

Secretary of the State File Number

6393

Regulation of the
Department of Energy and Environmental Protection
Concerning

Definition of Severe Non-Attainment Area for Ozone

Regulations adopted after July 1, 2013, become effective upon posting to the Connecticut eRegulations System, or at a later date if specified within the regulation.

Posted to the Connecticut eRegulations System on **November 13, 2023**

EFFECTIVE DATE
November 13, 2023

Approved by the Attorney General on
August 25, 2023

Approved by the Legislation Regulation Review Committee on
October 24, 2023

Electronic copy with agency head certification statement electronically submitted to and received by the Office of the Secretary of the State on
November 6, 2023

Form ICM-ECOPY (NEW 6/2015)
State of Connecticut
Secretary of the State



IMPORTANT NOTICE FOR CONNECTICUT STATE AGENCIES

This form should be used only for regulations first noticed *on and after* March 23, 2015.

Electronic Copy Certification Statement

(Submitted in accordance with the provisions of section 4-172 of the Connecticut General Statutes)

Regulation of the
Department of Energy & Environmental Protection
Concerning
Amendments Necessary Due to the Ozone Reclassification:

RCSA sections 22a-174-1, 22a-174-22e and 22a-174-22f

Approved by the Legislative Regulation Review Committee: **24 October 2023**

eRegulations System Tracking Number: **PR2022-023, PR2022-027**

I hereby certify that the electronic copy of the above-referenced regulation submitted herewith to the Secretary of the State is a true and accurate copy of the regulation approved in accordance with sections 4-169 and 4-170 of the *Connecticut General Statutes*.

And I further certify that in accordance with the approval of Legislative Regulation Review Committee, all required technical corrections, page substitutions and deletions, if any, have been incorporated into said regulation.

In testimony whereof, I have hereunto
set my hand on **November 6, 2023**.

Katie S. Dykes

Katie S. Dykes, Commissioner
Department of Energy & Environmental
Protection

**State of Connecticut
Regulation of
Department of Energy and Environmental Protection
Concerning
Definition of Severe Non-Attainment Area for Ozone**

Subdivision (106) of section 22a-174-1 of the Regulations of Connecticut State Agencies is amended to read as follows:

(106) “Severe non-attainment area for ozone” 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] Ansonia, Beacon Falls, Bethany, Bethel, Branford, Bridgeport, Bridgewater, Brookfield, Cheshire, Chester, Clinton, Cromwell, Danbury, Darien, Deep River, Derby, Durham, East Haddam, East Hampton, East Haven, Easton, Essex, Fairfield, Greenwich, Guilford, Haddam, Hamden, Killingworth, Madison, Meriden, Middlebury, Middlefield, Middletown, Milford, Monroe, Naugatuck, New Canaan, New Fairfield, New Haven, New Milford, Newtown, North Branford, North Haven, Norwalk, Old Saybrook, Orange, Oxford, Portland, Prospect, Redding, Ridgefield, Seymour, Shelton, Sherman, Southbury, Stamford, Stratford, Trumbull, Wallingford, Waterbury, Westbrook, West Haven, Weston, Westport, Wilton, Wolcott and Woodbridge.

Statement of purpose

Purpose. The proposal revises the definition of “severe non-attainment area for ozone” to more closely match¹ the area currently designated by the U.S. Environmental Protection Agency (EPA) for the 2008 and 2015 ozone national ambient air quality standards (NAAQS). The definition is now based on the non-attainment area designation under the 1-hour ozone NAAQS of 1979. The reason the revision is necessary now is the impending upgrade in our ozone non-attainment status from “serious” to “severe” nonattainment for the 2008 ozone NAAQS in one portion of the state. We must submit State Implementation Plan (SIP) revisions to meet the requirements for severe nonattainment areas set forth in Section 182(d) of the Clean Air Act.

¹ The geography of the severe non-attainment area we are proposing includes two towns from Litchfield County (Bridgewater and New Milford) that are not included in the nonattainment area as defined by EPA for the 2008 and 2015 ozone NAAQS. We are proposing to include these two towns because they had formerly been classified as severe under the 1979 ozone standard. Maintaining the severe designation provides consistency in Clean Air Act requirements for major sources in these communities.

This definition change is part of the regulatory infrastructure necessary to satisfy the Clean Air Act requirements.

Main provisions. The only provision of this proposal is a revision of the definition of “severe non-attainment area for ozone” as it applies throughout the air quality regulations. The definition of “severe non-attainment area for ozone” identifies the part of state in which sources of air pollution must comply with requirements for severe non-attainment areas as set out in the Clean Air Act, including non-attainment new source review permitting requirements, Title V permitting and reasonably available control technology (RACT) standards. The permitting requirements include the quantity of potential emissions that determines whether or not major source requirements apply to new construction and the number of emissions credits required to offset the emissions from new construction.

By re-defining the towns included in Connecticut’s severe non-attainment area for ozone, the towns located in Connecticut’s serious non-attainment area for ozone also change, as the serious non-attainment area is defined as any location in the state not included in the severe non-attainment area for ozone. The severe designation implies higher levels of ozone pollution than are measured in the serious non-attainment area. Different, less stringent, permitting and emissions requirements apply to the sources of air pollution in the serious non-attainment area for ozone. The number of sources of air pollution located in the severe non-attainment area for ozone will increase with the adoption of this proposal.

Legal effects of the proposal on existing regulations or laws. 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 EPA designates as severe non-attainment. As the number of towns included in the severe non-attainment area for ozone increases with this proposal, 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. Most of such more stringent permitting and emissions requirements are now included in our air regulations, but this definition change applies those requirements to a larger portion of the state, as designated by EPA. New Title V permit sources will also be required to pay annual emission fees.

The revision of the definition results in non-attainment area designations at least as stringent as those of EPA. Absent this revision, sources in some parts of the state would be held to an incorrect and less stringent level of non-attainment new source review permit requirements, Title V permit requirements and RACT 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.



I, Katherine S. Dykes, Commissioner of the Department of Energy & Environmental Protection (DEEP), hereby make the following certifications with respect to the proposal to revise the definition of “severe non-attainment area for ozone:”

1. In compliance with Connecticut General Statutes (CGS) § 4-168(a)(1), on March 20, 2023, DEEP gave notice by posting a notice on the eRegulations System of its intention to adopt regulations concerning the definition of “severe non-attainment area for ozone” that included the information required in said statute.
2. In compliance with CGS § 4-168(a)(2), on March 20, 2023, DEEP posted a copy of the proposed regulation on the eRegulations System.
3. In compliance with CGS § 4-168(a)(3), on March 20, 2023, DEEP gave notice electronically to each joint standing committee of the General Assembly having cognizance of the subject matter of the proposed regulation.
4. In compliance with CGS § 4-168(a)(4), on March 22, 2023, DEEP gave notice electronically or provided paper copies to all persons who made requests for advance notice of its regulation-making proceedings.
5. DEEP received no requests for a paper copy or electronic version of the proposed regulation, as described in CGS § 4-168(a)(5), presumably due to the availability of the proposal on DEEP’s website and the eRegulations system.
6. In compliance with CGS § 4-168(a)(6), on July 18, 2022, DEEP prepared a fiscal note, including an estimate of the cost or of the revenue impact of the proposed regulations (A) on the state or any municipality of the state, and (B) on small businesses in the state, including an estimate of the number of small businesses subject to the proposed regulation and the projected costs, including but not limited to, reporting, recordkeeping and administrative, associated with compliance with the proposed regulation and, if applicable, the regulatory flexibility analysis prepared under Conn. Gen. Stat. § 4-168a.
7. All interested persons were given reasonable opportunities to submit data, views or arguments, orally at a hearing if granted under CGS § 4-168(b) or in writing, concerning the proposed regulations and to inspect and copy or view online and print the fiscal note referred to in paragraph (6) above.

8. No request for an opportunity to present oral argument was made by any person, by a governmental subdivision or agency or by an association having not less than fifteen members, within fourteen days of the posting of the notice on the eRegulations System.
9. DEEP considered fully all written submissions respecting the proposed regulation. No oral comments were made concerning the proposal.
10. The fiscal note and small business impact statement referred to in paragraph (6) above, were reviewed and re-issued as revised documents, although no substantive changes were necessary.
11. In compliance with CGS § 4-168(e), August 4, 2023, DEEP posted on the eRegulations System notice that it decided to take action on the proposed regulation and has provided such notice electronically to all persons who submitted oral or written comments concerning the regulation and has provided a paper copy of such notice to all persons who submitted comments in a non-electronic format. DEEP has also posted on the eRegulations System: (1) The final wording of the proposed regulation; (2) a statement of the principal reasons in support of its intended action; and (3) a statement of the principal considerations in opposition to its intended action as urged in written or oral comments on the proposed regulation and its reasons for rejecting such considerations.



Katherine S. Dykes
Commissioner

8/4/2023

Date

OFFICE OF THE ATTORNEY GENERAL REGULATION CERTIFICATION

Agency: Department of Energy and Environmental Protection

REGULATION NUMBER: PR2022-023

This Regulation is hereby APPROVED by the Attorney General as to legal sufficiency in accordance with Connecticut General Statutes § 4-169.

DATE: 8/25/2023

Signed: **Eileen Meskill**  Digitally signed
by Eileen Meskill
Date: 2023.08.25
11:20:54 -04'00'

Eileen Meskill
Deputy Attorney General
Duly Authorized

The Connecticut General Assembly

Legislative Regulation Review Committee



Senator John Kissel
Senate Chair

Representative Lucy Dathan
House Chair

Official Record of Committee Action

October 24, 2023

Agency:	Department of Energy and Environmental Protection
Description:	Definition of Non-Attainment Areas for Ozone
LRRC Regulation Number:	2023-016
eRegulation Tracking Number:	PR2022-023

The above-referenced regulation has been

Approved with Technical Corrections

by the Legislative Regulation Review Committee in accordance
with CGS Section 4-170.

Catherine M. Thomas
Committee Administrator



State of Connecticut
Office of the Secretary of the State

Confirmation of Electronic Submission

Re: Regulation of the Department of Energy and Environmental Protection
concerning Definition of Severe Non-Attainment Area for Ozone
eRegulations System Tracking Number PR2022-023
Legislative Regulation Review Committee Docket Number 2023-016

The above-referenced regulation was electronically submitted to the Office of the Secretary of the State in accordance with Connecticut General Statutes Section 4-172 on November 6, 2023.

Said regulation is assigned Secretary of the State File Number 6393.

The effective date of this regulation is November 13, 2023.

A handwritten signature in blue ink, appearing to read "Stephanie Thomas".

Stephanie Thomas
Secretary of the State
November 13, 2023

By:

/s/ Christopher R. Drake
Christopher R. Drake
Director, Business Services
Division