



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2017-0065; FRL-9979-40-Region 1]

Air Plan Approval; Connecticut; Infrastructure State Implementation Plan Requirements; Prevention of Significant Deterioration Permit Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of a State Implementation Plan (SIP) submission from Connecticut regarding the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2012 fine particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS), and a SIP submission addressing interstate transport requirements of the CAA for the 2006 PM_{2.5} NAAQS. In addition, we are approving one statute included in the SIP for the 2012 PM_{2.5} NAAQS. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. The EPA is also approving revisions to the SIP submitted by Connecticut on October 18, 2017, satisfying Connecticut's earlier commitment to adopt and submit provisions that meet certain requirements of the federal Prevention of Significant Deterioration (PSD) permit program. In addition, we are converting the June 3, 2016 conditional approval to full approval for elements of Connecticut's infrastructure SIP regarding PSD requirements to treat nitrogen oxides (NO_x) as a precursor to ozone and to establish a minor source baseline date for PM_{2.5} emissions for the 1997 and 2006

PM_{2.5}, 1997 and 2008 ozone, 2008 lead, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS. This action is being taken under the Clean Air Act.

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-2017-0065. 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. 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: Alison C. Simcox, Air Quality 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, tel. (617) 918-1684; simcox.alison@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 March 19, 2018 (83 FR 11933), EPA published a Notice of Proposed Rulemaking (NPRM) for the State of Connecticut. The NPRM proposed approval of three formal SIP submissions from the Connecticut Department of Energy and Environmental Protection (CT DEEP). These included a SIP revision addressing the “Good Neighbor” (or “transport”) (Section 110(a)(2)(D)(i)(I) of the CAA) provisions for the 2006 PM_{2.5}¹ NAAQS submitted on August 19, 2011, and an infrastructure SIP (including the transport provisions) for the 2012 PM_{2.5} NAAQS submitted on December 14, 2015. In addition, on October 18, 2017, CT DEEP submitted a SIP revision addressing applicable requirements for the PSD permit program in Part C of the CAA that are codified in 40 CFR 51.166.

This rulemaking does not cover three substantive areas that are not integral to acting on a state’s infrastructure SIP submission: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (“SSM” emissions) that may be contrary to the CAA and EPA’s policies addressing such excess emissions; (ii) existing provisions related to “director’s variance” or “director’s discretion” that purport to permit revisions to SIP-approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (“director’s discretion”); and, (iii) existing provisions for

¹ PM_{2.5} refers to particulate matter of 2.5 microns or less in diameter, often referred to as “fine” particles.

Prevention of Significant Deterioration (PSD) programs that may be inconsistent with current requirements of EPA's "Final New Source Review (NSR) Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Instead, EPA has the authority to address each one of these substantive areas separately. A detailed history, interpretation, and rationale for EPA's approach to infrastructure SIP requirements can be found in EPA's May 13, 2014, proposed rule entitled, "Infrastructure SIP Requirements for the 2008 Lead NAAQS" in the section, "What is the scope of this rulemaking?" *See* 79 FR 27241 at 27242–45.

The rationale for EPA's proposed action is explained in the NPR and will not be restated here.

II. Response to Comments

EPA received 12 comments during the comment period, three of which are essentially identical. The nine distinct comments discuss subjects outside the scope of an infrastructure SIP action, do not explain (or provide a legal basis for) how the proposed action should differ in any way, and make no specific mention of the proposed action. As such, they are not germane.

Only the three identical comments make direct reference to the proposed rule or to Connecticut's SIP, but even these comments lack specificity and are unclear. They state that, "as much as the rule gives clear mandate and responsibility of the state in SIP [sic], it does not give out the responsibilities of other agencies and stakeholders in absolute terms." The comments, however, provide no further explanation for this statement, such as articulating what particular "responsibilities" the SIP should, but does not currently, "give out," offering any "absolute terms" to be included, or providing any specifics regarding the "other agencies and stakeholders." Moreover, it is not even clear that the commenter(s) opposes EPA's proposed

approval of Connecticut's submittals. In short, most of the comments are not germane and none of them provide a cogent explanation of how the proposed action should differ in any way nor any relevant legal basis for any changes. Consequently, the comments require no further response, and we are finalizing the action as proposed.

III. Final Action

EPA is approving Connecticut's infrastructure SIP submittal for the 2012 PM_{2.5} NAAQS, as well as the transport provisions (CAA section 110(a)(2)(D)(i)(I)) of the state's infrastructure SIP submittal for the 2006 PM_{2.5} NAAQS as revisions to the Connecticut SIP. EPA is also approving, into the Connecticut SIP, revisions to the PSD permit program pertaining to treating NO_x as a precursor to ozone (RCSA Section 22a-174-3a(k)(1)(C)) and establishing a minor source baseline date for PM_{2.5} (RCSA Section 22a-174-1(71)). Additionally, EPA is approving revised CGS section 16a-21a, "Sulfur content of home heating oil and off-road diesel fuel. Suspension of requirements for emergency. Enforcement." effective July 1, 2015. Finally, we are converting to full approval the June 3, 2016 conditional approval of Connecticut's infrastructure SIP submittals for the PSD-related requirements in section 110(a)(2)(C), (D)(i)(II), and J for the 1997 and 2006 PM_{2.5}, 1997 and 2008 ozone, 2008 lead, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS.

IV. 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 General Statutes of Connecticut and state regulations described in the amendments to 40 CFR part 52 set forth below. Specifically, EPA is finalizing the incorporation by reference of Connecticut General Statute Title 16a, Chapter 296, Section 16a-21a, and state

regulations, namely the provisions at Regulation 22a-174-1(71) and at 22a-174—3a(k)(1)(C). 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).

V. 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);
- This action is not 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).

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. 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: July 26, 2018.

Alexandra Dunn,
Regional Administrator,
EPA Region 1.

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 52.370 is amended by adding paragraphs (c)(103)(i)(C) and (c)(118) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(103) * * *

(i) * * *

(C) Connecticut General Statute Section 16a-21a, which was approved in paragraph (c)(103)(i)(B) of this section, is removed and replaced by Connecticut General Statute 16a-21a, see paragraph (c)(118)(i)(A) of this section.

* * * * *

(118) Revisions to the State Implementation Plan submitted by the Connecticut Department of Energy and Environmental Protection on August 19, 2011, December 14, 2015, and October 18, 2017.

(i) *Incorporation by reference.* (A) “Definitions,” Regulation 22a-174-1(71), the definition of “Minor source baseline date,” amended October 5, 2017.

(B) “Permit to Construct and Operate Stationary Sources,” Regulation 22a-174-3a(k)(1)(C), amended October 5, 2017.

(C) Connecticut General Statute, Title 16a, “Planning and Energy Policy,” Chapter 296, “Operation of Fuel Supply Business,” Section 16a-21a, “Sulfur content of home heating oil and off-road diesel fuel. Suspension of requirements for emergency. Enforcement,” effective July 1, 2015, as published in the State of Connecticut General Statutes, Revision of 1958, Revised to January 1, 2017.

(ii) *Additional materials.* (A) The Connecticut Department of Energy and Environmental Protection document, “Addendum to the CAA §110(a)(2)(D)(i)(I) Portion of Connecticut’s Infrastructure Submittal for the 2006 PM_{2.5} NAAQS,” August 19, 2011.

(B) The Connecticut Department of Energy and Environmental Protection document, “Connecticut State Implementation Plan for Clean Air Act Section 110(a) Infrastructure Elements: 2012 PM_{2.5} NAAQS,” December 14, 2015.

(C) The Connecticut Department of Energy and Environmental Protection document, State Implementation Plan Revision Concerning the Consumer Products, Architectural and Industrial Maintenance Coatings and Prevention of Significant Deterioration Permit Programs,” October 18, 2017.

§ 52.380 [Amended]

3. Section 52.380 is amended by:

- a. Under paragraph (e)(2), removing the text “Note 1 to paragraphs (f) through (h)” and adding in its place “Note 1 to paragraphs (f) through (g)”; and

b. Removing and reserving paragraph (h).

4. In § 52.385, Table 52.385 is amended by adding entries for state citations 22a-174-1 and 22a-174-3a in numerical order by state citation and date approved by EPA and revising the entry for state citation Section 16a-21a to read as follows:

§ 52.385 - EPA-approved Connecticut regulations.

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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	10/05/17	[Insert Federal Register date of publication date]	[Insert Federal Register citation]	c (118)	Modified definition of “minor source baseline date” for purposes of adding PM _{2.5} .
*	*	*	*	*	*	*
22a-174-3a	Permit to Construct and Operate Stationary Sources	10/05/17	[Insert Federal Register date of publication date]	[Insert Federal Register citation]	c (118)	Amendment of subsection (k)(1)(C).
*	*	*	*	*	*	*

Connecticut General Statutes Section 16a-21a	Sulfur content of home heating oil and off road diesel fuel. Suspension of requirements for emergency. Enforcement.	07/01/15	[Insert Federal Register date of publication date]	[Insert Federal Register citation]	c (118)	Allowable sulfur content of fuels provided. Criteria for suspension of requirements and for enforcement identified.
*	*	*	*	*	*	*

5. Section 52.386 is amended by adding paragraph (c) to read as follows:

§ 52.386 Section 110(a)(2) infrastructure requirements.

* * * * *

(c) The Connecticut Department of Energy and Environmental Protection submitted the following infrastructure SIPs on these dates: 2006 PM_{2.5} NAAQS— August 19, 2011 (CAA

section 110(a)(2)(D)(i)(I) transport provisions), and 2012 PM_{2.5} NAAQS — December 14, 2015.

These infrastructure SIPs are approved. Also with respect to the 1997 and 2006 PM_{2.5}, 1997 and 2008 ozone, 2008 lead, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS, elements related to PSD, which are in CAA section 110(a)(2)(C), (D)(i)(II), and (J) and were previously conditionally approved, are now approved.

[FR Doc. 2018-16431 Filed: 7/31/2018 8:45 am; Publication Date: 8/1/2018]