



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2020-0613; FRL-10024-96 Region 2]

Approval and Promulgation of Implementation Plans; New Jersey and New York; 1997 Ozone Attainment Demonstrations for the NY-NJ-CT Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the ozone attainment portions of the State Implementation Plan (SIP) submitted by the states of New Jersey and New York to meet the Clean Air Act (CAA) requirements for attaining the 1997 8-hour ozone national ambient air quality standard (NAAQS). Specifically, the EPA is proposing to approve New Jersey's and New York's demonstrations of attainment of the 1997 8-hour ozone NAAQS for their portions of 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). This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before **[insert date 30 days from date of publication]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R02-OAR-2020-0613 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION, CONTACT: Omar Hammad, Environmental Protection Agency, 290 Broadway, New York, New York 10007-1866, at (212) 637-3347, or by email at Hammad.Omar@epa.gov.

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I. What action is the EPA proposing?

A. History of NY-NJ-CT nonattainment area.

The Environmental Protection Agency (EPA) is proposing to approve the ozone attainment demonstration portions of the comprehensive State Implementation Plan (SIP) revisions submitted by New Jersey and New York to meet Clean Air Act requirements for attaining the 1997 84 parts per billion (ppb) 8-hour ozone National Ambient Air Quality Standards (NAAQS). New Jersey submitted its SIP revision to the EPA on January 2, 2018¹ and New York submitted its SIP revision to the EPA on November 13, 2017². New Jersey and New York previously submitted attainment demonstrations for the 1997 84 ppb 8-hour ozone standard which were

¹Submittal letter dated December 22, 2017 and received by the EPA January 2, 2018.

²Submittal letter dated November 10, 2017 and received by the EPA November 13, 2017.

approved by the EPA. 78 FR 9596 (February 11, 2013). On June 18, 2012, the EPA issued a Clean Data Determination (CDD) for the 1997 84 ppb 8-hour ozone standard for the NY-NJ-CT area based on the attainment demonstrations submitted by the two States. 77 FR 36163 (March 26, 2012). However, on May 4, 2016, EPA rescinded the CDD since EPA determined that areas within the NY-NJ-CT area exceeded the 1997 84 ppb standard based on 2010-2012 monitoring data. 81 FR 26697 (May 4, 2016). EPA simultaneously issued a SIP Call for the affected states within the nonattainment area to address the 1997 84 ppb 8-hour ozone standard. The SIP revisions submitted by New Jersey and New York address the attainment demonstration requirements of the May 4, 2016 SIP Call. The EPA's review of this material indicates that ambient air quality monitors within the NY-NJ-CT area are attaining the 1997 ozone NAAQS.

II. What is the background for this proposed rulemaking?

In 1997, the EPA revised the health-based NAAQS for ozone, setting it at 84 ppb (parts per billion) 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, over longer periods of time, than the former 1-hour ozone standard. The 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 84 ppb. These actions became effective on June 15, 2004. Among those nonattainment areas was 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 Westchester Counties in New York; and Fairfield, Middlesex, and New Haven Counties in Connecticut.

On April 30, 2004 (69 FR 23951), the EPA also promulgated the Phase 1 8-hour ozone implementation rule which provided details about the classification of areas designated nonattainment for the 1997 8-hour ozone standard. The 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 June 15, 2007. *See* 40 CFR 51.908(a). Subsequently, New Jersey and New York submitted the associated SIP revisions to present their respective plans to attain the 1997 84 ppb 8-hour ozone standard for the NY-NJ-CT nonattainment area. New Jersey submitted a SIP detailing plans to attain the 1997 standard on October 29, 2007, while New York submitted their SIP on February 8, 2008. EPA approved both SIPs on February 11, 2013. 78 FR 9596 (February 11, 2013).

On March 12, 2008 (73 FR 16436), the EPA revised the ozone NAAQS to a level of 75 ppb to further increase the 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 the NY-NJ-CT as a "Marginal" ozone nonattainment area for the 2008 ozone NAAQS. *See* 40 CFR 81.307, 81.331, and 81.333. As a result of its "Marginal" classification, the area was required to attain the 2008 ozone standard by July 20, 2015 but was not required to submit an attainment demonstration for the 2008 ozone standard. 42 U.S.C 7511a(a). On May 4, 2016, the EPA determined that the NY-NJ-CT nonattainment area failed to attain by the attainment date, resulting in the area to be reclassified from a "Marginal" to a "Moderate" nonattainment area. 81 FR 26697 (May 4, 2016). State attainment plans for the 2008 "Moderate" ozone NAAQS nonattainment areas were due by January 1, 2017. 81 FR 26697 (May 4, 2016). Furthermore, the EPA once again revised the ozone NAAQS in 2015, setting both levels of the

primary and secondary NAAQS at 70 ppb. 80 FR 65292 (October 26, 2015). The NY-NJ-CT area was designated by the EPA as a “Moderate” nonattainment area for the 2015 ozone NAAQS. 83 FR 25776 (June 4, 2018).

On June 18, 2012, the EPA issued a CDD for the NY-NJ-CT area with respect to the 1997 8-hour ozone NAAQS and determined that the area attained the 1997 standard by the June 15, 2010 attainment deadline. 77 FR 36163 (June 18, 2012). The purpose of the CDD was to suspend the involved states’ obligations to submit attainment-related planning requirements, including the obligation to submit attainment demonstrations, reasonably available control measures (RACM), reasonable further progress (RFP) plans, and contingency measures with respect to the 1997 8-hour ozone standard. On May 15, 2014 (79 FR 27830), the EPA proposed to rescind the CDD for the area based on the 2010-2012 monitoring data showing the area was no longer attaining the 1997 8-hour ozone standard, and the EPA proposed a SIP Call for submittal of a new ozone attainment demonstration for the NY-NJ-CT area for the 1997 ozone NAAQS. As an alternative to submitting a new attainment demonstration for the 1997 ozone NAAQS, the EPA proposed to affected states to respond to the SIP Call by voluntarily requesting they be reclassified to “Moderate” for the 2008 ozone standard, therefore the states would prepare SIP revisions demonstrating how they would attain the more stringent 2008 standard. However, the NY-NJ-CT area failed to attain the 2008 ozone NAAQS by the applicable attainment date of July 20, 2015. (80 FR 51992 August 27, 2015). By the operation of law, the NY-NJ-CT area was reclassified to “Moderate” nonattainment for the 2008 ozone standard. This effectively eliminated the need for the three states involved to voluntarily request reclassification. The NY-NJ-CT area submitted Moderate nonattainment plans for the more stringent 2008 ozone standard, satisfying the final SIP Call for the 1997 ozone standard, since an approvable plan would demonstrate attainment of a more stringent NAAQS. 81 FR 26687 (May 4, 2016). Both New Jersey and New York submitted combined attainment demonstrations for the 1997 and 2008 ozone standards for their portions of the NY-NJ-CT area. New Jersey submitted

its SIP revision to the EPA on January 2, 2018 and New York submitted its SIP revision to the EPA on November 13, 2017. Connecticut submitted comprehensive revisions to its SIP for the 8-hour ozone NAAQS on August 8, 2017 and the EPA approved the 1997 8-hour ozone NAAQS attainment demonstration revision in that submittal. (83 FR 39890 August 13, 2018).

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. New Jersey and New York previously submitted attainment demonstrations to present plans to attain the 1997 84 ppb 8-hour ozone standard and were approved by the EPA. 78 FR 9596 (February 11, 2013). On June 18, 2012, the EPA issued a Clean Data Determination (CDD) for the 1997 84 ppb 8-hour ozone standard for the NY-NJ-CT Nonattainment area. 77 FR 17341 (March 26, 2012). However, on May 4, 2016, EPA rescinded the CDD since EPA determined that areas within the NY-NJ-CT Nonattainment area exceeded the 1997 84 ppb standard based on 2010-2012 monitoring data. 81 FR 26697 (May 4, 2016). EPA simultaneously issued a SIP Call for the affected states within the nonattainment area to address the 1997 84 ppb 8-hour ozone standard. The SIP revisions submitted by New Jersey and New York address the requirements of the May 4, 2016 SIP Call. The EPA's review of this material indicates that ambient air quality monitors within the NY-NJ-CT Nonattainment area are attaining the 1997 ozone NAAQS.

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).³ 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, New Jersey and New York were obligated to implement the applicable requirements set forth in 40 CFR 51.1100(o), including the requirement to submit an attainment demonstration.

III. What is the EPA proposing to approve?

New Jersey submitted a SIP revision to the EPA on January 2, 2018 and New York submitted a SIP revision to the EPA on November 13, 2017, these submittals addressed, among other things, the ozone attainment demonstrations for the revoked 1997 8-hour ozone standard for their respective portions of the NY-NJ-CT area satisfying the May 4, 2016 SIP call.

This proposed action addresses New Jersey's demonstration of attainment of the 1997 8-hour ozone standard for the New Jersey portion of the NY-NJ-CT area, submitted on January 2, 2018 and New York's demonstration of attainment of the 1997 8-hour ozone standard for the New York portion of the NY-NJ-CT area, submitted on November 13, 2017⁴.

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

A. Air Quality Data and Attainment Determinations

³In *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).

⁴The EPA is not acting on any other portion of the submittals in this proposed action.

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.

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, referenced in New Jersey's and New York's submittals, 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 ppm⁵ and is in attainment for the 1997 ozone NAAQS. Certified data for 2017, 2018 and 2019 in the NY-NJ-CT area and the subsequent design values for 2015-2017, 2016-2018 and 2017-2019 are consistent with continued attainment.⁶ 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

⁵The 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. These thresholds have been met for the ambient air quality monitoring data reviewed by EPA.

⁶The design values are available on the EPA's website at: www.epa.gov/air-trends/air-quality-design-values#report. The 2015-2017 DV is 0.083 ppm, the 2016-2018 DV is 0.082 ppm and the 2017-2019 DV is 0.082 ppm.

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

As previously discussed, 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. 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. Both New Jersey and New York submitted a combined attainment demonstration analysis for the 1997 and 2008 8-hour ozone NAAQS.

B. Components of the Modeled Attainment Demonstrations

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 New Jersey’s and New York’s submittals for their portions 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 States is consistent with the EPA's guidelines and the model performed acceptably. See 40 CFR 51.908(c).

C. The EPA's Evaluation

In their attainment demonstrations, New Jersey and New York included results from the Ozone Transport Commission's (OTC's) SIP air quality modeling.⁷ The model used by the OTC was the Community Multi-scale Air Quality Model version 5.0.2 (CMAQ). This model is a photochemical grid model capable of simulating ozone production on a regional or national scale. The OTC CMAQ model projected 2015-2017 design value results indicating that all air quality monitors in the NY-NJ-CT nonattainment area will attain the 1997 ozone NAAQS in 2017.

In summary, the photochemical grid modeling used by New Jersey and New York in their SIP submittals 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, as have the subsequent design values for 2015-2017, 2016-2018 and 2017-2019.⁸ 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. New York and New Jersey have already adopted, submitted, approved and implemented all necessary ozone control measures necessary for attainment of the 1997 ozone NAAQS. Based on: (1) The States following the EPA's modeling guidance, (2) the modeled attainment of 1997 standard, (3) the air quality monitoring data for 2014-2016, 2015-2017, 2016-2018, 2017-2019, and (4) the implemented SIP-approved control measures, the EPA is proposing to approve the attainment

⁷The 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.

⁸The design values are available on the EPA's website at: www.epa.gov/air-trends/air-quality-design-values#report. The 2015-2017 DV is 0.083 ppm, the 2016-2018 DV is 0.082 ppm and the 2017-2019 DV is 0.082 ppm.

demonstration analyses for the 1997 ozone NAAQS for the New Jersey and New York portion of the NY-NJ-CT area. The EPA is not taking action on the other elements of the State submittals.

V. Proposed Action

The EPA has evaluated the information provided by New Jersey and New York and has considered all other information it deems relevant to a demonstration of attainment of the 1997 8-hour ozone standard and the continued attainment of the 1997 8-hour ozone standard based on the modeling, the 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 New Jersey's and New York's attainment demonstrations for the states' respective portions 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 the 1997 8-hour standard attainment demonstration portions of the New Jersey January 2, 2018 submittal and the New York November 13, 2017 submittal addressing the NY-NJ-CT nonattainment area.

The EPA is soliciting public comments on the issues discussed in this proposal. Any timely comment submitted will be considered before the EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments as discussed in the **ADDRESSES** section of this rulemaking.

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 proposes to approve 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 Order 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 (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 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, this proposed rulemaking action, pertaining to New York’s and New Jersey’s 1997 8-hour ozone attainment demonstration submissions 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, Nitrogen Dioxide, Intergovernmental Relations, Ozone, Reporting and recordkeeping requirements, Particulate matter, Volatile Organic Compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: June 08, 2021.

Walter Mugdan,
Acting Regional Administrator,
Region 2.

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