



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 70

[EPA-R01-OAR-2023-0353; FRL- 11161-01-R1]

Air Plan Approval and Operating Permit Program Approval; Connecticut; Revision to Definitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revised definition in the State Implementation Plan (SIP) and the Title V Operating Permit Program for the State of Connecticut. On June 9, 2023, the Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted to EPA a request to parallel process recently proposed revisions to the state’s definition of “severe non-attainment area for ozone” for inclusion in the EPA-approved SIP and Title V Operating Permit Program. The revision is necessary to fully implement these programs based on a nonattainment reclassification to a portion of Connecticut for the 2008 ozone National Ambient Air Quality Standard. EPA is approving these revisions pursuant to the CAA and implementing federal regulations.

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-2023-0353 at <https://www.regulations.gov>, or via email to bird.patrick@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 <https://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: Patrick Bird, Air and Radiation Division, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square - Suite 100, (Mail code 5-MO), Boston, MA 02109 - 3912, tel. (617) 918-1287, email bird.patrick@epa.gov

SUPPLEMENTARY INFORMATION:

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

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I. Background

On October 7, 2022, EPA published a final rule to reclassify, among other areas, the southwest Connecticut ozone nonattainment area to severe nonattainment from serious nonattainment based on the area's inability to attain the 2008 ozone National Ambient Air Quality Standard (NAAQS) by the attainment date (87 FR 60926).

Connecticut regulations define nonattainment areas in a geographic manner. The current definition of "severe non-attainment area for ozone," as found in 22a-174-1 of the Regulations of Connecticut State Agencies (RCSA), is based on the nonattainment area designation under the 1-hour ozone NAAQS of 1979. The area includes all towns and cities in Fairfield County, except the town of Shelton, and two towns in Litchfield County (Bridgewater and New Milford). The current definition of "serious non-attainment area for ozone," as found in RCSA 22a-174-1, "means all towns within the State of Connecticut, except those towns located in the severe non-attainment area for ozone."

The southwest Connecticut ozone nonattainment area for the 2008 ozone NAAQS is larger than the older area associated with the 1979 ozone NAAQS, and it includes all of Fairfield County, New Haven County, and Middlesex County.

On March 20, 2023, CT DEEP proposed changes to the definition of "severe non-attainment area for ozone" within RCSA 22a-174-1. A public comment period was open through May 10, 2023. The proposed change to the definition expanded the list of cities and towns included in the existing definition, including all cities and towns in New Haven County and Middlesex County.

CT DEEP retained the two towns in Litchfield County to ensure consistency in the severe classification requirements in these communities and to comply with section 193 of the CAA which prohibits any control measure in effect in a nonattainment area prior to the enactment of the CAA Amendments of 1990 to be modified after enactment, unless such modification yields equivalent or greater emission reductions.

II. Impacts on Reasonably Available Control Technology, New Source Review and Title V Programs

Changes in an area's ozone nonattainment classification impact, among other things, the tons per year threshold for major stationary sources. Consistent with section 182(d) of the CAA, upon the effective date of the reclassification, a major source for all severe nonattainment areas, including the southwest Connecticut ozone nonattainment area, was defined as any stationary source that emits, or has the potential to emit, at least 25 tons per year of nitrogen oxides or volatile organic compounds. Given the way in which Connecticut's definitions and regulatory programs are structured, the reclassification from serious to severe nonattainment creates a programmatic gap between the federal major source threshold and the state major source threshold in portions of the southwest Connecticut ozone nonattainment area.

Connecticut regulations incorporate the definition of "severe non-attainment area for ozone" and "serious non-attainment area for ozone" into several key definitions and program requirements that guide determinations of applicability to programs such as reasonably available control technology (RACT), the New Source Review preconstruction permitting program and the Title V operating permitting program, as well as prohibitory rules that limit a source's potential to emit to below Title V permitting thresholds.

Sections 172(c)(1) and 182(b)(2) of the CAA require states to implement RACT in areas classified as moderate (and higher) non-attainment for ozone, while section 184(b)(1)(B) of the Act requires RACT in states located in the Ozone Transport Region. Specifically, these areas are

required to implement RACT for all major stationary sources of nitrogen oxides and volatile organic compounds, and for all sources covered by a Control Techniques Guideline. EPA approved Connecticut's RACT regulations into the SIP for volatile organic compounds at RCSA 22a-174-32 and for nitrogen oxides at RCSA 22a-174-22. The applicability of these RACT regulations relies, in part, on the definitions of "severe non-attainment area for ozone" and "serious non-attainment area for ozone" within RCSA 22a-174-1. Therefore, revisions to the geographic scope of those definitions impact how RCSA 22a-174-22 and RCSA 22a-174-32 are implemented.

Connecticut's New Source Review program is federally enforceable through EPA's approval of applicable regulations into the Connecticut SIP. EPA last approved New Source Review SIP elements on February 15, 2019 (84 FR 4338). Within Connecticut's rules, a "major stationary source," as defined at RCSA 22a-174-1, includes, "[a] stationary source that emits or has the potential to emit twenty-five (25) tons per year of volatile organic compounds or nitrogen oxides as an ozone precursor in any severe ozone nonattainment area" and "[a] stationary source that emits or has the potential to emit fifty (50) tons per year of volatile organic compounds or nitrogen oxides as an ozone precursor in any serious ozone nonattainment area."

Connecticut's New Source Review permitting program relies on the definition of "major stationary source" within the applicability sections of the state's prevention of significant deterioration program at RCSA 22a-174-3a(k) and nonattainment New Source Review program at RCSA 22a-174-3a(l). Therefore, the thresholds within the definition of "major stationary source," and that term's inclusion in the applicability sections of the state's New Source Review programs, directly rely on the geographic-specific definitions of "severe non-attainment area for ozone" and "serious non-attainment area for ozone" within RCSA 22a-174-1.

Connecticut's Title V program is an EPA-approved operating permits program under 40 CFR Part 70. See the y on the geographic-specific definitions of "severe non-attainment area for ozone" and "serious non-attainment area for ozone" within RCSA 22a-174-1.

Connecticut also has two EPA-approved prohibitory rules that limit sources' potential to emit to below Title V thresholds. RCSA 22a-174-33a and 22a-174-33b were approved by EPA on March 11, 2022 (87 FR 13936) and provide a mechanism for Connecticut sources to comply with legally and practicably enforceable limits to levels 50% or 80% of the Title V thresholds for regulated NSR pollutants or hazardous air pollutants. RCSA 22a-174-33a and 22a-174-33b both define "Title V source thresholds" to mean the tons per year levels in the definition of "Title V source," as found in the state's Title V operating permit program at RCSA 22a-174-33. Again, through reliance on the terms "severe non-attainment area for ozone" and "serious non-attainment area for ozone," the geographic scope of those definitions impact how RCSA 22a-174-33a and 22a-174-33b are implemented.

III. Review of CT DEEP's Submittal

On June 9, 2023, CT DEEP submitted to EPA a revised version of the definition of "severe non-attainment area for ozone" within RCSA 22a-174-1 for approval into the SIP and as a program revision to the state's Title V operating permitting program. The proposed definition includes all cities and towns in Fairfield County, New Haven County, Middlesex County and the towns of Bridgewater and New Milford of Litchfield County.

The definition is consistent with what was proposed at the state level on March 20, 2023. At the time of state proposal, EPA reviewed the RACT, New Source Review, Title V, and applicable prohibitory rules to determine if any other regulatory revisions were needed to satisfy the immediate impacts related to the programmatic gap between the federal major source threshold and the state major source threshold in portions of the southwest Connecticut ozone nonattainment area due to the reclassification of the area to severe nonattainment. As described in sections I. and II. of this notice, the terms "severe non-attainment area for ozone" and "serious non-attainment area for ozone" are applicable within several sections of the state's rules, and EPA concluded that by revising the definition of "severe non-attainment area for ozone" within

RCSA 22a-174-1, several programs would be immediately compliant with the federal major source threshold as part of EPA's reclassification of the southwest Connecticut ozone nonattainment area to severe nonattainment.

IV. Parallel Processing

In CT DEEP's June 9, 2023 submittal, the state requested parallel processing of the revised definition of "severe non-attainment area for ozone" within RCSA 22a-174-1 for approval within the Connecticut SIP and as a Title V program revision. Under this procedure, EPA would propose for approval the revision before the state's final adoption of the definition. Given the significance of this revision on several important CAA programs, we see the value in proceeding with parallel processing. Connecticut has also indicated that no comments were submitted concerning the definition of "severe non-attainment area for ozone" during the public comment period for the state rulemaking. Connecticut has indicated that it plans to have a final adopted regulation by October or November of 2023. After Connecticut submits its final adopted regulation, EPA will review the regulation to determine whether it differs from the proposed regulation submitted on June 9, 2023.

If the final regulation does not differ from the proposed regulation, EPA will process a final rule, adopting the revised definition into the SIP and as a Title V program revision. If the final regulation does differ from the proposed regulation, EPA will determine whether these differences are significant. Based on EPA's determination regarding the significance of any changes in the final regulation, EPA would then decide whether it is appropriate to prepare a final rule and describe the changes in the final rulemaking action, re-propose action based on Connecticut's final adopted regulation, or other such action as may be appropriate.

V. Proposed Action

EPA is proposing to approve Connecticut's revised definition of “severe non-attainment area for ozone” within RCSA section 22a-174-1, as proposed by the state on March 20, 2023 and submitted to EPA on June 9, 2023 with a request to parallel process the proposal. EPA is proposing to approve this revised definition within the Connecticut SIP and as a Title V program revision.

EPA is soliciting public comments on the revised definition and programmatic implications 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*.

VI. 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 the revised definition of “severe non-attainment area for ozone” within Connecticut's RCSA section 22a-174-1, which, upon final action, will have impacts to several state regulations, including RACT, the state’s New Source Review program, and applicable prohibitory regulations as discussed in section II. of this preamble. The impact of this revision will change the threshold by which these State programs will apply to sources of NOx and VOCs in Connecticut. 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).

VII. Statutory and Executive Order Reviews

In reviewing SIP and Title V submissions, EPA's role is to approve such submissions, provided that they meet the criteria of the CAA and EPA's implementing regulations. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- 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); and
- 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.

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).

Furthermore, the rules regarding Title V operating permit programs do not have tribal implications because they are not approved to apply to any source of air pollution over which an Indian Tribe has jurisdiction, nor will these rules impose substantial direct costs on tribal governments or preempt tribal law.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The CT DEEP did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating Permits, Reporting and recordkeeping requirements.

Dated: July 10, 2023.

David Cash,
Regional Administrator,
EPA Region 1.

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