

and adjustment regulations<sup>66</sup> may have to pay late fees under the CRJs' regulations for any underpayments, that has no bearing on whether the statutory text is ambiguous. As the MLC points out, the estimate and adjustment regulations adopted by the Office pursuant to that provision allow DMPs "to use estimates where appropriate without violating the law[,] . . . but not the ability to pay royalties later than the statutory due date."<sup>67</sup>

Further, as the NMPA noted, Congress knows how to exempt certain types of royalty payments from incurring late fees, as it did with the optional statutory limitation on liability for certain unlicensed uses prior to the license availability date.<sup>68</sup> Under the negative-implication canon of statutory construction, "[w]hen Congress includes particular language in one section of a statute but omits it from a neighbor, we normally understand that difference in language to convey a difference in meaning,"<sup>69</sup> *i.e.*, that textual difference is presumed to be intentional.

## 2. Distinguishing the Phonorecords III Remand Determination

Commenters appear to be in agreement that late fees do not apply to adjustments resulting from the change in rates and terms following the CRJs' *Phonorecords III Remand* determination. For example, the MLC reasoned that where applicable royalty rates are changed, as with the *Phonorecords III Remand* proceeding, there would be no underpayment to trigger late fees, as the "rates were not in effect at those times."<sup>70</sup> Similarly, the NMPA states that "where rates have not yet been determined, payment under the not-yet determined rates are not 'due'" and "[payment] only become[s] 'due' when [the rates] are determined."<sup>71</sup> The DLC believes that it would be illogical and inconsistent for DMPs' "true-up" payments made after the *Phonorecords III Remand* determination to be considered "late."<sup>72</sup>

<sup>66</sup> It appears that not all DMPs use the adjustment provisions. MLC *Ex Parte* Letter at 4 (Dec. 21, 2022) (noting that "over half of the blanket licensees submitted annual reports of usage for 2021 without any concurrent adjustment").

<sup>67</sup> MLC Initial Comments at 8.

<sup>68</sup> NMPA Initial Comments at 4 (citing 17 U.S.C. 115(d)(10)(B)(v)).

<sup>69</sup> *Bittner v. United States*, 598 U.S. 85, 94 (2023).

<sup>70</sup> MLC Initial Comments at 6 n.1.

<sup>71</sup> NMPA Initial Comments at 8.

<sup>72</sup> DLC Initial Comments at 6; DLC Reply Comments at 6 ("It is entirely unclear why that is true for interim section 115 rates but not true for interim rates or payments to PROs or labels.").

The Office concurs that no late fees are owed in connection with any *Phonorecords III Remand* adjustments. Under section 115(c)(1)(C), for digital phonorecord deliveries (including uses under the blanket license), "the royalty payable shall be the royalty prescribed under subparagraphs (D) through (F), paragraph (2)(A), and chapter 8."<sup>73</sup> Therefore, what constitutes "all royalties"<sup>74</sup> that are "due" for any given monthly reporting period<sup>75</sup> are the royalties "prescribed" under the rates and terms that are in effect at that time.<sup>76</sup> By definition, the newer rates and terms, despite having retroactive effect, were not "the royalty prescribed" at the time the previous payment was due, and therefore did not constitute "the royalty payable" at that time.<sup>77</sup> Previously timely payments cannot subsequently be rendered late because of a retroactive change in the rates and terms adopted by the CRJs.

### C. The CRJs' Authority To Set Late Fees

As noted above, the Copyright Office concludes that the MMA's provisions are not ambiguous or silent on the issue of when royalty payments are due; therefore our inquiry ends here. To the extent that interested parties have competing policy concerns about when or how late fees should be incurred, such concerns must be addressed either to Congress or the CRJs, as Congress delegated authority over the substance of late fees to the CRJs and not the Office.

While we offer no views regarding what late fee regulations should be adopted by the CRJs, if any, the Office does take the position that the CRJs have broad and flexible authority under section 803(c)(7) to adopt late fee terms, including by adopting differentiated or variable late fees (*e.g.*, where the amounts can change over time), if the CRJs see fit to do so and such regulations are otherwise consistent with title 17 and based on an appropriate record. Nothing in title 17 suggests that the CRJs cannot adopt different late fees (whether with respect to their amount(s) or how they operate) based on competing policy concerns.

Dated: August 23, 2023.

**Suzanne V. Wilson,**

*General Counsel and Associate Register of Copyrights.*

[FR Doc. 2023-18609 Filed 9-1-23; 8:45 am]

**BILLING CODE 1410-30-P**

<sup>73</sup> 17 U.S.C. 115(c)(1)(C).

<sup>74</sup> *See id.* at 115(c)(2)(I).

<sup>75</sup> *See id.* at 115(d)(4)(A)(i).

<sup>76</sup> *See id.* at 115(c)(1)(C).

<sup>77</sup> *See id.*

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2023-0189; FRL-10876-02-R1]

### Air Plan Approval; Connecticut; New Source Review Permit Program State Plan Revision

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving revisions to the Connecticut State Implementation Plan (IeSIP) concerning ruits New Source Review (NSR) permit program. The Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted these revisions on December 15, 2020, as well as a supplemental letter on February 14, 2023. The revised SIP incorporates various updates to CT DEEP's NSR procedural requirements, substantive review criteria, provisions related to the control of volatile organic compounds (VOCs), and clarifying revisions to existing SIP-approved regulations. EPA is also fully approving the state's infrastructure SIP for the 2015 National Ambient Air Quality Standards (NAAQS) ozone standard, which was previously conditionally approved.

**DATES:** This rule is effective on October 5, 2023.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2023-0189. 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.*, 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:** Jessica Kilpatrick, Air Permits, Toxics,

and Indoor Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, APTB05-2, Boston, MA 02109-0287. Telephone: 617-918-1652. Fax: 617-918-0652 Email: [kilpatrick.jessica@epa.gov](mailto:kilpatrick.jessica@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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- I. Background and Purpose
- II. Response to Comments
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

#### I. Background and Purpose

On April 11, 2023, EPA published a Notice of Proposed Rulemaking (NPRM) for the State of Connecticut. The NPRM proposed approving CT DEEP's revised SIP for its NSR permit program at Regulations of Connecticut State Agencies (RCSA) 22a-174-2a, 22a-174-3a, and 22a-174-20. The NPRM also proposed to convert a conditional approval to full approval for the 2015 NAAQS ozone standard infrastructure SIP as it relates to Clean Air Act (CAA) section 110(a)(2)(K) and for the Prevention of Significant Deterioration (PSD) requirements of CAA sections 110(a)(2)(D)(i)(II), 110(a)(2)(C), and 110(a)(2)(J). CT DEEP initially submitted a formal SIP revision to EPA on December 15, 2020, and a supplemental clarification letter was submitted on February 14, 2023. The rationale for EPA's proposed approval of the revised SIP is explained in the NPRM and will not be restated here. No germane comments were received regarding the NPRM.

#### II. Response to Comments

EPA received four comments during the comment period, all of which were identical and outside the scope of this action. As such, these comments are nongermane and do not require further response to finalize the action as proposed. Nevertheless, EPA is including these comments in the docket for this rule.

#### III. Final Action

EPA is approving CT DEEP's revised SIP for its NSR permit program as well as converting a conditional approval to a full approval for 2015 NAAQS ozone standard requirements in the Connecticut infrastructure SIP. Specifically, EPA is amending 40 CFR part 52, subpart H—Connecticut to include revisions to RCSA 22a-174-2a (Procedural Requirements for New Source Review and Title V Permitting), 22a-174-3a (Permit to Construct and Operate Stationary Sources), and 22a-

174-20 (Control of Organic Compound Emissions) and is updating the CAA 110(a)(2) infrastructure requirements. Specifically, EPA is approving revisions to:

- Regulations of Connecticut State Agencies Section 22a-174-2a “Procedural Requirements for New Source Review and Title V Permitting,” 22a-174-2a(c)(3), 22a-174-2a(d)(9), 22a-174-2a(e)(3)(C), 22a-174-2a(e)(3)(E), 22a-174-2a(e)(7), 22a-174-2a(f)(2), and 22a-174-2a(f)(2)(G), amended by the State of Connecticut on November 18, 2020;
- Regulations of Connecticut State Agencies Section 22a-174-3a, “Permit to Construct and Operate Stationary Sources,” at 22a-174-3a(a)(2)(A)(ii) through (v), 22a-174-3a(a)(5), 22a-174-3a(d)(3)(B) and (C), 22a-174-3a(i) Table 3a(i)-1, 22a-174-3a(i)(2), 22a-174-3a(j)(1)(B), 22a-174-3a(j)(8)(A), 22a-174-3a(k)(3) and (4), 22a-174-3a(k)(6)(A), 22a-174-3a(k)(7) Table 3a(k)-1, and 22a-174-3a(l)(1), amended by the State of Connecticut on November 18, 2020; and
- Regulations of Connecticut State Agencies Section 22a-174-20, “Control of Organic Compound Emissions,” at 22a-174-20(gg)(8), amended by the State of Connecticut on November 18, 2020.

#### IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the provisions regulating NSR permitting as described in section III. of this preamble. These provisions update the CT DEEP's NSR procedural requirements, add to substantive review criteria for CT DEEP's NSR permitting process, and revise provisions related to the control of VOCs. EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at 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 CAA, 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 CAA. 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); and
  - 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 CAA.
- 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).
- Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation,

and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

CT DEEP did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate

circuit by November 6, 2023. 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, Administrative practice and procedure, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 28, 2023.

**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)(129) to read as follows:

**§ 52.370 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(129) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on December 15, 2020, and supplemented on February 14, 2023.

(i) *Incorporation by reference.*

(A) Regulations of Connecticut State Agencies Section 22a-174-2a

“Procedural Requirements for New Source Review and Title V Permitting,” 22a-174-2a(c)(3), 22a-174-2a(d)(9), 22a-174-2a(e)(3)(C), 22a-174-2a(e)(3)(E), 22a-174-2a(e)(7), 22a-174-2a(f)(2), and 22a-174-2a(f)(2)(G), amended by the State of Connecticut on November 18, 2020.

(B) Regulations of Connecticut State Agencies Section 22a-174-3a, “Permit to Construct and Operate Stationary Sources,” at 22a-174-3a(a)(2)(A)(ii) through (v), 22a-174-3a(a)(5), 22a-174-3a(d)(3)(B) and (C), 22a-174-3a(i) Table 3a(i)-1, 22a-174-3a(i)(2), 22a-174-3a(j)(1)(B), 22a-174-3a(j)(8)(A), 22a-174-3a(k)(3) and (4), 22a-174-3a(k)(6)(A), 22a-174-3a(k)(7) Table 3a(k)-1, and 22a-174-3a(l)(1), amended by the State of Connecticut on November 18, 2020.

(C) Regulations of Connecticut State Agencies Section 22a-174-20, “Control of Organic Compound Emissions,” at 22a-174-20(gg)(8), amended by the State of Connecticut on November 18, 2020.

(ii) *Additional materials.*

(A) Letter from CT DEEP submitted to EPA on December 15, 2020, entitled “State Implementation Plan Revision Concerning the New Source Review Permit Program Update.”

(B) Letter from CT DEEP submitted to EPA on February 14, 2023, entitled “Re: Supplement to the State Implementation Plan Revision Concerning the NSR Program Update.”

■ 3. Section 52.385 is amended in Table 52.385 by adding:

■ a. A third entry for “22a-174-2a” before the entry for “22a-174-3;

■ b. A sixth entry for “22a-174-3a” before the entry for “22a-174-3b”; and

■ c. A fifth entry for “22a-174-20” before the entry “22a-174-21”.

The additions 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-174-2a	Procedural Requirements for New Source Review and Title V Permitting.	11/18/20	9/5/23	[INSERT FEDERAL REGISTER CITATION].	(c)(129)	Revisions made to 22a-174-2a(c)(3), 22a-174-2a(d)(9), 22a-174-2a(e)(3)(C), 22a-174-2a(e)(3)(E), 22a-174-2a(e)(7), 22a-174-2a(f)(2), and 22a-174-2a(f)(2)(G).

TABLE 52.385—EPA-APPROVED REGULATIONS—Continued

Connecticut state citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
22a-174-3a .....	Permit to Construct and Operate Stationary Sources.	11/18/20	9/5/23	[INSERT Federal Register CITATION].	(c)(129)	Revisions made to 22a-174-3a(a)(2)(A)(ii) through (v), 22a-174-3a(a)(5), 22a-174-3a(d)(3)(B) and (C), 22a-174-3a(i) Table 3a(i)-1, 22a-174-3a(i)(2), 22a-174-3a(j)(1)(B), 22a-174-3a(j)(8)(A), 22a-174-3a(k)(3) and (4), 22a-174-3a(k)(6)(A), 22a-174-3a(k)(7) Table 3a(k)-1, and 22a-174-3a(l)(1).
22a-174-20 .....	Control of Organic Compound Emissions.	11/18/20	9/5/23	[INSERT Federal Register CITATION].	(c)(129)	Revisions made to 22a-174-20(gg)(8).

■ 4. Section 52.386 is amended by revising paragraph (e) to read as follows:

**§ 52.386 Section 110(a)(2) infrastructure requirements.**

\* \* \* \* \*

(e) CT DEEP submitted an infrastructure SIP for the 2015 ozone NAAQS on September 7, 2018. This infrastructure SIP was approved, with the exception of CAA section 110(a)(2)(K) and the PSD-related requirements of CAA sections 110(a)(2)(D)(i)(II), 110(a)(2)(C), and 110(a)(2)(J), which were conditionally approved. On December 15, 2020, CT DEEP submitted SIP revisions to address the conditional approval. EPA fully approves the revised infrastructure SIP for the 2015 ozone NAAQS.

\* \* \* \* \*

[FR Doc. 2023-18909 Filed 9-1-23; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2022-0384; FRL-11035-01-OCSPP]

**Spinetoram; Pesticide Tolerances**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of spinetoram in or on Spice group 26, and Stalk and stem vegetable subgroup 22A. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective September 5, 2023. Objections and

requests for hearings must be received on or before November 6, 2023, 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-2022-0384, 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 and the OPP Docket is (202) 566-1744. For the latest status information on EPA/DC services, docket access, visit <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Charles Smith, Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (202) 566-1030; 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 EPA's tolerance regulations at 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-2022-0384 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 November 6, 2023. 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