



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2016-0414; FRL-9979-91-Region 2]

### Approval of Air Quality Implementation Plans; New York; Subpart 225-1, Fuel Composition and Use - Sulfur Limitations

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency is proposing to approve a revision to the New York State Implementation Plan concerning sulfur-in-fuel limits. The intended effect of this revision is to add a regulatory mechanism for meeting the existing obligations related to regional haze. The SIP revision consists of amendments to Title 6 of the New York Codes, Rules and Regulations Subpart 225-1, "Fuel Composition and Use - Sulfur Limitations" and Section 200.1, "Definitions" and, also removes an obsolete provision from the Code of Federal Regulations related to facility specific sulfur-in-fuel limits.

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-R02-OAR-2016-0414, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The 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. The 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 i.e, 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:** Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3381, or by email at [wieber.kirk@epa.gov](mailto:wieber.kirk@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Background**

The Environmental Protection Agency (EPA) proposes to approve New York's State Implementation Plan (SIP) submittal consisting of revisions to Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) Section 200.1, "Definitions," which adds a definition for waste oil. EPA proposes to approve, with limitations, Subpart 225-1, "Fuel Composition and Use - Sulfur Limitations," as contributing to attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter less than or equal to 2.5 microns in diameter (PM 2.5) and the NAAQS for sulfur dioxide (SO<sub>2</sub>), and establishing a revised regulatory mechanism for New York's regional haze SIP. The EPA's proposed approval of New York's sulfur-in-fuel regulation into the SIP does not alter the EPA's prior action on New York's Regional Haze SIP, which includes emission reductions related to the sulfur-in-fuel requirements of section 19-0325 of the Environmental Conservation Law (ECL). 77 FR 51915 (Aug. 28, 2012). The

EPA is proposing to approve these revisions, requested by New York, as strengthening the effectiveness of New York's SIP.

Pursuant to 40 CFR part 51, the EPA also is proposing to remove a section from 40 CFR 52.1675 which lists sulfur limitations for various facilities in New York. EPA has determined that these limitations have expired and/or refer to sources which have been shut down. That determination was reflected in EPA's reformatting exercise that ensured that all revisions to the New York State SIPs are accurately reflected in 40 CFR part 52, including 40 CFR 52.1670(d), "EPA approved State source-specific requirements." 76 FR 41705 (July 15, 2011). In addition, the sulfur-in-fuel rule proposed for approval here requires the use of lower sulfur fuel, with lower sulfur concentrations than the limits listed in 40 CFR 52.1675. The EPA is therefore removing the existing sulfur limitations in 40 CFR 52.1675 as they are superfluous and obsolete.

## **II. EPA's Evaluation of New York's Submittal**

On June 12, 2013, New York State Department of Environmental Conservation (NYSDEC) submitted to the EPA the proposed revisions to Section 200.1 and Subpart 225-1 and supplemental materials, including documentation of the comment period and public hearings, and NYSDEC's responses to public comments. These materials are in the EPA's docket for this proposal.

### *Revisions to Section 200.1*

The EPA is proposing to approve Section 200.1, which includes New York's new definition for "waste oil" at 6 NYCRR 200.1(cw). This definition is relevant to Subpart 225-1 and is consistent with similar definitions of waste oil recognized by EPA.

NYSDEC also revised 6 NYCRR 200.9, Table 1, updating the list of federal regulations referenced in the amended Subpart 225-1. In a separate rulemaking action, the EPA approved a SIP submittal from New York, dated October 12, 2011 and revised on July 25, 2016, of Section 200.9, Table 1. 81 FR 95049 (Dec. 27, 2016). That approval included the revisions to Section 200.9, Table 1, referenced in NYSDEC's June 12, 2013 submittal. We therefore have already acted on the revision to Section 200.9, Table 1, which references the amended Subpart 225-1, and we are not taking action here.

### Subpart 225-1

New York relied on ECL section 19-0325, limiting sulfur concentrations in fuel oil, in its Regional Haze SIP and the EPA approved it as part of New York's emissions reduction plan to make reasonable progress toward reducing widespread visibility impairment. 77 FR 51915. By submitting this revision to Subpart 225-1 to the EPA for SIP approval, New York is adding a regulatory mechanism for implementing the reduced sulfur-in-fuel limits in ECL-19-0325 and the Regional Haze SIP. The EPA proposes to approve these revisions to strengthen the New York's SIP.

### Sulfur-in-fuel limitations

Section 225-1.2 provides the sulfur-in-fuel limitations and are identified below.

Owners and/or operators of any stationary combustion installation that fires solid fuels are limited to the firing of solid fuel with a sulfur content listed in the table below on or after July 1, 2014:

| <i>Area</i>   | <i>Solid fuel (pounds of sulfur per million Btu gross heat content)</i> |
|---|---|
| New York City   | 0.2 MAX   |
| Nassau, Rockland and Westchester Counties                                       | 0.2 MAX   |
| Suffolk County: Towns of Babylon, Brookhaven, Huntington, Islip, and Smith Town | 0.6 MAX   |
| Erie and Niagara Counties   | 1.7 MAX, 1.4 AVG*   |
| Remainder of State  | 2.5 MAX, 1.9 AVG*, and 1.7 AVG (ANNUAL)**                               |

\* Averages are computed for each emission source by dividing the total sulfur content by the total gross heat content of all solid fuel received during any consecutive three-month period.

\*\* Annual averages are computed for each emission source by dividing the total sulfur content by the total gross heat content of all solid fuel received during any consecutive 12-month period.

Owners and/or operators of any stationary combustion installation that fires residual oil are limited to the firing of residual oil with a sulfur content listed in the table below on or after July 1, 2014:

| <i>Area</i>                               | <i>Residual oil (percent sulfur by weight)</i> |
|---|--|
| New York City                             | 0.30   |
| Nassau, Rockland and Westchester Counties | 0.37   |

Owners and/or operators of any stationary combustion installation that fires residual oil are limited to the purchase of residual oil with a sulfur content listed in the table below on or after July 1, 2014, and are limited to the firing of residual oil with a sulfur content listed in the table below on or after July 1, 2016:

| <i>Area</i>   | <i>Residual oil (percent sulfur by weight)</i> |
|---|--|
| Suffolk County: Towns of Babylon, Brookhaven, Huntington, Islip, and Smith Town | 0.50   |
| Erie and Niagara Counties   | 0.50   |
| Remainder of State  | 0.50   |

Owners and/or operators of commercial, industrial, or residential emission sources that fire number two heating oil on or after July 1, 2012 are limited to the purchase of number two heating oil with 0.0015 percent sulfur by weight or less.

Owners and/or operators of a stationary combustion installation that fires distillate oil other than number two heating oil are limited to the purchase of distillate oil with 0.0015 percent sulfur by weight or less on or after July 1, 2014.

Owners and/or operators of any stationary combustion installation that fires distillate oil including number two heating oil are limited to the firing of distillate oil with 0.0015 percent sulfur by weight or less on or after July 1, 2016.

Owners and/or operators of any stationary combustion installation that fires waste oil on or after July 1, 2014 are limited to the firing of waste oil with 0.75 percent sulfur by weight or less.

### *Exceptions and Variances Provided for in Subpart 225-1*

6 NYCRR Sections 225-1.3 and 225-1.4 include provisions allowing for exceptions or variances from the sulfur-in-fuel limits set forth in ECL 19-0325 and Section 225-1.2.

Section 225-1.3 addresses exceptions to fuel limitations due to fuel shortage. It provides that NYSDEC may issue an order granting a temporary exception based on an insufficient supply of conforming fuel, provided the decision is certified by the New York State Energy Research and Development Authority. The exception cannot exceed 45 days, unless the department permits a public hearing, after which the extension can be granted for up to one year. Section 225-1.3(e) recognizes that, pursuant to New York

State Energy Law 5-117, any provisions of Section 225-1.3 may be preempted if the Governor declares that a fuel-supply emergency exists or is impending.<sup>1</sup>

Section 225-1.4 allows for fuel mixture or equivalent emission rate variances. Fuels with sulfur content greater than that allowed by Section 225-1.2 may be fired when the facility owner can demonstrate that sulfur dioxide emissions do not exceed the value for S calculated using the following equation:

$$S = (1.1AM + 2BT)/(M + T)$$

where:

S = Allowable sulfur dioxide emission (in pounds per million Btu)

A = Sulfur in oil allowed by section 225-1.2 of this Subpart (in percent by weight)

B = Average sulfur in solid fuel allowed by section 225-1.2 of this Subpart (in pounds of sulfur per million Btu gross heat content)

M = Percent of total heat input from liquid fuel

T = Percent of total heat input from solid fuel (including coal, coke, wood, wood waste, and refuse-derived fuel)

Fuel mixtures and equivalent emission rate variances only apply to processes or stationary combustion installations. Compliance will be based on the total heat input from all fuels fired, including gaseous fuels. Any process or stationary combustion installation owner who chooses to fire a fuel mixture is subject to the emission and fuel monitoring requirements of Section 225-1.5.<sup>2</sup>

In the initial approval of Part 225 into the SIP, the EPA indicated that variances adopted by the State pursuant to sections 225.2(b) and (c), 225.3, and 225.5(c) are federally enforceable only if approved by

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<sup>1</sup> Section 5-117 of the New York State Energy Law concerns powers granted to the Commissioner of the New York State Energy Research and Development Authority (NYSERDA) when the Governor finds there is a fuel supply emergency; the powers are authorized to the extent that they are not in conflict with federal law.

<sup>2</sup> Subpart 225-1.4 also allows variances for fuel fired to demonstrate the performance of experimental equipment and/or processes for reducing sulfur compounds from an emission source.

the EPA as SIP revisions. 46 FR 55690, 55693 (Nov. 12, 1981). The provisions of 225.2(b) and (c), 225.3, and 225.5(c), although now renumbered in revised Subpart 225-1, are substantively unchanged. Therefore, EPA's condition, that variances adopted pursuant to these conditions are federally enforceable only if approved by the EPA as SIP revisions, remains in effect. 81 FR 23167, 23171 (April 20, 2016); 40 CFR Part 52.1670.

The EPA proposes to approve New York's Subpart 225-1 submittal, provided that, consistent with prior approvals of Part 225, any exception or variance must to be submitted to the EPA as a source-specific SIP revision and is not federally enforceable until approved by EPA.

### **III. Updating 40 CFR 52.1675 Control Strategy and Regulations: Sulfur Oxides**

40 CFR 52.1675 includes a list of special limitations of sulfur-in-fuels, adopted in the 1980s, for a variety of sources. EPA has determined that either these limits have expired or the sources have shut down. 47 FR 7662 (2/22/82); letter from NYSDEC, dated March 25, 2011, confirming the shut-down of Lovett Generating Station (a copy is in the docket for this action). EPA's determination was reflected in the reformatting exercise that ensured that all revisions to the New York State SIP are accurately reflected in 40 CFR part 52, including 40 CFR 52.1670(d), "EPA approved State source-specific requirements." 76 FR 41705 (July 15, 2011). 40 CFR 52.1670(d) identifies all source-specific requirements still effective in New York State. The EPA is proposing to remove the provisions listed below from 40 CFR 52.1675 as superfluous and obsolete.

List of special limitations from 40 CFR 52.1675 (d), (f) and (g) that the EPA proposes to remove:

*(d) Section 225.3(e) of Subchapter A, Chapter III, Title 6 of New York State's Official*

*Compilation of Codes, Rules and Regulations, is disapproved since it does not provide for the*

*type of permanent control necessary to assure attainment and maintenance of national standards.*

*\* \* \**

*(f) The following applies to the Environmental Protection Agency's approval as a SIP revision of the "special limitation" promulgated by the Commissioner of the New York State Department of Environmental Conservation on November 20, 1979 permitting the purchase and use by the Consolidated Edison Company of New York, Inc. of fuel oil with a maximum sulfur content of 1.5 percent, by weight, at units 2 and 3 of its Arthur Kill generating facility on Staten Island, New York and unit 3 of its Ravenswood generating station in Queens, New York:*

*(1) On or before the "Date of Conversion" indicated below, each "Facility" indicated below shall combust only natural gas for the duration of the special limitation.*

*(a) City College of New York, Amsterdam Ave. between W. 135th St. and W. 138th St., Manhattan—*

*North Campus Academic Center: Converted North Campus Main Boiler (Compton Hall):*

*Two boilers shut-down; One boiler converted;*

*South Campus—Boiler Plant: Converted;*

*North Campus Science and Physical Education Building: October 1, 1980.*

*(b) Harlem Hospital, 135th St. and Lenox Ave., Manhattan: April 1, 1981;*

*(c) Columbia University, 116th St. and Broadway, Manhattan: Converted;*

*(d) New York City Housing Auth., Senator Robert F. Wagner Houses, 23-96 First Ave.: October 1, 1980;*

*(e) New York City Housing Auth., Frederick Douglass Houses, 880 Columbus Ave., Manhattan: October 1, 1980;*

*(f) New York City Housing Auth., Manhattanville Houses, 549 W. 126th St., Manhattan: October 1, 1980;*

*(g) New York City Housing Auth., St. Nicholas Houses, 215 W. 127th St.: October 1, 1980;*

*(h) New York City Housing Auth., General Grant Houses, 1320 Amsterdam Ave., Manhattan: October 1, 1980;*

*(i) New York City Housing Auth., Harlem River Houses, 211-0-1 W. 151st Street, Manhattan: October 1, 1980;*

*(j) New York City Housing Auth., Martin Luther King Towers, 90 Lenox Ave., Manhattan: October 1, 1980;*

*(k) New York City Housing Auth., Drew Hamilton Houses, 210 W. 142nd Street, Manhattan: October 1, 1980.*

*(2) If any of the facilities identified in paragraph (g)(1) of this section, fail to meet the requirements of that paragraph, the Consolidated Edison Company shall not burn fuel oil with a sulfur content in excess of 0.30 percent, by weight. For this purpose, Consolidated Edison shall maintain a reserve supply of fuel oil with a maximum sulfur content of 0.30 percent, by weight, and shall have a mechanism to switch promptly to the use of such fuel oil.*

*(3) EPA's approval of this revision to the New York SIP will extend for a period of twelve months from [August 11, 1980] or such longer period limited to twelve months from the date on which fuel oil with a sulfur content exceeding 0.30 percent, by weight, is first burned at any of the affected Consolidated Edison facilities. However, once the use of high sulfur fuel oil has commenced, failure to meet any of the conversion dates specified in paragraph (g)(1) of this section shall not extend the period of EPA approval.*

*(4) On or before July 1, 1981 the Consolidated Edison Company of New York, Inc. shall displace the use of approximately 7.1 million gallons of residual oil, as projected on an annual basis, through a gas conversion program to be implemented within a two-mile radius of the Mabel Dean Bacon High School Annex monitor. Beginning on the first day of the month in which fuel oil with a sulfur content exceeding 0.30 percent, by weight, is first burned at any of the affected Consolidated Edison facilities and continuing for twelve months thereafter, the Consolidated Edison Company of New York, Inc. shall submit a report to the EPA, on a monthly basis, which includes, but is not limited to, the following information regarding this program:*

*(i) The total gallonage of fuel oil capacity converted (projected to an annual amount) as of that date,*

*(ii) The potential gallonage from sources at which conversion work has begun, and*

*(iii) The projected gallonage from sources expected to be converted by July 1, 1981.*

*(g) The Environmental Protection Agency has approved a New York State Implementation Plan revision relating to the SO<sub>2</sub> emission limit for units 4 and 5 of Orange and Rockland Utilities' Lovett generating station. The revision which allows Lovett to burn coal at units 4 and 5 was submitted by the New York State Department of Environmental Conservation (NYSDEC) on September 18, 1990, with additional materials submitted on April 12, 1991, and June 3, 1991. This action sets the emission limit applicable to the facility to 1.0 pound per million British thermal units (MMBtu) for units 4 and 5 if both are operated on coal, or to 1.5 lb/MMBtu for one unit if the other is operated on fuel oil, natural gas or is not operated at all, as set forth in the Certificates to Operate issued by NYSDEC on April 3, 1991. The SO<sub>2</sub> emission limit, monitoring and recordkeeping requirements pertaining to the SO<sub>2</sub> emissions are incorporated by reference into the Certificates to Operate.*

The EPA also proposes to revise 40 CFR 52.1675(e) to conform with the new nomenclature in New York's revised Subpart 225-1, and for it to read as follows:

*(e) Any exception or variance promulgated by the Commissioner under 6 NYCRR Sections 225-1.3 and 1.4 shall not exempt any person from the requirements otherwise imposed by 6 NYCRR Subpart 225-1; provided that the Administrator may approve such exception or variance as a plan revision when the provisions of this part, section 110 (a)(3)(A) of the Act, and 40 CFR Part 51 (relating to approval of and revisions to State implementation plans) have been satisfied with respect to such exception or variance.*

The removed sections of 40 CFR 52.1675: (d), (f) and (g), will be labeled as reserved.

#### **IV. Proposed Action**

The EPA proposes to approve the revisions to New York's Title 6 of the New York Codes, Rules and Regulations Subpart 225-1, "Fuel Composition and Use - Sulfur Limitations" and Section 200.1, "Definitions," both effective on April 5, 2013, into New York's SIP as strengthening enforcement of the State's air pollution control regulations.

In addition, EPA has determined that the source-specific limits in the New York's SIP at 40 CFR 52.1675(d), (f) and (g) have either expired or the affected sources have shut down and that the 52.1675 requirements are therefore superfluous and obsolete. The EPA is proposing to remove the source-specific limits from 52.1675 (d), (f) and (g). The EPA also proposes to revise 40 CFR 52.1675(e) to conform with the new nomenclature in New York's revised Subpart 225-1.

#### **V. Incorporation by Reference**

In this rule, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are proposing to incorporate by reference the provisions described above in Section IV. Proposed Action.

EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov> and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

## **VI. 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 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 Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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, 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. Thus, Executive Order 13175 does not apply to this action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: June 8, 2018.

Peter D. Lopez,  
Regional Administrator,  
Region 2.

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