

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2011-0956; FRL-9623-2]

Determination of Failure To Attain the One-Hour Ozone Standard by 2007, Determination of Current Attainment of the One Hour Ozone Standard, Determinations of Attainment of the Eight-Hour Ozone Standards for the New York-Northern New Jersey-Long Island Nonattainment Area in Connecticut, New Jersey and New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing four separate and independent determinations related to the New York-Northern New Jersey-Long Island (NY-NJ-CT) one-hour and 1997 eight-hour ozone nonattainment areas. The boundaries of the one-hour and eight-hour ozone nonattainment areas differ slightly. If EPA's determination that the area is currently attaining the eight-hour standard is finalized, EPA's ozone implementation regulation provides that the requirements for the States to submit certain reasonable further progress plans, attainment demonstrations, contingency measures and any other planning requirements of the Clean Air Act related to attainment of that ozone standard shall be suspended for as long as the area continues to attain the standard. A determination of attainment does not constitute a redesignation to attainment. Redesignation requires the states to meet a number of additional criteria, including EPA approval of a state plan to maintain the air quality standard for ten years after redesignation.

DATES: Comments must be received on or before February 24, 2012. Public comments on this action are requested and will be considered before taking final action.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R02-OAR-2011-0956, 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 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R02-OAR-2011-0956. 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>.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning EPA's proposed action related to New Jersey or New York, please contact Paul Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th floor, New York, New York 10008-1866, telephone number (212) 637-4249.

If you have questions concerning EPA's proposed action related to Connecticut, please contact Richard Burkhart, 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) 918-1664, fax number (617) 918-0664, email burkhart.richard@epa.gov.

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I. What are EPA's proposed actions?

EPA is proposing four separate and independent determinations. First, with respect to the one-hour ozone NAAQS, EPA is proposing to determine that the New York-Northern New Jersey-Long Island (NY-NJ-CT) one-hour ozone nonattainment area previously failed to attain the one-hour NAAQS by its applicable attainment deadline of November 15, 2007 (based on complete quality-assured and certified ozone monitoring data for 2005-2007). Second, and also with respect to the one-hour ozone NAAQS, EPA is proposing to determine that the area is currently attaining the one-hour standard based on complete, quality-assured and certified ozone monitoring data for 2008-2010. Preliminary ozone monitoring data for 2011 indicate the area continues to attain the one-hour ozone standard.

The third and fourth proposed determinations concern the 1997 eight-hour ozone NAAQS. EPA is proposing to determine that the NY-NJ-CT eight-hour ozone nonattainment area attained the 1997 eight-hour standard by the applicable deadline, June 15, 2010, based on complete, quality-assured and certified ozone monitoring data for 2007-2009. Finally, EPA is also proposing to determine that the area is currently attaining the 1997 eight-hour ozone standard based on complete, quality-assured and certified ozone monitoring data for 2008-2010. Preliminary data for 2011 indicate that the area continues to attain the 1997

eight-hour ozone standard. If EPA's determination that the area is currently attaining the eight-hour standard is finalized, 40 CFR 51.918¹ of EPA's ozone implementation rule provides that the requirements for the States to submit certain reasonable further progress plans, attainment demonstrations, contingency measures and any other planning requirements of the Clean Air Act related to attainment of that standard shall be suspended for as long as the area continues to attain the standard.

In addition to these proposed determinations, EPA is intending to withdraw EPA's proposed disapprovals of the CT and NJ 1997 eight-hour ozone attainment demonstrations, which were previously published in the **Federal Register** on May 8, 2009 (74 FR 21568 and 21578), provided that EPA finalizes its proposed determination here that the area is currently attaining the 1997 eight-hour ozone standard.

In order to determine the areas' air quality status for purposes of the proposed determinations, EPA reviewed ozone monitoring air quality data from the States, in accordance with 40 CFR 50.9, 40 CFR part 50 appendix H and appendix I, and EPA policy and guidance, as well as data processing, data rounding and data completeness requirements. EPA's review is discussed at length below.

II. What is the background for these proposed actions?

The boundaries for the NY-NJ-CT one-hour and the eight-hour ozone nonattainment areas are slightly different. For the one-hour ozone NAAQS of 0.12 parts per million (ppm), the area is composed of: The Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union Counties in New Jersey; the Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, Westchester Counties and part of Orange County in New York; and parts of Fairfield and Litchfield Counties in Connecticut. The 1997 eight-hour ozone nonattainment area is composed of many of the same counties as the one-hour ozone nonattainment area but does not include Ocean County in New Jersey, any part of Orange County in New York or any part of Litchfield County in Connecticut, and does include Warren County in New Jersey, and all of Fairfield, New Haven and Middlesex Counties in Connecticut. The one-hour ozone standard designations were established by EPA

following the enactment of the Clean Air Act (CAA) Amendments in 1990. Each area of the country that was designated nonattainment for the one-hour ozone NAAQS was classified by operation of law as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality problem. (See CAA sections 107(d)(1)(C) and 181(a)). The NY-NJ-CT one-hour ozone nonattainment area was designated nonattainment and classified as severe-17, with an attainment deadline of November 15, 2007.

On July 18, 1997, (62 FR38856), EPA promulgated a new, more protective standard for ozone based on eight-hour average concentrations (the "1997 eight-hour ozone NAAQS"). EPA designated and classified most areas of the country under the eight-hour ozone NAAQS in an April 30, 2004 final rule (69 FR 23858). The NY-NJ-CT 1997 eight-hour ozone nonattainment area was designated nonattainment and classified as moderate with an attainment deadline of June 15, 2010.

On April 30, 2004, EPA also issued a final rule (69 FR 23951) entitled "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1," referred to as the Phase 1 Rule. Among other matters, this rule revoked the one-hour ozone NAAQS in most other areas of the country, effective June 15, 2005. (See, 40 CFR 50.9(b); 69 FR at 23996; and 70 FR 44470 (August 3, 2005)). The Phase 1 Rule also set forth how anti-backsliding principles will ensure continued progress toward attainment of the eight-hour ozone NAAQS by identifying which one-hour ozone requirements remain applicable in an area after revocation of the one-hour ozone NAAQS.

Although EPA revoked the one-hour ozone standard (effective June 15, 2005), eight-hour ozone nonattainment areas remain subject to certain one-hour anti-backsliding requirements based on their one-hour ozone classification. Initially, EPA's rules to address the transition from the one-hour to the eight-hour ozone standard did not include one-hour contingency measures or major source penalty fee programs among the measures retained as one-hour ozone anti-backsliding requirements.² However, on December 23, 2006, the United States Court of Appeals for the District of Columbia Circuit determined that EPA should not have excluded these requirements (and certain others not relevant here) from its anti-

backsliding requirements. *South Coast Air Quality Management District v. EPA*, 472 F.3d 882 (D.C. Cir. 2006) reh'g denied 489 F.3d 1245 (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review). Thus, the Court vacated the provisions that excluded these requirements. As a result, states must continue to meet the obligations for one-hour ozone NAAQS contingency measures. EPA has issued a proposed rule that would remove the vacated provisions of 40 CFR 51.905(e), and that addresses contingency measures for failure to attain or make reasonable further progress toward attainment of the one-hour standard. See 74 FR 2936, January 16, 2009 (proposed rule); 74 FR 7027, February 12, 2009 (notice of public hearing and extension of comment period).

III. What is the rationale for and effect of these proposed determinations?

A. One-Hour Ozone Determinations

After revocation of the one-hour ozone standard, EPA must continue to provide a mechanism to give effect to the one-hour anti-backsliding requirements. See *South Coast v. EPA*, 47 F.3d 882, at 903. In keeping with this responsibility with respect to one-hour anti-backsliding contingency measures and section 185 fee programs for the NY-NJ-CT one hour ozone area, EPA proposes to determine that the NY-NJ-CT area failed to attain the one-hour ozone standard by its applicable attainment date. Consistent with 40 CFR 51.905(e)(2) and the *South Coast* court decision, upon revocation of the one-hour ozone NAAQS for an area, EPA is no longer obligated to determine whether an area has attained the one-hour NAAQS by its applicable deadline, except insofar as it relates to effectuating the anti-backsliding requirements that are specifically retained. EPA's proposed determination here—that the area did not attain the one-hour ozone standard by the November 15, 2007 deadline (based on data for 2005–2007) is linked solely to two required one-hour anti-backsliding measures: i.e., one-hour contingency measures for failure to attain under section 172(c)(9), and fee programs under sections 182(d)(3), 182(f) and 185.

A final determination of failure to attain by the area's 2007 attainment date will not result in reclassification of the area under the revoked one-hour standard. As a severe one-hour nonattainment area, the NY-NJ-CT area is not subject to reclassification for the one-hour standard, and in any event EPA is no longer required to reclassify

¹ CFR refers to the Code of Federal Regulations, in this case Title 40 part 51.

² Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1, 69 FR 23951 (April 30, 2004).

any area to a higher classification for the one-hour ozone NAAQS based upon a determination that the area failed to attain that NAAQS by its attainment date. 40 CFR 51.905(e)(2)(i)(B).

EPA's proposed determination that the area failed to attain the one-hour ozone standard by its applicable date, if finalized, would bear on the area's obligations with respect to two one-hour ozone anti-backsliding requirements whose implementation is triggered by a finding of failure to attain by the applicable attainment date: Section 172(c)(9) contingency measures for failure to attain and sections 182(d)(3) and 185 major stationary source fee programs.

With respect to the one-hour ozone anti-backsliding requirement for contingency measures, EPA has previously approved all of the States' one-hour ozone attainment demonstrations, reasonable further progress plans, and contingency plans for this area. See 67 FR 5152 (February 4, 2002) for New Jersey, 67 FR 5170 (February 4, 2002) for New York, and 66 FR 63921 (December 11, 2001) for Connecticut.

Moreover, EPA is also proposing a separate and independent one-hour ozone determination—that the NY-NJ-CT area currently attains the one-hour ozone standard, based on complete, quality-assured and certified ozone data for 2008–2010, and preliminary data available for 2011. If this determination is finalized, then even if EPA finalizes its proposed determination that the area failed to attain by the 2007 deadline, it will not result in any one-hour ozone contingency measure obligations for the area. Under EPA's "Clean Data Policy" interpretation, which was first articulated for the one-hour standard and then codified for the eight-hour ozone standard (40 CFR 51.918),³ a determination of attainment suspends obligations for attainment-related requirements for that standard, including contingency measures. See, for example, determination of one-hour ozone attainment for Baton Rouge, 75 FR 6570 (February 10, 2010). With respect to the one-hour ozone anti-backsliding requirement for penalty fees, section 182(d)(3) requires SIPs to include provisions required by section

185. Section 185 requires one-hour ozone SIPs for severe areas to provide that, if the area has failed to attain by the attainment date, each major stationary source of ozone precursors located in the area must begin paying a fee to the state. Thus a final determination of failure to attain by the area's one-hour attainment date would trigger the one-hour anti-backsliding obligation to implement the penalty fee program under section 182(d)(3), 182(f) and 185, unless that obligation is terminated.

B. Eight-Hour Ozone Determinations

EPA proposes to determine, in accordance with section 181(b)(2), that the NY-NJ-CT area attained the 1997 eight-hour ozone standard by the applicable deadline for that standard, June 15, 2010. This proposed determination is based on complete, quality-assured and certified data for 2007–2009. If EPA finalizes this determination, the area will be not be reclassified, there will be no obligation with respect to contingency measures for failure to attain by the attainment deadline, nor any other consequence that would have resulted had the area failed to attain by its attainment date.

In addition, EPA is separately and independently proposing to determine that the NY-NJ-CT area is currently attaining the 1997 eight-hour ozone standard, based on complete quality-assured and certified data for 2008–2010 and preliminary data for 2011 that indicate continued attainment. EPA's ozone implementation rule at 40 CFR 51.900–918, promulgated under sections 172 and 182 of the Clean Air Act, describes the Clean Air Act requirements for areas designated nonattainment for the 1997 eight-hour ozone standard. For areas that attain the standard, section 51.918 of the implementation rule provides that, upon a determination of attainment by EPA, the requirements for a state to submit certain required planning SIPs related to attainment of the eight-hour NAAQS, such as attainment demonstrations, reasonable further progress (RFP) plans⁴ and contingency measures, shall be suspended. EPA's action only suspends the requirements to submit the SIP revisions discussed above.⁵

EPA is also intending to withdraw our previous proposed disapprovals of the ozone attainment demonstrations submitted by Connecticut and New Jersey for the NY–NJ–CT eight-hour ozone nonattainment area, provided that EPA finalizes its proposed determination that the area is currently attaining the 1997 eight-hour ozone standard.

IV. How does EPA compute whether an area complies with the one-hour ozone standard?

Although the one-hour ozone NAAQS as promulgated in 40 CFR 50.9 includes no discussion of specific data handling conventions, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the one-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard, which is 0.12 ppm. 40 CFR 50.9(a) states that: "The level of the national one-hour primary and secondary ambient air quality standards for ozone * * * is 0.12 parts per million. * * * The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million * * * is equal to or less than 1, as determined by appendix H to this part." Thus, compliance with the NAAQS is based on comparison of air quality concentrations with the standard and on how many days that standard has been exceeded, adjusted for the number of missing days.

For comparison with the NAAQS, EPA has clearly communicated the data handling conventions for the one-hour ozone NAAQS in guidance documents. As early as 1979, EPA issued guidance stating that the level of our NAAQS

ozone NAAQS is only one of the criteria set forth in CAA section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated, the state must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of section 107(d)(3)(E), including a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and a fully-approved SIP meeting all of the applicable requirements under section 110 and part D and a fully-approved maintenance plan for the 1997 eight-hour ozone standard. If, however, the determination of current attainment for the 1997 eight-hour standard is finalized, and EPA subsequently determines after notice and comment rulemaking in the **Federal Register** that the area has violated the standard, the basis for the suspension of these requirements for the area would no longer exist, and the area would thereafter have to address the pertinent submission requirements within a reasonable period of time. EPA would establish that time period, taking into account the circumstances surrounding the particular submissions at issue.

³ The U.S. Court of Appeals for the District of Columbia Circuit upheld the provisions of 40 CFR 51.918, which codified the Clean Data Policy. Previously Courts of Appeals for several other Circuits upheld the Clean Data Policy under the one-hour standard. See *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009); *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004) and *Our Children's Earth Foundation v. EPA*, No. 04–73032 (9th Cir. June 28, 2005) (memorandum opinion).

⁴ EPA approved the RFP plan for New Jersey on May 15, 2009 (74 FR 22837) and the RFP plan for New York on August 18, 2011 (76 FR 51264). EPA proposed approval of the RFP plan for Connecticut on September 20, 2010 (75 FR 57221).

⁵ A determination that the area is currently attaining the 1997 eight-hour ozone standard is not equivalent to a redesignation of the area to attainment for that standard. Attainment of the

dictates the number of significant figures to be used in determining whether the standard was exceeded. The stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and, therefore, 0.125 ppm is the smallest concentration value in excess of the level of the standard. (See, "Guideline for the Interpretation of Ozone Air Quality Standards," EPA-450/4-79-003, OAQPS No. 1.2-108, January 1979.) EPA has consistently applied the rounding convention in this 1979 guideline. See, 68 FR 19106, 19111 (April 17, 2003), 68 FR 62041, 62043 (October 31, 2003), and 69 FR 21717, 21720 (April 22, 2004). Then, EPA determines attainment status under the one-hour ozone NAAQS on the basis of the annual average number of expected exceedances of the NAAQS over a three-year period. (See, 60 FR 3349 (January 17, 1995) and see, also, "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," at 57 FR 13498, 13506 (April 16, 1992) ("General Preamble").) EPA's determination is based upon data that has been collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA's Air Quality System (AQS) database, (formerly known as the Aerometric Information Retrieval System (AIRS)). To account for missing data, the procedures found in appendix H to 40 CFR part 50 are used to adjust the actual number of monitored exceedances of the standard to yield the annual number of expected exceedances ("expected exceedance days") at an air quality monitoring site. EPA determines whether an area has attained the one-hour ozone NAAQS by calculating, at each monitor, the average expected number of days over the standard per year (i.e., "average number of expected exceedance days") during the applicable 3-year period. See, generally, the General Preamble, 57 FR 13498, April 16, 1992 and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors, "Procedures for

Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas," February 3, 1994. The term "exceedance" is used throughout this document to describe a daily maximum ozone measurement that is equal to or exceeds 0.125 ppm which is the level of the standard after rounding. An area violates the ozone standard if, over a consecutive 3-year period, more than 3 days of expected exceedances occur at the same monitor. For more information please refer to 40 CFR 50.9 "National one-hour primary and secondary ambient air quality standards for ozone" and "Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone" (40 CFR part 50, appendix H).

V. How does EPA compute whether an area complies with the 1997 eight-hour ozone standard?

An area achieves attainment of the eight-hour ozone standard when an area's monitoring sites all have a design value of less than 0.085 ppm, calculated as described in 40 CFR part 50, Appendix I. The design value is the average of each year's fourth highest concentration, over a three year period, as described in Appendix I to 40 CFR part 50. From 40 CFR part 50, Appendix I, Section 2.2:

The standard-related summary statistic is the annual fourth-highest daily maximum eight-hour average ozone concentration, expressed in parts per million, averaged over three years. The 3-year average shall be computed using the three most recent, consecutive calendar years of monitoring data meeting the data completeness requirements described in this appendix. The computed 3-year average of the annual fourth-highest daily maximum eight-hour average ozone concentrations shall be expressed to three decimal places (the remaining digits to the right are truncated.)

This proposed action addresses only the 1997 eight-hour ozone standard, and does not address the ozone standard that EPA established in 2008, or any future ozone standard. This proposed action does not affect and is not affected by future air quality designations for the 2008 ozone standard.

VI. What are EPA's analyses of data regarding attainment of the one-hour and 1997 eight-hour ozone standards in the NY-NJ-CT areas?

New York, New Jersey, and Connecticut submitted requests for EPA to make "Clean Data" determinations regarding whether the NY-NJ-CT area is currently attaining both the one-hour and eight-hour ozone standards. These requests were dated June 16, 2011, January 19, 2011, and April 29, 2011, respectively. These requests, and EPA's proposed determinations, are based upon complete, quality-assured, certified ambient air monitoring data. These data are summarized in the tables below, along with EPA's evaluation of whether these areas are currently attaining the one-hour ozone and eight-hour ozone NAAQS. In addition, EPA evaluated the data to determine whether the area attained the one-hour ozone standard by the applicable deadline for that standard (November 15, 2007), and whether the area met its 1997 eight-hour ozone attainment deadline (June 15, 2010). All of the data on which EPA has based its evaluations are also available to the public through the **FOR FURTHER INFORMATION CONTACT** section and via www.epa.gov/ttn/airs/airsaqs/.

A. Data for the One-Hour Ozone Standard

For the time periods 2005–2007 through 2008–2010, Table 1 shows the average number of expected one-hour ozone exceedances per year for each ozone monitor in the NY-NJ-CT ozone nonattainment area. The standard for the one-hour ozone NAAQS is 0.12 ppm and attainment is achieved when the number of expected exceedances is 1.0 or less averaged over a three year period. The data for 2005–2007 show that the area did not attain the one-hour ozone standard by the applicable attainment date of November 15, 2007, since the area maximum expected exceedance rate is above 1.0. The data for 2008–2010, however, show that the area is now attaining the one-hour ozone standard, since the area maximum expected exceedance rate is below 1.0. Preliminary data available for 2011 indicate that the area continues to attain the one-hour ozone standard.

TABLE 1—ONE-HOUR OZONE DATA FOR THE NY-NJ-CT OZONE MONITORS

| Monitor information | | | Average number of expected exceedance days per year | | | |
|---------------------|-------------------------|-----------|---|-----------|-----------|-----------|
| State | Monitor name, county | AQS ID | 2005–2007 | 2006–2008 | 2007–2009 | 2008–2010 |
| CT | Greenwich, Fairfield Co | 090010017 | 1.3 | 1.3 | 0.3 | 0.3 |
| CT | Danbury, Fairfield Co | 090011123 | 3.0 | 1.3 | 1.0 | 0.0 |
| CT | Stratford, Fairfield Co | 090013007 | 1.4 | 1.4 | 0.3 | 0.3 |
| CT | Westport, Fairfield Co | 090019003 | 1.3 | 1.3 | 0.3 | 0.3 |

TABLE 1—ONE-HOUR OZONE DATA FOR THE NY-NJ-CT OZONE MONITORS—Continued

| Monitor information | | | Average number of expected exceedance days per year | | | |
|---|---|-----------|---|-----------|-----------|-----------|
| State | Monitor name, county | AQS ID | 2005–2007 | 2006–2008 | 2007–2009 | 2008–2010 |
| NJ | Teaneck, Bergen Co | 340030005 | * | * | * | * |
| NJ | Leonia, Bergen Co | 340030006 | * | * | * | 0.0 |
| NJ | Newark-Fire House, Essex Co | 340130003 | * | * | * | * |
| NJ | Bayonne, Hudson Co | 340170006 | 0.3 | 0.0 | 0.0 | 0.0 |
| NJ | Flemington, Hunterdon Co | 340190001 | 0.3 | 0.3 | 0.3 | 0.0 |
| NJ | Rutgers University, Middlesex Co | 340230011 | 1.3 | 0.7 | 0.0 | 0.0 |
| NJ | Monmouth University, Monmouth Co | 340250005 | 0.3 | 0.0 | 0.0 | 0.0 |
| NJ | Chester, Morris Co | 340273001 | 0.0 | 0.0 | 0.0 | 0.0 |
| NJ | Colliers Mills, Ocean Co | 340290006 | 0.7 | 0.0 | 0.0 | 0.0 |
| NJ | Ramapo, Passaic Co | 340315001 | 0.0 | 0.0 | 0.0 | 0.0 |
| NY | Botanical Gardens/Harding Lab, Bronx Co | 360050083 | * | * | * | * |
| NY | IS 52, Bronx Co | 360050110 | 0.0 | 0.0 | 0.0 | 0.0 |
| NY | Botanical Gardens/Pfizer Lab, Bronx Co | 360050133 | * | * | 0.0 | 0.0 |
| NY | CCNY, New York Co | 360610135 | * | * | 0.0 | 0.0 |
| NY | Queens College II, Queens Co | 360810124 | 0.0 | 0.0 | 0.0 | 0.0 |
| NY | Susan Wagner, Richmond Co | 360850067 | 0.3 | 0.0 | 0.0 | 0.3 |
| NY | Rockland County, Rockland Co | 360870005 | * | * | * | * |
| NY | Babylon, Suffolk Co | 361030002 | 1.4 | 1.0 | 0.0 | 0.4 |
| NY | Riverhead, Suffolk Co | 361030004 | 1.4 | 1.7 | 0.7 | 0.7 |
| NY | Holtsville, Suffolk Co | 361030009 | * | 1.2 | 0.0 | 0.0 |
| NY | White Plains, Westchester Co | 361192004 | 1.7 | 1.8 | 1.4 | 0.4 |
| Highest Maximum Expected Exceedance Rate for each 3-year Period | | | 3.0 | 1.8 | 1.4 | 0.7 |

Source: EPA Air Quality System (AQS) Database.

*EPA calculates the expected exceedances based on the number of times a site exceeds the 0.12 ppm standard averaged over a three-year period and adjusted for any missing data. These sites have less than 3 years worth of data because they are either new monitors or relocated monitors, due to building closures or other access issues. However, the monitoring network remains adequate because any actual exceedances that might have occurred at these sites would still be included in the above table, although none occurred during the time periods examined.

B. Data for the 1997 Eight-Hour Ozone Standard

Table 2 shows the design values (DV) by county (i.e., the 3-year average of

annual 4th highest maximum eight-hour average ozone concentrations) for the 1997 eight-hour ozone NAAQS for the NY–NJ–CT ozone nonattainment area monitors for the years 2007 through

2010. The standard for the 1997 eight-hour ozone NAAQS is 0.08 ppm. A monitor with a design value of 0.084 ppm or less is meeting the 1997 eight-hour ozone NAAQS.

TABLE 2—HIGHEST DESIGN VALUES (DV) IN PARTS PER MILLION (PPM) BY COUNTY FOR THE 1997 EIGHT-HOUR OZONE NAAQS FOR THE NY-NJ-CT MONITORS

| County | 2007–2009 DV | 2008–2010 DV |
|------------------------------|--------------|--------------|
| NEW YORK: | | |
| Bronx | 0.073 | 0.072 |
| New York | * | 0.073 |
| Queens | 0.074 | 0.074 |
| Richmond | 0.074 | 0.075 |
| Rockland | * | * |
| Suffolk | 0.084 | 0.084 |
| Westchester | 0.083 | 0.077 |
| NEW JERSEY: | | |
| Bergen | * | 0.076 |
| Essex | * | * |
| Hudson | 0.080 | 0.077 |
| Hunterdon | 0.081 | 0.078 |
| Middlesex | 0.080 | 0.078 |
| Monmouth | 0.081 | 0.080 |
| Morris | 0.079 | 0.075 |
| Passaic | 0.076 | 0.074 |
| CONNECTICUT: | | |
| Fairfield | 0.084 | 0.081 |
| Middlesex | 0.081 | 0.077 |
| New Haven | 0.081 | 0.076 |
| Nonattainment Area (highest) | 0.084 | 0.084 |

*EPA calculates the design value based on 3 consecutive years of complete (75 percent or more data capture per year) monitored data. These sites have less than 3 years worth of data because they are either new monitors or relocated monitors, due to building closures or other access issues.

In this case, all of the monitoring sites had a design value less than 0.085 ppm based on the 2007–2009 monitoring period, thus showing that the area met its June 15, 2010 deadline to attain the 1997 eight-hour ozone standards. The data in Table 2 show that the monitoring design values remained below 0.085 through 2008–2010. Preliminary 2011 air quality data indicate the area continues to attain the 1997 eight-hour ozone standard.

VII. Proposed Actions

For the reasons set forth in this action, EPA is proposing four separate and independent determinations related to the NY-NJ-CT one-hour and 1997 eight-hour ozone nonattainment areas. These determinations are based upon complete, quality-assured and certified ozone monitoring data. First, with respect to the one-hour ozone standard, and pursuant to EPA's authority to ensure implementation of one-hour ozone anti-backsliding requirements and CAA section 301, EPA is proposing to determine that data for 2005–2007 show that the NY-NJ-CT area previously failed to attain the one-hour standard by its applicable November 15, 2007 attainment deadline. Second, however, EPA is proposing to determine that the NY-NJ-CT area is currently attaining the one-hour ozone standard, based on more recent 2008–2010 data and preliminary data for 2011. These proposed determinations regarding the one-hour standard, if finalized, would bear on the area's obligation with respect to one-hour anti-backsliding requirements for section 172(c)(9) contingency measures for failure to attain and sections 182(d)(3) and 185 major stationary source fee programs.

Third, with respect to the 1997 eight-hour ozone standard, in accordance with section 181(b) of the CAA, EPA proposes to determine that data for 2007–2009 show the NY-NJ-CT eight-hour ozone nonattainment area attained the 1997 eight-hour ozone standard by its June 15, 2010 attainment deadline. Fourth, EPA is also proposing to determine that the NY-NJ-CT eight-hour ozone nonattainment area currently continues to attain the eight-hour ozone NAAQS, based on data for 2008–2010 and preliminary data for 2011.

As provided in 40 CFR 51.918, if EPA's determination that the area has attained the eight-hour ozone standard is made final, it would suspend the requirements under section 182(b)(1) for submission of the attainment demonstration, reasonable further progress plan, contingency measures and any other planning SIP relating to attainment of the 1997 eight-hour

NAAQS. This suspension of requirements would be effective as long as the area continues to attain the 1997 eight-hour ozone standard.

EPA's proposed determination that the area is currently attaining the 1997 eight-hour ozone NAAQS is contingent upon continued monitoring and continued attainment of that NAAQS. If the determination that the area is currently attaining the 1997 eight-hour ozone NAAQS is finalized and EPA subsequently determines, after notice and comment rulemaking, that the area has subsequently violated the standard, the basis for the suspension of obligations with respect to 1997 eight-hour ozone attainment-related planning requirements would no longer exist, and the area would thereafter have to address the pertinent requirements.

It is EPA's intent to withdraw the May 8, 2009 proposed disapprovals of Connecticut's and New Jersey's eight-hour ozone attainment demonstrations for the NY-NJ-CT eight-hour ozone nonattainment area, provided that EPA finalizes its determination that the area currently attains the 1997 eight-hour ozone standard.

EPA is soliciting public comments on the issues discussed in this action. EPA will consider these comments before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to EPA as discussed in the **ADDRESSES** section of this **Federal Register**.

VIII. Statutory and Executive Order Reviews

These actions include proposals to make attainment determinations based on air quality, and would if finalized, result in the suspension of certain Federal requirements, would not impose additional requirements beyond those imposed by state law, or would not impose any requirements beyond those required by Federal statute.

For these reasons, these proposed actions:

- Are 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);

- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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 Clean Air Act; and
- Do 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, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: December 8, 2011.

Judith A. Enck,
Regional Administrator, Region 2.

Dated: January 11, 2012.

H. Curtis Spalding,
Regional Administrator, Region 1.

[FR Doc. 2012–1518 Filed 1–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2010–1075; FRL–9335–4]

RIN 2070–AB27

Proposed Significant New Use Rules on Certain Chemical Substances; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).