

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2021-0361, FRL-10180-01-R2]

Approval of Air Quality Implementation Plans; New York; Fuel Composition and Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the New York State Implementation Plan (SIP) concerning the control and reduction of sulfur and particulate matter emissions from facilities in New York State. The proposed SIP revision consists of amendments to regulations outlined within New York's Codes, Rules and Regulations (NYCRR) for sulfur in fuel limits. The intended effect of this revision is to approve control strategies, required by the Clean Air Act, which will result in emission reductions that will help attain and maintain National Ambient Air Quality Standards (NAAQS) for fine particulate matter and sulfur dioxide emissions throughout New York State. Additionally, the proposed revisions will establish applicability criteria, composition limits and permitting requirements for waste oils; establish monitoring, recordkeeping and reporting requirements for facilities that are determined eligible to burn waste oil; and allow for the burning of waste oils in space heaters at automotive maintenance/service facilities.

DATES: Written comments must be received on or before November 25, 2022.

ADDRESSES: Submit your comments, identified by Docket Number EPA-R02-OAR-2021-0361, at <https://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., 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 electronically through <https://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 Once submitted, comments cannot be edited or withdrawn.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, such as 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:

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SUPPLEMENTARY INFORMATION:

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I. Background

The EPA is proposing to approve New York's SIP submittal consisting of revisions to Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) subpart 225-1, "Fuel Composition and Use—Sulfur Limitations," which imposes limits on the sulfur content of distillate oil, residual oil, and coal fired in stationary sources and regulates the burning of waste oils in combustion, incineration, and process sources throughout New York State. In addition, the EPA is proposing to approve revisions to 6 NYCRR subpart 225-2, "Fuel Composition and Use," and an attendant revision made to 6 NYCRR part 200, "General Provisions," that moves the definition for "residual oil" from subpart 225-2, now entitled, "Fuel Consumption and Use—Waste Oil as a Fuel," to part 200. The EPA is proposing to approve these revisions, requested by New York, to strengthen the effectiveness of New York's SIP.

II. The EPA's Evaluation of New York's Submittal

On August 26, 2020, the New York State Department of Environmental Conservation (NYSDEC) submitted to the EPA proposed SIP revisions to 6 NYCRR part 225, "Fuel Composition and Use," subpart 225-2, now entitled, "Fuel Composition and Use—Waste Oil as a Fuel," and attendant revisions to part 200, "General Provisions," sections 200.1, "Definitions," and section 200.9, "Referenced material". The attendant revisions to 6 NYCRR part 200, "General Provisions," section 200.9, Table 1, "Referenced material," for 6 NYCRR subpart 225-2 have been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022. Additionally, on March 2, 2021, NYSDEC submitted to the EPA proposed SIP revisions to 6 NYCRR part 225, "Fuel Composition and Use," subpart 225-1, "Fuel Composition and Use—Sulfur Limitations". Each proposed SIP revision submitted to the EPA provided supplemental materials and the NYSDEC's responses to public comments. These materials are in the EPA's docket for this proposal.

Revisions to Parts 225 and 200

The EPA is proposing to approve revisions to parts 225 and 200. The revisions to part 225 apply to fuel composition and use, and limits the sulfur content of distillate oil, residual oil, and coal fired in stationary sources and regulates the burning of waste oils in combustion, incineration, and process sources throughout New York. The EPA proposes to approve these revisions to strengthen New York's SIP.¹

The revisions to subpart 225-1, "Fuel Composition and Use—Sulfur Limitations," will add process sources and incinerators as stationary emission sources to which these revisions will apply throughout New York State. The revisions also lower the sulfur-in-fuel limit for waste oil and correct minor typographical errors. The revisions remove 6 NYCRR subdivision 225-1.3(e) which had stated that, pursuant to Section 117 of Article 5 of the Energy Law, the Governor may pre-empt the requirements of 6 NYCRR subpart 225-1 if an energy or fuel supply emergency

¹ The NYSDEC revised subpart 225-1 to impose limits on the sulfur content of distillate oil, residual oil, and coal fired in stationary source and revised subpart 225-2 which establishes applicability criteria, composition limits, and permitting requirements for waste oils; establishes monitoring, recordkeeping, and reporting requirements for facilities that are determined eligible to burn waste oil; and allows for the burning of waste oils in space heaters at automotive maintenance/service facilities. Subpart 225-2 has also been renamed "Fuel Composition and Use—Waste Oil as Fuel".

is declared. Finally, the revisions will remove paragraph 225–1.4(c)(2) which New York indicated, in the January 20, 2021 Notice of Adoption, was contradictory and less stringent than the sulfur-in-fuel requirements of the table in subdivision 225–1.2(b) of this subpart.

The revisions to subpart 225–2 that the EPA is proposing to approve, “Fuel Composition and Use—Waste Oil As A Fuel,” simplify and streamline implementation of the regulation by eliminating obsolete regulatory references; correcting typographical errors; updating the regulation’s waste oil constituent limits; removing outdated work practices; expanding the number of facilities eligible to burn waste oil; updating the permitting process to include monitoring, recordkeeping, and reporting requirements, thus aligning it with part 201 and Title V criteria found in the Clean Air Act; and moving the definition of “residual oil” from existing subpart 225–2 to part 200. The existing SIP version of subpart 225–2 also contains references to liquid waste transportation regulations that no longer apply and need to be removed from the SIP. NYSDEC also now includes arsenic (5 ppm), cadmium (2 ppm), and chromium (10 ppm) and their corresponding limits in Table 1 of Proposed Subpart 225–2. The NYSDEC has removed the ninety-nine (99) percent combustion efficiency requirement. The revised subpart 225–2 no longer addresses the burning of chemical waste and “off-spec” waste oils (*i.e.*, Waste fuel B) that do not meet the limitations specified in Table 1 of existing subpart 225–2. Instead, burning chemical waste and off-spec waste oils is regulated under 6 NYCRR part 212, Process Operations or 6 NYCRR parts 370–376 as appropriate. New York State’s subpart 225–2 revisions clarify the regulation’s process for the burning of waste oil while removing the term “waste fuel.”

III. Proposed Action

The EPA proposes to approve the revisions to 6 NYCRR subpart 225–2, “Fuel Composition and Use,” attendant revisions to part 200, “General Provisions,” section 200.1, “Definitions,” and revisions to 6 NYCRR part 225, “Fuel Consumption and Use,” subpart 225–1, “Fuel Limitations”, with State effective dates

of April 2, 2020 (subpart 225–2 and section 200.1) and February 4, 2021 (part 225–1), into New York’s SIP, in order to strengthen enforcement of the State’s air pollution control regulations. The attendant revisions to 6 NYCRR part 200, “General Provisions,” section 200.9, Table 1, “Referenced material,” for 6 NYCRR subpart 225–2 have been addressed under a separate rulemaking at 87 FR 52337, effective September 26, 2022. The EPA is soliciting public comments on the issues discussed in this proposed rulemaking action. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to 6 NYCRR part 225, “Fuel Composition and Use,” subpart 225–2, “Fuel Composition and Use,” attendant revisions to part 200, “General Provisions,” section 200.1, “Definitions,” and 6 NYCRR part 225, “Fuel Composition and Use,” subpart 225–1, “Fuel Composition and Use—Sulfur Limitations,” as described in Section II. and III. of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

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, the 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);

- 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 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, the SIP is not proposing to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and it 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).

List of Subjects 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.*

Lisa Garcia,

Regional Administrator, Region 2.

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