Section 123.22(f) | Combustion units - | 02/09/13 | [insert the date of publication in | New section |

| State citation | Title/subject | State effective date | EPA approval date | Additional explanation/ § 52.2063 citation |
|--|--|----------------------|---|---|
| | Sampling and testing | | the Federal Register] [insert Federal Register citation] | |
| Section 123.22(g) | Combustion units - Recordkeeping and reporting | 02/09/13 | [insert the date of publication in the Federal Register] [insert Federal Register citation] | New section |
| * * * * * | | | | |
| Chapter 139--Sampling and Testing | | | | |
| * * * * * | | | | |
| Section 139.4 | References | 02/09/13 | [insert the date of publication in the Federal Register] [insert Federal Register citation] | Amended and added references. |
| * * * * * | | | | |
| Section 139.16 | Sulfur in fuel oil | 02/09/13 | [insert the date of publication in the Federal Register] [insert Federal Register citation] | Amended to add cross references. |
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[FR Doc. 2014-16087 Filed 07/09/2014 at 8:45 am; Publication Date: 07/10/2014]