

minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 2, 2014.

**D.H. Sulouff,**

*District Bridge Chief, Eleventh Coast Guard District.*

[FR Doc. 2014-16608 Filed 7-15-14; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2009-0469; A-1-FRL-9910-12-Region 1]

#### Approval and Promulgation of Implementation Plans; Connecticut; Control of Visible Emissions, Recordkeeping and Monitoring

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Connecticut on December 1, 2004. Specifically, EPA is approving revisions to Connecticut's visible and particulate matter (PM) emissions, recordkeeping and monitoring regulations. These revised rules establish and require limitations on visible and PM emissions for stationary sources, and clarify reporting requirements for operation of air-pollution-control and monitoring equipment. EPA is approving this SIP revision because EPA has determined that it will not interfere with attainment or maintenance of the national ambient air quality standards (NAAQS) in Connecticut or with any other applicable requirements of the Clean Air Act (CAA).

This action is being taken in accordance with the CAA.

**DATES:** This rule is effective on August 15, 2014.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2009-0469. All documents in the electronic docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information may not be 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 either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Office of Ecosystem Protection, 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.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at 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, Office of Ecosystem Protection, Air Quality Planning Unit, 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](mailto: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

Connecticut first adopted regulations to limit visible and PM emissions from stationary sources, including, among other sources, electric generating units (EGUs) and boilers, in the early 1970s. In 1972, EPA approved "Control of particulate emissions," into the Connecticut SIP (37 FR 10842). That regulation has since been recodified as Regulations of Connecticut State Agencies (RCSA) Section 22a-174-18. See Section II of EPA's Notice of Proposed Rulemaking (NPR), dated August 15, 2013 (78 FR 49701), for a brief discussion of the relationships among "visible emissions," "opacity" and "particulate matter."

In 2003, the Connecticut Department of Environmental Protection (now the Connecticut Department of Energy and Environmental Protection or CT DEEP) proposed under state law revisions to Section 22a-174-18 "Control of particulate matter and visible emissions" (herein referred to as the "visible emissions regulation") to address short-term excursions from maximum allowed opacity levels that may occur and be measured at some stationary sources with continuous opacity monitoring systems (COMS)<sup>1</sup> during periods of startup, shutdown or malfunction; stack testing; soot-blowing, fuel switching or sudden load changes. Facilities covered under these new exceptions in Section 22a-174-18(j)(1) include only those facilities that operate COMS. CT DEEP's revisions also excluded sources subject to opacity limits under a federal new source performance standard (NSPS) from the opacity limits contained in the state regulations. See Section 22a-174-18(j)(2).

In 2003, CT DEEP also proposed revisions to several other RCSA sections, including 22a-174-4, "Source monitoring, recordkeeping and reporting" (codified as RCSA Section 19-508-4 in the Connecticut SIP, and herein referred to as the "recordkeeping regulation"), and 22a-174-7, "Air pollution control equipment and monitoring equipment operation" (codified as RCSA Section 19-508-7 in the Connecticut SIP, and herein referred to as the "monitoring regulation").

CT DEEP held a public hearing on revisions to these three (as well as several other) regulations on April 29, 2003. Subsequently, CT DEEP amended its visible emissions, recordkeeping, and monitoring regulations based on comments received from EPA and others, with an effective date of April 1, 2004.

On December 1, 2004, CT DEEP submitted the revised regulations to EPA for inclusion in the Connecticut SIP. This submittal included a provision in the visible emissions regulation providing alternate opacity limits for periods of source operation consisting of startup, shutdown or malfunctions; stack testing; soot-blowing, fuel switching or sudden load changes. These alternate opacity limits only apply to stationary sources that use COMS (Section 22a-174-18(j)(1)). However, on July 8, 2013, CT DEEP sent

<sup>1</sup> CT regulations use the term "opacity continuous emissions monitoring systems" or "Opacity CEMS." However, EPA and others commonly refer to these monitors as "continuous opacity monitoring systems" or "COMS." Throughout this notice, we use the more common term "COMS."

a letter to EPA withdrawing Section 22a-174-18(j)(1) to the extent that it applies to malfunctions; all other aspects of Section 22a-174-18(j)(1) were retained as originally submitted. Thus, EPA is not acting on the submission with respect to the revised opacity limits applicable during malfunctions and is not approving an alternative emissions limit applicable during malfunctions.

Connecticut's December 1, 2004 submittal also included a provision that excluded sources subject to opacity limits under a federal NSPS from the opacity limits contained in the state regulations (Section 22a-174-18(j)(2)). However, on March 27, 2014, CT DEEP sent a letter to EPA withdrawing Section 22a-174-18(j)(2), which excluded emissions units that are subject to a visible emissions standard pursuant to a new source performance standard set forth in 40 CFR 60 from the visible emissions standards in Sections 22a-174-18(b)(1) and (b)(2). Thus, EPA is not acting on the submission with respect to Section 22a-174-18(j)(2). In correspondence between EPA and CT DEEP it was discussed that if Connecticut withdrew Section 22a-174-18(j)(2) from its SIP submission, stationary sources subject to visible emissions standards under a federal NSPS will continue to be exempt from the visible emissions standards in Sections 22a-174-18(b)(1) and (b)(2) of the state regulation, as a matter of state law, but will remain subject to the opacity limits contained in "Control of particulate emissions" under the SIP (See 37 FR 10842).<sup>2</sup> Moreover, it should be noted that the NSPS sources subject to visible emissions standards are not eligible for the alternate opacity limits for non-steady-state modes of source operation contained in Section 22a-174-18(j)(1) of Connecticut's regulations and being approved into the Connecticut SIP. The reason for this is that Connecticut never intended for those NSPS-subject sources to be able to demonstrate compliance with the alternate opacity limits in Section 22a-174-18(j)(1). Thus, the opacity limits contained "Control of particulate emissions," which had earlier been approved by EPA into Connecticut's SIP prior to today's SIP revision, will continue to apply to stationary sources subject to visible emissions standards under a federal NSPS.

CT DEEP's December 1, 2004 SIP submittal included a total of six regulations. EPA approved three of

these regulations into the Connecticut SIP on August 31, 2006 (71 FR 51761). They are: RCSA Section 22a-174-3b "Exemptions from permitting for construction and operation of external combustion units, automotive refinishing operations, emergency engines, nonmetallic mineral processing equipment and surface coating operations;" RCSA Section 22a-174-30 "Dispensing of gasoline/Stage I and Stage II vapor recovery;" and RCSA Section 22a-174-43 "Portable fuel container spillage control." Today's action addresses the remaining three regulations contained in the December 1, 2004 SIP submittal, namely RCSA Sections 22a-174-4, 22a-174-7, and 22a-174-18 (except for the portions of Section 22a-174-18, noted earlier, which CT DEEP has withdrawn from its SIP submittal). As stated in our August 15, 2013 NPR, these three regulations amend earlier versions of certain recordkeeping, monitoring, and visible and PM emissions regulations.

On August 15, 2013 (78 FR 49701), EPA proposed approval of RCSA Sections 22a-174-4, 22a-174-7, and 22a-174-18 (without the withdrawn portion relating to malfunctions). After our August 15, 2013 NPR, CT DEEP withdrew Section 22a-174-18(j)(2) as we noted above. Specific details of Connecticut's December 1, 2004 SIP submittal and the rationale for EPA's proposed approval are explained in the August 15, 2013 NPR and will not be restated in this notice, except to the extent relevant to our responses to public comments we received on our proposal.

## II. Response to Comments

EPA received comments on our August 15, 2013 NPR from the following entities: NRG Energy, Inc. and Montville Power LLC (collectively referred to herein as NRG); PSEG Services Corporation; the Conservation Law Foundation (CLF) Massachusetts; and the Sierra Club. The public comments received are contained in the docket for today's final action. We summarize and respond to all of those comments below.

### *NRG Energy's Comments*

NRG noted that although Middletown Station #3 employs "water injection" at its facility, water injection is not used for compliance purposes, an inference that may have been drawn from the information contained in Table 1 of our August 15, 2013 NPR. EPA acknowledges NRG's factual assertion, but also notes that NRG's point does not impact in one way or the other the substance of EPA's final action today. NRG also noted a typographical error in

Section IV.C.a(1) of our August 15, 2013 NPR. NRG noted that the reference in that section to "Mountville Station #4" actually should be a reference to "Middletown Station #4." EPA acknowledges that typographical error, but also notes that NRG's point does not impact in one way or the other the substance of EPA's final action today.

### *PSEG's Comments*

PSEG's comments were supportive of our proposed action, stating that as an owner and operator of sources regulated by the SIP revisions in question the company is ideally situated to provide comments. Among other things, PSEG noted that EPA had determined that the revised visible emission regulations would not result in interference with maintenance of the PM NAAQS in Connecticut, and that certain aspects of the revised regulations would actually enhance protection of air quality through improved control of visible emissions due, in part, to the requirement to use COMS. While EPA believes that the revisions to Connecticut's Section 22a-174-18 (visible emissions regulation) may allow slight emission increases, EPA agrees with PSEG that the revisions will not interfere with attainment and maintenance of the NAAQS and is otherwise consistent with the CAA.

### *Sierra Club's Comments*

*Comment 1:* The Sierra Club commented that the proposed revisions to Connecticut's SIP opacity regulations violate the anti-backsliding requirement of section 193 of the CAA because portions of Connecticut were designated nonattainment for particulate matter at the time of EPA's August 15, 2013 NPR.

*Response 1:* EPA disagrees with Sierra Club's assertion that the revisions to Connecticut's opacity regulations violate the anti-backsliding requirements of CAA section 193. By its own terms, CAA section 193 only applies in areas designated nonattainment for a NAAQS. Opacity limits in SIPs are intended to assure attainment and maintenance of particulate matter standards, thus, the only NAAQS relevant to our action today are the PM<sub>2.5</sub> and PM<sub>10</sub> NAAQS. All areas in Connecticut are now designated as attainment or unclassifiable/attainment for the 1997 and 2006 PM<sub>2.5</sub> NAAQS and for the PM<sub>10</sub> NAAQS, thus, CAA section 193 does not apply to today's final action. On July 19, 2013, EPA proposed to redesignate New Haven and Fairfield counties in Connecticut to attainment for the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS (78 FR 43096). All other

<sup>2</sup> See Section 19-508-18, "Control of Particulate Emissions" posted at [http://www.epa.gov/region1/topics/air/sips/sips\\_ct.html](http://www.epa.gov/region1/topics/air/sips/sips_ct.html).

counties in Connecticut were at that time already designated as attainment or unclassifiable/attainment for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. EPA did not receive any public comments on its July 19, 2013 proposal to redesignate New Haven and Fairfield counties, and our final approval of Connecticut's redesignation request for those counties was published on September 24, 2013, with an effective date of October 24, 2013 (78 FR 58467).<sup>3</sup>

In addition, as noted in EPA's July 19, 2013 proposed approval of Connecticut's redesignation request, air quality design values (DVs) for the years 2007–2009, 2008–2010, and 2009–2011 show that both New Haven and Fairfield counties are well below the 1997 annual PM<sub>2.5</sub> NAAQS of 15 micrograms per cubic meter (µg/m<sup>3</sup>) and the 2006 24-hour PM<sub>2.5</sub> NAAQS of 35 µg/m<sup>3</sup>. DVs for those counties also indicate that recent monitoring data from 2009–2011 are well below the 2012 annual PM<sub>2.5</sub> NAAQS of 12 µg/m<sup>3</sup>.<sup>4</sup> Attainment of the 24-hour PM<sub>10</sub> standard is based on the expected number of annual exceedances of the level of the standard (averaged over a three-year period) being equal to or less than one. EPA revoked the annual PM<sub>10</sub> NAAQS in 2006. The last time there was an exceedance of the 24-hour PM<sub>10</sub> NAAQS in Connecticut was in 1994.

Furthermore, modeling analyses conducted by EPA in relation to the Regulatory Impact Analysis (RIA) associated with the 2012 PM<sub>2.5</sub> NAAQS<sup>5</sup> indicates that DVs in southwestern Connecticut (where New Haven and Fairfield counties are located) are expected to continue to decline through 2020. The RIA shows that, for the 2012 PM<sub>2.5</sub> NAAQS, for New Haven and Fairfield counties, the highest annual DV projected for 2020 is 8.79 µg/m<sup>3</sup> for Fairfield County and 8.62 µg/m<sup>3</sup> for New Haven County. The RIA also indicates that the highest 24-hour DV projected for 2020 for New Haven and Fairfield counties is 22.27 µg/m<sup>3</sup> for Fairfield County and 21.78 µg/m<sup>3</sup> for New Haven County.

In summary, as the entire State of Connecticut is currently designated attainment or unclassifiable/attainment for the applicable PM NAAQS (see 40 CFR 81.307), section 193 of the CAA is

not applicable or relevant to our analysis of the SIP revisions.

*Comment 2:* The Sierra Club commented that even if EPA were correct that the only applicable anti-backsliding provision is the one found in section 110(I) the proposed revisions must still be rejected. The Sierra Club asserted that because neither EPA nor Connecticut attempted to quantify the impact of the proposed SIP revisions on air emissions, EPA's section 110(I) analysis "was fatally flawed." The Sierra Club asserted that EPA failed to show that the proposed SIP revisions would meet either of two tests EPA assesses when conducting a section 110(I) analysis. These two tests are (1) allowing a state to show that a SIP revision will not interfere with attainment or maintenance of the NAAQS by demonstrating that the revision will not allow for an increase in emissions into the air over what is allowed under the existing EPA-approved SIP, taking into consideration SIP-approved measures that represent new emissions reductions achieved in a contemporaneous time frame to the change represented by the SIP revision; or (2) allowing a state to show that a SIP revision will not interfere with attainment or maintenance of the NAAQS by showing that, taking into consideration the change in emissions levels allowed under the SIP revision, there is a substantial margin of safety (i.e., "headroom" or "cushion of compliance") between ambient concentrations and the applicable NAAQS (in this instance the 1997 and 2006 PM<sub>2.5</sub> NAAQS and the 24-hour PM<sub>10</sub> NAAQS). The Sierra Club also asserted that Table 4 of EPA's August 15, 2013 NPR shows that Fairfield County's maximum 24-hour PM<sub>10</sub> concentration increased from 33 to 54 µg/m<sup>3</sup> from 2011 to 2012, which Sierra Club claims "contradicts EPA's assertion of a substantial margin of safety" and "is also not consistent with permanent and legally enforceable emissions reductions." The Sierra Club also stated that EPA's approach to the section 110(I) analysis was not appropriate because not all portions of Connecticut were designated attainment for the applicable PM NAAQS at the time we proposed approval of the SIP revisions.

*Response 2:* As stated in our response to *Comment 1* above, all portions of Connecticut are currently designated attainment or unclassifiable/attainment for the applicable PM<sub>2.5</sub> and PM<sub>10</sub> NAAQS. Therefore, as also explained in our August 15, 2013 NPR, EPA's analysis of the proposed SIP revision under section 110(I) takes into account

that Connecticut is designated attainment or unclassifiable/attainment for the PM<sub>2.5</sub> and PM<sub>10</sub> NAAQS. We noted in our August 15, 2013 NPR that CT DEEP submitted a clarifying letter to its SIP submittal to demonstrate that the SIP provisions we are approving today are consistent with CAA section 110(I). In order to better assess the State's demonstration, EPA determined it would be helpful to conduct its own section 110(I) analysis which drew upon, but is not identical to, the analysis presented in the CT DEEP's letter (78 FR 49704).

EPA requires an evaluation whether changes to SIP-approved opacity limits are likely to interfere with attainment or maintenance of the PM NAAQS pursuant to section 110(I). Generally, to satisfy section 110(I), EPA does not require a full attainment demonstration showing that the change will not interfere with attainment or maintenance of the NAAQS. For nonattainment areas, in the absence of air quality modeling, EPA requires that the revision at least maintain status quo air quality, by offsetting any emissions increases with additional contemporaneous emissions reductions. For attainment areas, EPA requires a basis for concluding that any emissions increases will not interfere with attainment or maintenance of the NAAQS, e.g., by illustrating that any change in the emission inventory is so small relative to the margin between ambient concentrations and the NAAQS that it is unlikely that the change would interfere with maintenance of the NAAQS. In the case of changes to opacity limits, EPA applies these requirements taking into consideration that limits on opacity are a means of assuring control of PM emissions.<sup>6</sup>

For these SIP revisions, EPA has assessed the likelihood of interference with the PM<sub>2.5</sub> and PM<sub>10</sub> NAAQS in Connecticut by attempting to quantify the total emissions associated with the sources that would be covered by the changes to opacity requirements. EPA's approach assumes that relaxing the opacity requirements will result in an increase in PM emissions (we refer to this as the "worst case scenario"). The 110(I) analysis looks to the additional

<sup>6</sup> Although opacity is not a criteria pollutant and increases in opacity do not always correlate precisely with increases in mass emissions, opacity standards are established as an independent requirement for effective PM emissions control, opacity is used as an indicator of increased PM emissions (due both to changes in process and in the effectiveness of emission controls), and opacity limits supplement the implementation and enforcement of PM emission standards. See, e.g., *Utility Air Regulatory Group v. EPA*, No. 12–1166 (D.C. Cir., Mar. 11, 2014).

<sup>3</sup> EPA recognizes that this redesignation was not final at the time of the proposal. However, EPA noted in the proposal that it intended to take final action on the proposed redesignation before taking final action on Connecticut's visible emissions SIP revision.

<sup>4</sup> EPA has not yet designated nonattainment areas with respect to the 2012 PM<sub>2.5</sub> NAAQS.

<sup>5</sup> The RIA is included in the docket for this rulemaking.

increment of emissions associated with the SIP revision, which would be a portion of the emissions during the time for which the opacity standard has been loosened. In turn, the operating periods when the opacity standard is loosened is a portion of the total operating time for these sources. Finally, we look at the total emissions from these sources at all operating times in relation to the total emissions inventory and current ambient concentrations. We estimate that the *total* emissions of these sources (at all times) represents about only 11 tons per year of PM<sub>2.5</sub>, out of a total statewide inventory of 17,151 tons per year of PM<sub>2.5</sub> and about 17 tons per year of PM<sub>10</sub> out of a total statewide inventory of 38,995 tons per year. Furthermore, as noted in EPA's proposed approval of Connecticut's section 22a-174-18 (78 FR 49701; August 15, 2013), emission projections from the maintenance plan for Connecticut's PM<sub>2.5</sub> redesignation request indicate that there is a substantial margin of safety that ensures maintenance of the NAAQS even if small increases in emissions were to occur. As illustrated in Table 5 of that notice, PM<sub>2.5</sub> emissions in Fairfield and New Haven counties are projected to drop by 22% from 2007—when the area was attaining the NAAQS—to 2025, including over 1,000 tons per year of reductions in the period from 2007 to 2017 (and over 300 tons per year of reductions from 2017–2025). Thus, in EPA's technical judgment, although we assume that these SIP changes will result in some emissions increases, in light of the size of these sources and the nature of the changes, such increases would be quite small in comparison with the large margin of compliance with the NAAQS and the ongoing projected reductions in the emissions inventory.

Taking into consideration the small amount of total PM<sub>2.5</sub> and PM<sub>10</sub> emissions from these sources relative to the statewide inventories, the nature of the revisions (including the more stringent PM limits for certain sources), and the large “margin of compliance” between ambient concentrations and the PM<sub>2.5</sub> and PM<sub>10</sub> NAAQS in Connecticut, EPA concludes that these changes will not interfere with attainment and maintenance of the PM<sub>2.5</sub> and PM<sub>10</sub> NAAQS in Connecticut.

Our August 15, 2013 NPR (beginning at 78 FR 49705) contains an analysis of the section 110(I) demonstration and data supporting CT DEEP's and EPA's conclusion that the requirements of section 110(I) have been met. A summary of that analysis is provided here, with additional information

quantifying the potential emissions increases that might be associated with the SIP revisions, added in response to the Sierra Club's comment.

First, in our August 15, 2013 NPR, we considered and evaluated (although we stated that we did not precisely quantify) potential emissions increases that could result from the SIP revisions (78 FR 49705–49707). As noted, we considered emissions increases that potentially might occur as a result of the relaxation of the SIP's opacity limits during periods of source operation limited to startup or shutdown; stack testing; soot-blowing, fuel switching or sudden load changes. We noted that, of the 20 units (all of which utilized COMS) for which the state originally designed the alternative opacity limit in Section 22a-174-18(j)(1), eight of those units are now permanently removed from service and three additional units have since switched their primary fuel from residual oil to natural gas (resulting in significant reductions of emissions of PM and PM precursors during operation). Thus, our August 15, 2013 NPR noted that for purposes of examining potential emission increases that may arise from the alternative opacity limit in Section 22a-174-18(j)(1), our focus would be limited to the potential impacts of increased opacity at the remaining nine of the original 20 units. We also noted in our August 15, 2013 NPR that the requirements of section 110(I) were satisfied with respect to Connecticut's Section 22a-174-18(j)(2) affecting stationary sources separately subject to a federal NSPS; however, as noted earlier in this notice, CT DEEP has since withdrawn Section 22a-174-18(j)(2) from its SIP submission and, thus, we do not include in this notice a section 110(I) analysis of the effect of that provision. In addition, another aspect of our air quality impact analysis considered and evaluated the reductions in PM emissions that would arise due to other aspects of the SIP revisions, i.e., the fact that more stringent PM limits will apply *at all times* to sources that burn natural gas and to “registration sources” that burn distillate oil.

We concluded in our August 15, 2013 NPR that “taking into consideration the universe of sources subject to the revised opacity standard, the fuels and emissions limits applicable to those sources (including those that are more stringent under the revision), and the nature of the alternative opacity limit (which only allows an increase from 40% to 60% opacity during certain limited modes of source operation during a maximum period of time just under 11 hours per calendar quarter),

that while there may be an increase in PM emissions associated with this SIP revision, any such increase would be small, especially in relation to the applicable attainment margin. It is also critical to note that Connecticut's revised rule includes an important check on any potential increase in emissions that could occur, even under the alternative opacity limit. The revised regulation restricts the amount of time that sources with COMS may operate under the alternate opacity limit to 0.5 percent of a facility's total operating hours during any calendar quarter, or slightly less than 11 hours. EPA believes that these changes to the opacity limit may result in increased PM emissions, and considered whether those increased emissions would interfere with maintenance of the PM<sub>2.5</sub> and PM<sub>10</sub> NAAQS in Connecticut in light of the nature and scope of those changes and current air quality (i.e., margin of compliance with all existing PM NAAQS). At the same time, however, EPA believes that the limited nature of the alternate opacity limit (including that opacity may only increase to 60%, as well as the limits on periods of operation during which the alternate limit applies) means that the opacity standard will continue to assist with SIP implementation of the NAAQS by continuing to identify (as violations) changes in process and in the effectiveness of emission controls that result in more significant increases in PM emissions.

We believe that our discussion in the August 15, 2013 NPR is sufficient to address any concerns under section 110(I); however, in response to the Sierra Club's statement that we failed to quantify those potential emissions increases, we provide more detailed information. With respect to the alternate opacity limit available during specific non-steady-state modes of operation, the total amount of PM emissions from the nine units that we earlier identified as being relevant to the emissions increase analysis (a subset of the units identified in our Table 1 to our August 15, 2013 NPR) is small. More specifically, the *total* PM<sub>2.5</sub> emissions from these nine units is approximately 11 tons per year (as reported in the 2011 National Emissions Inventory (NEI)<sup>7</sup>), as compared to statewide emissions of PM<sub>2.5</sub> from all sources of 17,151 tons per year. The total PM<sub>10</sub> emissions from these nine units (which includes PM<sub>2.5</sub> emissions) is about 17 tons per year (estimated from the 2011 NEI), compared to statewide emissions of

<sup>7</sup> See [www.epa.gov/ttn/chief/net/2011inventory.html](http://www.epa.gov/ttn/chief/net/2011inventory.html).

PM<sub>10</sub> from all sources of 38,995 tons per year. Moreover, because the worst case scenario analysis (consistent with the roughly 11 hours of operation per quarter limitation contained in the regulation for the applicability of the alternate opacity limit) only includes a small fraction of these sources' total annual hours of operation, the total increase in emissions from these nine units under the worst-case scenario would most likely be only a fraction of the approximately 11 tons per year of PM<sub>2.5</sub> and the 17 tons per year of PM<sub>10</sub>, an even smaller amount of emissions compared to the annual statewide emissions noted above. In light of the wide margin of compliance with all of the PM NAAQS, any potential increase in PM<sub>2.5</sub> or PM<sub>10</sub> emissions from the nine units in question during the worst-case scenario under the alternate opacity emissions limits in the SIP revision should not interfere with the maintenance of the applicable PM NAAQS in Connecticut.

Our August 15, 2013 NPR also contained a separate CAA section 110(I) analysis in relation to Section 22a-174-18(j)(2) of Connecticut's regulation. However, as noted earlier in this notice, CT DEEP has since withdrawn Section 22a-174-18(j)(2) and, thus, we do not include here a section 110(I) analysis of that regulatory provision.

In addition to the analysis above of specific potential emissions increases associated with the SIP revisions, as noted in our August 15, 2013 NPR, we also considered recent data from emissions inventories and ambient air-quality monitoring to show that Connecticut's statewide emissions have declined substantially in recent years, and that the state's current air quality is well below the federal primary and secondary PM<sub>2.5</sub> and PM<sub>10</sub> NAAQS. As part of that discussion, we described certain regulations that EPA has approved into the Connecticut SIP that have resulted in permanent, federally enforceable emissions reductions. Our purpose in discussing the effect of these regulations was to lend additional support to our section 110(I) analysis by demonstrating that current statewide emissions inventories and air quality in Connecticut show that these other pollution-control measures have resulted in an adequate "compliance cushion" below the PM<sub>2.5</sub> and PM<sub>10</sub> NAAQS that can easily accommodate any potential emissions increases of PM<sub>2.5</sub> and PM<sub>10</sub> that might arise as a result of the SIP revisions. Our analysis demonstrated that the current, relatively low, emissions levels in Connecticut are not solely attributable to non-regulatory factors (e.g., economic changes) but,

rather, are, in significant part, attributable to the permanent, enforceable reductions achieved by Connecticut's SIP and other federal CAA programs. The combination of three facts—that Connecticut's PM<sub>2.5</sub> and PM<sub>10</sub> emissions (and emissions of precursor pollutants) have been reduced, that these reductions are largely permanent reductions attributable to federally enforceable CAA measures (including SIP requirements), and that the measured ambient PM<sub>2.5</sub> and PM<sub>10</sub> concentrations are well below the NAAQS—persuade us that the weight of evidence shows that Connecticut's SIP has a sufficient margin of safety with respect to the PM NAAQS throughout the state. We conclude based on this analysis that even if overall emissions were to increase somewhat as a result of this revision, any such increase would not interfere with attainment or maintenance of the PM<sub>2.5</sub> and PM<sub>10</sub> NAAQS in Connecticut. For a more detailed discussion of these measures and air quality in Connecticut, see 78 FR 49707-49710.

As to the Sierra Club's comment that Table 4 of our August 15, 2013 NPR shows that Fairfield County's maximum 24-hour PM<sub>10</sub> concentration increased from 33 to 54 µg/m<sup>3</sup> from 2011 to 2012, there are several important things to note. First, and most important, the referenced increase in PM<sub>10</sub> is, in EPA's judgment, more likely related to emissions associated with roadways or construction activities than to any increases in stationary point-source emissions. Emissions of PM<sub>2.5</sub> tend to be more prevalent than emissions of PM<sub>10</sub> from stationary sources in Connecticut and, as mentioned above, PM<sub>2.5</sub> DVs decreased during this same time period. For example, 2011 NEI data for Fairfield County show that approximately 76% of the PM<sub>10</sub> emissions inventory derives from the following categories of sources: (1) Dust associated with paved and unpaved roads; (2) construction activities; and (3) burning of residential wood heaters and stoves. Moreover, the PM<sub>10</sub> increase referenced by the Sierra Club is, in any event, well below the level of the 24-hour PM<sub>10</sub> NAAQS, which is 150 µg/m<sup>3</sup>; this lends further support for EPA's contention that there is an adequate "cushion of compliance" for the PM<sub>10</sub> NAAQS.<sup>8</sup>

The SIP revisions we are approving in this action, which apply to emissions

from stationary sources, are unlikely to add substantially to ambient PM<sub>10</sub> levels in Fairfield County because, as explained in detail above, the total amount of increased PM<sub>2.5</sub> and PM<sub>10</sub> emissions that might be expected to arise from the sources subject to Section 22a-174-18(j)(1) is very small, particularly in comparison to the 17,151 and 38,995 tons per year of PM<sub>2.5</sub> and PM<sub>10</sub> emissions, respectively, from all sources in Connecticut.

As noted in our August 15, 2013 NPR, our CAA section 110(I) analysis also included a discussion of CAA section 110(a)(2)(A)'s requirement that SIPs contain "enforceable emission limitations and other control measures, means, or techniques . . . as may be necessary or appropriate to meet the applicable requirements of [the CAA]." We included in that same section of our NPR a related discussion of CAA section 302(k)'s definition of the term "emission limitation" as "a requirement that limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis." We discussed EPA's position, set forth in well-established guidance, that the CAA precludes SIP provisions that include exemptions for emissions that occur during periods of source operation such as startup, shutdown, or malfunction. In the context of EPA's guidance, we then analyzed the alternative opacity limits in Section 22a-174-18(j)(1). (We also analyzed separately the NSPS-subject source exclusion in Section 22a-174-18(j)(2) of Connecticut's regulations, which raises different issues than the alternate opacity limits provision in Section 22a-174-18(j)(1), but CT DEEP subsequently withdrew that provision from its SIP submission.) Given that the Sierra Club commented on whether the SIP revisions are consistent with EPA's startup, shutdown and malfunction (SSM) guidance and related proposed SIP Call<sup>9</sup> separately from its comments on Connecticut's and EPA's section 110(I) demonstrations, EPA addresses the former specific set of comments in Responses #3 and #4, below.

*Comment 3:* The Sierra Club commented extensively on our application of EPA's criteria relevant to development of alternative emission limits in SIPs, as those criteria relate to the alternative opacity limits submitted by Connecticut as SIP revisions in Section 22a-174-18(j)(1). Specifically, Sierra Club asserted that our evaluation

<sup>8</sup> We also note here that we discussed in our August 15, 2013 NPR a Regional Haze program analysis that was a fourth component of our section 110(I) analysis. Sierra Club did not comment on that aspect of our analysis, therefore our analysis will not be repeated here.

<sup>9</sup> See, "State Implementation Plans; Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Proposed Rule," 78 FR 12459 (Feb. 22, 2013).

of these alternative emissions limits was flawed in light of our 1999 SSM Policy guidance for SIP provisions and our February 2013 proposed SIP Call.

*Response 3:* EPA disagrees with the Sierra Club's assertion that our evaluation of Connecticut's SIP revisions is flawed in light of EPA's 1999 SSM Policy guidance and proposed SIP Call. We have longstanding SIP guidance recommending criteria for development of alternative emission limits in SIP provisions, including opacity limits (or other control measures) that may be appropriate during specific modes of source operation such as startup and shutdown.<sup>10</sup> If sources cannot meet the otherwise applicable SIP emissions limit during certain modes of operation, these criteria serve to assure that the alternative emission limits that states may elect to adopt for these periods of operation meet CAA requirements for SIP provisions. We recently reiterated those criteria in our February 2013 proposed SIP Call. The basic thrust of those criteria is to ensure that emission limitations apply continuously, including during certain modes of source operation (i.e., startup, shutdown, and malfunction), in such a manner that emissions are properly minimized in order to ensure attainment and maintenance of the NAAQS and to meet other CAA requirements (e.g., enforceability). EPA analyzed the higher opacity limits established by CT DEEP for certain sources in Section 22a-174-18(j)(1) in relation to the seven criteria for alternative emissions limits recommended in our SSM guidance for SIP provisions and reiterated in our proposed SIP Call. That analysis was set forth in our August 15, 2013 NPR. We address below the Sierra Club's specific comments regarding EPA's evaluation of Connecticut's SIP revision in relation to EPA's SSM Policy guidance and proposed SIP Call. Please refer to our August 15, 2013 NPR for EPA's original analysis and additional detailed information (beginning at 78 FR 49710).

#### *EPA's Criterion #1*

*The Sierra Club's comment:* The Sierra Club states that EPA did not fully address criterion #1 because Connecticut's revision to its visible emissions regulation must be "limited

to specific, narrowly defined source categories using specific control strategies" and asserted that Connecticut's SIP revision is not so limited.

*EPA's response:* As identified and discussed in our August 15, 2013 NPR, the sources to which the alternate opacity emission limit will apply are mostly electric generating units (EGUs); and all of the sources are boilers with a heat input capacity greater than 250 MMBtu/hr. We also noted in our August 15, 2013 NPR that most of these units use some combination of electrostatic precipitators, selective non-catalytic reduction, and/or low NO<sub>x</sub> burners. (Two of the affected units (Middletown Station #4 and Montville Station #6) do not have control measures comparable to the other sources, but they are subject to numerical PM emission limitations in the Connecticut SIP and in their permits.) Finally, as noted earlier in this notice, the universe of existing units in Connecticut from which potential increases in emissions may arise (realistically) is limited to nine. Since Connecticut adopted the revised regulation in question, eight of the 20 units potentially covered have been permanently removed from service, and three of the units have changed their primary fuel from residual oil to natural gas (resulting in a significant reduction in emissions of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors during source operation). In our judgment, based on the facts described above, these remaining nine boilers (i.e., those that will be subject to Connecticut's alternate opacity emission limit) sufficiently meet what EPA's guidance and related rulemaking intended to fall within the notion of "specific, narrowly defined source categories." Finally, it is also important to note that any new stationary sources in the future (beyond the existing nine units) would separately be regulated by any opacity limits contained in a new source review permit required under Connecticut's SIP. The CT DEEP has informed us that its new source review permits require best available control technology (BACT) for opacity and for PM. Emission limits based on BACT cannot be less stringent than NSPS under the CAA and CT DEEP's current practice is to include a 10% opacity limit in its new source review permits applicable during all periods of operation (including startup and shutdown). Any such future new sources also would be subject to any opacity limits that might be applicable under newly promulgated NSPS regulations (not the NSPS discussed herein) that would contain opacity

limits during startup, shutdown, and other specific modes of source operation.

#### *EPA's Criterion #2*

*The Sierra Club's comment:* The Sierra Club asserts that EPA's conclusion that Connecticut's SIP revision satisfies criterion #2 is flawed, because "nothing prevents a source from starting up or shutting down with a cleaner fuel or employing other measures during periods of startup and shutdown that would reduce particulate emissions from the boiler" and because "[n]o determination has been made that more stringent control is 'technically infeasible' during specified periods for any sources in Connecticut."

*EPA's response:* First, EPA notes that the Sierra Club has not addressed in its comment exactly how it concluded that it *would* be feasible for the specific boilers in question to use "a cleaner fuel or employ[ ] other measures during periods of startup and shutdown" that would reduce PM emissions. Sierra Club, although critical of EPA's evaluation of this criterion in the proposal, did not provide specific facts concerning what other measures the state could or should have required of these sources.

Second, EPA is evaluating this criterion based upon factual information developed by the state to support the higher alternative emission limits applicable to the affected sources. Our August 15, 2013 NPR explains the difficulties that some sources may have in meeting the otherwise applicable opacity emissions limits during non-steady-state modes of source operation, such as startup and shutdown. Included in EPA's explanations of such technical challenges was a reference to a CT DEEP workgroup provided to EPA by letter dated January 14, 2013 (included in the docket for this action). As noted in our August 15, 2013 NPR, the CT DEEP workgroup considered technical issues that make it difficult for some facilities to consistently meet, during periods of operation such as startup and shutdown, opacity limits that apply during normal steady-state operating conditions. The CT DEEP workgroup based its recommendations for an alternate emissions limit on the technology, normal operating procedures, and type of fuels used, as well as a review of historical opacity data for the sources in question (see Table 1 of EPA's August 15, 2013 NPR). The units considered for an alternative opacity limit were older and less efficient than new units that would be installed today. The workgroup took into account the fact that older

<sup>10</sup> See Memorandum entitled "State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown," from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, to the Regional Administrators, Regions I-X on September 20, 1999.

combustion units may take longer than modern units to reach optimum temperatures for efficient operation of control systems, such as Selective Non-catalytic Reduction (SNCR) systems for reducing NO<sub>x</sub> (a precursor of PM<sub>2.5</sub>), or may have higher emissions than modern units during cold startups. They also assessed whether the older units experienced more short-term load swings than would be expected from modern units. These swings make it more difficult to optimize unit operation and to continuously stay within the 20 percent and 40 percent averages that apply during normal, steady-state operations. These can be appropriate considerations relevant to development of alternative emission limits, so long as other CAA requirements are met. For further details of EPA's explanation, see our August 15, 2013 NPR. (78 FR 49710–49711).

#### EPA's Criterion #3

*The Sierra Club's comment:* The Sierra Club states that EPA did not fully address criterion #3 because “the proposed SIP revision does not limit the frequency or duration of operation in startup, shutdown or other modes to the maximum extent practicable” in that the alternative opacity limit applies equally to all units regardless of age or specific unit characteristics.

*EPA's response:* EPA disagrees with the Sierra Club's assertion that criterion #3 has not been met. As discussed in our August 15, 2013 NPR, the frequency and duration of periods of startup, shutdown or malfunction; stack testing; soot-blowing, fuel switching or sudden load changes for the units in question (see Table 1 in our August 15, 2013 NPR) were taken into account by CT DEEP's workgroup and were a part of the analysis that resulted in the alternate opacity limit. In any event, however, the most important limitation in the SIP revision on the frequency and duration of opacity levels that may exceed those allowed during normal, steady-state operations is the regulation's strict limit on the amount of time per calendar quarter (less than 11 hours) that a facility may operate under an alternative opacity limit (i.e., 60% opacity during any 6-minute block average). We believe that this limitation will help to ensure that the emissions units in question will be required to limit the frequency and duration of the relevant modes of operation and to restrict their emissions to an appropriate level consistent with criterion #3. Additionally, because fuel is a significant operational cost at EGUs it is also generally the case that EGUs have an economic incentive to optimize their

fuel-to-air ratio consistent with best engineering practices so as to combust their fuel source most efficiently.

Finally, the Connecticut SIP's revised recordkeeping and monitoring requirements serve as an additional, supplemental compliance tool that will help to ensure that the units emit at the alternative opacity limit only during the allowed modes of operation and within the allowed periods of time. As we stated in our August 15, 2013 NPR, the revisions to Connecticut's recordkeeping and monitoring requirements clarify and improve enforceability of SIP requirements. For example, revised 22a–174–4 includes specific data availability requirements and revised 22a–174–7 includes explicit, specific time frames for various notifications (such as “no later than two business days”), as compared to prior requirements to notify the state “promptly.”

#### EPA Criterion #4

*The Sierra Club's comment:* Regarding criterion #4, the Sierra Club asserts that “[c]riterion (4) requires that “[a]s part of its justification of the SIP revision, the state would analyze the potential worst-case emissions that could occur during startup and shutdown.” The Sierra Club asserts that EPA's August 15, 2013 NPR acknowledged that neither the state nor EPA attempted to quantify the exact increase in PM emissions that could be allowed under this SIP revision. Sierra Club also objected to EPA's rationale for approval of the revision that, if elevated emissions levels were to cause future violations of the PM NAAQS, EPA has additional authority under the CAA to address such potential problems.

*EPA's response:* EPA disagrees with the Sierra Club's comments on this point. Our August 15, 2013 NPR included an analysis under criterion #4 of the worst-case-emissions scenario. As we noted in our August 15, 2013 NPR, that worst-case scenario would occur (albeit extremely unlikely) if all nine currently operating units (i.e., those that we earlier noted were relevant to the analysis of potential emissions increases and that are subject to the alternative opacity limit), simultaneously were to: (1) Engage in startup, shutdown, or any of the other listed modes of operation for which the alternative opacity limit is allowed; (2) for exactly the same nearly 11-hour period; and (3) at the uppermost allowed level of 60% opacity. The most important limitation on any additional emissions resulting from this SIP revision, even under this unlikely worst-case scenario, is the strict limit set by CT DEEP on the amount of time per calendar quarter

(less than 11 hours) that a facility may lawfully operate up to the 60% alternative opacity limit.

Furthermore, in response to the Sierra Club's assertion that EPA and Connecticut failed to attempt to quantify any potential worst-case scenario increase in emissions, we do so here. The total amount of annual PM<sub>2.5</sub> emissions (11 tons per year, as reported in the 2011 NEI) from the nine units collectively (which we earlier noted were part of our analysis of potential increased emissions that may arise from the alternate opacity limit) is an extremely small percentage of the total PM<sub>2.5</sub> emissions statewide, both in comparison to stationary point-source emissions (436 tons per year) and to PM<sub>2.5</sub> emissions from all sources (17,151 tons per year). The total amount of annual PM<sub>10</sub> emissions from the nine units collectively (17 tons, as reported in the 2011 NEI) is an extremely small percentage of the total PM<sub>10</sub> emissions statewide, both in comparison to stationary point-source emissions (494 tpy) and to PM<sub>10</sub> emissions from all sources (38,995 tpy). Consequently, any potential annual increase in PM<sub>2.5</sub> and PM<sub>10</sub> emissions from these nine units during the highly unlikely worst-case scenario would most likely be only a portion of that small percentage, because the relevant analysis concerns an assessment of maximum potential increases in emissions from these sources during a maximum of just under 11 hours per calendar quarter when there is a potential increase from 40% opacity to 60% opacity. While it is difficult to quantify the precise amount of additional PM<sub>2.5</sub> and PM<sub>10</sub> emissions that could occur during such periods of elevated opacity, we think that the additional PM<sub>2.5</sub> and PM<sub>10</sub> is likely to be relatively small in light of the fact that the total PM<sub>2.5</sub> and PM<sub>10</sub> emissions from the affected sources are currently such a small amount relative to other sources. As explained in detail earlier in this notice, our section 110(I) analysis shows that any potential increases will easily be accommodated by the wide “compliance cushion” in Connecticut between the PM<sub>2.5</sub>, and PM<sub>10</sub> NAAQS and air quality concentrations of PM<sub>2.5</sub>, and PM<sub>10</sub>.

Finally, our August 15, 2013 NPR statement about the availability of additional CAA authorities that EPA could use to address any future problems in relation to the PM NAAQS was not intended to indicate that we anticipate there will be such a problem and, as we have explained in this notice, we have no reason to expect that such a problem will arise. We only intended to point out that the CAA

provides remedies to address any unexpected problems that could arise as a result of this SIP revision, even though we anticipate that such problems are highly theoretical in this instance. We emphasize, however, that our section 110(I) analysis strongly demonstrates that any such problems are not expected to arise as a result of this SIP revision.

#### EPA Criterion #5

*Sierra Club's comment:* For criterion #5, the Sierra Club claims that the proposed SIP revision includes nothing that will minimize emissions impacts on ambient air quality during periods of startup and shutdown. The Sierra Club also asserts that, although EPA identified reporting requirements contained in Connecticut's SIP, prompt reporting does not minimize air-quality impacts and does not rise to the level of taking "all possible steps" to minimize the impact of the emissions.

*EPA's response:* EPA disagrees with the Sierra Club's comments about criterion #5 for the following reasons. As we explained in our August 15, 2013 NPR, RCSA Section 22a-174-4, which is being approved as part of EPA's action today, requires submission of all COMS data on a quarterly basis, along with a quarterly quality-assurance audit, and the submitted data would be required to include data during periods of startup, shutdown or malfunction; stack testing; soot-blowing, fuel switching or sudden load changes. The sources are not exempt from the opacity standards during such periods and all emissions that occur during such periods will be counted in the context of the SIP, such as for emissions inventories, modeling demonstrations, and other regulatory purposes. Alternative emissions limits for non-steady-state modes of operation are not equivalent to exemptions. We also emphasize that this regulation requires a facility to submit a corrective action plan for a failed audit. We believe that prompt reporting and the requirement to submit a corrective action plan (if demonstrated to be necessary by an audit) helps to minimize air-quality impacts by alerting the CT DEEP to possible operational issues so that the CT DEEP may then work with the facility to implement corrective actions.

In addition, we note that the quarterly reporting requirement is aligned with the regulation's quarterly maximum limit on use of the alternative opacity limit (slightly less than 11 hours). Moreover, the exception in Section 22a-174-18(j)(1) itself is designed on its face to minimize emissions during startup and shutdown; stack testing; soot-blowing, fuel switching or sudden load

changes. That is, the source operator must limit the time period during which the alternative opacity limit applies to less than 11 hours per calendar quarter, and must limit opacity levels during such periods to no more than 60% opacity during any 6-minute block average.

#### EPA Criterion #6

*The Sierra Club's comment:* The Sierra Club's comments on criterion #6 are related to those for criterion #5. Specifically, the Sierra Club claims that EPA does not point to anything that requires continuous minimization of emissions.

*EPA's response:* We incorporate by reference here the entirety of our responses (above) to the Sierra Club's comments on EPA criterion #5 due to the similarity of the Sierra Club's comments on criteria #5 and #6.

#### EPA Criterion #7

The Sierra Club did not submit an adverse comment on criterion #7, noting that the criterion "is met by Connecticut's proposed opacity SIP revisions." Accordingly, no response from EPA is necessary or provided here.

*Comment 4:* The Sierra Club claims that EPA's evaluation of the "exemption" in Connecticut's revised Section 22a-174-18 (visible emissions regulation) for sources subject to federal NSPS set forth in 40 CFR 60 is flawed and that the "exemption" is unlawful. The Sierra Club argued that EPA's approval of a SIP revision that eliminates the currently applicable opacity standard from certain categories of sources has the "practical and legal effect" of exempting those sources for emissions during periods of startup, shutdown, and malfunction.

*Response 4:* As noted earlier, by letter dated March 27, 2014, CT DEEP withdrew from its SIP submission Section 22a-174-18(j)(2). Thus, without conceding Sierra Club's arguments about the legality of Section 22a-174-18(j)(2), EPA provides no response to those arguments because the SIP is not being revised to include that regulatory provision.

#### Conservation Law Foundation (CLF)

*Comment:* CLF asserts that the provision in Connecticut's SIP revision that allows deviations from otherwise applicable visible emissions limits during periods of startup, shutdown, and other discrete periods of routine operations, like those set forth in RCSA Section 22a-174-18(j)(1), is illegal. CLF further commented that if EPA determines that this provision does not violate the CAA and approves it, such

approval should clearly state that (1) the SIP revision is effective prospectively, beginning on the date that EPA officially approves it; and (2) for that reason, approval of the exemption for periods of startup, shutdown, and other listed modes of operation into the federally-enforceable SIP has no retroactive effect on past violations. CLF's September 16, 2013 comment letter included, as an attachment, other comments that CLF submitted to the CT DEEP on February 14, 2012 regarding Bridgeport Harbor Station's CAA Title V operating permit renewal (2012) which, in relevant part, addresses Connecticut's visible emissions rule and RCSA Section 22a-174-18(j)(1), which CLF asserts is illegal under the CAA. Also attached to CLF's September 16, 2013 letter were comments submitted by CLF to EPA regarding EPA's proposed SIP Call.

*Response:* EPA disagrees with CLF's assertion that the alternative emission limits for opacity during modes of operation such as startup, shutdown, and others contained in RCSA Section 22a-174-18(j)(1), which differ from opacity limits that apply during normal steady-state operating conditions, are illegal under the CAA. In fact, as discussed in our August 15, 2013 NPR, EPA has longstanding SIP guidance that recommends criteria relevant to development of such alternative opacity limits or other control measures that may apply during specific modes of source operation such as startup and shutdown, if properly supported and established.<sup>11</sup> EPA has also recently reiterated these criteria in a proposed rulemaking relevant to its interpretation of CAA requirements applicable to SIP provisions.<sup>12</sup> These criteria are intended to ensure that opacity limits or other control measures or techniques in SIPs that apply during specific modes of source operation, such as startup or shutdown, are designed to minimize emissions in order to provide for attainment and maintenance of the NAAQS and meet other CAA requirements (e.g., enforceability). As discussed above, we believe that these

<sup>11</sup> See Memorandum entitled "State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown," from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, to the Regional Administrators, Regions I-X on September 20, 1999.

<sup>12</sup> See, "State Implementation Plans; Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Proposed Rule," 78 FR 12459 (Feb. 22, 2013).

criteria have been met with respect to the revisions at issue in today's action.

In response to CLF's comments about the effective date of our approval of Connecticut's SIP revision and the relationship of these specific revisions to factual circumstances that pre-date the effective date of the SIP revisions, the SIP revisions we are approving today are effective on August 15, 2014. EPA's approval of these SIP revisions does not change the legal requirements that applied under the SIP, prior to this action.

### III. Final Action

EPA is approving and incorporating into the Connecticut SIP three regulations submitted by the State of Connecticut on December 1, 2004. Specifically, EPA is approving revised RCSA Section 22a-174-18 "Control of particulate matter and visible emissions," except for the phrase "or malfunction" in Section 22a-174-18(j)(1) and all of Section 22a-174-18(j)(2), which CT DEEP has withdrawn from its SIP submission. EPA is also approving revised RCSA Section 22a-174-4 "Source monitoring, recordkeeping and reporting," and revised RCSA Section 22a-174-7 "Air pollution control equipment and monitoring equipment operation." These latter two regulations strengthen monitoring, recordkeeping, and reporting requirements, which improve the state's ability to detect violations of emissions limits. As noted earlier, because Connecticut withdrew Section 22a-174-18(j)(2) from its SIP submission, stationary sources subject to a federal NSPS will remain subject to the opacity limits contained in "Control of particulate emissions" under the SIP (See 37 FR 10842).

Revised Section 22a-174-18 establishes and requires limitations on visible and PM emissions from certain stationary sources, identifies a standardized method for determining compliance for sources without COMS, and establishes an alternative opacity limit of up to 60 percent opacity (during any 6-minute block average) during certain non-steady-state modes of operation for sources with COMS. In addition, the revised regulation sets a strict limit on the amount of time (0.5 percent of a facility's total operating hours during any calendar quarter) that sources with COMS can operate under the alternative opacity limit. As described earlier in this notice, we believe that the revision of Section 22a-174-18 will not interfere with attainment or maintenance of any NAAQS or other applicable CAA requirements, and thus is approvable

with respect to section 110(l) of the CAA.

### 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 Order 12866 (58 FR 51735, October 4, 1993);
  - 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 (Pub. L. 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 September 15, 2014. 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, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 8, 2014.

### H. Curtis Spalding,

*Regional Administrator, EPA New England.*

**Editorial Note:** This document was received for publication by the Office of the Federal Register on July 9, 2014.

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 paragraph (c)(104) to read as follows:

**§ 52.370 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(104) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on December 1, 2004.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated December 1, 2004 submitting a revision to the Connecticut State Implementation Plan.

(B) Regulations of Connecticut State Agencies, Section 22a-174, Abatement of Air Pollution Regulations, amended April 1, 2004:

(1) Section 22a-174-4 “Source monitoring, recordkeeping and reporting.”

(2) Section 22a-174-7 “Air pollution control equipment and monitoring equipment operation.”

(3) Section 22a-174-18 “Control of particulate matter and visible emissions,” with the exception of the phrase “or malfunction” in Section 22a-174-18(j)(1) and all of Section 22a-174-18(j)(2), which CT DEEP withdrew from the SIP submittal.

(ii) Additional materials.

(A) Letter from CT DEEP dated January 14, 2013, entitled “Information to Support EPA’s Approval of

Connecticut’s Requirements for Opacity.”

(B) Letter from CT DEEP dated July 8, 2013, withdrawing from CT DEEP’s December 1, 2004 SIP revision the phrase “and malfunction” from Subsection (j)(1) of RCSA Section 22a-174-18.

(C) Letter from CT DEEP dated March 27, 2014, withdrawing from CT DEEP’s December 1, 2004 SIP revision Section 22a-174-18(j)(2).

■ 3. In § 52.385, Table 52.385 is amended by adding new entries to existing state citations for 22a-174-4, 22a-174-7, and 22a-174-18 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-174-4 ....	Source monitoring, recordkeeping and reporting.	4/1/04	7/16/14	[Insert <b>Federal Register</b> Citation].	(c)(104)	
*	*	*	*	*	*	*
22a-174-7 ....	Air pollution control equipment and monitoring equipment operation.	4/1/04	7/16/14	[Insert <b>Federal Register</b> Citation].	(c)(104)	
*	*	*	*	*	*	*
22a-174-18 ..	Control of particulate matter and visible emissions.	4/1/04	7/16/14	[Insert <b>Federal Register</b> Citation].	(c)(104)	All of Section 22a-174-18 is approved, with the exception of the phrase “or malfunction” in Section 22a-174-18(j)(1) and all of Section 22a-174-18(j)(2), which CT DEEP withdrew from the SIP submittal. Because Connecticut withdrew Section 22a-174-18(j)(2) from its SIP submission, stationary sources subject to a federal NSPS will remain subject to the opacity limits contained in “Control of particulate emissions” under the SIP (See 37 FR 10842). See Section 19-508-18, “Control of Particulate Emissions” posted at <a href="http://www.epa.gov/region1/topics/air/sips/sips_ct.html">http://www.epa.gov/region1/topics/air/sips/sips_ct.html</a> .
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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2013-0072; FRL-9913-62-OAR]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Section 110(9)(2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving two State Implementation Plan (SIP) revisions submitted by the State of Maryland pursuant to the Clean Air Act (CAA). Whenever new or revised National Ambient Air Quality Standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The State of Maryland has made submittals addressing the infrastructure requirements for the 2008 lead (Pb) NAAQS.

**DATES:** This final rule is effective on August 15, 2014.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2013-0072. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (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 either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Ruth Knapp, (215) 814-2191, or by email at [knapp.ruth@epa.gov](mailto:knapp.ruth@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On October 15, 2008, EPA substantially strengthened the primary and secondary lead NAAQS (hereafter the 2008 Pb NAAQS), revising the level of the primary (health-based) standard from 1.5 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) to 0.15  $\mu\text{g}/\text{m}^3$ , measured as total suspended particles (TSP) and not to be exceeded with an averaging time of a rolling three month period. EPA also revised the secondary (welfare-based) standard to be identical to the primary standard, as well as the associated ambient air monitoring requirements. See 40 CFR 50.16.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS or within such shorter period as EPA may prescribe. The contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affect the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(1) provides the procedural and timing requirements for SIPs and section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. More specifically, section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS.

For the 2008 Pb NAAQS, states typically have met many of the basic program elements required in section 110(a)(2) of the CAA through earlier SIP submissions in connection with

previous lead NAAQS. Nevertheless, pursuant to section 110(a)(1) of the CAA, states have to review and revise, as appropriate, their existing lead NAAQS SIPs to ensure that the SIPs are adequate to address the 2008 Pb NAAQS. To assist states in meeting this statutory requirement, EPA issued guidance on October 14, 2011, entitled, "Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)," which lists the basic elements that states should include in their SIPs for the 2008 Pb NAAQS.

##### II. Summary of SIP Revision

On May 2, 2014 (79 FR 25059), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland proposing approval of Maryland's January 3, 2013 and August 14, 2013 submittals to satisfy several requirements of section 110(a)(2) of the CAA for the 2008 Pb NAAQS. In the NPR, EPA proposed approval of the following infrastructure elements: Sections 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. This action does not include any action on section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate process if necessary. The rationale which supports EPA's proposed action, including the scope of infrastructure SIPs in general, is explained in the NPR and the technical support document (TSD) accompanying the NPR and will not be restated here. The TSD is available online at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA-R03-OAR-2013-0072. No comments were received on this rulemaking action.

##### III. Final Action

EPA is approving two revisions to the Maryland SIP, Maryland's January 3, 2013 and August 14, 2013 submittals for the 2008 Pb NAAQS, that address the following infrastructure elements: Sections 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). This rulemaking action does not include section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, since this element is not required to be submitted by the three year submission deadline of section 110(a)(1), and will be addressed in a separate process.