

“Guidance on Passive Foreign Investment Companies” is corrected to read “Guidance Under Section 958 on Determining Stock Ownership”.

**Oluwafunmilayo A. Taylor**,  
Chief, Legal Processing Division, Associate  
Chief Counsel, (Procedure and  
Administration).

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2020-0719; FRL-9530-01-R1]

#### Air Plan Approval; Connecticut; Regulations To Limit Premises-Wide Actual and Potential Emissions From Major Stationary Sources of Air Pollution

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision approves into the Connecticut SIP state regulations that apply restrictions on emissions of criteria pollutants for which EPA has established National Ambient Air Quality Standards. Separately, we are also approving Connecticut regulations that apply restrictions on emissions of hazardous air pollutants (HAPs). The Connecticut regulations impose legally and practicably enforceable emissions limitations restricting eligible sources’ actual and potential emissions below major stationary source thresholds, if a source chooses to be covered by the regulations. Such restrictions generally allow eligible sources to avoid having to comply with reasonably available control technology (RACT) that would otherwise apply to major stationary sources, title V operating permit requirements, or other requirements that apply only to major stationary sources. This action is being taken under the Clean Air Act.

**DATES:** This rule is effective on April 11, 2022. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of April 11, 2022.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2020-0719. All documents in the docket are listed on the <https://www.regulations.gov>

website. Although listed in the index, 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 at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Susan Lancey, Air Permits, Toxics and Indoor Programs Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05-2), Boston, MA 02109-3912, telephone 617-918-1656, email [lancey.susan@epa.gov](mailto:lancey.susan@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 February 8, 2021 (86 FR 8574), EPA published a notice of proposed rulemaking (NPRM) for the State of Connecticut.

The NPRM proposed approval of a SIP revision consisting of Regulations of Connecticut State Agencies (RCSA) section 22a-174-33a, Limit on Premises-wide Actual Emissions Below 50% of Title V Thresholds, effective September 24, 2020, and RCSA section 22a-174-33b, Limit on Premises-wide Actual Emissions Below 80% of Title V Thresholds, effective September 24, 2020, as the regulations relate to criteria pollutants. The Connecticut regulations impose legally and practicably enforceable emissions limitations restricting eligible sources’ actual and potential emissions below major stationary source thresholds, if a source chooses to be covered by the regulations. The NPRM separately proposed approval of RCSA sections

22a-174-33a and 22a-174-33b under section 112(l) of the CAA, as the regulations relate to HAPs. As noted earlier, RCSA sections 22a-174-33a and 22a-174-33b are designed to limit air pollutant emissions from major stationary sources to below major stationary source thresholds by including legally and practicably enforceable restrictions on potential and actual emissions.

The formal SIP revision was submitted by Connecticut on October 26, 2020, supplemented on January 12, 2022. In the January 12, 2022 letter, Connecticut requested to withdraw provision RCSA 22a-174-33b(d)(6) from consideration as part of the SIP, clarified its interpretation of several provisions, and provided additional information concerning implementation of the regulations.

Connecticut submitted a December 21, 2020 letter requesting approval of RCSA sections 22a-174-33a and 22a-174-33b under section 112(l) of the CAA.

The rationale for EPA’s proposed approval of the SIP revision and CAA 112(l) submittal is explained in the NPRM and will not be restated here.

#### II. Response to Comments

We received three comments that supported this action. One commenter stated that they support approval of the rule. One commenter stated it is important that air quality plans are passed and that clean air quality is crucial for anyone in any state. One commenter supports approval of the rule and believes that a limit on emissions should occur because of concerns that an increase of pollution affects air quality; the commenter also made additional statements not germane to this action. The following provides our responses to adverse comments received.

*Comment 1:* The commenter could not access the docket for this rulemaking and could not find any results on [Regulations.gov](https://www.regulations.gov).

*Response:* The docket was available on February 8, 2021, the publication date of the proposal. The commenter emailed comments on February 7th, after the pre-publication proposed rule was posted, but one day prior to the proposed rule’s publication in the **Federal Register** on February 8th. The docket only becomes available on the actual date that a Rulemaking publishes in the **Federal Register**, and that it is typically available by 10 a.m. EST. We informed the commenter on February 8th that the docket was available.

*Comment 2:* The commenter was concerned that RCSA section 22a-174-

33a ignores, in the definition of Hazardous Air Pollutant (HAP) in section (a)(4), HAPs added to the CAA 112(b) HAPs list. The commenter pointed out that there are several petitions in front of EPA, being reconsidered by EPA, or headed for or in litigation to add HAPs to the HAPs list. The commenter asserted that 22a-174-33a would ignore these added HAPs and thus isn't approvable. The commenter stated that without a change in the regulation to address this issue, sources could be over the major source threshold, and would not be covered by the regulation, by virtue of a HAP which is added to the HAP list but does not appear in CAA 112(b). The commenter submitted the same comment in relation to Connecticut's regulation at RCSA 22a-174-33b.

*Response:* The definition of Hazardous Air Pollutant (HAP) in Section 22a-174-33a(a)(4) and 33b(a)(10) means "notwithstanding the definition in Section 22a-174-1 of the Regulations of Connecticut State Agencies (RCSA), any air pollutant listed in section 112(b) of the Federal Clean Air Act excluding any air pollutants that are removed from such list." We agree that Connecticut's definition does not include air pollutants that are added to the list. However, this should not be a reason to disapprove Connecticut's requested CAA 112(l) submission. On January 5, 2022, EPA added a new HAP, 1-bromopropane, to the CAA HAP list by amending 40 CFR part 63, subpart C. (See 87 FR 393) As a result, Connecticut should now amend its regulations to add 1-bromopropane to its definition of Hazardous Air Pollutant so that sources emitting 1-bromopropane may be covered by Connecticut's regulation. EPA could then approve a subsequent State submittal including 1-bromopropane under Section 112(l). It is not a legal requirement of the CAA that all sources be regulated by the regulation in question. A source that is a major source if not regulated pursuant to this CAA 112(l) approval will have to comply with any applicable major source requirements unless and until Connecticut amends its rule to include the added HAP. In a letter dated January 12, 2022, Connecticut Department of Energy and Environmental Protection (DEEP) clarified its implementation with respect to HAPs added to the HAP list. Connecticut's January 12, 2022 letter provided that "To the extent that a hazardous air pollutant (HAP) is added to the Clean Air Act (CAA) HAP list but does not appear in CAA Section 112(b), if DEEP identifies a facility with

potential emissions of such a HAP not listed in CAA Section 112(b), DEEP shall not allow such facility to operate under RCSA section 22a-174-33a or RCSA section 22a-174-33b until such time as DEEP adopts regulatory revisions to include such a newly listed HAP within the definitions that apply to RCSA sections 22a-174-33a and 22a-174-33b. As 1-bromopropane has recently been added to the CAA list of HAPs and does not appear in CAA Section 112(b), neither RCSA section 22a-174-33a nor RCSA section 22a-174-33b is a regulatory compliance option available for a facility that emits 1-bromopropane to limit the potential to emissions [sic] of criteria pollutants and hazardous air pollutants." Thus, the commenter's concerns are unwarranted.

*Comment 3:* The commenter was concerned that section (d)(1) of Connecticut's regulation ignores VOC and NO<sub>x</sub> emissions in areas that are marginal, moderate, or extreme ozone nonattainment areas, as well as areas designated attainment but located inside the ozone transport region. Connecticut currently contains one marginal ozone nonattainment area and one moderate nonattainment area for the 2015 ozone National Ambient Air Quality Standard (NAAQS). The commenter asserted that the fact that those areas are currently designated as serious nonattainment areas for the 2008 ozone NAAQS does not fix this problem as that could change in the future if those areas were redesignated to attainment for the 2008 ozone NAAQS. The commenter believes the current rule would leave a gap by not placing emission limits on NO<sub>x</sub> and VOC emissions and thus is not approvable. The commenter asserts that the same is true if those areas were to be "bumped up" to extreme nonattainment areas for the 2008 ozone NAAQS. The same comment was submitted for Connecticut's regulation at RCSA 22a-174-33b.

*Response:* By definition, any source in Connecticut eligible to be regulated by this rule could avail itself of the limits contained within the regulation. The definition of "Serious non-attainment area for ozone" in Connecticut's SIP-approved regulation at RCSA Section 22a-174-1 means "all towns within the State of Connecticut, except those towns located in the severe non-attainment area for ozone." The SIP-approved definition of "Severe non-attainment area for ozone" in Connecticut's regulation at RCSA 22a-174-1 means the towns of Bethel, Bridgeport, Bridgewater, Brookfield, Danbury, Darien, Easton, Fairfield, Greenwich, Monroe, New Canaan, New Fairfield, New Milford, Newtown, Norwalk,

Redding, Ridgefield, Sherman, Stamford, Stratford, Trumbull, Weston, Westport, and Wilton. These serious and severe non-attainment areas, as defined, represent Connecticut's nonattainment area classifications under the one-hour ozone standard, encompassing all locations in the State of Connecticut and thereby all sources eligible to be regulated by this rule. Because Connecticut's regulations define all areas as serious nonattainment for ozone, except for towns located in a severe nonattainment area for ozone, the state definitions are equivalent to or more stringent than the current classifications under the 2008 and 2015 ozone standards. EPA can request in the future that Connecticut amend its regulation if any area in Connecticut were to be reclassified. Reclassifying an area, for example from serious to severe, would be done through a proposed and final rulemaking process. Connecticut would then have to make any regulatory changes as needed. In addition, in a letter dated January 12, 2022, Connecticut stated that "To the extent that EPA changes the ozone attainment designations applicable to Connecticut, DEEP will act with all due haste to make necessary revisions to the relevant definitions in Connecticut's regulations and in the SIP."

*Comment 4:* The commenter was concerned that RCSA 33a(d)(4)(F) is a "director's discretion" provision which the commenter asserted is illegal. The same comment was submitted for Connecticut's regulation at RCSA 22a-174-33b(d)(4)(F).

*Response:* Connecticut's regulations at sections 33a(d)(4)(F) and 33b(d)(4)(F) provide that "if the data in subparagraphs (A), (B), (C), (D) and (E) of this subdivision are unavailable, the emission rate shall be calculated using another source of emissions data that is approved by the Commissioner and the Administrator. Such approval shall be obtained prior to operating in accordance with this section." In a letter dated January 12, 2022, Connecticut clarified implementation of these provisions. Connecticut stated that "Sections 22a-174-33a(d)(4)(F) and 22a-174-33b(d)(4)(F) of the Regulations of Connecticut State Agencies (RCSA) are the final alternatives in a hierarchy of data acceptable for a source owner to determine actual emissions. The two provisions allow for the use of data not otherwise specified in the hierarchy with the prior approval of the Commissioner and Administrator. DEEP understands the approval of the Commissioner and Administrator to be achieved via DEEP's submission of a

single-source SIP revision that would be subject to the procedural requirements of 40 CFR part 51, subpart F, and DEEP will proceed according to this understanding should any requests be received under one of these two provisions. DEEP further understands that such exercise of discretion will not have an effect on the existing SIP requirement until such time as the single-source SIP revision has been approved by the Administrator.” The commenter’s concerns are unwarranted because any alternatives approved by EPA and DEEP under RCSA Sections 33a(d)(4)(F) or 33b(d)(4)(F) would be accomplished by a SIP revision with an opportunity for public review and comment.

*Comment 5:* The commenter stated that the regulations are not enforceable as a practical matter because they do not ensure actual emissions stay below the thresholds in section (d)(1) of the regulation. Section (d)(4)(A) requires the use of a Continuous Emission Monitoring System (CEMS) if the data is available. The commenter was concerned that while CEMS are a good monitoring method, Section (d)(4)(A) does not require data substitution or gap filling when CEMS data for certain time periods are not available, and potential to emit and actual emissions that trigger title V and reasonably available control technology (RACT) applicability don’t allow for ignoring emissions. The commenter asserted that, for example, CEMS are often not required to gather data during periods of startup and shutdown even though some emission sources, such as combustion devices, can have substantially higher emissions during those periods. The commenter cites generally to *Weiler v. Chatham Forest Products*, 392 F.3d 532, 535 (2nd Cir. 2004). Also, the commenter stated that CEMS have downtime, both planned downtime to do testing and also unplanned downtime, and section (d)(4)(A) of Connecticut’s regulation does not address these situations so it would be arbitrary and capricious for EPA to approve this regulation.

The commenter was concerned that Section (d)(4)(B) suffers from similar flaws as discussed above but much worse. For example, the commenter asserted that stack tests are not performed during startups or shutdowns. The commenter stated that by using stack test data to calculate “actual” emissions on an annual basis, Section (d)(4)(B) ignores an important part of the problem, that is actual emissions during periods of startup, shutdown, process malfunctions, control equipment malfunctions or operations at different parameters that

are not startup and shutdown. The commenter stated that the problem isn’t limited to startup or shutdown. The commenter stated that the fact that a source emitted at a certain rate during a stack test does not prove that a source emits at that same rate every other hour that it operates. The commenter stated that this flaw is further compounded by the lack of a requirement for the frequency of stack testing, because a stack test performed 20 years ago, for example, provides no reliable data on current emissions.

The commenter was concerned that Section (d)(4)(C) of Connecticut’s regulation suffers from the same problems discussed above but noted that it also ignores a host of other considerations. The commenter questioned whether, for example, the source that is going to use this rule is defective in some way or not properly installed. The commenter stated that if that is the case, the manufacturers’ testing doesn’t provide reliable data on emissions from the source in question. The commenter pointed to the introduction section of AP-42, *Compilation of Air Pollutant Emission Factors*, which states “Average emissions differ significantly from source to source and, therefore, emission factors frequently may not provide adequate estimates of the average emissions for a specific source. The extent of between-source variability that exists, even among similar individual sources, can be large depending on process, control system, and pollutant. Although the causes of this variability are considered in emission factor development, this type of information is seldom included in emission test reports used to develop AP-42 factors.” As a result, some emission factors are derived from tests that may vary by an order of magnitude or more. Similarly, the commenter was concerned whether the conditions of the source in any way match the conditions of the manufacturer’s test. The commenter stated that if the manufacturer did its testing in a high-altitude desert, that could create radically different conditions from sea level winter conditions than a source in Connecticut faces. The commenter stated that this difference in altitude and weather can result in very different combustion and evaporation conditions which change emissions.

The commenter was concerned that Sections (d)(4)(D) and (E) are much worse than prior sections of Connecticut’s regulation and use calculations which are in no way rationally related to actual emissions. The commenter believes that these

sections allow the use of absolutely no actual emissions data to determine “actual” emissions and that they suffer from most of the same faults discussed above. Furthermore, the commenter questioned how a pertinent material balance would account for thermal NO<sub>x</sub> emissions, that is NO<sub>x</sub> that is formed in combustion processes because our air is 78% nitrogen, regardless of the composition of the fuel. The commenter stated that thermal NO<sub>x</sub> formation is greatly influenced by temperature in combustion processes but (d)(4)(D) does not require any parametric monitoring, much less restrictions, on operating temperature. Thus, the commenter states the rule is ignoring this important aspect of the problem such that the calculated emissions from application of (d)(4)(D) would not be rationally related to actual emissions. As to AP-42, the commenter stated that EPA’s position has been that AP-42 should not be used for ensuring compliance with synthetic minor limits. The commenter stated that AP-42 clearly states that it is used for “estimating emissions”, See, e.g., AP-42 Introduction at 1, but a synthetic minor limit is not an estimate. The commenter stated that actual and potential to emit emissions have to be below the applicable threshold. The commenter asserted that actual emissions and an estimate of emissions are two separate things; that AP-42 emission factors come with ratings. The commenter stated that a “D” rating is below average and an “E” rating is poor. See AP-42 Introduction at 10. The commenter stated that Section (d)(4)(E) allows the use of even emission factors which EPA itself describes as “Poor”, and it is arbitrary for EPA to allow the use of “Poor” “estimates” to provide actual emissions.

Therefore, the commenter believes EPA must disapprove this SIP submittal.

The commenter submitted the same comments in relation to Connecticut’s regulation at RCSA 22a-174-33b.

*Response:* The Commenter asserts that “the regulations are not enforceable as a practical matter because they do not ensure actual emissions stay below the thresholds in section (d)(1).” As a general matter, a source may avoid treatment as a major source if its “potential to emit” (PTE) pollutants is below the relevant major source thresholds. See for example the definition of “major source” in 40 CFR part 63, subpart A, and 40 CFR 70.2. In addition, 40 CFR 63.2 defines “potential to emit” as the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the

stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. The Connecticut regulations under RCSA section 22a–174–33a allow sources to elect to comply with emission limitations set at 50% of the title V operating permit program thresholds for a major source; or, alternatively, under RCSA section 22a–174–33b, certain specified source categories may commit to be limited to emissions up to, but no more than, 80% of the title V operating permit program thresholds for a major stationary source provided the owner or operator conducts the additional specified monitoring and any other additional requirements required by RCSA 22a–174–33b for the relevant source category. The commenter essentially maintains that the limits in question are not enforceable because of flawed or inadequate methods for determining compliance with the applicable limits.

Connecticut's RCSA sections 22a–174–33a and 22a–174–33b require the owner or operator committing to operate pursuant to the applicable regulations to submit a notification to the State and to keep records that include, among other things, calculation of a source's actual emissions on a monthly and 12-month rolling basis for regulated air pollutants and a detailed description of the methodology used to calculate those actual emissions. The methodology used by an eligible source to calculate emissions must be selected from a preferential hierarchy of methodologies explicitly identified in the regulations.

The commenter cites generally to *Weiler v. Chatham Forest Products*, 392 F.3d 532, 535 (2nd Cir. 2004), which held that a group of citizens could bring an action under CAA 304(a)(3) against an owner or operator of a proposed source for which New York had issued a synthetic minor source construction permit, where the citizens contended that the controls or limitations on the source's potential to emit were neither practicably effective nor enforceable and where the source was to be constructed in a nonattainment area. The Court concluded that the plain language of the CAA allowed citizen suits to challenge a state's determination that no major source permit is necessary. In reaching this conclusion, the Court reviewed EPA's treatment of a source's "potential to emit," as relevant to determining whether a source is a major source, and summarized EPA's position that a

source that otherwise might be considered a major emitting facility may be treated as not such a source if "there are legally and practicably enforceable mechanisms in place to make certain that the emissions remain below the relevant levels." The Court did not reach the question of whether the controls or limitations at issue in New York were "legally and practicably enforceable." Connecticut's regulation is legally enforceable because it was properly promulgated under state law. In addition, Connecticut's regulation states that no owner or operator of any premises operating in accordance with the rule shall cause or allow the emission of any regulated air pollutant during each and every consecutive 12-month period to be equal to or exceed the emission limitations in the regulation.

Connecticut's approach was developed in accordance with an EPA guidance document titled "Options for Limiting Potential to Emit of a Stationary Source under Section 112 and Title V of the Clean Air Act," issued by John Seitz, Office of Air Quality Planning and Standards (OAQPS) to EPA Air Division Directors, dated January 25, 1995<sup>1</sup> (January 25, 1995 OAQPS PTE memorandum). This guidance lays out the key criteria for practical enforceability of limits on PTE, which EPA later incorporated into its rationale, in part, for the 2002 New Source Review (NSR) Reform rule (2002 final rule).<sup>2</sup> In the 2002 final rule, EPA stated that practical enforceability for a source-specific permit will be achieved if the permit's provisions specify: (1) A technically-accurate limitation and the portions of the source subject to the limitation; (2) the time period for the limitation (hourly, daily, monthly, and annual limits such as rolling annual limits); and (3) the method to determine compliance, including appropriate

<sup>1</sup> The January 25, 1995 OAQPS memo was predicated on a view that federal enforceability is an essential element in establishing potential to emit limits. A court decision in the *National Mining Association (NMA) v. EPA*, 59 F.3d 1351, 1363–1365 (D.C. Cir. 1995) remanded the Federal enforceability provision. Consistent with this decision, EPA's longstanding policy allows for any physical or operational limitation on the capacity of the stationary source to emit a pollutant to be treated as part of the source's design if the limitation or the effect it would have on emissions is, first, either federally enforceable or legally enforceable by a state or local permitting authority and, second, practicably enforceable. See December 20, 1999, memorandum titled "Third Extension of January 25, 1995 Potential to Emit Transition Policy." Available in the docket for this rulemaking.

<sup>2</sup> PSD and NSR: Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Unit, Pollution Control Projects. 67 FR 80190–80191 (December 31, 2002).

monitoring, recordkeeping, and reporting. For rules and general permits that apply to categories of sources, practicably enforceability additionally requires that the provisions: (1) Identify the types or categories of sources that are covered by the rule; (2) where coverage is optional, provide for notice to the permitting authority of the source's election to be covered by the rule; and (3) specify the enforcement consequences relevant to the rule. EPA also stated in the 2002 final rule that "[e]nforceable as a practical matter" will be achieved if a requirement is both legally and practicably enforceable." Among several other provisions, the 2002 final rule established provisions for Plantwide Applicability Limitations (PALs).<sup>3</sup>

To make a PAL enforceable as a practical matter, the EPA regulations require a source to conduct monitoring, recordkeeping and reporting of the actual emissions of a PAL pollutant on a 12-month rolling total basis. A PAL monitoring system must employ one or more of four general approaches meeting minimum requirements specified in the regulations. These include mass balance calculations for activities using coatings or solvents, CEMS, continuous parameter monitoring systems (CPMS) or predictive emissions monitoring systems (PEMS), and emission factors. 40 CFR 52.21(aa)(12)(i)(b), (aa)(12)(ii). The regulations also provide for alternative monitoring approaches that are approved by the reviewing authority. 40 CFR 52.21(aa)(12)(i)(c). Connecticut's RCSA Sections 33a and 33b contain monitoring and recordkeeping requirements that are substantially consistent with those in the EPA PAL regulations, supporting the conclusion that the limits in Connecticut's RCSA Sections 33a and 33b are enforceable as a practical matter.

As stated above, EPA's January 25, 1995 OAQPS PTE memorandum and EPA's 2002 final rule provide specific criteria for practical enforceability to be achieved. Connecticut's rules include requirements that meet these criteria. Specifically, 33a(d) and 33b(d) specify technically-accurate emission limitations that apply premises-wide on a 12-month rolling annual basis. Sections 33a(d) and 33b(d) specify a preferential hierarchy for determining compliance with the emission limitations, as well as monitoring, reporting and recordkeeping. In addition, Sections 33a(g) and 33b(h) require a notification to the permitting

<sup>3</sup> The PAL regulations were upheld by the Court in *New York v. EPA*, 413 F.3d 3, 22 (D.C. Cir. 2005).

authority for sources that elect coverage under the rules. Sections 33a(b) and 33b(c) include duty to comply provisions, as well as a required certification statement in 33a(c) and 33b(k) to be submitted that the information submitted is true, accurate and complete. These provisions require the certifier to acknowledge that any false statements may be punishable as a criminal offense under Connecticut's statutes. In addition, Sections 33a(j) and 33b(k) provide that nothing in these sections precludes the Commissioner from requiring a source to obtain a title V operating permit. Lastly, Sections 33a(f)(2)(A) and 33b(g)(3)(A) require the owner or operator to determine the cause of any emission limitation exceedance, correct such exceedance, mitigate its results, and prevent any further exceedance.

In addition to providing practical enforceability criteria, the January 25, 1995 OAQPS PTE memo indicates that one approach to establishing appropriately enforceable limitations is by general rules creating enforceable restrictions at one time for many sources. The memo discusses a California model rule developed in consultation with EPA as an example of such an approach. The California model rule is designed to place smaller sources under annual emissions limits which restrict their "potential to emit" and thus their exposure to "major source" requirements of the Clean Air Act. The California model rule ensures compliance with the annual limit through a series of recordkeeping and reporting requirements. These requirements are tapered to reduce burdens as source size (as it relates to emissions) decreases. The California model rule provides a hierarchy of data for sources to calculate actual emissions for every consecutive 12-month period.

Connecticut's RCSA Sections 33a and 33b are consistent with the approach taken in the California model rule, cited approvingly as an example by EPA. The California model rule and Connecticut's rules require a detailed hierarchy for sources to calculate emissions. Specifically, Connecticut's Section 22a-174-33a(d)(4) requires:

(A) If data are available from CEM equipment, such data shall be used to determine the rate of emissions. Only CEM installed, operated, and certified in accordance with a permit or order, regulation issued or administered by the Commissioner or the Administrator, or a Commissioner approved voluntarily installed CEM may be used to satisfy the requirements of this subdivision;

(B) If the data in subparagraph (A) of this subdivision are unavailable but stack testing

data are available, such stack testing data shall be used to determine the rate of emissions, provided such testing was conducted in accordance with protocols approved in writing by the Commissioner or the Administrator in advance of testing and a representative of the Commissioner or the Administrator was provided the opportunity to witness such testing;

(C) If the data in subparagraphs (A) and (B) of this subdivision are unavailable, the rate of emissions shall be calculated using data supplied by the manufacturer of the subject emission unit or units, which data were derived from EPA approved emissions testing of such unit performed by or for the manufacturer;

(D) If the data in subparagraphs (A), (B) and (C) of this subdivision are unavailable, the rate of emissions shall be calculated using data derived from an analysis of pertinent material balances;

(E) If the data in subparagraphs (A), (B), (C) and (D) of this subdivision are unavailable, the rate of emissions shall be calculated using the data or emissions estimation technique from the following EPA publications that results in the *highest* rate of emissions:

(i) Compilation of Air Pollutant Emission Factors (AP-42),

(ii) AIRS Facility Subsystem Emission Factors, or

(iii) The Emission Inventory Improvement Program; and

(F) If the data in subparagraphs (A), (B), (C), (D) and (E) of this subdivision are not available, the emission rate shall be calculated using another source of emissions data that is approved by the Commissioner and the Administrator. Such approval shall be obtained prior to operating in accordance with this section.

Connecticut's rules include a preferential hierarchy to use the best data to calculate actual emissions when available. Actual emissions are required to be calculated for the premises for each and every consecutive 12-month period. Connecticut set the emissions limitation in Section 33a at 50% of the major source threshold to create a sufficient buffer to account for variability that may exist in calculating emissions using the methods allowed in the preferential hierarchy. Section 33b sets the premises wide limit to below 80% of the major source threshold for certain source categories and requires additional monitoring and recordkeeping for these source categories.

In addition to the preferential hierarchy, Connecticut's RCSA Sections 33a and 33b also require detailed records and emissions calculations including a log of:

(i) The total amount of fuels, solvents, coatings, raw materials, or other such material, used by each emission unit during each month,

(ii) An identification of such fuels, solvents, coatings, raw materials, or other

such material used, by each emission unit during each month,

(iii) The actual operating hours of each emission unit during each month, as necessary to calculate emissions,

(iv) Any other documentation the Commissioner deems necessary to reliably calculate the emission of air pollutants regulated under this section, and

(v) All purchase orders, invoices, Material Safety Data Sheets, test results, certifications or other documents necessary to verify information and calculations in the monthly log.

In addition, Connecticut's RCSA 33a and 33b require sources to maintain a log of annual actual emissions of each regulated air pollutant emitted from the premises, including a detailed description of the methodology the owner or operator used to calculate such emissions and the basis thereof.

Connecticut's 33a and 33b also require the facility to submit annual compliance certifications. Section 33b, which limits sources to up to, but not more than, 80% of the major title v operating source threshold, requires sources with actual emissions >50% of the major source threshold to report emissions for each and every 12-month period. Sections 33a and 33b further allow DEEP to request any additional information in writing to verify actual emissions. (See RCSA 22a-174-33a(f) and 33b(g)) Connecticut's rules also require sources to maintain records of any other documentation the Commissioner deems necessary to reliably calculate the emission of air pollutants regulated. (See RCSA 22a-174-33a(e)(1)(B)(iv) and 33b(f)(1)(B)(iv))

In addition to this regulatory oversight of sources by the State, in a letter dated January 12, 2022, Connecticut provided that:

DEEP has a robust federally enforceable minor source new source review (NSR) permit program that governs operations of individual pieces of equipment. Section 22a-174-33a and Section 22a-174-33b do not shield pieces of equipment from Connecticut's minor source NSR program. Consequently, pieces of equipment subject to minor source NSR at facilities operating under RCSA Section 22a-174-33a or Section 22a-174-33b would be subject to Best Achievable Control Technology, ambient air quality impact analysis, monitoring, record keeping and reporting to assure compliance with individual pollutant limits contained in the permits. Permits for many pieces of equipment require periodic emissions testing and/or continuous emission monitoring systems (CEMS) to assure compliance with permit limits. The permits contain limits on allowable materials, material composition and material throughput and include monitoring, record keeping and reporting to assure that sources are operating as expected. Where applicable, many permits limit startup and shutdown emissions and require

monitoring and record keeping of startup and shutdown emissions to assure compliance with annual emissions limits.

Finally, concerning DEEP's compliance oversight of sources operating under RCSA sections 22a-174-33a and -33b, DEEP offers the following information. . . . DEEP's five-year inspection frequency for RCSA section 22a-174-33b sources is consistent with the frequency stipulated in EPA's CAA CMS policy for synthetic minor 80 percent (SM-80) sources. Note that under EPA's CAA CMS, an SM-80 source is one with a premises-wide potential to emit (including any federally or legally and practicably enforceable physical or operational limitations on such source's capacity) greater than or equal to 80% and less than 100% of the major source thresholds, whereas an RCSA section 22a-174-33b source is limited to premises-wide emissions less than 80% of the major source thresholds. See EPA's CAA Stationary Source CMS, October 2016, section IV [available in the docket for this rulemaking]. Since EPA's CMS does not establish a minimum inspection frequency for true minor sources or synthetic minor sources that do not qualify as SM-80s, the five-year FCE [full compliance evaluation] frequency to which DEEP has committed for the RCSA section 22a-174-33b source universe is more stringent than required by EPA's CMS.

Sources operating under RCSA section 22a-174-33a are subject to inspection at DEEP's discretion. Such inspections may take the form of an on-site FCE or an off-site partial compliance evaluation (e.g., the issuance of an information request under RCSA section 22a-174-4 and the subsequent inspection of responsive records).

In inspecting synthetic minor sources operating under RCSA sections 22a-174-33a and -33b, DEEP ensures proper calculation of facility-wide emissions, including the appropriateness of the selected emission factors, pursuant to the hierarchy of emission calculation methodologies established in subsection (d)(4) of either regulation. This approach is consistent with DEEP's handling of sources previously registered under DEEP's General Permit to Limit the Potential to Emit (GPLPE). In inspecting sources that calculate emissions using CEMS data, DEEP ensures that such CEMS meet applicable performance specifications, quality assurance (QA) requirements, and operational requirements by (i) reviewing relative accuracy test audit (RATA) protocols and results and auditing such test programs as resources allow; (ii) reviewing quarterly excess emission and downtime reports; (iii) verifying that the required QA activities are completed and passed; and (iv) during on-site FCEs, conducting a physical inspection of the CEMS. In inspecting sources that calculate emissions using stack test data, DEEP ensures the validity of stack testing—including the utilization of appropriate test methods, conformance with such methods, and the proper reduction and accuracy of the test results—by reviewing all stack test protocols and results and auditing such test programs as resources allow. Furthermore, DEEP verifies that testing is conducted under the most challenging representative operating

conditions. See, e.g., EPA's CAA National Stack Testing Guidance, April 2009, section 5 and DEEP's Source Emission Monitoring Test Guidelines, Version 2.0, April 2019, section 8 [available in the docket for this rulemaking].

Furthermore, consistent with its handling of GPLPE reports, DEEP reviews all reports submitted in accordance with RCSA sections 22a-174-33a and -33b upon their submission, including annual compliance certifications; emission exceedance reports; and, for sources operating under RCSA section 22a-174-33b, annual emission reports. In reviewing emission reports, DEEP ensures proper calculation of facility-wide emissions, including the appropriateness of the selected emission factors, pursuant to the hierarchy of emission calculation methodologies established in the regulations.<sup>4</sup>

In summary, Connecticut's regulatory scheme includes significant oversight; emission limitations containing a sufficient buffer below the major source thresholds to account for variability that may exist in calculating emissions; the requirement to use methods to calculate emissions from a preferential hierarchy; and requirements for monitoring, reporting and recordkeeping. The overall regulatory scheme is based on a model rule contained in EPA guidance, California's model rule, and establishes a program that EPA finds legally and practicably enforceable to limit a sources potential to emit.

While EPA provides a general response to the adverse comment above, for purposes of clarity, below we have broken down the comment into its specific parts and provide additional responses for specific issues raised within the comment.

*Comment 5a:* The commenter stated that while CEMS are a good method, Section (d)(4)(A) does not require data substitution or gap filling when CEMS data for certain time periods are not available, and that potential to emit and actual emissions which trigger title V and RACT applicability don't allow for ignoring certain periods of emissions. The commenter is concerned about periods of startup and shutdown when CEMS may not be operating or other times when CEMS data is unavailable. The commenter states that CEMS are often not required to gather data during periods of startup and shutdown even

<sup>4</sup> EPA notes that when Connecticut DEEP refers to the GPLPE, they are referring to a prior general permit designed to limit air pollutant emissions from major stationary sources to below major source thresholds by including legally and practicably enforceable permit restrictions on potential and actual emissions. Connecticut adopted new RCSA sections 22a-174-33a and 22a-174-33b as a replacement program for the GPLPE. On April 24, 2017, EPA approved Connecticut's GPLPE issued on November 9, 2015. See 82 FR 18868.

though some emission sources, such as combustion devices, can have substantially higher emissions during those periods and cites generally to *Weiler v. Chatham Forest Products*, 392 F.3d 532, 535 (2nd Cir. 2004). The commenter also stated that CEMS have downtime, both planned downtime to do testing and unplanned downtime, and because (d)(4)(A) does not address this, it would be arbitrary and capricious for EPA to approve this.

*Response:* EPA disagrees with the commenter and finds that the portions of Connecticut's rules that allow for calculating premises-wide emissions using CEMS data sufficiently accounts for determining actual emissions over a 12-month rolling period. Only CEMS installed, operated, and certified in accordance with a permit, order, or regulation issued or administered by the Commissioner or EPA, or a Commissioner approved voluntarily installed CEMS may be used to calculate emissions. (See RCSA 33a(d)(4)(A) and 33b(d)(4)(A)) In addition, the regulations specify when data from CEMS are not available, the next method in the hierarchy, if available, is to be used to calculate emissions, so the regulations do not allow data gaps in calculating actual emissions. Connecticut's CEMS rules do not allow for the exclusion of startup and shutdown emissions. Connecticut's CEMS regulations also specify quality assurance requirements for CEMS, minimum CEMS data availability, and prohibit shutdown of monitoring equipment. (See RCSA 22a-174-4(c)(4)-(5), and 22a-174-7) Connecticut's regulations specify that CEMS data shall be available no less than 90% of the total operating hours of a source per calendar quarter, except for sources operated less than 336 hours and approved by the Commissioner. In addition, Connecticut's rule is written to provide a sufficient buffer below the major source threshold by setting the premises-wide limit to below 50% of the major source threshold or alternatively, setting the premises-wide limit in Connecticut's 33b to below 80% of the major source threshold for certain source categories with additional required monitoring and recordkeeping. Connecticut's requirements for minimum CEMS data availability ensure that sufficient data is being collected for calculating emissions, which combined with the buffer below the major source thresholds, ensure that sources' emissions stay below the major source thresholds. In light of the overall regulatory scheme, the PTE limits in Connecticut's regulation are not

rendered practicably unenforceable because of the use of CEMS.

*Comment 5b:* The commenter was concerned that stack tests are not performed during startups or shutdowns. The commenter stated that by using stack test data to calculate “actual” emissions on an annual basis, Section (d)(4)(B) ignores an important part of the problem, that is actual emissions during periods of startup, shutdown, process malfunctions, control equipment malfunctions or operations at different operating periods that are not startup and shutdown. The commenter asserted that the problem isn’t limited to startup or shutdown because the fact that a source emitted at a certain rate during a stack test does not prove that a source emits at that same rate every other hour that it operates. The commenter asserted that this flaw is further compounded by the lack of a requirement for the frequency of stack testing. The commenter asserted that a stack test performed 20 years ago, for example, provides no reliable data on current emissions.

*Response:* Connecticut’s 33a(d)(4)(B) and 33b(d)(4)(B) only allow stack tests if such testing is conducted in accordance with protocols approved in writing by the Commissioner or the Administrator in advance of testing and when a representative of the Commissioner or the Administrator has been provided the opportunity to witness such testing. Should parametric monitoring, specifically required by RCSA 22a–174–33b, indicate that operations are outside of the ranges occurring during the most recent test, or for any other reason, Connecticut has the authority to mandate emissions testing to assure compliance with applicable limits under RCSA 22a–174–5(e)(2). In addition, Connecticut’s rule is written to provide a sufficient buffer below the major source threshold by setting the premises wide limit to below 50% of the major source threshold or alternatively, setting the premises wide limit in Connecticut’s 33b to below 80% of the major source threshold for certain source categories with additional required monitoring and recordkeeping. Although stack tests are not conducted during startup or shutdown, stack tests are required to be conducted under conditions representative of a source’s operations and that would be reviewed during the required approval of the test protocol. Stack test data, combined with the buffer below the major source thresholds, ensure that sufficient data is being collected to ensure that sources’ emissions stay below the major source thresholds. In light of the overall regulatory scheme, the PTE limits in

Connecticut’s regulations are not rendered practicably unenforceable because of the allowance for stack testing.

*Comment 5c:* Regarding manufacturers’ data to calculate emissions, the commenter is concerned that the manufacturer’s testing may not provide reliable data on emissions from the source in question if the source that is going to use this rule is defective in some way or not properly installed. The commenter is also concerned about the conditions of the source matching the conditions of the manufacturer’s test. The commenter states that if the manufacturer did its testing in a high-altitude desert, that could create radically different conditions from sea level winter conditions that a source in Connecticut faces. This difference in altitude and weather can result in very different combustion and evaporation conditions which change emissions.

*Response:* Connecticut’s 33a(d)(4)(C) and 33b(d)(4)(C) only allow the rate of emissions to be calculated using data supplied by the manufacturer of the subject emission unit or units, when such data were derived from EPA approved emissions testing of such unit performed by or for the manufacturer. Should parametric monitoring, specifically required by RCSA 22a–174–33b, indicate that operations are outside of the ranges occurring during the most recent test, or for any other reason, Connecticut has the authority to mandate emissions testing to assure compliance with applicable limits under RCSA 22a–174–5(e)(2). Regarding the commenter’s concern that the source may be defective or not installed properly, Connecticut’s RCSA 22a–174–7(b) prohibits the deliberate shut down of air pollution control equipment or monitoring equipment except to perform maintenance as specified. In addition, Connecticut has committed to conduct inspections every 5 years for sources covered by RCSA 22a–174–33b, and sources covered by RCSA 22a–174–33a are subject to inspection at DEEP’s discretion. Lastly, Connecticut’s rule is written to provide a sufficient buffer below the major source threshold by setting the premises wide limit to below 50% of the major source threshold or alternatively, setting the premises wide limit in Connecticut’s 33b to below 80% of the major source threshold for certain source categories with additional required monitoring and recordkeeping. Manufacturers’ test data, combined with Connecticut’s oversight and the buffer below the major source thresholds, ensures that sufficient data is being collected to ensure that sources stay below the major source thresholds. In

light of the overall regulatory scheme, the PTE limits in Connecticut’s regulations are not rendered practicably unenforceable by the allowance, under certain circumstances, of the use of manufacturers’ data to calculate emissions.

*Comment 5d:* The commenter is concerned that 33a(d)(4)(D) and 33b(d)(4)(D), a requirement in the hierarchy to use pertinent material balances, is not rationally related to actual emissions. The commenter questioned how a pertinent material balance would account for thermal NO<sub>x</sub> emissions, that is NO<sub>x</sub> that is formed in combustion processes because our air is 78% nitrogen, regardless of the composition of the fuel. The commenter stated that thermal NO<sub>x</sub> formation is greatly influenced by temperature in combustion processes but (d)(4)(D) does not require any parametric monitoring, much less restrictions, on operating temperature.

*Response:* EPA disagrees that a source would be required to use material balances to calculate thermal NO<sub>x</sub> formation. Sections 33a(d)(4)(E) and 33b(d)(4)(E) require that if pertinent material balance data is not available, for example, to calculate thermal NO<sub>x</sub> emissions, and other preferential methods in the hierarchy were not available, sources should use the data or emissions estimation technique from the following EPA publications that results in the *highest* rate of emissions: (i) Compilation of Air Pollutant Emission Factors (AP–42), (ii) AIRS Facility Subsystem Emission Factors, or (iii) The Emission Inventory Improvement Program (EIIP). In addition, emissions can be calculated for a premise using a combination of methods in the hierarchy depending on the operations. That is because the hierarchy does not require the exclusive use of one method for calculating emissions if data in the hierarchy is available for certain operations and not for others. Material balances, combined with the buffer below the major source thresholds, ensures that sufficient data is being collected to ensure that sources stay below the major source thresholds. In light of the overall regulatory scheme, the PTE limits in Connecticut’s regulations are not rendered practicably unenforceable by the allowance, under certain circumstances, of the use of material balances to calculate emissions.

*Comment 5e:* The commenter is concerned that 33a(d)(4)(E) and 33b(d)(4)(E) are not rationally related to actual emissions. The commenter points to the introduction section of AP–42, Compilation of Air Pollutant Emission Factors which provides “Average

emissions differ significantly from source to source and, therefore, emission factors frequently may not provide adequate estimates of the average emissions for a specific source. The extent of between-source variability that exists, even among similar individual sources, can be large depending on process, control system, and pollutant. Although the causes of this variability are considered in emission factor development, this type of information is seldom included in emission test reports used to develop AP-42 factors.” As a result, some emission factors are derived from tests that may vary by an order of magnitude or more. The commenter states that EPA’s position has been that AP-42 should not be used for ensuring compliance with synthetic minor limits. The commenter states that AP-42 clearly states that it is used for “estimating emissions” but a synthetic minor limit is not an estimate. The commenter states that actual and potential to emit emissions have to be below the applicable threshold, and that actual emissions and an estimate of emissions are two separate things. The commenter is also concerned that AP-42 emission factors come with ratings. A “D” rating is below average and an “E” rating is Poor. The commenter states that Section (d)(4)(E) allows the use of even emission factors which EPA itself describes as “Poor”, and that it is arbitrary for EPA to allow the use of “Poor” “estimates” to provide actual emissions.

*Response:* Sections 33a(d)(4)(E) and 33b(d)(4)(E) require that if other preferential methods in the hierarchy are not available, sources should use the data or emissions estimation technique from the following EPA publications that results in the *highest* rate of emissions: (i) Compilation of Air Pollutant Emission Factors (AP-42), (ii) AIRS Facility Subsystem Emission Factors, or (iii) The Emission Inventory Improvement Program (EIIP). In calculating emissions using emission factors when other data are not available, Connecticut conservatively requires the highest rate of emissions from these publications to be used. The calculation of emissions and assurance of compliance with the limits is not reliant on this alone but also on parametric monitoring, which is explicitly required by RCSA 22a-174-33b. Should parametric monitoring indicate that operations are outside of the ranges occurring during the most recent test, or for any other reason, Connecticut has the authority to mandate emissions testing to assure

compliance with applicable limits under RCSA 22a-174-5(e)(2). As noted above, emissions can be calculated for a premise using a combination of methods in the hierarchy depending on the operations, because the hierarchy does not require the exclusive use of one method if data in the hierarchy is available for certain operations and not for others.

EPA acknowledges that in the AP-42 Introduction document we state that use of these factors as source-specific permit limits and/or as emission regulation compliance determinations is not recommended by EPA. However, we also state that emission factors are frequently the best or only method available for estimating emissions, despite their limitations. And we further provide that if representative source-specific data cannot be obtained, emissions information from equipment vendors, particularly emission performance guarantees or actual test data from similar equipment, is a better source of information for permitting decisions than an AP-42 emission factor. When such information is not available, use of AP-42 emission factors may be necessary as a last resort. Sources that reach this level of the data hierarchy in Connecticut’s rules would typically be the smallest sources of emissions and it would be unreasonably costly to require such small sources to install a CEMS or conduct a stack test to calculate emissions for purposes of demonstrating emissions remain below the major source thresholds.<sup>5</sup>

In addition, Connecticut’s rule is written to provide a sufficient buffer below the major source threshold by setting the premises wide limit in Connecticut’s 33a to below 50% of the major source threshold, or alternatively, setting the premises wide limit in Connecticut’s 33b to below 80% of the major source threshold for certain source categories with additional required monitoring and recordkeeping. In light of all the material provisions of Connecticut’s regulatory scheme including the buffer below the major source thresholds, the possibility of the use of AP-42 emissions factors when other data in the hierarchy are not available does not render the PTE limits practicably unenforceable.

### III. Final Action

EPA is approving Connecticut’s RCSA section 22a-174-33a, Limit on

<sup>5</sup> See AP-42, Introduction at 3. “Where the risks of using a poor estimate are low, and the costs of more extensive methods are unattractive, then less expensive estimation methods such as emission factors and emission models may be both satisfactory and appropriate.”

Premises-wide Actual Emissions Below 50% of Title V Thresholds, effective September 24, 2020, and RCSA section 22a-174-33b, Limit on Premises-wide Actual Emissions Below 80% of Title V Thresholds, effective September 24, 2020 (excluding the following provision: RCSA 22a-174-33b(d)(6)) as a revision to the Connecticut SIP with respect to criteria pollutants and is separately approving the regulations under section 112(l) of the Act with respect to HAPs. EPA is approving Connecticut’s request in accordance with the requirements of sections 110 and 112 of the CAA.

### 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 Connecticut Regulations described in the amendments to 40 CFR part 52 set forth below. 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);
- 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, 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 May 10, 2022. 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: March 4, 2022.

**David Cash,**  
*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 paragraph (c)(127) to read as follows:

**§ 52.370 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(127) Revisions to the State Implementation Plan submitted by the Connecticut Department of Energy and Environmental Protection on October 26, 2020, supplemented on January 12, 2022.

(i) *Incorporation by reference.* (A) Regulations of Connecticut State Agencies section 22a-174-33a, Limit on Premises-wide Actual Emissions Below 50% of Title V Thresholds, effective September 24, 2002.

(B) Regulations of Connecticut State Agencies section 22a-174-33b, Limit on Premises-wide Actual Emissions Below 80% of Title V Thresholds, effective September 24, 2020, excluding section (d)(6).

(ii) *Additional materials.* (A) Letter from the Connecticut Department of Energy and Environmental Protection dated October 26, 2020, submitting a revision to the Connecticut State Implementation Plan.

(B) Letter from the Connecticut Department of Energy and Environmental Protection dated January 12, 2022, withdrawing Regulations of Connecticut State Agencies section 22a-174-33b(d)(6) from its SIP submittal.

- 3. Section 52.385 is amended in Table 52.385 by adding state citations for 22a-174-33a and 22a-174-33b in alphanumeric order 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-174-33a ....	Limit on Premises-wide Actual Emissions Below 50% of Title V Thresholds.	9/24/2020	3/11/2022	[Insert <b>Federal Register</b> citation].	(c)127	
22a-174-33b ....	Limit on Premises-wide Actual Emissions Below 80% of Title V Thresholds.	9/24/2020	3/11/2022	[Insert <b>Federal Register</b> citation].	(c)127	Approved with the exception of section (d)(6) which Connecticut withdrew from its SIP submittal.

[FR Doc. 2022-05042 Filed 3-10-22; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2021-0642; FRL-9536-01-OCSPP]

#### Calcium Sulfate; Exemption From the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of calcium sulfate when used as an inert ingredient in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils, limited to 100 parts per million (ppm) in the final formulation. Exponent, Inc. on behalf of Tygrus, LLC, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of calcium sulfate when used in accordance with this exemption.

**DATES:** This regulation is effective March 11, 2022. Objections and requests for hearings must be received on or before May 10, 2022, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2021-0642, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. For the latest status information on

EPA/DC services and access, visit <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Marietta Echeverria, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [RDfRNNotices@epa.gov](mailto:RDfRNNotices@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

###### *B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at <https://www.ecfr.gov/current/title-40>.

###### *C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2021-0642 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before May 10, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket.

Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2021-0642, by one of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <https://www.epa.gov/dockets/contacts.html>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

##### **II. Petition for Exemption**

In the **Federal Register** of November 23, 2021 (86 FR 66512) (FRL-8792-05), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN-11565) by Exponent, Inc., 1150 Connecticut Ave. NW, Suite 1100, Washington, DC 20036 on behalf of Tygrus, LLC, 1132 E. Big Beaver Road, Troy, MI 48083. The petition requested that 40 CFR 180.940(a) be amended by establishing an exemption from the requirement of a tolerance for residues of calcium sulfate when used as an inert ingredient in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils, limited to 100 parts per million (ppm) in the final formulation. That document referenced a summary of the petition prepared by Exponent, Inc. on behalf of Tygrus, LLC, the petitioner, which is available in the docket, <https://www.regulations.gov>. There were no comments received in response to the notice of filing.

##### **III. Inert Ingredient Definition**

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as