



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2020-0209; FRL-10019-69-Region 1]

Air Plan Approval; New Hampshire; Sulfur Content Limitations for Fuels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire on March 11, 2019. This revision establishes sulfur content limitations for fuels. In addition, the State requests withdrawal from the SIP of the existing sulfur limitations regulation, which will be superseded if and when EPA takes final action on the State's revised sulfur limitations regulation. The intended effect of this action is to propose approval of the State's March 11, 2019 submittal into the New Hampshire SIP. This action is being taken under the Clean Air Act.

DATES: Written 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 No. EPA-R01-OAR-2020-0209 at <https://www.regulations.gov>, or via email to mcwilliams.anne@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, 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, please contact the person identified in the “**For Further Information Contact**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 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 and facility closures due to COVID-19. **FOR FURTHER INFORMATION CONTACT:** Anne McWilliams, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square – Suite 100, (Mail code 05-2), Boston, MA 02109-3912, tel. (617) 918-1697, email mcwilliams.anne@epa.gov.

SUPPLEMENTARY INFORMATION:

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

Table of Contents

- I. Background and Purpose
- II. New Hampshire’s SIP Revision
- III. EPA’s Evaluation of New Hampshire’s SIP Revision
 - a. Liquid Fuels
 - b. Solid Fuels
 - c. Gaseous Fuels
- IV. Proposed Action
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

I. Background and Purpose

New Hampshire's Env-A 400 Sulfur Content Limits of Fuels was approved by EPA as a revision to the New Hampshire SIP on August 14, 1992 (57 FR 36603). Env-A 400 Sulfur Content Limits of Fuels was subsequently renumbered by the state as Env-A 1600 Fuel Specifications (Env-A 1600). Env-A 1600 was submitted to EPA as a revision to the SIP in 2003 with a subsequent amendment submitted in 2015. However, New Hampshire withdrew both submittals prior to EPA action. Effective July 1, 2018, New Hampshire's Revised Statutes Annotated (RSA) 125-C:10-d was amended to reduce the sulfur limits in liquid fuels imported into or distributed within the State. The State's March 11, 2019 SIP submittal of revised Env-A 1600 Fuel Specifications implements the state statute, (RSA) 125-C:10-d as amended.

Env-A 1600 is intended to prevent, abate, and control the use of fuels containing specific pollutant elements and compounds. In conjunction with the submittal of Env-A 1600, on May 22, 2019, the New Hampshire Department of Environmental Services (NH DES) requested removal of Env-A 400 Sulfur Content Limits in Fuels, which currently exists in the New Hampshire SIP but has been superseded as a matter of state law by Env-A 1600. Env-A 400 is now a state regulation unrelated to sulfur limitations in fuels.

II. New Hampshire's SIP Revision

On March 11, 2019, the NH DES submitted a SIP revision to EPA. This SIP revision includes Env-A 1600 Fuel Specifications, with amendments to Env-A 1603 and 1604 Sulfur Content Limitations effective December 21, 2018. The amended Env-A 1603 and 1604 lower the allowable limits for the sulfur content of liquid and solid fuels. The submitted Env-A 1600 removes the provisions of the EPA's previously approved Env-A 400 related to sulfur content requirements for natural gas, as explained below in section III.c.

III. EPA's Evaluation of New Hampshire's SIP Revision

a. Liquid Fuels

The previous SIP-approved Env-A 400 generally allowed for the use of distillate oil (No. 2), No. 4 oil, and residual oil (Nos. 5 and 6) with a sulfur in fuel limit containing 0.4% sulfur by weight, 1% sulfur by weight, and 2% sulfur by weight, respectively.¹ The submitted revised Env-A 1603 prohibits on and after July 1, 2018 the importation of, and prohibits on and after February 1, 2019 the sale or distribution (except for fuel remaining in storage for a device not requiring a permit pursuant to RSA 125-C:11) of, fuels having a sulfur content in excess of the limits contained in Table 1:

Table 1: Revised Sulfur Content of Liquid Fuels

Fuel Type	Percent by weight
No. 2 oil, also referred to as distillate oil	0.0015% (15 parts million (ppm))
No. 4 oil	0.25% (250 ppm)
No. 5 oil or No. 6 oil, also referred to as residual oil	0.5% (500 ppm)

In addition, Env-A 1603, Sulfur Content of Liquid Fuels prohibits the use of subject fuels at a stationary source or unit, and prohibits any person from supplying such fuels, having a sulfur content in excess of that in Table 2:

Table 2: State Approved Sulfur Content of Liquid Fuels

Fuel Type	Percent by weight
JP-4 aviation fuel	0.4% (4000 parts million (ppm))
Aviation gasoline	0.05% (500 ppm)
Kerosene-1 oil	0.04% (400 ppm)
Kerosene-2 oil and Jet A, A-1, B, and JP-8 aviation fuels	0.3% (3000 ppm)
Used oil	2%

Sulfur in fuel limits for these fuel types are not specified in the previously SIP-approved Env-A 400 and therefore this strengthens the SIP.

EPA finds that Env-A 1600 contains fuel sulfur limits which are more stringent than those in the original rule (Env-A 400), and in addition, includes sulfur limits for additional fuels

¹ The residual oil limit for the Androscoggin Valley Air Quality Controls Region was 2.2% by weight.

(kerosene and several grades of aviation fuel) which have not been previously addressed in the SIP.

b. Solid Fuels

For solid fuel, the previous SIP-approved Env-A 400 required the use of coal with a maximum sulfur content of 2.8 pounds sulfur per million BTU gross heat content for existing sources, a three month weighted average of 2.0 pounds sulfur per million BTU for coal received for use in any stationary source for the generation of heat or power, and 1.5 pounds sulfur per million BTU gross heat content for sources placed in operation after April 15, 1970. Env-A 1604 Sulfur Content Limitations for Solid Fuels limits the maximum sulfur content in coal to the following:

Table 3: Revised Sulfur Content of Solid Fuels

	Percent by weight
Coal-burning device placed in operation before April 15, 1970	2.8 pounds per million BTU (lb/MBTU) gross heat content
Coal-burning device placed in operation on or after April 15, 1970	1.5 lb/MBTU gross heat content 1.0 lb/MBTU gross heat content average over any consecutive 3-month period

Env-A 1604 is silent on the previously approved three-month weighted average of 2.0 pounds sulfur per million BTU for coal received for use in any stationary source for the generation of heat or power. However, NH DES's SIP submission points out that current federally approved permit operating conditions for the two stationary sources in the State put into operation prior to April 15, 1970 are more stringent than the previously approved sulfur in coal requirement in Env-A 400.²

c. Gaseous Fuels

SIP-approved Env-A 400 requires that gaseous fuel (natural and manufactured gas) shall contain no more than 5 grains per 100 cubic feet of sulfur, calculated as hydrogen sulfide (H₂S),

² The coal sulfur limit of 2.0 lb sulfur per MMBtu is equivalent to an emission limit of 4.0 lbs SO₂/MMBtu averaged over any consecutive 3-month period. The subject facilities, Merrimack Station and Schiller Station, have federally enforceable SO₂ permit limits of 0.39 lb/MMBtu (7-day rolling average) and 0.83 lb/MMBtu (24-hr calendar average), respectively.

at standard conditions. Env-A 1600 does not include sulfur limits for gaseous fuels. New Hampshire’s SIP submittal points out that the Federal Energy Regulatory Commission (FERC) determines the allowable sulfur content of natural gas in interstate pipelines. In addition, New Hampshire’s SIP submission states that Subchapter C of EPA regulations at 40 CFR 79.55 specifies that propane-based fuel, defined as “gaseous motor vehicle fuel, marketed commercially as liquified petroleum gas (LPG), whose primary constituent is propane” shall have a sulfur limit, including odorant, as specified in the table below. In addition, commercial propane is sold in several grades and each grade has a sulfur content specification (also shown in the table 4 below) as published by the Gas Processor’s Association.

Table 4: Sulfur Content of Gaseous Fuels

Fuel	ppmvd (as S)	gr/100 scf (as H ₂ S)	gr/100 scf (as S)
Natural Gas	338	0.3	20
Natural Gas & Manufactured Gas	338	0.25	20
EPA 40 CFR 79.55 Table F94-B Propane Based Fuel Specifications			7.7
GPA HD-5 Propane (industry standard)	169	10	10
Commercial Propane (industry standard)	254	15	15

Section 110(l) of the Clean Air Act provides that EPA shall not approve any implementation plan revision if it would interfere with any applicable requirements concerning attainment and reasonable progress, or any other applicable requirement of the CAA. As noted above, Env-A 1600 as a whole contains more stringent sulfur in fuel limits than the current SIP-approved rule (Env-A 400). Even though Env-A 1600 does not contain limits for sulfur in gaseous fuels (HD-5 Propane and Commercial Propane), the lowering of the allowed sulfur in fuel content of the solid and liquid fuels will result in an overall reduction in the sulfur content of fuels. Therefore, EPA is proposing to find that the requirements of section 110(l) have been met.

The rule contains a provision whereby the State may, upon application, allow suppliers to defer compliance with sulfur content emission limits of the rule during fuel supply shortages, provided that compliance is not deferred for more than 90 days. Additional requests to defer

compliance may be made if the supply shortage continues longer than 90 days. The regulation requires the supplier to: (1) describe efforts made to obtain compliant fuel, (2) indicate how much compliant fuel the supplier has at the time of the request, and (3) provide an estimate of the duration of the shortage. The rule requires that the State confer with EPA upon receipt of a deferral request. In addition, the rule requires that the State notify EPA within 5 days of issuing an order deferring compliance.

In a letter dated November 20, 2020, NH DES provided additional information on the possible impact of granting a deferral request during a supply shortage.³ NH DES conservatively estimated that the granting of a temporary statewide sulfur in fuel deferral would only increase the SO₂ emissions by an average of 1.9 lb SO₂ per square mile per day. NH DES further clarifies that the adoption of the low sulfur in fuels limits is SIP strengthening and considered one component of the State's Regional Haze strategy. Based on modeling conducted in support of regional haze plan development, a temporary deferral of the sulfur in fuel requirements would not cause significant degradation of visibility. Finally, NH DES highlighted the establishment of the Department of Energy Northeast Home Heating Oil Reserve (NEHHOR), a one-million-barrel supply of ultra-low sulfur distillate which can be released should a disruption in supply occur.⁴

Since (1) the supplier must demonstrate that certain conditions are met, (2) the deferral of the emission limits may not be permanent or open-ended, (3) such deferral requires notification to EPA, (4) such a temporarily deferral will not result in a significant increase in SO₂ emissions or visibility impairment, and (5) the unlikelihood of such a request due to the NEHHOR, we propose to find the provision approvable.

IV. Proposed Action

³ The NH DES letter dated November 20, 2020, signed by Craig A. Wright is included in the docket for this rulemaking.

⁴ <https://www.energy.gov/fe/services/petroleum-resrves/heating-oil-reserves> as visited on July 8, 2020.

EPA is proposing to approve Env-A 1600, Fuel Specifications, which was submitted to EPA by New Hampshire on March 11, 2019. In addition, EPA is proposing to remove previously SIP approved Env-400, Sulfur Content of Fuels, which has been superseded by Env-A 1600 as a matter of state law. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference New Hampshire's regulation Env-A 1600 Fuel Specifications as discussed in section III. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). EPA is also proposing to remove provisions of Env-A 400 Sulfur Content Limit in Fuels, approved August 14, 1992 (57 FR 36603) from the New Hampshire State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

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 proposed 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 proposed 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);
- Is not expected to be an Executive Order 13771 regulatory action because this action is not significant 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 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).

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: February 3, 2021.

Deborah Szaro,
Acting Regional Administrator,
EPA Region 1.

[FR Doc. 2021-02535 Filed: 2/5/2021 8:45 am; Publication Date: 2/8/2021]