



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2014-0605; A-1-FRL-9935-31-Region 1]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Sulfur Content of Fuels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island on June 26, 2014, with supplemental submittals on March 25, 2015 and August 28, 2015. This SIP revision includes a regulation that has been revised to require a lower sulfur content for petroleum-based distillate and residual fuel oils. In addition, outdated provisions in the regulation have been removed. The intended effect of this action is to approve this regulation into the Rhode Island SIP. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective **[Insert date 60 days from date of publication in the Federal Register]**, unless EPA receives adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2014-0605 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: mcconnell.robert@epa.gov
3. Fax: (617) 918-0046.
4. Mail: “Docket Identification Number EPA-R01-OAR-2014-0605, Bob McConnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912.
5. Hand Delivery or Courier. Deliver your comments to: Bob McConnell, Acting Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Instructions: Direct your comments to Docket ID No EPA-R01-OAR-2014-0605. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected.

The www.regulations.gov website is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., 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 in www.regulations.gov or in hard copy at U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

In addition, copies of the state submittals are also available for public inspection during normal business hours, by appointment at the State Air Agency; Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908-5767.

FOR FURTHER INFORMATION CONTACT: Anne K. McWilliams, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912, telephone number (617) 918-1697, fax number (617) 918-0697, email mcwilliams.anne@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Rhode Island’s SIP Revision
- III. EPA’s Evaluation of Rhode Island’s SIP Revision
- IV. Final Action
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

I. Background and Purpose

In section 169A(a)(1) of the 1977 Amendments to the Clean Air Act (CAA), Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas¹ which impairment results from manmade air pollution." Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35714), the Regional Haze Rule. The Regional Haze Rule revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas.

On May 22, 2012, EPA approved Rhode Island's initial Regional Haze plan into the SIP. See 77 FR 30214. As part of the Rhode Island Regional Haze Plan, the Rhode Island Department of Environmental Management (RI DEM) stated that it intended to adopt low-sulfur fuel oil requirements.² As discussed in our proposed approval of Rhode Island's Regional Haze Plan, although we encouraged Rhode Island to pursue its stated intention of adopting a low-sulfur fuel oil strategy, this measure was not considered a necessary requirement in order to approve Rhode Island's Regional Haze SIP for the first implementation period. See 77 FR 11798; February 28, 2012.

¹ Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value (44 FR 69122, November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions (42 U.S.C. 7472(a)).

² Sulfates play a major role in the formation of Regional Haze in the Northeast. See the Northeast States for Coordinated Air Use Management (NESCAUM) document *Contributions to Regional Haze in the Northeast and Mid-Atlantic United States*, August 2006.

II. Rhode Island's SIP Revision

On June 26, 2014, with supplemental submittals on March 25, 2015 and August 28, 2015, the RI DEM submitted a SIP revision to EPA. This SIP revision includes Rhode Island's revised Air Pollution Control Regulation No. 8, "Sulfur Content of Fuels," (excluding Section 8.7 "Fuel Supply Shortages" which was not submitted by the State) effective on June 24, 2014. The amended regulation lowers the allowable limits for the sulfur content of petroleum-based distillate and residual fuel oils and removes some outdated provisions. The outdated provisions pertained to emissions bubbling at facilities, conversion and conservation incentives for fuel switching, and twenty-four hour averaging for demonstrating compliance for coal burning devices. The outdated provisions are described in more detail in the next section.

III. EPA's Evaluation of Rhode Island's SIP Revision

RI DEM Regulation No. 8, "Sulfur Content of Fuels," was previously approved into the Rhode Island SIP on January 8, 1986. See 51 FR 755. The SIP-approved rule states that "no person shall store for sale, offer for sale, sell or deliver for use in Rhode Island and no person shall use or store high sulfur fuel." High sulfur fuel oil is defined in the regulation to be "any fuel except fuel oil containing more than 0.55 pounds of sulfur per million Btu (British thermal unit) heat release potential or fuel oil containing more than 1.0 percent sulfur by weight."

The revised rule, effective June 24, 2014, states that no person shall store for sale, offer for sale, sell or deliver for use in Rhode Island and no person shall use any fuel oil having a sulfur content in excess of that in the following table:

Fuel Type	Percent by weight	Effective date(s)
Distillate Oil, Biodiesel or Alternative Fuel	0.5% (5000 parts million (ppm))	Current requirement
Distillate Oil, Biodiesel or Alternative Fuel	0.05% (500 ppm)	July 1, 2014 through June 30, 2018
Distillate Oil, Biodiesel or Alternative Fuel	0.0015% (15 ppm)	On and after July 1, 2018
Residual Oil	1.0%	Current requirement
Residual Oil	0.5%	On and after July 1, 2018

These sulfur content emission limits are more stringent than the previously required 1% limit. In addition, the revised rule maintains the previously SIP-approved requirement that no person shall store for sale, offer for sale, sell or deliver for use in Rhode Island any solid fossil fuel containing more than 0.55 pounds of sulfur per million Btu heat release potential.

An exemption from the requirements of Regulation No. 8 extends to fuel used in combination with an approved stack cleaning process provided that the emissions from the stack are no greater than if the applicable sulfur content fuel were used, fuel used for fuel blending with ultra-low sulfur fuel to meet the applicable standard, and fuel oil which met the applicable requirements when received for storage in Rhode Island.

In addition, the revised rule does not include three flexibilities allowed in the previously SIP-approved rule. Specifically, the following sections are not included in the revised rule: (1) “Emission Bubbling,” whereby a facility with more than one fuel burning device could propose to meet total emission control requirements for a given pollutant through a mix of different control technologies; (2) “Conversion and Conservation Incentive,” which allowed the continued use of high sulfur fuel, for up to 30 months, for select facilities, so that monies saved from the

price differential between high sulfur fuel and low sulfur fuel could be used to finance the necessary modifications or installation of pollution control needed to meet the low sulfur limits; and (3) “Sulfur Variability in Coal,” which established a 24-hour averaging period for demonstrating compliance.

The Clean Air Act (CAA) section 110(*l*) provides that EPA shall not approve any implementation plan revision if it would interfere with any applicable requirement concerning attainment and reasonable progress, or any other applicable requirement of the CAA, i.e. demonstrate anti-backsliding. As noted above, the revised rule contains more stringent emission limits than the SIP-approved rule and does not include some of the flexibilities allowed by the SIP-approved rule. Therefore, the anti-backsliding requirements of section 110(*l*) have been met.

EPA has determined that the approval of Rhode Island’s revised Regulation No. 8, effective June 24, 2014, as submitted by the State, will strengthen the Rhode Island SIP. Therefore, EPA is approving Rhode Island’s June 26, 2014, with supplemental submittals on March 25, 2015 and August 28, 2015, SIP revision.

IV. Final Action

EPA is approving, and incorporating into the Rhode Island SIP, Rhode Island’s revised Air Pollution Control Regulation No. 8 “Sulfur Content of Fuels,” (excluding Section 8.7 “Fuel Supply Shortages” which was not submitted by the State) effective in the State of Rhode Island on June 26, 2014.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed.

This rule will be effective **[Insert date 60 days from date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[Insert date 60 days from date of publication in the Federal Register]** and no further action will be taken on the proposed rule.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[Insert date 60 days from date of publication in the Federal Register]** and no further action will be taken on the proposed rule. Please note that if

EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Rhode Island's Air Pollution Control Regulation No. 8, "Sulfur Content of Fuels," excluding Section 8.7 "Fuel Supply Shortages," as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or 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 Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act 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 Clean Air Act. 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, 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 (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 Clean Air Act; 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 approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of

Indian country, the rule does not have tribal implications and 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).

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).

Under section 307(b)(1) of the Clean Air Act, 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 from 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. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 21, 2015.

H. Curtis Spalding,
Regional Administrator,
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations 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 OO - Rhode Island

2. In § 52.2070, the table in paragraph (c), “EPA-Approved Rhode Island Regulations”, is amended by revising the entry for “Air Pollution Control Regulation 8” to read as follows:

§52.2070 Identification of plan.

* * * * *

(c) * * *

EPA-Approved Rhode Island Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanations
**	*	*	*	**
Air Pollution Control Regulation 8	Sulfur Content of Fuels	6/26/2014	[Insert Federal Register date of publication] [Insert Federal Register citation]	Excluding Section 8.7 “Fuel Supply Shortages” which was not submitted by the State
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