IMPORTANT: Read instructions on bottom of last page (Certification Page) before completing this form. Failure to comply with instructions may cause disapproval of proposed regulations

State of Connecticut
REGULATION
of

SECRETARY OF THE STATE
LEGISLATION & ELECTIONS
ADMINISTRATION DIVISION
2012 SEP 10 P 1:55

NAME OF AGENCY

Energy and Environmental Protection

Concerning

SUBJECT MATTER OF REGULATION

Amendment of sections 22a-174-1, 22a-174-3a, 22a-174-36b, 22a-174-26 and repeal of sections 22a-174-17, 22a-174-43 and 22a-174-100 of the Regulations of Connecticut State Agencies (RCSA)

Section 1. Definition (62) of section 22a-174-1 of the Regulations of Connecticut State Agencies is amended as follows:

(62) "Major source baseline date" means January 6, 1975 for particulate matter and sulfur dioxide; [and] February 8, 1988 for nitrogen dioxide; and October 20, 2010 for $PM_{2.5}$.

Sec. 2. Table 3a(i)-1 of section 22a-174-3a(i) of the Regulations of Connecticut State Agencies is amended as follows:

Table 3a(i)-1 Ambient Impact

AIR POLLUTANT	AMBIENT IMPACT (MICROGRAMS PER CUBIC METER)
PM2.5 Annual average 24-hour average	 0.3 1.2
PM10 Annual average 24-hour average	 1 5
Sulfur Dioxide Annual average 24-hour average 3-hour average	 1 5 25
Carbon Monoxide 8-hour average 1-hour average	 500 2000
Nitrogen Dioxide Annual average	 1
Dioxin Annual average (as calculated according to Section 22a-174-1(29) of the Regulations of Connecticut State Agencies) (Polychlorodibenzodioxins (PCDDs)) (Polychlorodibenzofurans (PCDFs))	(Notwithstanding above units) 0.1 picograms/m^3
Lead (Pb) Three (3) month average	0.3

Sec. 3. Table 3a(k)-1 of section 22a-174-3a(k) of the Regulations of Connecticut State Agencies is amended as follows:

Table 3a(k)-1 Significant Emission Rate Thresholds

AIR POLLUTANT	EMISSION LEVELS (TONS PER YEAR)
Carbon Monoxide	100
Nitrogen Oxides (as an ozone precursor)	25
Nitrogen Oxides (as a $PM_{2.5}$ precursor)	40
Nitrogen Oxides (NOx National Ambient Air Quality Standard)	40
[Sulfur Dioxide]	[40]
Sulfur Dioxide (as a $PM_{2.5}$ precursor)	40
Sulfur Dioxide (SO_2 National Ambient Air Quality Standard)	40
Particulate Matter	25
$PM_{2.5}$	10
PM_{10}	15
Volatile Organic Compounds	25
Hydrogen Sulfide (H2S)	10
Total Reduced Sulfur (including H2S)	10
Reduced Sulfur Compounds (including H2S)	10
Sulfuric Acid Mist	7
Fluorides	3
Lead	0.6
Mercury	0.1
Municipal Waste Combustor Organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6}
Municipal Waste Combustor Metals (Measured as particulate matter)	15
Municipal Waste Combustor Acid Gases (Measured as sulfur dioxide and hydrogen chloride)	40

Sec. 4. Table 3a(k)-2 of section 22a-174-3a(k) of the Regulations of Connecticut State Agencies is amended as follows:

Table 3a(k)-2 Maximum Allowable Increase above Baseline Concentration

AIR POLLUTANT	PSD INCREMENT (ug/m^3)
$PM_{2.5}$	
Annual Arithmetic Mean	4
24-Hour Average	9
Particulate Matter, as PM10	
Annual Arithmetic Mean	17
24-Hour Average	30
Sulfur Dioxide	
Annual Arithmetic Mean	20
24-Hour Average	91
3-Hour Average	512
Nitrogen Dioxide	
Annual Arithmetic Mean	25

Sec 5. Section 22a-174-3a(*l*)(1) of the Regulations of Connecticut State Agencies is amended as follows:

(1) Applicability. In accordance with subsection (a) of this section, the provisions of this subsection shall apply to the owner or operator of: [any new major stationary source or major modification which:]

(A) [Is or will be a] Any new major stationary source that: [or major modification for any nonattainment air pollutant if such source is located in a non-attainment area for such air pollutant; or]

(i) Is or will be constructed in a designated nonattainment area; and

(ii) Is or will be major for the pollutant for which the area is designated as nonattainment;

(B) [Is located in an attainment area or unclassifiable area, but the allowable emissions of any air pollutant would cause or exacerbate a violation of a National Ambient Air Quality Standard in an adjacent non-attainment area. Allowable emissions of any such air pollutant will be deemed not to cause or contribute to a violation of a National Ambient Air Quality Standard provided that such emissions result in impacts that are less than levels set forth in Table 3a(i)-1 in subsection (i) of this section.] Any major modification that:

(i) Occurs at a source that is major for the pollutant for which the area is designated as nonattainment; and

(ii) Is or will be major for the pollutant for which the area is designated as nonattainment; or

(C) Any new major stationary source or major modification that is located in an attainment area or unclassifiable area, where the allowable emissions of any air pollutant would cause or exacerbate a violation of a National Ambient Air Quality Standard in an adjacent nonattainment area. Allowable emissions of any such air pollutant shall be deemed not to cause or contribute to a violation of a National Ambient Air Quality Standard provided that such emissions result in impacts that are less than the levels set forth in Table 3a(i)-1 in subsection (i) of this section.

Sec 6. Section 22a-174-3a(*l*)(4) of the Regulations of Connecticut State Agencies is amended as follows:

(4) Offsetting emission reductions or Emission Reduction Credits.

(A) Except as provided in subdivision (8)(B) of this subsection, prior to commencing operation pursuant to a permit issued under this section, the owner or operator of the subject source or modification shall:

(i) reduce actual emissions from other stationary sources on such premises, sufficient to offset the allowable emissions increase for each individual non-attainment air pollutant which is the subject of the application, or

(ii) obtain certified emission reduction credits in accordance with subdivision (5) of this subsection, which credits are sufficient to offset the allowable emissions increase for each individual nonattainment air pollutant; and

(B) The commissioner shall not grant a permit to an owner or operator of the subject source or modification unless the owner or operator demonstrates that internal offset or certified emission reduction credits pursuant to subparagraph (A) of this subdivision:

(i) have occurred preceding the submission of such application and prior to the date that the subject source or modification becomes operational and begins to emit any air pollutant. The commissioner may consider a time period beginning no earlier than November 15, 1990,

(ii) are not otherwise required by any of the following: the Act; a federally enforceable permit or order; the State Implementation Plan; or the regulations or statutes in effect when such application is filed,

(iii) will be incorporated into a permit or order of the commissioner and would be federally enforceable,

(iv) will create a net air quality benefit in conjunction with the proposed emissions increase. In determining whether such a net air quality benefit would be created, the commissioner may consider emissions on an hourly, daily, seasonal or annual basis. For carbon monoxide or particulate matter (total suspended particulate, $PM_{2.5}$ and PM10), the net air quality benefits shall be determined by the use of atmospheric modeling procedures

approved by the commissioner and the Administrator in writing. Upon the request of the commissioner, the owner or operator shall make and submit to the commissioner, a net air quality benefit determination for each air pollutant. Such determination shall include, but not be limited to, all increases and decreases of emissions from stationary sources at any premises providing the offsetting emission reductions,

(v) shall be based on the pounds per hour of potential emissions increase from the subject source or modification. The commissioner may consider other more representative periods, including, but not limited to, tons per year or pounds per day,

(vi) are identified in an emissions inventory maintained by the commissioner or otherwise approved in writing by the commissioner,

(vii) are of the same non-attainment air pollutant of which the owner or operator proposes to increase. Reductions of any exempt volatile organic compound [listed in Table 1-3 of section 22a-174-1 of the Regulations of Connecticut State Agencies or those] listed in 40 CFR 51.100 shall not be used to offset proposed increases emissions of non-exempt volatile organic compounds,

(viii) occurred at either: one or more stationary sources in the same nonattainment area or stationary sources in another non-attainment area if, pursuant to the Act, such area has an equal or higher nonattainment classification than the area in which the proposed activity would take place, and if emissions from such other nonattainment area contribute to a violation of a National Ambient Air Quality Standard in the non-attainment area in which the proposed activity would take place,

(ix) for the applicable non-attainment air pollutant, shall be from reductions in actual emissions, and

(x) offset actual emissions at a ratio greater than one to one, as determined by the commissioner. In addition, the owner or operator shall offset emission increases of allowable emissions at a ratio, for volatile organic compounds or nitrogen oxides, of at least: 1.3 to 1 in any severe non-attainment area for ozone, and 1.2 to 1 in any serious non-attainment area for ozone.

Sec. 7. Subsection (g) of section 22a-174-36b of the Regulations of Connecticut State Agencies is amended as follows:

(g) Fleet Average Emissions Reporting Requirements.

(1) For the purposes of determining compliance with the requirements of subsections (c)(3) and (e) of this section, commencing with the 2008 model year, each manufacturer shall submit annually to the Department, by March 1st of the calendar year succeeding the end of the model year, a report which demonstrates that such manufacturer has met the fleet average emissions

Statement of Purpose

This regulatory proposal is a series of changes to the Department of Energy and Environmental Protection's (DEEP's) air quality programs that will function to reduce regulatory burdens on Connecticut businesses and administrative burdens on DEEP, without interfering with DEEP's progress towards meeting its air quality goals.

This proposal has three components:

- The addition of fine particulate matter requirements into DEEP's new source review permitting program, to retain federal program approval;
- Additional compliance options for vehicle manufacturers under DEEP's low emission vehicle program; and
- The repeal of non-core air quality programs.

Fine Particulate Matter (PM2.5) Criteria for Air Permits (Sections 1 through 6)

DEEP is proposing to include the pollutant fine particulate matter, or $PM_{2.5}$, in DEEP's new source review (NSR) permit program. While the U.S. Environmental Protection Agency (EPA) first promulgated a National Ambient Air Quality Standard for $PM_{2.5}$ in 1997, EPA allowed states to use the pollutant PM_{10} as a surrogate for $PM_{2.5}$ in NSR permitting programs until certain technical problems were resolved and EPA issued guidance for the states. EPA has issued two relevant implementation rules and has required states to adopt the necessary requirements by July 20, 2012. The revisions help DEEP and the regulated community to understand what new sources or modifications have the potential to impact $PM_{2.5}$ levels and thus warrant additional permitting requirements.

The proposal also revises an unrelated portion of the NSR permit program to achieve consistency with federal requirements in 40 CFR 51.165(a)(2). The revision links the applicability for preconstruction review requirements in nonattainment areas to the pollutant for which the area is designated as nonattainment. The difference between the state and federal requirements has caused considerable delay in processing several NSR permits, so the harmonization of the requirements is likely to streamline certain future applications.

Once adopted, these requirements will be submitted to EPA and will allow DEEP to retain full approval of its NSR permitting program.

Compliance Flexibility in the Low Emission Vehicle Program (Sections 7 through 9)

DEEP is proposing to increase the compliance flexibility available to vehicle manufacturers under Connecticut's low emission vehicle program, as follows:

- The greenhouse gas standards are revised to allow for alternative compliance with the joint federal EPA/National Highway Traffic Safety Administration greenhouse gas (GHG) standards; and
- An additional voluntary compliance mechanism allows a manufacturer to demonstrate compliance based on the total number of passenger cars, light-duty trucks, and medium-duty passenger vehicles sold in all states that have adopted California's vehicle GHG emissions standards under CAA section 177, rather than the current fleet average requirements, which limit averaging only to the state of Connecticut.

The proposed revisions are required under CAA section 177, which requires Connecticut's low emission vehicle program to maintain requirements identical to California's program.

Repeal of Non-Core Programs (Sections 10 through 14)
DEEP recognizes the need to eliminate programs that are no longer necessary to DEEP's core mission. Accordingly, DEEP proposes to repeal the following three discretionary air management programs:

- Control of open burning;
- Portable fuel container spillage control; and
- Permits for construction of indirect sources.

Staff resources freed by this amendment can be devoted to more immediate permitting and enforcement needs. In addition to the repeal of the three programs described below, the amendment proposes to revise the Air Bureau's general fee regulation to delete exemptions from fees provided for the open burning and indirect source permit programs.

Open burning. In a series of public acts in 1996, 1999 and 2000, the Connecticut General Assembly developed an open burning program via statute, CGS section 22a-174(f), which allows DEEP's commissioner, along with local officials, to enforce open burning requirements. This statutory program is self-implementing, comprehensive and supersedes DEEP's authority under RCSA section 22a-174-17, an open burning regulation developed in 1983. The continued existence of RCSA section 22a-174-17 serves only to confuse and is therefore proposed for repeal.

Portable fuel containers. In 2007, EPA promulgated national evaporative emissions standards for portable fuel containers (aka gas cans), which apply to containers manufactured on and after January 1, 2009. These federal standards are as protective of air quality as DEEP's portable fuel container spillage control requirements (RCSA section 22a-174-43), which DEEP adopted in 2004 as part of a regional initiative. To eliminate the redundant regulatory requirements, DEEP is proposing to repeal the Connecticut regulation, leaving manufacturers to comply with EPA's national standards. This approach will allow Connecticut to retain expected air quality benefits, while saving enforcement and administrative resources.

Indirect source permits. DEEP is proposing to repeal the indirect source permit (ISP) program of RCSA section 22a-174-100. The ISP program requires the Connecticut Department of Transportation (DOT) to obtain an ISP permit from DEEP before beginning certain state highway construction projects. DEEP recognizes that many of the ISP program elements are duplicated in the transportation conformity process, the National Environmental Protection Act and/or the Connecticut Environmental Policy Act. Hence, the ISP program is no longer programmatically necessary for Connecticut. DEEP is developing a joint Memorandum of Agreement with DOT to ensure that, with the repeal of RCSA section 22a-174-100, the limited air quality benefits of the ISP program, especially with respect to emissions from construction equipment, continue in a more efficient, streamlined and less costly manner.

CERTIFICATION

Be it known that the foregoing *(check one)* ☒ Regulations ☐ Emergency Regulations

are *(check all that apply)* ☐ Adopted ☒ Amended as hereinabove stated ☒ Repealed

by the aforesaid agency pursuant to section(s) 22a-174 **of the *General Statutes* and/or**

Public Act number(s) _____,

(If applicable) **after publication of notice of intent in the *Connecticut Law Journal* on** September 27, 2011,

(If applicable) **and the holding of an advertised public hearing on** November 9, 2011;

WHEREFORE, the foregoing regulations are hereby *(check all that apply)*

☐ Adopted ☒ Amended as hereinabove stated ☒ Repealed

EFFECTIVE: *(check one, and complete as applicable)*

☒ When filed with the Secretary of the State

OR ☐ *(insert date)* _____

In Witness Whereof:	DATE 2/23/12	SIGNED *(Head of Board, Agency or Commission)*	OFFICIAL TITLE, DULY AUTHORIZED Commissioner, DEEP

APPROVED by the Attorney General as to legal sufficiency in accordance with CGS Section 4-169, as amended

DATE 3/15/12	SIGNED *(Attorney General or AG's designated representative)* Joseph Rubin	OFFICIAL TITLE, DULY AUTHORIZED ASSOC. ATTY. GENERAL

Or ☐ *DEEMED APPROVED by the Attorney General in accordance with CGS Section 4-169, as amended, due to failure to give notice to the agency of any legal insufficiency within thirty (30) days of the receipt of the proposed regulation.*

DATE	SIGNED *(Head of Board, Agency or Commission)*	OFFICIAL TITLE, DULY AUTHORIZED

(For Regulation Review Committee Use ONLY)

☐ Approved ☒ Rejected without prejudice

☐ Approved with technical corrections ☐ Disapproved in part, *(Indicate Section Numbers disapproved only)*

☐ Deemed approved
pursuant to CGS 4-170(c) as amended

By the Legislative Regulation Review Committee in accordance with CGS Section 4-170, as amended	DATE 6/26/2012	SIGNED *(Administrator, Legislative Regulation Review Committee)* Pamela B. Booth

Two certified copies received and filed and one such copy forwarded to the Commission on Official Legal Publications in accordance with CGS Section 4-172, as amended.

DATE	SIGNED *(Secretary of the State)*	BY

INSTRUCTIONS

1. All regulations proposed for adoption, amendment or repeal, *except* emergency regulations, must be presented to the Attorney General for his/her determination of legal sufficiency. (See CGS Section 4-169.)

2. After approval by the Attorney General, original and eighteen (18) copies of all regulations proposed for adoption, amendment or repeal must be presented to the standing Legislative Regulation Review Committee for its action. (See CGS Section 4-170.)

3. Each proposed regulation must be in the form intended for publication and each section must include the appropriate regulation section number and section heading. (See CGS Section 4-172.)

4. New language added to an existing regulation must be in underlining or CAPITAL LETTERS, as determined by the Regulation Review Committee. (See CGS 4-170(b).)

5. Language to be deleted must be enclosed in brackets [ ]. (See CGS 4-170(b).)

R-39 Rev. 02/2010

CERTIFICATION

1) **I hereby certify that the above** (*check one*) ☒ Regulations ☐ Emergency Regulations

2) **are** *(check all that apply)* ☐ adopted ☒ amended ☒ repealed **by this agency pursuant to the following authority(ies):** *(complete all that apply)*

a. *Connecticut General Statutes* section(s) *22a-174, 22a-174g*

b. Public Act Number(s) _____

(Provide public act number(s) if the act has not yet been codified in the Connecticut General Statutes.)

3) **And I further certify that notice of intent to adopt, amend or repeal said regulations was published in the Connecticut Law Journal on** September 27, 2011;
(Insert date of notice publication if publication was required by CGS Section 4-168.)

4) **And that a public hearing regarding the proposed regulations was held on** Nov. 2011;
(insert date(s) of public hearing(s) held pursuant to CGS Section 4-168(a)(7), if any, or pursuant to other applicable statute.)

5) **And that said regulations are EFFECTIVE** *(check one, and complete as applicable)*
☒ When filed with the Secretary of the State
OR ☐ on *(insert date)* _____

SECRETARY OF THE STATE
LEGISLATION & ELECTIONS
ADMINISTRATION DIVISION
2012 SEP 10 P 1:55

DATE	SIGNED (Head of Board, Agency or Commission)	OFFICIAL TITLE, DULY AUTHORIZED
7/11/12		Commissioner

*APPROVED by the **Attorney General** as to legal sufficiency in accordance with CGS Section 4-169, as amended*

DATE	SIGNED *(Attorney General or AG's designated representative)*	OFFICIAL TITLE, DULY AUTHORIZED
7/20/12	Joseph Rubin	ASSOC. ATTY. GENERAL

*Proposed regulations are **DEEMED APPROVED** by the Attorney General in accordance with CGS Section 4-169, as amended, if the Attorney General fails to give notice to the agency of any legal insufficiency within thirty (30) days of the receipt of the proposed regulation*

(For Regulation Review Committee Use ONLY)

☒ Approved in whole ☐ Rejected without prejudice

☐ Approved with technical corrections ☐ Disapproved in part *(Indicate Section Numbers disapproved only)*

☐ Deemed approved pursuant to CGS 4-170(c) as amended

By the Legislative Regulation Review Committee in accordance with CGS Section 4-170, as amended	DATE	SIGNED *(Administrator, Legislative Regulation Review Committee)*
	8/28/2012	Pamela B. Booth

Two certified copies received and filed and one such copy forwarded to the Commission on Official Legal Publications in accordance with CGS Section 4-172, as amended.

DATE	SIGNED *(Secretary of the State)*	BY

(For Secretary of State Use ONLY)