

explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. This rule involves modifying or establishing drawbridge operation regulations to reflect standard practices for drawbridge operating schedules during winter months on the Great Lakes, and will not have any impact on the environment.

## List of Subjects in 33 CFR Part 117

Bridges.

## Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Section 117.1087 is amended by revising paragraphs (a) and (b) to read as follows:

#### § 117.1087 Fox River.

(a) The draws of the Canadian National Bridge, mile 1.03, Main Street Bridge, mile 1.58, Walnut Street Bridge, mile 1.81, Mason Street (Tilleman Memorial) Bridge, mile 2.27, and Canadian National Bridge, mile 3.31, all at Green Bay, shall open as follows:

(1) From April 1 through November 30, the draws shall open on signal for

recreational vessels; except the draws need not open from 7 a.m. to 8 a.m., 12 noon to 1 p.m., and 4 p.m. to 5 p.m., Monday through Saturday except Federal holidays. Public vessels, tugs, and commercial vessels with a cargo capacity of 300 short tons or greater shall be passed at all times.

(2) From December 1 through March 31, the draws shall open on signal if notice is given at least 12 hours in advance of a vessels time of intended passage.

(3) The opening signal for the Main Street Bridge is two short blasts followed by one prolonged blast, for the Walnut Street Bridge one prolonged blast followed by two short blasts, and for the Mason Street Bridge one prolonged blast, followed by one short blast, followed by one prolonged blast.

(b) The draw of the George Street Bridge, mile 7.27 at DePere, shall open on signal from April 1 to November 30; except that, from 6 p.m. to 8 a.m., the draw shall open on signal if notice is given at least 2 hours in advance of a vessels time of intended passage. From December 1 to March 31, the draw shall open on signal if notice is given at least 12 hours in advance of a vessels time of intended passage.

\* \* \* \* \*

Dated: September 30, 2005.

**R.J. Papp, Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander,  
Ninth Coast Guard District.*

[FR Doc. 05–20468 Filed 10–12–05; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[R01–OAR–2005–CT–0003;  
A–1–FRL–7979–8]

### Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Redesignation of City of New Haven PM<sub>10</sub> Nonattainment Area to Attainment and Approval of the Limited Maintenance Plan

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision approves the Limited Maintenance Plan (LMP) for the New Haven PM<sub>10</sub> nonattainment area (New Haven NAA) in the State of Connecticut and grants a request by the State to redesignate the New Haven NAA to

attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>). EPA is approving this redesignation and LMP because Connecticut has met the applicable requirements of the Clean Air Act (CAA).

**DATES:** This direct final rule will be effective December 12, 2005, unless EPA receives adverse comments by November 14, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–CT–0003 by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. Agency Web site: <http://docket.epa.gov/rmepub/> Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: [conroy.dave@epa.gov](mailto:conroy.dave@epa.gov).

4. Fax: (617) 918–1661.

5. Mail: "RME ID Number R01–OAR–2005–CT–0003", David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Air Programs Branch Chief, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. 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 Regional Material in EDocket (RME) ID Number R01–OAR–2005–CT–0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, 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 through Regional Material in EDocket (RME), regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected. The EPA RME Web site and the federal regulations.gov Web site are "anonymous access" systems, 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 e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail 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.

**Docket:** All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Alison C. Simcox, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114-2023, telephone number (617) 918-1684, fax

number (617) 918-0684, e-mail [simcox.alison@epa.gov](mailto:simcox.alison@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. How Can I Get Copies of This Document and Other Related Information?*

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section above, copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106-1630.

##### **II. Rulemaking Information**

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- A. Background and Purpose
- B. Summary of Redesignation Request and Maintenance Plan
- C. Review of the Connecticut Submittal Addressing the Requirements for Redesignation and Limited Maintenance Plans

###### *A. Background and Purpose*

On the date of enactment of the CAA Amendments of 1990, PM<sub>10</sub> areas meeting the qualifications of Section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law. [See generally, 42 U.S.C. 7407(d)(4)(B).] These areas included all former Group I areas and any other areas violating the PM<sub>10</sub> standards prior to January 1, 1989. On October 31, 1990 (55 FR 45799), EPA redefined a Group I area for Connecticut as the City of New Haven; the remainder of the State was designated as Group III (areas with a strong likelihood of attaining the PM<sub>10</sub> NAAQS). Subsequently, after enactment of the CAA on November 15, 1990, New Haven was designated moderate nonattainment for PM<sub>10</sub> in 56 FR 11101 (March 15, 1991).

The air quality in attainment or unclassifiable areas (Groups II and III) are regulated under the prevention of significant deterioration (PSD) program, under which an area's air quality is not allowed to deteriorate beyond prescribed maximum allowable increases in pollutant concentrations (*i.e.*, increments). On February 27, 2003, EPA approved revisions to Connecticut's SIP that implement CAA requirements regarding the PSD program. See 68 FR 9009.

The PSD program, however, does not apply to nonattainment areas. During the period that New Haven has been classified as nonattainment for PM<sub>10</sub>, new major sources or major modifications proposing to locate in New Haven have been required to comply with the nonattainment provisions of Subsection 22a-174-3(l) (Permits Requirements for Nonattainment Areas) of the Regulations of Connecticut State Agencies.

On June 23, 2005, the State of Connecticut formally submitted a redesignation request entitled "Redesignation to Attainment and Limited Maintenance Plan for the City of New Haven PM<sub>10</sub> Nonattainment Area" as a SIP revision. Upon the effective date of today's action, the PM<sub>10</sub> designation status for the City of New Haven under 40 CFR part 81 will be revised to attainment, and Connecticut's PSD program will become applicable in the New Haven maintenance area. Sections below describe how Connecticut has adequately addressed all of the requirements of the CAA for redesignation of New Haven to attainment, and has qualified for use of a LMP for the first 10-year period (2006 to 2015).

###### *B. Summary of Redesignation Request and Maintenance Plan*

###### *(1) How Can a Nonattainment Area Be Redesignated to Attainment?*

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA provides the criteria for redesignation. These criteria are further clarified in a policy and guidance memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards dated September 4, 1992, Procedures for Processing Requests to Redesignate Areas to Attainment. The criteria for redesignation are:

(a) The Administrator determines that the area has attained the applicable NAAQS;

(b) The Administrator has fully approved the applicable SIP for the area under section 110(k) of the CAA;

(c) The State containing the area has met all requirements applicable to the area under Section 110 and part D of the CAA;

(d) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable reductions; and

(e) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA.

## (2) What Is the LMP Option for PM<sub>10</sub> Nonattainment Areas Seeking Redesignation to Attainment, and How Can an Area Qualify for This Option?

On August 9, 2001, EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM<sub>10</sub> nonattainment areas seeking redesignation to attainment (Memo from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled "Limited Maintenance Plan Option for Moderate PM<sub>10</sub> Nonattainment Areas", hereafter called "the Wegman memo"). The policy described in this guidance includes a statistical demonstration that areas meeting certain air quality criteria will, with a high degree of probability, maintain the standard 10 years into the future. Thus, EPA has already provided the maintenance demonstration for areas that meet the air quality criteria outlined in the policy. It follows that future-year emission inventories for these areas and some of the standard analyses to determine transportation conformity with the SIP are no longer necessary.

To qualify for the LMP option, the area should have attained the PM<sub>10</sub> NAAQS and the average PM<sub>10</sub> design values for the area, based upon the most recent five years of air quality data at all monitors in the area, should be at or below the LMP requirement of 98 µg/m<sup>3</sup> for the 24-hour PM<sub>10</sub> NAAQS and 40 µg/m<sup>3</sup> for the annual PM<sub>10</sub> NAAQS. If an area cannot meet this test, it still qualifies for the LMP option if the average design values (ADV) of a site are less than their respective site-specific critical design value (CDV). A CDV is the highest possible ADV at which there is a less than 10 percent risk of future violation of the PM<sub>10</sub> NAAQS. At least five years of data from a monitoring site are required to calculate the site's CDV. Given sufficient site data, a CDV can be found by using a mathematical relationship between the NAAQS, ADV, standard deviation of past design values (a measure of their variability over time), and a selected risk factor (in this case, a 10 percent risk of violation of the PM<sub>10</sub> NAAQS). For further details about the CDV calculation method, see Attachment A of the Wegman memo. Section 2.2 of the Connecticut SIP submittal shows calculations used to derive the CDV for the Stiles Street monitoring site in New Haven, which is the site currently used to assess whether

the city is in attainment with the PM<sub>10</sub> NAAQS.

The CDV test was used to determine whether the New Haven NAA qualifies for the LMP option because the 2003 24-hour ADVs for the PM<sub>10</sub> Federal Equivalent Method (FEM) monitor at the Stiles Street site in New Haven exceeded 98 µg/m<sup>3</sup> for the 24-hour PM<sub>10</sub> NAAQS. A CDV of 124 µg/m<sup>3</sup> for the 24-hour standard was calculated for the Stiles Street site using over five years of data from the FEM monitor and over 10 years of data from a Federal Reference Method (FRM) monitor. All 24-hour ADVs for the Stiles Street site, including the ADV for 2003, have remained below this CDV, indicating a very low probability (less than 1 in 10 chance) of exceeding the 24-hour PM<sub>10</sub> NAAQS in the future. Therefore, this site passes the CDV test and qualifies for the LMP option.

In addition to meeting design value criteria, an area qualifying for the LMP option should expect only limited growth in on-road motor vehicle PM<sub>10</sub> emissions (including fugitive dust) and should pass a motor vehicle regional emissions analysis test designed to show that expected growth in vehicle miles traveled will not cause the area to exceed the margin of safety for the relevant PM<sub>10</sub> standard for a given area (in this case, the CDV for the 24-hour PM<sub>10</sub> NAAQS at the Stiles Street site). In addition to meeting these requirements, the LMP must include an attainment-year emission inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions (See pages A-6 and A-7 of the Wegman memo). Sections below describe how the Connecticut LMP meets each of these requirements.

## (3) How Is Conformity Treated Under the LMP Option?

The transportation conformity rule (40 CFR parts 51 and 93) and the general conformity rule (40 CFR parts 51 and 93) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a federal action conforms to the applicable SIP is to demonstrate that expected emissions from planned actions are consistent with the emissions budget for the area. While EPA's LMP policy does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Emissions budgets in LMP areas are treated as essentially not constraining for the length of the maintenance period

because it is unreasonable to expect that an area satisfying the LMP criteria will experience so much growth during that period of time that a violation of the PM<sub>10</sub> NAAQS would result.

For transportation conformity purposes, EPA concludes that, as long as the area qualifies for the LMP option, emissions in New Haven need not be capped for the maintenance period and, therefore, a regional emissions analysis is not required. Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the "budget test" specified in § 93.158 (a)(5)(i)(A) of the rule for the same reasons that the budgets are essentially considered to be unlimited.

## C. Review of the Connecticut Submittal Addressing the Requirements for Redesignation and Limited Maintenance Plans

### (1) Has the State Demonstrated That the New Haven NAA Has Attained the Applicable NAAQS?

States must demonstrate that an area has attained the PM<sub>10</sub> NAAQS through analysis of ambient air quality data from an ambient air monitoring network representing peak PM<sub>10</sub> concentrations. The data should be stored in the EPA Air Quality System (AQS) database.

The 24-hour PM<sub>10</sub> NAAQS is 150 µg/m<sup>3</sup>. An area has attained the 24-hour standard when the average number of expected exceedances per year is less than or equal to one when averaged over a three-year period (40 CFR 50.6). To make this determination, three consecutive years of complete ambient air quality data must be collected in accordance with federal requirements (40 CFR part 58, including appendices). Table 1 in the Connecticut SIP submittal lists 24-hour design values for 1999 through 2003. The 24-hour design value is below 150 µg/m<sup>3</sup> for each of these years at all PM<sub>10</sub> monitoring sites in Connecticut (range: 31–107 µg/m<sup>3</sup>). There have been no exceedances of the 24-hour PM<sub>10</sub> NAAQS in the New Haven NAA during the past five years. Thus, currently, the expected number of days exceeding the 24-hour standard is zero, and the New Haven NAA has attained the 24-hour PM<sub>10</sub> NAAQS.

The annual PM<sub>10</sub> NAAQS is 50 µg/m<sup>3</sup>. To determine attainment at a monitoring site, the standard is compared to the expected annual average, which is calculated by averaging the arithmetic average from the previous three years. Table 2 in the Connecticut SIP submittal lists annual average design values for 1999 through 2003. These values are below 50 µg/m<sup>3</sup> for each of these years at all PM<sub>10</sub> monitoring sites in

Connecticut (range: 11–37  $\mu\text{g}/\text{m}^3$ ). Thus, the three year annual average is below 50  $\mu\text{g}/\text{m}^3$ , and the New Haven NAA has attained the annual  $\text{PM}_{10}$  NAAQS.

(2) Does the New Haven NAA Have a Fully Approved SIP Under Section 110(k) of the Clean Air Act?

To qualify for redesignation, the SIP for the area must be fully approved under section 110(k) of the CAA, and must satisfy all requirements that apply to the area. EPA approved Connecticut's  $\text{PM}_{10}$  Attainment Plan for New Haven on September 11, 1995 (60 FR 47076). Connecticut's  $\text{PM}_{10}$  attainment plan demonstrated that the implementation of reasonably available control technology and reasonably available control measures (RACT/RACM), as embodied in seven consent orders, is sufficient to attain and maintain the  $\text{PM}_{10}$  NAAQS. Thus, the area has a fully approved nonattainment area SIP under section 110(k) of the CAA.

(3) Has the State Met All Applicable Requirements Under Section 110 and Part D of the Clean Air Act?

Section 107(d)(3)(E)(v) of the CAA requires that a state containing a nonattainment area must meet all applicable requirements under section 110 and Part D of the CAA. EPA interprets this to mean the state must meet all requirements that applied to the area prior to, and at the time of, the submission of a complete redesignation request. The following is a summary of how Connecticut meets these requirements.

(a) Clean Air Act Section 110 Requirements

Section 110(a)(2) of the CAA contains general requirements for state implementation plans. These requirements include, but are not limited to, submittal of a SIP that has been adopted by the state after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring and reporting, provisions for modeling; and provisions for public and local agency participation. For purposes of redesignation, EPA's review of the Connecticut SIP shows that the State has satisfied all requirements under section 110(a)(2) of the CAA.

(b) Part D Requirements

Part D contains general requirements applicable to all areas designated nonattainment. The general requirements are followed by a series of subparts specific to each pollutant. All  $\text{PM}_{10}$  nonattainment areas must meet the general provisions of Subpart 1 and the specific  $\text{PM}_{10}$  provisions in Subpart 4, "Additional Provisions for Particulate Matter Nonattainment Areas." The following paragraphs discuss these requirements as they apply to the New Haven area.

(c) Subpart 1, Section 172(c)

Subpart 1, section 172(c) contains general requirements for nonattainment area plans. A thorough discussion of these requirements may be found in the General Preamble. See 57 FR 13538 (April 16, 1992). The requirements for reasonable further progress and other measures needed for attainment were satisfied with the approved  $\text{PM}_{10}$  Attainment Plan for New Haven. See 60 FR 47076 (September 11, 1995).

(d) Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of actual emissions from all sources in the New Haven  $\text{PM}_{10}$  NAA. The  $\text{PM}_{10}$  Attainment Plan for New Haven that was approved by EPA in 1995 (60 FR 47076) included an emissions inventory for base year 1990. As described in the Attainment Plan, CT DEP determined that the  $\text{PM}_{10}$  nonattainment problem in New Haven was a local problem in the area around the Stiles Street and Yankee Gas monitoring sites, primarily due to re-entrainment of mud and dirt from the unpaved areas by local traffic. To estimate  $\text{PM}_{10}$  emissions from all source sectors, CT DEP used the 1999 National Emissions Inventory (NEI). This inventory represents the level of emissions in the New Haven area during the five-year time period (1999–2003) used to demonstrate that the area qualifies for the LMP option. This inventory shows that fugitive dust sources were the primary contributor to  $\text{PM}_{10}$  in New Haven County, with lesser contributions from on-road, non-road, area (other than fugitive dust), and point sources. EPA is satisfied that the inventory contained in the Attainment Plan and in the NEI is sufficiently accurate and comprehensive to meet the requirement for an emission inventory.

(e) Section 172(c)(5)—New Source Review (NSR)

The CAA Amendments of 1990 contained revisions to the new source

review (NSR) program requirements for the construction and operation of new and modified major stationary sources located in nonattainment areas. The CAA requires states to amend their SIPs to reflect these revisions, but does not require submittal of this element along with the other SIP elements. The CAA established June 30, 1992 as the submittal date for the revised NSR programs (Section 189 of the CAA). In the New Haven Area, the requirements of the Part D NSR program will be replaced by the Prevention of Significant Deterioration (PSD) program and the maintenance area NSR program upon the effective date of redesignation. Revisions to the Part D NSR rules for nonattainment areas and to PSD rules for attainment areas in Connecticut were approved by EPA on February 27, 2003 (68 FR 9009) and can be found in Subsection 22a–174 of the Regulations of Connecticut State Agencies.

(f) Section 172(c)(7) Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements.

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accordance with 40 CFR part 58 to verify attainment status of the area. Connecticut currently (as of December 2004) maintains seven  $\text{PM}_{10}$  monitoring sites. Monitors at these sites are operating in accordance with 40 CFR part 58. The State has committed to continue operating a  $\text{PM}_{10}$  monitoring network, and has agreed (in Hearing Report in Connecticut SIP submittal, DEP Response to Comment 3, p. 4) to maintain a continuous  $\text{PM}_{10}$  FEM or FRM monitor at the Criscuolo Park site, which will replace the Stiles Street site about October 2005 due to highway construction. If Criscuolo Park site becomes unsuitable, a monitor will be maintained at an alternate site agreeable to EPA and CT DEP. This monitor must be maintained over the maintenance period to verify compliance with the  $\text{PM}_{10}$  NAAQS in the New Haven area.

To continue to qualify for the LMP option, Connecticut must ensure that the ADV of the Criscuolo Park  $\text{PM}_{10}$  monitor remains below the monitor's CDV. Connecticut has agreed (in Hearing Report in Connecticut SIP submittal, DEP Response to Comment 4, p. 4) to calculate the ADV for this monitor on an annual basis and to report this value to EPA. When five years of data are available, Connecticut will calculate the CDV for the monitoring site and compare this to the five-year ADV; CDV and ADV values will be reported to EPA annually over the maintenance period.

## (g) Section 172(c)(9) Contingency Measures

The CAA requires that contingency measures take effect if the area fails to meet reasonable further progress (RFP) requirements or fails to attain the NAAQS by the applicable attainment date. EPA approved Connecticut's PM<sub>10</sub> Attainment Plan and Contingency Measures for New Haven on September 11, 1995 (60 FR 47076). Contingency provisions are also required for maintenance plans under Section 175(a)(d). Connecticut provided contingency measures in their LMP. These measures are described below.

## (h) Part D Subpart 4

Part D Subpart 4, Section 189(a), (c) and (e) requirements apply to any moderate nonattainment area before the area can be redesignated to attainment. The requirements which were applicable prior to the submission of the request to redesignate the area must be fully approved into the SIP before redesignating the area to attainment. These requirements include: (i) Provisions to assure that RACM was implemented by December 10, 1993; (ii) Either a demonstration that the plan provided for attainment as expeditiously as practicable but not later than December 31, 1994, or a demonstration that attainment by that date was impracticable;

(iii) Quantitative milestones which were achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

(iv) Provisions to assure that the control requirements applicable to major stationary sources of PM<sub>10</sub> also apply to major stationary sources of PM<sub>10</sub> precursors except where the Administrator determined that such sources do not contribute significantly to PM<sub>10</sub> levels which exceed the NAAQS in the area. These provisions were fully approved into the SIP upon EPA approval of the PM<sub>10</sub> Attainment Plan for New Haven on September 11, 1995 (60 FR 47076).

## (4) Has the State Demonstrated That the Air Quality Improvement Is Due to Permanent and Enforceable Reductions?

The state must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. In making this showing, the state must demonstrate that air quality improvements are the result of actual enforceable emission reductions. This showing should consider emission rates, production capacities, and other related information. The analysis should

assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic. EPA believes that areas that qualify for the LMP will meet the NAAQS even under worst case meteorological conditions.

The maintenance demonstration is considered satisfied for New Haven because the area meets the air-quality criteria in the Wegman memo (pages A-4 and A-5 of the memo) and, thus, has a very low probability (1 in 10) of exceeding the NAAQS in the future. These criteria are met when ADVs for monitoring sites are less than CDVs for those sites with little variability in data over the years, the area expects only limited growth in on-road motor vehicle PM<sub>10</sub> emissions (including fugitive dust), and the area passes a motor vehicle regional emissions analysis test. A more detailed description of the LMP qualifying criteria and how the New Haven area meets these criteria is provided in Section (6).

## (5) Does the Area Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the Clean Air Act?

In this action, EPA is proposing to fully approve the maintenance plan as allowed by the LMP guidance described in Section 6 below.

## (6) Has the State Demonstrated That the New Haven NAA Qualifies for the LMP Option?

The Wegman memo explains the requirements for an area to qualify for the LMP option. First, the area should be attaining the NAAQS. Section 2.0 of the Connecticut SIP submittal summarizes quality-assured ambient monitoring data showing that the New Haven area met both the 24-hour and annual PM<sub>10</sub> NAAQS for the period 1999–2003 and continues to do so. As stated above in Section C(1), EPA has determined that the New Haven area is in attainment with the PM<sub>10</sub> NAAQS.

Second, the design value at each PM<sub>10</sub> monitor for the past five years must be either (1) at or below the margin of safety levels of 98 µg/m<sup>3</sup> for the 24-hour PM<sub>10</sub> NAAQS and 40 µg/m<sup>3</sup> for the annual PM<sub>10</sub> NAAQS, or (2) be less than the site-specific CDV, indicating that the site has a very low probability (1 in 10) of exceeding the NAAQS in the future. EPA's review of AQS data for 1999–2003 shows that New Haven qualifies for the LMP option using the second option. The CDV test is appropriate because, in 2003, one PM<sub>10</sub> monitor (of two) at the New Haven Stiles Street site had a 24-hour design value above 98 µg/m<sup>3</sup> (107 µg/m<sup>3</sup>). Section B (2) above

describes how this site passes the CDV test and qualifies for the LMP option.

Third, the area must meet the motor vehicle regional emissions analysis test. This test determines whether increased emissions from on-road mobile sources could, in the next 10 years, increase concentrations in the area and threaten the assumption of maintenance under the LMP option. Section 3.0 of the Connecticut SIP submittal demonstrates that when adjusted for future on-road mobile emissions, New Haven passes a motor vehicle emissions analysis test with a design value of 102 µg/m<sup>3</sup>, which is less than the (Stiles Street) CDV of 124 µg/m<sup>3</sup> for the 24-hour NAAQS. Thus Connecticut has shown that New Haven qualifies for the LMP option as described in the Wegman memo.

## (7) Does the State Have an Approved Attainment Plan That Includes an Emissions Inventory Which Can Be Used To Demonstrate Attainment of the NAAQS?

The PM<sub>10</sub> Attainment Plan for New Haven that was approved in 1995 (60 FR 47076) includes an emissions inventory which was used to demonstrate attainment of the NAAQS. As described in the Attainment Plan, CT DEP determined that the PM<sub>10</sub> nonattainment problem in New Haven was a local problem in the area around the Stiles Street and Yankee Gas monitoring sites, primarily due to re-entrainment of mud and dirt from the unpaved areas by local traffic. These areas have since been paved.

To estimate PM<sub>10</sub> emissions from all source sectors, CT DEP used the 1999 National Emissions Inventory (NEI). This inventory represents the level of emissions in the New Haven area during the five-year time period (1999–2003) used to demonstrate that the area qualifies for the LMP option. This inventory shows that fugitive dust sources were the primary contributor to PM<sub>10</sub> in New Haven County, with lesser contributions from on-road, non-road, area (other than fugitive dust), and point sources. EPA is satisfied that the inventory contained in the Attainment Plan and in the NEI is sufficiently accurate and comprehensive to meet the requirement for an emission inventory that can be used to demonstrate attainment of the NAAQS.

## (8) Does the LMP Include an Assurance of Continued Operation of an Appropriate EPA-Approved Air Quality Monitoring Network in Accordance With 40 CFR Part 58?

In Section 5.0 of the Connecticut SIP submittal, the CT DEP states that it will continue to maintain a PM<sub>10</sub> network to

verify continued compliance with the PM<sub>10</sub> NAAQS in the New Haven maintenance area. Connecticut has specifically committed to maintaining a FEM monitor for PM<sub>10</sub> at Criscuolo Park (Hearing Report in Connecticut SIP submittal, DEP Response to Comment 3, p. 4). This site will replace the Stiles Street site about October 2005 due to highway construction.

(9) Does the Plan Meet the Clean Air Act Requirements for Contingency Provisions?

Section 175A of the CAA states that a maintenance plan must include contingency measures, as necessary, to promptly correct any violation of the NAAQS which may occur after redesignation of the area to attainment. As explained in the Wegman memo, these contingency measures do not have to be fully adopted at the time of redesignation. The New Haven PM<sub>10</sub> LMP contains a Contingency Plan (Section 6.0 of the Connecticut SIP submittal). This plan incorporates contingency measures in the approved Attainment Plan (60 FR 47076) plus procedures that CT DEP will follow if a measured violation of the PM<sub>10</sub> NAAQS occurs after redesignation.

The contingency plan would be activated in the event of a potential violation of the PM<sub>10</sub> NAAQS, which under the LMP option is 40 µg/m<sup>3</sup> for the annual PM<sub>10</sub> NAAQS and 98 µg/m<sup>3</sup> for the 24-hour PM<sub>10</sub> NAAQS. These limits will be effective until five years of PM<sub>10</sub> FEM monitoring data are available for the Criscuolo Park site, which is scheduled to replace the Stiles Street site about October 2005. When five years of data are available, CDVs can be calculated for the PM<sub>10</sub> annual and 24-hour NAAQS for Criscuolo Park. If ADVs exceed these new CDV, the New Haven PM<sub>10</sub> maintenance area would no longer qualify for the LMP option, and a full maintenance would be required.

If a measured violation of the PM<sub>10</sub> NAAQS occurs, CT DEP will “immediately” (defined as within several working days in Hearing Report in Connecticut SIP submittal, DEP Response to Comment 5, p. 5) determine the validity of data by verifying all monitor operating parameters and quality assurance procedures. Once the violation is confirmed, the CT DEP will examine all activities in the vicinity of the site, such as traffic patterns and meteorological conditions, and determine the likely cause of the violation. CT DEP will then consult with the appropriate local, regional or state agency to design and implement a control remedy.

If the control remedy is ineffectual (*i.e.*, another verified exceedance of the PM<sub>10</sub> NAAQS occurs), CT DEP will undertake a full emission inventory of the area and do modeling studies to identify additional control measures, and to estimate future PM<sub>10</sub> reductions and expected air quality at the violating monitor.

EPA concludes that these measures and commitments meet the requirement for contingency provisions of CAA Section 175A(d).

(10) Has the State Met Conformity Requirements?

(a) Transportation Conformity

Under the LMP policy, emissions budgets are treated as essentially not constraining for the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a NAAQS violation would result. While areas with maintenance plans approved under the LMP option are not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the state will still need to document and ensure that: (a) Transportation plans and projects provide for timely implementation of SIP transportation control measures (TCMs) in accordance with 40 CFR 93.113; (b) transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108; (c) the MPO's interagency consultation procedures meet applicable requirements of 40 CFR 93.105; (d) conformity of transportation plans is determined no less frequently than every three years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104; (e) the latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111; (6) projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and (7) project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

(b) General Conformity

As noted above, under the LMP policy, emissions budgets are treated as essentially not constraining for the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a NAAQS violation

would result. As long as the New Haven area qualifies for the LMP option, federal actions subject to the general conformity rule are considered to satisfy the “budget test” specified in § 93.158(a)(5)(i)(A) of the rule.

### III. Final Action

EPA is approving the LMP for the New Haven PM<sub>10</sub> nonattainment area (New Haven NAA) in the State of Connecticut, and is granting a request by the State to redesignate the New Haven NAA to attainment for the NAAQS for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective December 12, 2005 without further notice unless the Agency receives relevant adverse comments by November 14, 2005.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 12, 2005 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May

22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it 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).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection

burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 12, 2005. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, PM<sub>10</sub>, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

##### 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 26, 2005.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

■ Parts 52 and 81 of chapter I, title 40 of the Code of Federal Regulations are amended as follows:

#### PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

■ 2. A new § 52.378 is added to subpart H to read as follows:

#### § 52.378 Control strategy: PM<sub>10</sub>

(a) Approval—On June 23, 2005, the Connecticut Department of Environmental Protection submitted a request to redesignate the City of New Haven PM<sub>10</sub> nonattainment area to attainment for PM<sub>10</sub>. The redesignation request and the initial ten-year maintenance plan (2006–2015) meet the redesignation requirements in sections 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively.

(b) Approval—On June 23, 2005, the Connecticut Department of Environmental Protection (CT DEP) submitted a request to establish a Limited Maintenance Plan (LMP) for the City of New Haven PM<sub>10</sub> attainment area for the area's initial ten-year maintenance plan (2006–2015). The State of Connecticut has committed to: maintain a PM<sub>10</sub> monitoring network in the New Haven PM<sub>10</sub> maintenance area; implement contingency measures in the event of an exceedance of the PM<sub>10</sub> National Ambient Air Quality Standards (NAAQS) in the maintenance area; coordinate with EPA in the event the PM<sub>10</sub> design value in the maintenance area exceeds 98 µg/m<sup>3</sup> for the 24-hour PM<sub>10</sub> NAAQS or 40 µg/m<sup>3</sup> for the annual PM<sub>10</sub> NAAQS; and to verify the validity of the data and, if warranted based on the data review, develop a full maintenance plan for the maintenance area. The LMP satisfies all applicable requirements of section 175A of the Clean Air Act. Approval of the LMP is conditioned on maintaining levels of ambient PM<sub>10</sub> below a PM<sub>10</sub> design value criteria of 98 µg/m<sup>3</sup> for the 24-hour PM<sub>10</sub> NAAQS and 40 µg/m<sup>3</sup> for the annual PM<sub>10</sub> NAAQS. For the Criscuolo Park site, Connecticut still qualifies for the LMP option if, based on five years of site data, the average design values (ADVs) of the continuous PM<sub>10</sub> monitor are less than the site-specific critical design value (CDV). If the LMP criteria are no longer satisfied, Connecticut must develop a full maintenance plan to meet Clean Air Act requirements.

#### PART 81—[AMENDED]

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

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

■ 2. In § 81.307, the "Connecticut-PM-10" table is amended by revising the entry for "New Haven County City of New Haven" to read as follows:

#### § 81.307 Connecticut.

\* \* \* \* \*



## CONNECTICUT—PM-10

Designated area	Designation		Classification	
	Date	Type	Date	Type
New Haven County City of New Haven .....	12/12/05	Attainment.		
*	*	*	*	*

\* \* \* \* \*

[FR Doc. 05-20418 Filed 10-12-05; 8:45 am]  
BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[ET Docket No. 04-295; RM-10865; FCC 05-153]

### Communications Assistance for Law Enforcement Act and Broadband Access and Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) adopts a rule establishing that providers of facilities-based broadband Internet access services and providers of interconnected voice over Internet Protocol (VoIP) services—meaning VoIP service that allows a user generally to receive calls originating from and to terminate calls to the public switched telephone network (PSTN)—must comply with the Communications Assistance for Law Enforcement Act (CALEA). This new rule will enhance public safety and ensure that the surveillance needs of law enforcement agencies continue to be met as Internet-based communications technologies proliferate.

**DATES:** *Effective Date:* This rule is effective November 14, 2005.

*Compliance Date:* Newly covered entities and providers of newly covered services must comply with CALEA within 18 months of November 14, 2005.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Carol Simpson, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418-2391.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's First Report and Order (1st R&O) in ET Docket No. 04-295, FCC 05-153,

adopted August 5, 2005, and released September 23, 2005. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via e-mail at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

### Synopsis of the First Report and Order

1. *Background.* In response to concerns that emerging technologies such as digital and wireless communications were making it increasingly difficult for law enforcement agencies to execute authorized surveillance, Congress enacted CALEA on October 25, 1994. CALEA was intended to preserve the ability of law enforcement agencies to conduct electronic surveillance by requiring that telecommunications carriers and manufacturers of telecommunications equipment modify and design their equipment, facilities, and services to ensure that they have the necessary surveillance capabilities. The Commission began its implementation of CALEA with the release of a Notice of Proposed Rulemaking in 1997 (62 FR 63302, November 27, 1997). Since that time, the Commission has taken several actions and released numerous orders implementing CALEA's requirements.

2. On March 10, 2004, the Department of Justice, the Federal Bureau of Investigation, and the Drug Enforcement Administration (collectively, DOJ) filed a petition asking the Commission to declare that broadband Internet access services and VoIP services are covered by CALEA. The Petition also requested that the Commission initiate a rulemaking proceeding to resolve, on an expedited basis, various outstanding issues associated with the implementation of CALEA. The Commission declined to issue a

declaratory ruling, finding instead that it was necessary to compile a more complete record on the factual and legal issues surrounding the applicability of CALEA to broadband Internet access services and VoIP services, and thus issued a Notice of Proposed Rulemaking (NPRM) (69 FR 56976, September 23, 2004).

3. The Commission initiated this proceeding both to undertake a comprehensive and thorough examination of the appropriate legal and policy framework of CALEA, and to respond to DOJ's Petition asking the Commission to seek comment on the various outstanding issues associated with the implementation of CALEA, including the potential applicability of CALEA to broadband Internet access services and VoIP services. The NPRM indicated that the Commission would analyze the applicability of CALEA to broadband Internet access services and VoIP services under section 102(8)(B)(ii), a provision of CALEA upon which the Commission had never before relied. That provision—the Substantial Replacement Provision (SRP)—requires the Commission to deem certain service providers to be telecommunications carriers for CALEA purposes even when those providers are not telecommunications carriers under the Communications Act of 1934, as amended (Communications Act). The NPRM indicated that the Commission had never before exercised its section 102(8)(B)(ii) authority to identify additional entities that fall within CALEA's definition of

“telecommunications carrier,” and had never before solicited comment on the discrete components of that subsection.

4. The NPRM sought comment, among other things, on the Commission's tentative conclusions that: (1) Congress intended the scope of CALEA's definition of “telecommunications carrier” to be more inclusive than that of the Communications Act; (2) facilities-based providers of any type of broadband Internet access service are subject to CALEA; (3) “managed” VoIP services are subject to CALEA; and (4) the phrase “a replacement for a substantial portion of the local telephone exchange service” in section