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**DEPARTMENT OF ENERGY & ENVIRONMENTAL PROTECTION**  
**SMALL BUSINESS IMPACT STATEMENT**  
**ALSO KNOWN AS THE REGULATORY FLEXIBILITY ANALYSIS**  
**Amendment of RCSA Section 22a-174-1**

**Definition of “Severe Non-Attainment Area for Ozone”**

By the time a notice of intent for a new regulatory action is published, section 4-168a of the Connecticut General Statutes (CGS) requires the proposing agency to consider the effect of such action on small businesses as defined in CGS section 4-168a. CGS section 4-168a directs the agency to prepare an analysis that identifies specified criteria about the regulatory action. Such criteria are addressed in this document for the following regulatory action:

**Agency Submitting Regulatory Action:** Department of Energy and Environmental Protection (DEEP)

**Subject of Regulatory Action:** Definition of “severe non-attainment area for ozone”

**Date Prepared:** 18 July 2022

**Scope and Objectives of the Proposal:**

This proposal revises the definition of “severe non-attainment area for ozone” as used in the air quality regulations. The entire state of Connecticut is divided into two non-attainment areas for ozone. One area is located in the southwest portion of the state (the Connecticut portion of the New York-New Jersey-Connecticut area) and the remainder of the state (Greater Connecticut) makes up the other non-attainment area. The area in the southwest portion of the state generally monitors higher ozone levels and is the portion of the state the U.S. Environmental Protection Agency (EPA) designates as the severe non-attainment area. The current definition of “severe non-attainment area for ozone” in the air quality regulations identifies a smaller area than the area classified as severe non-attainment by EPA in its recent reclassification action.

Since the number of towns in the state included in the severe non-attainment area for ozone increases with this proposal by 43 towns, the number of significant air pollution sources in the severe non-attainment area for ozone will increase. The owners of those sources will be held to more burdensome permitting and emissions requirements, which will impose administrative and financial costs on those sources.

The result of this definition revision is non-attainment area designations at least as stringent as those of EPA. Absent this, sources in some parts of the state would be held to an incorrect and less stringent level of non-attainment new source review permitting requirements, resulting in a

programmatic deficiency, which could eventually result in a reduction in Clean Air Act grants to the state or a reduction in highway funding.

In addition, the requirements of a number of other air quality programs in the state apply limitations that differ in stringency depending on the non-attainment area in which the source of air pollution is located. As a result of this revision, more sources will be held to the requirements imposed in the severe non-attainment area, which are more rigorous than those of the serious non-attainment area.

If an action may have an adverse impact on small businesses, the agency shall notify the Department of Economic and Community Development (DECD) and the Commerce Committee of the Connecticut General Assembly of the intent to adopt the regulatory action.

- ☐ The regulatory action will not have an effect on small businesses. *If you check this box, do not complete the remainder of this form.*
- ☐ The regulatory action will have an effect on small businesses but will not have an adverse effect on such small businesses. *If you check this box, complete the remainder of this form.*
- ☒ The regulatory action may have an adverse effect on small businesses, but no alternatives considered would be both as effective in achieving the purpose of the action and less burdensome to potentially effected small business. *Note: alternatives considered may include those listed in C.G.S. § 4-168a(b)(6). If you check this box, complete the remainder of this form.*
- ☐ The regulatory action will have an adverse effect on small businesses that cannot be minimized in a manner that is consistent with public health, safety and welfare. *If you check this box, complete the remainder of this form.*

### **ANALYSIS**

#### **Types of businesses potentially affected:**

Businesses are impacted based on the level of pollutants the business emits to the air from its equipment and operations. While generally larger sources of air pollution such as electric generating units, pharmaceutical companies, and municipal waste combustors do not qualify as small businesses, it is possible that some larger sources of air pollution in the towns newly added to the severe non-attainment area for ozone will be owned by small businesses. Any business that emits pollutants to the air through a smokestack may be subject to air permitting requirements, depending on the amount of pollution emitted. Many types of business own and operate a diesel generator or turbine or other fuel-burning equipment or use chemical compounds that may be filtered and emitted through a stack. Asphalt plants, crematories, chemical manufacturers, food manufacturers, metal processing and finishing, hospitals and soil processing plants are all potential regulated businesses.

#### **Total number of small businesses potentially subject to the regulatory action:**

DEEP has limited information about the total number of businesses that may be impacted. Using our source emissions inventory, we estimate that there are over 300 businesses in the towns newly added to the severe non-attainment area for ozone that will have major source levels of emissions or that operate under a general permit that restricts emissions to a level below major source thresholds. The impact of the definition change on each business will vary. Some operations will be able to continue to limit emissions below major source thresholds while others will need to comply with new, more burdensome requirements. While some of these businesses may qualify as small businesses, the impact of the change will be independent of whether or not the business is a small business since the emissions to the air, and the ability of the business to limit such emissions, are the criteria that matter for air regulatory purposes.

Furthermore, there are some businesses currently operating equipment under a permit-by-rule that may be unable to continue to operate in such a manner after this regulatory change. Some of these businesses may be small businesses. However, the Bureau of Air Management does not require a notification or registration to operate under the permit-by-rule and so cannot estimate the total number of businesses, let alone small businesses, potentially subject to the new requirements.

**Will small businesses be required to perform any of the following tasks under the regulatory action:**

- (A) Create, file or issue additional reports;**
- (B) Implement additional recordkeeping procedures;**
- (C) Provide additional administrative oversight;**
- (D) Hire additional employees;**
- (E) Hire or contract with additional professionals, including, but not limited to, lawyers, accountants, engineers, auditors or inspectors;**
- (F) Purchase any product or make any capital investment;**
- (G) Conduct additional training, auditing or inspections; or**
- (H) Pay additional taxes or fees?**

As explained in previous parts of this statement, it is possible that some small businesses will be affected by this change in definition, but DEEP lacks the information to say with certainty that small businesses will be impacted or how many. To the extent that some small businesses in the 43 towns newly added to the severe non-attainment area for ozone have air emissions of such a quantity that the change in definition makes them new major sources, such businesses may be able to limit emissions to avoid having to perform any of the listed tasks. Some of such hypothetical small businesses may not be able to limit emissions and would be subject to additional reporting and recordkeeping requirements, may need to hire a contractor to assist with air permitting as such need arises and may be subject to annual emission fees.

**Communications by DEEP with small businesses in developing the regulatory action:**

DEEP will consult with the State Implementation Plan Revision Advisory Committee (SIPRAC) regarding this action and will share draft regulatory language with SIPRAC. SIPRAC includes representatives from environmental consulting firms, law firms, and regulated industries in Connecticut. SIPRAC meets bimonthly to address issues in air quality and new actions by the Bureau of Air Management at DEEP. SIPRAC's membership includes the Connecticut Business and Industry Association (CBIA), and DEEP relies on CBIA to provide information to its small

business members. No additional outreach to small business, beyond outreach to CBIA, will be conducted.

**Are alternative compliance methods available to small businesses, such as:**

- (A) Establishment of less stringent compliance or reporting requirements;**
- (B) Establishment of less stringent schedules or deadlines for compliance or reporting requirements;**
- (C) Consolidation or simplification of compliance or reporting requirements;**
- (D) Establishment of performance standards in place of design or operational standards; or**
- (E) Exemption from any part of the requirements?**

No. The quantity of air pollutant emissions is what matters for air permitting and regulation. Exemptions and exceptions to requirements are made on the basis of the environmental impact of a business, not the number of employees.