



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R01-OAR-2024-0325; FRL- 13014-02-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: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing its finding that the tribal portions of the Greater Connecticut area (the Mashantucket Pequot Tribal Nation and the Mohegan Indian Tribe) did not attain the 2015 ozone National Ambient Air Quality Standards (NAAQS) by the attainment date and a reclassification of those portions of the area to Serious nonattainment for the 2015 ozone NAAQS. Additionally, the EPA is taking final action on an exceptional events request submitted by CT DEEP on July 1, 2024, and the EPA's July 22, 2024 concurrence and nonconcurrence with CT DEEP's request. This final action fulfills the EPA's statutory obligation to determine whether the Mashantucket Pequot Tribal Nation and the Mohegan Indian Tribe's portions of the Greater Connecticut area attained the NAAQS by the attainment date. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2024-0325. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

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; telephone number: (617)-918-1067, or email address: 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

On November 20, 2025 (90 FR 52297), EPA published a Notice of Proposed Rulemaking (NPRM) that proposed to find that the tribal portions of the Greater Connecticut area did not attain the standards by the attainment date. Consequently, in that NPRM, we proposed to reclassify the Mashantucket Pequot Tribal Nation and the Mohegan Indian Tribe to Serious nonattainment for the 2015 ozone NAAQS. The statutory authority for these determinations is provided by the CAA, as amended (42 U.S.C. 7401 *et seq.*). The NPRM also solicited public comment on EPA's prior action on CT DEEP's July 1, 2024 request to exclude event-influenced air quality monitoring data from regulatory decisions. Please see the NPRM for more information regarding EPA's July 22, 2024 concurrence and nonconcurrence with CT DEEP's request. Relevant portions of the CAA include, but are not necessarily limited to, sections 181

and 182. Other specific requirements and EPA's rationale of this reclassification are explained in the NPRM and will not be restated here.

II. Response to Comments

EPA received one comment during the comment period, which is available in the docket of this rulemaking action. This commenter claimed that the EPA did not adhere to the following statutory requirements based on the four arguments below.

Comment 1: The reclassification to Serious for the 2015 ozone NAAQS “lowers major NSR [New Source Review] applicability thresholds for VOC/NOx . . . increases offset ratios . . . [and] tightens applicability for federal minor NSR,” thereby imposing “significant costs” on small entities. EPA must comply with the Regulatory Flexibility Act (RFA) either by providing a reasoned certification with a factual basis showing no significant economic impact or by preparing an initial regulatory flexibility analysis.

Response: The RFA is inapplicable to this rulemaking because the EPA has certified that this rule will not have a significant economic impact on a substantial number of small entities. The regulatory analysis provisions of the RFA are only triggered by a threshold determination by the Agency that this rule will have a significant economic impact on a substantial number of small entities. Because the Agency has certified this rule will not have a significant economic impact, section 603 and 604 of the RFA do not apply to this rulemaking. 5 U.S.C. 605(b). As noted in the NPRM, “[t]he 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,” 90 FR 52297 at 52302 (November 20, 2025), which the comment does not contest. Furthermore, the premise of the comment—that reclassification will impose costs on small entities—is flawed. As the EPA stated in the NPRM, “Areas such as the Mashantucket Pequot Tribal Nation and the Mohegan Indian Tribe that were already classified as Serious for a previous ozone NAAQS . . . 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.” 90 FR at 52302 & n.17.

Comment 2: EPA’s reliance on the Administrative Procedure Act’s (APA) “good cause” exceptions to bypass notice and comment and the 30-day effective date is improper for discretionary elements of this action.

Response: The EPA disagrees with the commenter. This claim is based on commenter’s mistaken assertion that the EPA issued a final rule with the November 20, 2025, action. The EPA published a notice of proposed rulemaking on November 20, 2025. The EPA included a 30-day public comment period that closed on December 22, 2025, which the commenter availed itself of. In this action we are finalizing the November 20, 2025, proposed action. Based on these facts, the proposed rule was not a final action for the commenter to petition the EPA for a stay or delay of a yet-to-be-established effective date. Finally, the EPA is not relying on APA 553(b) in this action.

Comment 3: The action has clear tribal implications in that “it changes permitting thresholds and offset ratios that affect economic development, and it may trigger federal planning measures in the absence of a Tribal Implementation Plan.” EPA must document meaningful consultation under Executive Order (E.O.) 13175 and reconcile its statements with E.O. 12866 analysis.

Response: As noted in the proposal, the EPA complied with E.O. 13175 by engaging in meaningful and timely input with Tribal officials regarding this reclassification to Serious nonattainment. Relevant communications are in the docket for this action. As also noted in the proposal, a Tribe that is part of an area that is reclassified from Moderate to Serious nonattainment is not required to submit a Tribal Implementation Plan (TIP) revision to address new Serious area requirements. And, as explained in an earlier response above and in the proposal, the NNSR major source threshold and offset requirements will not

change for stationary sources seeking preconstruction permits in the tribal portions of this nonattainment area, because they are already subject to these higher offset ratios and lower thresholds. Nor does the reclassification impose substantial direct compliance costs on Indian tribal governments or preempt tribal law. Accordingly, a tribal summary impact statement under E.O. 13175 is not required. Lastly, the Agency complied with E.O. 12866 by determining that this rulemaking is not a significant regulatory action as defined in E.O. 12866.

Comment 4: The Unfunded Mandates Reform Act (UMRA) analysis is incomplete as to private sector effects.

Response: The EPA has complied with the UMRA by making its own determination that this rule will not result in expenditures of \$100M+, and therefore the Agency does not need to complete a statement under 2 U.S.C. 1532.

III. Final Action

For the reasons described in our November 20, 2025, notice of proposed rulemaking,¹ EPA is taking final action to reclassify the Mashantucket Pequot Tribal Nation and the Mohegan Indian Tribe portions of the Greater Connecticut nonattainment to Serious nonattainment for the 2015 ozone NAAQS. Additionally, the EPA is taking final action on an exceptional events request submitted by CT DEEP on July 1, 2024, and the EPA's July 22, 2024 concurrence and nonconcurrence with CT DEEP's request.

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).

¹ 90 FR 52297.

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 finalize 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 in the proposed rule, 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 finalizing 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 final rule.

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.

K. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability. The rule makes factual determinations for identified entities (Mashantucket Pequot Indian Nation and Mohegan Indian Tribe), based on facts and circumstances specific to each entity. The determinations of attainment and failure to attain the 2015 ozone NAAQS do not in themselves create any new requirements beyond what is mandated by the CAA.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 15, 2026.

Mark Sanborn,
Regional Administrator,
EPA Region 1.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 81 of Chapter I, title 40 of the CFR to read as follows:

PART 81 – DESIGNATION FOR AREAS FOR AIR QUALITY PLANNING PURPOSES

1. The authority citation for part 81 continues to read as follows:

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

2. In § 81.307 the table entitled “Connecticut – 2015 8-Hour Ozone NAAQS” is amended to read as follows:

§ 81.307 Connecticut.

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**Connecticut-2015 8-Hour Ozone NAAQS
[Primary and Secondary]**

Designated area ¹	Designation		Classification	
	Date ²	Type	Date ²	Type
Greater Connecticut, CT:	Nonattainment	7/29/2024	Serious
Hartford County				
Litchfield County				
New London County				
Tolland County				
Windham County				
Mashantucket Pequot Tribal Nation		[Insert date 30 days after publication in the Federal Register]	Serious
Mohegan Indian Tribe		[Insert date 30 days after publication in the Federal Register]	
New York-N. New Jersey-Long Island, NY-NJ-CT:	Nonattainment	7/25/2024	Serious
Fairfield County				Serious
Middlesex County				
New Haven County				

¹ Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

² This date is August 3, 2018, unless otherwise noted.

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