(202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: On December 11, 2000, the Copyright Office issued a final rule to clarify that the transmission of a sound recording as part of a retransmission of an AM/FM broadcast signal over a digital communications network, such as the Internet, is subject to the limited digital performance right provided by section 106(6) of the Copyright Act, title 17 of the United States Code, and is not exempt under section 114(d)(1)(A)—the provision that specifically exempts a ''nonsubscription broadcast transmission.'' 65 FR 77292 (December 11, 2000).

Broadcasters have challenged the Copyright Office's final rule and its interpretation of the relevant statutory provisions. On January 25, 2001, Bonneville International Corp., Clear Channel Communications, Inc., Cox Radio, Inc., Emmis Communications Corp., Entercom Communications Corp., Susquehanna Radio Corp. and the National Association of Broadcasters (hereinafter, ''Broadcasters'') filed suit in the United States District Court for the Eastern District of Pennsylvania, seeking a declaratory ruling that the Office's rule was invalid. On cross summary judgment motions, the district court upheld the Copyright Office's interpretation of the statutory exemption, finding the interpretation both reasonable and permissible. *Bonneville Int'l, et al.* v. *Peters*, 153 F. Supp. 2d 763 (E.D. Pa. 2001). An appeal of the district court's decision is currently pending in the Third Circuit. *See Bonneville, et al.* v. *Peters*, Case No. 01–3720 (3d Cir.).

Under the Office's interpretation of the section 114(d)(1)(A) exemption, FCC-licensed broadcasters who retransmit their AM/FM programming over the Internet may publicly perform the sound recordings that are part of that programming under the section 114 statutory license provided that the licensee pays the appropriate copyright royalty fees and abides by the terms of the statutory license. The rates and terms for use of this license and for the statutory license for making ephemeral phonorecords for the purpose of facilitating digital transmissions were recently adopted by the Library of Congress. *See* Final Order and Rule, Docket No. 2000–9 CARP DTRA1&2, 67 FR 45239 (July 8, 2002). Under these rules, the first payment of copyright royalty fees for those operating under the section 112 and section 114 statutory licenses is due October 20, 2002.

Broadcasters, however, would like to stay the application of the Copyright Office's interpretation of section 114(d)(1)(A). To this end, Bonneville International Corp., Clear Channel Communications, Inc., Cox Radio, Inc., Emmis Communications Corp., Entercom Communications Corp., Salem Communications Corp., Susquehanna Radio Corp. and the National Association of Broadcasters (hereinafter, ''Movants'') filed a motion for stay [1] with the Copyright Office on September 11, 2002, asking ''the Register of Copyrights to stay the Register's December 11, 2000 final rule, 65 FR 77330 (December 11, 2000), to the extent that its application would otherwise require thousands of radio stations across the nation to pay retrospective royalties covering a four year period on October 20, 2002 and thereafter to make royalty payments on a monthly basis for broadcasting transmissions that Broadcasters contend are exempt from any such obligation pursuant to 17 U.S.C. 114(d)(1)(A).''

Because this rule was promulgated through a notice and comment proceeding in accordance with the Administrative Procedure Act, title 5 of the United States Code, Chapter 5, Subchapter II and Chapter 7, the Copyright Office is publishing this notice to announce the receipt of the motion to stay the December 11, 2000, final rule and to provide any person with an interest in this proceeding with an opportunity to comment on the motion.

Oppositions are due in the Copyright Office no later than close of business on Tuesday, September 24, 2002. Replies are due no later than Friday, September 27, 2002.

Dated: September 13, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02–23731 Filed 9–16–02; 8:45 am]

BILLING CODE 1410–31–M

[1] A copy of the motion to stay has been posted to the Copyright Office website at: *http://www.loc.gov/copyright/carp/motiontostay.pdf.* Alternatively, copies of the motion are available in the Office of the General Counsel for copying.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[ME–68–7017b; FRL–7378–2]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Redesignation of the Portland, Maine Moderate Ozone Nonattainment Area to Attainment, Determination of Attainment and Approval of the Associated Maintenance Plan; or Determination of Nonattainment as of November 15, 1997 and Reclassification of the Portland, Maine Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing in the alternative either to redesignate the Portland, Maine moderate ozone nonattainment area (the Portland Area) to attainment for the 1-hour ozone National Ambient Air Quality Standard (NAAQS), or to determine that the Portland Area did not attain by November 15, 1997, and thus must be reclassified to serious. The Portland Area is comprised of three counties in Maine; Cumberland, Sagadahoc, and York. EPA is proposing to determine that the Portland Area has attained the NAAQS. This determination is based on three years of complete quality-assured ambient air monitoring data for the 1999–2001 ozone seasons. The EPA is also proposing to approve the maintenance plan, submitted by the Maine Department of Environmental Protection as a revision to the Maine State Implementation Plan (SIP). Approval of the maintenance plan would put into place a plan for maintaining the 1-hour ozone standard for the next 10 years in the Portland Area. EPA is also proposing to approve Maine's 1999 attainment inventory for the Portland Area into the Maine State Implementation Plan. This inventory establishes a 1999 ozone emission inventory of volatile organic compounds and oxides of nitrogen for the Portland nonattainment area in Maine.

In the alternative, EPA is proposing to find that the Portland Area did not attain the 1-hour ozone NAAQS by November 15, 1997, the date set forth in the Clean Air Act (CAA) for moderate nonattainment areas that have received a 1-year attainment date extension under section 181(a)(5) of the CAA. If EPA finalizes this finding, the CAA provides that the Portland Area would be reclassified, at least to a serious nonattainment area. EPA is also taking

comment on a proposed schedule for submittal of the SIP revisions required for serious areas should the Portland Area be reclassified and a requirement that Maine develop an attainment demonstration that provides for attainment as expeditiously as practicable. Finally, EPA is proposing to grant an extended effective date for the determination of nonattainment and reclassification to give time for facilities to plan compliance with new construction permitting requirements.

DATES: Written comments must be received on or before October 17, 2002.

ADDRESSES: Written comments (two copies, if possible) should be sent to: David B. Conroy at the EPA Region I (New England) Office, One Congress Street, Suite 1100–CAQ, Boston, Massachusetts 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the following addresses: U.S. Environmental Protection Agency, Region 1 (New England), One Congress St., 11th Floor, Boston, Massachusetts, telephone (617) 918–1664, and at the Maine Department of Environmental Protection, Bureau of Air Quality Control, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, Maine 04333–0017. Please telephone in advance before visiting.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, (617) 918–1664.

SUPPLEMENTARY INFORMATION: On July 9, 2002, the State of Maine submitted a request that EPA redesignate the Portland ozone nonattainment area (the Portland Area) to attainment. The State of Maine simultaneously submitted its proposed maintenance plan for the Portland Area and requested that EPA parallel process its approval of that plan as a SIP revision. The State of Maine also submitted a 1999 attainment emission inventory for the Portland Area and requested that EPA parallel process its approval of that inventory as a SIP revision. Maine's redesignation request is based on the area attaining the 1-hour ozone NAAQS for the period 1999–2001.

On August 1, 2002, Maine Department of Environmental Protection (Maine DEP) held a public hearing on its proposed redesignation request, maintenance plan, and 1999 attainment inventory for the Portland Area. By letter dated August 14, 2002, EPA transmitted its comments to the Maine DEP on these SIP elements. EPA gave Maine DEP comments designed to refine Maine's submission, and DEP expects to address these comments prior to finalization and submission to EPA of the redesignation request, maintenance plan, and 1999 attainment inventory for incorporation into the SIP. But the SIP revision that Maine has proposed includes all the basic elements of what EPA is proposing to approve.

On August 13 and 14, 2002, however, the ozone monitor for Kennebunkport, Maine had preliminary ozone data readings over the 1-hour NAAQS. These two exceedances may result in Maine violating the NAAQS for the period 2000–2002. Although these monitor readings have yet to be quality assured,[1] EPA has preliminary evidence that this area has violated the NAAQS for the period 2000–2002, and therefore, may no longer qualify for redesignation. Pursuant to a consent decree in *Sierra Club and GASP* v. *Whitman,* No. 1:00CV02206 (D.D.C), EPA is obligated to act this fall to determinate whether the Portland Area attained as of its attainment date, or, alternatively, to approve a request to redesignate the Portland Area. Therefore, in the alternative EPA is proposing not to approve this redesignation request and to instead determine, pursuant to section 182(b) of the CAA, that the Portland Area failed to attain the 1-hour ozone NAAQS by its attainment date of November 15, 1997. This finding, if it becomes final, would result in the reclassification of the Portland moderate area to serious, as explained in more detail below.

In this document, EPA will cover the following:

[1] Maine DEP and EPA are currently this data and performing the appropriate quality assurance and review procedures. Maine DEP and EPA are also evaluating whether exceptional events (*e.g.,* forest fires) led to the elevated readings recorded during the August 13–14, 2002 time period.

I. What Action Is EPA Proposing To Take on the Determination of Attainment, the Redesignation Request, the Maintenance Plan and the 1999 Attainment Inventory?

Pursuant to a request from the State of Maine, EPA is proposing to determine that the Portland moderate area is attaining the 1-hour ozone NAAQS and to redesignate the Portland moderate ozone area from nonattainment to attainment of the 1-hour ozone National Ambient Air Quality Standard (NAAQS). We are also proposing to approve the Portland Area's proposed maintenance plan submitted by Maine DEP for approval by EPA as a SIP revision. This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its SIP. If the proposed maintenance plan is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made EPA will approve the state's maintenance plan, if EPA concludes that the area continues to attain the NAAQS. Before EPA can approve this plan, Maine must finally adopt the Portland Area's maintenance plan and formally submit that plan to EPA for incorporation into the SIP. EPA is also proposing to approve the proposed 1999 attainment inventory for the Portland Area into the Maine State Implementation Plan. This request will establish the 1999 ozone emission inventories of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) emissions for the Portland ozone nonattainment area in Maine.

II. Why Is EPA Taking This Action on the Redesignation Request and Maintenance Plan?

EPA is proposing to take this action based on its evaluation of the SIP elements submitted by the State and to preserve the option of approving this plan if EPA determines that the redesignation request and maintenance plan meet the requirements of the Clean Air Act (CAA).

III. What Is the Background for This Redesignation Action?

On November 15, 1990, the CAA amendments were enacted. Pursuant to section 107(d)(4)(A), on November 6, 1991 (56 FR 56694), the Maine counties of Cumberland, Sagadahoc, and York

were designated as the Portland moderate ozone nonattainment area.

The Portland Area has recorded three years of complete quality-assured, violation-free ambient air quality monitoring data for the 1999 to 2001 ozone seasons, thereby demonstrating that the area has attained the 1-hour ozone NAAQS for that period. On July 9, 2002, Maine DEP submitted a request that EPA redesignate the Portland Area from nonattainment to attainment of the 1-hour ozone standard. The Maine DEP also requested that EPA parallel process its approval of the maintenance plan in concert with the State of Maine's procedures for amending its SIP.

Preliminary ozone data from 2002, however, may indicate that the Portland Area is once again violating the 1-hour ozone NAAQS. Maine DEP and EPA are currently evaluating these data and performing the appropriate quality assurance and review procedures. If the Portland Area is indeed violating the 1-hour ozone NAAQS, EPA will not proceed to finalize approval of our determination of attainment, Maine's redesignation request, maintenance plan and 1999 attainment inventory.

IV. What Would Be the Effect of This Redesignation?

The redesignation would change the official designation of the Maine counties of Cumberland, Sagadahoc, and York from nonattainment to attainment for the 1-hour ozone standard. It would also put into place a plan for maintaining the 1-hour ozone standard for the next 10 years. This maintenance plan includes contingency measures to address future violations of the 1-hour ozone NAAQS.

V. What Criteria Must Be Met To Redesignate an Area to Attainment?

The Act provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under Section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175(A); and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

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

(1) ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994, (Nichols, October 1994).

(2) ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide, (CO) Nonattainment Areas,'' D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

(3) ''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,'' Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993.

(4) ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act Deadlines,'' John Calcagni, Director, Air Quality Management Division, October 28, 1992. (Calcagni, October 1992).

(5) ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' John Calcagni, Director, Air Quality Management Division, September 4, 1992.

(6) ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' G.T. Helms, Chief Ozone/Carbon Monoxide Programs Branch, June 1, 1992.

(7) State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498), April 16, 1992.

VI. What About the Attainment Demonstration, Reasonable Further Progress, Reasonably Available Control Measure Requirements and Other Requirements of Section 172(c)(9)?

As mentioned above EPA is proposing to determine that the Portland Area has attained the one-hour ozone NAAQS. On the basis of this determination of attainment, EPA is also proposing to determine that certain attainment demonstration requirements (section 182(b)(1)), along with certain other related requirements, of Part D of Title I of the Clean Air Act, specifically the section 172(c)(1) requirements and the section 172(c)(9) contingency measure requirements, are no longer applicable to the Portland Area. The EPA believes it is reasonable to interpret the provisions regarding attainment demonstrations, along with certain other related provisions, so as not to require State Implementation Plan (SIP) submissions, as described below, if an ozone nonattainment area subject to those requirements is in fact in attainment of the ozone standard (attainment of the NAAQS is demonstrated with three years of complete, quality-assured, air quality monitoring data). *See* 65 FR 3630, 3631–32 (Jan. 24, 2000). The EPA is basing this determination upon the most recent three years of complete, quality-assured, ambient air monitoring data for the 1999 to 2001 ozone seasons that demonstrate that the ozone NAAQS has been attained in the Portland Area. Maine had also attained during the 1998–2000 three-year period. EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS) for the Portland nonattainment area in the State of Maine from 1999 through 2001. On the basis of that review EPA proposes to conclude that Portland has attained the 1-hour ozone standard during the period from 1999–2001.[2]

The design value for the Portland nonattainment area, computed using ozone monitoring data for 1999 through 2001 is 0.12 ppm. The average annual number of expected exceedances is 0.7 for that same time period. An area is considered in attainment of the standard if the average annual number of expected exceedances is less than or equal to 1.0. Thus, based on 1999 through 2001, the Portland Area did not record violations of the 1-hour air quality standard for ozone.

Subpart 2 of part D of Title I of the Clean Air Act contains various air quality planning and SIP submission requirements for ozone nonattainment areas. The EPA believes it is reasonable to interpret provisions regarding reasonable further progress (RFP) and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area, subject to those requirements, is monitoring attainment of the ozone standard. EPA

[2] As noted above, EPA will evaluate whether the Portland Area continues to attain based on 2000–2002 data before finalizing this action.

has interpreted the general provision of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum dated May 10, 1995 from John S. Seitz, Director, Office of Air Quality Planning and Standards to the Regional Air Division Directors, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' EPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner. *See Sierra Club* v. *EPA,* 99 F. 3d 1551 (10th Cir. 1996).

The attainment demonstration requirements of section 182(b)(1) require that the plan provide for ''such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act.'' If an area has in fact monitored attainment of the standard, EPA concludes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to Title I where EPA stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached,'' (57 FR at 13564, see also September 1992 Calcagni memorandum at page 6). Upon attainment of the NAAQS, the focus of state planning efforts shifts to maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Similar reasoning applies to other related provisions of subpart 2, including the contingency measure requirements of section 172(c)(9) of the Clean Air Act. The EPA has previously interpreted the contingency measure requirements of section 172(c)(9) as no longer being applicable once an area has attained the standard since those ''contingency measures are directed at ensuring RFP and attainment by the applicable date'' (57 FR 13564).

The state must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the 1-hour ozone standard must be consistent with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the 1-hour ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

Furthermore, the determinations of these actions will not shield an area from future EPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas (*see* section 110(a)(2)(D)). EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) to require such emission reductions as necessary and appropriate to deal with transport situations. Therefore, the requirements of section 172(c)(1) and 182(b)(1) concerning the submission of the ozone attainment demonstration and reasonably available control measure requirements and the requirements of section 172(c)(9) concerning contingency measures for reasonable further progress or attainment will not be applicable to the area (*i.e.* EPA is proposing to find that the requirements of section 182(b)(1) and related requirements of section 172(c)(1) and 172(c)(9) do not apply to the area), if the Agency ultimately approves Maine's redesignation request.

VII. What Is EPA's Analysis of the State of Maine's Redesignation Request and Maintenance Plan?

1. The Area Must Be Attaining the 1-Hour Ozone NAAQS

For ozone, an area may be considered attaining the 1-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9 and appendix H, based upon three complete consecutive calendar years of quality assured monitoring data. A violation of the 1-hour ozone NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1.05 per year at a monitoring site. A daily exceedance occurs when the maximum hourly ozone concentration during a given day is 0.125 parts per million (ppm) or higher. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in AIRS. The monitors should have remained at the same location the duration of the monitoring period required for demonstrating attainment. The Maine DEP submitted ozone monitoring data for the April through September ozone season from 1999 to 2001. These data have been quality assured and recorded into AIRS. During the 1999 to 2001 time period, the design value is 0.12 ppm. The average annual number of expected exceedances is 0.7 for that same time period. Maine also monitored attainment of the standard from 1998–2000. Information concerning these monitors and monitoring data is available in the docket for this action. Therefore, the first criterion of section 107(d)(3)(E) has been satisfied based on 1999–2001 data. EPA will evaluate whether this is still true based on the available 2000–2002 data before final approval is granted.

2. The Area Must Have a Fully Approved SIP Under Section 110(k); and the Area Must Have Met All Applicable Requirements Under Section 110 and Part D

General SIP elements are delineated in section 110(a)(2) of Title I, part A. These requirements include but are not limited to the following: submittal of a SIP that has been adopted by the state after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program, provisions for part C, Prevention of Significant Deterioration (PSD), and part D, New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring and reporting; and provisions for public and local agency participation. For the purposes of redesignation, the Maine SIP was reviewed to ensure that all requirements under the amended CAA were satisfied through approved SIP provisions for the Portland Area. EPA has concluded that the State of Maine's SIP for the Portland Area satisfies all of the Section 110 SIP requirements of the CAA.

Before the Portland Area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D. Under part D, an area's classification determines the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under Table 1 of section 181(a). As described in the General Preamble for the Implementation of Title 1, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501, April 16, 1992). The Portland Area was classified

as moderate ozone nonattainment. Therefore, in order to be redesignated, the State of Maine must meet the applicable requirements of subpart 1 of part D—specifically section 172(c) and 176, as well as the applicable requirements of subpart 2 of part D.

With regard to the section 172(c) requirements, EPA has determined that the redesignation request received from Maine DEP for the Portland Area has satisfied all the relevant submittal requirements under section 172(c) necessary for the area to be redesignated.

Under section 176(c) of the CAA requires states to establish criteria and procedures to ensure that 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. or the Federal Transit Act (''transportation conformity''), as well as to all other federally supported or funded projects (''general conformity''). Section 176 further provides that state conformity revisions must be consistent with federal conformity regulations that the CAA required the EPA to promulgate. The EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions, to comply with the conformity provision of the CAA continues to apply to areas after redesignation to attainment, since such areas would be subject to a section 175A maintenance plan. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of federally approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under federal rules if state rules are not yet approved, the EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. Consequently, EPA may approve the ozone redesignation request for the Portland Area without a fully approved conformity SIP. See Detroit, Michigan, carbon monoxide redesignation published on June 30, 1999 (64 FR 35017), Cleveland-Akron-Lorain ozone redesignation published on May 7, 1996 (61 FR 20458), and Tampa, Florida, published on December 7, 1995 (60 FR 52748). EPA did approve the State of Maine's general conformity SIP on September 23, 1997 (62 FR 49608). *Wall* v. *EPA,* 265 F. 3d 426, 438–440 (6th Cir. 2001).

By proposing approval of the maintenance plan for the Portland Area, EPA is also proposing to approve the 2012 Motor Vehicle Emissions Budgets (MVEB) and find them adequate for maintenance of the one-hour ozone NAAQS. The proposed Year 2012 Motor Vehicle Emissions Budgets are 16.654 tons per summer weekday for volatile organic compounds, and 26.450 tons per summer day for oxides of nitrogen. Upon promulgation of the final approval of the maintenance plan for the Portland Area, the MVEB's for both VOC and NO_X contained in the plan shall be the applicable budgets that must be used for purposes of demonstrating transportation conformity. These budgets shall replace the VOC budget of the 15% plan as well as the so-called ''NO_X Build/No Build Test'' currently being used to demonstrate transportation conformity in the Portland Area.

With regard to the section 182 requirements, the Portland Area is classified as moderate ozone nonattainment and therefore, the section 182(b) requirements apply. In accordance with the September 17, 1993 EPA guidance memorandum, the requirements which came due prior to the submission of the request to redesignate the area must be fully approved into the SIP before or at the time of the request to redesignate the area to attainment. Table 1 below contains the control programs being relied on in Maine's SIP, including the section 182(b) requirements that the Portland Area must meet. As detailed in Table 1, below, EPA has determined that Maine's SIP meets all the relevant requirements under section 182. Thus, EPA proposes to find that the Maine SIP for the Portland Area is fully approved and has met all applicable requirements under section 110 and Title I, Part D of the Act.

TABLE 1.—CONTROL MEASURES IN THE PORTLAND OZONE NONATTAINMENT AREA

Name of control measure	Type of measure	Approval status
On-board refueling vapor recovery	Federal Rule	Promulgated at 40 CFR 86.
Federal motor vehicle control program	Federal Rule	Promulgated at 40 CFR 86.
Federal non-road heavy duty diesel engines	Federal Rule	Promulgated at 40 CFR 89.
Federal non-road gasoline engines	Federal Rule	Promulgated at 40 CFR 90.
Automotive Refinishing	Federal Rule	Promulgated at 40 CFR 59, subpart B.
Consumer & commercial products	Federal Rule	Promulgated at 40 CFR 59, subpart C.
AIM Surface Coatings	Federal Rule	Promulgated at 40 CFR 59, subpart D.
Contingency Measures	Section 172(c)(9) CAA Requirement.	Not applicable based on the area attaining the NAAQS.
Base Year Emissions Inventory	Section 182 CAA Requirement.	SIP approved (62 FR 9081; 2/28/97).
Emissions Statements	Section 182 CAA Requirement.	SIP approved (60 FR 2524; 1/10/95).
New Source Review	Section 182 CAA Requirement.	SIP approved (61 FR 5690; 2/14/96).
15% VOC Reduction Plan and Attainment Demonstration	Section 182 CAA Requirement.	Not applicable based on the area attaining the NAAQS.
VOC RACT pursuant to sections 182(a)(2)(A) and 182(b)(2)(B) of CAA.	Section 182 CAA Requirement.	SIP 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_X RACT	Section 182 CAA Requirement.	SIP approved at 40 CFR 52.1020(c)(46).
Vehicle inspection and maintenance program	Ozone Transport Region Requirement.	SIP approved (66 FR 1871; 1/10/01).

TABLE 1.—CONTROL MEASURES IN THE PORTLAND OZONE NONATTAINMENT AREA—Continued

Name of control measure	Type of measure	Approval status
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).

3. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions

The improvement in air quality must be due to permanent and enforceable reductions in emissions resulting from the SIP, federal measures, and other state adopted measures. The improvement in air quality in the Portland Area is due to emissions reductions from reductions in point, stationary, area, and mobile sources. Point source reductions are due to implementation of RACT in federally enforceable rules, as well as additional NO_X controls implemented in upwind areas. Additional stationary area source controls were implemented for the following categories: automobile refinish coatings, consumer products, architectural and industrial maintenance coatings, municipal solid waste landfills, and stage II vapor recovery. Several programs were implemented to reduce highway vehicle emissions, such as the Federal Motor Vehicle Control Program (FMVCP), a Portland-specific summertime gasoline 7.8 psi volatility limit, and a motor vehicle inspection and maintenance program. Nonroad source programs include federal rules for large and small compression-ignition engines, small spark-ignition engines, and recreation spark-ignition marine engines.

Thus, EPA proposes to find that Maine has satisfied the criteria of section 107(d)(3)(E) that the improvement in air quality must be due to permanent and enforceable reductions in emissions resulting from the SIP, federal measures, and other state adopted measures.

4. The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan is a SIP revision which provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. The EPA memorandum, dated September 4, 1992 from John Calcagni, provides additional guidance on the required content of a maintenance plan. An ozone maintenance plan should address the following five areas: the attainment emissions inventory, maintenance demonstration, monitoring network, verification of continued attainment and a contingency plan. The attainment emissions inventory identifies the emissions level in the area which is sufficient to attain the 1-hour ozone NAAQS, and includes emissions during the time period which had no monitored violations. Maintenance is demonstrated by showing that future emissions will not exceed the level established by the attainment inventory. Provisions for continued operation of an appropriate air quality monitoring network are to be included in the maintenance plan. The state must show how it will track and verify the progress of the maintenance plan. Finally, the potential contingency measures ensure prompt correction of any violation of the ozone standard.

The Maine DEP included a 1999 emissions inventory as the attainment inventory. The maintenance plan provides emissions estimates from 1999 to 2012 for VOCs and NO_X (see Tables 2 and 3, below). The emissions in the Portland Area are projected to decrease from the 1999 levels. The results of the analysis show that the Portland Area is expected to maintain the air quality standard for at least 10 years into the future after redesignation.

TABLE 2.—VOC EMISSIONS FROM 1999 TO 2012 IN THE PORTLAND AREA

Source category	1999 attainment	2005 projected	2012 projected
Point sources	4.307	4.588	4.896
Area Sources	25.422	29.449	35.544
Mobile Sources	63.783	45.437	31.67
Totals	93.512	79.474	71.11

TABLE 3.—NO_X EMISSIONS FROM 1999 TO 2012 IN THE PORTLAND AREA

Source category	1999 attainment	2005 projected	2012 projected
Point sources	15.0	14.9	14.9
Area Sources	1.768	1.724	1.685
Mobile Sources	85.978	66.356	41.718
Totals	102.746	82.98	58.303

The State of Maine's plan commits to continue the operation of the monitors in the Portland Area in accordance with 40 CFR part 58. The State of Maine's plan also states that it will track maintenance by reviewing the air quality data during the maintenance period. As stated earlier, the plan also includes motor vehicle emission budgets to be used for transportation conformity purposes for the Portland Area upon the effective date of the final approval of the maintenance plan.

Section 175A(b) of the CAA also requires the Maine DEP to submit a revision of the SIP eight years after the original redesignation request is

approved to provide for maintenance of the NAAQS for an additional 10 years following the first 10 year period. The State of Maine recognizes that it is required to submit such a SIP revision 8 years after this request and maintenance plan are approved.

The contingency plan for the Portland Area consists of attainment tracking and contingency measures to be implemented in the event that a violation of the ozone NAAQS occurs in the Portland Area. Attainment tracking will be utilized in the Portland Area. The state will use air quality monitoring using the existing ozone monitoring network, and if a violation of the one-hour NAAQS is monitored at any ozone site within the Portland Area, the state will inform EPA that a violation has occurred, review data for quality assurance, and conduct a technical analysis including an analysis of meteorological conditions leading up to and during the exceedences contributing to the violation to determine local culpability. The state will submit a preliminary analysis to the EPA and afford the public the opportunity for review and comment. The State will also solicit and consider EPA's technical advice and analysis before making a final determination on the cause of the violation. The trigger date will be the date that the state certifies to the EPA that the air quality data are quality assured, and that the exceedences contributing to the violation are determined not to be attributable to transport from upwind areas which will be no later than 180 days after the violation is monitored. In the event EPA disagrees with the state's final determination and believes that the violation was not attributable to transport, but to the Portland Area's own emissions, authority exists under section 179(a) and 110(k), to require the area to implement contingency measure, and section 107, to redesignate the area to nonattainment.

If the triggering event, a violation of the ozone NAAQS determined not to be attributable to transport from upwind areas, is confirmed, the state will implement one or more appropriate contingency measures. The contingency measure(s) will be selected by the Governor or the Governor's designee within 6 months of a triggering event, (*i.e.*, a monitored one-hour ozone NAAQS violation determined not to be attributable to transport). Possible contingency measures are listed below.

Maine will utilize the model rules developed by the Ozone Transport Commission (OTC) as its principal contingency measures. In December 1999, EPA informed several jurisdictions in the Ozone Transport Region that their State Implementation Plans would not provide sufficient emission reductions to attain the one-hour ozone standard by 2005 and 2007. EPA indicated it would grant states additional time to implement new measures if those states pursued regional strategies to control ozone and its precursors. Within this context, the OTC agreed to begin addressing the emission shortfalls by developing model rules for its member states. These model rules will provide a consistent framework for air pollution regulation throughout the region.

On March 28, 2001, the OTC approved final model rules for the following source categories: consumer products; portable fuel containers; architectural and industrial maintenance coatings; solvent cleaning operations; mobile equipment repair and refinishing; and additional nitrogen oxides controls for industrial boilers, cement kilns, stationary reciprocating engines, and stationary combustion engines. Thus, EPA proposes to find that the contingency measures meet the provisions of the Act.

VIII. What Is the Attainment Emission Inventory and Why Is EPA Proposing To Approve It?

An attainment emissions inventory is an inventory of the ozone precursors VOC and NO_X prepared for a typical summer day during a year that coincides with one of the years that the requesting area monitored attainment of the one hour ozone standard. As discussed elsewhere in this notice, the Maine DEP recorded air quality monitoring data during 1998, 1999 and 2000 that indicated the Portland Area met the one hour ozone standard during that time-frame. Therefore, Maine DEP prepared a 1999 emission inventory for the Portland ozone nonattainment area, and submitted it as part of its July 9, 2002 redesignation request for this area. This portion of the notice discusses our review of the inventory, and is divided into three parts: (1) Background Information, (2) Summary of 1999 Inventory, and (3) Results of our Review.

1. Background Information

Under the CAA as amended in 1990, states have the responsibility to inventory emissions contributing to nonattainment of a NAAQS, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. Further information on emission inventories and their purpose can be found in the document, ''Emission Inventory Requirements for Ozone State Implementation Plans,'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991, and in a September 4, 1992 memorandum from John Calcagni, Director of EPA's Air Quality Management Division, entitled, ''Procedures for Processing Requests to Redesignate Areas to Attainment.'' Copies of these two documents are available from EPA-New England at the address listed in the address section of this notice.

Those states containing ozone nonattainment areas classified as marginal to extreme were required under section 182(a)(1) of the CAA to submit a 1990 base year emissions inventory of ozone precursors by November 15, 1992. Maine DEP submitted a 1990 base year emission inventory to EPA, which we approved by a direct final rule published in the **Federal Register** on February 28, 1997 (62 FR 9081). On July 9, 2002, Maine DEP submitted a proposed redesignation request to EPA for the Portland Area that contained a proposed 1999 attainment inventory for the area. Our analysis of the 1999 inventory appears below.

2. Summary of 1999 Inventory

The Clean Air Act requires states to observe certain procedural requirements in developing emission inventory submissions to the EPA. Section 110(a)(2) of the Clean Air Act provides that each emission inventory submitted by a state must be adopted after reasonable notice and public hearing.[3] On August 1, 2002, the Maine DEP held a public hearing on the state's proposed redesignation request for the Portland Area, which included the 1999 emission estimate of ozone precursors.

EPA reviewed Maine DEP's 1999 emission inventory for the Portland Area to determine whether it conformed with our guidance on preparation of stationary point, area, on-road mobile, off-road mobile and biogenic emission estimates. Each of these inventory sections is discussed below.

Point Sources: Maine DEP considers any facility that emits 10 tons per year (tpy) or more of VOC or NO_X a point source of emissions, and estimates emissions for such facilities primarily by using information contained in emission statement questionnaire sent

[3] Also section 172(c)(7) of the Clean Air Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

annually to these facilities. The questionnaires require the reporting of various process related parameters such as fuel and raw material consumption, and pollution control equipment efficiency. The DEP uses this information in conjunction with emission factors and stack test data to calculate emissions. The Maine DEP verifies the information reported on the questionnaires during inspections conducted at the facilities.

Area Sources: Maine DEP used EPA recommended procedures to estimate emissions from area sources, which are essentially small facilities which in their aggregate may emit substantial emissions, but do not do so individually (*e.g.*, gasoline stations, automobile refinishers, *etc*). Our recommended techniques generally suggest use of per capita or per employee emission factors in conjunction with levels of activity to determine approximate levels of emissions from these sources. Emissions from area sources contribute substantially to total VOC emissions, but not much to total NO_X emissions.

Non-road mobile sources: Non-road mobile sources are engines that operate in a wide variety of applications, including farm and construction equipment, lawn and garden equipment, marine vessels, aircraft, and locomotives. Maine DEP used EPA's draft non-road air emission estimation model to determine emissions from most equipment types in this sector. This model estimates emissions for all non-road equipment types except locomotives, aircraft, and commercial marine vessels, so Maine DEP calculated emissions from these sources separately. Although this model is still draft, it presents a better means of estimating emissions for this sector than previous guidance issued by EPA in 1991.

On-road mobile sources: Maine DEP calculated emissions from this sector using data on vehicle miles traveled (VMT) collected by the State's Department of Transportation (Maine-DOT), and the EPA's MOBILE6 emission factor model. Maine-DOT used a variety of means to estimate VMT in Maine, including use of traffic counts and household and mass transit surveys. Maine DEP used a combination of state specific and national default data as inputs to the MOBILE6 model.

Biogenic Sources: Biogenic sources are naturally occurring emissions from various forms of plant life. Maine DEP used the EPA's biogenic emission information system (BEIS) to calculate these emissions, which are primarily VOC emissions. Maine DEP used data from the National Weather Service as input to the BEIS model.

3. Results of Our Review

Maine DEP has submitted a complete inventory for the Portland Area containing point, area, on-road mobile, non-road mobile, and biogenic source data, and accompanying documentation of how these estimates were prepared. The September 4, 1992 memorandum from John Calcagni referenced above recommends that ozone attainment inventories consist of typical summer day estimates of VOC and NO_X emissions prepared in accordance with the current inventory guidance available at the time the attainment inventory is submitted. The current inventory guidance is the body of work produced by the Emissions Inventory Improvement Program (EIIP), which is a joint effort between EPA and representatives from various state environmental agencies. The emission estimates prepared by the Maine DEP are presented in table 4:

TABLE 4.—1999 OZONE SEASONAL EMISSIONS IN TONS PER DAY

	VOC	NO_X
Point	3.70	15.0
Area	26.0	1.8
On-road	36.8	65.0
Off-road	27.0	20.9
Biogenic	197.5	
Total	291.0	102.7

Maine DEP has prepared an emissions inventory that meets the recommendations outlined in the EIIP guidance for a comprehensive, accurate, and current inventory of actual ozone precursor emissions for the Portland nonattainment area. EPA proposes to fully approve the 1999 ozone emission inventory submitted by Maine for the Portland nonattainment area. The calculations and assumptions used to develop this inventory are explained in Maine DEP's submittal and are available in the record supporting this proposal.

IX. What Action Is EPA Proposing in the Alternative To Approving the Redesignation Request, Maintenance Plan and 1999 Attainment Inventory?

Under section 107(d)(1)(C) of the CAA, each ozone area designated nonattainment for the 1-hour ozone standard prior to enactment of the 1990 CAA amendments, such as the Portland Area, was designated nonattainment by operation of law upon enactment of the 1990 amendments. Under section 181(a) of the Act, each ozone area designated nonattainment under section 107(d) was also classified by operation of law as ''marginal,'' ''moderate,'' ''serious,'' ''severe,'' or ''extreme,'' depending on the severity of the area's air quality problem. The design value for an area, which characterizes the severity of the air quality problem, is represented by the highest design value at any individual monitoring site (*i.e.*, the highest of the fourth highest 1-hour daily maximums in a given three-year period with complete monitoring data). Ozone nonattainment areas with design values between .138 and .160, such as the Portland area, were classified as moderate.

In addition, under section 182(b)(1)(A) of the CAA, states containing areas classified as moderate nonattainment were required to submit SIPs to provide for certain controls, to show progress toward attainment, and to provide for attainment of the ozone standard as expeditiously as practicable but no later than November 15, 1996. Moderate area SIP requirements are found primarily in section 182(b) of the CAA.

With regard to reclassification for failure to attain, section 182(b)(2)(A) of the Clean Air Act provides in relevant part:

> Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. * * * [A]ny area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of —
>
> (i) the next higher classification for the area, or
>
> (ii) the classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

Furthermore, section 182(b)(2)(B) of the Act provides that:

> The Administrator shall publish a notice in the **Federal Register**, no later than 6 months following the attainment date, identifying the area that the Administrator has determined under subparagraph A as having failed to attain and identifying the reclassification, if any, described under subparagraph (a).

Section 182(b)(2) of the Act requires EPA to determine whether an ozone nonattainment area attained the one-hour ozone NAAQS by its statutory attainment date, or any extension provided for in the Act. If EPA is unable to approve Maine's redesignation request based on current attainment in the Portland Area, we propose in the alternative to find the Portland Area did not attain as of its required attainment date, November 15, 1997.

1. Proposed Determination of Nonattainment as of November 15, 1997

Table 5 lists the number of exceedances of the 1-hour ozone NAAQS for each monitor in the Portland nonattainment area for the period 1995–1997. The ozone design value for each monitor is also listed for the same period. For the three year period ending in 1997 (i.e., 1995–1997), the design value for the Portland Area was 0.126 ppm. Therefore, if EPA does not approve a redesignation for Portland pursuant to section 107(d)(3) of the CAA, EPA proposes to find that the Portland Area did not attain the 1-hour NAAQS by its extended attainment date of November 15, 1997, the statutory attainment deadline for this area.[4]

TABLE 5.—AIR QUALITY MONITORING DATA FOR THE PORTLAND AREA 1995–1997

Site ID	Monitoring site	Total exceedances 1995–1997	Annual average expected exceedances	Design value (ppm)
23–005–2003	Cape Elizabeth	3	1.0	0.121
23–023–0003	Phippsburg	4	1.5	0.125
23–031–2002	Kennebunkport	4	1.4	0.125
23–031–3002	Kittery	4	1.9	0.126

* Only monitors with three complete years of data were used for these calculations.

2. Reclassification

Section 181(b)(2)(A) of the CAA requires that, when an area is reclassified for failure to attain, its reclassification be the higher of the next higher classification or the classification applicable to the area's ozone design value at the time the notice of reclassification is published in the **Federal Register**. Section 181(b)(2)(A)(ii) provides that no area shall be reclassified as Extreme. The Portland Area is a moderate nonattainment area. Its design value at the time of its attainment date, November 15, 1997, was 0.126 ppm, and based on preliminary ozone data from 2002, that have not yet been quality-assured, its current design value appears to be 0.126 ppm. Therefore, if EPA finalizes the finding of failure to attain, the Portland Area would be reclassified, by operation of law, as a serious nonattainment area.

Section 182(i) states that the Administrator may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency for submission of the new requirements applicable to an area which has been reclassified. An area reclassified to serious is required to submit SIP revisions addressing the serious area requirements for the 1-hour ozone NAAQS in section 182(c).

If the Portland Area is reclassified to serious, EPA must also address the schedule by which Maine is required to submit SIP revisions meeting the serious area requirements. EPA is proposing to require that the state submit SIP revisions containing all the serious area requirements no later than 12 to 18 months after final action on the reclassification. EPA is soliciting comments pertaining to the time frame for SIP submission. This submission would include an attainment demonstration and all additional measures required by section 182(c) of the CAA. The additional measures include, but are not limited to, the following: (1) Stage II vapor recovery in the nonattainment area, (2) the new source review offset requirements would increase from 1.15 to 1 to 1.2 to 1, (3) the definition of a major source of NO_X would decrease from 100 tons per year to 50 tons per year,[5] and (4) additional rate of progress requirements.

Where an attainment date has already passed and thus is impossible to meet, EPA believes that the Administrator may adjust the date to assure fair treatment in accordance with Congressional intent. 64 FR 13390 (March 18, 1999), 66 FR 15587–88 (March 19, 2001). Since the statutory attainment date of 1999 for serious areas has already passed, EPA is proposing to require that Maine DEP submit an attainment demonstration for the Portland Area that provides for attainment as expeditiously as practicable. It is currently impossible for DEP to meet the 1999 attainment deadline. Therefore, the only reasonable course for setting an attainment date for the Portland Area is to require Maine to develop an attainment demonstration that provides for attainment as expeditiously as practicable. Once Maine submits that demonstration EPA will provide the public an opportunity to comment on whether the date Maine selects is as expeditious as practicable. EPA is asking for comment on how to address a new attainment date for the Portland Area.

Finally, EPA is proposing to grant an extended effective date for the reclassification of the Portland Area to a serious ozone nonattainment area if EPA finalizes the proposal to find that the area did not attain as of 1997. The approved Maine new source review (NSR) SIP includes provisions that would automatically impose more stringent requirements for the preconstruction permitting of major sources of ozone precursors and major modifications to major sources once an area in Maine is reclassified to serious pursuant to the Act. Maine's SIP will require a higher ratio of offsets for new or increased emissions of VOC or NO_X, by automatically imposing the 1:1.2 level of offsets for a serious areas upon redesignation. See Maine DEP Air Pollution Control Regs. c. 100(98), c. 113(2)(c)(1) and (2), and c. 115(V)(B)(2)(b). In light of the relative scarcity of offsets for increased emissions of VOC, facilities that must secure a NSR permit for construction or modification in the Portland Area may face a significant planning burden in securing the increased level of offsets required as a result of this reclassification. Therefore, EPA believes the regulated community needs time to prepare for compliance with this enhanced NSR requirement. EPA is proposing and believes it is reasonable to have an effective date of 100 days from the date of publication to provide sources with additional time to prepare for the impact of these new

[4] EPA granted a one-year extension of the attainment date for the Portland Area pursuant to Section 181(a)(5) of the CAA on April 16, 1997 (62 FR 18526).

[5] Note that Maine is the Ozone Transport Region and as such, the definition of a major source for volatile organic compounds is already 50 tons per year.

requirements. *See* 66 FR 27036 (May 16, 2001); 67 FR 53882 (Aug. 20, 2002).

Proposed Action

EPA is proposing to determine that the Portland Area has attained the one-hour ozone NAAQS from 1999–2001, to redesignate the Portland Area from nonattainment to attainment of the 1-hour ozone NAAQS, and to approve the proposed maintenance plan submitted by the State of Maine. By proposing approval of the Portland Area maintenance plan, EPA is also proposing to approve the year 2012 MVEBs (16.654 tons per summer weekday for volatile organic compounds, and 26.450 tons per summer day for oxides for nitrogen) contained in that plan as adequate for maintenance of the ozone NAAQS and for transportation conformity purposes. EPA also proposes to approve the proposed Portland Area 1999 attainment emission inventory into the SIP.

In the alternative, EPA is proposing to find pursuant to section 181(b)(2) that the Portland Area did not attain the 1-hour ozone NAAQS by November 15, 1997, the attainment date for the Portland Area. If EPA finalizes this finding and when it becomes effective, the Act requires that the Portland Area be reclassified as a serious nonattainment area. EPA is also taking comment on a proposed schedule for submittal of the SIP revisions required for serious areas should the Portland Area be reclassified. Additionally, EPA is taking comment on how to address the new attainment date for the Portland Area and our proposal that Maine develop an attainment demonstration that provides for attainment as expeditiously as practicable. Finally, EPA is proposing to grant an extended effective date for the determination of nonattainment and reclassification, to give time for facilities to prepare for compliance with new construction permitting requirements.

EPA is soliciting public comments on the issues discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice. Interested parties should submit comments by October 17, 2002.

This redesignation is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed maintenance plan is substantially changed, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made, EPA will publish a Final Rulemaking Notice on the revisions. Before EPA can finally approve this plan Maine must finally adopt the SIP revision and submit it formally to EPA for incorporation into the SIP.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. The Agency has determined that the determination of nonattainment would result in none of the effects identified in section 3(f) of the Executive Order. Under section 181(b)(2) of the CAA, the proposed determination of nonattainment is based upon air quality considerations and the resulting reclassifications must occur by operation of law. It does not, in and of itself, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, determinations of nonattainment and reclassification cannot be said to impose a materially adverse impact on state, local, or tribal governments or communities. For this reason, the proposed determination of nonattainment and reclassification 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). Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA 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. This proposal merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). Determinations of nonattainment and the resulting reclassification of nonattainment areas pursuant to section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this proposed rulemaking only makes a factual determination, and does not directly regulate any entities. *See* 62 FR 60001, 60007–8, and 60010 (November 6, 1997) for additional analysis of the RFA implications of attainment determinations. Therefore, pursuant to 5 U.S.C. 605(b), certify that today's proposed action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes. Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small governments. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. EPA believes, as discussed above, that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, the finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

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

because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, 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: September 9, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 02–23589 Filed 9–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[FRL–7374–5]

RIN 2060–AK29

Proposed Revisions To Clarify the Scope of Sufficiency Monitoring Requirements for Federal and State Operating Permits Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing this rule to clarify the scope of the monitoring required in operating permits issued by State and local permitting authorities or by EPA under title V of the Clean Air Act (Act). Specifically, this proposed rule would clarify that under the sufficiency monitoring rules, all title V permits must contain monitoring sufficient to assure compliance as required under sections 504(a), 504(b), 504(c), and 114(a)(3) of the Act, in cases where the periodic monitoring rules are not applicable. The EPA believes this proposed rule is necessary to address claims of confusion on the part of some source owners and operators, permitting authorities and citizens as to the scope of EPA's title V monitoring regulations.

DATES: *Comments.* We must receive written comments on or before October 17, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–93–50, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–93–50, U.S. EPA, 401 M St., SW., Room M–1500, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Docket. Documents relevant to this action are available for inspection at the Docket Office, Attention: Docket Number A–93–50, U.S. Environmental Protection Agency, 401 M Street, SW., Room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 7:30 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. Copies also may be mailed on request form the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying. Documents relevant to the promulgation of the operating permit program regulations at parts 70 and 71 are available for inspection at the same location under docket numbers A–90–33 and A–93–50 for part 70, and A–93–51 for part 71.

FOR FURTHER INFORMATION CONTACT: For further information, contact Mr. Jeff Herring, U.S. EPA, Information Transfer and Program Implementation Division (C304–04), Research Triangle Park, North Carolina 27711, telephone number (919) 541–3195, facsimile number (919) 541–5509, electronic mail (e-mail) address: *herring.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov.* Comments submitted by e-mail must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments also will be accepted on disks in WordPerfect® version 5.1, 6.1 or 8 file format. All comments and data submitted in electronic form must note the docket number: A–93–50. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: OAQPS Document Control Officer, U.S. EPA, Information Transfer and Program Implementation Division (C304–04), Research Triangle Park, North Carolina 27711, Attention: Mr. Jeff Herring. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule will also be available on the WWW through EPA's Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or final rules at *http://www.epa.gov/ttn/oarpg/t5pfpr.html.* The TTN provides information and technology exchange in various areas of air pollution control. For more information, call the TTN help line at (919) 541–5384.

Regulated Entities. Categories and entities potentially affected by this action include facilities currently required to obtain title V permits by State, local, tribal, or Federal operating permits programs.

Outline. The contents of the preamble are listed in the following outline: