



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2017-0150; FRL-9973-18-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: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve the state implementation plan (SIP) revision submitted on March 9, 2017 by 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 Standard (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 rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2017-0150. All documents in the docket are listed on the <https://www.regulations.gov> web site. 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 <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. The 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.

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.

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I. Background and Purpose

On August 14, 2017, EPA published a Notice of Proposed Rulemaking (NPR) (82 FR 37829) and Direct Final Rulemaking (DFRN) (82 FR 37819) proposing to approve and approving,

respectively, Connecticut's demonstration that its nonattainment new source review regulations approved into the state implementation plan meet the requirements of the 2008 8-hour ozone standard. The demonstration was submitted on March 9, 2017 by the CT DEEP as a SIP revision. In the DFRN, EPA stated that if an adverse comment were to be submitted to EPA by September 13, 2017, the action would be withdrawn and not take effect, and a final rule would be issued based on the NPR. EPA received one adverse comment prior to the close of the comment period. Therefore, EPA withdrew the DFRN on October 13, 2017 (82 FR 47630). This action is a final rule based on the NPR. A detailed discussion of Connecticut's March 9, 2017 SIP revision and EPA's rationale for approving the SIP revision was provided in the DFRN and will not be restated here, except to the extent it is relevant to our response to the public comment we received.

II. Response to Comment

EPA received one adverse comment on its August 14, 2017 (82 FR 37829) Notice of Proposed Rulemaking.

Comment: The commenter stated that EPA is required to evaluate Connecticut's NNSR SIP as it relates to the ozone transport region (OTR) requirements in section 184 of the CAA.

Response: The Connecticut SIP's NNSR requirements are at least as stringent, and in some instances more stringent, than what is required by CAA section 184. That is the reason why EPA's DFRN did not discuss the section 184 requirements. As stated in the DFRN, Connecticut's SIP-approved NNSR regulation contains the CAA's 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 retained these requirements based on its designations and classifications associated

with the earlier, revoked 1-hour ozone standard, effective November 15, 1990. For example, the Connecticut SIP's major stationary source threshold for nitrogen oxides (NO_x) and volatile organic compounds (VOC) in the area of the State defined in the SIP as a "Severe nonattainment area for ozone" is 25 tons per year. The SIP defines "Severe nonattainment area for ozone" as 24 specific towns, independently from how these towns are currently classified under the ozone NAAQS. The SIP defines the remaining towns in the State as "Serious nonattainment area for ozone." The Connecticut SIP's major stationary source threshold for NO_x and VOC in the area of the State defined in the SIP as a "Serious nonattainment area for ozone" is 50 tons per year. Section 184(b)(2) of the CAA provides that stationary sources that emit or have the potential to emit at least 50 tons per year of VOCs shall be considered a major stationary source and are subject to the requirements that would be applicable to major stationary sources if the area were classified as a moderate nonattainment area. For areas within the OTR that are classified as marginal nonattainment, moderate nonattainment, attainment, or unclassifiable, the major stationary source threshold for sources of NO_x is 100 tons per year. See 40 CFR 51.165(a)(1)(iv)(A)(2). Thus, Connecticut's NNSR SIP contains major stationary source thresholds that are at least as stringent as, and in some instances more stringent than, the thresholds required by CAA section 184 and EPA's implementing regulations.

Connecticut's NNSR SIP also contains more stringent modification thresholds for VOC and NO_x, as precursors to ozone, in the State's SIP definition of "Major modification." The Connecticut SIP's major modification thresholds for NO_x and VOC are both 25 tons per year. Under the CAA's implementing regulations, for areas within the OTR that are classified as marginal nonattainment, moderate nonattainment, attainment, or unclassifiable, the major modification thresholds for both ozone precursors is 40 tons per year. See 40 CFR 51.165(a)(1)(x). Thus, Connecticut's NNSR SIP contains major modification thresholds that are

more stringent than the thresholds required by CAA section 184 and EPA's implementing regulations.

Connecticut's NNSR SIP is at least as stringent in all respects as compared to the OTR requirements contained in CAA section 184. By demonstrating that Connecticut's NNSR SIP meets the requirements for serious or severe nonattainment areas, the Connecticut SIP is shown to be as stringent, or in some instances, more stringent, than the requirements of section 184 of the CAA as it pertains to the NNSR permit program.

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. That is, Connecticut's SIP retains the NNSR requirements applicable to serious and severe nonattainment areas (associated with the earlier, revoked 1-hour ozone standard), even though the two nonattainment areas in the State are now classified as moderate nonattainment areas for the 2008 ozone NAAQS. By demonstrating that Connecticut's SIP meets the NNSR requirements for serious and severe nonattainment areas, EPA has concluded that the State's submission fulfills the requirements of 40 CFR 51.1114, and meets the requirements of CAA sections 110, 182, and 184 as well as the minimum SIP requirements of 40 CFR 51.165.

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 Second Circuit by **Insert date 60 days after 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. 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: February 6, 2018.

Alexandra Dapolito Dunn,
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 H—Connecticut

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

§ 52.377 Control strategy: Ozone.

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(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.