



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2019-0513; FRL-10003-57-Region 1]

## **Air Plan Approval; Connecticut; Transport State Implementation Plan for the 2008 Ozone Standard.**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut that addresses the interstate transport of air pollution requirements of the Clean Air Act for the 2008 ozone national ambient air quality standards (NAAQS) (i.e., ozone transport SIP). The intended effect of this action is to propose approval of the transport SIP as a revision to the Connecticut SIP. This action is being taken in accordance with the Clean Air Act.

**DATES:** Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2019-0513 at <https://www.regulations.gov>, or via email to [simcox.alison@epa.gov](mailto:simcox.alison@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from 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 <http://www.epa.gov/dockets/commenting-epa-dockets>. 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.

**FOR FURTHER INFORMATION CONTACT:** Alison C. Simcox, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square - Suite 100, (Mail code 05-2), Boston, MA 02109 - 3912, tel. (617) 918-1684, email [simcox.alison@epa.gov](mailto:simcox.alison@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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## **I. Background**

On June 15, 2015, the Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted a revision to its State Implementation Plan (SIP) consisting of an interstate transport SIP for the 2008 ozone NAAQS. This interstate transport SIP, which we are herein proposing to approve, was submitted to address the infrastructure requirements of section 110(a)(2)(D)(i)(I) of the Clean Air Act (CAA or Act).

On March 12, 2008, EPA revised the level of the primary ozone standard from 0.08 ppm to 0.075 ppm, based on a three-year average of the annual fourth-highest daily maximum 8-hour average. *See* 73 FR 16436. Section 110(a)(1) of the CAA requires states to submit SIPs to address a new or revised NAAQS within three years after promulgation of a standard, or within a shorter period as EPA may prescribe. Section 110(a)(2) lists the elements that new SIPs must address, as applicable, including section 110(a)(2)(D)(i), which pertains to interstate transport of certain emissions.

Section 110(a)(2)(D)(i) identifies four elements related to the evaluation of impacts of interstate transport of air pollutants; in this rulemaking, we are addressing the first two elements; EPA addressed all other infrastructure SIP elements under section 110(a)(2) for Connecticut for the 2008 8-hour ozone NAAQS in separate rulemakings.<sup>1</sup> Specifically, the portions that we are proposing to approve pertain to section 110(a)(2)(D)(i)(I): (1) significant contribution to nonattainment of the ozone NAAQS in any other state (commonly called “prong 1”); and (2)

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<sup>1</sup> See 80 FR 54471 (September 10, 2015); 81 FR 35636 (June 3, 2016).

interference with maintenance of the ozone NAAQS (commonly called “prong 2”) by any other state. These two provisions (or “prongs”) are commonly referred to as the “good neighbor” provisions of the CAA. The first provision requires that a state's SIP for a new or revised NAAQS contain adequate measures to prohibit any source or other type of emissions activity in the state from emitting pollutants in amounts that will “contribute significantly” to nonattainment of the NAAQS in another state. The second provision requires that a state's SIP prohibit any source or other type of emissions activity in the state from emitting pollutants in amounts that will “interfere with maintenance” of the applicable NAAQS in any other state.

*EPA's Analysis Related to 110(a)(2)(D)(i)(I) for the 2008 8-Hour Ozone NAAQS*

EPA developed technical information and related analyses to assist states with meeting section 110(a)(2)(D)(i)(I) requirements for the 2008 8-hour ozone NAAQS through SIPs and, as appropriate, to provide backstop federal implementation plans (FIPs) in the event that states failed to submit approvable SIPs.<sup>2</sup> On October 26, 2016, EPA took steps to develop this backstop role with respect to eastern states<sup>3</sup> by finalizing an update to the 2011 Cross-State Air Pollution Rule (2011 CSAPR) ozone-season program that addresses good neighbor obligations for the 2008 8-hour ozone NAAQS (CSAPR Update).<sup>4</sup> The CSAPR Update established statewide nitrogen oxides (NO<sub>x</sub>) budgets for certain affected electricity generating units (EGUs)

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<sup>2</sup> The EPA issued a Notice of Data Availability on August 4, 2015, requesting comment on the modeling platform and air quality modeling results that were used for the proposed Cross-State Air Pollution Rule (CSAPR) Update. See 80 FR 46271.

<sup>3</sup> For purposes of the CSAPR Update, “eastern” states refer to all contiguous states fully east of the Rocky Mountains (thus not including the mountain states of Montana, Wyoming, Colorado, or New Mexico).

<sup>4</sup> See Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, Final Rule (2011 CSAPR), 76 FR 48208 (August 8, 2011); Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS (CSAPR Update), 81 FR 74504 (October 26, 2016).

in 22 eastern states for the May through September ozone season to reduce the interstate transport of ozone pollution in the eastern United States, and, thereby, help downwind states and communities meet and maintain the 2008 8-hour ozone NAAQS. *See* 81 FR 74506. The rule also determined that emissions from 14 states (including Connecticut) would not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states. Accordingly, EPA determined that it did not need to require further emission reductions from sources in those states to address the good neighbor provision as to the 2008 ozone NAAQS. *Id.*

A recent ruling by the United States Court of Appeals for the District of Columbia Circuit in *Wisconsin v. EPA*, 938 F.3d 303 (D.C. Cir. 2019) upheld certain aspects of the CSAPR Update and remanded others to EPA but did not vacate the rule. Our proposed approval of Connecticut's Transport SIP relies in part on EPA's finding in the CSAPR Update that emissions from Connecticut do not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any downwind state. *See* 84 FR at 40346-47 (citing 81 FR at 74506). No party challenged that aspect of the CSAPR Update and nothing in the court's opinion overturned that finding or called it into doubt. Consequently, *Wisconsin* does not impact EPA's reliance on the finding in the CSAPR Update to support approval of Connecticut's Transport SIP for the 2008 ozone NAAQS.

The CSAPR Update used the same framework that was used by EPA in developing 2011 CSAPR.<sup>5</sup> Through several previous rulemakings,<sup>6</sup> EPA, working in partnership with states,

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<sup>5</sup> Key elements of the four-step interstate transport framework have been upheld by the Supreme Court in *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489 (2014).

<sup>6</sup> NO<sub>x</sub> SIP Call. 63 FR 57356 (October 27, 1998); Clean Air Interstate Rule (CAIR). 70 FR 25162 (May 12, 2005); Cross-State Air Pollution Rule (CSAPR). 75 FR 48208 (August 8, 2011); and CSAPR Update. 81 FR 74504 (October 26, 2016).

established a four-step interstate-transport framework to address the requirements of the “good neighbor” provision for the ozone NAAQS.<sup>7</sup> The four steps are: Step 1—identify downwind receptors that are expected to have problems attaining or maintaining the NAAQS; step 2—determine which upwind states contribute enough to these identified downwind air quality problems to warrant further review and analysis; step 3—identify the emissions reductions necessary to prevent an identified upwind state from contributing significantly to those downwind air quality problems; and step 4—adopt permanent and enforceable measures needed to achieve those emissions reductions.

To apply the first and second steps of the four-step interstate-transport framework to the 2008 ozone NAAQS, EPA evaluated modeling projections for air-quality monitoring sites in 2017 and considered current (at the time) ozone monitoring data at these sites to identify receptors<sup>8</sup> anticipated to have problems attaining or maintaining the 2008 ozone NAAQS. Next, EPA used air-quality modeling to assess contributions from upwind states to these downwind receptors and evaluated the contributions relative to a screening threshold of one percent (1%) of the 2008 NAAQS (i.e., 0.75 parts per billion (ppb)). States with contributions that equaled or exceeded the 1% threshold were identified as warranting further analysis for “significant contribution to nonattainment” or “interference with maintenance” of the NAAQS. In the CSAPR Update, EPA found that Connecticut did not contribute at or above the 1% threshold to any downwind nonattainment or maintenance receptor. *See* 81 FR 74506. Therefore, EPA did not issue FIP requirements for sources in Connecticut as part of CSAPR Update. *See id.* at 74553.

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<sup>7</sup> The four-step interstate framework has also been used to address requirements of the good neighbor provision for some previous particulate matter (PM) NAAQS.

<sup>8</sup> Within the CSAPR framework, the term “receptor” indicates a monitoring site. Under CSAPR Update, nonattainment receptors are downwind monitoring sites that are projected to have an average design value that exceed the NAAQS and that have a current monitored design value above the NAAQS, while maintenance receptors are downwind monitoring sites that are projected to have maximum design values that exceed the NAAQS.

## II. EPA's Evaluation of Connecticut's Submittal

On December 28, 2012, CT DEEP submitted most of its infrastructure SIP for the 2008 ozone NAAQS to EPA. On June 3, 2016, EPA fully approved most, and conditionally approved some portions, of that submittal. *See* 81 FR 35636. However, that submittal did not include the “good neighbor” provisions of section 110(a)(2)(D)(i)(I). On June 15, 2015, Connecticut submitted a SIP revision to address this unmet SIP obligation for the 2008 ozone NAAQS. In today's action, we are proposing to approve that submittal.

In its June 2015 submittal, Connecticut examined the results of EPA's transport modeling for 2017 and ambient monitoring data at key downwind sites to demonstrate that the state meets its good neighbor requirements for the 2008 ozone NAAQS. CT DEEP referenced modeling results for EPA's 2011 CSAPR, which showed that emissions from Connecticut were projected to have a maximum impact in 2018 of 0.41 ppb at the monitor in Suffolk County, NY, with impacts at all other monitors of concern being 0.08 ppb or less, well below the 1% screening threshold of 0.75 ppb for the 2008 NAAQS.

EPA's August 2016 CSAPR Update Modeling TSD also projected the largest contributions of emissions from Connecticut to nonattainment and maintenance receptors at well below the threshold of 1% of the NAAQS. Specifically, this modeling indicated that Connecticut's largest impact on any projected downwind nonattainment receptor in 2017 was 0.00 ppb and the largest impact on any projected downwind maintenance-only site was 0.46 ppb.<sup>9</sup> As a result, in the CSAPR Update, EPA “determined that emissions from [Connecticut] do not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in

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<sup>9</sup> See CSAPR Update Modeling TSD at Table 4-2.

downwind states” and that EPA “need not require further emission reductions from sources in [Connecticut] to address the good neighbor provision as to the 2008 ozone NAAQS.” 81 FR at 74506.

Connecticut examined the results of EPA's transport modeling for 2017 and CT DEEP projected state-emissions trends to demonstrate that the state meets its good-neighbor requirements for the 2008 ozone NAAQS. Based on their analysis, total NO<sub>x</sub> emissions are projected to decline 18% between 2017 and 2025. CT DEEP also expects additional NO<sub>x</sub> emission reductions in the post-2017 period because their analysis did not include the state's recent revisions to its low emission vehicle (LEV) regulations, EPA's Tier 3 vehicle and fuel standards, and updates to its NO<sub>x</sub> RACT regulations. These additional NO<sub>x</sub> reductions expected to occur in future years (described below) further help to ensure that the state will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states.

CT DEEP identified regulations that have been approved into the Connecticut SIP to provide for the control of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs), the primary precursors to the formation of ground level ozone. Reasonably available control technology (RACT) has been required for major sources of NO<sub>x</sub> in Connecticut since 1996, with multiple updates since. On July 31, 2017, EPA approved Connecticut's Regulations of State Agencies (RCSA) sections 22a-174-22e, Control of nitrogen oxides emissions, -22f, High daily NO<sub>x</sub> emitting units at non-major sources of NO<sub>x</sub>, and -38, Municipal Waste Combustors. *See* 82 FR 35454.

In addition to these programs, CT DEEP noted that it implements regulations modeled after California's LEV program, has established a stringent new motor vehicle control program, and

implements a statewide vehicle emission inspection and maintenance program and state and federal incentive programs for diesel vehicle retrofits and replacements. Connecticut also implements a variety of energy efficiency strategies, including its Comprehensive Energy Strategy<sup>20</sup>.

In light of the EPA's determination made in the CSAPR Update finding that emissions from Connecticut will not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states, we propose that Connecticut has met its CAA Section 110(a)(2)(D)(i)(I) "good neighbor" SIP obligation for the 2008 ozone NAAQS.

### **III. Proposed Action**

EPA is proposing to approve Connecticut's June 15, 2015, SIP submission as meeting the CAA requirements of prongs 1 and 2 under section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters.<sup>10</sup> 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**.

### **IV. 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,

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<sup>10</sup> However, the EPA notes that it is not, in this action, reopening for public comment or otherwise reconsidering the analytic analysis conducted for or the determinations made in the final CSAPR Update rulemaking action.

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 (Public Law 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 18, 2019

Dennis Deziel,  
Regional Administrator,  
EPA Region 1.

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