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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R01-OAR-2012-0290; FRL- 9744-1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; New Hampshire; Redesignation of the Southern New Hampshire 1997 8-hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve: the State of New Hampshire's request to redesignate the Boston-Manchester-Portsmouth (SE), New Hampshire moderate 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS); a State Implementation Plan (SIP) revision containing a 10-year maintenance plan for this area; a 2008 comprehensive emissions inventory for the area; and new motor vehicle emissions budgets (MVEBs) for the years 2008 and 2022 that are contained in the 10-year ozone maintenance plan for this area. Finally, EPA is proposing to withdraw the SIP-approved 2009 MVEBs and replace them with the 2008 MVEBs included in the maintenance plan.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2012-0290 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
3. Fax: (617) 918-0047.
4. Mail: "Docket Identification Number EPA-R01-OAR-2012-0290," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912.
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, 5 Post Office Square, Suite 100, Boston, MA 02109-3912. 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-2012-0290. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website 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, 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 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 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, 5 Post Office

Square, Suite 100, Boston, MA 02109-3912, telephone number (617) 918-1664, fax number (617) 918-0664, email Burkhart.Richard@epa.gov .

In addition to the publicly available docket materials available for inspection electronically in the Federal Docket Management System at 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 are also available for public inspection during normal business hours, by appointment at the State Air Agency: Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ‘‘we,’’ ‘‘us,’’ or ‘‘our’’ is used, we mean EPA.

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I. What is EPA proposing?

EPA is proposing to determine that the Boston-Manchester-Portsmouth (SE), New Hampshire 1997 8-hour ozone nonattainment area (hereafter the "Southern NH" area) has met the requirements for redesignation under sections 107(d)(3)(E) and 175A of the Clean Air Act (CAA). EPA is thus proposing to approve New Hampshire's request to change the legal designation of the Southern NH area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. In this rulemaking, EPA is also proposing to approve New Hampshire's maintenance plan SIP revision for the Southern NH area under CAA section 175A, such approval being one of the CAA criteria for redesignation to attainment status. The maintenance plan is designed to keep the Southern NH area in attainment of the ozone NAAQS through 2022. EPA is proposing to approve the 2008 comprehensive emissions inventory for the Southern NH area as meeting the requirements of section 182(a)(1) of the CAA. Finally, EPA is proposing to approve the newly-established 2008 and 2022 MVEBs for the Southern NH area. At the state's request, EPA is proposing to remove the 2009 MVEBs prepared using MOBILE6.2 and replace them with 2008 MVEBs prepared using MOVES2010. EPA will finalize its approval of the redesignation request only if EPA also approves the 2008 comprehensive emissions inventory, vehicle inspection/maintenance (I/M) program and certain Reasonably Available Control Technology (RACT) rules for the area. EPA plans to take final action on the emission inventory, RACT rules, and revised I/M program, prior to, or in conjunction with, EPA's final approval of New Hampshire's redesignation request.

II. What is the background for these proposed actions?

A. General Background.

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NOx) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NOx and VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Before promulgation of the 1997 8-hour standard, the ozone NAAQS was based on a 1-hour standard. The Boston-Manchester-Portsmouth (SE), NH area 1997 8-hour ozone nonattainment area is composed of portions of three formerly separate 1-hour ozone nonattainment areas: (1) The Portsmouth-Dover-Rochester, NH serious 1-hour ozone nonattainment area; (2) the Boston-Lawrence-Worcester, MA-NH serious 1-hour ozone nonattainment area; and (3) the Manchester, NH marginal 1-hour ozone nonattainment area.

All three of these areas attained the 1-hour ozone standard by their respective attainment dates. Specifically, for the Boston-Lawrence-Worcester, MA-NH 1-hour area, see EPA's final determination at 77 FR 31496, May 29, 2012. For the Portsmouth-Dover-Rochester, NH 1-hour area and the Manchester, NH 1-hour area, see EPA's proposed determination at 77 FR 42470, July 19, 2012. (EPA will take final action with respect to this determination prior to taking final action on the redesignation request.)

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million parts (ppm). On April 30, 2004 (69 FR 23858), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications

became effective June 15, 2004. EPA designated as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of air quality data, 2001-2003. The Southern NH area was designated as nonattainment for the 1997 8-hour ozone standard and classified as a "moderate" nonattainment area under subpart 2 of the CAA. This area includes 54 cities and towns in Hillsborough, Merrimack, Rockingham, and Strafford Counties. See 40 CFR 81.330, for exact listing of cities and towns.

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, 42 U.S.C. 7501-7509a and 7511-7511f, respectively.) Subpart 1 contains general requirements for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment areas. Under EPA's implementation rule for the 1997 8-hour ozone standard (69 FR 23951, April 30, 2004), the Southern NH area was designated as a subpart 2, 8-hour ozone moderate nonattainment area by EPA based on air quality monitoring data from 2001-2003.

The New Hampshire Department of Environmental Services (NH DES) submitted a request to redesignate the Southern NH area to attainment of the 1997 8-hour ozone standard on March 2, 2012, with a supplement submitted on September 21, 2012. Complete, quality-assured and certified data show the area first attained the 1997 8-hour NAAQS based on 2002-2004 data and has remained in attainment since then (see 73 FR 14387, March 18, 2008 and 76 FR 14805, March 18, 2011). In addition, available preliminary ozone monitoring data for 2012 indicate continued attainment of the standard. See complete discussion of air quality data for the Southern NH area in section IV.A. of today's action. 40 CFR 50.10 and appendix I of 40 CFR part 50 provide that the 1997 8-hour ozone standard is attained when the three-year average of

the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm, when rounded, at all ozone monitoring sites in the area. To support the redesignation of the area to attainment of the NAAQS, the ozone data must be complete for the three attainment years. The data completeness requirement is met when the three-year average of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness, as determined in accordance with appendix I of 40 CFR part 50. Under the CAA, EPA may redesignate a nonattainment area to attainment if sufficient, complete, quality-assured data are available to show that the area has attained the standard and if the State meets the other CAA redesignation requirements specified in section 107(d)(3)(E) and section 175A.

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm. On May 21, 2012 (77 FR 30088), EPA designated all of New Hampshire as attainment/unclassifiable under the new, more stringent 2008 8-hour ozone NAAQS (see also 40 CFR part 81.330). Today's action does not address requirements of the 2008 8-hour ozone standard.

B. What are the impacts of the December 22, 2006 and June 8, 2007 United States Court of Appeals decisions regarding EPA's Phase 1 Implementation Rule?

On December 22, 2006, in *South Coast Air Quality Management Dist. v. EPA*, the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) vacated EPA's Phase 1 Implementation Rule for the 1997 8-hour Ozone Standard (69 FR 23951, April 30, 2004). 472 F.3d 882 (D.C.Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been

successfully challenged. Id., Docket No. 04 1201. Therefore, several provisions of the Phase 1 Rule remain effective: provisions related to classifications for areas currently classified under subpart 2 of title I, part D, of the CAA as 1997 8-hour nonattainment areas; the applicable attainment dates; and the timing for emissions reductions needed for attainment. The June 8, 2007 decision also left intact the court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the D.C. Circuit let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged.

The June 8, 2007 decision reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of Federal actions. The June 8, 2007 decision clarified that the court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations. More recently, EPA issued new regulations regarding 1-hour ozone anti-backsliding requirements (see 77 FR 28424, May 14, 2012) that were the subject of the court's rulings.

EPA previously concluded that the D.C. Circuit's December 22, 2006 and June 8, 2007 decisions impose no impediment to moving forward with redesignation to attainment, when redesignation

is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

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 provided that:

> (1) the Administrator determines that the area has attained the applicable 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 SIP and 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 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 William G. Laxton, Director Technical Support Division, 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;

"Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1-10, 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. What Is EPA's analysis of the State's request?

EPA is proposing to determine that the Southern NH area has met all applicable redesignation criteria under CAA section 107(d)(3)(E). The bases for EPA's proposed approval of the redesignation request are discussed below.

A. Has the Southern NH area has attained the 1997 8-hour ozone NAAQS?

On March 18, 2008 (73 FR 14387), EPA first determined that the Southern NH area attained the 1997 8- hour ozone NAAQS based on monitoring data for 2002-2004. EPA determines that an area has attained the 1997 8-hour ozone NAAQS in accordance with 40 CFR 50.10 and 40 CFR part 50, appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the three-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. 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 System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

In addition, on March 18, 2011 (76 FR 14805), EPA determined that the Southern NH area attained the 1997 8-hour ozone NAAQS based on complete, quality-assured monitoring data for 2007-2009. In the March 18, 2011 action, EPA also determined that the Southern NH area attained the 1997 ozone standard as of June 15, 2010, its applicable attainment date.

The State of New Hampshire's redesignation request that is the subject of this action, includes ozone data from 1983-2010, and shows that the area has been in attainment since 2004 (see also 73 FR 14387, March 18, 2008 and 76 FR 14805, March 18, 2011). All ozone monitoring data have been quality-assured in accordance with 40 CFR 58.10, recorded in the AQS database, and certified. The data also meet the completeness criteria in 40 CFR 50, appendix I, which requires a minimum completeness of 75 percent annually and 90 percent over each three-year period. Monitoring data for the years 2007 to 2011 is presented in Tables 1 and 2 below. (The tables include several years of data for thoroughness; EPA previously determined this area attained the

1997 8-hour NAAQS (see 73 FR 14387, March 18, 2008 and 76 FR 14805, March 18, 2011).) The 2011 data were not included in the redesignation request, but have since been certified; thus, EPA is including them in this proposal to show that that the area continues to attain during the most recent three years of complete, quality-assured data for 2009-2011. Table 1 shows, as determined on March 18, 2011 (76 FR 14805), that the Southern NH area attained the 1997 ozone standard by its applicable attainment date. Table 2 shows that the Southern NH area continues to attain the 1997 ozone standard. All sites are well below the 1997 8-hour NAAQS.

Table 1. 2007-2009 Fourth-High 8-hour Average Ozone Concentrations and 2007-2009 Design Values (parts per million) in the Boston-Manchester-Portsmouth (SE), New Hampshire Area.

Location	AQS Site ID	4th high 2007	4th High 2008	4th High 2009	Design Value (07-09)
Manchester	330110020	0.074	0.064	0.060	0.066
Nashua	330111011	0.081	0.067	0.066	0.071
Portsmouth	330150014	0.078	0.069	0.070	0.072
Rye	330150016	0.086	0.075	0.068	0.076

Table 2. 2009-2011 Fourth-High 8-hour Average Ozone Concentrations and 2009-2011 Design Values (parts per million) in the Boston-Manchester-Portsmouth (SE), New Hampshire Area.

Location	AQS Site ID	4th high 2009	4th High 2010	4th High 2011	Design Value (09-11)
Manchester	330110020	0.060	0.063	*	N/A
Londonderry	330150018	**	**	0.069	N/A
Nashua	330111011	0.066	0.065	0.066	0.066
Portsmouth	330150014	0.070	0.064	0.064	0.066
Rye	330150016	0.068	0.066	0.066	0.066

*Site moved to Londonderry; no 2009-2011 design values available.
**New site; no 2009-2011 design values available.
Preliminary data available for 2012 indicate that the area continues to attain.

In addition, as discussed below with respect to the maintenance plan, the NH DES has committed to continue to operate an EPA-approved monitoring network in the area as necessary to demonstrate maintenance of the NAAQS. New Hampshire remains obligated to continue to

quality-assure monitoring data in accordance with 40 CFR part 58 and enter all data into the AQS in accordance with Federal guidelines. In summary, EPA proposes to find that the area has attained the 1997 8-hour ozone NAAQS.

B. Has the State of New Hampshire met all applicable requirements of Section 110 and Part D and does the Southern NH area have a fully approved SIP under Section 110(k) of the CAA for purposes of redesignation to attainment?

1. Requirements under the 1997 8-hour ozone standard.

With respect to the 1997 8-hour standard, the Southern NH area is classified under subpart 2. The June 8, 2007 opinion clarifies that the Court did not vacate the Phase 1 Rule's provisions with respect to classifications for areas under subpart 2. The Court's decision therefore upholds EPA's classifications for those areas classified under subpart 2 for the 8-hour ozone standard.

2. Requirements under the 1-hour ozone standard.

In its June 8, 2007 decision the D.C. Circuit limited its vacatur so as to uphold those provisions of the anti-backsliding requirements that were not successfully challenged. Therefore, an area must meet the anti-backsliding requirements which apply by virtue of the area's classification for the 1-hour ozone standard. See 40 CFR 51.900, et seq.; 70 FR 30592, 30604 (May 26, 2005). As set forth in more detail below, the area must also address four additional anti-backsliding provisions identified by the court in its decisions.

The anti-backsliding provisions at 40 CFR 51.905(a)(1) prescribe 1-hour ozone standard requirements that continue to apply after revocation of the 1-hour ozone standard to former 1-hour ozone nonattainment areas that are also designated as nonattainment for the 1997 8-hour standard. 40 CFR 51.905(a)(1)(i) provides that the area remains subject to the obligation to adopt and implement the applicable requirements as defined in § 51.900(f), except as provided in § 51.905 (a)(1)(iii) of this section, and except as provided in paragraph (b) of § 51.905.

40 CFR 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 designation for the 8-hour NAAQS:

- Reasonably available control technology (RACT).
- Inspection and maintenance programs (I/M).
- Major source applicability cut-offs for purposes of RACT.
- Rate of Progress (ROP) reductions.
- Stage II vapor recovery.
- Clean fuels fleet program under section 182(c)(4) of the CAA.
- Clean fuels for boilers under section 182(e)(3) of the CAA.
- Transportation Control Measures (TCMs) during heavy traffic hours as provided section 182(e)(4) of the CAA.
- Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.
- Transportation controls under section 182(c)(5) of the CAA.
- Vehicle miles traveled provisions of section 182(d)(1) of the CAA.
- NOx requirements under section 182(f) of the CAA.
- Attainment demonstration or an alternative as provided under § 51.905(a)(1)(ii)

• Contingency measures as provided under § 51.905(b).

Pursuant to 40 CFR 51.905(c), the Southern NH area is subject to the obligations set forth in 40 CFR 51.905(a) and 40 CFR 51.900(f).

In addition, the D.C. Circuit held that EPA should have retained four additional measures in its anti-backsliding provisions: (1) nonattainment area NSR; (2) section 185 penalty fees; (3) contingency measures under section 172(c)(9) or 182(c)(9) of the Act; and (4) 1-hour MVEBs that were not yet replaced by 8-hour emissions budgets. EPA addressed portions of the court decision in a recent Federal Register notice (see 77 FR 28424, May 14, 2012). For the New Hampshire request EPA has addressed these four requirements as follows:

With respect to NSR, EPA has determined that an area being redesignated need not have an approved nonattainment NSR program, provided that the state demonstrates maintenance of the standard in the area without part D NSR in effect. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." This policy assumes that the state's PSD program will become effective in the area immediately upon redesignation to attainment. Consequently EPA concludes that an approved NSR program is not an applicable requirement for purposes of redesignation. See the more detailed explanations in the following rulemakings: Detroit, Michigan (60 FR 12467-12468, March 7, 1995); Cleveland-Akron-Lorrain, Ohio (61 FR 20458, 20469-70, May 7, 1996); Louisville, Kentucky (66 FR 53665, 53669, October 23, 2001); and Grand Rapids, Michigan (61 FR 31831, 31836-31837, June 21, 1996). Furthermore, New

Hampshire has a fully approved NSR program. The New Hampshire NSR program was last approved on February 6, 2012 (77 FR 5700).

With regard to the requirement for section 185 source penalty fee programs, no portion of the Southern NH area was classified as severe or higher for the 1-hour ozone standard, and therefore the area is not subject to this requirement.

With respect to the 1-hour MVEBs that were not yet replaced by 8-hour emissions budgets, the conformity portion of the court's June 8, 2007 ruling clarified that, for those areas with MVEBs for the 1-hour ozone standard, anti-backsliding requires that these MVEBs be used for 8-hour conformity determinations until replaced by MVEBs for the 8-hour ozone standard. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93. Note below that EPA is proposing to approve 8-hour MVEBs contained in New Hampshire's redesignation request and 8-hour ozone maintenance plan for the Southern NH area.

As stated above, in 1991, all cities and towns of what is now the Southern NH 1997 8-hour ozone nonattainment area were designated nonattainment by operation of law and classified by EPA. The two largest of these areas, the Boston-Lawrence-Worcester, MA-NH 1-hour area and the Portsmouth-Dover-Rochester, NH 1-hour area were classified as serious ozone nonattainment areas 56 FR 56694 (November 6, 1991). EPA previously approved the serious attainment demonstration SIP and its associated elements, e.g., attainment MVEBs and the Reasonably Available Control Measures (RACM) demonstration, for the Boston-Lawrence-Worcester, MA-NH 1-hour area (see 63 FR 67405, December 7, 1998; 67 FR 18493, April 16, 2002; and 67 FR 72574, December 6, 2002). As stated above, the Portsmouth-Dover-Rochester,

NH 1-hour area attained the 1-hour NAAQS by November 15, 1999. See 77 FR 42470, July 19, 2012. Since this area attained the 1-hour standard by its attainment deadline there is not a need for 1-hour contingency measures. Also as stated above, the Manchester, NH 1-hour area attained the 1-hour standard by its attainment deadline. In addition, since the Manchester, NH 1-hour area was a marginal area it did not need to have contingency measures for failure to attain. Neither the Portsmouth-Dover-Rochester, NH 1-hour area, the Boston-Lawrence-Worcester, MA-NH 1-hour area, nor the Manchester, NH 1-hour area needed to have section 185 fees since they were not classified as severe or extreme. In conclusion, there are no outstanding 1-hour requirements for this area (see 77 FR 42470, July 19, 2012).

We are proposing to determine that New Hampshire has met all currently applicable SIP requirements for purposes of redesignation of the Southern NH area to attainment of the 1997 8-hour ozone standard under section 110 and part D of the CAA, in accordance with section 107(d)(3)(E)(v). We are also proposing to determine that the New Hampshire SIP, with the exception of the comprehensive emission inventory, certain RACT rules, and revisions to New Hampshire's vehicle I/M program, is fully approved with respect to all applicable requirements for purposes of redesignation to attainment of the 1997 8-hour ozone standard, in accordance with section 107(d)(3)(E)(ii) of the CAA. As discussed below, in this action, EPA is proposing to approve New Hampshire's 2008 comprehensive emissions inventory as meeting the comprehensive emissions inventory requirement of section 182(a)(1) for the area. EPA is taking action on the New Hampshire RACT regulations and vehicle I/M program revisions in separate rules. Provided that the comprehensive emissions inventory, vehicle I/M program revisions, and RACT rules are approved on or before we complete final rulemaking approving the redesignation request, we determine here that, assuming that this occurs, New Hampshire will have met all applicable section 110 and part D SIP requirements of the CAA for purposes of

approval of New Hampshire's ozone redesignation requests for the Southern NH area. In making these determinations, we have ascertained what SIP requirements are applicable to the area for purposes of redesignation, and have determined that the portions of the SIP meeting these requirements are fully approved or will be fully approved under section 110(k) of the CAA by the time we complete final rulemaking on New Hampshire's ozone redesignation requests for the Southern NH area. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

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) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. See also the September 17, 1993 Michael Shapiro memorandum and 60 FR 12459, 12465-66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. See *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004), and also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

As noted in the Clean Data Determination for the area (see 76 FR 14805, March 18, 2011), since EPA determined that the Southern NH area has attained the 1997 8-hour ozone standard, under 40 CFR 51.918, the requirements to submit certain planning SIPs related to attainment, including

attainment demonstration requirements (the reasonably available control measure (RACM) requirement of section 172(c)(1) of the CAA, the reasonable further progress (RFP) and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) are not applicable to the area as long as it continues to attain the NAAQS and will cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble, EPA stated that:

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. "General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990," (General Preamble) 57 FR 13498, 13564 (April 16, 1992).

See also Calcagni memorandum (dated September 4, 1992) on page 6. ("The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.")

3. Requirements of Section 110 and Part D of the CAA applicable for purposes of redesignation for the 8-Hour NAAQS.

a. Section 110 and general SIP requirements.

Section 110(a) of Title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a State must have been adopted by the State after reasonable public notice and hearing, and, among other things, must: include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; provide for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; include provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; include criteria for stationary source emission control measures, monitoring, and reporting; include provisions for air quality modeling; and provide for public and local agency participation in planning and emission control rule development.

We believe that the section 110 elements that are not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. A State remains subject to these requirements after an area is redesignated to attainment. Only the section 110 and part D requirements that are linked with a particular area's designation and classification are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174-53176 October 10, 1996) and (62 FR 24826 May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748 December 7, 1995). See also the discussion on this issue

in the Cincinnati, Ohio 1-hour ozone redesignation (65 FR 37890 June 19, 2000), and in the Pittsburgh, Pennsylvania 1-hour ozone redesignation (66 FR 50399 October 19, 2001).

We have reviewed New Hampshire's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA, to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of the New Hampshire SIP addressing section 110 elements under the 1-hour ozone standard. See Table 3 below. All the VOC and NOx control measures listed in Table 3 are permanent and enforceable controls that will remain in place following redesignation.

TABLE 3. List of New Hampshire Control Measures for Volatile Organic Compounds and Oxides of Nitrogen (Ozone Precursors)

Name of Control 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
Heavy Duty Diesel Engines (On-road)	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
Federal Marine Engines	federal rule	Promulgated at 40 CFR part 91
AIM Surface Coatings	federal rule	Promulgated at 40 CFR part 59
Automotive Refinishing	federal rule	Promulgated at 40 CFR part 59
Consumer & commercial products	federal rule	Promulgated at 40 CFR part 59
Inspection & Maintenance	CAA SIP Requirement	SIP approved (66 FR 1868; 1/10/01)
NOx RACT	CAA SIP Requirement	SIP approved (62 FR 17087; 4/9/97)

VOC RACT pursuant to sections 182(a)(2)(A) and 182(b)(2)(B) of CAA	CAA SIP Requirement	SIPs approved (63 FR 67405; 12/17/98) (63 FR 11600; 3/10/98) (58 FR 4902; 1/19/93) (58 FR 29973; 5/25/93)
VOC RACT pursuant to section 182(b)(2)(A) and (C) of CAA	CAA SIP Requirement	SIPs approved (67 FR 48034; 7/23/02) (65 FR 42290; 7/10/2000) (63 FR 11600; 3/10/98)
Stage II Vapor Recovery	CAA SIP Requirement	SIP approved (63 FR 67405; 12/7/98).
Reformulated Gasoline	state opt-in	SIP approved (63 FR 67405; 12/7/98)
National Low Emission Vehicle	state opt-in	SIP approved (65 FR 12476; 3/9/00)
Clean Fuel Fleets	CAA SIP Requirement	SIP approved (64 FR 52434; 9/29/99)
New Source Review	CAA SIP Requirement	SIP approved (66 FR 39100; 7/27/01)
Base Year Emissions Inventory	CAA SIP Requirement	SIP approved (62 FR 55521; 10/27/97)
15% VOC Reduction Plan	CAA SIP Requirement	SIP approved (63 FR 67405; 12/7/98)
9% rate of progress plan	CAA SIP Requirement	SIP approved (67 FR 18547; 4/16/02)
Emissions Statements	CAA SIP Requirement	SIP approved (63 FR 11600; 3/10/98)
Enhanced Monitoring (PAMS)	CAA Requirement	SIP approved (62 FR 55521; 10/27/97)
OTC NOx MOU Phase II and III	state initiative	SIP approved (64 FR 29567; 6/2/99)
Stage II Vapor Recovery or comparable measures section 184(b)(2) CAA requirement	CAA SIP requirement	SIP approved (64 FR 52434; 9/29/1999)

The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the 8-hour ozone nonattainment status of the Southern NH area. Therefore, EPA concludes that these infrastructure SIP elements are not applicable requirements for purposes of review of the

state's 8-hour ozone redesignation request. Nevertheless, in a submittal dated December 14, 2007, New Hampshire confirmed that the state meets the section 110 requirements for the 1997 8-hour ozone standard. EPA approved the New Hampshire 110(a)(2) SIP submittal on July 8, 2011, at 76 FR 40248, for the following elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

b. Part D SIP requirements.

EPA has reviewed the New Hampshire SIP for the Southern NH area with respect to SIP requirements applicable for purposes of redesignation under part D of the CAA for both the 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS. EPA believes that the New Hampshire SIP for the Southern NH area contains approved SIP measures that meet the part D requirements applicable for purposes of redesignation. EPA has approved most of the required Part D elements. EPA plans to take final action on revisions to New Hampshire's vehicle I/M program,[1] and certain RACT rules prior to, or in conjunction with, final action on the Southern NH redesignation request. In addition EPA is proposing to approve the 2008 comprehensive emissions inventory, discussed in section IV.D.2.a. of this rulemaking. Upon final approval of New Hampshire's I/M program revisions, RACT rules, and the 2008 comprehensive emissions inventory, the Southern NH area will meet all of the requirements applicable to the area under part D for purposes of redesignation.

[1] The on-road mobile source emissions estimates found in the SNH redesignation request includes emissions reductions achieved as a result of the implementation of the revised New Hampshire motor vehicle I/M program; thus New Hampshire's revised I/M program should be approved into the SIP prior to, or in conjunction with, final action on the SNH redesignation request.

EPA has determined that, if EPA finalizes the approval of New Hampshire's I/M program, discussed below, requirements for RACT, and the 2008 comprehensive emissions inventory, discussed in section VII.D.2.a. of this rulemaking, the New Hampshire SIP will meet the SIP requirements applicable for purposes of redesignation under part D of the CAA for the Southern NH area. 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, which includes section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

The applicable subpart 1 requirements are contained in sections 172(c)(1)-(9) and in section 176. The applicable subpart 2 requirements are contained in sections 182(a) and (b) (marginal and moderate nonattainment area requirements).

Subpart 1 Section 172 Requirements.

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Southern NH area are contained in sections 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, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and to provide for attainment for the national primary ambient air quality standards. EPA interprets this requirement to impose a duty on states containing nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area

as components of the area's attainment demonstration. Because attainment has been reached in the Southern NH area, no additional measures are needed to provide for attainment and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard until redesignation. See 40 CFR 51.918.

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because the Southern NH area has met the 1997 8-hour ozone NAAQS (see General Preamble, 57 FR 13564, April 16, 1992). See also 40 CFR 51.918. In addition, because the Southern NH area has attained the ozone NAAQS and is no longer subject to an RFP requirement, the section 172(c)(9) contingency measures are not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. This requirement was superseded by the inventory requirement in section 182(a)(1) discussed below.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area.

New Hampshire has a fully approved NSR program (77 FR 5700, February 6, 2012). Even if New Hampshire did not have a fully approved NSR program, EPA has interpreted the section 184 Ozone Transport Region (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 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 Southern NH area has satisfied all 8-hour ozone standard requirements applicable for purposes of section 107(d)(3)(E) under Part D of the CAA.

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the New Hampshire SIP meets the requirements of section 110(a)(2) for purposes of redesignation.

Subpart 1, Section 176 Conformity Requirements.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the U.S. Code 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, which EPA promulgated pursuant to CAA requirements.

EPA interprets the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions 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, because they must implement conformity under Federal rules if state rules are not yet approved, it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748, 62749-62750 (December 7, 1995) (Tampa, Florida).

EPA approved New Hampshire's Env-A 1500 general conformity SIP on August 16, 1999 (64 FR 44417). New Hampshire submitted a revised Env-A 1500 Transportation Conformity SIP on December 9, 2011. New Hampshire has submitted onroad MVEBs for the Southern NH area of 17.8 tons per summer weekday (tpswd) VOC and 37.2 tpswd NOx for the year 2008, and 9.2 tpswd VOC and 11.8 tpswd NOx for the year 2022.

The area must use the MVEBs from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval. MVEBs are discussed further in section V.

Subpart 2 Section 182(a) and (b) Requirements

Comprehensive Emissions Inventory. Section 182(a)(1) requires the submission of a comprehensive emissions inventory. New Hampshire submitted both a 2002 comprehensive emissions inventory to EPA on June 7, 2007 and a 2008 emissions inventory with its redesignated request. As discussed below in section VII, EPA is proposing to approve the 2008 emissions inventory as meeting the section 182(a)(1) comprehensive emissions inventory requirement.

Emissions Statements. EPA approved New Hampshire's emission statement SIP, as required by section 182(a)(3)(B), on March 10, 1998 (63 FR 11600).

Reasonable Further Progress and Attainment Demonstration. For the reasons set forth earlier in this notice, because the Southern NH area has attained the 1997 8-hour ozone NAAQS, the requirements of section 182(b)(1) do not apply.

VOC and NOx RACT Requirements. Section 182(b)(2) requires states with moderate nonattainment areas to adopt RACT under section 172(c)(1) with respect to each of the following: (1) all sources covered by a Control Technology Guideline (CTG) document issued between November 15, 1990, and the date of attainment; (2) all sources covered by a CTG issued prior to November 15, 1990; and, (3) all other major non-CTG stationary sources. In addition, Section 182(f) establishes NO_X requirements for ozone nonattainment areas. As required under the 1-hour ozone standard, New Hampshire submitted, and EPA approved, NOx and VOC RACT regulations into the New Hampshire SIP. See 62 FR 17092, April 9, 1997; 63 FR 11600, March 10, 1998; and 67 FR 48036, July 23, 2002.

In addition, under the 1997 8-hour ozone standard, moderate and above ozone nonattainment areas, and areas in the OTR, were required to submit RACT SIPs. As noted in the EPA's Phase 2 ozone implementation rule,[2] the RACT submittal for the 1997 8-hour ozone standard was due from New Hampshire on September 16, 2006. See 40 CFR 51.916(b)(2). On January 28, 2008, New Hampshire submitted a SIP revision to EPA consisting of a certification that it met RACT for purposes of the 1997 8-hour ozone standard. EPA plans to take final action on New Hampshire's RACT certification, prior to, or in conjunction with, final action on the Southern NH redesignation request.

Furthermore, subsequent to the RACT submittal due date for the 1997 8-hour ozone standard, EPA issued additional CTGs, covering various VOC source categories. Specifically, on October 5, 2006, EPA issued four new CTGs (71 FR 58745). Then, on October 9, 2007, EPA issued three more CTGs (72 FR 57215). Lastly, on October 7, 2008, EPA issued an additional four CTGs (73 FR 58841). The State of New Hampshire submitted its SIP revision for all eleven 2006, 2007, and 2008 CTGs in one SIP revision package on July 26, 2011. EPA plans to take final action on New Hampshire's submittal for the 2006, 2007, and 2008 CTGs, prior to, or in conjunction with, final action on the Southern NH redesignation request.

Stage II Vapor Recovery. Section 182(b)(3) requires states to submit Stage II rules no later than November 15, 1992. New Hampshire became subject to the Stage II vapor recovery requirements under the 1-hour ozone standard. EPA approved New Hampshire's Stage II rule on December 7, 1998 (63 FR 67405). In addition, since New Hampshire is in the OTR, the State

[2] See Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2 (the Phase 2 Rule) (70 FR 71612; November 29, 2005).

must meet the CAA Section 184(b)(2) Stage II or comparable measures requirement. EPA approved New Hampshire's Stage II or comparable measures SIP on September 9, 1999 (64 FR 52434).

On May 16, 2012 (77 FR 28772), EPA issued a final rulemaking determining that onboard refueling vapor recovery technology is in widespread use across the motor vehicle fleet for purposes of controlling motor vehicle refueling emissions. The May 16, 2012 rulemaking waives the requirement for states to implement Stage II vapor recovery systems at gasoline dispensing facilities in nonattainment areas classified as Serious and above for the ozone NAAQS. The May 16, 2012 rulemaking allows a state to remove its Stage II vapor recovery program as of a date certain, if the state revises its SIP to satisfy the requirements of CAA sections 110(l), 184(b)(2), and 193, as applicable. In addition, on August 7, 2012, EPA issued guidance, "Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures," in order to assist states with addressing the SIP CAA requirements if a state moves forward with the phase out of its Stage II vapor recovery program. New Hampshire has recently revised its State regulation to eliminate the requirement for gasoline dispensing facilities to implement Stage II vapor recovery systems as of January 1, 2012. The State has not yet submitted the revised rule to EPA as a SIP revision. NH DES is currently developing a SIP revision to address the phase out of the State's Stage II vapor recovery program in accordance with EPA's May 16, 2012 rulemaking and August 7, 2012 guidance. The Stage II phase out is a separate action from this redesignation request. The maintenance plan included in New Hampshire's redesignation request is, however, consistent with the planned Stage II phase out SIP revision. Specifically, emission estimates for 2022 do not include any emission reductions from Stage II vapor recovery controls.

Vehicle Inspection and Maintenance (I/M). EPA's final I/M regulations in 40 CFR part 85 required the states to submit a fully adopted I/M program by November 15, 1993. New Hampshire became subject to the motor vehicle I/M requirements under the 1-hour ozone standard. EPA approved New Hampshire's enhanced I/M program on January 10, 2001 (66 FR 1868). On April 5, 2001, EPA issued "Amendments to Vehicle Inspection and Maintenance Program Requirements Incorporating the On-Board Diagnostics Check" (65 FR 18156). The revised I/M rule requires that electronic checks of the On-Board Diagnostics (OBD2) system be conducted as part of states' motor vehicle I/M programs. Subsequently, New Hampshire revised its I/M program regulations to include OBD2 testing of 1996 and newer motor vehicles. New Hampshire submitted a SIP revision, for its OBD2 I/M program, to EPA on November 17, 2011. EPA has not yet taken final action on the revised I/M SIP but plans to do so prior to the final approval of this redesignation request.

Thus, as discussed above, with approval of the comprehensive emissions inventory, certain RACT rules, and New Hampshire's revised I/M program, the Southern NH area will satisfy the requirements applicable for purposes of redesignation under section 110 and part D of the CAA.

C. Are the air quality improvement in the Southern NH area due to permanent and enforceable reductions in emissions?

EPA proposes to find that the state has demonstrated that the observed air quality improvement in the Southern NH area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures, listed in Table 3 above. As shown in the state's submittal and supported by EPA rulemaking (see 73 FR 14387, March 18, 2008 and 76 FR 14805, March 18, 2011) the area first came into attainment of

the 1997 8-hour ozone standard based on ozone data for 2002-2004. The area has remained in attainment and the air quality has improved in the area. The area is now attainment for the more stringent 2008 8-hour ozone NAAQS (77 FR 30088, May 21, 2012). Attainment is the direct result of permanent and enforceable emission reductions and not favorable meteorology or economic downturn.

New Hampshire's redesignation request documents a substantial emission reduction in ozone precursor emissions both in upwind states and within New Hampshire. For example, the state's request notes that in light of the OTC's NOx budget program and the EPA's NOx SIP call, NOx emissions from budget sources declined by 62% between 2000 and 2008. Additionally, the emission inventories for New Hampshire show that between 2002 (one of the ozone seasons on which the area's nonattainment designation was based) and 2008, an attainment year, in-state NOx and VOC emissions were reduced by approximately 68 tons per day and 51 tons per day, respectively. The following summary from the New Hampshire redesignation request (see pages 23-24) gives one example of the magnitude of emission reductions the area has experienced over the past two decades.

> "The observed improvement in air quality would not have occurred without the concerted efforts of EPA and the Ozone Transport Commission (OTC) to reduce the emitted amounts of both pollutants across the region. In September 1994, the OTC member states[3] adopted a memorandum of understanding to achieve regional NOx emission reductions. Phase I began with the installation of RACT, followed in Phases II and III by the development and implementation of regulations to achieve further reductions in ozone-season NOx emissions by 1999 and 2003, respectively. The second and third

[3] The OTC includes the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and Virginia, and the District of Columbia.

phases were modeled on the cap-and-trade principle and resulted in the creation of the OTC NOx Budget Program.[4] This program established a *de facto* NOx emission rate of 0.15 lbs/MMBtu for participating electric generating units and large industrial boilers. Rules for New Hampshire's participation in the OTC NOx Budget Program are codified at Chapter Env-A 3200. In the midst of these efforts, in 1998, EPA issued a final rule aimed at reducing the regional transport of NOx and ozone. This rule, commonly known as the NOx SIP Call, required 22 eastern states and the District of Columbia (not including New Hampshire) to reduce ozone-season NOx emissions. Compliance with the NOx SIP call began on May 1, 2003, for the participating OTC states[5] and on May 31, 2004, for states outside the Ozone Transport Region. Although the NOx SIP Call provided states with the flexibility to design their own programs to meet the NOx reduction requirements, all affected states chose to participate in a regional cap-and-trade program.[6] The NOx SIP Call and the NOx Budget Trading Program (NBP) have had a major effect on reducing regional transport of this pollutant. EPA data show that total ozone-season NOx emissions from all NBP sources fell from 1,256,000 tons in 2000 to 481,000 tons in 2008.[7]" (That is a 61% reduction in NOx.)

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4 The NOx Budget Program involves an allowance trading system which harnesses free market forces to reduce pollution, similar to the U.S. EPA's Acid Rain Program. Under this program, budget sources were allocated allowances by their state governments. Each allowance permits a source to emit one ton of NOx during the control period (May through September) for which it is allocated or any later control period. Allowances may be bought, sold, or banked. Any person may acquire allowances and participate in the trading system. Each budget source must comply with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a source holds, it cannot emit at levels that would violate other federal or state limits (e.g., NSPS, Title IV, NOx RACT).

5 The NOx SIP Call superseded Phase III of the OTC NOx Budget Program. Maine, New Hampshire, and Vermont were not participating states.

6 The NOx Budget Trading Program established under the NOx SIP Call is separate and distinct from the OTC NOx Budget Program.

7 USEPA, The NOx Budget Trading Program: 2008 Highlights, December 2008; available at http://www.epa.gov/airmarkt/progress/NBP_4.html.

The New Hampshire submittal contains a discussion of meteorology as it affects ozone levels (see Attachment A). This analysis shows that the downward trend in New Hampshire's ozone levels is a direct result of emission reductions and not favorable meteorology. EPA believes that New Hampshire has adequately demonstrated that the air quality improvement in the Southern NH 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, and not other factors such as favorable meteorology or economic downturn.

The recent D.C. Circuit decision on the Cross-State Air Pollution Rule (Transport Rule), *EME Homer Generation LP v. EPA*, No. 11-1302 (D.C. Cir., August 21, 2012)[8] does not disturb EPA's determination that it is appropriate to move forward with this redesignation. The air quality modeling analysis conducted for the Transport Rule demonstrates that the Southern NH Area would be able to attain the 1997 8-hour ozone NAAQS even in the absence of either the Clean Air Interstate Rule (CAIR) or the Transport Rule. See "Air Quality Modeling Final Rule Technical Support Document," App. B, B-18, B-19. Nothing in the D.C. Circuit's August 2012 decision disturbs or calls into question that conclusion or the validity of the air quality analysis on which it is based. More importantly, the Transport Rule is not relevant to this redesignation, since the Transport Rule only addressed emissions in 2012 and beyond. The Southern NH area has been in attainment since 2004 (see 73 FR 14387, March 18, 2008), well before the Transport rule and also before CAIR (see 70 FR 25162, May 12, 2005) was an enforceable control measure. As such, the status of CAIR is irrelevant and does not impact our conclusion that the

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8 The court's judgment is not final, as of Sept. 30, 2012, as the mandate has not yet been issued.

Southern NH area can be redesignated. Moreover, in its August 2012 decision, the Court also ordered EPA to continue implementing CAIR. See *EME Homer Generation LP v. EPA,* slip op. at 60. In sum, neither the current status of CAIR nor the current status of the Transport Rule affects any of the criteria for proposed approval of this redesignation request for the Southern NH area.

D. Does the Southern NH area have a fully approved maintenance plan pursuant to Section 175A of the CAA?

In conjunction with its request to redesignate the Southern NH nonattainment area to attainment status, New Hampshire submitted a SIP revision to provide for the maintenance of the 1997 8-hour ozone NAAQS in the Southern NH area until 2022.

1. Maintenance plan requirements.

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 for both VOC and NOx;

(b) A maintenance demonstration showing maintenance for the ten years of the maintenance period;

(c) A commitment to maintain the existing monitoring network;

(d) Factors and procedures to be used for verification of continued attainment; and

(e) Contingency measures as to correct future violations of the NAAQS.

2. EPA's analysis of the Southern NH maintenance plan.

a. Attainment emissions inventory.

An attainment inventory includes the emissions during the time period associated with the monitoring data showing attainment. An attainment inventory year of 2008 was used for the Southern NH area since it is a year for which monitors within the area showed attainment, and is also a year for which New Hampshire prepared a comprehensive inventory pursuant to the requirements of 40 CFR Part 51, Subpart A. The 2008 inventory is consistent with EPA guidance and is based on actual "typical summer day" emissions of VOC and NO_X during 2008.

New Hampshire prepared comprehensive VOC and NOx emissions inventories for the Southern NH area, including point, area, mobile on-road, and mobile non-road sources for their 2008 attainment inventory. To develop the NOx and VOC base-year emission inventories, New Hampshire used the following approaches and sources of data:

Point source emissions - New Hampshire requires owners and operators of larger facilities to submit annual production figures and emission calculations each year. Data for the point source emissions inventory was collected by this and several other means, including direct reporting by facilities to the NH DES pursuant to the state's emission statement requirements, permit requirements, and from data collected during site visits by field engineers. Quality assurance checks were performed on the source emission estimates, and comparisons made to prior year estimates.

Area source emissions - Area source emissions are generally estimated by multiplying an emission factor by some known indicator or collective activity for each area source category at the county level. New Hampshire estimates emissions from area sources using primarily the methodologies described within the EPA's Emissions Inventory Improvement Program (EIIP). Throughput estimates are derived from county-level activity data, by apportioning national and statewide activity data to counties, from census numbers, and from county employee numbers. County employee numbers are based upon North American Industry Classification System (NAICS) codes to establish that those numbers are specific to the industry covered.

On-road mobile sources - New Hampshire used EPA's Motor Vehicle Emissions Simulator (MOVES) to estimate highway vehicle emissions for 2008. Estimates of vehicle miles traveled (VMT) by vehicle type and roadway type were obtained from the relevant Metropolitan Planning Organization within the Southern NH area.

Nonroad mobile emissions - The 2008 emissions for the majority of nonroad emission source categories were estimated using the EPA NONROAD 2008a model. The NONROAD model estimates emissions for diesel, gasoline, liquefied petroleum gasoline, and compressed natural

gas-fueled nonroad equipment types and includes growth factors. The NONROAD model does not estimate emissions from aircraft, locomotives, or commercial marine vessels (CMVs). For 2008 locomotive and commercial marine emissions, New Hampshire used standard EPA recommended emission estimation methodologies. For 2008 aircraft and airport ground service equipment, New Hampshire used the Federal Aviation's Agency's Emissions and Dispersion Modeling System (EDMS). The 2008 attainment year VOC and NOx emissions for the Southern NH area are summarized along with the 2012 and 2022 projected emissions for this area in Table 4. The downward emissions trend demonstrates that the NAAQS should be maintained for this area. EPA has concluded that New Hampshire has adequately derived and documented the 2008 attainment year and projected year VOC and NOx emissions for this area.

New Hampshire's 2008 inventory VOC and NOx emissions was developed on a tons per summer weekday basis, and is summarized in Table 4 below.

b. Maintenance demonstration.

New Hampshire's March 2, 2012 SIP submittal, as amended September 21, 2012, includes a 10-year maintenance plan for the Southern NH area as required by section 175A of the Act. This plan demonstrates maintenance by showing that future emissions of VOC and NOx 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).

New Hampshire used 2008 as the base year, 2012 as the current year, and 2022 as the last year of 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 V below.) Table 4 shows the emissions inventories for 2008, 2012, and 2022, from New Hampshire's September 21, 2012 amended submittal for the Southern NH area. The emissions inventory shows a downward trend in precursor emissions from 2008 through 2012, and continuing on until 2022. By 2022, VOC emissions are expected to decrease by 13 percent and NOx emissions to decrease by 48 percent. Analysis of the anticipated trend in emissions is a requirement of a maintenance plan. New Hampshire's submittal provides such documentation and demonstrates that a significant downward trend in emissions will occur. New Hampshire has fulfilled this maintenance plan requirement.

Table 4. Attainment (2008), Current (2012) and Maintenance (2022) Inventories for the Southern NH Nonattainment Area (pounds per summer week day)

Source Category	VOC			NOx		
	2008	**2012**	**2022**	**2008**	**2012**	**2022**
Point	5,762	5,288	6,605	24,289	21,665	22,742
Area	55,871	57,885	70,195	6,528	6,243	6,432
Onroad	35,666	28,470	18,410	74,352	51,204	23,558
Nonroad	33,512	26,863	19,152	31,364	26,121	17,670
Total	130,811	118,506	114,362	136,533	105,223	70,402
Change from 2008		-12,305	-16,449		-31,310	-66,131

c. Monitoring network.

There are currently 4 monitors measuring ozone in the Southern NH area**.** In the maintenance plan, the State of New Hampshire has committed to continue to monitor ozone levels according to an EPA-approved monitoring plan. New Hampshire remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the AQS in

accordance with federal guidelines. New Hampshire 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. New Hampshire has also committed to track the progress of the maintenance demonstration by periodically updating their emission inventory. New Hampshire has committed to do this annually. The update will be based, in part, on the annual update of the National Emissions Inventory (NEI), and will indicate new source growth and other changes from the attainment inventory, including any changes in vehicle miles traveled or in traffic patterns, as well as any changes in MOVES 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 might occur 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 required by section 175A of the CAA, the NH DES has committed to the following procedure. At the conclusion of each ozone season, the NH DES will evaluate whether the design value for the Southern NH area is above or below the 1997 8-hour ozone standard. If the design value is above the standard, the NH DES will evaluate the potential causes of this design value increase. The NH DES 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, New Hampshire will evaluate the projected in-state emissions for the Southern NH 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, New Hampshire will implement one or more of the contingency measures listed in this section, or substitute a new VOC or NOx control measure(s) to achieve additional in-state emissions reductions.

As stated in New Hampshire's redesignation submittal (see page 42):

> "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 needed. New Hampshire will then initiate a course of action to implement enforceable control measure(s) to rectify the problem. New rulemaking, when required, can typically be adopted and implemented within a 12-month timeframe. NHDES will update the maintenance plan as necessary and develop and implement required regulations as soon as practicable within the guidelines established in the New

Hampshire Administrative Procedures Act, but no later than 18 months after selection of the appropriate measure."

Possible contingency measures include: additional controls for NOx at ICI Boilers (at Major Point Sources); additional controls on Emulsified Asphalt Paving operations for VOC; and additional controls on Consumer Products to lower VOC emissions (details can be found in the New Hampshire request see pages 41 to 45). In addition, NH DES is evaluating other potential NOx and VOC control measures that could be applied, if necessary, to further reduce ozone levels in the maintenance area. These control measures are listed in Table 6.4 of the New Hampshire request, along with the previously mentioned contingency measures for boilers, asphalt paving, and consumer products.

For the foregoing reasons, EPA believes that the Southern NH 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 is proposing to approve the maintenance plan SIP revision submitted by New Hampshire for the Southern NH area as meeting the requirements of CAA section 175A.

V. 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 based on on-road mobile source emissions 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 that, together with emissions from other sources in the area, will provide for attainment or maintenance. 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 or an interim milestone. 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).

VI. What is the status of EPA's adequacy determination for the area's MVEBs for 2022?

The Southern NH area's attainment plan and 10-year maintenance plan submission contains new VOC and NOx MVEBs for the years 2008 and 2022. The availability of the SIP submission with these 2008 and 2022 MVEBs was announced for public comment on EPA's adequacy web page on March 5, 2012, at: www.epa.gov/otaq/stateresources/transpconfor/adequacy.htm. The EPA public comment period on adequacy of the 2008 and 2022 MVEBs for the Southern NH area closed on April 4, 2012. EPA did not receive any adverse comments. EPA New England sent a letter to the New Hampshire Department of Environmental Services on April 25, 2012, stating that the 2008 and 2022 motor vehicle emissions budgets in the March 2, 2012 SIP submittal are adequate.

On September 21, 2012, the New Hampshire Department of Environmental Services submitted minor amendments to the SIP revision entitled "Request for Redesignating the Boston-Manchester-Portsmouth (SE), NH 8-Hour (1997 Standard) Ozone Nonattainment Area." One of these minor changes was running the MOVES2010b model with Stage II vapor controls turned off for 2012 and 2022 to generate new 2012 and 2022 on-road mobile VOC emissions.[9] This reflects the fact that New Hampshire's Stage II vapor recovery program will no longer be providing emissions reductions as of January 1, 2012. See section IV of this notice. Turning off Stage II vapor controls in future years increased the 2022 onroad motor vehicle VOC emissions by 581 pounds per summer weekday. This increase in onroad VOC emissions increased the 2022 VOC MVEB from 8.9 tpswd (previously determined adequate) to 9.2 tpswd.

[9] It should be noted that New Hampshire's December 2011 proposed redesignation request that was subject to public comment also included modeling runs with Stage II vapor controls turned off for 2012 and 2022. However, the final redesignation request submitted on March 2, 2012 did not include such provisions. This was corrected in the supplement submitted on September 21, 2012.

The NH DES utilized the MOVES2010 model to calculate on-road emissions of VOC and NOx for the Southern NH 8-hour nonattainment area. New Hampshire is establishing motor vehicle emissions budgets for the last year of the Southern NH area's 8-hour ozone maintenance plan (year 2022) at 9.2 tpswd of VOC and 11.8 tpswd of NOx. 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 2022 emissions inventories lower than the year 2008 attainment emissions inventory. New Hampshire is also establishing 2008 motor vehicle emissions budgets of 17.8 tpswd of VOC and 37.2 tpswd of NOx. As part of its redesignation request, NHDES has requested that EPA withdraw the SIP-approved 2009 MVEBs prepared using MOBILE6.2 and replace them with the submitted 2008 MVEBs prepared using MOVES2010. The 2008 and 2022 adequate emissions budgets, once approved by EPA, will continue to be used for future transportation conformity determinations.

VII. Proposed actions.

EPA is proposing to approve (1) the redesignation of the Southern New Hampshire 8-hour ozone nonattainment area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. EPA has evaluated the State of New Hampshire's redesignation request and is proposing to approve it as meeting the redesignation requirements in section 107(d)(3)(E) of the CAA provided that EPA finalizes approvals of emissions inventories under section 182(a)(1), certain RACT requirements, and New Hampshire's Vehicle I/M SIP revision. The final approval of this redesignation request would change the official designation for the Southern New Hampshire ozone nonattainment area from nonattainment to attainment for the 1997 8-hour ozone standard. EPA is also proposing to approve the 175A maintenance plan SIP revision for the Southern NH

8-hour area, including the 2008 and 2022 MVEBs submitted by New Hampshire. EPA is proposing to withdraw the SIP-approved 2009 MVEBs prepared using MOBILE6.2 and replace them with the new 2008 MVEBs included in the maintenance plan. In addition, in this notice EPA is proposing to approve the 2008 comprehensive emissions inventory for the Southern NH area under CAA section 182(a)(1). EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VIII. Statutory and Executive Order Reviews.

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions do not impose additional requirements beyond those imposed by state law and the CAA. For that reason, these actions:

- are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

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

- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, 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: October 15, 2012.

H. Curtis Spalding,
Regional Administrator,
EPA New England.

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