6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2012-0895; A-1-FRL-9913-56-OAR]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Nitrogen Oxides Exemption Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a request from Maine for an exemption from the requirements for the control of nitrogen oxides (NOx) emissions contained in section 182(f) of the Clean Air Act (CAA or Act) in relation to the 2008 8-hour ozone national ambient air quality standards (standards or NAAQS). Maine's request, dated October 13, 2012, is based on a technical demonstration submitted to EPA by Maine's Department of Environmental Protection (ME DEP) showing that NOx emissions in Maine are not having a meaningful adverse impact on the ability of any nonattainment areas located in the Ozone Transport Region (OTR) to attain the ozone standards during times when elevated ozone levels are monitored in those areas. Specifically, Maine analyzed the nearest of these areas (i.e., the nonattainment areas in Massachusetts and Connecticut). Based on EPA's review of this technical demonstration, and other relevant information, we conclude that any additional reductions in NOx emissions in the State of Maine that would be required under the 2008 8-hour ozone standards, and which would be beyond what Maine's State Implementation Plan (SIP) regulations already provide for, would not produce net

ozone air quality benefits in the OTR. Thus, EPA has determined that those emissions reductions may be exempted under the Act.

DATES: This rule is effective on **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2012-0895. All documents in the docket are listed on the www.regulations.gov web site. 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 through www.regulations.gov or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section immediately following this paragraph to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 AM to 4:30 PM, excluding legal holidays. Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the State Air Agency: Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333-0017.

FOR FURTHER INFORMATION CONTACT: Richard 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 .

SUPPLEMENTARY INFORMATION:

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

The information presented in this action is organized as follows:

I. Background

II. What action is EPA taking?

III. Response to Comments

IV. Final Action

V. Statutory and Executive Order Reviews

I. Background

On August 5, 2013 (78 FR 47253), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Maine. In the NPR, EPA proposed to approve Maine’s request for a state-wide exemption from the CAA section 182(f) NOx control requirements. The ME DEP submitted the request to EPA on October 13, 2012.

In the NPR, EPA also proposed approval of a CAA section 176A request from Maine to restructure the requirements of the OTR for all of Maine and proposed to amend the Maine SIP accordingly. The ME DEP submitted its restructuring request on February 11, 2013, and supplemented its submittal on November 18, 2013. Specifically, Maine requested that EPA approve a ''limited opt-out'' or ''restructuring'' of the Act's OTR requirements pertaining to nonattainment New Source Review (NSR) permitting requirements applicable to major new and modified stationary sources of volatile organic compounds (VOC). EPA is not taking final action on the proposed approval of Maine's CAA section 176A request or the related proposed SIP changes at this time.

II. What Action is EPA taking?

EPA is approving the State of Maine's request for an exemption from the NOx requirements contained in Section 182(f) of the CAA for the entire State of Maine. CAA section 182(f) makes certain requirements that apply to major sources of volatile organic compounds (VOC) also applicable to major stationary sources of NOx emissions. This section also gives the Administrator authority to exempt NOx emission sources from those requirements. Through this action the Administrator is granting such an exemption with respect to the 2008 ozone NAAQS for the State of Maine. The specific requirements that would otherwise apply are (1) the requirement to implement pollution controls meeting reasonably available control technology (RACT) for emissions of NOx; and (2) the nonattainment area new source review (NSR) permitting requirements for major new and modified sources as they apply to emissions of NOx. EPA is approving this request pursuant to CAA section 182(f)(1)(B), which provides the

applicable test for granting such exemptions for nonattainment areas in the Ozone Transport Region (OTR) (as well as for attainment areas in the OTR).

When evaluating how Maine's request meets the "net ozone air quality benefit" test in section 182(f)(1)(B) of the CAA, EPA considered a variety of factors: 1) Maine's unique position at the northern extremity of the OTR and the phenomenon that on high ozone days[1] in nearby nonattainment areas the prevailing winds typically flow from the southwest towards Maine; 2) our 2005 NOx exemption guidance[2] which indicates that the "net ozone air quality benefit" test may be applied in attainment areas within the OTR; 3) Maine's back-trajectory technical analysis and EPA's photochemical grid modeling; 4) the language of section 182(f) of the CAA and important related CAA provisions; and 5) information provided by the public, and the State of Maine, in response to our notice of proposed rulemaking. These factors, which are discussed in more detail in the response to comments below, show that Maine is downwind of nearby areas when they experience ozone concentrations above the standard, none of the back-trajectories associated with ozone concentration days above the standard for nearby nonattainment areas pass through Maine, and modeling data indicate that Maine's impact on nonattainment areas in the OTR is so small as to be not meaningful. For all of these reasons, EPA believes that NOx emission reductions required under section 182(f) absent a NOx exemption would not produce any meaningful ozone benefits in OTR areas that are not attaining the 2008 ozone standard; we therefore conclude that Maine's technical demonstration and the other information we evaluated satisfy the requirements of the "net ozone air quality benefits" test. If EPA subsequently determines, based on future air

[1]The term "high ozone days" refers to days when the ozone standard is exceeded. The 2008 ozone NAAQS is based on a three-year average of the fourth-highest 8-hour average yearly concentration. When an ozone monitor "exceeds" the level of the NAAQS (0.075 ppm or 75 ppb) it is commonly referred to as an exceedance day.

[2]"Guidance on Limiting Nitrogen Oxides Requirements Related to 8-Hour Ozone Implementation," January 2005.

quality analyses, that such NOx emissions controls in Maine are necessary to meet the requirements of the CAA, EPA may initiate rulemaking to revoke the NOx exemption being approved in relation to the 2008 ozone NAAQS.

III. Response to Comments

EPA received both supportive and adverse comments on its August 5, 2013 NPR. The comments received that relate to Maine's CAA section 182(f) NOx exemption request, and EPA's responses to those specific comments, are set forth below. As noted above, EPA is not taking action on Maine's OTR restructuring request relating to nonattainment NSR applicable to VOC emissions and this notice, therefore, does not address public comments received on that aspect of EPA's August 5, 2013 NPR. Any final action on EPA's proposed approval of Maine's OTR restructuring request for VOC NSR will be taken separately. Public comments received on our August 5, 2013 NPR that pertained to Maine's OTR VOC NSR restructuring request will be addressed at that time.

Comment #1: Several commenters mentioned that Maine's air quality data is near the existing ozone NAAQS. One or more commenters stated that preliminary 2013 ozone data show that coastal Maine's design value is 75 parts per billion (ppb) [0.075 parts per million (ppm)] and within a small margin of failing to meet the NAAQS. Several commenters directly stated or implied that they expect ozone levels in Maine will increase if EPA approves Maine's NOx exemption request.

Response #1: The ME DEP runs an extensive network of ozone monitors throughout the State of Maine. In addition, there are three ozone monitors run by tribes in Maine and two ozone monitors at CASTNET (Clean Air Status and Trends Network) sites. All ozone data for monitoring sites in Maine meet the 2008 ozone NAAQS. The design values[3] for ME DEP's ozone monitors, based on 2010-2012 quality-assured, certified ozone data, are shown in Table 1 below (Maine's ozone data are available in the EPA Air Quality System (AQS) air quality database and in the EPA airdata database at http://www.epa.gov/airdata/ad_rep_mon.html). Final 2013 ozone data and preliminary 2011-2013 design values are also shown. The 2013 data are also in AQS, and have been certified.

[3] The 2008 ozone NAAQS is based on a three-year average of the fourth-highest 8-hour average yearly concentration. This value is called the design value. If the design value is less than or equal to 0.075 ppm (the level of the 2008 ozone NAAQS) the area is meeting the 2008 ozone NAAQS. An ozone monitor can "exceed" the level of the NAAQS (0.075 ppm or 75 ppb) on average three times a year and still "meet" the 2008 ozone NAAQS. Any one monitor with a design value above the level of the NAAQS is not meeting the NAAQS.

Table 1. Maine Ozone Data 4th High Values and Design Values (DV)

Site Location	County	Monitor Type	AIRS ID #	4th High 2010	4th High 2011	4th High 2012	4th High 2013	2010 to 2012 DV	2011 to 2013 DV
Bar Harbor - McFarland Hill	Hancock	NCore	230090103	0.070	0.066	0.060	0.069	0.065	0.065
Bar Harbor - Cadillac Mtn.	Hancock	SLAMS	230090102	0.076	0.074	0.066	0.068	0.072	0.069
Bowdoinham	Sagadahoc	SPMS	230230006	0.061	0.061	0.062	0.061	0.061	0.061
Cape Elizabeth	Cumberland	SLAMS	230052003	0.072	0.070	0.066	0.072	0.069	0.069
Durham	Androscoggin	SPMS	230010014	0.058	0.063	0.061	0.059	0.060	0.061
Gardiner	Kennebec	SLAMS	230112005	0.059	0.063	0.064	0.065	0.062	0.064
Holden	Penobscot	SLAMS	230194008	0.059	0.055	0.058	0.064	0.057	0.059
Jonesport	Washington	SPMS	230290019	0.061	0.057	0.057	0.062	0.058	0.058
Kennebunkport	York	SLAM	230312002	0.072	0.073	0.077	0.076	0.074	0.075
North Lovell	Oxford	SPMS	230173001	0.054	0.054	0.056	0.052	0.054	0.054
Port Clyde	Knox	SLAM	230130004	0.070	0.068	0.062	0.076	0.066	0.068
Portland	Cumberland	SPM/NR	230050029	0.060	0.060	0.065	0.061	0.061	0.062
Shapleigh	York	SPMS	230310040	0.066	0.064	0.065	0.064	0.065	0.064
West Buxton	York	SPMS	230310037	0.058	0.059	0.065	0.063	0.060	0.062

All data in parts per million (ppm) ozone—2013 ozone design values are preliminary
NCore: National Core
SLAMS: State and Local Air Monitoring Station
SPMS: Special Purpose Monitoring Station
SPM/NR: Special Purpose Monitor/Non-Regulatory

As has always been the case in Maine, the ozone monitors with the highest design values are located on the coast (i.e., Kennebunkport, Cape Elizabeth, Portland, Port Clyde, Bar Harbor and Jonesport).

ME DEP received similar comments, during its state public comment period, asserting that if a NOx exemption is granted by EPA the effect would be to exacerbate current air quality in Maine; to address these comments, ME DEP prepared a technical analysis supplementing its original

analysis, and submitted that additional analysis to EPA as part of its November 18, 2013 submittal supplementing its original submittal. ME DEP's analysis tracks the origin of the ozone precursor pollutants (NOx and VOC) on days when the 2008 NAAQS is exceeded. Maine is at the end of the ozone "pipeline" in the OTR, and thus receives ozone transported from points to the south, such as from the Greater Boston area, the large cities along coastal Connecticut and from the New York City area. These pollutants are transported into Maine on southerly and south-westerly winds, the only wind direction that results in ozone levels in Maine that exceed the 2008 ozone NAAQS.

Furthermore, Maine did not request to discontinue or remove from its SIP any existing NOx pollution controls. That is, all existing sources still will be required to comply with currently applicable NOx pollution control requirements to which they were subject prior to EPA's action approving Maine's NOx exemption request. Specifically, the NOx control requirements contained in Chapters 138, 145 and 148 of ME DEP Regulations ("Reasonably Available Control Technology For Facilities That Emit Nitrogen Oxides (NOx-RACT)," "NOx Control Program," and "Emissions from Smaller-Scale Electric Generating Facilities") will remain in Maine's SIP. And for major new and modified stationary sources of NOx, Maine's Prevention of Significant Deterioration (PSD) permitting requirements will now apply in lieu of the nonattainment NSR permitting requirements. Outside of the OTR, PSD permitting requirements typically apply in areas attaining the NAAQS. All of Maine is now attaining the ozone NAAQS, and ME DEP's technical demonstration supporting its NOx exemption request shows that Maine's emissions are not having a meaningful adverse impact on the ability of any nonattainment areas in the OTR to attain the ozone NAAQS. The basis of Maine's conclusion was a detailed analysis of all of the

ozone exceedances in the nearest of these areas (i.e., the nonattainment areas in Massachusetts and Connecticut).

Moreover, it is important to note that, as explained in EPA's August 5, 2013 NPR, EPA's approval of this NOx exemption is not the first time that EPA has granted a NOx exemption under CAA section 182(f) to Maine. On December 26, 1995 (60 FR 66748), EPA approved the State of Maine's section 182(f) NOx exemption request for counties in northern and downeast Maine which were attaining the 1-hour ozone NAAQS applicable at that time (specifically, Aroostook, Franklin, Oxford, Penobscot, Piscataquis, Somerset, Washington, Hancock and Waldo Counties). In addition, on February 3, 2006 (71 FR 5791), EPA approved a section 182(f) NOx exemption request for a similar area in Maine (specifically, Aroostook, Franklin, Oxford, Penobscot, Piscataquis, Somerset, Washington, and portions of Hancock and Waldo Counties) in relation to the 1997 8-hour ozone NAAQS. Thus, since December 1995 all of the major stationary sources of NOx in these areas have not been subject to the nonattainment NSR permitting requirements that are applicable throughout the OTR. Sources in these areas have throughout that period of time been covered by Maine's PSD regulations, and will continue to be so covered under EPA's approval of this NOx exemption request.

Comment #2: One commenter requested that EPA and Maine examine ozone data from Appledore Island and other "research ozone monitors." In addition, the commenter requested that Maine examine ozone data at the now discontinued Small Point ozone monitor and discontinued ozone monitor in Pownall, Maine. Another commenter noted that "[g]iven the nature and

limitations of monitoring, it is fair to say that other locations are likely to be above the current 75 ppb [0.075 ppm] standard but simply haven't been identified."

Response #2: As stated in the response to comment #1 above, there is an extensive ozone monitoring network operated in the State of Maine by a number of entities. For a variety of reasons, ME DEP runs more ozone monitors than minimally required under EPA regulations at 40 CFR Part 58, Appendix D. This is especially true in southern Maine and along the entire coastline, where Maine records its highest levels of ozone. For example, EPA regulations require the State of Maine to run a minimum of two ozone monitors in the Portland-South Portland, Maine Metropolitan Statistical Area (MSA), which comprises the counties of Cumberland, Sagadahoc and York. ME DEP currently runs six ozone monitors in this MSA, with a mix of monitors along the coast and some monitors located more inland. As stated earlier, all current Maine ozone sites in the AQS data base (see Table 1, above) are monitoring air quality that meets the 2008 ozone NAAQS. In addition, all New Hampshire ozone sites in the AQS data base also monitor air quality that meets the 2008 ozone NAAQS. In fact, all of Maine and all of New Hampshire are designated as attainment/unclassifiable for the 2008 ozone NAAQS (see 40 CFR 81.320 and 81.330), the best/cleanest classification.

With regard to ozone monitoring data at Appledore Island off the coast of New Hampshire, the University of New Hampshire did operate a research data ozone monitor on this island for a number of years. The data is available at: www.eos.unh.edu/observatories/data.shtml. The Appledore monitor was shut down in March 2012, so the latest three years available to analyze

from that monitor for the ozone season are the years 2009-2011. An analysis of that data by the ME DEP shows that the 4th highest daily maximum concentrations for each year were 0.075 ppm, 0.068 ppm and 0.070 ppm, respectively, resulting in a design value of 0.071 ppm, which is below the 2008 ozone NAAQS.

The Pownal, Maine ozone monitoring site was in operation only during the 1980 through 1983 ozone seasons. Pownal is an inland ozone monitoring site and, as is the case for all inland ozone monitoring sites, historically had lower maximum ozone values than nearby coastal sites. An analysis of historic ozone data by the ME DEP shows the 4th highest daily maximum 8-hour ozone concentration in 1983 at the Pownal site was on the order of 0.02 ppm ozone lower (based on the 4th highest daily maximum 8-hour concentration) than the coastal sites in Kennebunkport and Cape Elizabeth, respectively. Even though these data are quite old, they confirm the observation that ozone concentrations at inland sites in Maine are much lower than at coastal sites during periods of high ozone. During ozone episodes in Maine, ozone plumes which originate from the large upwind urban areas of Boston and Providence are advected over the Gulf of Maine (the North Atlantic) by the wind, and then inland into coastal Maine. Once ashore, the ozone concentrations are quickly reduced, most likely by two methods. The first reduction method is the increase in mixing height over the land, as opposed to over the cold North Atlantic. The increase in mixing height, both because of the roughness length[4] of the land as opposed to the ocean (i.e. the land has hills, trees and buildings which cause a resistance for the winds; the relatively smooth ocean does not, and the increase in resistance, roughness, causes the mixing

[4] "Roughness length" is a measure of surface roughness, oceans are smooth with a low roughness length, while forests are rough with a high roughness length.

height to increase), and the warmer land being able to support a higher boundary layer mixing height, help to dilute ozone levels and thus lower ozone concentrations. In addition, ozone scavenging (the process whereby ozone is converted into oxygen, a non-pollutant) by the land-cover vegetation of trees, shrubs and grasslands helps to lower ozone concentrations. The result of these processes is lower ozone concentrations inland in Maine and higher concentrations along the coast. Since ozone in Maine is highest along the coast, Maine has put many of its ozone monitors in coastal locations.

The Small Point monitoring site in Phippsburg, Maine was in operation only during the 1994-2000 ozone seasons. This site is in Sagadahoc County, which is part of the Portland-South Portland, Maine Metropolitan Statistical Area. The Small Point monitor was at a coastal location. An analysis by the ME DEP of the historic ozone data during that time period shows that there was only a single year, 1996, when the Small Point (Phippsburg) site had the highest 4th high maximum daily 8-hour ozone concentration among coastal monitoring sites in Maine. The highest site during other years was at the Kennebunkport site in 1994 and 1995, at the Cape Elizabeth site in 1997, and at the Cadillac Mountain Summit site in 1998, 1999 and 2000. Depending on the transport pattern at a particular time, the peak ozone concentration can occur anywhere along Maine's southwest and mid-coast regions, but the southern sites are most likely to show the highest concentrations.

As stated earlier, ME DEP runs more ozone monitors in the Portland-South Portland, Maine MSA than is required by EPA's minimum ozone monitoring requirements at 40 CFR Part 58, Appendix D. Maine's entire ozone monitoring network is described in its 2014 Annual Air Monitoring

Plan. (See www.maine.gov/dep/air/monitoring/docs/Air%20Monitoring%20Plan.pdf.) This annual air monitoring plan is required to be submitted to EPA annually for review and approval after being subjected to a 30-day public comment period. Maine's most recent plan was posted for public comment on May 31, 2013, and was then submitted to EPA for review on July 1, 2013. EPA approved Maine's plan as a final action on August 6, 2013 and does not believe there exist any gaps in ozone monitoring coverage along Maine's coast.

Comment #3: Several commenters discuss Maine's ozone air quality and refer to it as poor and/or unhealthy. They cite high asthma rates and other lung ailments. For example, one commenter states: "[i]t is a troubling fact that Mainers continue to suffer from smog pollution from in-state and cross-border pollutants, especially in the summer. Maine's Department of Health and Human Services (DHHS) reports that Maine has some of the highest rates of asthma in the country, with approximately 10% of Maine adults and 10.7% of children suffering from asthma. According to the American Lung Association's 2013 "State of the Air" report, hundreds of thousands of Maine residents suffer from smog pollution, including more than 23,000 children and 127,000 adults with asthma; nearly 84,000 with COPD; 377,000 with cardiovascular disease; and nearly 103,000 with diabetes. In addition, more than 269,000 young people under age 18 and 216,000 seniors in Maine are especially vulnerable to harmful health impacts of smog pollution. Given the on-going health threat of smog pollution to Maine families, we believe that it would be a serious mistake to weaken the state's ability to control sources of smog pollutants."

Another commenter states that one half of Maine's counties have unhealthy air quality. Several commenters also state that Maine's ozone air quality is getting worse, not better.

Response #3: The primary ozone NAAQS (0.075 ppm on an 8-hour average basis) was established by EPA in 2008 to protect public health with an adequate margin of safety. As stated earlier, all of Maine's air quality meets the 2008 ozone NAAQS and all of Maine is designated attainment/unclassifiable for the 2008 ozone NAAQS (40 CFR 81.320). See Response #1 and Table 1, above. In addition, ozone trends in Maine show improving air quality. For example, EPA AQS ozone data show that in 1983 there were 30 days on which the 2008 ozone NAAQS was exceeded[5] in Maine. By 1993, the number of days on which the ozone NAAQS was exceeded had dropped to 20, and by 2003 that number was 15. In 2013, preliminary ozone data show only 5 days on which the 2008 ozone NAAQS was exceeded in Maine. Maine has also seen a significant reduction in its 8-hour ozone design values over the last 30 years. For example, the 8-hour ozone design values for Cumberland County for the 1983-1985, 1991-1993, 2001-2003, and 2011-2013 time periods are 0.116 ppm, 0.098 ppm, 0.088 ppm, and 0.069 ppm, respectively. Similarly, the 8-hour ozone design values for York County for the same time periods are 0.115 ppm, 0.102 ppm, 0.091 ppm, and 0.075 ppm, respectively. Due primarily to emission reductions upwind of Maine, EPA expects this improving ozone air quality trend to continue in Maine.

As noted in Maine's request, NOx emissions in Maine have been reduced over the past 10 years, and this trend is expected to continue. This trend has been demonstrated by a number of SIP

[5] An ozone monitor can "exceed" the level of the NAAQS (0.075 ppm or 75 ppb) on average three times a year and still "meet" the 2008 ozone NAAQS. Any one monitor with a design value above the level of the NAAQS is not meeting the NAAQS. Since Maine has many monitors it is likely and common that different monitors record exceedances on different days. This is one way Maine can have 5 "exceedance" days and still not violate the level of the ozone NAAQS. The other is that in one very hot year Maine can have 5 exceedance days, but have only one or two exceedance days in the two other years that are included in the calculation of the three-year average design value.

revisions submitted by ME DEP and approved by EPA in recent years. In those SIP submittals, Maine has shown that NOx emissions across the state will continue to decrease into the future as a result of the implementation of a variety of state and federal control strategies, none of which are affected by Maine's section 182(f) NOx exemption being approved by EPA. Examples of this are the Ozone Redesignation and Maintenance Plans for: 1) Portland, Maine; and 2) Hancock, Knox, Lincoln and Waldo Counties, each approved by EPA on December 11, 2006 (71 FR 71489). In the state's maintenance plans for these areas, ME DEP projected that typical summer day NOx emissions in Cumberland, Hancock, Knox, Lincoln, Sagadahoc, Waldo, and York Counties (the same counties affected by the expansion of Maine's previously approved section 182(f) NOx exemptions) would decrease by 42.5% between 2005 and 2016. Another example is Maine's Regional Haze Plan approved by EPA on April 24, 2012 (77 FR 24385). In that plan, Maine projected that annual NOx emissions across the entire state would decrease by 52.7% between 2002 and 2018. EPA's August 5, 2013 NPR for Maine's NOx exemption request explains that granting the NOx exemption will only result in rendering inapplicable any *additional* NOx reduction requirements that would be required pursuant to the 2008 ozone NAAQS and which would be beyond already existing pollution control requirements.

Comment #4: Several commenters noted that the Clean Air Scientific Advisory Committee (CASAC) has recommended a tighter ozone standard which, if promulgated, would put much of coastal Maine into ozone nonattainment.

Response #4: EPA is required by the CAA to evaluate and act on Maine's NOx exemption request as it applies to the current ozone NAAQS, the ozone standards EPA promulgated in 2008.

Section 182(f) of the CAA does not contain NOx exemption evaluative criteria relating to NAAQS that may be promulgated in the future. However, if EPA were to revise the ozone NAAQS in the future, EPA would evaluate Maine's ozone data at that time and make appropriate decisions regarding attainment and nonattainment in Maine during the designation process. If EPA in the future designates a portion of Maine as nonattainment under a revised ozone NAAQS, that area would automatically be subject to nonattainment new source review (NSR) and RACT for NOx, independent of whether or not EPA approves Maine's NOx exemption request for the 2008 ozone NAAQS. As noted in EPA's implementation rule for the 1997 ozone NAAQS (69 FR 23951, April 30, 2004) and in EPA's proposed implementation rule for the 2008 ozone NAAQS (78 FR 34178, June 6, 2013), a NOx exemption request must be submitted to EPA by a state with respect to a specific ozone NAAQS and must be re-submitted for each subsequent ozone NAAQS. Thus, if EPA does revise the ozone NAAQS in the future, we would expect that Maine would be required to submit a new request for a NOx exemption for the revised ozone NAAQS were Maine to determine that a NOx exemption should continue in any portion of the state.

Comment #5: Certain commenters asserted that, notwithstanding Maine's air trajectory analysis, EPA's Cross State Air Pollution Rule (CSAPR) modeling shows that Maine significantly contributes to nonattainment, and interferes with maintenance of the 2008 ozone NAAQS. For example, CSAPR source apportionment modeling for the ozone monitor in Barnstable County, Massachusetts shows that Maine's contribution to that monitor is greater than 1% of the 2008 ozone NAAQS (i.e., 1.217 ppb).

The commenters further asserted that, although CSAPR focused on the 0.08 ppm ozone NAAQS, had CSAPR focused on the 0.075 ppm 2008 NAAQS, Maine would have been identified at that time as a significant contributor of ozone-related pollutants to Barnstable County, Massachusetts. That is because, the commenters assert, the Barnstable County ozone monitor would have been identified as having attainment and maintenance problems in relation to a 0.075 ppm standard (i.e., at a level of 76.7 ppb).

The commenters further assert that the Barnstable County monitor has a current design value (DV) of 0.075 ppm (based upon 2010-2012 certified data), which is right at the level of the 2008 ozone NAAQS. An ozone monitor's DV consists of the 3-year average of the 4th highest ozone concentrations in each of the three years, at that monitor, which, for the Barnstable County monitor were 78 ppb (2010), 68 ppb (2011), and 79 ppb (2012), respectively. While the Barnstable County monitor is currently monitoring attainment, two of those three years were well above attainment levels for the 2008 ozone NAAQS. Thus, the commenters assert, this indicates that EPA's CSAPR modeling was correct, and that Barnstable does have an attainment/maintenance problem in relation to the 2008 ozone NAAQS. Thus, the commenters conclude that the CSAPR modeling indicates that Maine's emissions significantly contribute to ozone attainment/maintenance problems in Massachusetts.

The commenters continue by stating that Maine's back trajectory analysis is incomplete because it only considered nearby nonattainment areas in Connecticut and Massachusetts, and did not consider areas that are currently designated attainment that have been nonattainment in the past (i.e., maintenance areas). They further assert that EPA modeling from the Clean Air Interstate

Program (2005) and CSAPR (2011) shows that Maine has a 0.3 ppb nonattainment area impact on ozone levels in Massachusetts and a 0.141 ppb impact in Connecticut. Any reduction in controls, in Maine, the commenters assert, will result in greater adverse ozone impacts in these areas.

Response #5: The modeling conducted by EPA to support the development of the Clean Air Interstate Rule (CAIR) and CSAPR is not directly relevant to our analysis of Maine's request for a NOx waiver under section 182(f), because neither modeling analysis directly addresses ozone contribution with respect to the 2008 ozone standard. The CAIR modeling was conducted to analyze interstate transport with respect to the 1997 ozone and 1997 $PM_{2.5}$ NAAQS and the CSAPR modeling was conducted to analyze interstate transport with respect to the 1997 ozone and the 1997 annual $PM_{2.5}$ and the 2006 24-hour $PM_{2.5}$ NAAQS. Thus, neither modeling analysis provides information on downwind areas that will have difficulty attaining or maintaining the 2008 ozone standard, or on upwind areas that contribute to those problems. Nevertheless, it is informative that the CSAPR modeling shows a very small contribution from Maine to nonattainment sites (relative to the 1997 ozone standard) in the OTR. The CSAPR modeling does strongly suggest that Maine's ozone impact on these areas is not meaningful. (EPA's response to comment #8 below discusses issues related to Maine's ozone impact in greater detail).

In addition, it is important to note that Barnstable County, Massachusetts is designated attainment for the 2008 ozone NAAQS (see 40 CFR 81.320). Also, 2010-2012 quality-assured, certified ozone data (available in EPA's AQS database) for the Truro, Massachusetts ozone monitor (the ozone monitor in Barnstable County) meets the ozone NAAQS. As the commenter noted, the

design value for this monitor for this period is 0.075 ppm. The preliminary AQS ozone data for 2013 also meets the NAAQS (design value period 2011-2013). The preliminary design value at Truro for 2011-2013 is 0.073 ppm. Thus, for purposes of evaluating Maine's request for a NOx waiver, EPA has decided it is appropriate to treat Barnstable County, Massachusetts as an attainment area.

Furthermore, the Maine DEP has undertaken, and EPA has reviewed, an additional analysis of the elevated ozone levels recorded at the Truro ozone monitor. The ME DEP generated back trajectories for all days during 2008 to 2012 that the Truro monitor showed an exceedance, with final AQS data, of the 2008 ozone NAAQS, at the Truro ozone monitor. ME DEP also generated back trajectories for days during 2013 for which preliminary AQS ozone data showed an exceedance at the Truro monitor. In all, there were back trajectories generated by the ME DEP for 18 separate days, and the trajectories show that on those exceedance days the air parcels do not originate or traverse any part of Maine. This trajectory analysis does not show any meaningful ozone contribution from Maine to the Truro site on days conducive to ozone exceedances in Truro, for the period 2008 to 2013.

Comment #6: One commenter states that Maine's submission to EPA indicates that the state's VOC and NOx emissions are of small magnitude compared to other OTR states. The State of Delaware commented that, based on the emissions data Maine provided in its submittal, half of the OTR states' NOx emissions are smaller in magnitude than Maine's (i.e., CT, DE, Washington D.C., NH, RI, and VT), and the other half's NOx emissions are of greater magnitude than Maine's (i.e., MD, MA, NJ, NY, PA, and VA).

Response #6: EPA acknowledges that Maine's NOx exemption submission to EPA states that Maine's NOx emissions are small compared to the total emissions of the entire OTR, and that Maine provided that comparison as one aspect of the total weight of evidence supporting its request. The magnitude of NOx emissions in an area, however, is not a criterion for granting a NOx exemption request. Neither the magnitude of Maine's NOx emissions, nor the fact that Maine's emissions constitute a relatively small percentage of total NOx emissions generated in the OTR, were factors that influenced EPA's evaluation of the merits of Maine's NOx exemption request. The primary technical information that forms the basis of EPA's approval of Maine's NOx exemption request consists of the back trajectory analyses described in Maine's submittal, the conclusions of which are generally supported by the photochemical grid modeling conducted previously by EPA. Moreover, Maine is not seeking to increase its NOx emissions by eliminating or curtailing existing emission controls currently being implemented by existing stationary sources in Maine. As explained earlier, EPA expects the overall trend in anthropogenic NOx emissions to continue to decline in Maine over time due to already existing and enforceable pollution controls on those sources of NOx emissions. (VOC emissions are not the subject of this final action, which, as already noted, only addresses Maine's request for a NOx exemption under CAA section 182(f).)

Comment #7: One commenter stated that the nonattainment new source review requirement to implement a level of emissions control constituting the Lowest Achievable Emission Rate (LAER), that would be replaced by Best Available Control Technology (BACT) by virtue of the NOx exemption EPA is approving, is very important to air quality and therefore should not be

replaced. The commenter notes that LAER ensures a more stringent level of control. The commenter further states that such control is the backbone of maintaining air quality and is especially important where air quality is at, or near, the NAAQS, as are parts of Maine today. The commenter further concludes that ME DEP's position is that BACT, the level of emissions control applicable to major new and modified stationary sources in areas designated unclassifiable/attainment for a particular NAAQS, will be as effective as LAER for reducing ozone levels, and the commenter disagrees with that position which the commenter attributes to ME DEP. The commenter asserts that a review of EPA's RACT/BACT/LAER Clearinghouse shows a very wide range for BACT emission limits, whereas LAER is either unique or more stringent than BACT, or at least equivalent to the most stringent BACT limits. The commenter points to an example to illustrate its point, one of ME DEP's air pollution control licenses that would destroy fumes from loading crude oil into marine tank vessels. The commenter also makes a number of other assertions, all of which are designed to argue that LAER is more stringent than BACT and that EPA should therefore not grant Maine's request for a NOx exemption.

Response #7: In essence, the commenter asserts that a source required to meet a LAER level of emissions control will almost all of the time achieve greater emission reductions than a source that is required to meet a BACT level of emissions control. The commenter further alleges that the ME DEP takes the position that there is little to no difference between LAER and BACT levels of control when controlling NOx emissions. (VOCs are not the subject of this final action, and so are not discussed here).

Whether or not ME DEP actually does take the position that, in most cases, a BACT level of control will yield the same level of emissions reductions as a LAER level of control is not germane to EPA's analysis of the approvability of Maine's request for a NOx exemption under CAA section 182(f). Thus, whether the comment were true, or not, it would not be relevant to this final action. Whether BACT or LAER applies to major new or modified sources of NOx in Maine is simply a factual consequence of whether EPA grants Maine's NOx exemption request, and is not a technical or legal factor that determines (even in part) whether Maine qualifies for a NOx exemption under CAA section 182(f). As such no response to the comment is required.

Nonetheless, EPA notes that LAER and BACT determinations are made independently, based on the specific facts for each project. By definition, the main difference between the two types of determinations is the fact that a BACT analysis will take into account energy, environmental, and economic impacts and other costs required to meet a specific emission limit. These factors are not relevant, however, when determining an emission limit that meets LAER. For these reasons, whether an emission limit determined as a result of a BACT or LAER analysis would turn out to be equivalent in any one particular case depends largely on the case-specific facts regarding the source and the various factors considered in the analysis.

Moreover, EPA's approval of Maine's request is based on a technical demonstration submitted by ME DEP showing that NOx emissions in Maine are not having a meaningful adverse impact on the ability of any ozone nonattainment areas located in the OTR to attain the ozone standards during times when elevated ozone levels are monitored in those areas. Specifically, Maine analyzed the nearest of these areas (i.e., the nonattainment areas in Massachusetts and

Connecticut). Consequently, any additional reductions in NOx emissions (such as the difference between LAER and BACT) are not necessary for attainment or maintenance of the ozone standards in the ozone nonattainment areas nearest to Maine and located in the OTR.

Comment #8: Commenters stated that Maine's technical demonstration "lacks the proper analysis needed for EPA to approve the [NOx waiver] request," and that section 182 "specifically requires a technical demonstration that shows that 'net air quality benefits' are greater in the absence of NOx reductions from the sources concerned." The commenters also stated that the other two tests available under section 182(f), "contribution to attainment" and "net ozone benefit," only apply to nonattainment areas [and all of Maine is designated attainment] and the "contribution to attainment" test is only available in areas not located within the OTR.

Response #8: EPA has evaluated Maine's request for a NOx waiver and concluded that the State has met the relevant statutory test and that approval of the request is consistent with the requirements of the Clean Air Act. This response explains why we have concluded that the "net ozone air quality benefit" test in CAA section 182(f)(1)(B) is the relevant statutory test and how the information available to the Agency demonstrates that Maine has satisfied the requirements of that test.

First, as explained in our 2005 NOx waiver guidance ("Guidance on Limiting Nitrogen Oxides Requirements Related to 8-Hour Ozone Implementation," January 2005) ("2005 NOx Waiver Guidance"),[6] EPA concludes that the "net ozone air quality benefit" test outlined in section 182(f)(1)(B) applies to nonattainment and attainment areas within an ozone transport region. Section 182(f)(1)(B) provides that the NOx requirements in section 182(f) shall not apply for "nonattainment areas within . . . an ozone transport region if the Administrator determines . . . that additional reductions of [NOx] would not produce net ozone air quality benefits in such region." 42 U.S.C. 7511a(f)(1)(B). As explained in the 2005 NOx waiver guidance, EPA believes "[i]t would be absurd and, therefore, it is unlikely that Congress intended to apply more stringent requirements in the attainment/unclassified portions of the [OTR] than would apply to more polluted portions." 2005 NOx Waiver Guidance at pp. 23-24. Moreover, a key statutory consequence of a state's inclusion in the OTR is that key nonattainment area requirements also apply in attainment areas. CAA section 184(b)(2), for example, provides that certain sources shall be "subject to the requirements which would be applicable . . . if the area were classified as a Moderate nonattainment area." 42 U.S.C. 7511c(b)(2). In this context, EPA concludes that the statutory language in CAA section 182(f) is ambiguous. EPA further believes that it would not be reasonable to interpret the requirements of CAA section 182(f) as making it more difficult for an attainment area in the OTR than a nonattainment area in the OTR to qualify for a NOx waiver. EPA thus concludes that the "net ozone air quality benefit" is the appropriate statutory test to apply when evaluating Maine's request.

[6] The NOx waiver guidance is not binding and EPA remains free to reconsider whether the recommendations set forth in the guidance are applicable or not in any given situation. As explicitly explained in the guidance: "[t]his document does not impose binding, enforceable requirements on any party, nor does it assure that EPA may approve all instances of its application, and thus the guidance may not apply to a particular situation based upon the circumstances presented. The EPA retains the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate." 2005 NOx Waiver Guidance at p.3

Second, CAA section 182(f)(1)(B), which establishes the "net ozone air quality benefit" test, states that the NOx requirements in section 182(f) shall not apply if the Administrator determines that additional reductions of NOx emissions would not produce a "net ozone air quality benefit." As an initial matter and as acknowledged in the 2005 guidance, EPA believes the term "net ozone air quality benefit" is ambiguous. It is thus appropriate for EPA to look to other relevant CAA provisions in interpreting this term. Of particular relevance are CAA section 184 (which establishes the OTR) and CAA section 176A (which clarifies the purpose and intent behind creation of the OTR). These two provisions shed light on how terms in section 182(f) should be interpreted. Specifically, sections 176A and 184 focus on concerns regarding interstate transport of pollutants leading to a ***violation*** of a NAAQS in one or more states. Said another way, these sections focus on situations in which transported pollutants are making a meaningful contribution to **ozone *nonattainment***. Put simply, Congress was concerned with reducing the impact of transported pollutants to areas that were ***not*** attaining the ozone standard. This plain, but important, conclusion also is supported by other provisions contained in section 184. In this context, EPA concludes that it is appropriate to interpret the "net ozone air quality benefit" test in CAA section 182(f)(1)(B) as focused on downwind locations and days above the standard. In other words, the legally relevant ozone air quality benefits are those that occur in downwind nonattainment areas on days when those areas have air quality above the standard. Thus, we conclude it is appropriate, when evaluating whether this test has been satisfied, to focus on the impact of NOx emissions from the area requesting a NOx waiver on any nonattainment area's ability to attain the ozone standards.

This conclusion is also consistent with the 2005 guidance which says that the analysis should focus on values above the ozone standard, and, in some situations, may also need to consider values just below the standard. The suggestion that ozone impacts on areas with values just below the standard should be considered is made in the context of discussing the analysis needed when implementation of NOx emission controls would actually cause increased ozone levels in some areas. In such a situation, it is logical to consider impacts across areas to determine whether there is, on net, a benefit or disbenefit associated with NOx controls in the relevant area. EPA does not believe the guidance suggests that values below the standard should be considered in other circumstances such as those presented by Maine's request. In any event, as noted above, guidance documents by their nature are not binding and EPA retains discretion to depart from the guidance in appropriate circumstances. For the reasons given above, EPA has determined that it is reasonable in this situation to focus on nonattainment areas and on days when air quality in those areas exceeds the standard.

Third, in evaluating whether Maine has satisfied the "net ozone air quality benefit" test, we considered Maine's unique position at the northern extremity of the OTR, our 2005 guidance, the technical analysis presented by Maine and information provided by commenters in response to our notice of proposed rulemaking. Maine is in a relatively unique position for several reasons: 1) because of its geographic position, Maine is generally downwind of nearby areas with high ozone on the days when those areas are experiencing ozone nonattainment problems; 2) Maine's back trajectory modeling analysis shows that none of the air parcels associated with the nonattainment areas nearest to Maine pass through or traverse Maine's airshed on days when the ozone standard is exceeded; and 3) CSAPR modeling suggests that Maine's impact on nonattainment areas is not

meaningful. For all of these reasons, we believe that these additional NOx emission reductions would not produce any meaningful ozone benefits in areas above the standard within the OTR and therefore concluded that Maine's technical demonstration satisfies the requirements of the "net ozone air quality benefits test."

Fourth, as noted above, it is important to emphasize that EPA's decision to grant Maine's request will not result in the relaxation of any already required and operational emissions controls currently in place at stationary sources in Maine. Even with a NOx exemption in place, Maine will still be required to implement the air permitting requirements applicable in attainment areas for major new and modified stationary sources of NOx throughout the entire State of Maine (rather than the permitting requirements applicable in nonattainment areas). Major new and modified facilities must install best achievable control technology (BACT) to reduce emissions. In addition, the permitting requirements in Maine assure that the air quality does not degrade in areas that are currently meeting ozone standards. To obtain a new source permit, facilities must demonstrate as part of the permitting process that the new or modified source will not cause violations of air quality standards. As stated earlier, Maine also has shown that NOx emissions across the state will continue to decrease into the future as a result of implementation of a variety of state and federal control strategies, none of which will be affected by EPA's decision to grant Maine's request for a section 182(f) NOx exemption.

Finally, EPA's case-specific analysis of Maine's unique factual circumstances is consistent with EPA's obligation under CAA section 182(f) to consider the NOx and VOC study required under CAA section 185B. Section 185B of the Act required EPA, in conjunction with the National

Academy of Sciences, to conduct a study on the role of ozone precursors in tropospheric ozone formation and control and to submit a final report to Congress. See "The Role of Ozone Precursors in Tropospheric Ozone Formation and Control: A Report to Congress," EPA-454/R-93-024, July 1993. Section 5 of that report presents the key findings of the study and EPA's response. The essential thrust of the study and report was to analyze the various factors that contribute to the problem of ozone nonattainment, including consideration of the complexities associated with the roles that NOx and VOC play in ozone formation. For example, Section 185B provides, in part, that "[t]he study shall examine the roles of NOx and VOC emission reductions, [and] the extent to which NOx reductions may contribute (or be counterproductive) to achievement of attainment in different nonattainment areas . . .." Thus, in parallel with our discussion in Response #8, above, in which we explain that the purpose and intent underlying CAA sections 182(f), 184, and 176A is to address the problem of ozone nonattainment within the OTR, Congress required EPA, through section 185B, to conduct a study and submit a report with the goal of identifying improved ways of reducing ozone in ozone nonattainment areas. Consequently, it is reasonable as also explained in our Response #8 to focus on Maine's impacts on nonattainment areas and, in that light, EPA's approval of Maine's request for a NOx waiver is consistent with the purpose and content of the CAA section 185B study and report to Congress.

Comment #9: Several commenters asked what would happen if Maine were to be designated nonattainment for the ozone NAAQS in the future.

Response #9: If portions of Maine are designated nonattainment in the future for the current or a future ozone NAAQS, those areas would automatically be subject to all applicable ozone

nonattainment requirements, including nonattainment NSR for NOx emissions under ME DEP's new source review permitting requirements.

Comment #10: Several commenters discussed the benefits of the OTR and alleged that if Maine is allowed to opt out of these uniform requirements, similar petitions could follow and the benefits of the OTR will be minimized.

Response #10: To the extent that these comments are intended to relate to Maine's OTR restructuring request for VOC nonattainment new source review, as noted above, EPA is not taking final action in this notice on that aspect of Maine's request; so EPA here provides no response to the comment as it relates to that specific part of Maine's request. With respect to Maine's NOx exemption request, however, as discussed above, Maine's location at the northern extremity of the OTR is unique. Moreover, EPA notes that its prior approvals of Maine's NOx exemption requests in 1995 and 2006 did not result in other NOx exemption requests from states in the OTR. If, however, such a request were to be submitted to EPA by another state in the OTR, EPA would evaluate that request and conduct notice and comment rulemaking as appropriate on any proposed action on that request.

Comment #11: One commenter said he would be willing to pay more for gasoline to keep Maine's air cleaner.

Response #11: EPA's approval of Maine's NOx exemption request will have no effect on gasoline formulation or gasoline prices. There is no relationship under the CAA between gasoline prices and whether Maine legally qualifies for a NOx exemption under CAA section 182(f).

Comment #12: One commenter states that nearly every state in the 13-state OTR has reduced its NOx and VOCs by a higher rate relative to its 1990 baseline than has Maine. The commenter states that these data, covering the period 1990 to 2008, show that upwind states have shouldered a more significant burden to reduce air pollution than has Maine.

Response #12: EPA agrees that significant emission reductions of NOx have occurred throughout the OTR, and also throughout the country, as a result of both state and federal pollution control efforts. As the commenter notes, the rate of NOx emissions decreases varies from state to state. The exact rate of NOx emissions decreases in Maine from 1990 to the present does not affect Maine's analysis supporting its request for a NOx exemption, nor does it constitute a relevant fact that would or should inform EPA's evaluation and analysis of Maine's request for a NOx exemption under section 182(f). As explained earlier in response to other comments, the relevant factors for EPA's evaluation of Maine's NOx exemption request essentially consist of the fact that all of Maine is attaining the ozone NAAQS and that Maine's NOx emissions do not meaningfully affect nonattainment areas within the OTR, on days when those areas exceed the ozone NAAQS. Again, the amount of NOx emitted and controlled by other states is not a factor relevant to EPA's analysis under CAA section 182(f) of a NOx exemption request. To the extent the comment relates to VOC emissions, EPA is not taking

action in this final rulemaking on Maine's OTR restructuring request, and so EPA provides no response here to the comment in that respect.

Comment #13: One commenter noted that, if EPA approves Maine's requests, hazardous air pollutants will increase in Maine.

Response #13: The 1990 CAA Amendments significantly expanded EPA's authority to regulate hazardous air pollutants (HAPs). Section 112 of the CAA lists 187 HAPs to be regulated by source category. The National Emission Standards for Hazardous Air Pollutants (NESHAPs) promulgated after the 1990 CAA Amendments are found in 40 CFR Part 63. These standards require application of technology-based emissions standards referred to as Maximum Achievable Control Technology (MACT). Consequently, these post-1990 NESHAPs are also referred to as MACT standards. These standards are not affected by this final rulemaking action.

Comment #14: Several commenters stated that Maine should do its "fair share" in controlling air pollution.

Response #14: As noted earlier, Maine is not requesting to discontinue or remove from its SIP any existing NOx pollution controls. Specifically, existing NOx RACT requirements already contained in Maine's SIP will remain in Maine's SIP and stationary sources subject to those requirements before our action will continue to be subject to those same requirements. As explained earlier and in our August 5, 2013 NPR, for major new and modified stationary sources of NOx, Maine's PSD permitting requirements will apply in lieu of the nonattainment NSR

permitting requirements. The PSD permitting program is the major new source review permitting program under the CAA that generally applies in attainment areas (such as Maine). EPA has determined that Maine qualifies for a NOx exemption under CAA section 182(f)(1)(B) as a matter of law and thus Maine will, in fact, be doing what it is required to do legally under the CAA in order to control NOx emissions.

Comment #15: EPA received a comment that an economic analysis should have been performed. Another commenter noted that Maine should be required to show its economic analysis in support of its stated rationale that: "The RACT, Lowest Achievable Emission Rate (LAER) and 1.15 VOC and NOx emission offset requirements hinder economic sustainability and development in Maine."

Response #15: No provision of CAA section 182(f) CAA, or any aspect of EPA's 2005 NOx exemption guidance, indicates that an economic analysis is a relevant part of EPA's evaluation of a state's request for a NOx exemption under CAA section 182(f). The basis for EPA's action has been explained in EPA's August 5, 2013 NPR and in this final notice. The relevant factors are the CAA section 182(f)(1)(B) criteria that must be met by a state requesting a NOx exemption and the technical demonstration submitted by such state in support of its request.

Comment #16: One commenter requested that EPA conduct additional modeling and analyses to determine if new sources, or increased emissions from existing sources, would cause a violation of the ozone standard in York County, Maine.

Response #16: As discussed in more detail in Response #3, ME DEP's emission projections included in its EPA-approved ozone redesignation request and in its regional haze SIP submittal indicate that NOx emissions in York County, and in the entire state of Maine, are projected to decrease in the future. Furthermore, any new source would, even after EPA's approval of Maine's NOx waiver request, be subject to Maine's PSD permitting requirements. Under the PSD requirements, a source must demonstrate that its emissions, along with other sources, will not cause of a violation of ambient air quality standards. (See Maine's Chapter 115, "Major and Minor Source Air Emission License Regulations," section 7.)

Comment #17: EPA received numerous supportive comments from specific industrial sources in Maine; groups representing the lumber, wood and paper industries in Maine; and environmental consultants in Maine that usually represent Maine industries. All of these groups favor EPA's approval of Maine's section 182(f) NOx exemption request, dated October 13, 2012. The favorable comments generally point to the fact that Maine is attaining the 2008 ozone NAAQS (40 CFR 81.320) and that much of Maine has ozone air quality well below the level of the 2008 ozone NAAQS. Some of the supportive comments also agree with EPA that Maine's October 13, 2012 submittal for a NOx exemption contains a technical demonstration that meets the requirements of section 182(f) of the CAA. Several of the supportive comments also mention the benefit to Maine's economy that will result from EPA's approval of Maine's request, and express concern about negative impacts on employment in the state that would occur if EPA were to deny Maine's request.

Response #17: The basis for EPA's approval of Maine's NOx exemption request has been discussed in detail in EPA's August 5, 2013 NPR and in this final notice. While EPA agrees that it is appropriate to approve Maine's NOx exemption request in accordance with CAA section 182(f)(1)(B), benefits or harms to Maine's economy are not part of the CAA section 182(f)(1)(B) analysis. Therefore, EPA has not taken economic factors, whether favorable or unfavorable, into account in approving Maine's request for a NOx exemption under CAA section 182(f)(1)(B).

Comment #18: Several commenters commented on the public participation procedures Maine used in relation to its NOx exemption request, stating that notice of Maine's intended action was difficult to find on the ME DEP's internet page, and that ME DEP failed to provide adequate notice in Maine newspapers. One commenter stated that "DEP failed to give reasonable notice by prominent advertisement in the areas affected – essentially the entire state -- by their Restructure Request."

Response #18: The State of Maine and EPA followed established and appropriate public notice and comment procedures under applicable state and federal law in relation to Maine's NOx exemption request, including procedures applicable to revisions of Maine's state regulations, and procedures applicable to submission of its revised regulations to EPA as a SIP revision. On September 10, 2013, Maine DEP held a public hearing on the state's SIP revision, and the hearing was well attended. Numerous comments were received by Maine at the hearing, as well as by mail and e-mail. In addition, EPA extended the public comment period provided in its August 5, 2013 NPR for an additional 30 days (for a total of 60 days) in order to give the public additional time to provide comments (78 FR 54813, September 6, 2013). EPA also received numerous

comments, from approximately 30 parties, that are being addressed in this notice. As noted earlier, Maine's request for OTR restructuring relating to VOC nonattainment new source review is not the subject of EPA's final action here. EPA also is not taking action to revise the regulations in Maine's SIP as requested by Maine in its submittal dated November 18, 2013, because the regulations in the SIP revision are only relevant to the OTR restructuring aspect of the state's request and EPA is not taking action on that aspect of Maine's request. In this final action, EPA is only approving Maine's NOx exemption request, dated October 13, 2012, under section 182(f) of the CAA. Maine's SIP does not require revision in order for the NOx exemption to take effect under the SIP, because the SIP already contains language that accommodates the NOx exemption that EPA is approving in this final action.

IV. FINAL ACTION: EPA is approving the State of Maine's request for an exemption from the NOx requirements contained in Section 182(f) of the CAA for the entire State of Maine specifically pertaining to (1) the requirement to implement pollution controls meeting reasonably available control technology (RACT) for emissions of NOx; and (2) the nonattainment area new source review (NSR) permitting requirements for major new and modified sources as they apply to emissions of NOx. EPA is approving this request pursuant to CAA section 182(f)(1)(B). If EPA subsequently determines, based on future air quality analyses, that such NOx emissions controls in Maine are necessary to meet the requirements of the CAA, EPA may initiate rulemaking to revoke the NOx exemption being approved in relation to the 2008 ozone NAAQS.

V. STATUTORY AND EXECUTIVE ORDER REVIEWS

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any regulation subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201;) (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of

small entities. This rule will not impose any requirements directly on small entities. Entities potentially affected directly by this rule include state, local and tribal governments and none of these governments are small governments. Other types of small entities are not directly subject to the requirements of this rule.

D. Unfunded Mandates Reform Act

This action contains no federal mandate under the provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for state, local and tribal governments, in the aggregate, or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will 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.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It would not have a substantial direct effect on one or more Indian

tribes, since no tribe has to develop an implementation plan under these regulatory revisions. Furthermore, these regulation revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the Tribal Air Rule establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards

(e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States. The EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the

rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective [FEDERAL REGISTER OFFICE: INSERT DATE 30 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not

affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 18, 2014.

Gina McCarthy,
Administrator.

Part 52 of chapter I, title 40 of the Code of Federal Regulations, is amended as follows:

PART 52 - [AMENDED]

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

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

Subpart U - Maine

2. Section 52.1023 is amended by adding paragraph (j) to read as follows:

§ 52.1023 Control strategy: Ozone.

*** * * * ***

(j) Approval. EPA is approving an exemption request from the nitrogen oxides (NOx) requirements contained in Section 182(f) of the Clean Air Act for the entire state of Maine for purposes of the 2008 ozone National Ambient Air Quality Standard. The exemption request was submitted by the Maine Department of Environmental Protection on October 13, 2012. This approval exempts, for purposes of the 2008 ozone standard, major sources of nitrogen oxides in Maine from:

(1) The requirement to implement controls meeting reasonably available control technology (RACT) for NOx; and

(2) Nonattainment area new source review requirements for major new and modified sources as they apply to emissions of NOx.

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