

comply with the Best Available Control Technology (BACT) emission standards for greenhouse gases if they emitted these gases in significant amounts, defined as at least 75,000 tons per year of carbon dioxide equivalent (CO<sub>2</sub>e). During Step 2, from July 1, 2011, through June 30, 2012, sources with the potential to emit at least 100,000 tons per year of CO<sub>2</sub>e would be subject to PSD and Title V permitting for their construction and operation and to PSD permitting for modifications that would increase their greenhouse-gas emissions by at least 75,000 tons per year. EPA codified Steps 1 and 2 at 40 CFR 51.166(b)(48) and 40 CFR 52.21(b)(49) for the purpose of PSD applicability and at 40 CFR 70.2 and 40 CFR 71.2 for title V, in the definition of “subject to regulation”.

This action was challenged by numerous parties, including several states. On June 23, 2014, in *UARG v. EPA*, the Supreme Court ruled that the CAA neither compels nor permits EPA to adopt an interpretation of the CAA requiring a source to obtain a PSD or title V permit solely based on its potential greenhouse gas emissions. The ruling, however, supported EPA’s decision to require sources otherwise subject to PSD review to comply with BACT emission standards for greenhouse gases. In other words, with respect to PSD, the ruling upheld PSD permitting requirements for greenhouse gases under Step 1 of the Tailoring rule for “anyway” sources, and invalidated PSD permitting requirement for Step 2 sources.

In a subsequent rulemaking, on August 19, 2015 (80 FR 50199), EPA removed from the CFR several provisions of the PSD and title V permitting regulations that were originally promulgated as part of the Tailoring Rule. Specifically, the provisions that were removed included regulations under review that required sources to obtain a permit based only upon their potential greenhouse gas emissions (40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v)), and regulations under review that required EPA to consider further phasing-in the greenhouse gas permitting requirements at lower greenhouse gas emission thresholds. 40 CFR 52.22, 40 CFR 70.12, and 40 CFR 71.13.

The WDNR is modifying its PSD rules in NR 405.07(9) to establish the conditions under which greenhouse gases at a stationary source shall be subject to the PSD regulations. Following the *UARG v. EPA* decision on how greenhouse gas emissions are evaluated, WDNR’s modification

clarifies that only Step 1 sources will be subject to PSD permitting.

#### IV. What action is EPA taking?

EPA is proposing to approve WDNR’s submittal for revision of the SIP to incorporate the holding in *UARG v. EPA* decision regarding when greenhouse gas emissions must be controlled. EPA has reviewed Wisconsin’s November 28, 2017, submittal to approve Wisconsin Administrative Code provision NR 405.07(9) into Wisconsin’s SIP, and has found it to be consistent with the June 23, 2014, *UARG v. EPA* ruling.

#### V. Incorporation by Reference

In this rule, EPA is proposing to include a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Wisconsin Administrative Code provision NR 405.07(9) as published in the Register, July 2015, No. 715, effective August 1, 2015. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov), and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- 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 CAA; 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).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 16, 2018.

**Cathy Stepp,**

*Regional Administrator, Region 5.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R01–OAR–2018–0178; A–1–FRL–9978–28—Region 1]

### Air Plan Approval; Connecticut; 1997 8-Hour Ozone Attainment Demonstration

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing action on the ozone attainment portion of a State Implementation Plan (SIP) revision submitted by the State of Connecticut to meet the Clean Air Act (CAA) requirements for attaining the 1997 8-hour ozone national ambient air quality standard (NAAQS). The EPA is proposing to approve Connecticut's demonstration of attainment of the 1997 8-hour ozone NAAQS for the New York-Northern New Jersey-Long Island, NY-NJ-CT moderate 1997 8-hour ozone nonattainment area (hereafter, the NY-NJ-CT area or the NY-NJ-CT nonattainment area). In addition, the EPA is proposing to approve Connecticut's reasonably available control measures (RACM) analysis. This action is being taken under the Clean Air Act.

**DATES:** Written comments must be received on or before June 25, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2018-0178 at [www.regulations.gov](http://www.regulations.gov), or via email to [wortman.eric@epa.gov](mailto:wortman.eric@epa.gov). For comments submitted at [Regulations.gov](http://Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://Regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit [www.epa.gov/dockets/commenting-epa-dockets](http://www.epa.gov/dockets/commenting-epa-dockets). Publicly available docket materials are available at [www.regulations.gov](http://www.regulations.gov) or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 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. **FOR FURTHER INFORMATION CONTACT:** Eric Wortman, Air Permits, Toxics, and Indoor Programs Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100 (Mail Code OEP05-2), Boston, MA 02109-3912, phone number: (617) 918-1624, fax number: (617) 918-0624, email: [wortman.eric@epa.gov](mailto:wortman.eric@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

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### I. What action is the EPA proposing?

On August 8, 2017, Connecticut submitted comprehensive revisions to its SIP for the 8-hour ozone NAAQS. The SIP revisions included, among other things, an attainment demonstration for the Connecticut portion of the NY-NJ-CT nonattainment area for the 1997 and 2008 ozone NAAQS. The EPA's review of this material indicates that the NY-NJ-CT nonattainment area is attaining the 1997 ozone NAAQS. The EPA is proposing to approve the portion of the Connecticut SIP revision which demonstrates attainment of the 1997 ozone NAAQS. The EPA is also proposing to approve the associated RACM analysis for the same area. The EPA will address other components of the August 8, 2017 SIP submittal in separate forthcoming actions.

The EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action.

Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register** document.

### II. What is the background for the EPA's proposed action?

#### A. History of Connecticut Ozone Attainment Demonstrations

In 1997, the EPA revised the health-based NAAQS for ozone, setting it at 0.08 (parts per million) ppm averaged over an 8-hour time frame. The EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially with regard to children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23858), the EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 1997 8-hour ozone standard of 0.08 ppm. These actions became effective on June 15, 2004. Among those nonattainment areas is the NY-NJ-CT area. The NY-NJ-CT nonattainment area is composed of: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren Counties in New Jersey; Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, and Fairfield, Middlesex, and New Haven Counties in Connecticut. *See* 40 CFR 81.307, 81.331, and 81.333. In addition, the remaining five counties in Connecticut were also designated nonattainment, as the Greater Connecticut moderate ozone nonattainment area. *See* 40 CFR 81.307.

Also, on April 30, 2004 (69 FR 23951), the EPA promulgated the Phase 1 8-hour ozone implementation rule which provided how areas designated nonattainment for the 1997 8-hour ozone standard would be classified. These designations triggered the CAA requirements under section 182(b) for moderate nonattainment areas, including a requirement to submit an attainment demonstration. The EPA's Phase 2 8-hour ozone implementation rule (Phase 2 rule), published on November 29, 2005 (70 FR 71612),

specifies that states must submit attainment demonstrations for their nonattainment areas to the EPA by no later than three years from the effective date of designation, that is, by June 15, 2007. *See* 40 CFR 51.908(a).

Subsequently, Connecticut submitted attainment demonstrations and associated SIP revisions for the Connecticut portion of the NY-NJ-CT nonattainment area and Greater Connecticut nonattainment area on February 1, 2008.

Section 182(j) of the CAA requires each state within a multi-state ozone nonattainment area to specifically use photochemical grid modeling and take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of SIPs applicable to the nonattainment area. Under this subsection of the CAA, the EPA may not approve any SIP revision for a State that fails to comply with these requirements. Among other things, Connecticut's February 1, 2008 SIP submittal contained photochemical grid modeling to demonstrate attainment of the 1997 ozone NAAQS for the NY-NJ-CT nonattainment area. On May 8, 2009 (74 FR 21568), the EPA proposed to disapprove Connecticut's 8-hour ozone attainment demonstration for the NY-NJ-CT nonattainment area, because the EPA determined the photochemical modeling did not demonstrate attainment and the weight of evidence analysis that Connecticut used to support the attainment demonstration did not include sufficient evidence to provide confidence that the area would attain the 1997 ozone NAAQS by the June 15, 2010 deadline. The May 2009 proposal was never finalized.

On June 18, 2012 (77 FR 36163), the EPA issued a clean data determination (CDD) for the NY-NJ-CT area with respect to the 1997 8-hour ozone NAAQS and determined the area attained the 1997 standard by the June 15, 2010 attainment deadline. In a separate action, the EPA made a determination of attainment of the 1997 ozone NAAQS for the Greater Connecticut nonattainment area based on three years of monitoring data. *See* 75 FR 53219 (August 31, 2010). On May 9, 2013, the EPA proposed to approve the February 1, 2008 SIP submittal consisting of the ozone attainment demonstrations and RACM analysis for the 1997 ozone NAAQS. *See* 78 FR 27161 (May 9, 2013). In this action, the EPA proposed to approve the demonstrations of attainment of the 1997 ozone standard and RACM analysis for Connecticut's portion of the NY-NJ-CT nonattainment area and the Greater Connecticut nonattainment area.

On December 26, 2013, the EPA issued a final rule approving the portion of Connecticut's February 1, 2008 ozone attainment demonstration of the 1997 ozone NAAQS and RACM analysis for the Greater Connecticut nonattainment area. *See* 78 FR 78272 (December 26, 2013). However, the May 2013 proposed approval for the NY-NJ-CT nonattainment area portion of the February 1, 2008 SIP submittal was never finalized.

On March 12, 2008 (73 FR 16436), the EPA revised the ozone NAAQS to a level of 0.075 ppm to provide increased protection of public health and the environment. State and Federal emission reduction efforts adopted to meet the 1997 8-hour ozone standard continued with the implementation of the 2008 ozone NAAQS. On May 21, 2012 (77 FR 30088), the EPA designated as nonattainment any area that was violating the 2008 8-hour ozone NAAQS based on the three most recent calendar years of air quality data. The NY-NJ-CT nonattainment area was designated as a marginal ozone nonattainment area for the 2008 ozone NAAQS. *See* 40 CFR 81.307, 81.331, and 81.333. The boundaries of the 2008 ozone nonattainment area were identical to the 1997 ozone nonattainment area. As a result of its "marginal" classification, the area was required to attain the 2008 ozone standard by July 20, 2015<sup>1</sup> but was not required to submit an attainment demonstration for the 2008 ozone standard. 42 U.S.C. 7511a(a). Furthermore, the EPA again revised the ozone NAAQS in 2015, setting the level for both the primary and secondary NAAQS at 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). On November 16, 2017, the EPA published a document in the **Federal Register** to establish area designations for the 2015 ozone NAAQS for 2,646 counties as Attainment/Unclassifiable or Unclassifiable. *See* 82 FR 54232 (November 16, 2017). The EPA responded to certain state and

<sup>1</sup> The EPA originally established the attainment deadline to meet the 2008 ozone NAAQS to be December 31, 2015. *See* 77 FR 30167, May 21, 2012. Pursuant to a challenge of the EPA's interpretation of the attainment deadlines, on December 23, 2014, the D.C. Circuit issued a decision rejecting, among other things, the Classifications Rule's attainment deadlines for the 2008 ozone nonattainment areas. The court found that the EPA did not have statutory authority under the CAA to extend those deadlines to the end of the calendar year. *NRDC v. EPA*, 777 F.3d 456, 464-69 (D.C. Cir. 2014). Accordingly, as part of the final 2008 ozone NAAQS SIP Requirements Rule (*See* 80 FR 12264, March 6, 2015), the EPA modified the maximum attainment dates for all nonattainment areas for the 2008 ozone NAAQS, consistent with the court's decision. The rule established a deadline for marginal attainment areas of 3 years from the effective date of the designation, or July 20, 2015 to attain the 2008 ozone NAAQS.

tribal area designation requests for the 2015 ozone NAAQS on or about December 20, 2017 and published a document in the **Federal Register** on January 5, 2018. *See* 83 FR 651 (January 5, 2018). On April 30, 2018, the EPA finalized designations for the 2015 ozone NAAQS for the remaining areas of the country, except for eight counties in the San Antonio, Texas area.<sup>2</sup> At this time, the EPA has not finalized implementation guidelines for the 2015 ozone NAAQS.

The June 18, 2012 CDD for the NY-NJ-CT area with respect to the 1997 8-hour ozone NAAQS suspended the three states' obligations to submit attainment-related planning requirements, including the obligation to submit attainment demonstrations, RACM and reasonable further progress (RFP) plans, and contingency measures. On May 15, 2014 (79 FR 27830), the EPA proposed to rescind this CDD for the area based on the fact that the area was no longer attaining the 1997 8-hour ozone standard based on 2010-2012 and 2011-2013 air quality data, and proposed a SIP Call for submittals from the three states of new ozone attainment demonstrations for the NY-NJ-CT area for the 1997 ozone NAAQS. The EPA also proposed that the states could opt to respond to the SIP Call for a new 1997 ozone NAAQS attainment demonstration by requesting a voluntary reclassification, or "bump-up", to moderate nonattainment for the 2008 ozone NAAQS (*See* CAA section 181(b)(3)) and submit an attainment demonstration for the more stringent 2008 standard. Before taking final action on the rescission of the CDD for the NY-NJ-CT area, the EPA issued a proposal on August 27, 2015 to determine, among other things, that the NY-NJ-CT area failed to attain the 2008 NAAQS by the applicable attainment deadline of July 20, 2015. *See* 80 FR 51992 (August 27, 2015). The EPA also determined that the area was not eligible for a 1-year attainment date extension because the 4th highest daily maximum 8-hour average for at least one monitor in the area was greater than 0.075 ppm for 2014, the year preceding the attainment year.

On May 4, 2016, the EPA finalized the determination that the NY-NJ-CT nonattainment area failed to attain the 2008 standard by the Marginal nonattainment area attainment date of July 20, 2015, and reclassified the area to moderate for that standard by

<sup>2</sup> Additional Information on the EPA's regulatory actions regarding designations for the 2015 ozone NAAQS is available on the EPA's website at [www.epa.gov/ozone-designations/ozone-designations-regulatory-actions](http://www.epa.gov/ozone-designations/ozone-designations-regulatory-actions).

operation of law in accordance with CAA section 181(b)(2)(A). *See* 81 FR 26697 (May 4, 2016). The action also finalized the proposed rescission of the CDD for the NY-NJ-CT area with respect to the 1997 ozone NAAQS, and also finalized the accompanying SIP Call. The SIP Call found that the SIPs for New Jersey, New York, and Connecticut were substantially inadequate for demonstrating attainment of the 1997 standard and required the three states to submit new attainment plans. Since the area was reclassified by operation of law, the option to request a voluntary reclassification under section 182(b)(2)(A) of the CAA was eliminated. However, the EPA determined that the three affected states could meet their obligations under the SIP Call for the 1997 ozone NAAQS with their moderate nonattainment area SIP submittal for the 2008 standard. The EPA explained that because the 2008 standard is more stringent than the 1997 standard, the area would necessarily attain the 1997 standard once the area adopted a control strategy designed to achieve the tighter standard. Moreover, where state planning resources were constrained, those resources were better used focused on attaining the more stringent standard. The deadline for submitting the moderate nonattainment area SIP revisions for the 2008 standard was January 1, 2017. Connecticut submitted a combined attainment demonstration and RACM analysis for the 1997 and 2008 ozone standards for the Connecticut portion of the NY-NJ-CT area on August 8, 2017.

#### *B. Moderate Nonattainment Area and Anti-Backsliding Requirements*

The EPA's November 29, 2005 Phase 2 ozone implementation rule addresses, among other things, the control obligations that apply to areas designated nonattainment for the 1997 8-hour ozone NAAQS. The Phase 1 and Phase 2 ozone implementation rules outline the SIP requirements and deadlines for various requirements in areas designated as moderate nonattainment. For such areas, modeling and attainment demonstrations with projection year emission inventories were due by June 15, 2007, along with RFP plans, RACM, motor vehicle emissions budgets and contingency measures (40 CFR 51.908(a) and (c), 51.910, 51.912). In addition, moderate nonattainment areas were also required to submit a reasonably available control technology (RACT) SIP. Connecticut submitted an initial attainment demonstration for the 1997 ozone NAAQS for the Connecticut portion of the NY-NJ-CT area on

February 1, 2008. Although the EPA did not take final action on the February 1, 2008 attainment demonstration for the 1997 ozone NAAQS for the Connecticut portion of the NY-NJ-CT area, the EPA approved Connecticut's RFP plan and 2002 Base Year Emission Inventories in 2012, as well as the 2008 motor vehicle emission budgets and contingency measures associated with the RFP plan. *See* 77 FR 50595 (August 22, 2012). The EPA approved Connecticut's RACT submittals in 2013 and 2014. *See* 78 FR 38587 (July 9, 2013) and 79 FR 32873 (July 9, 2014).

In the 2008 ozone NAAQS SIP Requirements rule, the EPA revoked the 1997 ozone NAAQS for all purposes and established anti-backsliding requirements for that NAAQS, which include submittal of an attainment demonstration. *See* 80 FR 12296 (March 6, 2015).<sup>3</sup> The EPA retained a listing of the designated areas for the revoked 1997 NAAQS in 40 CFR part 81, for identifying anti-backsliding requirements that may apply to those areas. Accordingly, in an area designated nonattainment for the 2008 ozone NAAQS and nonattainment for the 1997 ozone NAAQS, as is the case with the NY-NJ-CT nonattainment area, Connecticut was obligated to implement the applicable requirements set forth in 40 CFR 51.1100(o), including the requirement to submit an attainment demonstration.

#### **III. What are we proposing to approve?**

On February 1, 2008, Connecticut submitted a SIP revision that included, among other things, an ozone attainment demonstration for the 1997 8-hour ozone standard and RACM analysis for the Connecticut portion of the NY-NJ-CT area. On August 8, 2017, Connecticut submitted comprehensive revisions to the SIP to satisfy the May 4, 2016 SIP Call. The SIP submittal included an ozone attainment demonstration for the 2008 ozone standard for the Connecticut portion of the NY-NJ-CT area, which also served as an ozone attainment demonstration for the revoked 1997 ozone NAAQS per the SIP Call. Connecticut's August 8, 2017 submittal also included 2011 base year emission inventories, RFP plans, RACM analysis, motor vehicle emission budgets and contingency measures.

<sup>3</sup> In *South Coast Air Quality Management District v. EPA*, the D.C. Circuit vacated a number of provisions in the 2008 Ozone SIP Requirements Rule, but that decision did not affect the rule's anti-backsliding requirement to submit an attainment demonstration for the 1997 ozone NAAQS. *South Coast Air Quality Management District v. EPA*, No. 15-1115 (D.C. Cir. February 16, 2018).

This proposed action addresses Connecticut's demonstrations of attainment of the 1997 8-hour ozone standard and associated RACM analysis for the Connecticut portion of the NY-NJ-CT area, submitted by Connecticut on February 1, 2008 and August 8, 2017. The EPA is taking separate action on the 2011 base year emission inventories, RFP plans, motor vehicle emission budgets, and contingency measures submitted as part of the August 8, 2017 SIP revisions in a forthcoming **Federal Register** document.

#### **IV. What is the EPA's basis for proposing to approve the 1997 attainment demonstration and RACM analysis?**

##### *A. Air Quality Data and Attainment Determinations*

Under the regulations at 40 CFR part 50, the 1997 ozone NAAQS is attained at a monitoring site when the three-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.08 ppm. This three-year average is referred to as the design value. When the design value is less than or equal to 0.08 ppm at each ambient air quality monitoring site within a nonattainment area, then the area is deemed to be meeting the 1997 standard. According to 40 CFR part 50, Appendix I, the number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the lowest value that is greater than 0.08 ppm.

On May 23, 2017, Connecticut submitted an exceptional events demonstration<sup>4</sup> claiming that emissions from a 2016 wildfire near Fort McMurray in Alberta, Canada caused elevated ozone levels at air quality monitors throughout Connecticut, exceeding the 8-hour ozone NAAQS at four monitoring stations on May 25 and 26, 2016. The ozone concentrations exceeded the 2015 ozone NAAQS at all four of the monitoring locations, and in some cases exceeded the 1997 and 2008 ozone NAAQS. One of the monitoring locations, the Westport monitoring

<sup>4</sup> Connecticut's exceptional event demonstration was submitted in accordance with the revised Exceptional Events Rule found in §§ 50.14 and 51.930 of 40 CFR parts 50 and 51. *See* 81 FR 68216 (October 3, 2016).

station, is located in the NY-NJ-CT nonattainment area. The EPA concurred on Connecticut's exceptional events demonstration on July 31, 2017, finding that Connecticut demonstrated a clear causal relationship between the Fort McMurray wildfire and the ozone exceedances at the Westport monitoring station on May 25 and 26, 2016, and that wildfires are natural events that are not reasonably preventable and not reasonably controllable.<sup>5</sup> As a result of the EPA's concurrence, the 2014–2016 design value at the Westport monitoring location was reduced from 0.085 ppm to 0.083 ppm, and the NY-NJ-CT nonattainment area therefore attained the 1997 ozone NAAQS.

The EPA has reviewed the 8-hour ozone ambient air quality monitoring data for the 2014–2016 monitoring period for the NY-NJ-CT area, as recorded in the EPA's Air Quality System (AQS) database. Air quality monitoring data from each year for 2014–2016 has been certified by Connecticut, New Jersey and New York in accordance with 40 CFR 58.15, and AQS reflects this. Based on that review, the EPA has concluded that the NY-NJ-CT area has a 2014–2016 design value of 0.083 ppm<sup>6</sup> and is in attainment for the 1997 ozone NAAQS.<sup>7</sup> Certified data for 2017 in the NY-NJ-CT area and the 2015–2017 design value are consistent with continued attainment. The EPA has a continuing obligation to review the air quality data each year to determine whether areas are meeting the NAAQS and will continue to conduct

<sup>5</sup> The EPA's concurrence on an exceptional events demonstration is a preliminary step in the regulatory process for actions that may rely on the dataset containing the event-influenced data and does not constitute final Agency action. This proposed approval of Connecticut's attainment demonstration is a regulatory action affected by exclusion of the ozone data for May 25 and 26, 2016. The EPA is publishing this document of its proposed action in the **Federal Register**. The EPA's concurrence letter and accompanying technical support document on the exceptional events demonstration, as well as the exceptional events demonstration submitted by Connecticut, are included in the docket as part of the technical basis for this proposal.

<sup>6</sup> The regulations at 40 CFR part 50, Appendix I specify that the design value shall be based on three consecutive, complete calendar years of air quality monitoring data. This requirement is met for the three-year period at a monitoring site if daily maximum 8-hour average concentrations are available for at least 90%, on average, of the days during the designated ozone monitoring season, with a minimum data completeness in any one year of at least 75% of the designated sampling days. Air quality monitoring data for 2016 does not meet the completeness criteria in 40 CFR part 50 and the EPA has not conducted a missing data analysis. This action is not making a formal determination of attainment or clean data determination.

<sup>7</sup> The 2014–2016 design values are available on the EPA's website at: [www.epa.gov/air-trends/air-quality-design-values#report](http://www.epa.gov/air-trends/air-quality-design-values#report).

that review in the future after data is complete, quality-assured, certified and submitted to the EPA.

As previously discussed, Connecticut submitted an attainment demonstration and RACM analysis for the 1997 8-hour ozone NAAQS for the Connecticut portion of the NY-NJ-CT area on February 1, 2008. On June 18, 2012 (77 FR 36163), the EPA determined the area had attained the standard by the June 15, 2010 attainment deadline and issued a CDD for the NY-NJ-CT nonattainment area. The CDD suspended Connecticut's obligation to submit attainment-related planning requirements, including the obligation to submit attainment demonstrations. The EPA rescinded the CDD on May 4, 2016 based on the fact that the area was no longer attaining the standard, and issued a SIP Call for a new attainment demonstration for the 1997 8-hour ozone NAAQS for the NY-NJ-CT area. As previously discussed, the EPA determined that the submission of a moderate nonattainment area attainment plan for the more stringent 2008 ozone NAAQS would satisfy the SIP Call for the NY-NJ-CT area in relation to the 1997 ozone standard. Connecticut submitted a combined attainment demonstration and RACM analysis for the 1997 and 2008 8-hour ozone NAAQS on August 8, 2017.

Section 110(k)(2) of the CAA requires the EPA to take action on any administratively complete SIP revision submittal within 12 months of the SIP being deemed complete. Although the June 2012 CDD temporarily suspended Connecticut's obligation to submit an attainment demonstration and RACM analysis, it did not suspend the EPA's obligation to take action on the February 1, 2008 SIP submittal. The EPA is proposing to take such final action in this document. This proposed rulemaking is intended to address EPA's obligations to act on Connecticut's attainment demonstration and RACM analysis for the State's portion of the NY-NJ-CT area submitted on February 1, 2008, and also is intended to approve the portion of the August 8, 2017 SIP submittal regarding the updated attainment demonstration and RACM analysis for the 1997 8-hour ozone NAAQS for the Connecticut portion of the NY-NJ-CT area.

### *B. Components of the Modeled Attainment Demonstration*

Section 110(a)(2)(k) of the Act requires states to prepare air quality modeling to demonstrate how they will meet ambient air quality standards. The SIP must demonstrate that the “measures, rules, and regulations contained in it are adequate to provide

for the timely attainment and maintenance of the national standard.” See 40 CFR 51.112(a). The EPA determined that states must use photochemical grid modeling, or any other analytical method determined by the Administrator to be at least as effective, to demonstrate attainment of the ozone health-based standard in areas classified as “moderate” or above, and to do so by the required attainment date. See 40 CFR 51.908(c). The EPA requires an attainment demonstration using air quality modeling that meets the EPA's guidelines. The model analysis can be supplemented by a “weight of evidence” analysis in which the state can use a variety of information to enhance the conclusions reached by the photochemical model analysis. In the case of the August 8, 2017 submittal for the Connecticut portion of the NY-NJ-CT area, the weight of evidence also included monitoring evidence that the area design value is attaining the 1997 standard. The EPA has determined that the photochemical grid modeling conducted by the State is consistent with the EPA's guidelines and the model performed acceptably. See 40 CFR 51.908(c).

### *C. The EPA's Evaluation*

In its attainment demonstration, Connecticut included results from the Ozone Transport Commission's (OTC's) SIP air quality modeling as well as EPA's modeling study used in support of the final update to the Cross-State Air Pollution Rule (CSAPR Update).<sup>8</sup> The model used by the OTC was the Community Multi-scale Air Quality Model version 5.0.2 (CMAQ) and the model used by EPA in the CSAPR Update was the Comprehensive Air Quality Model with Extensions version 6.2 (CAMx). Each of these models is a photochemical grid model capable of simulating ozone production on a regional or national scale. Both the OTC CMAQ model and the EPA's CAMx model projected 2017 design value results that all air quality monitors in Southwest Connecticut will attain the 1997 ozone NAAQS in 2017. In addition, modeling results predict all monitors in the NY-NJ-CT

<sup>8</sup> The OTC modeling results are available in the “Technical Support Document for the 2011 Ozone Transport Commission/Mid-Atlantic Northeastern Visibility Union Modeling Platform”, November 15, 2016 in the docket for this action.

<sup>9</sup> The EPA's final rule titled Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS was published in the **Federal Register** on October 26, 2016. See 81 FR 74504 (October 26, 2016).

nonattainment area will attain the 1997 ozone NAAQS in 2017.<sup>10</sup>

In summary, the photochemical grid modeling used by Connecticut in its August 8, 2017 SIP submittal to demonstrate attainment of the 1997 ozone NAAQS meets the EPA's guidelines and is acceptable to the EPA. Air quality monitoring data for 2014–2016 also demonstrates attainment of the 1997 8-hour ozone standard throughout the NY-NJ-CT area. The purpose of the attainment demonstration is to demonstrate how, through enforceable and approvable emission reductions, an area will meet the standard by the attainment date. The purpose of the RACM analysis is to show that the State has considered all reasonable available control measures to achieve attainment of the 1997 8-hour ozone standard. All necessary ozone control measures have already been adopted, submitted, approved and implemented. Based on (1) the State following the EPA's modeling guidance, (2) the modeled attainment of 1997 standard, (3) the air quality monitoring data for 2014–2016, and (4) the implemented SIP-approved control measures, the EPA is proposing to approve the attainment demonstration and RACM analysis for the 1997 ozone NAAQS for the Connecticut portion of the NY-NJ-CT area. The EPA is not taking action on the attainment demonstration and RACM analysis for the 2008 ozone NAAQS at this time.

## V. Proposed Action

The EPA has evaluated the information provided by Connecticut and has considered all other information it deems relevant to attainment of the 1997 8-hour ozone standard, *i.e.*, statewide RACT analysis approval, RFP plan approvals, continued attainment of the 1997 8-hour ozone standard based on quality assured and certified monitoring data, and the implementation of the more stringent 2008 8-hour ozone standard. The EPA is therefore proposing to approve the attainment demonstration and RACM analysis for the Connecticut portion of the NY-NJ-CT area for the 1997 ozone NAAQS. This proposed rulemaking is intended to address the EPA's obligations to act on Connecticut's

<sup>10</sup> The OTC CMAQ and EPA CAMx modeling results for all monitors in the NY-NJ-CT nonattainment area predict all monitors will attain the 1997 NAAQS in 2017. In addition, the OTC CMAQ modeling analysis was used to demonstrate attainment with the 1997 ozone NAAQS in the November 2017 attainment demonstration submitted by the New York Department of Conservation and the December 2017 attainment demonstration submitted by the New Jersey Department of Environmental Protection.

February 1, 2008 SIP revision for the 1997 ozone NAAQS, as well as the attainment demonstration and RACM analysis portion of the August 8, 2017 SIP submittal for the 1997 ozone NAAQS for the Connecticut portion of the NY-NJ-CT area.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register** document.

## VI. 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 proposed 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 proposed 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);
- Is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.
- 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).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 17, 2018.

**Alexandra Dunn,**

*Regional Administrator, EPA Region 1.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R01–OAR–2018–0269; FRL–9977–87—Region 1]

### Air Plan Approval; Maine; Infrastructure Requirement for the 2010 Nitrogen Dioxide National Ambient Air Quality Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a February 21, 2018, State Implementation Plan (SIP) revision submitted by the State of Maine. This revision addresses the interstate transport requirements of the Clean Air Act (CAA) with respect to the 2010 primary nitrogen dioxide (NO<sub>2</sub>) National