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Dated: August 24, 2012.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA-R02-OAR-2012-0504; FRL-9723-2]

Approval and Promulgation of Air Quality Implementation Plans; New York, New Jersey, and Connecticut; Determination of Attainment of the 2006 Fine Particle Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the New York-N. New Jersey-Long Island, NY-NJ-CT fine particle (PM_{2.5}) nonattainment area has attained the 2006 24-hour fine particle National Ambient Air Quality Standard (NAAQS). This proposed determination is based upon quality assured, quality controlled, and certified ambient air monitoring data that shows the area has monitored attainment of the 2006 24-hour PM_{2.5} NAAQS for the 2007-2009 and 2008-2010 monitoring periods and continues to show attainment through 2011. If this proposed determination is made final, the requirements for this area to submit an attainment demonstration, reasonably available control measures, reasonable further progress plan, and contingency measures related to attainment of the 2006 24-hour PM_{2.5} NAAQS shall be suspended for so long as the area continues to attain the 2006 24-hour PM_{2.5} NAAQS.

DATES: Comments must be received on or before October 1, 2012.

ADDRESSES: Submit your comments, identified by Docket ID number EPA-R02-OAR-2012-0504, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- *Email:* Werner.Raymond@epa.gov
- *Fax:* 212-637-3901

- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R02-OAR-2012-0504. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket

materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007-1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays. **FOR FURTHER INFORMATION CONTACT:** If you have questions concerning today's proposed action related to New York or New Jersey, please contact Gavin Lau, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, telephone number (212) 637-3708, fax number (212) 637-3901, email lau.gavin@epa.gov.

If you have questions concerning today's proposed action related to Connecticut, please contact Alison C. Simcox, Air Quality Planning Unit, Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, Mail Code OEP05-02, Boston, MA 02109-3912, telephone number (617) 918-1684, fax number (617) 918-0684, email simcox.alison@epa.gov.

SUPPLEMENTARY INFORMATION: For detailed information regarding this proposal, EPA prepared a Technical Support Document (TSD). The TSD can be viewed at <http://www.regulations.gov>.

The following table of contents describes the format of this notice:

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- VI. Proposed Action
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I. What action is EPA proposing?

EPA is proposing to determine that the New York-N. New Jersey-Long Island, NY-NJ-CT PM_{2.5} nonattainment area, referred to from this point forward as the NY-NJ-CT PM_{2.5} nonattainment area, has attained the 2006 24-hour PM_{2.5} NAAQS. This proposed determination is based upon quality-assured, quality-controlled, and certified ambient air monitoring data that show that the area has monitored attainment of the 2006 24-hour PM_{2.5} NAAQS for the 2007-2009 and 2008-2010 monitoring periods and continues to attain through 2011. The New York portion of the NY-NJ-CT PM_{2.5}

nonattainment area contains the counties of Bronx, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk, and Westchester. The New Jersey portion of the NY-NJ-CT PM_{2.5} nonattainment area contains the counties of Bergen, Essex, Hudson, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, and Union. The Connecticut portion of the NY-NJ-CT PM_{2.5} nonattainment area includes the counties of Fairfield and New Haven.

EPA received requests from the States of Connecticut, New Jersey, and New York (States) for the determination of attainment for the 2006 24-hour PM_{2.5} NY-NJ-CT PM_{2.5} nonattainment area. The States submitted air monitoring data, design value trends, and summaries of PM_{2.5} emissions control programs. The information provided by the States supports the proposed determination being made by EPA that the NY-NJ-CT PM_{2.5} nonattainment area has attained and continues to attain the 2006 24-hour PM_{2.5} NAAQS. Copies of the information submitted by the States are available in the TSD.

II. What is the effect of this action?

The proposed determination, if finalized, under the provisions of EPA's PM_{2.5} implementation rule (see 40 CFR 51.1004(c) and further reaffirmed in the implementation guidance for the 2006 24-hour PM_{2.5} NAAQS)¹ would: (1) Suspend the requirements for the NY-NJ-CT PM_{2.5} nonattainment area to submit an attainment demonstration, reasonably available control measures, reasonable further progress plan, and contingency measures related to the attainment of the 2006 24-hour PM_{2.5} NAAQS; (2) continue until such time, if any, that EPA subsequently determines that the area has violated the 2006 24-hour PM_{2.5} NAAQS; (3) be separate from the designation determination or requirements for the NY-NJ-CT PM_{2.5} nonattainment area based on the 1997 annual PM_{2.5} NAAQS; and (4) remain in effect regardless of EPA's designation of this area as a nonattainment area for purposes of the 1997 annual PM_{2.5} NAAQS. Furthermore, as described below, any such final determination would not be equivalent to the redesignation of the area to attainment based on the 2006 24-hour NAAQS.

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking in the *Federal Register*, that the area has violated the 2006 24-hour PM_{2.5}

NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.1004(c), would no longer exist, and the area would thereafter have to address the pertinent requirements.

The determination that EPA proposes with this *Federal Register* action, that the air quality data shows attainment of the 2006 24-hour PM_{2.5} NAAQS, is not equivalent to the redesignation of the area to attainment. This proposed action, if finalized, would not constitute a redesignation to attainment under section 107(d)(3) of the Clean Air Act (CAA), because we would not yet have approved a maintenance plan for the area as required under section 175A of the CAA, nor a determination that the area has met the other requirements for redesignation. The designation status of the area would remain nonattainment for the 2006 24-hour PM_{2.5} NAAQS until such time as EPA determines that it meets the CAA requirements for redesignation to attainment.

This proposed action, if finalized, is limited to a determination that the NY-NJ-CT PM_{2.5} nonattainment area has attained the 2006 24-hour PM_{2.5} NAAQS. The 2006 24-hour PM_{2.5} NAAQS became effective on December 18, 2006 (71 FR 61144, October 17, 2006) and is set forth at 40 CFR 50.13. Effective December 14, 2009, EPA made designation determinations, as required by CAA section 107(d)(1), for the 2006 24-hour PM_{2.5} NAAQS (74 FR 58688, November 13, 2009). EPA's proposed rulemaking action here addresses only the 2006 24-hour PM_{2.5} NAAQS, and has no bearing on any other NAAQS, including any future revised NAAQS. EPA's proposed rulemaking action in this notice is restricted to EPA's determination that the NY-NJ-CT PM_{2.5} nonattainment area is attaining the 2006 24-hour PM_{2.5}. This proposed action has no effect on control measures, or air quality, in the area.

If this proposed determination is made final and the NY-NJ-CT PM_{2.5} nonattainment area continues to monitor attainment of the 2006 24-hour PM_{2.5} NAAQS, the requirements for the area to submit attainment demonstrations, reasonably available control measures, reasonable further progress plans, and contingency measures related to attainment of the 2006 24-hour PM_{2.5} NAAQS would remain suspended.

III. What is the background for this action?

On September 21, 2006, EPA established a 24-hour PM_{2.5} NAAQS at 35.0 micrograms per cubic meter (µg/m³) based on a 3-year average of the 98th percentile of 24-hour

concentrations and retained the annual PM_{2.5} NAAQS at 15.0 µg/m³ based on a 3-year average of the annual mean (71 FR 61144). EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. EPA and state air quality agencies initiated the monitoring process for the PM_{2.5} NAAQS in 1999, and deployed all air quality monitors by January 2001. On November 13, 2009, (74 FR 58688), EPA published its air quality designations with respect to the 2006 24-hour PM_{2.5} NAAQS based upon air quality monitoring data from those monitors for calendar years 2006–2008. These designations became effective on December 14, 2009. The NY-NJ-CT PM_{2.5} area was designated as nonattainment for the 2006 24-hour PM_{2.5} NAAQS. This proposed determination addresses the 2006 24-hour standard only.

On November 15, 2010 (75 FR 69589), EPA made the determination that the NY-NJ-CT PM_{2.5} nonattainment area attained the 1997 annual PM_{2.5} NAAQS. On April 25, 2007 (72 FR 20586), EPA promulgated its implementation rule to assist states and tribes with the development of State Implementation Plans (SIPs) to demonstrate attainment of the annual and 24-hour 1997 PM_{2.5} NAAQS, codified at 40 CFR part 51, subpart Z. This rule, at 40 CFR 51.1004(c), specifies some of the regulatory consequences of a determination of attainment of the standard.

On March 2, 2012, EPA provided implementation guidance for the 2006 24-hour PM_{2.5} NAAQS. The 2012 guidance reaffirms and continues to use the framework and policy approaches of the April 25, 2007 rule. The 2006 24-hour PM_{2.5} NAAQS implementation guidance includes additional guidance for states in developing their SIPs.

IV. What is EPA's analysis of the relevant air quality data?

EPA has reviewed the ambient air monitoring data for PM_{2.5}, consistent with the requirements contained in 40 CFR part 50 and recorded in the EPA Air Quality System database for the NY-NJ-CT PM_{2.5} nonattainment area from 2006 through the present time. On the basis of that review, EPA has concluded that this area has attained the 2006 24-hour PM_{2.5} NAAQS based on data for the 2007–2009 and 2008–2010

¹ EPA's implementation guidance for the 2006 24-hour PM_{2.5} NAAQS was issued on March 2, 2012 and is available at http://www.epa.gov/ttn/naaqs/pm/pdfs/20120302_implement_guidance_24-hr_pm2.5_naaqs.pdf.

monitoring periods and continues to show attainment through 2011.

Under EPA regulations at 40 CFR 50.13(c): The 24-hour primary and secondary PM_{2.5} standards are met when the 98th percentile 24-hour concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 35.0 µg/m³.

Table 1 shows the design values by county (*i.e.*, the 3-year average of 98th percentile 24-hour PM_{2.5} concentrations) for the 2006 24-hour PM_{2.5} NAAQS for the NY-NJ-CT PM_{2.5} nonattainment area monitors for the years 2006 through 2010 based on complete (except where otherwise noted), quality-assured and certified air quality monitoring data. As shown in

Table 1, none of the design values for the periods of 2007–2009 and 2008–2010 in the NY-NJ-CT PM_{2.5} nonattainment area exceed the 2006 24-hour PM_{2.5} NAAQS of 35.0 µg/m³. Table 1 also provides certified, complete, and quality assured 98th percentile 24-hour concentrations for 2011 which show continued attainment of the 24-hour PM_{2.5} NAAQS.

TABLE 1—DESIGN VALUES² BY COUNTY FOR THE 2006 24-HOUR PM_{2.5} NAAQS FOR THE NY-NJ-CT MONITORS IN MICROGRAMS PER CUBIC METER (µg/M³)

[The standard for the 2006 24-hour PM_{2.5} NAAQS is 35.0 µg/m³]

County	06–08 DV	07–09 DV	08–10 DV	2011 ³
NY:				
Bronx	36	33	29	27
Kings	34	30	27	24
Nassau ⁴	INC	INC	25	23
New York ⁵	37	⁶ 33	⁶ 31	27
Orange	28	26	24	21
Queens	32	30	28	25
Richmond	30	29	26	24
Rockland	NM	NM	NM	NM
Suffolk	29	26	25	22
Westchester	32	29	28	23
NJ:				
Bergen	35	31	28	24
Essex ⁷	INC	⁶ 30	⁶ 26	24
Hudson	38	32	29	26
Mercer	33	29	27	28
Middlesex	31	27	23	21
Monmouth	NM	NM	NM	NM
Morris	29	26	23	24
Passaic	33	30	INC	25
Somerset	NM	NM	NM	NM
Union	36	⁶ 32	30	33
CT:				
Fairfield	33	31	28	29
New Haven	34	31	29	28

NM—No monitor located in county.

INC—All counties listed as INC did not meet 75 percent data completeness requirement for the relevant time period.

EPA's review of monitoring data indicates that, for the periods of 2007–

² PM_{2.5} Design Values can be found at: <http://www.epa.gov/airtrends/values.html>.

³ Data reported is the 98th percentile concentration from certified, complete, and quality assured data for the highest reading monitor in the county for 2011.

⁴ The monitor located in Nassau County had incomplete data for 2007 which lead to the inability to calculate design values for the periods of 2005–2007, 2006–2008, and 2007–2009. The monitor did not show previous violations and therefore it was deemed that determining the design values though alternative procedures was not necessary. The 2008–2010 design value was 25 µg/m³.

⁵ The monitor in New York County located at Public School 59 was the highest reading monitor in the County at the time EPA made designations for the 2006 PM_{2.5} NAAQS. Midway through 2008, the monitor at PS 59 was shut down due to the demolition of the building site. Missing 2008 data had an effect on calculating the design value for the 24-hour standard. EPA used an alternative procedure to determine the design value for the 24-hour standard. A description of the alternate procedure can be found in Section V. Detailed

2009 and 2008–2010 and 2011, the NY-NJ-CT PM_{2.5} nonattainment area has met, and continues to meet, the 2006 24-hour PM_{2.5} NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

information on this alternative procedure can be found in the Technical Support Document.

⁶ Design Value was calculated using the alternative procedure described in Section V. Detailed information on this alternative procedure can be found in the Technical Support Document.

⁷ The air monitor at the Newark Willis Center station in Essex County was discontinued on July 24, 2008 due to an unexpected loss of access, and replaced with a new monitor at the Newark Firehouse. PM_{2.5} monitoring was established at the firehouse on May 13, 2009. EPA used an alternative procedure to determine the design value for the 24-hour standard. A description of the alternate procedure can be found in Section V. Detailed information on this alternative procedure can be found in the Technical Support Document.

V. How did EPA address missing data?

Data handling conventions and computations necessary for determining whether areas have met the PM_{2.5} NAAQS, including requirements for data completeness, are listed in Appendix N of 40 CFR part 50. A year meets data completeness requirements when at least 75 percent of the scheduled sampling days for each quarter have valid data. The use of less than complete data is subject to the approval of EPA, which may consider factors such as monitoring site closures/relocation, monitoring diligence, and nearby concentrations in determining whether to use such data as set forth at 40 CFR part 50, Appendix N, section 4.1(c). Five monitors in the NY-NJ-CT PM_{2.5} nonattainment area with less than complete data were examined to determine if the monitors would have attained the 24-hour PM_{2.5} NAAQS had

they collected complete data. EPA had previously addressed less than complete data in the determination of attainment for the NY-NJ-CT PM_{2.5} nonattainment area for the 1997 annual standard NAAQS (see 75 FR 45076, 45079 (August 2, 2010), 75 FR 69589 (November 15, 2010)). The same statistical based method used to examine less than complete data for the 1997 annual PM_{2.5} NAAQS was used for this action regarding the 2006 24-hour PM_{2.5} NAAQS.

The statistical method used addressed less than complete data by determining if a monitor would have been in attainment of the NAAQS had it operated to completeness from 2007–2009 and 2008–2010. The approach summarized in this section, and further described in the TSD, may or may not be appropriate for other areas with less than complete data. EPA will determine the appropriateness of this analytical approach for each area with less than complete data on a case-by-case basis. In this case, EPA has determined that it is appropriate to use this statistical method for the NY-NJ-CT PM_{2.5} nonattainment area due to the adequateness of the monitoring network in the nonattainment area, historical air quality trends, and valid explanations for completeness issues.

EPA determined the adequacy of the monitoring network by examining the number and placement of monitors located in the nonattainment area through annual monitoring reviews and approval of network plans. The NY-NJ-CT PM_{2.5} nonattainment area is required to have 3 monitors and the nonattainment area had 42 in 2009. The States of New York, New Jersey, and Connecticut meet annually with EPA to discuss issues or concerns with air monitoring, data, and network. The three states also have approved network plans. Copies of the approved annual network review letters are available in the TSD.

Methodology

The method used to determine the design value for monitors with incomplete data involves establishing a linear relationship between incomplete monitors and another site in the NY-NJ-CT PM_{2.5} nonattainment area that has more complete data for the missing period and has a substantial number of samples in common over the period of interest. The same method was used for each incomplete monitor that had previously violated the NAAQS. The monitor in the nonattainment area that had complete data and had the highest correlation with an incomplete monitor was used to develop a regression

equation. The regression equation was used to estimate values for the missing quarters of data for an incomplete monitor. The design value for each incomplete monitor was then calculated using the estimated values to fill in for the missing quarters. The estimated design value was then analyzed using a bootstrapping statistical method. Bootstrapping involves the use of regression residuals and repeating the regression analysis 1000 times. There were no exceedances of the NAAQS as a result of the bootstrapping analysis.

The result of the analysis determined that the design value for 5 monitoring sites that: (1) Had incomplete monitoring data during 2006–2008, 2007–2009, and/or 2008–2010, (2) had previously violated the 2006 annual PM_{2.5} NAAQS, and (3) did not have clean data subsequent to their latest violation, would be below the 2006 24-hour PM_{2.5} NAAQS of 35.0 µg/m³ if they had operated the entire monitoring time period. The 5 previously incomplete sites in the NY-NJ-CT PM_{2.5} nonattainment area were: Newark-Willis Center in Essex County, NJ; Elizabeth Lab in Union County, NJ (only incomplete for 2007–2009); and PS 59, Canal Street, and PS 19, in New York County, NY. The detailed statistical analysis performed to obtain the completed design values for these monitors can be found in the TSD.

VI. Proposed Action

EPA is proposing to determine that the NY-NJ-CT PM_{2.5} nonattainment area for the 2006 24-hour PM_{2.5} NAAQS has attained the 2006 24-hour PM_{2.5} NAAQS for the 2007–2009 and 2008–2010 monitoring periods and continues to attain the standard based on data through 2011. As provided in 40 CFR 51.1004(c), if EPA finalizes this determination, it would suspend the requirements for this area to submit attainment demonstrations, reasonably available control measures, reasonable further progress plans, and contingency measures related to attainment of the 2006 24-hour PM_{2.5} NAAQS so long as the area continues to attain the 2006 24-hour PM_{2.5} NAAQS.

VIII. Statutory and Executive Order Reviews

This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. 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);

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 (Pub. L. 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 rule does not have Tribal implications, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: July 31, 2012.

Judith A. Enck,
Regional Administrator, Region 2.

Dated: August 7, 2012.

H. Curtis Spalding,
Regional Administrator, Region 1.

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