



## 40 CFR Part 52

[EPA-R01-OAR-2024-0325; FRL-13014-01-R1]

### **Finding of Failure to Attain and Reclassification of Tribal Portions of the Greater Connecticut Ozone Nonattainment Area as Serious for the 2015 Ozone National Ambient Air Quality Standards**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) previously granted the State of Connecticut's request to reclassify the Greater Connecticut ozone nonattainment area from Moderate to Serious under the 2015 ozone National Ambient Air Quality Standards (NAAQS). That request, however, did not include areas governed by the Mashantucket Pequot Tribal Nation and the Mohegan Indian Tribe that are located within this nonattainment area. Given that ozone monitoring data indicate that the Greater Connecticut area failed to attain the 2015 ozone NAAQS by the applicable attainment date, we are proposing to find that these tribal portions of the area did not attain the standards by the attainment date and to reclassify those portions of the area by operation of law to Serious nonattainment for the 2015 ozone NAAQS. This action, if finalized as proposed, would fulfill the EPA's statutory obligation to determine whether the Mashantucket Pequot Tribal Nation and the Mohegan Indian Tribe portions of the Greater Connecticut area attained the NAAQS by the attainment date. This action also solicits public comment on EPA's prior action on CT DEEP's request to exclude event-influenced air quality monitoring data from regulatory decisions. EPA is required to provide an opportunity for public comment on the claimed exceptional events and all supporting data. This proposed action provides the public with an opportunity to comment on the claimed exceptional events, all supporting documents, and the EPA's July 22, 2024 concurrence and nonconcurrence with CT DEEP's request.

**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-2024-0325 at <https://www.regulations.gov>, or via email to [lillis.patrick@epa.gov](mailto:lillis.patrick@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 <https://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.

**FOR FURTHER INFORMATION CONTACT:** Patrick Lillis, Air and Radiation Division (Mail Code 5-MI), U.S. Environmental Protection Agency, Region 1 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; tel. (617)-918-1067, or by email at [lillis.patrick@epa.gov](mailto:lillis.patrick@epa.gov).

**SUPPLEMENTARY INFORMATION:**

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

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## **I. Background and Purpose**

### A. Ozone Reclassification

#### 1. What is the Background for the Proposed Action?

The CAA requires the EPA to establish primary and secondary NAAQS for certain pervasive pollutants that “may reasonably be anticipated to endanger public health and welfare.” The primary NAAQS is designed to protect public health with an adequate margin of safety, and the secondary NAAQS is designed to protect public welfare and the environment. The EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants, including ozone. The NAAQS represent the air quality levels an area must meet to comply with the CAA. Ozone is a gas composed of three oxygen atoms and is created by chemical reactions between volatile organic compounds (VOC) and oxides of nitrogen (NO<sub>x</sub>) in the atmosphere in the presence of sunlight. Ground-level ozone can harm human health and the environment. Ozone exposure has been associated with increases in susceptibility to respiratory infections, medication use by asthmatics, doctor visits, and emergency department visits and hospital admissions for individuals with respiratory disease. Ozone exposure may also contribute to premature death, especially in people with heart and lung disease.

In October 2015, the EPA strengthened the primary and secondary eight-hour ozone NAAQS from 0.075 parts per million (ppm) to 0.070 ppm (“2015 ozone NAAQS”).<sup>1</sup> In accordance with section 107(d) of the CAA, the EPA must designate an area “nonattainment” if it is violating the NAAQS or if it is contributing to a violation of the NAAQS in a nearby area. With respect to the ozone NAAQS, the EPA further classifies nonattainment areas as “Marginal,” “Moderate,” “Serious,” “Severe,” or “Extreme,” depending upon the ozone design value for an area.<sup>2</sup> As a general matter, higher classified ozone nonattainment areas are subject to additional CAA planning requirements than lower classified areas but are allowed more time to demonstrate attainment of the ozone NAAQS.<sup>3</sup>

Effective on August 3, 2018, the EPA designated 52 areas throughout the country as nonattainment for the 2015 ozone NAAQS.<sup>4</sup> In a separate action, the EPA assigned classification thresholds and attainment dates based on the severity of an area's ozone problem, determined by the area's design value (DV).<sup>5, 6</sup> The EPA established the attainment date for Marginal, Moderate, and Serious nonattainment areas as 3 years, 6 years, and 9 years, respectively, from the effective date of the final designations. Thus, the attainment date for Marginal nonattainment areas for the 2015 ozone NAAQS was August 3, 2021, the attainment date for Moderate areas was August 3, 2024, and the attainment date for Serious areas is August 3, 2027. On October 7, 2022, the EPA determined that 22 areas including the Greater Connecticut area, did not attain the standards by the Marginal attainment date,<sup>7</sup> and these areas were reclassified as Moderate by operation of law. The Mashantucket Pequot Tribal Nation and the Mohegan Indian Tribe, which

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<sup>1</sup> 80 FR 65291, October 26, 2015.

<sup>2</sup> See CAA section 181(a)(1). For the 2015 ozone NAAQS, the design value at each monitoring site is the annual fourth-highest daily maximum 8-hour average ozone concentration, averaged over three years. The design value for an area is the highest design value among the monitoring sites in the area.

<sup>3</sup> See, generally, subpart 2 of part D of title I of the CAA.

<sup>4</sup> 83 FR 25776, June 4, 2018.

<sup>5</sup> 83 FR 10376, May 8, 2018.

<sup>6</sup> CAA section 181(b)(2)(A). A DV is a statistic used to compare data collected at an ambient air quality monitoring site to the applicable NAAQS to determine compliance with the standard. The data handling conventions for calculating DVs for the 2015 ozone NAAQS are specified in appendix U to 40 CFR part 50. *See also* n.3, *supra*.

<sup>7</sup> 87 FR 60897, November 7, 2022

are the two tribal territories being addressed in this proposed action, are located within the boundaries of the Greater Connecticut nonattainment area.

## 2. Overview of Proposal

The EPA is required to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable attainment date, and to take certain steps for areas that failed to attain.<sup>8</sup> The EPA's determination of attainment for the 2015 ozone NAAQS is "based on a nonattainment area's DV as of the attainment date."

The 2015 ozone NAAQS is met at an EPA regulatory monitoring site when the DV does not exceed 0.070 ppm. For the Moderate nonattainment areas for the 2015 ozone NAAQS addressed in this action, the attainment date was August 3, 2024. Because the DV is based on the three most recent, complete calendar years of data, the EPA's determinations for each Moderate 2015 ozone NAAQS nonattainment area under CAA section 181(b)(2) are based upon the complete, quality-assured, and certified ozone monitoring data from calendar years 2021, 2022, and 2023.

At the request of CT DEEP, the Greater Connecticut area was voluntarily reclassified from Moderate to Serious for the 2015 ozone NAAQS before the August 3, 2024, nonattainment date.<sup>9</sup> However, the tribal portions of the Greater Connecticut area remained classified as Moderate. The entire Greater Connecticut area, including the tribal portions, factually failed to attain the 2015 ozone NAAQS. This finding was not altered by CT DEEP's Exceptional Event (EE) demonstration discussed in Section I.B. of this action. EPA is proposing to determine that the tribal portions of the Greater Connecticut area failed to attain and will be reclassified as Serious for the 2015 ozone NAAQS. If the EPA determines that a nonattainment area classified as Moderate failed to attain by the attainment date, CAA section 181(b)(2)(B) requires the EPA

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<sup>8</sup> CAA section 181(b)(2).

<sup>9</sup> 89 FR 60827, July 29, 2024.

to publish a document in the Federal Register, identifying each such area and identifying the applicable reclassification.

### 3. What is the Statutory Authority for the Proposed Actions?

The statutory authority for these determinations is provided by the CAA, as amended (42 U.S.C. 7401 *et seq.*). Relevant portions of the CAA include, but are not necessarily limited to, sections 181 and 182.

As noted earlier, CAA section 107(d) provides that when the EPA establishes or revises a NAAQS, the agency must designate areas of the country as nonattainment, attainment, or unclassifiable based on whether an area is not meeting (or contributing to air quality in a nearby area that is not meeting) the NAAQS, meeting the NAAQS, or cannot be classified as meeting or not meeting the NAAQS, respectively. Subpart 2 of part D of title I of the CAA governs the classification, state planning, and emissions control requirements for any areas designated as nonattainment for a revised primary ozone NAAQS. In particular, CAA section 181(a)(1) requires each area designated as nonattainment for a revised ozone NAAQS to be classified at the same time as the area is designated based on the extent of the ozone problem in the area (as determined based on the area's design value). Classifications for ozone nonattainment areas range from “Marginal” to “Extreme” based on the severity of the area's air quality problem.

CAA section 182 provides the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification. CAA section 182, as interpreted by the EPA's implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 51.1308 through 51.1317, also establishes the timeframes by which air agencies must submit and implement SIP revisions to satisfy the applicable attainment planning elements, and the timeframes by which nonattainment areas must attain the 2015 ozone NAAQS. For reclassified areas, CAA section 182(i) provides that the Administrator may adjust

applicable deadlines other than attainment dates if such adjustment is necessary or appropriate to assure consistency among the required submissions.

Section 181(b)(2)(A) of the CAA requires that within 6 months following the applicable attainment date, the EPA shall determine whether an ozone nonattainment area attained the ozone standard based on the area's DV as of that date. For nonattainment areas that the EPA determines have not timely attained, CAA section 181(a)(5) gives the EPA the discretion to grant a 1-year extension of the attainment date for qualifying areas upon application by any state. In the event an area fails to attain the ozone NAAQS by the applicable attainment date and is not granted a 1-year attainment date extension, CAA section 181(b)(2)(A) requires the EPA to make the determination that an ozone nonattainment area failed to attain the ozone standard by the applicable attainment date, and requires the area to be reclassified by operation of law to the higher of: (1) the next higher classification for the area, or (2) the classification applicable to the area's design value as of the determination of failure to attain. Section 181(b)(2)(B) of the CAA required the EPA to publish the determination of failure to attain and accompanying reclassification in the **Federal Register** no later than 6 months after the attainment date, which in the case of the two tribal territories located in the Greater Connecticut nonattainment area, was February 3, 2025.

Once an area is reclassified, the state is required to submit certain SIP revisions in accordance with its more stringent classification. The SIP revisions are intended to, among other things, demonstrate how the area will attain the NAAQS as expeditiously as practicable, but no later than August 3, 2027, the Serious area attainment date for the 2015 ozone NAAQS. According to CAA section 182(i), a state with a reclassified ozone nonattainment area must submit the applicable attainment plan requirements “according to the schedules prescribed in connection with such requirements” in CAA section 182(c) for Serious areas, but the EPA “may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.” EPA has

addressed the SIP revision and implementation deadlines for newly reclassified Serious areas, as well as the continued applicability of Moderate area requirements that these areas may not yet have met, in a separate rulemaking.<sup>10</sup>

Under the CAA and Tribal Authority Rule (TAR), Tribes may, but are not required to, submit implementation plans to the EPA for approval.<sup>11</sup> Accordingly, for the Greater Connecticut nonattainment area, the Mashantucket Pequot Tribal Nation and the Mohegan Indian Tribe would not be required to submit any tribal implementation plan (TIP) revisions applicable to the Serious areas established in CAA section 182(c) and in the 2015 ozone NAAQS SIP Requirements Rule.

#### 4. How does EPA Determine Whether an Area has Attained the 2015 Ozone Standard?

As discussed earlier, the 2015 ozone NAAQS is attained at a site when the design value at each ambient air quality monitoring site within the area does not exceed 0.070 ppm. The rounding convention in Appendix U dictates that concentrations shall be reported in “ppm” to the third decimal place, with additional digits to the right being truncated. Thus, a computed 3-year average ozone concentration of 0.071 ppm is greater than 0.070 ppm and would exceed the standard, but a design value of 0.0709 is truncated to 0.070 and attains the 2015 ozone NAAQS.

The EPA's determination of attainment by the Moderate attainment date of August 3, 2024, is based upon hourly ozone concentration data for calendar years 2021, 2022 and 2023 that have been collected and quality-assured in accordance with 40 CFR part 58 and reported to the EPA's Air Quality System (AQS) database.<sup>12</sup>

#### B. Exceptional Events

##### 1. What is the Background for the Proposed Action?

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<sup>10</sup> 90 FR 5651, January 17, 2025.

<sup>11</sup> CAA section 301(d); 40 CFR part 49.

<sup>12</sup> The EPA maintains the AQS, a database that contains ambient air pollution data collected by the EPA, state, local, and tribal air pollution control agencies. The AQS also contains meteorological data, descriptive information about each monitoring station (including its geographic location and its operator) and data quality assurance/quality control information. The AQS data is used to (1) assess air quality, (2) assist in attainment/non-attainment designations, (3) evaluate SIPs for non-attainment areas, (4) perform modeling for permit review analysis, and (5) prepare reports for Congress as mandated by the CAA. Access is through the website at <https://www.epa.gov/aqs>.

Exceptional events are unusual or naturally occurring events that can affect air quality but are not reasonably controllable using techniques that tribal, state or local air agencies may implement to attain and maintain the NAAQS. Exceptional events may include wildfires, high wind dust events, prescribed fires, stratospheric ozone intrusions, and volcanic and seismic activities. Under section 319(b) of the CAA, air agencies can request the exclusion of event-influenced data when “exceptional” events influence monitoring data and cause exceedances or violations of the NAAQS, and the EPA can agree to exclude these data, from the data set used for certain regulatory decisions.

## 2. Overview of Proposal

On January 10, 2024, the Connecticut Department of Energy and Environmental Protection (CT DEEP) Bureau of Air Management submitted an initial notification for an intended EE demonstration, and on July 1, 2024, submitted an EE demonstration for exceedances or violations of the 2015 ozone NAAQS that occurred at the Cornwall (AQS Site ID #090050005), East Hartford (AQS Site ID #090031003), and Groton (AQS Site ID #090110124) monitoring sites in the Greater Connecticut area. CT DEEP requested that EPA exclude data for April 13-14, June 30-July 1, and July 12, 2023, at the Groton monitoring site, as well as data for July 1, 2023, at the East Hartford and Cornwall monitoring locations. The EPA's July 22, 2024, action on the demonstration affects the determinations of attainment by the attainment date for the Greater Connecticut area (including the two tribal territories). The EE initial notification, EE demonstration, the EPA's response to the initial notification, and EPA's July 22, 2024, decision on the EE demonstration are provided in the docket for this rulemaking.

## **II. What is the EPA Proposing and What is the Rationale?**

The EPA is proposing this action to fulfill its statutory obligation under CAA section 181(b)(2) to determine whether the tribal portions of the Greater Connecticut area attained the 2015 ozone NAAQS as of the attainment date of August 3, 2024, and to reclassify both tribal

portions of the area. The two tribal territories are governed by the Mashantucket Pequot Tribal Nation and the Mohegan Indian Tribe.

A. Evaluation of Design Value Data and Exceptional Events Documentation

The EPA evaluated air quality data to determine if the two tribal portions of the Moderate nonattainment area attained the 2015 ozone NAAQS by the attainment date of August 3, 2024. The areas’ ozone design values for 2021-2023 are shown in Table 1. Based on the certified, complete data from 2021-2023, the design value for the tribal portions of the Greater Connecticut area is 0.072 ppm and the 2023 4th highest daily maximum 8-hour average is 0.071 ppm.

**Table 1. 2021-2023 fourth highest daily maximum 8-hour average ozone concentrations and design values at all monitors in the Greater Connecticut area.**

AQS Site ID	County	State	Fourth highest daily maximum 8-hour average ozone concentration (ppm)			2021-2023 design value (DV) (ppm)
			2021	2022	2023	
090031003	Hartford	Connecticut	0.066	0.074	0.07	0.07
090050005	Litchfield	Connecticut	0.068	0.07	0.067	0.068
090110124	New London	Connecticut	0.075	0.071	0.071	0.072
090131001	Tolland	Connecticut	0.067	0.068	0.07	0.068
090159991	Windham	Connecticut	0.068	0.064	0.063	0.065

On July 1, 2024, CT DEEP submitted an EE demonstration. The EE demonstration proposed five days to be excluded from the 2023 ozone season. The EPA's previous action on the demonstration affects the determination of attainment by the attainment date for the Mashantucket Pequot Tribal Nation and the Mohegan Indian Tribe.<sup>13</sup> The EE initial notification,

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<sup>13</sup> CAA section 319(b) defines an exceptional event as an event that (i) affects air quality; (ii) is not reasonably controllable or preventable; (iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and (iv) is determined by the Administrator through process established in regulation to be an exceptional event.

EE demonstration, the EPA's response to the initial notification, and EPA's decision on the EE demonstration are provided in the docket for this rulemaking.

For the Greater Connecticut nonattainment area (including the two tribal territories) to have an attaining 2021-2023 DV for the 2015 ozone NAAQS, the EPA would have had to concur on all of the requested air quality monitoring data for exclusion in the EE demonstration that CT DEEP submitted for 2023. Furthermore, to qualify for an extension of the attainment date, the EPA would have to concur on all of the air quality monitoring data requested for exclusion at the Groton (New London County) monitoring site in the EE demonstration submitted for 2023. The EPA responded to CT DEEP's Initial Notification submittal for an intended EE demonstration, dated March 7, 2024, indicating that the events described may affect a future regulatory decision.<sup>14</sup> Because regulatory significance is required for EPA concurrence on an EE demonstration and subsequent exclusion of the event-influenced data from the design value, the EPA therefore determined it would evaluate the demonstration submitted by CT DEEP under the Exceptional Events Rule (EER). The demonstration submitted by CT DEEP stated that the exceedances measured on April 13–14 were caused by annual agricultural and prescribed fires from the Flint Hills region of Kansas, and nearby wildfires from Pennsylvania, New York, and New Jersey. The demonstration from CT DEEP also stated that there were exceedances or violations on June 30–July 1 due to Quebec, Canada, wildfires that transported smoke into the area. CT DEEP also asserted that high levels of ozone were recorded due to smoke from western Canadian wildfires on July 12. A summary of CT DEEP's exceptional event demonstration dates, type of events, and regulatory monitoring sites affected is outlined in Table 2 below.

**Table 2—Summary of Critical and Analytically Complex Exceptional Event Demonstration in Greater Connecticut**

<b>Event Date</b>	<b>Type of Event</b>	<b>Monitoring Sites Affected</b>
April 13, 2023	Annual Agricultural and Prescribed Fires, Wildfires	Groton (New London Co.)

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<sup>14</sup> Letter from L. Hamjian, Director, EPA R1 Air and Radiation Div., to T. Babbidge, Chief, Bureau of Air management., Conn. Dept. of Energy and Env'tl. Prot. (March 7, 2024).

April 14, 2023	Annual Agricultural and Prescribed Fires, Wildfire	Groton (New London Co.)
June 30, 2023	Wildfire	Groton (New London Co.)
July 1, 2023	Wildfire	Groton (New London Co.), East Hartford (Hartford Co.), Cornwall (Litchfield Co.)
July 12, 2023	Wildfire	Groton (New London Co.)

The EPA concurred with CT DEEP’s request to exclude data on June 30 and July 1, 2023, at the Groton monitoring site, and on July 1, 2023, at the East Hartford and Cornwall monitoring sites. However, the EPA did not concur with CT DEEP’s request to exclude data on April 13-14 or July 12 from the Groton monitoring site. Please refer to the technical support document for EPA’s July 22, 2024, EE decision located in the docket of this rulemaking for further information regarding EPA’s decision on CT DEEP’s EE demonstration.

The 2007 EER and 2016 EER<sup>15</sup> contain the procedural requirements and the criteria that the EPA uses to evaluate EE demonstrations. The demonstration must satisfy all of the EER criteria for the EPA to concur with excluding the air quality data from regulatory decisions. If any one of the criteria are not met, the EPA will nonconcur with the demonstration. In addition to the procedural requirements, the demonstration must include: (1) a narrative conceptual model describing the event(s) causing the exceedance or violation and a discussion of how the emissions from the event(s) led to the exceedance or violation, (2) a demonstration of a clear causal relationship between the event and the monitored exceedance or violation, (3) analyses comparing the event-influenced concentration to concentrations at the same monitoring site at other times to support the clear causal relationship, (4) a demonstration that the event was both not reasonably controllable and not reasonably preventable, and (5) a demonstration that the event was a human activity unlikely to recur at a particular location or was a natural event.

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<sup>15</sup> The EPA promulgated the EER in 2007, pursuant to the 2005 amendment of CAA section 319. In 2016, the EPA finalized revisions to the EER, which superseded the 2007 EER. The 2007 EER and 2016 EER revisions added sections 50.1(j)-(r); 50.14; and 51.930 to title 40 of the CFR.

The EPA found that CT DEEP's demonstration met the Exceptional Events Rule criteria for some of the dates and monitors as noted above and determined that wildfire smoke events had regulatory significance for purposes of calculating the Area's most recent design value. As such, the EPA is proposing and taking comment on the EPA's July 22, 2024, decision regarding CT DEEP's request to exclude air quality monitoring data as an exceptional event for regulatory purposes. The rationale for the EPA's July 22, 2024, exceptional events determination is detailed in the docket. For this proposed action, the EPA will rely on the calculated design values that exclude the event-influenced data for the purpose of determining attainment of the 2015 ozone NAAQS. Further details on CT DEEP's analyses and the EPA's concurrence and nonconcurrence, including the exceptional events initial notification, exceptional events demonstration, the EPA's response to the initial notification, and EPA's technical support document can be found in the docket for this rulemaking.

While the EPA has concurred with CT DEEP's request to exclude event-influenced air quality monitoring data (June 30 and July 1, 2023, at the Groton monitoring site, and on July 1, 2023, at the East Hartford and Cornwall monitoring sites) from regulatory decisions, these regulatory actions require the EPA to provide an opportunity for public comment on the claimed exceptional events and all supporting data. This proposed action provides the public with an opportunity to comment on the claimed exceptional events, all supporting documents, and the EPA's concurrence and nonconcurrence with CT DEEP's request.

#### B. Determination of Failure to Attain and Reclassification

The EPA is proposing to determine that the Mashantucket Pequot Tribal Nation and the Mohegan Indian Tribe portions of the Greater Connecticut area failed to attain the 2015 ozone NAAQS by the attainment date of August 3, 2024. Table 1 shows the annual fourth highest daily maximum 8-hour average ozone concentration and 2021-2023 DV for each monitor in the Greater Connecticut nonattainment area, which includes the two Tribes' territories.

The tribal portions of the Greater Connecticut area will be reclassified to Serious, the next higher classification, as provided under CAA section 181(b)(2)(A)(i) and codified at 40 CFR 51.1303. The areas are required to attain the standard “as expeditiously as practicable” but no later than 9 years after the initial designation as nonattainment, which in this case would be no later than August 3, 2027.

### C. Serious Area Requirements and Proposed Schedule

Moderate nonattainment areas that failed to attain the 2015 ozone NAAQS by the attainment date will be reclassified as Serious by operation of law upon the effective date of the final reclassification notice. EPA has addressed the Serious area requirements and SIP submittal schedule for relevant air agencies newly reclassified Serious areas, as well as the continued applicability of Moderate area requirements that these areas may not yet have met, in a separate rulemaking.<sup>16</sup> As discussed previously, under the CAA and TAR, Tribes may, but are not required to, submit implementation plans to the EPA for approval.

### **III. Proposed Action**

EPA is proposing that the tribal portions of the Greater Connecticut area failed to attain the 2015 ozone standard by the Moderate area attainment date of August 3, 2024, based on a 2021-2023 DV of 0.072 ppm. CAA section 181(b)(2) requires areas that have failed to attain by their attainment date be reclassified to the higher of (i) the next highest classification, or (ii) the classification that corresponds with the area's DV as of the time that the EPA publishes the document identifying the areas that have failed to attain by their attainment date. Accordingly, the EPA is proposing that the tribal portions of the area, which includes the Mashantucket Pequot Tribal Nation and the Mohegan Indian Tribe, failed to attain the 2015 ozone NAAQS by August 3, 2024, and therefore the tribal portions of the nonattainment area must be reclassified as Serious.

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<sup>16</sup> 90 FR 5651, January 17, 2025.

As noted previously, a Tribe that is part of an area that is reclassified from Moderate to Serious nonattainment is not required to submit a TIP revision to address new Serious area requirements. Under the EPA requirements, the NNSR major source threshold and offset requirements change for stationary sources seeking preconstruction permits in any nonattainment areas newly classified as Serious, including on tribal lands. Areas such as the Mashantucket Pequot Tribal Nation and the Mohegan Indian Tribe that were already classified as Serious for a previous ozone NAAQS, however, are already subject to these lower thresholds and higher offset ratios, so a reclassification to Serious for the 2015 ozone NAAQS would have no effect on the NNSR permitting requirements for the tribal lands in those areas.<sup>17</sup> The EPA is soliciting public comment on the reclassification from Moderate to Serious nonattainment for the 2015 ozone NAAQS.

The EPA is also soliciting public comment on EPA's July 22, 2024, decision of CT DEEP's exceptional events demonstration to exclude air quality data from the 2023 ozone season and its decision to nonconcur on other elements of CT's demonstration. This is in accordance with EPA's 2016 Exceptional Events Rule (EER).<sup>18</sup> The EPA is taking comment for 30 days upon publication of this proposed rule in the federal register. 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**

##### *A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 14094:*

##### *Modernizing Regulatory Review*

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Order 14094 (88 FR 21879, April 11, 2023).

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<sup>17</sup> The Mashantucket Pequot Tribal Nation and Mohegan Indian Tribe were reclassified as a "serious" nonattainment area under the 2008 Ozone NAAQS on August 23, 2019 (84 FR 44238).

<sup>18</sup> 81 FR 68216, October 3, 2016.

*B. Executive Order 14192: Unleashing Prosperity Through Deregulation*

This action is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because determinations of attainment by the attainment date under the CAA are exempt from review under Executive Order 12866.

*C. Paperwork Reduction Act (PRA)*

This rule does not impose an information collection burden under the provisions of the PRA of 1995 (44 U.S.C. 3501 *et seq.*). This action does not contain any information collection activities and serves only to propose determinations that the tribal portions of the Greater Connecticut nonattainment area failed to attain the 2015 ozone standards by the August 3, 2024, attainment date where such areas will be reclassified as Serious nonattainment for the 2015 ozone standards.

*D. Regulatory Flexibility Act (RFA)*

This action is certified as not having a significant economic impact on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This action will not impose any requirements on small entities. The determination of failure to attain the 2015 ozone standards (and resulting reclassifications), do not in and of themselves create any new requirements beyond what is mandated by the CAA.

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the Federal government and the states for purposes of implementing the NAAQS is established under the CAA.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.” This action has Tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. As noted previously, a Tribe that is part of an area that is reclassified from Moderate to Serious nonattainment is not required to submit a TIP revision to address new Serious area requirements. However, the EPA is proposing the determinations of failure to attain in this action. Ordinarily, the NNSR major source threshold and offset requirements will change for stationary sources seeking preconstruction permits in any nonattainment areas newly classified as Serious, including on tribal lands. Areas that are already classified as Serious for a previous ozone NAAQS, however, are already subject to these higher offset ratios and lower thresholds, so a reclassification to Serious for the 2015 ozone NAAQS would have no effect on the NNSR permitting requirements for the tribal lands in those areas. The EPA has communicated with the affected Tribes located within the boundaries of the nonattainment area addressed in this proposed rule to inform them of this forthcoming action.

*H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

**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.

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

Dated: September 29, 2025.

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[FR Doc. 2025-20497 Filed: 11/19/2025 8:45 am; Publication Date: 11/20/2025]