



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R01-OAR-2017-0150; FRL-9965-92-Region 1]**

**Air Plan Approval; Connecticut; Nonattainment New Source Review Permit Requirements for the 2008 8-Hour Ozone Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve the state implementation plan (SIP) revision submitted on March 9, 2017, by the State of Connecticut, through the Connecticut Department of Energy and Environmental Protection (CT DEEP), addressing the nonattainment new source review (NNSR) requirements for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). The SIP revision addresses both of Connecticut's ozone nonattainment areas for the 2008 ozone NAAQS; the Greater Connecticut area and the Connecticut portion of the New York-N. New Jersey-Long Island, NY-NJ-CT area. The Connecticut portion of the New York-N. New Jersey-Long Island, NY-NJ-CT ozone nonattainment area consists of Fairfield, New Haven, and Middlesex counties. The Greater Connecticut nonattainment area includes the rest of the State. This action is being taken pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

**DATES:** This direct final rule is effective **[Insert date 60 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse comments by **[Insert date 30 days after publication in the Federal Register]**. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the

public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2017-0150 at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. 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. 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912. Mr. Dahl’s telephone number is (617) 918–1657; email address: *dahl.donald@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. Analysis of Connecticut's Nonattainment New Source Review Requirements
- III. Final Action
- IV. Statutory and Executive Order Reviews

## **I. Background and Purpose**

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR 50.15, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. The two Connecticut areas were designated nonattainment for the 2008 8-hour ozone NAAQS on April 30, 2012 (effective July 20, 2012) using 2009-2011 ambient air quality data. *See* 77 FR 30088 (May 21, 2012). At the time of designation, both Connecticut areas were classified as marginal nonattainment areas. On March 6, 2015, EPA issued a final rule entitled, "Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements" (SIP Requirements Rule), which establishes the requirements that state, tribal, and local air quality

management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2008 8-hour ozone NAAQS.<sup>1</sup> *See* 80 FR 12264. Areas that were designated as marginal ozone nonattainment areas were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015, based on 2012-2014 monitoring data. *See* 40 CFR 51.1103. The Connecticut areas did not attain the 2008 8-hour ozone NAAQS by July 20, 2015, and therefore on April 11, 2016, the EPA Administrator signed a final rule reclassifying both Connecticut areas from marginal nonattainment areas to moderate nonattainment areas for the 2008 8-hour ozone standard. *See* 81 FR 26697 (May 4, 2016). Moderate areas are required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2018, six years after the effective date of the initial nonattainment designations. *See* 40 CFR 51.1103.

Based on the initial nonattainment designation for the 2008 8-hour ozone standard, Connecticut was required to develop a SIP revision addressing certain CAA requirements for both nonattainment areas. One component of that was a SIP addressing nonattainment new source review. *See* 40 CFR 51.1114. On March 9, 2017, Connecticut submitted a SIP revision addressing the NNSR requirements related to the 2008 8-hour ozone NAAQS for both nonattainment areas.<sup>2</sup> EPA's analysis of how this SIP revision addresses the NNSR requirements

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<sup>1</sup> The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

<sup>2</sup> States have three years after the effective date of designation for the 2008 8-hour ozone NAAQS to submit SIP revisions addressing NNSR for their nonattainment areas. *See* 40 CFR 51.1114. Connecticut's SIP revision certified that its SIP-approved state regulation addressing nonattainment new source review for all new stationary sources and modified existing stationary sources in the State exceeds the requirements of section 182(a)(2)(C) for the 2008 8-hour ozone NAAQS. However, EPA does not believe that the two-year deadline contained in CAA section 182(a)(2)(C) applies to NNSR SIP revisions for implementing the 8-hour ozone NAAQS. *See* 80 FR 12264, 12267 (March 6, 2015); 70 FR 71612, 71683 (November 29, 2005). The submission of NNSR SIPs due on November 15, 1992, satisfied the requirement for states to submit NNSR SIP revisions to meet the requirements of CAA sections 172(c)(5) and 173 within two years after the date of enactment of the 1990 CAA Amendments. *Id.*

for the 2008 8-hour ozone NAAQS is provided below.

## **II. Analysis of Connecticut's Nonattainment New Source Review Requirements**

The minimum SIP requirements for NNSR permitting programs for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.165. These NNSR program requirements include those promulgated in the "Phase 2 Rule" implementing the 1997 8-hour ozone NAAQS (70 FR 71612 (November 29, 2005)) and the SIP Requirements Rule implementing the 2008 8-hour ozone NAAQS. Under the Phase 2 Rule, the SIP for each ozone nonattainment area must contain NNSR provisions that: set major source thresholds for NO<sub>x</sub> and VOC pursuant to 40 CFR 51.165(a)(1)(iv)(A)(1)(i) through (iv) and (a)(1)(iv)(A)(2); classify physical changes at a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); consider any significant net emissions increase of NO<sub>x</sub> as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); consider increases of VOC emissions in extreme ozone nonattainment areas as significant net emissions increases and major modifications for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); set significant emissions rates for VOC and NO<sub>x</sub> as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A) through (C) and (E); contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(1) and (2); provide that the requirements applicable to VOC also apply to NO<sub>x</sub> pursuant to 40 CFR 51.165(a)(8); and set offset ratios for VOC and NO<sub>x</sub> pursuant to 40 CFR 51.165(a)(9)(i) through (iii) (renumbered as (a)(9)(ii) through (iv) under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS). Under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS, the SIP for each ozone nonattainment area designated nonattainment for the 2008 8-hour ozone NAAQS and designated nonattainment for the 1997

ozone NAAQS on April 6, 2015, must also contain NNSR provisions that include the anti-backsliding requirements at 40 CFR 51.1105.

Connecticut's longstanding SIP-approved NNSR program, established in Regulations of Connecticut State Agencies (RCSA) Sections 22a-174-1 (definitions), and 22a-174-3a (applicability and substantive requirements) applies to the construction and modification of stationary sources, including major stationary sources in nonattainment areas. In its SIP revision, Connecticut certifies that the version of RCSA Sections 22a-174-1 and 22a-174-3a in the current SIP meet the federal NNSR requirements for both ozone nonattainment areas within Connecticut. EPA last approved revisions to the SIP-approved version of Connecticut's NNSR rule in 2015 addressing, among other things, the NNSR requirements that apply when a major source or major modification causes a significant impact in an area that is violating the PM<sub>2.5</sub> ambient air quality standard.

Connecticut's SIP-approved NNSR regulation retains the NNSR requirements applicable to serious and severe nonattainment areas, even though the two nonattainment areas in the State are now classified as moderate nonattainment under the 2008 8-hour ozone NAAQS. Connecticut's SIP-approved NNSR regulation defines the term "Severe nonattainment area for ozone" as including the cities and towns that were historically part of the severe New York-N. New Jersey-Long Island, NY-NJ-CT ozone nonattainment area designated on November 15, 1990 for the 1-hr ozone NAAQS. The term "Serious nonattainment area for ozone" is defined to include "all towns within the State of Connecticut, except those towns located in the severe non-attainment area for ozone." This is the portion of the State that was historically part of the serious Greater Connecticut nonattainment area designated on November 15, 1990 for the 1-hr ozone NAAQS.

The SIP's definition of "Major stationary source" then uses these terms to define the NO<sub>x</sub> and VOC emission thresholds when determining if a source is major for ozone. The SIP's major stationary source threshold for NO<sub>x</sub> and VOC in the area defined as a "Severe nonattainment area for ozone" is 25 tons per year. The SIP's major stationary source threshold for NO<sub>x</sub> and VOC in the area defined as a "Serious nonattainment area for ozone" is 50 tons per year. These thresholds for NO<sub>x</sub> and VOC are consistent with EPA regulations.

Connecticut's NNSR SIP also properly addresses the thresholds for VOC and NO<sub>x</sub>, as precursors to ozone, in the definition of "Major modification" by establishing the threshold for either of these ozone precursors at 25 tons per year. This threshold for a major modification is consistent with EPA regulations. Lastly, since Connecticut's NNSR SIP retains the definitions "Serious nonattainment area for ozone" and "Severe nonattainment area for ozone" that are based on how the State was designated nonattainment on November 15, 1990 for the 1-hr ozone standard, the State's SIP meets the anti-backsliding requirements.

### **III. Final Action**

EPA is approving Connecticut's March 9, 2017, SIP revision addressing the NNSR requirements for the 2008 8-hour ozone NAAQS for both nonattainment areas in the State. The approval encompasses both the original designations under the 2008 8-hour ozone NAAQS of marginal and the subsequent reclassification of both nonattainment areas to moderate. The approval also includes the applicable NNSR provisions of Connecticut's regulations that satisfy the CAA's anti-backsliding requirements. As discussed above in this notice, Connecticut's SIP retains the NNSR requirements applicable to serious and severe nonattainment areas, even

though the two nonattainment areas in the State are now classified as moderate nonattainment areas. EPA has concluded that the State's submission fulfills the 40 CFR 51.1114 revision requirement and meets the requirements of CAA section 110 and the minimum SIP requirements of 40 CFR 51.165.

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 after date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days after 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 after 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.

In addition, Connecticut was issued a finding of failure to submit, which started an 18 month

sanctions clock and a 24 month Federal Implementation Plan (FIP) clock. *See* 82 FR 9158 (February 3, 2017). The 18 month sanctions clock was stopped when Connecticut submitted the SIP and we determined it complete on April 19, 2017. The 24 month FIP clock will stop upon the effective date of our final approval, **[Insert date 60 days after date of publication in the Federal Register]**.

#### **IV. 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 after 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 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 24, 2017.

Deborah A. Szaro,  
Acting Regional Administrator,  
EPA New England

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 H - Connecticut**

2. Section 52.377 is amended by adding paragraph (r) to read as follows:

**§52.377 Control strategy: Ozone.**

\* \* \* \* \*

(r) *Approval.* Submittal from the Connecticut Department of Energy and Environmental Protection dated March 9, 2017, to address the nonattainment new source review requirements for the 2008 8-hour ozone NAAQS for the Greater Connecticut and the New York-N. New Jersey-Long Island, NY-NJ-CT ozone nonattainment areas, as it meets the requirements for both the State's marginal and moderate classifications.

[FR Doc. 2017-17021 Filed: 8/11/2017 8:45 am; Publication Date: 8/14/2017]