

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R03-OAR-2018-0513; FRL-9993-01-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Commercial Fuel Oil Sulfur Limits for Combustion Units in Allegheny County****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 (Pennsylvania). The revision updates Allegheny County's portion of the Pennsylvania SIP by incorporating low sulfur fuel oil provisions. Implementation of these provisions will reduce the amount of sulfur in fuel oils used in combustion units in Allegheny County. EPA is approving this revision to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on June 3, 2019.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2018-0513. All documents in the docket are listed on the <https://www.regulations.gov> website. 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 through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Erin Trouba, Planning and Implementation Branch (3AD30), Air and Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2023. Ms. Trouba can also be reached via electronic mail at [trouba.erin@epa.gov](mailto:trouba.erin@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

On February 12, 2019 (84 FR 3387), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA proposed to incorporate low sulfur fuel oil provisions for Allegheny County into the Pennsylvania SIP. These provisions will reduce the amount of sulfur in fuel oils used in combustion units in Allegheny County. The formal SIP revision was submitted by the Allegheny County Health Department (ACHD) through the Pennsylvania Department of Environmental Protection (PADEP) on May 8, 2018.

The SIP revision consists of an amendment to implement the use of low sulfur fuel oils used in combustion units in Allegheny County, adding sampling and testing methods, and amending associated definitions. The SIP revision submittal adds Sections 2104.10 (Commercial Fuel Oil) and 2107.16 (Sulfur in Fuel Oil) of Article XXI to the Pennsylvania SIP and amends, within the SIP, Section 2101.20 (Definitions) of Article XXI.

**II. Summary of SIP Revision and EPA Analysis**

Section 2104.10 implements low sulfur fuel oil provisions that will reduce the amount of sulfur in fuel oils that are offered for sale, delivered for use, exchanged in trade or permitted to use in Allegheny County, Pennsylvania. Section 2104.10(a) establishes maximum allowable sulfur content for commercial fuel oil, expressed as parts per million (ppm) by weight or percentage by weight, for number 2 and lighter distillate oil to 0.05 percent sulfur content by weight (500 ppm), number 4 residual oil to 0.25 percent sulfur content by weight (2,500 ppm), and 0.5 percent sulfur content by weight (5,000 ppm) for number 5 and number 6 and heavier commercial fuel oils by no later than July 1, 2016. Commercial fuel oil stored by the ultimate consumer in Allegheny County prior to the applicable compliance date may be used after the applicable compliance date if the fuel oil met the applicable maximum allowable sulfur content at the time it was stored. Section 2104.10(c) and (d) of Article XXI establish sampling, testing, recordkeeping, and reporting requirements. Definitions for terminology which relate to reporting and recordkeeping requirements were added and amended. Section 2107.16 of Article XXI establishes the sampling methods that must be used.

Other specific requirements of commercial fuel oil sulfur limits for combustion units in Allegheny County and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. No adverse public comments were received on the NPRM. One positive comment was received.

**III. Final Action**

EPA is approving Pennsylvania's May 8, 2018 SIP submittal regarding sulfur limits in fuel oil for combustion units in Allegheny County as a revision to the Pennsylvania SIP.

**IV. Incorporation by Reference**

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Allegheny County's rules regarding sulfur content in commercial fuel oils discussed in Sections I and II of this action. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

**V. Statutory and Executive Order Reviews****A. General Requirements**

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 approves state law as meeting Federal requirements and does not impose 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 Orders 12866 (58 FR 51735,

<sup>1</sup> 62 FR 27968 (May 22, 1997).

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 (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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), 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.

*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 July 1, 2019. 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 which limits the sulfur content in fuel oil used by combustion units in Allegheny County 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, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 18, 2019.

**Diana Esher,**

*Acting Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

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

**Subpart NN—Pennsylvania**

■ 2. In § 52.2020, the table in paragraph (c)(2) is amended by adding:

■ a. Under “Part A—General”, a tenth entry for “2101.20”;

■ b. Under “Part D—Pollutant Emission Standards”, an entry for “2104.10”; and

■ c. Under “Part G—Methods”, an entry for “2107.16”.

The additions read as follows:

**§ 52.2020 Identification of plan.**

*	*	*	*	*
(c)	*	*	*	
(2)	*	*	*	

Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
<b>Part A—General</b>				
2101.20	Definitions	12/08/2017	5/2/2019, [ <i>Insert Federal Register citation</i> ].	Revised and added definitions relating to sale and usage of commercial fuel oil.
<b>Part D—Pollutant Emission Standards</b>				
2104.10	Commercial Fuel Oil	12/08/2017	5/2/2019, [ <i>Insert Federal Register citation</i> ].	
<b>Part G—Methods</b>				

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Article XX or XXI citation	Title/subject	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
* 2107.16 .....	* Sulfur in Fuel Oil .....	* 12/08/2017	* 5/2/2019, [ <i>Insert Federal Register citation</i> ].	* *
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