Connecticut Department of
ENERGY &
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PROTECTION

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February 10, 2017

Via Electronic Submission
to the Federal eRulemaking Portal
http://www.regulations.gov

U.S. Environmental Protection Agency
**Docket ID No. EPA-HQ-OAR-2016-0202**

**RE: Proposed Rule - Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements**

To Whom It May Concern:

The Department of Energy and Environmental Protection (Department) welcomes the opportunity to comment on the United States Environmental Protection Agency's (EPA) proposed rule for implementing the 2015 National Ambient Air Quality Standards (NAAQS) for ground-level ozone (81 FR 81276; November 17, 2016).

The Department appreciates EPA's timely guidance which is needed to achieve the important health benefits of the strengthened ozone standard. Connecticut and other states have been striving to attain the previous ozone NAAQS for over forty years. Timely and sound rules and guidance are key to successful implementation of the standards, especially in terms of how nonattainment areas are defined and classified, and how interstate transport is addressed. Implementation of the revised NAAQS can be improved if EPA establishes nonattainment boundaries that better link contributing source regions to nearby non-compliant monitors, classifies nonattainment areas based on realistic timelines for expected compliance, and more equitably assigns the level of emission reductions necessary to fully address emissions transported by winds from one state to another.

On October 1, 2016, Governor Malloy submitted a recommendation to EPA for establishment of a single nonattainment area encompassing the highly connected New York City and Philadelphia metropolitan urban areas, which are the largest contributors to ozone transport into Connecticut – the state measuring the highest levels of ozone outside of California. Earlier last year, on February 1, 2016, the Department submitted comments requesting that EPA strengthen its transport rules to provide a greater level of relief to Connecticut commensurate with the overwhelming level of interstate ozone transport inflicted on our citizens. We urge EPA to incorporate these critical recommendations into the upcoming action to finalize designations and into a timely rule to fully address transport for the 2015 ozone NAAQS.

In the attached comments, the Department provides additional recommendations for improving the implementation of the 2015 ozone standard. In particular, we request that EPA update and adjust the proposed method for classifying areas by the severity of their ozone problem. The proposal would classify most areas as "marginal", providing three years to achieve compliance with no new control requirements. The same method was used to implement the 2008 standard, resulting in over half the

marginal areas failing to measure compliance within the 3 years mandated by the Clean Air Act. This failure will be repeated for the 2015 standard unless EPA's approach is modified to properly classify areas at the beginning of the planning process, so that timeframes to attain more appropriately account for current measured ozone levels and the expeditious implementation of controls both in the nonattainment area and in upwind states that significantly contribute to interstate transport. Viable alternatives to EPA's proposed classification method are described in the attachment.

The partnership between EPA and the states has been crucial to the air quality improvements achieved in the almost three decades since the 1990 amendments to the Clean Air Act. Connecticut looks forward to building on that level of cooperation as we both strive to find cost effective and equitable ways to implement the 2015 ozone NAAQS while expeditiously providing our citizens with healthy air. Please contact Anne Gobin, Chief of the Bureau of Air Management, at 860-424-4152 with any questions regarding these comments.

Sincerely,

Michael J. Sullivan
Deputy Commissioner

Attachment

# CT DEEP Comments on
# EPA's Proposed Implementation Rule for the 2015 Ozone NAAQS

In the November 17, 2016 Federal Register (81 FR 81276), EPA proposed a rule to establish classification thresholds and implementation requirements for the 2015 ozone national ambient air quality standards (NAAQS). The revised ozone NAAQS was promulgated on October 1, 2015 and most states submitted designation recommendations one year later. EPA has committed to finalizing attainment/nonattainment designations and the implementation rule by October 2017, which would then commence the timeline for states with nonattainment areas to prepare and submit plans to achieve compliance with the revised NAAQS.

As with prior ozone NAAQS, Connecticut's prospects for achieving timely attainment are largely dependent on securing sizeable emission reductions from upwind areas[1]. In practice, EPA's methods for implementing important provisions of the Clean Air Act (CAA) have proven to be insufficient to fully address the overwhelming level of pollutant transport inflicted on Connecticut. To address those shortcomings, CT DEEP recently provided EPA with a recommendation[2] for a larger, regional nonattainment area for the 2015 NAAQS that would include both the New York City and Philadelphia metro areas. The recommended nonattainment area would more securely link nearby source regions that contribute the most to Connecticut high ozone levels to the attainment planning process and the adoption of needed controls. CT DEEP has also previously voiced concerns[3] that EPA's transport rules do not assign appropriate emission reduction responsibilities to upwind states, resulting in inadequate transport relief.[4] CT DEEP recommended that the transport rules be developed based on control cost thresholds equivalent to those required in Connecticut and should consider a greater variety of source categories beyond power plants. EPA should develop a proposed transport FIP for the 2015 ozone NAAQS that fully addresses CT DEEP's concerns, provides a level of relief commensurate with the scale of the transport problem impacting Connecticut, and is fully implemented prior to Connecticut's classification-driven deadline to attain. EPA should propose a FIP as soon as possible to provide states with emission reduction expectations and implementation deadlines that can be included in their transport SIPs.

CT DEEP's comments on EPA's proposed implementation rule are provided below. We commend EPA for the timely issuance of the proposed rule, and urge EPA to follow through on its commitment to finalize both the designations process and the implementation rule by October 2017 so the people of Connecticut can breathe clean air.

## Deadlines for Submitting Nonattainment Area and OTR SIP Elements (Page 81278)

The EPA is proposing to retain the existing approach to calculating deadlines for submitting nonattainment SIP elements. CAA section 182 requires states with ozone nonattainment areas to submit SIP elements within specified time periods after enactment of the CAA Amendments of 1990. CAA section 184 has similar requirements for states in the Ozone Transport Region. CT DEEP supports EPA's intent to use the CAA submission timeframes, but to measure them relative to the effective date of designations, retaining the same approach used in the 2008 Ozone NAAQS SIP Requirements Rule.

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[1] EPA's transport modeling for the 2015 NAAQS, as well as for previous NAAQS, indicate that over 90% of peak ozone levels at Connecticut's worst-case monitor can be attributed to sources outside of Connecticut's control.

[2] See the October 1, 2016 letter from Governor Malloy to EPA Regional Administrator Spaulding.

[3] For example, see CT DEEP's comments on the CSAPR Update Rule, dated February 1, 2016.

[4] EPA's modeling indicates the CSAPR Rule and the CSAPR Update Rule each provide less than 0.5 ppb of ozone benefit to Connecticut, providing miniscule relief from the overwhelming level of transport entering the state.

**Classification of Ozone Nonattainment Areas (Page 81283)**

EPA's proposed method for classifying the severity of ozone nonattainment areas for the 2015 NAAQS is identical to the method used for the previous 2008 and 1997 NAAQS. EPA's method adapts the thresholds listed in Table 1 of CAA Subpart 2 (developed to be specific to the standard in place in 1990) to the most current standard. Although EPA's approach retains a degree of consistency with Congressional intent, it fails to include key information that was available to Congress in 1990 -- the range of current measured ozone levels across the nation at the time of designations and classifications.

EPA's classification method results in the vast majority of areas being classified as marginal nonattainment areas, which have no CAA requirements to adopt new control programs based on that classification or to submit attainment demonstrations. More than half of all marginal areas for the 2008 NAAQS failed to achieve measured attainment of the standard within the required three year period, illustrating the failure of EPA's current method to properly classify areas so as to provide a realistic timeframe for attainment and require additional controls needed to attain expeditiously. EPA should address this shortcoming by revising its current classification scheme to also account for the range of current measured ozone design values across the country. Doing so will ensure that nonattainment areas are distributed more appropriately to the various classification levels, with more realistic timeframes to expeditiously attain and requirements for additional local controls that correspond to the proper classification level. EPA should also hold upwind states responsible to fully address their transport contributions by the earliest classification-driven deadline established for downwind nonattainment areas. More details to support this recommendation are provided in the following paragraphs.

Starting on page 81283 of the preamble to the proposed rule, EPA summarizes the history of its approach to establishing classification thresholds for each generation of the ozone NAAQS. As part of the 1990 amendments to the Clean Act, Congress included Table 1 in Subpart 2 of the CAA. Table 1 established classification thresholds and attainment deadlines specifically for the 1-hour ozone NAAQS (0.12 ppm) in place at that time and was developed with full knowledge of the then current ozone levels around the country. The classification thresholds resulted in a distribution of nonattainment areas across the various levels (marginal, moderate, serious, severe, extreme) based on the severity of the ozone problem in each area, providing areas with greater problems more time to secure the emissions reductions needed to attain.

In 1997, EPA revised both the form and level of the ozone NAAQS to a 3-year average of the annual fourth highest daily maximum 8-hour averages. In a subsequent rulemaking, EPA translated the Table 1 classification thresholds for use with 8-hour design values based strictly on the percentage by which each classification threshold in the table exceeded the 1-hour NAAQS, and then applied each percentage to the level of the 8-hour NAAQS. For example, the lower threshold of the Moderate classification in Table 1 is 15% greater than the level of the 1-hour NAAQS, while the lower threshold of the Serious classification in Table 1 is 33.33% greater than the level of the 1-hour NAAQS. EPA applied those "percent-above-the-standard" values to the level of the 1997 8-hour NAAQS (0.08ppm) to establish the various classification thresholds for that NAAQS. EPA later used the same approach to establish classification thresholds for the 2008 NAAQS and is now proposing to repeat the process for the 2015 NAAQS. EPA points out that this approach for translating the CAA's 1-hour threshold values to 8-hour threshold values was challenged in litigation and was upheld by the court. *See South Coast Air Quality Management District v. Environmental Protection Agency*, 472 F.3d at 896–898.

Application of EPA's "percent-above-the-standard" method for the 2008 ozone NAAQS resulted in the vast majority of nonattainment areas (i.e., 36 out of 46 according to Table 2 at 77 FR 30162) being classified as marginal and thereby were required to achieve attainment within 3 years after the effective date of designations. Marginal areas are not required to adopt additional controls (with the exception some specific requirements for areas in OTR states) or submit attainment plans, so timely attainment is

dependent on previously adopted control programs and any additional national/regional measures that may be implemented during the 3-year period after designations. For the 2008 NAAQS (75 ppb), nonattainment areas with initial design values ranging from 76 ppb through 85 ppb (inclusive) were assigned to the marginal category, requiring areas to achieve up to a 10 ppb improvement within the 3-year deadline with no requirement for additional controls.

Ultimately, more than half of all marginal areas failed to achieve timely attainment of the 2008 NAAQS by the end of the 2014 ozone season (86 FR 26697). This extensive failure illustrates that EPA's current classification scheme does not properly assign nonattainment areas to a classification category representative of the time period needed to achieve attainment.

Similarly, EPA's proposed application of the "percent-above-the-standard" method to the 2015 ozone NAAQS (70 ppb) would place areas with design values ranging from 71 ppb through 80 ppb (inclusive) in the marginal classification. This would result in an even greater fraction of all nonattainment areas being classified as marginal, based on 2015 design values (i.e., 47 out of 57 nonattainment areas would be marginal, according to Table 2 at 81 FR 81284).

Given what has occurred with the 2008 NAAQS, it is reasonable to assume that many of the marginal areas under EPA's proposal will not reach timely attainment for the more health protective 2015 NAAQS within the allotted three years. EPA essentially acknowledges this problem in the preamble to the proposed rule (see 81 FR 81285) by suggesting other alternatives for areas "challenged to attain by the attainment date". EPA recognizes the specific difficulties that some areas in California will have achieving timely attainment by proposing to use agency discretion to assume that several areas desire voluntary reclassifications, unless the state of California explicitly requests otherwise. EPA's proposal also cites CAA sections 181(a)(4) and 181(b)(3) as mechanisms for other states to request reclassification to a higher level if they anticipate difficulty reaching timely attainment. However, pursuing this pathway could place an unfair burden (both in terms of necessary control levels and economic impacts) on the requesting state, especially if it is subject to overwhelming levels of transport. Any upwind areas similarly misclassified as marginal, but which choose not to request a higher classification, would not be required to implement any new control measures, thereby prolonging the transport problem in the downwind state. Such situations can better be addressed more equitably by ensuring that all nonattainment areas are properly classified at the start of the planning process, and by promulgating a transport FIP that fully addresses transport prior to the earliest classification-driven attainment deadline in affected downwind states.

Based on the recent history with marginal areas for the 2008 NAAQS, CT DEEP recommends that EPA re-examine the methodology used to adapt the Table 1 classification thresholds for use with the 2015 8-hour NAAQS. While EPA's "percent-above-the-standard" method does provide a level of consistency with the approach used by Congress in the 1990 CAA amendments, it does not include a key piece of information that was available to Congress back in 1990, namely the range of current design values around the country at the time of designations. CAA Table 1 was originally constructed with full knowledge of measured 1-hour ozone design values during the period leading up to the 1990 CAA amendments (i.e., the highest 1-hour DV in 1989 was 0.340 ppm in the South Coast CA area), resulting in a more appropriate distribution of areas to classifications that better reflected a reasonable amount of time to reach attainment. However, EPA's "percent-above-the-standard" approach for the 2015 NAAQS ignores the range of current 8-hour design values (i.e., the highest preliminary 8-hour DV in 2016 is 0.108 ppm in Long Beach CA). EPA should modify its classification methodology to take into account the range of current measured design values across the nation so as to classify areas more realistically relative to the required attainment dates for each classification level.

When developing its proposed classifications rule for the 2008 ozone standards, the EPA evaluated other options for classifying ozone nonattainment areas (see "Background Information Document: Additional Options Considered for Classification of Nonattainment Areas Under the 2008 Ozone NAAQS" (BID); Docket ID No. EPA-HQ-OAR-2010-0885). CT DEEP encourages EPA to re-examine those ten options, along with any others that would result in a more appropriate distribution of areas to classifications that better reflect an appropriate amount of time to expeditiously reach attainment.

For example, both Options 1 and 7 in the cited BID provide quantitative methods that are based upon EPA's "percent-above-the-standard" approach, while also considering the range of current measured design values across the country. Option 1 in the cited BID assigns the highest current 8-hour design value measured in the country as the lower threshold for the Extreme classification, and then establishes the other thresholds based on ratios of the Extreme threshold and the values in Table 1 of the CAA. Option 7 uses a similar approach, but calculates the thresholds to reflect the fact that the highest 1-hour design value in 1989 was greater than the lower threshold for the Extreme classification in CAA Table 1.

Figure 1 depicts potential classifications in the eastern US based on EPA's proposed method using preliminary 2016 design values, while Figures 2 and 3 depict the classifications that might result if Option 1 or Option 7 from EPA's BID were used for the 2015 NAAQS. Note that the New York-New Jersey-Connecticut area would be classified as Serious under Option 1 if CT DEEP's upcoming request for an Exceptional Event exclusion for a May 2016 event is approved by EPA.

CT DEEP believes either of these options would enable classifications to be determined by operation of law, without requiring qualitative judgment or agency discretion. In addition, CT DEEP believes that both options are consistent with the court ruling that upheld EPA's current classification approach because they comport with the "principles inherent in the subpart 2 classification table", as summarized by EPA (see 81 FR 81284):

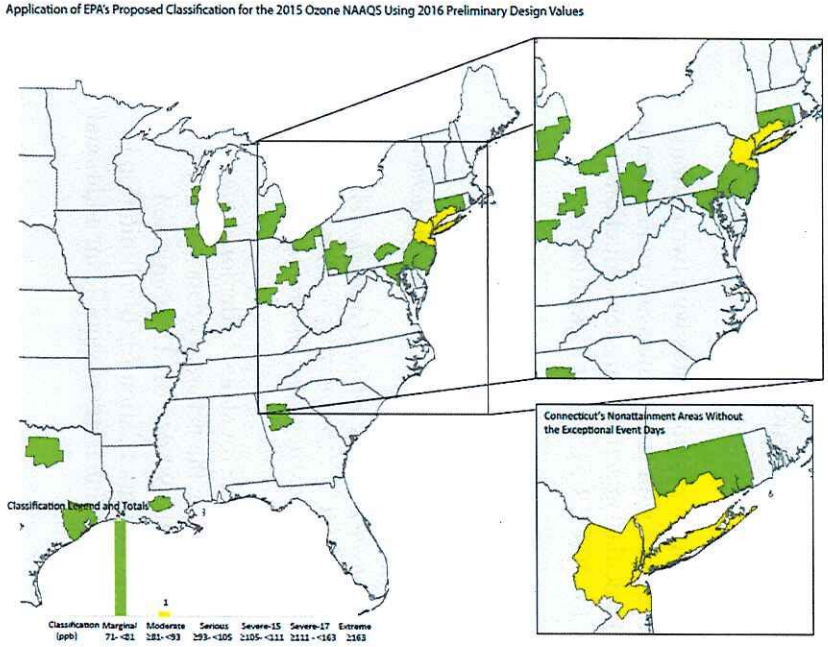
> *"The principles include the following:*
> - *Areas are grouped by the severity of their air quality problem as characterized by the degree of nonattainment based on their DV.*
> - *Classification would occur ''by operation of law'' without relying on the EPA exercising discretion for individual situations.*
> - *Classification thresholds are derived from the structure or logic of the CAA's nonattainment area planning and control requirements, including the subpart 2 classification table, and consistent with the overall goal of subpart 2 of attaining the standards as expeditiously as practicable."*

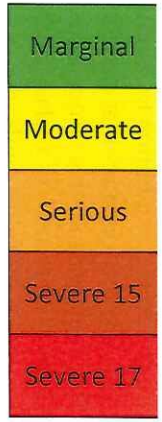
CT DEEP urges EPA to revise its classification method to address the concerns described above.

**Revocation of the 2008 Ozone NAAQ (Page 81286)**

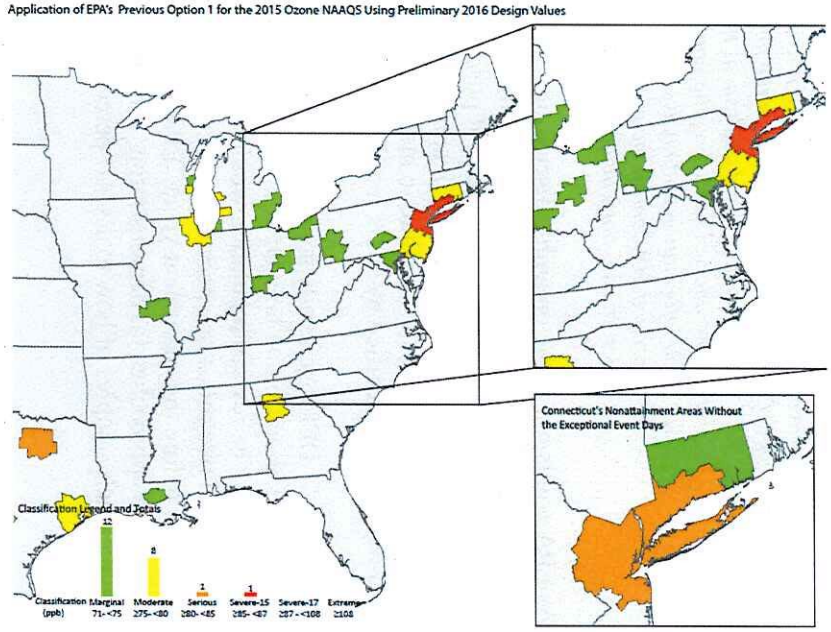
EPA is seeking comment on two alternative approaches for revoking the 2008 NAAQS. The first option mirrors the approach used in revoking the previous ozone NAAQS by revoking the 2008 NAAQS for all purposes in each area one year after the effective date of designations for the 2015 NAAQS. Anti-backsliding provisions would apply to an area based on its designation and classification status for the 2008 NAAQS (and the earlier NAAQS, as applicable) as of the 2008 NAAQS revocation date. Under the second option, the 2008 ozone NAAQS would be revoked for all purposes in an area only when the area is designated attainment for that NAAQS, but no sooner than one year after the effective date of designations for the 2015 NAAQS.

## Figure 1: EPA's Current Proposal

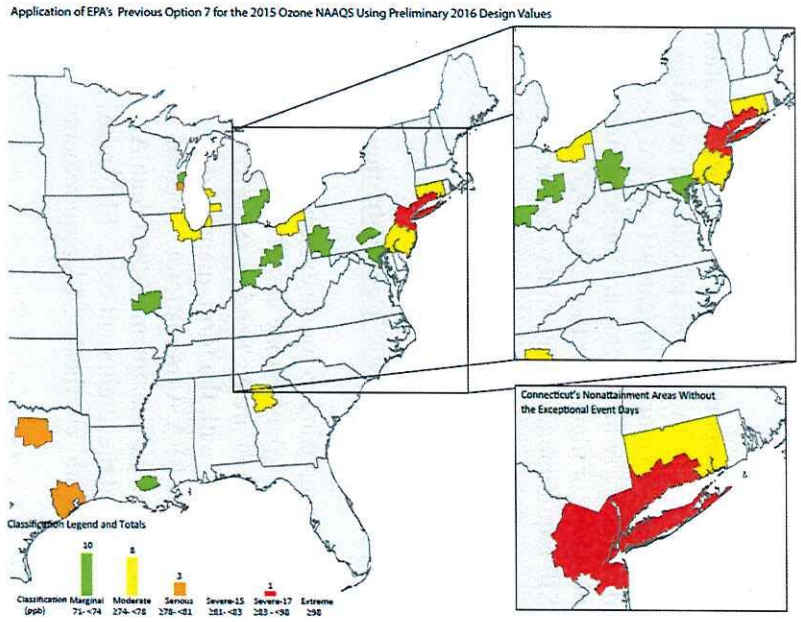



## Figure 2: Example Option 1 (method described in EPA's BID)




## Figure 3: Example Option 7 (method described in EPA's BID)



CT DEEP supports the first option for revocation of the 2008 ozone NAAQS. In addition to maintaining consistency with previous practice for revoking ozone standards, this approach ensures that only one standard, the more stringent 2015 NAAQS, applies in an area. EPA should ensure that strong anti-backsliding requirements are implemented, including ensuring that areas classified (or reclassified) as moderate or higher for the 2008 NAAQS, but marginal for the 2015 NAAQS, fulfill applicable attainment SIP requirements for the older standard. This approach will help states to more efficiently focus resources towards achieving attainment of the new NAAQS, while preserving the commitments made to improve air quality under the previous NAAQS.

**Milestone Compliance Demonstration Requirements for Reasonable Further Progress (Page 81292)**

EPA is proposing to revise existing reasonable further progress (RFP) provisions to address the CAA section 182(g) milestone compliance demonstration (MCD) requirements for serious and higher ozone nonattainment areas. Section 182(g)(2) requires states to submit MCDs within 90 days after a milestone date occurs, with the form, manner of submittal and contents of the demonstration to be established in rule by the EPA Administrator. Section 182(g)(1) establishes applicable milestone dates as "6 years after the date of the enactment of the Clean Air Act Amendments of 1990 and at intervals of every 3 years after" until the attainment date. EPA notes that the existing ozone implementation regulations do not explicitly address these CAA requirements.

In the preamble to the proposed regulatory changes, EPA is proposing to provide states with two options for meeting the MCD requirements, by either: 1) assessing compliance with control measure requirements contained in the RFP plan (e.g., percent implementation), or 2) calculating actual emission reductions using periodic inventory data. EPA's proposed regulation text for 40 CFR 51.1310(c) specifically requires that the MCD

> *"must provide for objective evaluation of reasonable further progress toward timely attainment of the ozone NAAQS in the area, and may take the form of:*
>
> *(i) Such information and analysis as needed to quantify the actual reduction in emissions achieved in the time interval preceding the applicable milestone; or*
>
> *(ii) Such information and analysis as needed to demonstrate progress achieved in implementing the approved SIP control measures, including RACM and RACT, corresponding with the reduction in emissions achieved in the time interval preceding the applicable milestone."*

As EPA points out in the preamble discussion, it will typically be infeasible for states to demonstrate milestone compliance based on an assessment of actual emissions because the necessary data will not be available in a timeframe that would make it possible for states to meet the 90-day MCD submission deadline of CAA 182(g)(2). CT DEEP agrees, and emphasizes that accommodation for this limitation is especially important because failure to meet the 90-day submission deadline triggers significant additional requirements, as specified by CAA section 182(g)(3).

Although CT DEEP generally supports the flexible approach EPA proposes, EPA should provide additional elaboration on how Option 1 methods such as the "percent implementation" approach would be carried out. The revised regulation would apply to serious and higher nonattainment areas, all of which have at least two milestone periods to consider (i.e., 6 years after designations and each 3 years afterward that occur before the attainment year). EPA should quickly issue guidance to assist states with identifying approvable approaches for demonstrating compliance as of each milestone date. Ideally, the guidance will include examples of how to assess "percent implementation" of SIP control strategies.

**Deadlines for Submittal and Implementation of RACT SIP Revisions (Page 81293)**

EPA notes that existing RACT provisions address submission and implementation deadlines for areas (including portions of a state located in an OTR) subject to initial designation and existing RACT requirements, including measures described in existing CTGs. However, existing RACT provisions do not contemplate some RACT SIP revision submittal and implementation deadlines triggered by events occurring after initial area designations, including area reclassifications and the issuance of new CTGs. EPA is proposing to add new RACT SIP revision submission and implementation deadlines for these situations.

For areas reclassified to a higher classification upon failure to attain (pursuant to CAA section 181(b)(2)), areas requesting a voluntary reclassification (pursuant to CAA section 181(b)(3)), areas redesignated as moderate or higher nonattainment, and areas newly added to an OTR, EPA is proposing that RACT SIP revisions be submitted no later than 24 months after the effective date of reclassification, or the deadline established by the Administrator in the action reclassifying an area. EPA is also proposing that the RACT SIP revisions be implemented as expeditiously as practicable, but no later than the start of the ozone season attainment year associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier. EPA is also proposing that the Administrator would retain existing authority to establish a different implementation deadline in the action reclassifying an area.

CT DEEP supports this approach, which is generally consistent with CAA section 182(b).

For CTGs in effect at the time of initial designations for a revised NAAQS, the EPA has interpreted the CAA provisions to require implementation of related RACT SIP revisions as expeditiously as practicable, but no later than January 1 of the fifth year after the effective date of initial designations for the revised NAAQS (80 FR 12279; March 6, 2015). For new CTGs issued after initial area designations, EPA is soliciting comment on two options:

1) RACT SIP revisions must be submitted no later than 24 months after the effective date of the action issuing the CTG, or the deadline established by the Administrator in the action issuing the CTG. The implementation deadline would be no later than January 1 of the third year after the associated SIP revision submittal deadline.
2) RACT SIP revisions must be submitted no later than 24 months after the effective date of reclassification, or the deadline established by the Administrator in the action issuing a new CTG. The implementation deadline would be no later than January 1 of the third year after the associated SIP revision submittal deadline, or the deadline established by the Administrator in the action issuing a new CTG. Under this option, setting a RACT SIP revision implementation deadline in a CTG action would allow the Administrator to tailor the implementation timeframe to the particular technical considerations and attainment objectives associated with the sources subject to the CTG.

CT DEEP strongly supports establishing SIP submittal and implementation deadlines for new CTGs. Although Connecticut has typically adopted and implemented CTGs in an expeditious manner, many other states have not, highlighting the need to establish firm deadlines. CT DEEP prefers Option 2.

**RACM Requirements: Consideration of Sources of Intrastate Transport of Pollution (Page 81295)**

The EPA is proposing to retain its existing general RACM provisions, and to clarify in the rule that, in addition to sources located in an ozone nonattainment area, air agencies must also consider the impacts of emissions from sources outside an ozone nonattainment area (but within a state's boundaries), and must require other measures for emissions reductions from these intrastate sources if needed to attain the ozone NAAQS by the applicable attainment date.

CT DEEP supports EPA's proposal, which is consistent with existing EPA policy and CAA section 172(c)(6). This requirement will help ensure that states with nonattainment areas consider all sources within their jurisdiction to provide for expeditious attainment.

**Emissions Inventory and Emissions Statement Requirements (Page 81298)**

For purposes of the 2015 ozone NAAQS, EPA is proposing to add 40 CFR 51.1315, so as to clarify requirements for the emissions inventories and emissions statements required by CAA sections 182(a)(1), 182(a)(3)(A), and 182(a)(3)(B), respectively. In addition, EPA has included a discussion in the preamble to the proposed rule to clarify how states demonstrate compliance with CAA section 182(a)(3)(B) in the context of the 2015 ozone NAAQS.

While CT DEEP appreciates EPA's efforts to provide clarifying text in both the CFR and the rule's preamble, the language is still not as clear as it could be regarding the emission statements requirements of CAA section 182(a)(3)(B). CAA section 182(a)(3)(B) requires all stationary sources of NOx or VOC to provide annual statements showing actual emissions of those pollutants, although states can waive the requirement under certain specified conditions for any class or category of sources "which emit less than 25 tons per year" of those pollutants. Neither the preamble nor any CFR section specifically cites the 25 ton per year actual emissions threshold for emission statements. EPA should include further explanation in the preamble, and ideally include appropriate CFR rule language, to clearly reflect the CAA section 182(a)(3)(B) requirement. Doing so will help to avoid any potential confusion with the proposed revised emission thresholds contained in Table 1 to Appendix A of 40 CFR part 51, subpart A.