

environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

**List of Subjects in 40 CFR Part 52**

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

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

Dated: September 14, 2006.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[EPA-R01-OAR-2006-0226; FRL-8231-7]

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Maine; Redesignation of the Portland, ME and the Hancock, Knox, Lincoln and Waldo Counties, Maine 8-Hour Ozone Nonattainment Areas to Attainment for Ozone**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve: A request to redesignate two 8-hour ozone National Ambient Air Quality Standard (NAAQS) nonattainment areas to attainment for the 8-hour ozone NAAQS; and a State Implementation Plan (SIP) revision containing a separate 10-year maintenance plan for each area. The two areas are the Portland, Maine 8-hour ozone nonattainment area and the Hancock, Knox, Lincoln and Waldo Counties (Midcoast), Maine 8-hour ozone nonattainment area. EPA is also providing information on the status of its transportation conformity adequacy determination for the new motor vehicle emissions budgets (MVEBs) for the year 2016 that are contained in the 10-year 8-hour ozone maintenance plans for each area. EPA is proposing to approve MVEBs for both areas.

**DATES:** Written comments must be received on or before November 16, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA-R01-OAR-2006-OAR-0226 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail:* [arnold.anne@epa.gov](mailto:arnold.anne@epa.gov).

3. *Fax:* (617) 918-0047.

4. *Mail:* "Docket Identification Number EPA-R01-OAR-2006-OAR-0226", Anne Arnold, U.S.

Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114-2023.

5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, 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 legal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA-R01-OAR-2006-OAR-0226. 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](http://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 through [www.regulations.gov](http://www.regulations.gov) or e-mail, information that you consider to be CBI or otherwise protected. The [www.regulations.gov](http://www.regulations.gov) Web site is an "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 [www.regulations.gov](http://www.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. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. 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 [www.regulations.gov](http://www.regulations.gov) or in hard copy at Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114-2023. EPA requests that if at all possible, you contact the

person 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 legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Burkhart, 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) 918-1664, fax number (617) 918-0664, e-mail [Burkhart.Richard@epa.gov](mailto:Burkhart.Richard@epa.gov).

### 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 the Federal Docket Management System at [www.regulations.gov](http://www.regulations.gov), and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section of this **Federal Register**, 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 State Air Agency: The Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333-0017.

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### I. What Is EPA Proposing?

EPA is proposing to take several related actions. EPA is proposing to determine that both the Portland and

the Midcoast, Maine 8-hour ozone nonattainment areas have attained the 8-hour ozone standard. EPA is also proposing to approve a request to change the legal designation of the two areas from nonattainment to attainment for the 8-hour ozone National Ambient Air Quality Standards (NAAQS). In addition, EPA is proposing to approve a 10-year maintenance plan for each area and motor vehicle emissions budgets (MVEBs) for each area.

The Portland nonattainment area is located in southern Maine. The Portland nonattainment area consists of 57 coastal towns and cities located in York County (partial), Cumberland County (partial), Sagadahoc County (full) along with Durham, Maine, a town in Androscoggin County. The Portland area is designated as "marginal" nonattainment for the 8-hour ozone standard. (See 40 CFR 81.320) The Midcoast area is located north of the Portland area and consists of 55 coastal towns and islands in Hancock, Knox, Lincoln, and Waldo Counties (all are partial Counties), and is designated as "subpart 1, basic" for the 8-hour ozone standard. (See 40 CFR 81.320)

### II. What Is the Background for These Proposed Actions?

The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years (2001-2003) of air quality data. The **Federal Register** notice making these designations was signed on April 15, 2004, and published on April 30, 2004, (69 FR 23857). The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for nonattainment areas. (Both are found in Title I, Part D of the CAA.) Subpart 1 (which EPA refers to as "basic" nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as "classified" nonattainment) provides more specific requirements for ozone nonattainment areas. Some areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based

upon their 8-hour design values. The Portland and Midcoast areas were designated as 8-hour ozone nonattainment areas by EPA on April 30, 2004, (69 FR 23857). The 2004 classification for the Portland 8-hour ozone nonattainment area is based on air quality monitoring data from 2001-2003. The Portland area is classified as marginal. The 2004 classification for the Midcoast 8-hour ozone nonattainment area is also based on air quality monitoring data from 2001-2003. The Midcoast area is classified as subpart 1, basic.

Control requirements are linked to each classification. Areas with more serious ozone pollution are subject to more prescribed requirements. The requirements are designed to bring areas into attainment by their specified attainment dates. The control requirements and dates by which attainment needs to be achieved vary with the area's classification. For example, marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm). (See 69 FR 23857 (April 30, 2004) for further information.) The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in Appendix I of 40 CFR part 50.

On August 3, 2006, Maine requested redesignation to attainment for the 8-hour ozone standard for the both areas. The redesignation request includes three years of complete, quality-assured data for the period of 2003 through 2005, indicating the 8-hour NAAQS for ozone had been achieved for the both areas. The data satisfies the CAA requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

### III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and,

(5) The state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

- “Ozone and Carbon Monoxide Design Value Calculations,” Memorandum from Bill Laxton, June 18, 1990;
- “Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,” Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
- “Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,” Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
- “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
- “State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,” Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
- “Technical Support Documents (TSD’s) for Redesignation Ozone and

Carbon Monoxide (CO) Nonattainment Areas,” Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

- “State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,” Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
- Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, “Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,” dated November 30, 1993;
- “Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,” Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
- “Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,” Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

### IV. Why Is EPA Taking These Actions?

On August 3, 2006,<sup>1</sup> the state requested redesignation of the both the Portland, Maine and the Midcoast, Maine 8-hour ozone nonattainment areas to attainment for the 8-hour ozone standard. EPA believes that both areas have attained the standard and have met the requirements for redesignation set forth in section 107(d)(3)(E). EPA is proposing to approve the maintenance plans to fulfill the requirements of section 175(A). EPA is also proposing to approve the MVEB’s for these two areas. EPA has previously determined that the 2016 budgets are adequate.

### V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the official designation of both the Portland and the Midcoast, Maine 8-hour ozone nonattainment

areas for the 8-hour ozone NAAQS found at 40 CFR 81.320. It would also incorporate into the Maine SIP plans for maintaining the 8-hour ozone NAAQS through 2016, for both areas. The maintenance plans include contingency measures to remedy future violations of the 8-hour NAAQS. In addition MVEBs are established for the year 2016. The MVEBs will be used to assure that plans for the area’s transportation system which effect vehicle miles traveled, do not cause motor vehicle emissions in excess of levels consistent with maintaining attainment of the NAAQS.

### VI. What Is EPA’s Analysis of the Portland Redesignation Request?

EPA is proposing to determine that the Portland nonattainment area has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The basis for EPA’s proposed determination is as outlined below.

#### A. The Portland Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the Portland area has attained the 8-hour ozone NAAQS. For ozone, an area is attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I, based on three of complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. This 3-year average is known as the design value. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA’s Air Quality Data System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

Maine submitted ozone monitoring data for the April through September ozone season from 2003 to 2005. This data has been quality assured and is recorded in AQS. The data are summarized in Table 1:

<sup>1</sup> The ME DEP submitted the redesignation request on August 3, 2006. The submittal showed evidence of a public hearing, but did not include

the public hearing transcript, which was not available at that time. The ME DEP submitted the

public transcript on August 30, 2006. The transcript is available in the docket for this action.

TABLE 1.—8-HOUR OZONE (PARTS PER MILLION, PPM) FOR THE PORTLAND AREA

Monitor	County	4th High 8-hr ozone average			3-Year average (design value)
		2003	2004	2005	
Kittery .....	York .....	0.080	0.080	0.072	0.077
Kennebunkport .....	York .....	0.076	0.076	0.072	0.074
West Buxton .....	York .....	0.069	0.075	0.076	0.073
Cape Elizabeth .....	Cumberland .....	0.073	0.068	0.073	0.072
Reid State Park .....	Sagadahoc .....	0.074	0.069	0.068	0.070
Area Design Value .....	.....	.....	.....	.....	0.077

The design value for an area is the highest design value recorded at any monitor in the area. Therefore, as shown in Table 1, the design value for the Portland area is 0.077 ppm, which meets the standard as described above. Preliminary ozone data for the summer of 2006 still show the area as being in attainment.

In addition, as discussed below with respect to the maintenance plan, Maine has committed to continue monitoring in these areas in accordance with 40 CFR Part 58. In summary, EPA believes that the data submitted by Maine provides an adequate demonstration that the Portland area has attained the 8-hour ozone NAAQS.

*B. The Portland Area Has Met All Applicable Requirements for Purposes of Redesignation Under Section 110 and Part D of the CAA and the Area Has a Fully Approved SIP Under Section 110(k) for Purposes of Redesignation*

EPA has determined that Maine has met all applicable SIP requirements for the Portland area for purposes of redesignation under section 110 of the CAA (general SIP requirements). EPA has also determined that the Maine SIP meets applicable SIP requirements for purposes of redesignation under Part D of Title I of the CAA (requirements specific to marginal nonattainment areas, see section 107(d)(3)(E)(v)). In addition, EPA has determined that the Maine SIP is fully approved with respect to all applicable requirements for purposes of redesignation (see section 107(d)(3)(E)(ii)). In making these determinations, EPA ascertained what requirements are applicable to the area and that they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E).

Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993 and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit—Ann Arbor, MI). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A (c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424 (May 12, 2003).

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emission limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of Title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirement (Prevention of Significant Deterioration (PSD) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent

sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants in accordance with the NO<sub>x</sub> SIP call, October 27, 1998 (63 FR 57356), amendments to the NO<sub>x</sub> SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25161). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland–Akron–Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65

FR 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR 50399, October 19, 2001).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request, except for the submission of the 2002 base year inventory, which Maine has submitted and EPA has approved (71 FR 14815; March 24, 2006). Therefore EPA believes that the State has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Act.

## 2. Part D Nonattainment Area Requirements under the 8-Hour Standard

The Portland area was designated a marginal nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements for all nonattainment areas. Section 182 of the CAA, found in subpart 2 of Part D, establishes additional specific requirements depending on the area's nonattainment classification. For a marginal nonattainment area for the 8-hour standard, such as the Portland area, section 182(a) sets forth requirements. Section 184 also sets forth additional requirements for this area, due to its location within the Ozone Transport Region (OTR).

With respect to the 8-hour standard, EPA has determined that the Maine SIP meets all applicable SIP requirements under Part D of the CAA, because no 8-hour ozone standard Part D requirements applicable for purposes of redesignation became due prior to submission of the area's redesignation request, except for the submission of the 2002 base year inventory, which Maine has submitted and EPA has approved (71 FR 14815; March 24, 2006). Under part D, an area's classification (marginal, moderate, serious, severe, and extreme) indicates the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, found in section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

For purposes of evaluating this redesignation request, the applicable part D, subpart 1 requirements for all nonattainment areas are contained in section 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). (See also 68 FR 4852–3 in St. Louis NPR for discussion of section 172 requirements.) In addition to the fact that certain Part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the conformity, new source review requirements, and OTR requirements as not requiring approval prior to redesignation.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure the federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (“transportation conformity”) as well as to all other Federally supported or funded projects (“general conformity”). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (December 7, 1995) (Tampa, FL).

Maine has a fully approved NSR program (61 FR 5690; February 14, 1996). Even if Maine did not have a fully approved NSR program, EPA has interpreted the section 184 OTR requirements, including NSR, as not being applicable for purposes of redesignation. The rationale for this is based on two factors. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have New Source Review, as well as reasonably available control requirements (RACT)

and Vehicle Inspection and Maintenance (I/M) programs even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the area by virtue of its designation and classification. See 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–32 (May 7, 1997). Thus, EPA proposes to find that the Portland area has satisfied all 8-hour ozone standard requirements applicable for purposes of section 107(d)(3)(E) under Part D of the CAA.

## 3. Part D Nonattainment Area Requirements Under the 1-Hour Standard and EPA's Anti-Backsliding Rules

Prior to its designation as an 8-hour ozone nonattainment area, the Portland area was designated moderate for the 1-hour ozone standard. While, on June 15, 2005, the 1-hour ozone standard was revoked (see 40 CFR 50.9(b)), under EPA's anti-backsliding rules, areas designated nonattainment for the 1-hour standard at the time of the 8-hour ozone designations remained subject to certain control measures that applied by virtue of the area's classification for the 1-hour NAAQS. 40 CFR 51.900 *et seq.*, see also 70 FR 30592, 30604 (May 26, 2005). The applicable Part D 1-hour standard requirements for purposes of redesignation are those that continue to apply under EPA's anti-backsliding rules, which were promulgated in conjunction with the implementation of the 8-hour NAAQS. 40 CFR 51.900 *et seq.*, as amended 70 FR 30592, 30604 (May 26, 2005).

40 CFR 51.905(a)(1) prescribes the 1-hour NAAQS requirements that continue to apply after revocation of the 1-hour NAAQS to former 1-hour ozone nonattainment areas. Section 51.905(a)(1)(i) provides that:

“The area remains subject to the obligation to adopt and implement the applicable requirements as defined in section 51.900(f), except as provided in paragraph (a)(1)(iii) of this section, and except as provided in paragraph (b) of this section \* \* \*.” Section 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), states that: “Applicable Requirements means for an area the following requirements to the extent such requirements apply or applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at the time the Administrator signs a final rule designating the area for the 8-hour standard as nonattainment, attainment, or unclassifiable.” For a former 1-hour moderate area, such as Portland, the applicable requirements are as follows:

(1) Reasonably available control technology (RACT);  
 (2) Inspection and maintenance programs (I/M);  
 (3) Major source applicability cut-offs for purposes of RACT;  
 (4) Rate of Progress (ROP) Reductions;  
 (5) NO<sub>x</sub> requirements under section 182(f) of the CAA; and

(6) Attainment demonstration or an alternative as provided under § 51.905(a)(1)(ii).  
 Table 2 lists the control measures, effective in the Portland area. The table shows how the applicable requirements have been met for the Portland area. Thus, EPA believes that Portland has

met all applicable Part D requirements under the 1-hour standard for purposes of redesignation under the 8-hour standard. In addition, Table 2a lists other programs Maine has implemented to address emissions of ozone precursors.

TABLE 2.—CONTROL MEASURES IN THE PORTLAND OZONE NONATTAINMENT AREA

Name of measure	Type of measure	Approval status
On-board refueling vapor recovery .....	Federal Rule .....	Promulgated at 40 CFR part 86.
Federal motor vehicle control program .....	Federal Rule .....	Promulgated at 40 CFR part 86.
Federal non-road heavy duty diesel engines .....	Federal Rule .....	Promulgated at 40 CFR part 89.
Federal non-road gasoline engines .....	Federal Rule .....	Promulgated at 40 CFR part 90.
Automotive refinishing .....	Federal Rule .....	Promulgated at 40 CFR part 59, subpart B.
Consumer & commercial products .....	Federal Rule .....	Promulgated at 40 CFR part 59, subpart C.
AIM Surface Coatings .....	Federal Rule .....	Promulgated at 40 CFR part 59, subpart D.
1990 Base Year Emissions Inventory .....	Section 182 CAA Requirement.	SIP approved (62 FR 9081; 2/28/97).
2002 Base Year Emissions Inventory .....	Section 182 CAA Requirement.	SIP approved (71 FR 14815; 3/24/06).
1-Hour Emissions Statements .....	Section 182 CAA Requirement.	SIP approved (60 FR 2524; 1/10/95).
5% Reduction Plan in Lieu of 1-Hour Ozone Attainment Demonstration.	Section 182 CAA Requirement.	SIP approved (71 FR 14815, 3/24/06).
15% VOC Reduction Plan .....	Section 182 CAA Requirement.	SIP approved (71 FR 14815, 3/24/06).
VOC RACT pursuant to sections 182(a)(2)(A) and 182(b)(2)(B) of CAA.	Section 182 CAA Requirement.	SIPs approved (57 FR 3046; 2/13/92), (58 FR 15281; 3/22/93), (59 FR 31154; 6/17/94), (60 FR 33730; 6/29/95).
VOC RACT pursuant to sections 182(b)(2)(A) and (C) of CAA.	Section 182 CAA Requirement.	SIPs approved (65 FR 20749; 4/18/00), (67 FR 35439; 5/20/02).
NO <sub>x</sub> RACT .....	Section 182 CAA Requirement.	SIP approved (67 FR 57154; 9/9/02).

TABLE 2A.—NEW SOURCE REVIEW PROGRAM AND OTHER CLEAN AIR ACT PROGRAMS IN THE PORTLAND OZONE NONATTAINMENT AREA

Name of measure	Type of measure	Approval status
New Source Review .....	CAA Requirement .....	SIP approved (61 FR 5690; 2/14/96).
Vehicle Inspection and Maintenance Program .....	Ozone Transport Region Requirement.	SIP approved (66 FR 1871; 1/10/01).
Stage II Vapor Recovery .....	Ozone Transport Region Requirement.	SIP approved (61 FR 53636; 10/15/96).
Low RVP Gasoline .....	State Initiative .....	SIP approved (67 FR 10099; 3/6/02).
Solvent Cleaners .....	State Initiative .....	SIP approved (70 FR 30367; 05/26/05).
NO <sub>x</sub> Control Program .....	State Initiative .....	SIP approved (70 FR 11879; 03/10/05).
Emissions from Smaller-Scale Electric Generating Resources.	State Initiative .....	SIP approved (70 FR 30373; 05/26/05).
Architectural and Industrial Maintenance (AIM) Coatings	State Initiative .....	SIP approved (71 FR 13767; 03/17/06).
Control of Emissions of Volatile Organic Compounds from Consumer Products.	State Initiative .....	SIP approved (70 FR 61382; 10/24/05).
Mobile Equipment Repair and Refinishing .....	State Initiative .....	SIP approved (70 FR 30367; 05/26/05).
Portable Fuel Container Spillage Control .....	State Initiative .....	SIP approved (70 FR 6352; 02/07/05).

4. The Portland Area has a Fully Approved Applicable SIP for Purposes of Redesignation under Section 110(k) of the CAA

EPA has fully approved the applicable Maine SIP for purposes of redesignation for the Portland area under section 110(k) of the CAA. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo,

p. 3 *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998), *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Maine has adopted and submitted and EPA has fully approved at various times provisions addressing

the various SIP elements applicable in the Portland area under the 1-hour standard (see Table 2).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable

for purposes of redesignation have yet become due, except for the submission of the 2002 base year inventory, which Maine has submitted and EPA has approved (71 FR 14815 (March 24, 2006)), and therefore they need not be approved into SIP prior to redesignation.

*C. The Air Quality Improvement in the Portland Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions*

EPA believes that the state has demonstrated that the observed air quality improvement in the Portland area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. EPA approved Maine's SIP control strategy for the Portland area, including rules and the emission reductions achieved as a result of those rules that are enforceable. Several Federal and statewide rules are in place which have improved the ambient air quality in this area. (See Tables 2 and 2a above for a list of control measures and other CAA requirements.) The emission inventories for the Portland area show that between 2002 (the ozone season for which the area was classified) and 2005 (the year the area came into attainment), VOC emissions were reduced by over 10 tons per summer day and NO<sub>x</sub> emissions were reduced by over 19 tons per summer day. Ozone precursor emissions were also reduced in upwind states.

The Maine submittal discusses the meteorological data for the years 2003, 2004 and 2005, and for many of the years leading up to 2003. The Maine submittal has numerous graphs and charts of ozone data, ozone precursor data, and meteorological data for the Portland area. These data all support the claim that the downward trend in ozone data is not due to favorable meteorology, but is due to permanent and enforceable reductions in ozone precursor emissions, both within the state and upwind from the state. EPA agrees with Maine's analysis on ozone trends. EPA agrees the downward trend in ozone in Maine has been occurring for several ozone seasons. The meteorology for the Portland area shows that for some of these ozone seasons the summers have been warmer than average, while others have been cooler than average, but the weather over the past several ozone

seasons has not been unfavorable to ozone formation. In short, the air quality improvement in the Portland area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal air pollution control regulations and other permanent and enforceable reductions, not favorable meteorology. Therefore, EPA finds this requirement is met for the Portland area.

*D. The Portland Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA*

In conjunction with its request to redesignate the Portland nonattainment area to attainment status, Maine submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the Portland area for at least 10 years after redesignation.

1. What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the ten years following the initial ten-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

- (a) An attainment emissions inventory;
- (b) A maintenance demonstration;
- (c) A monitoring network;
- (d) Verification of continued attainment; and
- (e) A contingency plan.

2. What Is EPA's Analysis of the Portland Maintenance Plan?

(a) *Attainment Emissions Inventory*—Maine selected 2005 as the attainment year for purposes of demonstrating attainment of the 8-hour ozone NAAQS. The 2005 VOC and NO<sub>x</sub> emission estimates for the Portland area were developed consistent with EPA guidance and are summarized in Table 3 below. Point source emissions were obtained using 2004 data collected pursuant to Maine's Chapter 137 Emission Statement regulation; projections were made to 2005, 2009, and 2016 using economic-based growth factors. Non-road mobile emissions were calculated using the most recent NONROAD Model. On-road mobile source emissions were calculated using MOBILE 6.2 for 2005, 2009, and 2016. Area source emissions for 2002 were derived from Maine DEP's submittal made to the EPA's national emissions inventory (NEI) for 2002, and modified as described in support material submitted by Maine DEP to EPA. The 2002 area emissions were then projected to 2005, 2009, and 2016.

(b) *Maintenance demonstration*—Maine's August 3, 2006 SIP submittal includes a 10-year maintenance plan for the Portland area as required by section 175A of the Act. This demonstration shows compliance and maintenance of the 8-hour ozone standard by assuring that current and future emissions of VOC and NO<sub>x</sub> remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25430–25432 (May 12, 2003).

Maine used 2005 as the base year, 2009 was chosen as the interim year and 2016 is the "out year," which as required, is at least 10 years after the time necessary for EPA to review and approve the maintenance plan. (In addition, per 40 CFR part 93, a MVEB must be established for the last year of the maintenance plan. MVEBs are discussed in Section VII below.) Table 3 shows the emissions inventories for 2005, 2009 and 2016, for the Portland area. The emissions inventory shows a downward trend in precursor emissions data from 2005, through 2009 and continuing on until 2016. The decreases in emissions are a requirement of a maintenance plan. Maine has fulfilled this requirement.

TABLE 3.—ATTAINMENT (2005), INTERIM (2009) AND MAINTENANCE (2016) INVENTORIES FOR THE PORTLAND NONATTAINMENT AREA (3 COUNTIES)<sup>1</sup>

[All emissions expressed in tons per summer week day]

Category	Subcategory	2005 VOC	2005 NO <sub>x</sub>	2009 VOC	2009 NO <sub>x</sub>	2016 NO <sub>x</sub>	2016 NO <sub>x</sub>
Point		4.220	10.480	4.540	11.140	5.350	12.990
Area		41.557	6.301	42.579	6.491	47.331	6.723
Mobile	Onroad <sup>2</sup>	27.033	55.328	20.018	38.849	13.243	19.078
Mobile	Nonroad	20.592	12.020	17.917	10.170	15.560	6.801
Mobile	Locomotives	0.030	0.849	0.027	0.747	0.024	0.620
Total		93.432	84.978	85.081	67.397	81.508	46.212
Change in emissions from 2005				-8.351	-17.581	-11.924	-38.766

<sup>1</sup> The emissions in the table are based on an inventory for three entire counties (Cumberland, Sagadahoc, and York Counties) rather than the somewhat smaller 57 town Portland nonattainment area. EPA believes it is reasonable to use countywide inventories for the purpose of this re-designation demonstration even though the nonattainment area itself includes the 57 towns in these three counties nearest the coast. The Agency concludes that the distribution of emissions for each source category across the counties will generally track population, which is highest along the coast. Therefore, the declining emissions trends reflected in this table for the three entire counties should generally be true for 57 town nonattainment area as well.

<sup>2</sup> To provide a consistent comparison with the other source categories, the mobile onroad inventory numbers are based on an inventory for three entire counties (Cumberland, Sagadahoc and York Counties) and are therefore larger than motor vehicle emissions calculated for the 57 town Portland nonattainment area shown in Table 4.

(c) *Monitoring Network*—There are currently 5 monitors measuring ozone in the Portland area. The State of Maine has committed in the maintenance plan to the necessary continued operation of the ozone monitoring network in compliance with 40 CFR Part 58, and has, therefore, addressed the requirement for continued ozone monitoring in this area.

(d) *Verification of Continued Attainment*—The state has the legal authority to enforce and implement the requirements of the ozone maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emission control contingency measures determined to be necessary to correct future ozone attainment problems. To implement the ozone maintenance plan, the state will continue to monitor ozone levels in the area. Maine has also committed to track the progress of the maintenance demonstration by periodically updating their emission inventory. Maine has committed to do this annually. The update will be based, in part, on the annual update of the NEI, and will indicate new source growth and other changes from the attainment inventory, including changes in vehicle miles traveled or in traffic patterns and changes in MOBILE6.2 or its successor.

(e) *The Maintenance Plan's Contingency Measures*—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the Act requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the

state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment (see section 175A(d)).

As stated in the Portland area maintenance plan, the Maine DEP has committed to the following procedure. At the conclusion of each ozone season, the Maine DEP will evaluate whether the design value for the Portland area is above or below the 8-hour ozone standard. If the design value is above the standard, the DEP will evaluate the potential causes of this design value increase. The DEP will examine whether this increase is due to an increase in local in-state emissions or an increase in upwind out-of-state emissions. If an increase in in-state emissions is determined to be a contributing factor to the design value increase, Maine will evaluate the projected in-state emissions for the Portland area for the ozone season in the following year. If in-state emissions are not expected to satisfactorily decrease in the following ozone season in order to mitigate the violation, Maine will implement one or more of the contingency measures listed

in this section, or substitute a new VOC or NO<sub>x</sub> control measure(s) to achieve additional in-state emissions reductions.

The contingency measures(s) will be selected by the Governor or the Governor's designee within 6 months of the end of the ozone season for which contingency measures have been determined necessary. Possible contingency measures include:

#### *Adhesives*

Establish VOC content limits for industrial and commercial application of solvent-based adhesives and sealants based on California Air Resources Board (CARB) suggested RACT controls (1998).

#### *Asphalt Paving*

Reduce the VOC content limit for cutback asphalt from 5% to 4%, and lower current VOC content limits for emulsified asphalt by 20%.

#### *Automobile Refinish Coatings*

Adopt the VOC content limits contained in the Bay Area Air Quality Management District (BAAQMD) regulations.

#### *Consumer Products*

Adopt and implement the July 20, 2005 CARB regulations. These regulations include emission limits for additional consumer product categories that are not included in Maine's existing Chapter 151 consumer products rule.

#### *Rule Effectiveness Improvement*

Increase enforcement of existing rules in order to increase rule effectiveness.

*Small Source Non-CTG VOC RACT*

Reduce the major source and Chapter 134 non-CTG VOC RACT applicability threshold from 40 to 10 tons per year of actual emissions.

The Portland area maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory; maintenance demonstration; monitoring network; verification of continued attainment; and a contingency plan. Therefore, EPA believes that the maintenance plan SIP revision submitted by Maine for the Portland area meets the requirements of section 175A of the Act.

**VII. How are MVEBs Developed and What is an Adequacy Determination?**

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (e.g. reasonable further progress SIPs and attainment demonstration SIPs) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB is established for the last year of the maintenance plan. The MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and revise the MVEB.

Under section 176(c) of the CAA, new transportation projects, such as the

construction of new highways, must "conform" to (i.e., be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. If a transportation plan does not "conform," most new projects that would expand the capacity of roadways cannot go forward.

Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein "adequate" for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and federal agencies in determining whether proposed transportation projects "conform" to the SIP as required by section 176(c) of the Act. EPA's substantive criteria for determining "adequacy" of an MVEB are set out in 40 CFR 93.118(e)(4).

**VIII. What is the Status of EPA's Adequacy Determination for the Portland Area's MVEB for the Year 2016?**

The Portland area's 10-year maintenance plan submission contains new VOC and NO<sub>x</sub> MVEBs for the year 2016, which are shown in Table 4. The availability of the SIP submission with these 2016 MVEBs was announced for

public comment on EPA's adequacy web page on August 8, 2006, at: <http://www.epa.gov/otaq/transp/conform/cursips.htm>. The EPA public comment period on adequacy of the 2016 MVEBs for the Portland area closed on September 7, 2006. EPA did not receive any adverse comments. EPA New England sent a letter to the Maine Department of Environmental Protection on September 8, 2006, stating that the 2016 MOBILE 6.2 motor vehicle emissions budgets in the August 3, 2006 SIP submittal are adequate.

Additionally, EPA through this rulemaking is proposing to approve those MVEBs for use in determining transportation conformity because EPA has determined that the area maintains the standard with emissions at the levels of the budgets. The Maine DEP utilized the MOBILE 6.2 model to calculate on-road emissions of VOC and NO<sub>x</sub> for the 57 towns in York, Cumberland, Sagadahoc and Androscoggin County comprising the 8-hour nonattainment area. Maine is establishing motor vehicle emissions budgets for the last year of the Portland 8-hour ozone maintenance plan (year 2016) at 16.659 tons per summer weekday (tpswd) of VOC and 32.837 tpswd of NO<sub>x</sub>. These on-road mobile source emissions when added to emissions from all other inventory sources (stationary, other mobile (i.e., non-road, marine vessels, airplanes, locomotives) and area sources) result in year 2016 emissions inventories lower than the year 2005 attainment emissions inventory. These emissions budgets, once approved by EPA must be used for future transportation conformity determinations.

TABLE 4.—THE 2016 MVEBs FOR THE PORTLAND 8-HOUR OZONE NONATTAINMENT AREA (57 TOWNS)  
[Emissions expressed in tons per summer weekday (tpswd)]

	2005 VOC	2005 NO <sub>x</sub>	2016 VOC	2016 O <sub>x</sub>
Point .....	3.669	8.210	4.627	10.118
Area .....	33.433	5.207	38.118	5.596
Mobile:				
Nonroad .....	17.401	10.556	13.146	5.545
Locomotives .....	0.015	0.423	0.013	0.342
Onroad .....	22.476	46.776	11.032	16.098
Total Inventory .....	76.994	71.172	66.936	37.699
Total Safety Margin .....	.....	.....	10.058	33.473
MVEB:				
Onroad .....	22.476	46.776	11.032	16.098
Plus Safety Margin applied to MVEB .....	.....	.....	5.627	16.739
Total MVEB .....	.....	.....	16.659	32.837
Safety Margin Remaining .....	.....	.....	4.431	16.734

As part of its maintenance plan, Maine elected to apply a portion of its “safety margin” to its MVEBs. In this case, a “safety margin” is the amount by which the total projected ozone precursor emissions, from all sources (point, area and mobile) are less than the total emissions that would maintain the ozone standard (*i.e.* the difference between 2005 and 2016 precursor emissions, with VOC and NO<sub>x</sub> treated separately). The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. For example, the Portland area attained the 8-hour ozone NAAQS during the 2003–2005 time period. Maine uses 2005 emissions as the attainment level of emissions for the area. The emissions from point, area, nonroad, and mobile sources in 2005 equaled 76.994 tpswd of VOC for the Portland area (see Table 4). Projected VOC emissions from point, area, nonroad, and mobile sources, out to the year 2016, equals 66.936 tpswd of VOC. The SIP demonstrates that the area will continue to maintain the standard with emissions at this level. The safety margin for VOCs is calculated to be the difference between the 2005 VOC emissions (76.994 tpswd) and the 2016 VOC emissions (66.936 tpswd), in this case, 10.058 tpswd is the VOC safety margin for 2016. By this same method, 33.473 tpswd (*i.e.*, 71.172 tpswd less 37.699 tpswd) is the safety margin for NO<sub>x</sub> for 2016. The emissions are

projected to maintain the area’s air quality consistent with the NAAQS. The safety margin is the extra emissions that can be allocated as long as the total attainment level of emissions is maintained. The credit, or a portion thereof, can be allocated to any of the source categories. For the year 2016, the available safety margin (see Table 4) is 10.058 tpswd for VOC and 33.473 tpswd for NO<sub>x</sub>. After partial allocation of the safety margin to the MVEB (5.627 tpswd VOC and 16.739 tpswd NO<sub>x</sub>), the remaining safety margins are 4.431 tpswd for VOC and 16.734 tpswd for NO<sub>x</sub>. Maine has not yet allocated the remaining safety margin to any source category under its maintenance plan, and the State will need to submit a SIP revision to amend its maintenance plan if in the future it decides to use any of the remaining safety margin. The 2016 MVEBs for Portland are approvable because the MVEBs for NO<sub>x</sub> and VOC, including the allocated safety margins, when added to all other inventory sources, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

**IX. What is EPA’s Analysis of the Midcoast Redesignation Request?**

EPA is also proposing to determine that the Midcoast nonattainment area has attained the 8-hour ozone standard and that all other redesignation criteria

have been met. The basis for EPA’s proposed determination is as follows.

*A. The Midcoast Area Has Attained the 8-Hour Ozone NAAQS*

EPA is proposing to determine that the Midcoast area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. This 3-year average is known as the design value. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in AQS. The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

Maine submitted ozone monitoring data for the April through September ozone season from 2003 to 2005. This data has been quality assured and is recorded in AQS. The ozone data are summarized in Table 5:

TABLE 5.—8-HOUR OZONE (PARTS PER MILLION, PPM) FOR THE MIDCOAST AREA

Monitor	County	4th High 8-hr ozone average			3-Year Average (design value)
		2003	2004	2005	
Port Clyde .....	Knox .....	0.082	0.074	0.075	0.077
McFarland Hill .....	Hancock .....	0.080	0.073	0.074	0.075
Cadillac Mountain .....	Hancock .....	0.094	0.088	0.082	0.082
Area Design Value .....	.....	.....	.....	.....	0.082

The design value for an area is the highest design value recorded at any monitor in the area. Therefore, as shown in Table 5, the design value for the Midcoast area is 0.082 ppm, which meets the standard as described above. Preliminary ozone data for the summer of 2006 still show the area as being in attainment.

In addition, as discussed below with respect to the maintenance plan, Maine has committed to continue monitoring in this area in accordance with 40 CFR part 58. In summary, EPA believes that the data submitted by Maine provides an adequate demonstration that the Midcoast area has attained the 8-hour ozone NAAQS.

*B. The Midcoast Area Has Met All Applicable Requirements for Purposes of Redesignation Under Section 110 and Part D of the CAA and the Area Has a Fully Approved SIP Under Section 110(k) for Purposes of Redesignation*

EPA has determined that Maine has met all applicable SIP requirements for the Midcoast area for purposes of redesignation under section 110 of the CAA (general SIP requirements). EPA has also determined that the Maine SIP meets applicable SIP requirements for purposes of redesignation under Part D of Title I of the CAA (requirements specific to subpart I, basic nonattainment areas, see section 107(d)(3)(E)(v)). In addition, EPA has

determined that the SIP is fully approved with respect to all applicable requirements for purposes of redesignation (see section 107(d)(3)(E)(ii)). In making these determinations, EPA ascertained what requirements are applicable to the area and that they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (see “Procedures for Processing Requests to Redesignate Areas to Attainment,” Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA’s

interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation states requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993 and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, MI). Applicable requirements of the CAA that come due subsequent to the area’s submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A (c) of the CAA. *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003).

1. Section 110 General SIP Requirements

As explained in more detail in section VI.B.1 above, EPA believes that section 110 elements not linked to the area’s nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request. Therefore, EPA believes that the State has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the CAA for the Midcoast redesignation request.

2. Part D Nonattainment Area Requirements Under the 8-Hour Standard

The Midcoast area is designated a subpart 1, basic nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. Section 182 of the CAA, found in subpart 2 of Part D, establishes additional specific requirements depending on the area’s nonattainment classification. EPA has determined that the Maine SIP meets SIP requirements applicable for purposes of redesignation under part D of the Act. Under part D, an area’s classification (marginal, moderate, serious, severe, and extreme) indicates

the requirements to which it will be subject. For purposes of evaluating this redesignation request, the applicable part D, subpart 1 requirements for all nonattainment areas are contained in section 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). (See also 68 FR 4852–3 in St. Louis NPR for discussion of section 172 requirements.)

With respect to the 8-hour standard, EPA proposes to determine that the Maine SIP meets all applicable SIP requirements for purposes of redesignation of the Midcoast area under part D of the CAA since no 8-hour ozone standard Part D requirements applicable for purposes of redesignation became due prior to submission of the area’s redesignation request. In addition to the fact that certain Part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the conformity, new source review requirements, and OTR requirements as not requiring approval prior to redesignation. (See Section VI.B for a more detailed discussion of this interpretation.) Therefore, EPA proposes to find that the Midcoast area has satisfied all 8-hour ozone standard requirements applicable for purposes of section 107(d)(3)(E) under Part D of the CAA.

3. Part D Nonattainment Area Requirements Under the 1-Hour Standard and EPA’s Anti-Backsliding Rules

Prior to its designation as an 8-hour ozone nonattainment area, parts of the Midcoast area were designated maintenance for the 1-hour standard and the rest of the area was designated moderate nonattainment for the 1-hour ozone standard. While, on June 15, 2005, the 1-hour ozone standard was revoked (See 40 CFR 50.9(b)), under EPA’s anti-backsliding rules, areas designated nonattainment for the 1-hour standard at the time of the 8-hour ozone designations remained subject to certain control measures that applied by virtue of the area’s classification for the 1-hour NAAQS. 40 CFR 51.900 *et seq.*, see also 70 FR 30592, 30604 (May 26, 2005). The applicable Part D 1-hour standard

requirements for purposes of redesignation are those that continue to apply under EPA’s anti-backsliding rules, which were promulgated in conjunction with the implementation of the 8-hour NAAQS. 40 CFR 51.900 *et seq.*, as amended 70 FR 30592, 30604 (May 26, 2005).

40 CFR 51.905(a)(1) prescribes the 1-hour NAAQS requirements that continue to apply after revocation of the 1-hour NAAQS to former 1-hour ozone nonattainment areas. Section 51.905(a)(1)(i) provides that:

“The area remains subject to the obligation to adopt and implement the applicable requirements as defined in section 51.900(f), except as provided in paragraph (a)(1)(iii) of this section, and except as provided in paragraph (b) of this section \* \* \*.” Section 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), states that: “Applicable Requirements means for an area the following requirements to the extent such requirements apply or applied to the area for the area’s classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at the time the Administrator signs a final rule designating the area for the 8-hour standard as nonattainment, attainment, or unclassifiable.” For the Midcoast area, where portions of the area were classified as moderate under the 1-hour standard the applicable requirements for those portions are as follows:

- (1) Reasonably available control technology (RACT);
- (2) Inspection and maintenance programs (I/M);
- (3) Major source applicability cut-offs for purposes of RACT;
- (4) Rate of Progress (ROP) Reductions;
- (5) NO<sub>x</sub> requirements under section 182(f) of the CAA; and
- (6) Attainment demonstration or an alternative as provided under § 51.905(a)(1)(ii).

Table 6 lists the control measures effective in the Midcoast area. The table shows how the applicable requirements have been met for the Midcoast area. Thus, EPA believes that Midcoast area has met all applicable Part D requirements under the 1-hour standard for purposes of redesignation under the 8-hour standard. In addition, Table 6a lists other programs Maine has implemented to address emissions of ozone precursors.

TABLE 6.—CONTROL MEASURES IN THE MIDCOAST MAINE OZONE NONATTAINMENT AREA

Name of control measure	Type of measure	Approval status
On-board refueling vapor recovery .....	Federal Rule .....	Promulgated at 40 CFR part 86.

TABLE 6.—CONTROL MEASURES IN THE MIDCOAST MAINE OZONE NONATTAINMENT AREA—Continued

Name of control measure	Type of measure	Approval status
Federal motor vehicle control program .....	Federal Rule .....	Promulgated at 40 CFR part 86.
Federal non-road heavy duty diesel engines .....	Federal Rule .....	Promulgated at 40 CFR part 89.
Federal non-road gasoline engines .....	Federal Rule .....	Promulgated at 40 CFR part 90.
Automotive Refinishing .....	Federal Rule .....	Promulgated at 40 CFR part 59, subpart B.
Consumer & commercial products .....	Federal Rule .....	Promulgated at 40 CFR part 59, subpart C.
AIM Surface Coatings .....	Federal Rule .....	Promulgated at 40 CFR part 59, subpart D.
1990 Base Year Emissions Inventory .....	Section 182 CAA Requirement.	SIP approved (62 FR 9081; 2/28/97).
1 Hour Emissions Statements .....	Section 182 CAA Requirement.	SIP approved (60 FR 2524; 1/10/95).
Ozone Attainment Demonstration .....	Section 182 CAA Requirement.	Not required for the portion of the area that was classified as marginal under the 1-hour standard and the requirement was waived do to clean air quality for the portions of the area that was classified as moderate under the 1-hour standard (60 FR 29763; June 6, 1995).
1-hour 15% VOC Rate of Progress Plan .....	Section 182 CAA Requirement.	Not required for the portion of the area that was classified as marginal under the 1-hour standard and the requirement was waived do to clean air quality for the portions of the area that was classified as moderate under the 1-hour standard (60 FR 29763, June 6, 1995).
VOC RACT pursuant to sections 182(a)(2)(A) and 182(b)(2)(B) of CAA.	Section 182 CAA Requirement.	SIPs approved (57 FR 3046; 2/13/92), (58 FR 15281; 3/22/93), (59 FR 31154; 6/17/94), (60 FR 33730; 6/29/95).
VOC RACT pursuant to sections 182(b)(2)(A) and (C) of CAA.	Section 182 CAA Requirement.	SIP approved (65 FR 20749; 4/18/00), (67 FR 35439; 5/20/02).
NO <sub>x</sub> RACT .....	Section 182 CAA Requirement.	SIP approved (67 FR 57154; 9/9/02).

TABLE 6A.—NEW SOURCE REVIEW PROGRAM AND OTHER CLEAN AIR ACT PROGRAMS IN THE MIDCOAST NONATTAINMENT AREA

Name of measure	Type of measure	Approval status
New Source Review .....	CAA Requirement .....	SIP approved (61 FR 5690; 2/14/96).
Low RVP Gasoline applicable in Knox and Lincoln counties.	State Initiative .....	SIP approved (67 FR 10099; 3/6/02).
Solvent Cleaners .....	State Initiative .....	SIP approved (70 FR 30367; 05/26/05).
NO <sub>x</sub> Control Program .....	State Initiative .....	SIP approved(70 FR 11879; 03/10/05).
Emissions from Smaller-Scale Electric Generating Resources.	State Initiative .....	SIP approved (70 FR 30373; 05/26/05).
Architectural and Industrial Maintenance (AIM) Coatings	State Initiative .....	SIP approved (71 FR 13767; 03/17/06).
Control of Emissions of Volatile Organic Compounds from Consumer Products.	State Initiative .....	SIP approved (70 FR 61382; 10/24/05).
Mobile Equipment Repair and Refinishing .....	State Initiative .....	SIP approved (70 FR 30367; 05/26/05).
Portable Fuel Container Spillage Control .....	State Initiative .....	SIP approved (70 FR 6352; 02/07/05).

4. The Midcoast Area Has a Fully Approved Applicable SIP for Purposes of Redesignation Under Section 110(k) of the CAA

EPA has fully approved the applicable Maine SIP for purposes of redesignation for the Midcoast area under section 110(k) of the Act. EPA may rely on prior SIP approvals in approving a redesignation request (See Calcagni Memo, p. 3 *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998), *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001)), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003) and citations therein. Following passage

of the CAA of 1970, Maine has adopted and submitted and EPA has fully approved at various times provisions addressing the various SIP elements applicable in the Midcoast area under the 1-hour standard (see Table 6 and Table 6a).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable for purposes of redesignation of the Midcoast area have yet become due, and therefore they need not be approved into the SIP prior to redesignation.

*C. The Air Quality Improvement in the Midcoast Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions*

EPA believes that the state has demonstrated that the observed air quality improvement in the Midcoast area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. EPA approved Maine's SIP control strategy for the Midcoast area, including rules and the emission reductions achieved as a result

of those rules that are enforceable. Several Federal and statewide rules are in place which have improved the ambient air quality in this area. (See Tables 6 and 6a above for a list of control measures and other CAA requirements). The emission inventories in the four counties that comprise the Midcoast area show that between 2002 (the ozone season for which the area was classified) and 2005 (the year they came into attainment), VOC emissions were reduced by over 4 tons per summer day and NO<sub>x</sub> emissions were reduced by over 8 tons per summer day. Ozone precursor emissions were also reduced in upwind states.

The Maine submittal discusses the meteorological data for the years 2003, 2004 and 2005, and for many of the years leading up to 2003. The Maine submittal has numerous graphs and charts of ozone data, ozone precursor data, and meteorological data for the Midcoast area. These data all support the claim that the downward trend in ozone data is not due to favorable meteorology, but is due to permanent and enforceable reductions in ozone precursor emissions, both within the state and upwind from the state. EPA agrees with Maine's analysis on ozone trends. EPA agrees the downward trend in ozone in Maine has been occurring for several ozone seasons. The meteorology for the Midcoast area shows that for some of these ozone seasons the summers have been warmer than average, while others have been cooler than average, but the weather over the past several ozone seasons has not been unfavorable to ozone formation. In short, the air quality improvement in the Midcoast area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions, not favorable meteorology. Therefore, EPA finds this requirement is met for the Midcoast area.

*D. The Midcoast Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA*

In conjunction with its request to redesignate the Midcoast nonattainment area to attainment status, Maine submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the Midcoast area for at least 10 years after redesignation.

1. What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the elements of maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the ten years following the initial ten-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment.

The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

- (a) An attainment emissions inventory;
- (b) A maintenance demonstration;
- (c) A monitoring network;
- (d) Verification of continued attainment; and
- (e) A contingency plan.

2. What Is EPA's Analysis of the Midcoast Maintenance Plan?

(a) *Attainment Inventory*—Maine selected 2005 as the attainment year for purposes of demonstrating attainment of the 8-hour ozone NAAQS. The 2005

VOC and NO<sub>x</sub> emission estimates for the Midcoast area were developed consistent with EPA guidance and are summarized in Table 7 below. Point source emissions were obtained using 2004 data collected pursuant to Maine's Chapter 137 Emission Statement regulation; projections were made to 2005, 2009, and 2016 using economic based growth factors. Non-road mobile emissions were calculated using the most recent NONROAD model. On-road mobile source emissions were calculated using MOBILE 6.2 for 2005, 2009, and 2016. Area source emissions for 2002 were derived from Maine DEP's submittal made to the EPA's national emissions inventory (NEI) for 2002, and modified as described in support material submitted by Maine DEP to EPA. The 2002 area emissions were then projected to 2005, 2009, and 2016.

(b) *Maintenance demonstration*—Maine's August 3, 2006 SIP submittal includes a 10-year maintenance plan for the Midcoast area as required by section 175A of the Act. This demonstration shows compliance and maintenance of the 8-hour ozone standard by assuring that current and future emissions of VOC and NO<sub>x</sub> remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25430–25432 (May 12, 2003).

Maine used 2005 as the base year, 2009 was chosen as the interim year and 2106 is the "out year," which as required is at least 10 years, after the time necessary for EPA to review and approve the maintenance plan. (In addition per 40 CFR part 93, a MVEB must be established for the last year of the maintenance plan.) MVEBs for the Midcoast area are discussed in Section X below. Table 7 shows the Midcoast area emissions inventories for 2005, 2009 and 2016. The emissions inventory shows a downward trend in precursor emissions data from 2005, through 2009 and continuing on until 2016. The decreases in emissions are a requirement of a maintenance plan. Maine has fulfilled this requirement.

TABLE 7.—ATTAINMENT (2005), INTERIM (2009) AND MAINTENANCE (2016) INVENTORIES FOR THE MIDCOAST NONATTAINMENT AREA (4 COUNTIES) <sup>1</sup>

[All emissions expressed in tons per summer weekday (tpswd)]

Category	Subcategory	2005		2009		2016	
		VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
Point .....	.....	1.520	4.530	1.640	5.360	1.840	6.080

TABLE 7.—ATTAINMENT (2005), INTERIM (2009) AND MAINTENANCE (2016) INVENTORIES FOR THE MIDCOAST NONATTAINMENT AREA (4 COUNTIES) <sup>1</sup>—Continued

[All emissions expressed in tons per summer weekday (tpswd)]

Category	Subcategory	2005		2009		2016	
		VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
Area .....	.....	14.214	3.659	14.610	3.816	15.989	4.081
Mobile .....	Onroad <sup>2</sup> .....	8.664	15.296	6.368	10.731	4.154	5.332
Mobile .....	Nonroad .....	13.727	4.713	12.073	4.284	10.217	3.343
Mobile .....	Locomotives .....	0.005	0.183	0.005	0.161	0.004	0.135
	Total .....	38.130	28.381	34.696	24.352	32.204	18.971
	Change in emissions from 2005.	.....	.....	-3.434	-4.029	-5.926	-9.41

<sup>1</sup> The emissions in the table are based on an inventory for four entire counties (Hancock, Knox, Lincoln and Waldo Counties) rather than the somewhat smaller 55 town Midcoast nonattainment area. EPA believes it is reasonable to use countywide inventories for the purpose of this re-designation demonstration even though the nonattainment area itself includes the 55 towns in these four counties nearest the coast. The Agency concludes that the distribution of emissions for each source category across the counties will generally track population, which is highest along the coast. Therefore, the declining emissions trends reflected in this table for the four entire counties should generally be true for 55 town nonattainment area as well.

<sup>2</sup> To provide a consistent comparison with the other source categories, these Mobile Onroad Inventory numbers are based on an inventory for the entire four county area (Hancock, Knox, Lincoln and Waldo Counties) and are, therefore larger than motor vehicle emissions calculated for the 55 Town Midcoast nonattainment area shown in Table 8.

(c) *Monitoring Network*—There are currently three monitors measuring ozone in the Midcoast area. The State of Maine has committed in the maintenance plan to the necessary continued operation of the ozone monitoring network in compliance with 40 CFR part 58, and has, therefore addressed the requirement for continued ozone monitoring in this area.

(d) *Verification of Continued Attainment*—The state has the legal authority to enforce and implement the requirements of the ozone maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emission control contingency measures determined to be necessary to correct future ozone attainment problems. To implement the ozone maintenance plan, the state will continue to monitor ozone levels in the area. Maine has also committed to track the progress of the maintenance demonstration by periodically updating their emission inventory. Maine has committed to do this annually. The update will be based, in part, on the annual update of the NEI, and will indicate new source growth and other changes from the attainment inventory, including changes in vehicle miles traveled or in traffic patterns and changes in MOBILE6.2 or its successor.

(e) *The Maintenance Plan's Contingency Measures*—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the Act requires that a maintenance plan include such contingency measures as

EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment. Section 175A(d).

As stated in the Midcoast area maintenance plan, the Maine DEP has committed to the following procedure. At the conclusion of each ozone season, the Maine DEP will evaluate whether the design value for the Midcoast area is above or below the 8-hour ozone standard. If the design value is above the standard, the DEP will evaluate the potential causes of this design value increase. The DEP will examine whether this increase is due to an increase in local in-state emissions or an increase in upwind out-of-state emissions. If an increase in in-state emissions is determined to be a contributing factor to the design value increase, Maine will evaluate the projected in-state emissions for the Midcoast area for the ozone season in the following year. If in-state emissions are not expected to satisfactorily decrease in the following ozone season in order to mitigate the violation, Maine will implement one or

more of the contingency measures listed in this section, or substitute a new VOC or NO<sub>x</sub> control measures to achieve additional in-state emissions reductions.

The contingency measures(s) will be selected by the Governor or the Governor's designee within 6 months of the end of the ozone season for which contingency measures have been determined necessary. Possible contingency measures include:

*Adhesives*

Establish VOC content limits for industrial and commercial application of solvent-based adhesives and sealants based on California Air Resources Board (CARB) suggested RACT controls (1998).

*Asphalt Paving*

Reduce the VOC content limit for cutback asphalt from 5% to 4%, and lower current VOC content limits for emulsified asphalt by 20%.

*Automobile Refinish Coatings*

Adopt the VOC content limits contained in the Bay Area Air Quality Management District (BAAQMD) regulations.

*Consumer Products*

Adopt and implement the July 20, 2005 California Air Resources Board (CARB) regulations. These regulations include emission limits for additional consumer product categories that are not included in Maine's existing Chapter 151 consumer products rule.

*Rule Effectiveness Improvement*

Increase enforcement of existing rules in order to increase rule effectiveness.

*Small Source Non-CTG VOC RACT*

Reduce the major source and Chapter 134 non-CTG VOC RACT applicability threshold from 40 to 10 tons per year of actual emissions.

The Midcoast area maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory; maintenance demonstration; monitoring network; verification of continued attainment; and a contingency plan. Therefore, EPA believes that the maintenance plan SIP revision submitted by Maine for the Midcoast area meets the requirements of section 175A of the Act.

**X. What is the Status of EPA’s Adequacy Determination for the Midcoast area’s MVEB for the Year 2016?**

The Midcoast area’s 10-year maintenance plan submission contains new VOC and NO<sub>x</sub> MVEBs for the year 2016, which are shown in Table 8. The development of MVEBs and adequacy determinations are explained in section

VII above. The availability of the SIP submission with these 2016 MVEBs was announced for public comment on EPA’s adequacy Web page on August 8, 2006, at: <http://www.epa.gov/otaq/transp/conform/currstips.htm>. The EPA public comment period on adequacy of the 2016 MVEBs for the Midcoast area closed on September 7, 2006. EPA did not receive any adverse comments. EPA New England sent a letter to the Maine Department of Environmental Protection on September 8, 2006, stating that the 2016 MOBILE6.2 motor vehicle emissions budgets in the August 3, 2006 SIP submittal are adequate.

40 CFR 93.118(b)(2) provides that when a maintenance plan has been submitted (as in this redesignation request), motor vehicle emissions must be less than or equal to the motor vehicle emissions budgets established for any other years for which the maintenance plan establishes motor vehicle emissions budgets. The Maine DEP used the MOBILE 6.2 model to calculate on-road VOC and NO<sub>x</sub>

emissions for the last year (year 2016) of the Midcoast maintenance plan for the 55 towns that make up the Midcoast maintenance area in Hancock, Knox, Lincoln and Waldo Counties. Maine is establishing motor vehicle emissions budgets for the last year of the Midcoast 8-hour ozone maintenance area (year 2016) at 3.763 tons per summer week day of VOC and 6.245 tons per summer week day. These on-road mobile source emissions when added to emissions from all other inventory sources (stationary, other mobile (i.e., non-road, marine vessels, airplanes, locomotives) and area sources) result in year 2016 emissions inventories lower than the year 2005 attainment emissions inventory.

EPA through this rulemaking is proposing to approve these MVEBs for use in determining transportation conformity because EPA has determined that the area maintains the standard with emissions at the levels of the budgets.

TABLE 8.—THE 2016 MVEBs FOR THE MIDCOAST 8-HOUR OZONE NONATTAINMENT AREA (55 TOWNS)  
[Emissions expressed in tons per summer day (tpswd)]

	2005		2016	
	VOC	NO <sub>x</sub>	VOC	NO <sub>x</sub>
Point .....	1.179 .....	4.300 .....	1.390 .....	5.788 .....
Area .....	8.568 .....	2.365 .....	9.726 .....	2.619 .....
Mobile:				
Nonroad .....	8.684 .....	2.689 .....	6.439 .....	1.987 .....
Locomotives .....	0.009 .....	0.224 .....	0.009 .....	0.191 .....
Onroad .....	5.131 .....	8.923 .....	2.442 .....	3.103 .....
Total Inventory .....	23.571 .....	18.501 .....	20.006 .....	13.688 .....
Total Safety Margin .....	.....	.....	3.565 .....	4.813 .....
MVEB:				
Onroad .....	5.131 .....	8.923 .....	2.442 .....	3.103 .....
Plus Safety Margin applied to MVEB .....	.....	.....	1.321 .....	3.142 .....
Total MVEB .....	.....	.....	3.763 .....	6.245 .....
Safety Margin Remaining .....	.....	.....	2.244 .....	1.671 .....

As part of the maintenance plan for the Midcoast area, Maine elected to apply a portion of its “safety margin” to its MVEBs. In this case, a “safety margin” is the amount by which the total projected ozone precursor emissions, from all sources (point area and mobile) are less than the total emissions that would maintain the ozone standard (i.e. the difference between 2005 and 2016 precursor emissions, with VOC and NO<sub>x</sub> treated separately). The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. For example, the

Midcoast area attained the 8-hour ozone NAAQS during the 2003–2005 time period. Maine uses 2005 emissions as the attainment level of emissions for the area. The emissions from point, area, nonroad, and mobile sources in 2005 equaled 23.571 tpswd of VOC for the Midcoast area (see Table 8). Projected VOC emissions from point, area, nonroad, and mobile sources, out to the year 2016, equals 20.006 tpswd of VOC. The SIP demonstrates that the area will continue to maintain the standard with emissions at this level. The safety margin for VOCs is calculated to be the difference between the 2005 VOC

emissions (23.571 tpswd) and the 2016 VOC emissions (20.006 tpswd), in this case, 3.565 tpswd is the VOC safety margin for 2016. By this same method, 4.813 tpswd (i.e., 18.501 tpswd less 13.688 tpswd) is the safety margin for NO<sub>x</sub> for 2016. The emissions are projected to maintain the area’s air quality consistent with the NAAQS. The safety margin is the extra emissions that can be allocated as long as the total attainment level of emissions is maintained. The credit, or a portion thereof, can be allocated to any of the source categories. For the year 2016, the available safety margin (see Table 8) is

3.565 tpswd for VOC and 4.813 tpswd for NO<sub>x</sub>. After partial allocation of the safety margin to the MVEB (1.321 tpswd VOC and 3.142 tpswd NO<sub>x</sub>), the remaining safety margins are 2.244 tpswd for VOC and 1.671 tpswd for NO<sub>x</sub>. Maine has not yet allocated the remaining safety margin to any source category under its maintenance plan, and the State will need to submit a SIP revision to amend its maintenance plan if in the future it decides to use any of the remaining safety margin. The 2016 MVEBs for Midcoast area are approvable because the MVEBs for NO<sub>x</sub> and VOC, including the allocated safety margins, when added to all other inventory sources, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

#### **XI. Proposed Actions on Maine's Redesignation Requests, 175 Maintenance Plan SIP Revisions, and Associated MVEBs**

EPA is proposing to determine that both the Portland, Maine and the Midcoast, Maine, 8-hour ozone nonattainment areas have attained the 8-hour ozone NAAQS. EPA is also proposing to approve the redesignation of both the Portland, Maine and the Midcoast, Maine 8-hour ozone nonattainment areas from nonattainment to attainment for the 8-hour ozone NAAQS. EPA has evaluated the State of Maine's redesignation requests and determined that they meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation requests and monitoring data demonstrate that these two areas have attained the 8-hour ozone standard. The final approval of this redesignation request would change the official designation for both the Portland, Maine and the Midcoast, Maine 8-hour ozone nonattainment areas from nonattainment to attainment for the 8-hour ozone standard.

EPA is proposing to approve the maintenance plan SIP revision and the 2016 MVEBs submitted by Maine for both the Portland, Maine and the Midcoast, Maine 8-hour ozone nonattainment areas in conjunction with the corresponding redesignation requests. EPA is proposing to approve the maintenance plan for both the Portland, Maine and the Midcoast, Maine 8-hour ozone nonattainment areas, because they meet the requirements of section 175A as described more fully above.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### **XII. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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). This action merely proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean

Air Act. This proposed 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. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. 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 proposed 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.*).

#### **List of Subjects**

##### **40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

##### **40 CFR Part 81**

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: October 8, 2006.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

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## **DEPARTMENT OF HOMELAND SECURITY**

### **Federal Emergency Management Agency**

#### **44 CFR Part 67**

[Docket No. FEMA-D-7676]

#### **Proposed Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency (FEMA),