



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2015-0471; A-1-FRL-9943-06-Region 1]

Air Plan Approval; Connecticut; Open Burning and Portable Fuel Containers.

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 Connecticut on November 19, 2012. We are approving Connecticut's request to remove two regulations from its SIP that regulate "open burning" and "portable fuel container spillage control." In place of the open burning regulation, we are approving into the Connecticut SIP a Connecticut statute that controls open burning. We are also approving a definition of "brush," which was included in a December 14, 2015 SIP submittal by Connecticut to meet infrastructure requirements of the Clean Air Act for the 2012 fine particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The requirements in the Connecticut portable fuel container regulation have been superseded by federal portable fuel container requirements. 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-2015-0471 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. E-mail: arnold.anne@epa.gov
3. Fax: (617) 918-0047.
4. Mail: "Docket Identification Number EPA-R01-OAR-2015-0471," Anne Arnold, 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: Anne Arnold, 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-2015-0471. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://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 <http://www.regulations.gov>, or e-mail, information that you consider to be CBI or otherwise protected. The <http://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 <http://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 <http://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 at <http://www.regulations.gov> or 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 submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency: the Bureau of Air Management, Department of Energy and Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106-1630.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Planning 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) 918-1684, fax number (617) 918-0684, email simcox.alison@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. EPA's Evaluation of Connecticut's SIP Revisions.

III. Final Action.

IV. Incorporation by Reference.

V. Statutory and Executive Order Reviews.

I. Background and Purpose.

On November 19, 2012, the State of Connecticut submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of a request to remove two regulations from its SIP that regulate open burning (Regulations of Connecticut State Agencies (RCSA) section 22a-174-17 (formerly section 19-508-17) and "portable fuel container spillage control" (RCSA section 22a-174-43), and to add into the SIP a statute, Connecticut General Statutes (CGS) section 22a-174(f), that regulates open burning.

Open burning

Connecticut adopted regulations to control open burning in 1972. On May 31, 1972, EPA approved RCSA section 19-508-17 "Control of Open Burning" into the Connecticut SIP (37 FR 10842). In 1983, the state re-codified section 19-508-17 as section 22a-174-17 and, subsequently, adopted revisions to CGS section 22a-174(f) to control open burning, effective March 30, 2000. Connecticut intended that the statute supersede the regulation. Although CGS section 22a-174(f) authorizes the Connecticut Department of Energy and Environmental Protection (CT DEEP) to adopt regulations to control open burning, the agency did not adopt a

new regulation and, instead, enforces CGS section 22a-174(f) as the state's sole authority for regulation of open burning.

On September 27, 2011, CT DEEP proposed to repeal RCSA section 22a-174-17 and held a public hearing on November 9, 2011. CT DEEP repealed RCSA section 22a-174-17, effective on September 10, 2012. On November 19, 2012, CT DEEP submitted a SIP revision to EPA to remove RCSA section 19-508-17 "Control of Open Burning" from the Connecticut SIP and to replace it with a Connecticut statute, CGS section 22a-174(f). Because implementation of this statute depends on having a definition of "brush," Connecticut included a definition of this term in its December 14, 2015 SIP submittal to meet infrastructure requirements of the Clean Air Act for the 2012 fine particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS).

Portable fuel container spillage

Connecticut adopted regulations to control portable fuel container spillage in 2004. On August 31, 2006, EPA approved RCSA section 22a-174-43 "Portable Fuel Container Spillage Control" into the Connecticut SIP (71 FR 51761). In 2007, EPA issued a regulation entitled "Control of Hazardous Air Pollutants from Mobile Sources" (72 FR 8428), which included new federal requirements for portable fuel containers. See 40 CFR Part 59, Subpart F "Control of Evaporative Emissions from New and In-Use Portable Fuel Containers."

On September 27, 2011, the CT DEEP proposed to repeal RCSA section 22a-174-43 "Portable Fuel Container Spillage Control" and held a public hearing on November 9, 2011. CT DEEP repealed RCSA section 22a-174-43, effective on September 10, 2012. On November 19,

2012, CT DEEP submitted a SIP revision to EPA to remove RCSA section 22a-174-43 “Portable Fuel Container Spillage Control” from the Connecticut SIP.

II. EPA’s Evaluation of Connecticut’s SIP Revisions.

Open burning

The open burning rule, RCSA section 19-508-17, which is currently in the Connecticut SIP, identifies the types of open fires that are allowed within state boundaries, and the types of fires that require a written certificate from the Commissioner. Open fires that are allowed include barbecues or other outdoor open fires for cooking food; campfires, bonfires, and other fires for ceremonial or recreational purposes; fires to abate a fire hazard as directed by a responsible fire official; fires in devices used by construction or other workers for heating purposes; and small fires needed for activities such as street installation or paving activities and repairing utilities.

Fires that require a written certificate from the Commissioner include fires for fire-fighting training; fires for preventing or controlling diseases or pests, including agricultural diseases and pests; agricultural burning for vegetation management; fires for the disposal of dangerous materials where no reasonable alternative disposal method is available; and other fires which the Commissioner determines are necessary for protection of public health.

CGS section 22a-174(f) allows local open-burning officials to issue permits for open burning on residential property and for fire training, insect control, agricultural purposes, natural disaster clean-up, wildlife habitat and vegetative management and ecological sustainability. It

also allows officials to issue permits for open burning of brush in municipal landfills, transfer stations and municipal recycling centers. Open burning of brush is not allowed when national or state air quality standards may be exceeded, where it may create a hazardous health condition, when forest fire danger is extreme, where woodland or grass land is within 100 feet of the proposed burn, or where prohibited by municipal ordinance. Burning of leaves, demolition waste or other solid waste in municipal landfills is also prohibited. The statute also establishes a process for certifying local open burning officials.

Based on a comparison of provisions in SIP-approved RCSA section 19-508-17 and CGS section 22a-174(f), EPA has determined that the statute is at least as stringent as the regulation except in one regard. CGS section 22a-174(f) includes the term “brush,” but does not include a definition of this term. Instead of including the definition of brush in the statute, Connecticut added “brush” to RCSA section 22a-174-1 (definitions), effective February 1, 2010: “Brush” means shrubs, vegetation or prunings, the diameter of which is not greater than three inches at the widest point.” Connecticut included this definition as contained in RCSA section 22a-174-1(19) as part of the state’s December 14, 2015 SIP submittal for infrastructure requirements for the 2012 PM_{2.5} NAAQS. Therefore, EPA has determined that removing RCSA section 19-508-17 from the Connecticut SIP and replacing it with CGS section 22a-174(f) is consistent with the Clean Air Act section 110(l) anti-backsliding requirements. Accordingly, EPA is approving: (1) the removal of RSCA section 19-508-17 from the Connecticut SIP; (2) the addition of CGS section 22a-174(f), submitted on November 19, 2012, into the Connecticut SIP; and (3) the addition of the definition of “brush” in RSCA section 22a-174-1, submitted on December 14, 2015, into the Connecticut SIP.

Portable fuel container spillage

The regulation that controls portable fuel container spillage presently in the Connecticut SIP, RCSA section 22a-174-43, was adopted by the state in 2004, and applies to any person who sells, supplies, offers for sale, or manufactures a portable fuel container or spout for use in Connecticut. In 2007, EPA promulgated national evaporative emission standards for portable fuel containers. EPA's regulation prohibits manufacturers or importers from selling, offering for sale, introducing or delivering for introduction into commerce in the United States, or importing, any new portable fuel container that is subject to the emissions standards of the regulation and is manufactured after December 31, 2008, unless it is covered by a valid certificate of conformity, it is labeled as required, and it complies with all of the applicable requirements of the regulation, including compliance with the emissions standards for its useful life. After June 30, 2009, no manufacturer or importer may sell, offer for sale, introduce or deliver into commerce in the United States, or import any new portable fuel container that was manufactured prior to January 1, 2009 unless it meets the requirements of the regulation.

EPA's regulation also prohibits wholesale distributors from selling, offering for sale, or distributing any portable fuel container in the United States that is subject to the emissions standards of the regulation and is manufactured after December 31, 2008, unless it is covered by a valid certificate of conformity and is labeled as required. After December 31, 2009, no wholesale distributor may sell, offer for sale, or distribute in the United States any portable fuel container that was manufactured prior to January 1, 2009 unless it meets all of the requirements

of the regulation. After December 31, 2009, all new portable fuel containers shall be deemed to be manufactured after December 31, 2008 unless they are in retail inventory.

Even though the applicability date for SIP-approved RCSA section 22a-174-43 is earlier, May 1, 2004, all fuel containers must now (in the year 2016 and beyond) meet the federal regulation, which is as stringent as RCSA section 22a-174-43. Therefore, EPA has determined that removal of RCSA section 22a-174-43 from the Connecticut SIP is consistent with the Clean Air Act section 110(l) anti-backsliding requirements and is approvable.

IV. FINAL ACTION.

EPA is approving Connecticut's request, submitted to EPA on November 19, 2012, to remove from the Connecticut SIP RCSA section 19-508-17 "Control of Open Burning" and section 22a-174-43 "Portable Fuel Container Spillage Control." We are also incorporating into the Connecticut SIP the following Connecticut statute which was included in the November 19, 2012 submittal: Connecticut General Statute, Title 446c, Section 22a-174 (Formerly Sec. 19-508) "Powers of the commissioner. Regulations. Fees. Exemptions. General permits. Appeal of commissioner's action re permit applications," (f) "Open Burning," effective March 30, 2000. In addition, EPA is approving the definition of "brush" as contained in RCSA section 22a-174-1, which was included in Connecticut's December 14, 2015 submittal to meet infrastructure requirements under sections 110(a)(1) and 110(a)(2) of the Clean Air Act for the 2012 PM_{2.5} NAAQS.

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. 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 Connecticut General Statute, Title 446c, Section 22a-174 (Formerly Sec. 19-

508) “Powers of the commissioner. Regulations. Fees. Exemptions. General permits. Appeal of commissioner’s action re permit applications,” (f) “Open burning,” effective March 30, 2000, as published in the General Statutes of Connecticut, revision of 1958, revised to January 1, 2015, volume 8, described in the amendments to 40 CFR part 52 set forth below. EPA is also finalizing the incorporation by reference of RCSA section 22a-174-1(19) “brush,” effective February 1, 2010, as published in the State of Connecticut General Statutes, revised to January 1, 2015, described in the amendments to 40 CFR part 52 set forth below. Note that the definition for paragraph (19) in the statute that is incorporated by reference is the same as the definition that became effective in Connecticut on February 1, 2010. The EPA has made, and will continue to make, these documents generally available electronically through <http://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 of this document 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 today's **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: February 4, 2016.

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 - [AMENDED]

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

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

Subpart H - Connecticut

2. Section 52.370 is amended by:

- a. Removing and reserving paragraph (c)(95)(i)(C); and
- b. Adding paragraph (c)(113).

The addition reads as follows:

§ 52.370 Identification of plan

* * * * *

(c) * * *

(113) Revisions to the State Implementation Plan submitted by the Connecticut Department of Energy and Environmental Protection on November 19, 2012 and December 14, 2015.

(i) Incorporation by reference.

(A) Section 19-508-17, “Control of Open Burning,” which was approved in the March 1972 plan (see paragraph (b)) is removed and replaced with the following:

(1) Connecticut General Statute, Title 22A “Environmental Protection,” Chapter 446c “Air Pollution Control,” Section 22a-174 “(Formerly Sec. 19-508). Powers of the commissioner. Regulations. Fees. Exemptions. General permits. Appeal of commissioner’s action re permit applications,” paragraph (f), effective March 30, 2000, as published in the General Statutes of Connecticut, revision of 1958, revised to January 1, 2015, volume 8.

(2) Regulations of Connecticut State Agencies (RCSA) section 22a-174-1 entitled “Definitions,” revisions to Section 22a-174-1(19), as published in the Connecticut Law Journal on July 1, 2014.

(B) [Reserved]

(ii) Additional materials. [Reserved]

3. In § 52.385, Table 52.385 is amended by adding entries to existing state citations for 22a-174-1, 22a-174-17, and 22a-174-43; and adding an entry for CGS Section 22a-174(f) to read as follows:

§ 52.385 - EPA-approved Connecticut regulations.

* * * * *

Table 52.385 - EPA-Approved Regulations

| Connecticut State citation | Title/subject | Dates | | Federal Register citation | Section 52.370 | Comments/description |
|-----------------------------------|----------------------|------------------------------|--|--|-----------------------|--|
| | | Date adopted by State | Date approved by EPA | | | |
| * | * | * | * | * | * | * |
| 22a-174-1 | Definitions | 2/1/10 | [Insert <u>Federal Register</u> publication date] | [Insert <u>Federal Register</u> citation] | (c)(113) | Approved 22a-174-1(19) definition of “brush” for purposes of Connecticut General Statutes (CGS) Section 22a-174(f); see paragraph (c)(113)(A) of this section. |
| * | * | * | * | * | * | * |

| | | | | | | |
|---------------------------------------|---|---------|---|---|---------|---|
| 22a-174-17 (formerly 19-508-17) | Control of Open Burning | 4/4/72 | [Insert Federal Register publication date] | [Insert Federal Register citation] | (b)(2) | DEEP regulation to control open burning. Paragraph (b) was revised [Insert Federal Register publication date] by redesignating paragraph (b) as (b)(1) and adding paragraph (b)(2) to read as follows: This rule, formerly known as Section 19-508-17, which was approved in paragraph (b)(1), is removed from the SIP and replaced by Connecticut General Statute (CGS) section 22a-174(f) and RCSA section 22a-174-1(19); see paragraph (c)(113)(A) of this section. |
| * | * | * | * | * | * | * |
| 22a-174-43 | Portable Fuel Container Spillage Control | 5/10/04 | [Insert Federal Register publication date] | [Insert Federal Register citation] | (c)(95) | DEEP regulation to control portable fuel container spillage. Paragraph (c)(95) was revised [Insert Federal Register publication date] by removing and reserving paragraph (c)(95)(i)(C). |
| * | * | * | * | * | * | * |

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|--|--|---------|---|---|----------|---|
| Connecticut General Statute, Title 446c, Section 22a-174(f) | Powers of the commissioner. Open Burning. | 3/30/00 | [Insert Federal Register publication date] | [Insert Federal Register citation] | (c)(113) | Control of open burning; see paragraph (c)(113)(A) of this section. |
|--|--|---------|---|---|----------|---|

[FR Doc. 2016-21012 Filed: 8/31/2016 8:45 am; Publication Date: 9/1/2016]