under the facts and circumstances of the case, the Commission shall award to an eligible applicant who does not prevail the fees and expenses related to defending against the excessive demand, unless the applicant has committed a willful violation of law or otherwise acted in bad faith or special circumstances make an award unjust. The burden of proof is on the applicant to establish that the Secretary's demand is substantially in excess of the Commission's decision; the Secretary may avoid an award by establishing that the demand is not unreasonable when compared to that decision. As used in this section, ''demand'' means the express demand of the Secretary which led to the adversary adjudication, but does not include a recitation by the Secretary of the maximum statutory penalty—

* * * * *

26. In § 2704.206, revise the second sentence of paragraph (a) and paragraph (c) to read as follows:

§ 2704.206 When an application may be filed.

(a) * * * An application may also be filed by a non-prevailing party when a demand by the Secretary is substantially in excess of the decision of the Commission and is unreasonable when compared with such decision. * * *

* * * * *

(c) For purposes of this part, final disposition before the Commission means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, becomes final (pursuant to sections 105(d) and 113(d) of the Mine Act (30 U.S.C. 815(d) and 823(d)) and unappealable, both within the Commission and to the courts (pursuant to section 106(a) of the Mine Act (30 U.S.C. 816(a)).

27. In § 2704.302, revise the second sentence of paragraph (a) to read as follows:

§ 2704.302 Answer to application.

(a) * * * Unless counsel requests an extension of time for filing, files a statement of intent to negotiate under paragraph (b), or a proceeding is stayed pursuant to § 206(b), failure to file an answer within the 30-day period may be treated as a consent to the award requested.

* * * * *

PART 2705—PRIVACY ACT IMPLEMENTATION

28. The authority citation for part 2705 continues to read as follows:

Authority: 5 U.S.C. 552a; Pub. L. 93–579, 88 Stat. 1896.

29. In § 2705.1, republish the introductory text and revise paragraph (a) to read as follows:

§ 2705.1 Purpose and scope.

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the Federal Mine Safety and Health Review Commission, hereafter the ''Commission,'' maintains a system of records which includes a record pertaining to the individual. This does not include Commission files generated in adversary proceedings under the Federal Mine Safety and Health Act; and

* * * * *

Dated: December 29, 2005.

Michael F. Duffy,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 06–64 Filed 1–4–06; 8:45 am]

BILLING CODE 6735–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2005–ME–0006; A–1–FRL–8018–1]

Approval and Promulgation of Air Quality Implementation Plans; Maine; 15% and 5% Emission Reduction Plans, Inventories, and Transportation Conformity Budgets for the Portland One and Eight Hour Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the state of Maine. These revisions establish a 15% VOC emission reduction plan, and revised 1990 base year emissions inventory, for the Portland Maine one-hour ozone nonattainment area. Additionally, these revisions establish a 5% increment of progress emission reduction plan, 2002 base year inventory, and transportation conformity budget for the Portland Maine eight-hour ozone nonattainment area. The intended effect of this action is to propose approval of these plans as revisions to the Maine SIP. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before February 6, 2006.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number EPA–R01–OAR–2005–ME–0006 by one of the following methods:

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

2. Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, will be replaced by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov*. On November 28, 2005, when that occurs, you will be redirected to that site to access the docket EPA–R01–OAR–2005–ME–0006 and submit comments. Follow the on-line instructions for submitting comments.

3. E-mail: *conroy.dave@epa.gov.*

4. Fax: 617–918–0661.

5. Mail: ''RME ID Number EPA–R01–OAR–2005–ME–0006'' David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Manager, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number EPA–R01–OAR–2005–ME–0006. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through Regional Material in EDocket (RME), regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected. The EPA RME website and

the federal regulations.gov website are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Air Quality Planning Unit, U.S. EPA Region 1, One Congress Street, Suite 1100–CAQ, Boston, MA 02114–2023, telephone number 617–918–1046, fax number 617–918–0046, e-mail *mcconnell.robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies Of This Document and Other Related Information?

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section above, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality Control, Department of Environmental Protection, Tyson Building, First Floor, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

B. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Rulemaking Information

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

A. Background

On June 9, 13, and 14, 2005, the Maine Department of Environmental Protection (DEP) submitted revisions to its State Implementation Plan (SIP) for ozone. These revisions consist of a 15% rate-of-progress (ROP) plan, a 5% increment of progress emission reduction plan, the associated base year emission inventories developed in support of these plans, and transportation conformity budgets for 2007 established by the 5% increment of progress plan. A public hearing on these SIP revisions was conducted by the state on April 21, 2005. This action proposes approval of these SIP revisions, and provides EPA's rationale for doing so.

B. 15% VOC Emission Reduction Plan

1. Background

Section 182(b)(1) of the Clean Air Act (CAA) as amended in 1990 requires that moderate and above one hour ozone nonattainment areas develop plans to reduce area wide Volatile Organic Compound (VOC) emissions from a 1990 baseline by 15%. The plans were required to be submitted by November 15, 1993 and the reductions were required to be achieved within 6 years after enactment, meaning by November 15, 1996. The CAA also set limitations on the creditability of certain types of reductions. For example, states cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (new car emissions standards) that were already in place prior to the 1990 amendments to the CAA, or for reductions due to controls on gasoline Reid Vapor Pressure (RVP) that were promulgated prior to 1990.

In 1991, EPA designated the Portland area, which includes all of Cumberland, Sagadahoc and York counties, as a nonattainment area for the one hour ozone standard, and classified the area as moderate. Maine is, therefore, subject to the 15% rate-of-progress (ROP) requirement. Maine submitted a final 15% ROP plan to EPA on July 25, 1995. However, air quality in the Portland area fluctuated above and below the one-hour ozone national ambient air quality standard (NAAQS) after 1995.

Pursuant to EPA policy,[1] the Agency interpreted the Act not to require a 15% plan during times that the Portland area's air quality was better than EPA's one hour ozone NAAQS, and so EPA never approved the state's June 1995 plan into the SIP.

Beginning in 2002, the Portland area has again been in violation of the one hour ozone standard, and so the 15% plan requirement is again pertinent for this area. In consultation with Maine DEP, it was determined that the state would revise the 15% plan submitted in 1995 to reflect up-to-date emission estimation methodologies and control strategies. On June 9, 2005, the state submitted a revised, adopted 15% rate-of-progress plan for the Portland one-hour nonattainment area.

2. Calculation of Required Reductions

a. Step 1: 1990 base year inventory.

The first step in calculating the emission reductions needed to comply with the 15% VOC emission reduction requirement is to prepare a 1990 base year emission inventory for VOCs. The EPA approved Maine's 1990 base year inventory of ozone precursors on February 28, 1997 (62 FR 9081). Some of the emission estimates contained within Maine's revised 15% plan submitted in June of 2005 were updated using improved methodologies that have arisen since the earlier inventory was prepared. The most significant revisions made occurred in the estimates for mobile sources. For the nonroad sector (excluding commercial marine, rail, and emissions from aircraft), Maine DEP's prior emission estimates were based on outdated studies conducted for EPA's then Office of Mobile Sources in 1991. Since that time, EPA has made numerous refinements to its emission estimation techniques for the diverse types of nonroad engines, and compiled them in a software program referred to as the Nonroad Model. Maine DEP used this tool to generate a revised 1990 emission estimate for this sector. Additionally, Maine DEP's originally approved 1990 emission estimate for on-road vehicles was based on EPA's Mobile 5a model. The state re-calculated its 1990 emission estimate using the Mobile 6.2 version of the model, as that is the most current version. Maine also made changes to some of its emission estimates for stationary sources, as outlined in the support material submitted by the state with this SIP revision.

Table 1 below compares the previously approved emission estimates to those in the state's revised 1990 inventory.

TABLE 1.—COMPARISON OF 1990 EMISSION ESTIMATES (TPSD)

Source category	Originally approved emissions	June, 2005 emissions
Point Source	9.65	9.65
Area Source	31.8	33.43
Non-road Mobile	7.4	18.08
On-Road Mobile	49.87	63.31
Biogenic	197.6	197.6
Total	296.32	322.07

During development of the revised 15% plan, Maine DEP and EPA ensured that the 1990 emission estimation methodologies matched the methods used to prepare its projected 2005 inventory to ensure that the same methods were used for both inventories. This was done to ensure that emission reduction credit was not taken due simply to changes in emission estimation technique.

b. Step 2: 1990 rate-of-progress inventory.

The second step involves excluding biogenic emissions and emissions included within the base year inventory which do not emanate from within the boundaries of the nonattainment area. Maine's base year inventory for the Portland nonattainment area did not include any emissions from sources outside of the area. Therefore, step 2 consists of simply subtracting the biogenic VOC component, producing a ''rate-of-progress'' inventory of 124.47 tpsd.

c. Step 3: Adjusted base year inventory.

The third step in calculating the required emission reductions is to subtract the emission reductions that are not creditable toward the 15% VOC emission reduction goal. The reductions which are not creditable include those which would have occurred even without passage of the 1990 CAA Amendments due to control programs already in place. The FMVCP and gasoline RVP standards are examples of such non-creditable programs. Maine had no RVP reductions to account for since the state has been using gasoline that meets the required RVP maximum of 9.0 psi or lower since 1989, but did have to account for the non-creditable FMVCP reductions. Maine included within the 15% plan the input and output MOBILE6.2 files documenting its determination of these reductions, which turned out to be 35.93 tpsd. Subtracting this amount from the rate-of-progress inventory calculated in step 2 of 124.47 tpsd yields 88.54 tpsd.

d. Step 4: Calculation of required reductions.

In this step, the adjusted base year inventory is multiplied by 15% to calculate the amount of the required 15% emission reduction: 88.54 * 0.15 = 13.28 tpsd.

e. Step 5: Determination of total expected reductions.

The total expected reductions from the 1990 rate-of-progress inventory (calculated in step 2) include the 15% emission reduction calculated in step 4, and the emission reductions anticipated from the noncreditable programs as outlined in step 3. Additionally, emission reductions that occur between 1990 and 1996 due to corrections to pre-existing (pre-1990) but deficient I&M programs and/or deficient RACT rules, though not eligible to count towards the 15% emission reduction requirement, still represent emission reductions that are expected to occur between 1990 and 1996. Maine did not have a pre-1990 I&M requirement, nor any ''RACT Fix-up'' obligations, and so the total expected emission reductions for the Portland nonattainment area are the

[1] May 10, 1995, guidance memorandum signed by John S. Seitz, Director of the Office of Air Quality Planning and Standards, which stated in part that ozone nonattainment areas subject to 15% ROP requirements that were meeting the ozone standard did not need to submit 15% ROP plans as long as the area continued to meet the standard.

sum of reductions from steps 3 and 4: 35.93 + 13.28 = 49.21 tpsd.

f. Step 6: Target level of emissions.

The target level of emissions for 1996 is obtained by subtracting the total required reductions (step 5) from the 1990 rate-of-progress inventory (step 2). For the Portland area this yields: 124.47 − 49.21 = 75.26 tpsd.

g. Step 7: Project emission to target year.

The original 15% plans required by the CAA were required to be submitted to EPA in 1993. These plans were to include emission projections to 1996, the year by which the 15% emission reductions were to be achieved. Due to the circumstances described above, Maine DEP's revised 15% plan could not conceivably demonstrate that a 15% emission reduction occurred from 1990 levels by 1996, as that year has passed. Once a statutory deadline has passed and has not been replaced by a later one, it is reasonable to require the plan to comply with the act ''as soon as possible.'' See Delaney v. EPA, 898 F.2d 687, 691 (9th Circuit, 1990). EPA has interpreted this requirement to be ''as soon as practicable.'' Upon consultation between EPA and Maine DEP, EPA determined that 2005 is the most suitable year by which Maine's revised 15% analysis must demonstrate the 15% reduction. Accordingly, an estimate of emissions in 2005 was needed.

Although an estimate of 2005 emission was needed, the most current inventory available to Maine DEP was its 2002 inventory, and so an estimate of growth in emissions from 2002 to 2005 was used to complete the 15% VOC emission reduction demonstration. This was accomplished by taking the 2002 inventory and multiplying it by growth factors which estimate growth from 2002 to 2005. Growth factors specific to each source category were used since the sources typically grow at different rates. For example, Maine used growth factors obtained from the Bureau of Economic Analysis (BEA) via a tool they developed called the Economic Growth Analysis System (EGAS) to project most of the point and area source emissions growth from 2002 to 2005.

Once emissions were projected to 2005, a review was made to see if any controls not in existence in 2002 became effective by 2005. If so, the state reduced emissions to account for the controls, as will be described in section II.B. of this document. Maine DEP did not use the emission reductions generated pursuant to its adoption of area source VOC rules developed by the Ozone Transport Commission (OTC) in its 15% plan, *i.e.*, Maine's projected 2005 emission estimates do not reflect emission reductions from these measures. Maine DEP did use reductions from these measures to meet its 5% plan emission reductions requirements as is explained in Section C. of this document.

Table 2 below compares Maine's projected, controlled 2005 emissions for the Portland nonattainment area with its 1990 emission estimates:

TABLE 2.—COMPARISON OF 1990 AND 2005 VOC EMISSIONS

Emission source category	1990 base year emissions	2005 projected, controlled emissions
Point	9.65	*4.32
Area	33.43	24.7
Off-road Mobile	18.08	15.75
On-road Mobile	63.31	23.48
Total	124.47	68.25

* Includes 0.82 tpsd in VOC offsets awarded to Spinnaker Coating.

The CAA Section 182(b)(1)(A) language regarding the 15% VOC emission reduction requirement states that this reduction must occur, ''accounting for any growth in emissions after the year in which the CAAA of 1990 were enacted.'' EPA interprets this passage to mean any growth in emission levels between 1990 and 1996 must also be offset so that by 1996, emission levels will be truly 15% lower than they were in 1990. In actuality, emission levels will be reduced by more than 15% in the evaluation year because other required reductions, such as those from pre-enactment FMVCP, will also be occurring as described above.

Maine's projected, controlled 2005 inventory for the Portland area totals 68.25 tpsd. This is considerably lower than the target level of emissions of 75.26 calculated in step 6. Maine DEP has therefore shown that emissions have been reduced by 15% from 1990 levels, after accounting for growth, and not counting the non-creditable reductions from the FMVCP program.

3. Evaluation of control measures.

a. Point source controls.

Maine DEP's revised 15% plan analysis shows that VOC emissions from point sources fell 5.33 tpsd (55%) between 1990 and 2005. Table 3 below summarizes the control programs that affected this decrease in emissions.

TABLE 3.—POINT SOURCE CONTROLS FOR VOC SOURCES

Point source category	Rule implementation date	Federal approval
Chapter 129 (Surface Coating)	May 31, 1995	June 17, 1994, (59 FR 31154).
Chapter 130 (Solvent Degreasers)	May 31, 1995	June 17, 1994, (59 FR 31154).
Chapter 134 (Non-CTG Sources)	May 31, 1995	April 18, 2000, (65 FR 20749).
Bulk Terminal Emission Limit	May 31, 1996	October 15, 1996, (61 FR 53636).

Additional information on each of these regulations is available in the **Federal Register** notice that contains EPA's approval of them.

VOC offsets: Maine DEP's revised 15% plan indicates that one source in the Portland area, Spinnaker Coatings in Westbrook, applied for and obtained VOC offset credits in the amount of 213 tons which could be used (emitted) in the future. To account for this, Maine DEP translated these emissions into

what could be emitted during a typical summer day, (0.82 tons), and added that value to its projected 2005 (and 2007 for its 5% plan) emission estimate from point sources.

b. Area source controls.

Maine DEP's revised 15% plan analysis shows that VOC emissions from area sources fell 8.73 tpsd (26%) between 1990 and 2005, despite the growth that occurred in population and other activity indicators. The discussion below summarizes the area source control programs that caused this change in emissions.

Stage I: Maine has adopted and submitted to EPA a Stage I vapor recovery regulation that limits VOC emissions from the filling of underground storage tanks at gasoline stations. The rule applies to facilities with through-puts that exceed 10,000 gallons per month. Chapter 118 of the state's VOC control regulations entitled ''Gasoline Dispensing Facilities Vapor Control'' was submitted to EPA on July 11, 1994, and approved as a revision to the Maine SIP within a **Federal Register** notice published on June 29, 1995 (60 FR 33730). The state projects that VOC emissions will be reduced by 1.35 (52%) tpsd by this program between 1990 and 2005.

Stage II: Maine has adopted and submitted to EPA a Stage II vapor recovery regulation that limits VOC emissions from vehicle refueling activity in the Portland nonattainment area. Chapter 118 of the state's VOC control regulations entitled ''Gasoline Dispensing Facilities Vapor Control'' was submitted to EPA on July 26, 1995, and approved as a revision to the Maine SIP within a **Federal Register** notice published on October 15, 1996 (61 FR 53636). The rule is applicable to gasoline stations with throughputs greater than 1,000,000 gallons per year. Maine used EPA's Mobile 6.2 program to calculate emission reductions from all of the state's on-road mobile source control programs simultaneously, and therefore a separate amount of emission reduction credit from the Stage II program is not reported in the state's 15% SIP.

Cutback asphalt: Maine has adopted and submitted to EPA a cutback asphalt regulation (Chapter 131) that prohibits the use of cutback asphalt for most applications during the ozone season. Maine adopted this rule on January 6, 1993, and submitted it to EPA as a revision to the state's SIP. EPA approved the rule as part of the state's SIP within a **Federal Register** notice dated June 17, 1994 (59 FR 31154). The state determined that emissions were reduced by 7.33 tpsd (95%) between 1990 and 2005 due to this control program.

Architectural and industrial maintenance (AIM) coatings: Emission reductions were taken from the Architectural and Industrial Maintenance (AIM) surface coating emission source category due to a federal rule that required such coatings be reformulated to emit less VOCs. In a memo dated March 22, 1995, EPA provided guidance on the expected reductions from the national rulemaking on AIM coatings, stating that emissions would be reduced by 20%. The state determined that despite growth in this sector between 1990 and 2005, emissions were reduced by 0.46 tpsd (9%) in the Portland nonattainment area due to this federal rule.

Automobile refinishing: A November 29, 1994, EPA guidance memorandum specifies that states can assume a 37% control level for this source category due to a National rule. The state projects that between 1990 and 2005, the net effect of activity growth and implementation of the federal rule reduced emissions by 0.12 tpsd (20%) in the Portland nonattainment area.

Consumer products: On June 22, 1995, EPA issued a guidance memorandum regarding the regulatory schedule for consumer and commercial products which indicated that states that have not adopted their own consumer and commercial products rule could take emission reduction credit from a pending national consumer and commercial products rulemaking. After re-calculating its base year emission estimate to account for updated guidance as mentioned earlier in this document, the state applied the recommended control level of 12.5% and determined that between 1990 and 2005, emissions from this sector actually rose by 0.19 tpsd (4%) as population growth overwhelmed the reductions from the federal rule.

c. On-road mobile source controls.

Maine DEP identified and modeled within its Mobile 6.2 runs a number of state and federal motor vehicle emission and fuel control programs that reduce emissions in the state. These control programs are discussed below. Region 1 has confirmed that Maine correctly modeled these programs together to calculate the overall emission reduction benefit from them.

Low RVP gasoline program: On June 26, 1991 the state submitted a letter from the Governor requesting that Maine participate in the reformulated fuels program. This request was published in the **Federal Register** on September 10, 1991, 56 FR 46119. However, Maine subsequently rescinded its participation in this program and replaced it with its Chapter 119 rule, a low RVP program which limits the RVP of gasoline sold in the 7 southern most Maine counties, including all of the Portland 1-hour area, to a level no greater than 7.8 from May 1 to September 15 of each year. This regulation was submitted to EPA and approved into the state's SIP on March 6, 2002 (67 FR 10099).

Motor vehicle inspection and maintenance (I&M) program: Maine state regulations include an I&M program which has minimal requirements. In Cumberland county, the program requires a check of gas cap fitting adequacy. Additionally, an anti-tampering program checks for any modification to exhaust catalysts exists in Portland, Sagadahoc, and York counties. Maine adopted its automobile inspection and maintenance program on July 9, 1998, and submitted it to EPA as a revision to the state's SIP. EPA approved the program into the state's SIP in a **Federal Register** notice published on January 10, 2001 (66 FR 1875).

Tier I federal motor vehicle control program: The EPA promulgated standards for 1994 and later model year light-duty vehicles and light-duty trucks (56 FR 25724, June 5, 1991). Since the standards were adopted after the Clean Air Act amendments of 1990, the resulting emission reductions are creditable toward the 15 percent reduction goal.

California low emission vehicle program: Chapter 127 of the Maine DEP Air rules is entitled ''New Motor Vehicle Emission Standards,'' began phasing in during 2001, and requires the sale of motor vehicles meeting California certification standards contained within Title 13 of the California Code of Regulations pertaining to emission standards for motor vehicles. Maine submitted this rule to EPA as a revision to the state's SIP on February 25, 2004. EPA approved the program into the Maine SIP in a final rule published in the **Federal Register** on April 28, 2005 (70 FR 21959).

Onboard vapor recovery systems: This is a federal program required by section 202(a)(6) of the 1990 CAAA. For passenger cars, the onboard control requirements will be phased in over three model years with 40 percent, 80 percent, and 100 percent of new car production being required to meet the standard in model years 1998, 1999, and 2000, respectively. The phase-in of onboard controls for light trucks will follow the phase-in period for cars. Onboard controls for the lighter class of

light trucks (those under 6000 pounds GVWR) will be phased in during models years 2001 through 2003, while onboard controls for the heavier light trucks (those from 6001 through 8500 pounds GVWR) will be phased in during models years 2004 through 2006. When fully phased in, the new controls will capture 95 percent of refueling emissions.

d. Nonroad mobile source controls.

EPA has established emission standards for a variety of non-road engine categories that will reduce ozone precursor emissions over the time period covered by the Maine 15% plan. These standards affect heavy duty compression ignition (diesel) engines, small non-road spark-ignition (gasoline) engines, large non-road gasoline engines, gasoline powered outboard and personal water-craft engines, commercial diesel marine engines, recreational stern-drive and inboard engines, and locomotives. Detailed information regarding each of these emission control programs is available on EPA's Web site at: *http://www.epa.gov/otaq*.

EPA has also created a draft nonroad air emissions estimation model that can be used to calculate emissions from all nonroad engines except those used to power aircraft, locomotives, and large commercial marine vessels, for the present year, and for past or future years. Maine DEP used the Nonroad Model to calculate air emissions from this sector in the Portland area. Region 1 has reviewed and confirmed the emission estimates for nonroad engines Maine has used in its revised inventories and ROP plans.

4. Contingency Measures

On April 30th, 2004, EPA published a final rule (the ''Phase 1'' rule), which included provisions for revoking the one-hour ozone standard one-year from the effective date of the designations for the 8-hour ozone standard. This requirement is codified in the Code of Federal Regulations at 40 CFR Part 50.9(b). Prior to revocation, ozone nonattainment areas classified as moderate or above were required to include in their submittals under section 172(b) of the CAA, contingency measures to be implemented if ROP was not achieved or if the standard is not attained by the applicable date. However, on May 26, 2005, EPA published a final rule (70 FR 30592) that, in light of the revocation of the one-hour ozone standard, removed the requirement that contingency plans be adopted for ROP plans submitted to make progress toward achievement of the one-hour ozone standard. Accordingly, Maine-DEP's revised 15% ROP plan does not contain contingency measures.

C. 5% Increment of Progress Plan

1. Background

On July 18, 1997, EPA promulgated a new NAAQS for ozone based on an 8-hour averaging period. Court challenges to the 8-hour ozone standard delayed implementation of it, but were eventually resolved and on April 30, 2004, EPA promulgated designations for the 8-hour ozone standard in the **Federal Register** (69 FR 23858). The effective date for the designations was June 15, 2004. Portions of Maine were designated nonattainment for this standard, including the Portland 8-hour area which was classified as a marginal nonattainment area. The Portland 8-hour marginal nonattainment area consists of Sagadahoc county, most portions of Cumberland and York counties, and one town in Androscoggin county. As such, it differs geographically from the Portland 1-hour nonattainment area, as that area consists of Cumberland, Sagadahoc, and York counties in their entirety.

On April 30, 2004, EPA also published the first part of its rule governing implementation of the 8-hour ozone standard (69 FR 23951). Although this rule dealt primarily with issues pertaining to the new 8-hour ozone standard, it included some provisions relevant to the one-hour ozone NAAQS. Of particular interest to Maine was a provision allowing one-hour areas with unmet attainment demonstration obligations to submit, in lieu of a full one-hour ozone attainment demonstration, an early 5% increment of progress plan toward achievement of the 8-hour standard. Such plans would need to be submitted no later than one year from the effective date of the 8-hour ozone standard, meaning by no later than June 15, 2005. Maine's Portland one-hour nonattainment area has an unmet attainment demonstration obligation, and so Maine DEP decided to prepare a 5% increment of progress plan to meet its unmet one-hour attainment demonstration obligation. Accordingly, Maine's June 9, 2005 SIP revision request to EPA included a 5% increment of progress plan.

The geographic area covered by the Portland 8-hour area is smaller than the area covered by the Portland 1-hour area in that it only includes portions of Cumberland and York counties, whereas the 1-hour area covers these two counties entirely (plus all of Sagadahoc county). Given the difficulties of SIP planning activities at a sub-county level, in particular preparation of emission inventories at a sub-county level, Maine DEP developed its 5% increment of progress plan such that it covers all of the old one-hour nonattainment area. As such it covers a larger area and plans for more emission reductions than is required, even though one town, the town of Durham in Androscoggin county, is not covered by the plan. EPA worked closely with the Maine DEP in development of this plan, and we believe that the geographic area Maine DEP chose to cover in its 5% increment of progress plan is appropriate and reasonable. We believe this to be so because the mix of stationary and mobile emission sources is fairly uniform across the area, and so the net result of expansion of the geographic area is primarily an increase in the amount of emission reductions that must be planned for.

Given the difficulty and additional uncertainty introduced by developing emission inventories at the sub-county level, it is not likely that doing so would produce data that would improve our decision making ability. Accordingly, as mentioned above we believe that Maine DEP's use of full county emission inventories is appropriate. However, transportation conformity budgets need to match the exact geographic borders of the nonattainment area they are associated with. Since development of on-road mobile source emission estimates at the sub-county level is not unduly burdensome, and critical for transportation conformity purposes, Maine DEP's 5% increment of progress plan contains on-road mobile source inventories for 2007 that exactly match the geographic area of its 8-hour nonattainment area.

2. 5% Increment of Progress Plan Requirements

EPA issued a guidance memorandum [2] on August 18, 2004 which outlines the criteria for 5% increment of progress plans. In brief summary, the guidance requires the emission reduction be based on a 2002 inventory, does not allow credit from federal measures or measures already in the SIP as of 2002, requires that the reduction occur by 2007, and allows use of VOC, NO_X, or some combination of both pollutants. The steps involved in determining the magnitude of the emission reductions needed to meet the 5% plan obligation are outlined below.

[2] ''Guidance on 5% Increment of Progress'' (40 CFR 51.905(a)(1)(ii)); dated August 18, 2004; from Lydia Wegman, Director, OAQPS, to EPA Regional Air Directors.

Step 1: Establish 2002 Emissions Baseline

The first step in this calculation is the establishment of a 2002 emissions baseline. Although EPA's August 18, 2004 guidance allows states to use EPA's draft 2002 National Emissions Inventory (NEI) for the 2002 baseline, Maine DEP provided a better 2002 emissions baseline by developing their own 2002 inventory. This inventory includes better activity data in many instances than what is available in EPA's NEI. Maine's 2002 inventory of ozone precursors for the full 3 county area is shown below in Table 4 by major source category.

TABLE 4.—2002 ANTHROPOGENIC EMISSIONS FOR THE PORTLAND AREA

Major source category	2002 VOC emissions (tpsd)	2002 NO_X emissions (tpsd)
Point	3.29	13.08
Area	23.65	1.89
On-road	30.94	61.20
Off-road	16.59	13.23
Com. marine, rail, and aircraft	0.45	2.33
Total	74.90	91.70

Step 2: Calculate 5% Reduction

EPA's August 18, 2004 5% plan guidance allows the 5% reduction to be made from only VOC emission reductions, only NO_X reductions, or from a combination of VOC and NO_X reductions which in total equal 5%. Maine DEP chose to demonstrate it could meet the 5% emission reduction requirement by relying exclusively on VOC emission reductions. Therefore, its emission reduction obligation is calculated as follows: 0.05 * 74.90 = 3.75 tpsd of VOC emissions.

Step 3: Project Emissions to 2007

The third step in the 5% calculation is to develop a 2007 inventory that reflects growth and controls from measures already in the SIP or expected to occur due to federal measures. Maine DEP prepared its projected 2007 inventory for the three county Portland area in a manner similar to the way it prepared its 2005 projected inventory as described in section 2.g of this document. Table 5 below shows Maine's 2002 baseline and projected 2007 emissions inventory for VOCs.

TABLE 5.—2002 AND 2007 VOC EMISSIONS BY MAJOR SOURCE CATEGORY

Major source category	2002 VOC emissions (tpsd)	2007 VOC emissions (tpsd)
Point	3.29	4.0
Area	23.65	25.52
On-road	30.94	20.48
Off-road	16.59	14.21
Commercial Marine, Rail, and Aircraft	0.45	0.5
Total	74.90	64.73

Step 4: Determine Emissions Target

In Step 4, the required 5% emission reduction of 3.75 tpsd is subtracted from the projected 2007 emission inventory of 64.73 tpsd, establishing an emissions target level of 60.98 tpsd for 2007. Maine's 5% plan demonstrates that it will meet this target by reducing the area source inventory by 4.47 tpsd, taking it from 25.52 tpsd down to 21.05. This will reduce the overall inventory similarly, taking it from 64.73 tpsd to 60.26 tpsd, which is 0.72 tpsd below the target level of emissions.

Step 5: Compare 2007 to 2002 Inventory

The final step in the 5% calculation is to ensure that the 2007 projected, controlled inventory is 5% lower than the 2002 emissions baseline. This step is required because in a rapidly growing area, a large increment of growth could conceivably overwhelm the 5% emission reduction, and the reductions from already scheduled SIP and federal control programs. This is not the case in Maine, however, as the projected, controlled 2007 emission level of 60.26 tpsd is almost 20% lower than 2002 emissions.

3. Evaluation of Control Measures

Maine DEP's 5% plan demonstrates that it will achieve the required level of emission reductions via adoption of four VOC emission control measures that are based on model rules developed by the Ozone Transport Commission (OTC). The four rules apply to small source solvent cleaners (degreasers), architectural and industrial maintenance (AIM) coatings, consumer and commercial products, and mobile equipment repair and refinishing. Several of these rules require control measures beyond those already required by the corresponding federal measures relied on in Maine's 15% plan. Each of these rules, and the emission reductions anticipated from them, are discussed below.

a. *Chapter 130 solvent cleaning rule:* This regulation establishes requirements for testing, evaluating, and limiting VOCs from solvent cleaning machines and sets minimum requirements for equipment and operation standards in order to reduce VOC emissions. Maine used a control factor of 66% as recommended in a report by E.H. Pechan and associates [3] in work done for the OTC. Facilities were required to comply with the rule by January 1, 2005, and Maine DEP expects it to produce 2.57 tpsd in emission reductions. EPA approved this rule into the state's SIP in a final rule published

[3] E.H. Pechan and Associates, ''Control Measures Development Support Analysis of Ozone Transport Commission Model Rules,'' March 31, 2001.

in the **Federal Register** on May 26, 2005 (70 FR 30367).

b. *Chapter 151 AIM coatings rule:* Chapter 151 establishes limits for emissions of VOCs from 51 AIM coating categories. Compliance with the rule will be required as of January 1, 2006, and Maine DEP expects it to produce 0.99 tpsd in emission reductions beyond the reductions already achieved by the federal program. However, Maine DEP will need to adjust the credit claimed for AIM reductions downward to reflect recent revisions to its Chapter 151 rule. Specifically, the proposal contains a new, less stringent, emission limit for interior wood clear and semitransparent stains. The proposal also includes a less stringent 2006 emission limit for varnishes (although by 2011 varnishes are required to meet the same limit as in the existing rule). These revisions will impact the emission reductions Maine achieves from the implementation of Chapter 151 by 2007. However, given that Maine's 5% plan currently includes 0.72 tpsd of surplus credits, it appears that even with these adjustments, Maine will be able to meet its 5% plan target.

Additionally, in the August 31, 2005 **Federal Register** (70 FR 51694) EPA published a notice soliciting comments, data and information with regard to calculation of emission reductions from AIM coating rules. Therefore, future adjustments may also need to be made to Maine's credit claim from this rule. However, EPA has analyzed the emission credit claims made by states that have adopted AIM rules based on the OTC's model rule, and determined a 35% post federal AIM rule reduction factor is currently the most appropriate reduction factor to use. Maine DEP used the 35% post federal rule reduction factor in its AIM credit calculation. EPA has not yet approved this rule into the state's SIP. Therefore, emission reduction credit will only be granted to Maine for reductions from this rule if EPA approves it into the state's SIP on or before the date final action is taken on Maine's 5% increment of progress plan. On December 15, 2005, EPA publised a notice of proposed rulemaking (70 FR 74259) that proposes approval of Maine's AIM coatings rule. The comment period for that proposed rule ends January 17, 2006.

c. *Chapter 152 consumer and commercial products rule:* This regulation limits emissions of VOC from consumer products by establishing emission limits for consumer product source categories. Compliance with the rule was required by May 1, 2005, and Maine DEP expects it to produce 0.72 tpsd in emission reductions in the three county area beyond the reductions already achieved by the federal program. EPA approved this rule into the state's SIP in a final rule published in the **Federal Register** on October 24, 2005 (70 FR 61382).

d. *Chapter 153 mobile equipment repair and refinishing rule:* This regulation limits emissions of VOCs from mobile equipment refinishing and repair facilities by limiting the VOC content of coatings, by requiring the use of high efficiency coating application systems, and through work practice standards. Maine used a control factor of 38% as recommended in the previously mentioned report by E.H. Pechan. This 38% emission reduction is above and beyond the emission reductions achieved from this sector by an earlier federal rule. Facilities were required to comply with the rule by January 1, 2005, and Maine DEP expects it to produce 0.19 tpsd in emission reductions in the three county area. EPA approved this rule into the state's SIP in a final rule published in the **Federal Register** on May 26, 2005 (70 FR 30367).

D. Transportation Conformity Budgets

Maine's 5% increment of progress plan contains projected, controlled emission levels for on-road mobile sources for 2007. Although the 15% plan also contains projected, controlled emission levels, they are for 2005, and are geographically matched to the full county Portland one-hour nonattainment area. EPA revoked the one-hour ozone standard on June 15, 2005. Therefore, the on-road mobile source VOC and NO_X emissions estimates for 2007 contained in Maine's 5% increment of progress plan will establish a transportation conformity budget, and the 2005 on-road mobile estimates in the 15% plan will not.

Although Maine DEP prepared its base year and future year inventories at the full county level, the state included in its 5% plan a 2007 emission estimate for on-road mobile sources for the exact geographic area that comprises the Portland 8-hour nonattainment area. These 2007 emission estimates establish transportation conformity budgets, and they are as follows: For VOCs, 20.115 tpsd, and for NO_X, 39.893 tpsd.

In the August 30, 2005 **Federal Register** (70 FR 51353) EPA published a notice of adequacy determination for the above transportation conformity budgets. These budgets were calculated in accordance with standard EPA methods, and should be approved into the state's SIP along with the 5% increment of progress plan.

III. Proposed Action

EPA's review of this material indicates that Maine has prepared these emission inventories, emission reduction plans, and transportation conformity budgets in accordance with EPA methods and guidance. EPA is proposing to approve Maine's 15% rate of progress plan and associated revised 1990 inventory, and also proposing approval of the state's 5% increment of progress plan, 2002 base year inventory, and transportation conformity budgets for 2007 for VOC and NO_X for the Portland 8-hour ozone nonattainment area as a revision to the state's SIP. These SIP revisions were submitted to EPA on June 9, 13, and 14, 2005. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this action, or by submitting comments electronically, by mail, or through hand delivery/courier following the directions in the **SUPPLEMENTARY INFORMATION**, I. General Information section of this action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: December 21, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E5–8221 Filed 1–4–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2005–MI–0001; FRL–8019–4]

Approval and Promulgation of Air Quality Implementation Plans; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Michigan's request for a revision to its Clean Air Act State Implementation Plan which provides for exemptions for major sources of nitrogen oxides (NO_X) from the Reasonably Available Control Technology (RACT) and New Source Review (NSR) requirements for NO_X. The review is for sources in eleven counties located in six of Michigan's eight-hour ozone non-attainment areas. Section 182(f) of the Clean Air Act allows this exemption for areas where additional reductions in NO_X will not contribute to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. We are proposing approval of the exemption for each of the six non-attainment areas.

DATES: Comments must be received on or before February 6, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2005–MI–0001, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: mooney.john@epa.gov.*
- *Fax:* (312) 886–5824.
- *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2005–MI–0001. 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 information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, 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 instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows: