## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2020–0310; FRL–8007–03–OAR]**

**40 CFR Part 81**

# Response to Clean Air Act Section 176A Petition From Maine; Final Action on Petition

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

**ACTION:** Notice of final action on petition.

**SUMMARY:** The Environmental Protection Agency (EPA) is granting a Clean Air Act (CAA) section 176A petition submitted by the state of Maine on February 24, 2020. The petition requested that the EPA remove a portion of Maine from the Ozone Transport Region (OTR) based on that area's continued attainment with ozone National Ambient Air Quality Standards (NAAQS) and technical analyses demonstrating that further control of emissions from that portion of Maine will not significantly contribute to the attainment of any ozone standard in any area of the OTR.

**DATES:** This final action is effective March 14, 2022.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2020–0310. All documents in the docket are listed and publicly available at *http://www.regulations.gov.* Publicly available docket materials are also available in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA William Jefferson Clinton West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC. Out of an abundance of caution, the EPA Docket Center and Reading Room was closed to public visitors on March 31, 2020, to reduce the risk of transmitting COVID–19. The EPA Docket Center and Reading Room has since started the reopening process. Visitors will be considered on an exception basis and allowed entrance by appointment only. Docket Center staff will continue to provide remote customer service via email, phone, and webform. For further information on EPA Docket Center services and the current status, please visit *https://www.epa.gov/dockets.* In addition to being available in the docket, an electronic copy of this document will be posted at *https://www.epa.gov/ozone-pollution/ozone-national-ambient-air-quality-standards-section-176a-petition-maine.*

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this final notice should be directed to Holly DeJong, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail code C539–01, Research Triangle Park, NC 27711, telephone (919) 541–4353; email at *dejong.holly@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the U.S. EPA. The information in this **SUPPLEMENTARY INFORMATION** section of this preamble is organized as follows:

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## I. Executive Summary

The EPA is finalizing approval of a Clean Air Act (CAA) section 176A petition submitted by the state of Maine on February 24, 2020. In the petition, Maine requested that the EPA remove the state of Maine from the Ozone Transport Region (OTR) except for 111 towns and cities comprising the Androscoggin Valley,[1] Down East [2] and Metropolitan Portland [3] Air Quality Control Regions, commonly referred to as the ''Portland and Midcoast Ozone Areas.'' Maine contended that emissions from northern and eastern Maine do not significantly contribute to ozone nonattainment in other states nor do they interfere with maintenance of the ozone National Ambient Air Quality Standards (NAAQS) in those Maine municipalities that would remain in the OTR. Therefore, the state asserted that removing these areas from the OTR would not degrade the air quality in Maine or in any other state. The petition included monitoring data and technical analyses to support a demonstration that the areas requested to be removed from the OTR are in attainment with the ozone NAAQS and that emissions from these areas do not significantly contribute to ozone nonattainment in any area of the OTR. For the reasons detailed in this notice, the EPA is finalizing approval of the petition on the basis that the portion of the state requested to be removed from the OTR does not contribute to a violation of any ozone standard in any area of the OTR, and that further control of emissions from that portion of Maine will not significantly contribute to the attainment of any ozone standard in any area of the OTR.

Section 176A(a) of the CAA provides the Administrator with the authority to develop transport regions for particular pollutants where the Administrator determines that interstate transport of air pollutants from one or more states contributes significantly to violations of air quality standards in one or more other states. In the 1990 CAA Amendments, Congress created the OTR by statute under CAA section 184(a) to address the interstate transport of ozone pollution in the Northeast and Mid-Atlantic regions of the United States (U.S.).

The creation of an interstate transport region requires establishing a transport commission with representatives from each state who make recommendations to mitigate interstate pollution. Model rules and programs designed through the OTC (Ozone Transport Commission) may be adopted by the individual states through their own rulemaking processes. Under CAA section 184(c), the OTC may petition the EPA to approve additional control measures to be applied within all or part of the transport region. Maine seeks to remove portions of the state from the OTR, thereby releasing those areas from OTC recommendations and applicable control requirements established under CAA section 184, effective 30 days after the date of publication of this notice.[4]

Section 176A(a)(1) of the CAA provides the Administrator with authority to ''add any state or portion of

[1] 40 CFR 81.90 defines the Androscoggin Valley Interstate Air Quality Control Region as Androscoggin County, Kennebec County, Knox County, Lincoln County, Waldo County and parts of Franklin County, Oxford County, Somerset County. Androscoggin Valley also includes Cass County in the State of New Hampshire. Cass County is not included in the scope of this petition and will remain in the OTR.

[2] 40 CFR 81.181 defines the Down East Intrastate Air Quality Control Region as Hancock County, Washington County and parts of Penobscot County and Piscataquis County.

[3] 40 CFR 81.78 defines the Metropolitan Portland Intrastate Air Quality Control Region as Cumberland County, Sagadahoc County, York County, and the towns of Brownfield, Denmark, Fryeburg, Hiram, and Porter.

[4] Existing State Implementation Plan (SIP)-approved controls that were adopted by Maine due to its inclusion in the OTR will remain in place unless and until Maine submits, and the EPA approves, a SIP revision which includes a CAA section 110(1) demonstration.

a state to any [transport] region . . . whenever the Administrator has reason to believe that the interstate transport of air pollutants from such state significantly contributes to a violation of the standard in the transport region.'' Conversely, CAA section 176A(a)(2) allows the Administrator to ''remove any state or portion of a state from [a transport] region whenever the Administrator has reason to believe that the control of emissions in that state or portion of the state . . . will not significantly contribute to the attainment of the standard in any area in the region.''

In making this final decision, the EPA reviewed the petition from Maine, the public comments received, the relevant statutory authorities and other relevant materials. Accordingly, the EPA grants the CAA section 176A petition from Maine.

## II. Background and Legal Authority

### *A. Ozone Formation and Impacts*

Ground-level ozone causes a variety of negative effects on human health, vegetation, and ecosystems. In humans, acute and chronic exposure to ozone is associated with premature mortality and several morbidity effects, such as asthma exacerbation. In ecosystems, ozone exposure may cause visible foliar injury, decrease plant growth, and affect ecological community composition. Ground-level ozone is not emitted directly into the air. Rather, it is a secondary air pollutant created by chemical reactions between nitrogen oxides ($NO_X$) and volatile organic compounds (VOCs) in the presence of sunlight. These precursor emissions can be transported downwind directly or, after transformation in the atmosphere, as ozone. As a result, ozone formation, atmospheric residence, and transport can occur on a regional scale (*i.e.,* hundreds of miles).

The EPA has regulated ozone pollution and the precursor emissions that contribute to ozone for the last five decades.[5] Currently, there are two NAAQS in effect for ozone.[6] On March 12, 2008, the EPA promulgated a revision to the ozone NAAQS, lowering both the primary and secondary standards to 75 parts per billion (ppb).[7] On October 1, 2015, the EPA lowered the primary and secondary standards to 70 ppb.[8]

In accordance with CAA section 107(d), the EPA designates areas as ''attainment'' (meeting the standard), ''nonattainment'' (not meeting the standard) or ''unclassifiable'' (insufficient data to classify). States with areas designated as nonattainment must develop and submit SIPs to the EPA with the goal of attaining and maintaining the level of the NAAQS by the applicable attainment deadline. In this way, the EPA and states work collaboratively to establish and implement nonattainment area planning requirements that are designed to bring areas into attainment of the NAAQS by the applicable attainment deadline. A key step in ensuring that areas attain and maintain ozone NAAQS is to assess and understand the potential for ozone source formation in a given area, including the potential for upwind states' emissions to impact ozone formation in downwind states.

### *B. Sections 176A and 184 of the CAA and the OTR Process*

Subpart 1 of part D of title I of the CAA provides the general plan requirements for designated nonattainment areas. This subpart includes provisions governing the development of transport regions to address the interstate transport of pollutants that contribute to NAAQS violations. In particular, section 176A(a) of the CAA provides that, on the EPA's own motion or by a petition from the Governor of any state, whenever the EPA has reason to believe that the interstate transport of air pollutants from one or more states contributes significantly to a violation of the NAAQS in one or more other states, the EPA may establish, by rule, a transport region for such pollutant that includes such states. The provision further provides that the EPA may add any state or portion of a state to any transport region whenever the Administrator has reason to believe that the interstate transport of air pollutants from such state significantly contributes to a violation of the standard in the transport region.

Section 176A(b) of the CAA provides that when the EPA establishes a transport region, the Administrator shall establish an associated transport commission, comprised of (at a minimum) the following: The Governor or her or his designee of each covered state, the EPA Administrator or a designee, the Regional EPA Administrator or a designee, and an air pollution control official appointed by the Governor of each state. The purpose of the transport commission is to assess the degree of interstate transport throughout the transport region and assess and recommend control strategies to the EPA to mitigate such interstate transport.

Subpart 2 of part D of title I of the CAA provides plan requirements specific to the ozone NAAQS. Consistent with CAA section 176A, found in subpart 1, subpart 2 includes specific provisions focused on the interstate transport of ozone. CAA section 184(a) establishes a single transport region for ozone—the OTR—comprising the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area for the District of Columbia, which includes certain portions of northern Virginia. The Virginia counties and cities included in the OTR are Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

Section 184(b) of the CAA establishes specific control requirements that each state in the OTR is required to implement within the state, including certain controls on sources of $NO_X$ and VOCs. These control requirements are required to be implemented statewide in any state included within the OTR, regardless of ozone attainment status.[9] Under CAA section 184(b)(1)(A), OTR states must include enhanced vehicle emissions inspection and maintenance (I/M) programs in their SIPs.[10] Under CAA section 184(b)(2), major stationary sources of VOCs in the OTR are subject to the same requirements that apply to major sources in designated ozone nonattainment areas classified as Moderate.[11] Thus, the state must adopt

[5] Primary and secondary NAAQS were first established for photochemical oxidants in 1971. 36 FR 8186 (April 30, 1971). In 1979, the EPA revised the NAAQS to change the indicator from photochemical oxidants to $O_3$ and to revise the primary and secondary standards. 44 FR 8202 (February 8, 1979). In 2005, the 1-Hour Ozone NAAQS was revoked for all areas except the 8-Hour Ozone nonattainment Early Action Compact (EAC) areas. 70 FR 44470 (June 15, 2005). In 1997, the EPA once again revised the primary and secondary standards for ozone NAAQS. 62 FR 38856 (July 18, 1997). In 2015, the 1997 ozone NAAQS were revoked. 80 FR 12264 (March 6, 2015).

[6] The 1997 ozone NAAQS were revoked in 2015. 80 FR 12264 (March 6, 2015).

[7] *See* National Ambient Air Quality Standards for Ozone, Final Rule, 73 FR 16436 (March 27, 2008).

[8] *See* National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015).

[9] We note that one exception to the statewide applicability of these control requirements applies to Virginia, as only a portion of that state is included within the OTR.

[10] In the OTR, enhanced vehicle inspection and maintenance programs are required in metropolitan statistical areas with a 1990 Census population of 100,000 or more.

[11] Section 184(b)(2) of the CAA provides that, for purposes of implementing these requirements, a

Continued

rules to apply nonattainment new source review (NNSR) and reasonably available control technology (RACT) (pursuant to CAA section 182(b)(2)) provisions for major VOC sources. Under CAA section 184(b)(2) states must also implement Stage II gasoline refueling vapor recovery programs, incremental to vehicle Onboard Refueling Vapor Recovery achievements, or measures that achieve comparable emissions reductions for both attainment and nonattainment areas.[12]

Section 182(f) of the CAA requires states to apply the same requirements to major stationary sources of $NO_X$ as are applied to major stationary sources of VOCs under subpart 2. Thus, the same NNSR and RACT requirements that apply to major stationary sources of VOC in the OTR also apply to major stationary sources of $NO_X$.[13] CAA section 182(f) provides for a $NO_X$ waiver, or an exemption to the $NO_X$ requirements, where the Administrator determines that such $NO_X$ reductions would not contribute to the attainment of the NAAQS in an area. Areas granted a $NO_X$ waiver under CAA section 182(f) may be exempt from certain requirements of the EPA's motor vehicle I/M program regulations and from certain federal requirements of general and transportation conformity.[14]

*C. Legal Standard for This Action*

The EPA proposed to interpret the key terms in CAA section 176A(a)(2) (*i.e.,* ''control of emissions . . . will not significantly contribute to the attainment of the standard'' and ''in any area in the region'') within the context of and consistently with other parts of the CAA that govern the interstate transport of ozone pollution, taking into account relevant facts and circumstances and the EPA's past approaches to addressing interstate ozone transport. Specifically, because of CAA section 176A(a)(2)'s use of the phrase ''significantly contribute to [ ] attainment,'' the EPA proposed to look to its prior interpretations of the interstate pollution transport provision, often referred to as the ''good neighbor'' provision, at section 110(a)(2)(D)(i)(I) of the CAA, and the 4-step interstate transport framework the Agency has applied to analyze significant contributions under that provision in various regional interstate transport rules, to guide the Agency's analysis in determining whether Maine had met the necessary condition for removal from the OTR.[15] 86 FR 23312–13.

As such, we proposed to interpret the inquiry under CAA section 176A(a)(2) as permitting the EPA to remove a state or a portion of a state from a transport region whenever the Administrator has reason to believe that the state's continued inclusion in the transport region will not be required for attainment in the transport region, *i.e.,* that the petitioning state is not significantly contributing to air quality problems in the region and *will not* so contribute if the state is removed from the OTR. We received no adverse comments on this aspect of our interpretation, and we are therefore retaining this interpretation for purposes of the final approval.

We also proposed an interpretation of the phrase ''control of emissions in that state or portion of that state pursuant to this section.'' The EPA proposed that ''controls'' refers to new controls that would be required under CAA section 184(b) if the state or portion of the state were to remain in the OTR, as opposed to controls that the state has already adopted as required by the CAA due to its inclusion in the OTR. We stated that interpreting ''controls'' in this manner gives effect to the forward-looking nature of the provision, which asks the Administrator to analyze whether removal of the state or portion of the state from the OTR ''will'' have the effect of contributing to air quality problems in any area in the OTR. We are finalizing this interpretation.[16]

We proposed to interpret CAA section 176A(a)(2)'s use of the phrase ''any area in the region,'' which we used to establish the geographic scope of our significant contribution analysis, to mean all existing areas in the OTR, including areas within the petitioning state. We also took comment on an alternative interpretation wherein our analysis would be limited to interstate impacts, as opposed to impacts within a state's own borders. We received two comments supporting the broader interpretation, *i.e.,* that the phrase should be read to mean all areas in the existing OTR. The EPA will continue to assume for purposes of our final analysis that the phrase ''any area in the region'' includes any areas within the State of Maine in addition to areas of the OTR beyond Maine's borders. Because our analysis is that Maine's emissions will not significantly contribute to any nonattainment receptors in the OTR, including within its own borders, at this time we need not decide whether it would be appropriate to adopt a narrower interpretation of the phrase as limited to areas beyond the home state's borders.

In summary, we proposed to interpret CAA section 176A(a)(2) in a manner consistent with the EPA's 4-step interstate transport framework, and we retain that proposed interpretation for purposes of this final action. Applying that framework to the question presented by CAA section 176A(a)(2), we proposed to interpret the inquiry as requiring the Administrator to identify whether there are ambient air monitoring sites in the OTR that either are projected to be in nonattainment based on modeling data, or potentially struggle with maintenance or are currently violating the NAAQS based on monitored data, and whether the area petitioned to be removed from the transport region contributes below one percent of the NAAQS to those monitors. We retain that interpretation for purposes of this final rule.

*D. Previous Actions*

Consistent with the 1990 CAA Amendments, nine Maine counties were designated as nonattainment of the now-revoked 1979 1-hour NAAQS (0.12 parts per million (ppm)). York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln Counties were classified as Moderate nonattainment areas. Waldo and Hancock Counties were classified as Marginal nonattainment areas.

Maine had two nonattainment areas under the now-revoked 1997 8-hour ozone standard. The Portland Ozone Nonattainment area consisted of 56 cities and towns in York, Cumberland, and Sagadahoc Counties, along with the town of Durham in Androscoggin County, and was classified as Marginal

major stationary source shall be defined as any source that emits or has the potential to emit at least 50 tons per year of VOCs.

[12] *See* 72 FR 28772, May 16, 2012, Air Quality: Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver.

[13] *See* 57 FR 55622 (Nitrogen Oxides Supplement to the General Preamble, published November 25, 1992).

[14] As stated in the EPA's I/M (November 5, 1992; 57 FR 52950) and conformity rules (60 FR 57179 for transportation rules and 58 FR 63214 for general rules), certain $NO_X$ requirements in those rules do not apply where the EPA grants an areawide exemption under CAA section 182(f).

[15] We note that we received a comment alleging that CAA section 176A(a)(2) applies to Maine's petition by virtue of the reference to that section in CAA section 184(a). We address that comment below in the Responses to Comment section.

[16] One commenter asserted that the technical bases relied upon by the Agency in its proposal were ''inadequate to the task'' of analyzing Maine's petition, because those bases assumed the continued application of existing OTR controls. We address that comment in section III.B of this notice and in the Response to Comments (RTC) document for this action. Another commenter asserted that the EPA's interpretation of controls required us to articulate how CAA section 110(l) demonstrations would be analyzed in the future. We address that comment in Section III.B of this notice and the RTC document for this action.

for the 1997 ozone standard. The Hancock, Knox, Lincoln, and Waldo Counties Ozone Nonattainment Area (also known as the Midcoast area) consisted of 55 coastal towns and islands in Hancock, Knox, Lincoln, and Waldo counties and was designated as nonattainment under Subpart 1 for the 8-hour ozone standard. Maine was designated ''Attainment/Unclassifiable'' statewide for both the 2008 and 2015 8-hour ozone standards of 0.075 ppm and 0.070 ppm, respectively.

As previously discussed, Section 184(b) of the CAA established certain control requirements that each state in the OTR is required to implement within the state. Section 182(f) of the CAA Amendments allows for the suspension of the OTR stationary source $NO_X$ requirements based on a demonstration that additional $NO_X$ reductions would not produce net ozone air quality benefits in the OTR. Maine has petitioned for and has been granted the following CAA section 182(f) $NO_X$ waivers.

On December 26, 1995 (60 FR 66748), the EPA approved an exemption request for the Northern Maine area from CAA section 182(f) $NO_X$ requirements. This action exempted the Oxford, Franklin, Somerset, Piscataquis, Penobscot, Washington, Aroostook, Hancock and Waldo counties from the requirements to implement $NO_X$ control measures for existing stationary sources, NNSR for new sources and modifications that are major for $NO_X$, $NO_X$ RACT requirements, the $NO_X$-related general conformity provisions, and the $NO_X$-related transportation conformity provisions now contained in 40 CFR 93.119.[17]

On February 3, 2006 (71 FR 5791), the EPA approved a request for an exemption for a similar area in northern Maine (specifically Aroostook, Franklin, Oxford, Penobscot, Piscataquis, Somerset, Washington, and portions of Hancock and Waldo Counties) under the 1997 ozone standard.

On July 29, 2014 (78 FR 43945), the EPA approved the state of Maine's request for an exemption from the $NO_X$ requirements contained in section 182(f) of the CAA for the entire state of Maine for the 2008 ozone standard. The CAA does not provide a similar VOC waiver process, and major stationary sources of VOC remain subject to NNSR and RACT requirements throughout the entire state of Maine.

In addition to the $NO_X$ waivers under CAA section 182(f), Maine requested and was granted an OTR restructuring with respect to enhanced I/M requirements.[18] (66 FR 1873; January 10, 2001) While the Maine I/M rule did not meet all requirements of the EPA's final rule for enhanced I/M, the EPA determined that the implementation of an enhanced I/M program in Maine in place of the approved Maine I/M rule would not significantly contribute to attainment in any other state in the OTR.

*E. The CAA Section 176A Petition From Maine*

On February 24, 2020, the state of Maine petitioned the EPA pursuant to CAA section 176A(a)(2) for the removal of the state of Maine from the OTR with the exception of the 111 towns and cities listed in Table 1 comprising the Portland and Midcoast Ozone Areas.

TABLE 1—MAINE TOWNS AND CITIES TO REMAIN IN THE OZONE TRANSPORT REGION

| |
|---|
| *Androscoggin County (includes only the following town):* Durham. |
| *Cumberland County (includes only the following towns and cities):* Brunswick, Cape Elizabeth, Casco, Cumberland, Falmouth, Freeport, Frye Island, Gorham, Gray, Harpswell, Long Island, New Gloucester, North Yarmouth, Portland, Pownal, Raymond, Scarborough, South Portland, Standish, Westbrook, Windham, and Yarmouth. |
| *Hancock County (includes only the following towns and cities):* Bar Harbor, Blue Hill, Brooklin, Brooksville, Cranberry Isles, Deer Isle, Frenchboro, Gouldsboro, Hancock, Lamoine, Mount Desert, Sedwick, Sorrento, Southwest Harbor, Stonington, Sullivan, Surry, Swans Island, Tremont, Trenton, and Winter Harbor. |
| *Knox County (includes only the following towns and cities):* Camden, Criehaven, Cushing, Friendship, Isle au Haut, Matinicus Isle, Muscle Ridge Shoals, North Haven, Owls Head, Rockland, Rockport, St. George, South Thomaston, Thomaston, Vinalhaven, and Warren. |
| *Lincoln County (includes only the following towns and cities):* Alna, Boothbay, Boothbay Harbor, Breman, Bristol, Damariscotta, Dresden, Edgecomb, Monhegan, Newcastle, Nobleboro, South Bristol, Southport, Waldoboro, Westport, and Wiscasset. |
| *Sagadahoc County (includes all towns and cities).* |
| *Waldo County (includes only the following town):* Islesboro. |
| *York County (includes only the following towns and cities):* Alfred, Arundel, Berwick, Biddeford, Buxton, Dayton, Eliot, Hollis, Kennebunk, Kennebunkport, Kittery, Limington, Lyman, North Berwick, Ogunquit, Old Orchard Beach, Saco, Sanford, South Berwick, Wells, and York. |

The Maine Department of Environmental Protection provided an analysis purporting to demonstrate that Maine's emissions have an insignificant effect on nonattainment for the 8-hour ozone NAAQS in other states and in those areas in Maine that will remain in the OTR. Maine's analysis consisted of modeling ''back trajectories'' for ozone exceedance days in the 2016–2018 period recorded at monitoring locations in southern New England and in Maine, the EPA's source-apportionment modeling results and emissions-inventory data for Maine and the OTR.[19] A more detailed description of the technical analysis included in Maine's petition can be found in Section V.A of the proposal.

## III. The EPA's Final Response to the CAA Section 176A Petition From Maine

*A. The EPA's Assessment of Maine's CAA Section 176A Petition*

On May 3, 2021, the EPA proposed to grant the CAA section 176A petition from Maine (86 FR 23309). The EPA considered monitoring data, technical demonstrations, and impacts to air quality control regimes in the areas to be removed and proposed to grant Maine's petition on the basis that the portion of the state requested to be removed from the OTR does not contribute to a violation of any ozone standard in any area of the OTR, and that further control of emissions from that portion of Maine under CAA section 184 will not significantly contribute to the attainment of any ozone standard in any area of the OTR. The EPA's basis for this

[17] Transportation and general conformity requirements only apply in nonattainment areas and areas redesignated to attainment with an approved CAA section 175A maintenance plan. *See* CAA section 176(c)(5). Transportation and general conformity do not apply in attainment areas in the OTR.

[18] The EPA's I/M rule was established on November 5, 1992 (57 FR 52950). The EPA made significant revisions to the I/M rule on September 18, 1995 (60 FR 48035) and on July 25, 1996 (61 FR 39036). Maine is subject to the requirements of the CAA for an I/M program in the Portland, Maine area.

[19] Back trajectory analyses use interpolated measured or modeled meteorological fields to estimate the most likely central path over geographical areas that an air parcel travels before reaching a specific location at a given time.

final action to grant Maine's petition has not fundamentally changed from the proposal. The EPA continues to believe that the portion of the state requested to be removed from the OTR does not contribute to a violation of any ozone standard in any area of the OTR, and that further control of emissions from that portion of Maine will not significantly contribute to the attainment of any ozone standard in any area of the OTR.

In support of the EPA's decision to grant the petition, the EPA has determined that all areas of the state proposed for removal from the OTR have been designated in attainment of the ozone NAAQS since 2004, and the entire state of Maine has been designated as in attainment with the ozone NAAQS since 2007. Additionally, technical demonstrations from Maine's Hybrid Single-Particle Lagrangian Integrated Trajectory (HYSPLIT) back trajectory analysis, the EPA's ozone source apportionment modeling, and emissions trends all indicate that emissions from the areas requested to be removed from the OTR will not significantly contribute to nonattainment or maintenance problems in any area in the OTR, either within or outside the state of Maine, in the foreseeable future. Furthermore, removing those areas from the OTR will not result in unchecked relaxation of existing $NO_X$ and VOC controls included in Maine's SIP or revoke permitted emissions limits at existing facilities. For these reasons, the EPA believes that a substantial increase in ozone precursor emissions resulting from this action is highly unlikely in any area of Maine or the OTR. A full description of the EPA's technical assessment can be found in Section V.B. of the proposal. The EPA's full assessment of the provisions that will be impacted as a result of granting the petition can be found in Section IV.B of the proposal.

*B. Public Comments*

The EPA received 11 comments during the public comment period on the EPA's proposal to grant Maine's petition. This section addresses significant comments received regarding the need for future ozone monitoring in the areas to be removed from the OTR, the potential for final approval of the petition to increase ozone levels in the OTR, and potential adverse impacts that could result if removing part of Maine from the OTR were to increase ozone levels. The remaining comments are addressed in a separate Response to Comments (RTC) document found in the docket for this action.

I. Comments Regarding Future Monitoring

*Comment:* Several commenters note that there are no future plans to monitor for ozone in the areas to be removed from the OTR, and that if the decision to approve the petition is finalized, the EPA should require future monitoring in those areas. One commenter asserts that the Agency should require quarterly or bi-annual monitoring, particularly in areas where there could be more industry development. Another commenter asserts that the EPA should establish an assessment plan to be carried out every few years to ensure that the ozone stays within the acceptable range. One commenter notes that currently there is limited monitoring in the areas to be removed from the OTR and that weakening requirements for ozone precursor pollution controls in these areas without ensuring that there is a monitoring system in place to track changes in ozone formation resulting from that decision leaves the EPA no way to determine what the impacts of this decision are.

*Response:* The EPA disagrees with commenters that there are no plans for future ozone monitoring in the areas to be removed from the OTR and disagrees that the monitoring system currently in place is insufficient to inform the Agency's decision making on this petition. Maine's ozone monitoring obligations as set out in 40 CFR part 58 are not impacted by whether portions of the state are removed from the OTR. Minimum monitoring requirements for ozone are based on Metropolitan Statistical Areas/Consolidated Metropolitan Statistical Areas (MSA/CMSA) population, and how close an area's design value concentrations of a pollutant are to the NAAQS. In addition, every state is required to have at least one NCore site that must measure ozone year-round. Currently, there are 14 ozone monitoring sites operating in Maine with eight monitoring sites located in the portion of the state proposed to be removed from the OTR. Of these eight monitoring sites, one is operated by the EPA's CASTNET program, and two are operated by independent tribal nations. For these three monitoring sites, it is not within the state's purview to consider discontinuation. Although Maine's current ozone monitoring network already exceeds the minimum regulatory requirements set out in 40 CFR part 58, according to 40 CFR part 58.10, any modifications to Maine's current ozone monitoring network must be proposed by Maine and approved by the EPA Regional Administrator. In addition, every 5 years, Maine is required to submit an assessment to the EPA to determine if its current monitoring network ''meets the monitoring objectives defined in appendix D to this part, whether new sites are needed, whether existing sites are no longer needed and can be terminated, and whether new technologies are appropriate for incorporation into the ambient air monitoring network.'' If, as commenters postulate, emissions of ozone precursors were to increase substantially as a result of the approval of this petition in an area that is not currently monitored, the location and magnitude of new emissions sources could be evaluated at that 5-year interval to determine whether their existence warrants additional ozone monitors or any other modifications to the ozone monitoring network.

The EPA also notes that all ozone monitoring data in locations for which the petition requests be removed from the OTR have 2020 design values substantially below the current ozone NAAQS of 0.070 ppm. The highest design value among these ozone monitors is 0.057 ppm. There is no indication, and commenters have not cited evidence, that ozone levels in areas of Maine away from the monitoring locations differ substantially from those at the locations of the monitors.

TABLE 2—TABLE OF 2018, 2019, AND 2020 DVs FOR MONITORING SITES IN ME WITH NON-ZERO DVs

| AQS site ID | County name | CBSA name | Local site name | 2016–2018 DV | 2017–2019 DV | 2018–2020 DV | Removed from OTR? |
|---|---|---|---|---|---|---|---|
| 230010014 | Androscoggin | Lewiston-Auburn | Durham Fire Station | 59 | 57 | 53 | N |
| 230031100 | Aroostook | | Micmac Health Dept | 51 | 51 | 51 | Y |
| 230039991 | Aroostook | | Ashland | 52 | 53 | 53 | Y |

TABLE 2—TABLE OF 2018, 2019, AND 2020 DVs FOR MONITORING SITES IN ME WITH NON-ZERO DVs—Continued

| AQS site ID | County name | CBSA name | Local site name | 2016–2018 DV | 2017–2019 DV | 2018–2020 DV | Removed from OTR? |
|---|---|---|---|---|---|---|---|
| 230052003 | Cumberland | Portland | Cape Elizabeth Two Lights. | 65 | 64 | 62 | N |
| 230090102 | Hancock | | Top of Cadillac Mountain. | 70 | 69 | 65 | N |
| 230090103 | Hancock | | McFarland Hill | 63 | 64 | 60 | N |
| 230112001 | Kennebec | Augusta-Waterville | Gardiner HS | 62 | 60 | 55 | Y |
| 230130004 | Knox | | Marshall Point Lighthouse. | 63 | 61 | 60 | N |
| 230173002 | Oxford | | Bethel Smith Farm Road. | 0 | 57 | 54 | Y |
| 230194008 | Penobscot | Bangor | Summit of Rider Bluff. | 57 | 56 | 55 | Y |
| 230290019 | Washington | | Jonesport Public Landing. | 61 | 60 | 57 | Y |
| 230310038 | York | Portland | West Buxton Fire Dept. | 59 | 57 | 53 | N |
| 230310040 | York | Portland | Shapleigh Ball Park | 61 | 60 | 56 | Y |
| 230312002 | York | Portland | Kennebunkport | 66 | 64 | 64 | N |

II. Comments Regarding the Potential for This Action To Increase Ozone Levels in the OTR, and Potential Adverse Impacts That Could Result if Removing Part of Maine From the OTR Were To Increase Ozone Levels in the OTR

*Comment:* One commenter asserts that Maine's petition does not establish a ''reason to believe'' that all areas currently within the OTR in Maine will not see significant additional ozone precursor emissions due to the EPA's approval of Maine's request. The commenter contends that the analyses relied on by Maine and the EPA are all based on the continued application of existing OTR controls, including the nonattainment new source review (NNSR) requirements and offsets. The commenter states that the petition offers no information about expected additional new or expanded existing sources in the area of Maine to be removed from the OTR, nor does the petition assess what emissions increases or ozone levels would be expected from allowing new or expanded existing stationary sources without requiring Lowest Achievable Emissions Rate for $NO_X$ and VOC emissions, and providing offsets of at least 1.15:1. The commenter claims that the EPA's failure to consider the consequences of approving Maine's petition (*i.e.,* the likely increase in new and modified industrial sources in inland Maine and the accompanying increase in ozone precursor emissions and in ozone concentrations) constitutes an abuse of the EPA's discretion.

The commenter notes that, should Maine's ozone precursor emissions increase, the state may experience nonattainment of the current 70 ppb standard or of a more stringent standard. The commenter further asserts that if ozone levels increase enough to trigger nonattainment status (under the current standard or future standards), that would require all nonattainment provisions to be reinstated, including OTR requirements that have been waived on the basis that much of the state is in attainment and create regulatory uncertainty for industry. Furthermore, the commenter asserts that removing parts of the state from the OTR will cause Maine to lose the mantle of ''clean hands.'' The commenter states that Maine's longstanding status in the OTR has shown that the state ''did its part to ensure that areas within the State and downwind are also clean'' but that leaving the OTR will ''eliminate that good neighbor behavior'' and ultimately be unfair to other states in the OTR and their neighbors in Canada. The commenter also points to maximum 8-hour average concentrations recorded during the June 6–7, 2021, high ozone event in Maine and asserts that climate change will exacerbate the problem of high ozone throughout the Mid-Atlantic and Northeast states, and further contribute to high ozone levels in Maine.

Multiple commenters also note that the proposal, if finalized, could be harmful to health and the environment if emissions were to increase as a result of approving the petition. One commenter notes that some of the counties and cities that would be removed include farmland and asserts that prolonged exposure to ozone would decrease the growth and production of crops and lead to economic instability for farmers in those areas. Another commenter states that the EPA failed to address potential adverse effects of its action on plant and animal life in parks, National Wildlife Refuges, and Wilderness Areas in Maine, and asserts that the current secondary ozone standard is not sufficiently protective of plants (including crops), trees, and animals. The commenter also cites the adverse effects of ozone exposure on the black cherry tree in Maine and on wilderness area ecosystems, which the commenter cites as important for the carbon storage and other climate benefits these areas provide. The commenter further asserts that the EPA has failed to consider possible implications of its action on air quality and regional haze at the coastal Moosehorn Baring and Moosehorn Edmunds Wilderness Areas in Washington County, or in the downwind Roosevelt-Campobello International Park, all U.S. Class I areas.

*Response:* The EPA does not agree that there is insufficient information to finalize the approval of Maine's request. The analytical information described in the proposal first identified air quality monitors located in the OTR that either measured elevated ozone concentrations or were projected to have design values that violated the NAAQS or struggled to maintain the NAAQS. The analyses then used a HYSPLIT trajectory model and photochemical source apportionment modeling to identify whether Maine contributed to those problem monitors. We acknowledge that this information did not attempt to speculate what sources might locate in Maine or make modifications based on the regulatory changes that would result from this final action (in particular, as raised by commenter, the change from NNSR

requirements to prevention of significant deterioration (PSD) requirements). However, other information in the record, including current ozone concentrations in the state and projected emissions trends, informs the EPA's determination that the portion of the state requested to be removed from the OTR does not contribute to a violation of any ozone standard in any area of the OTR, and that further control of emissions from that portion of Maine will not significantly contribute to the attainment of any ozone standard in any area of the OTR. All areas of the state proposed for removal from the OTR have been designated in attainment of the ozone NAAQS since 2004, and the entire state of Maine has been designated as in attainment with the ozone NAAQS since 2007. Our evaluation of emissions trends and applicability of other existing regulatory control programs that would still apply to the areas removed from the OTR, discussed in more detail below, indicate that a substantial increase in ozone precursor emissions resulting from this action is highly unlikely.

To begin, the projected emissions in Maine indicate steep declines in emissions of ozone precursors associated with on-the-books emissions controls, including mobile source controls that will continue to provide emissions reductions throughout the entire State regardless of whether portions of the state remain in the OTR or are removed from the OTR. Emissions trends of ozone season $NO_X$ and VOC in the counties to be fully removed from the OTR are provided in Table 3.[20] [21] The data indicate that $NO_X$ and VOC emissions will continue to trend downward in these counties, primarily due to reductions in onroad mobile sources. For the counties to be fully removed from the OTR, the emissions of ozone season $NO_X$ from onroad mobile sources are projected to decline by 70 percent from 2016 to 2032, as compared to 22 percent for other anthropogenic source sectors. Emissions of VOCs from onroad mobile sources in the counties to be fully removed from the OTR are projected to decline by 53 percent from 2016 to 2032, as compared to 34 percent for other anthropogenic source sectors.

TABLE 3—OZONE SEASON $NO_X$ AND VOC EMISSIONS IN COUNTIES TO BE FULLY REMOVED FROM THE OTR

| | 2016 | 2023 | 2032 |
|---|---|---|---|
| $NO_X$: | | | |
| Onroad Mobile | 3,318 | 1,581 | 990 |
| Other Sectors | 6,712 | 5,525 | 5,212 |
| Total | 10,030 | 7,106 | 6,202 |
| VOC: | | | |
| Onroad Mobile | 1,058 | 670 | 499 |
| Other Sectors | 7,439 | 5,527 | 4,883 |
| Total | 8,498 | 6,197 | 5,381 |

*On the books mobile source controls include:* Control of Air Pollution From Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards (*See* 79 FR 23414, April 28, 2014); Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (*See* 66 FR 5002, January 18, 2001); and Control of Emissions of Air Pollution From Nonroad Diesel Engines and Fuel (*See* 69 FR 38958, June 29, 2004). If additional national mobile source rules are adopted and implemented in the future, those will also provide emissions reductions throughout the entire state regardless of OTR status.

As noted at proposal, Maine's current modeled contributions to nonattainment or maintenance issues anywhere in the OTR are also relevant. The state's highest modeled contribution to any receptor in the OTR that is expected to struggle with attainment or maintenance of the 2015 ozone NAAQS is only 0.01 ppb, *i.e.,* 0.01 percent of the 70 ppb standard. This suggests that the ozone contribution from anthropogenic ozone precursor emissions in Maine would have to increase by a factor of 70 for Maine to potentially contribute above the one percent threshold to an existing or projected nonattainment or maintenance problem in the OTR. This observation is made merely to provide an indication of the general magnitude of emissions increases from Maine that would be needed for existing trends in improving air quality to be halted and reversed to the extent that such an increase may create new air quality problems closer to, or within, Maine. We cannot predict what emissions increases or ozone levels would be expected based on regulatory changes associated with the EPA's approval of Maine's request. But the existing baseline of our analysis of Maine's emissions to other states informs our judgment that it is not reasonable to expect emissions increases on this scale or anything like it.

As also discussed in the proposal, we recognize that by approving Maine's request there would be consequent changes to the New Source Review (NSR) preconstruction permitting program in the state. However, while commenter is correct that lowest achievable emission rate (LAER) and the 1.15:1 emissions offset requirements would no longer apply to new major stationary sources and major modifications in the areas of the state being removed from the OTR, it is not the case these new and modified sources could construct without any regulatory safeguards in place.

Specifically, the areas being removed from the OTR will be subject to Maine's PSD and minor NSR permitting requirements for ozone precursors, $NO_X$ and VOC. Both the PSD and minor NSR permitting programs require that permitting authorities assess the impact of the proposed emissions increases from new and modified sources on the applicable NAAQS, as required by CAA sections 165(a)(3)(B) and 110(a)(2)(C), prior to construction. The PSD program, which will apply to major stationary sources and major modifications in the areas removed from the OTR, requires a

[20] Trends in $NO_X$ and VOC for individual source sectors for each county in Maine can be found in the docket for this rule.

[21] The development of emissions data for 2016, 2023, and 2032 is described in the 2016v2 North American Emissions Modeling Platform, *https://www.epa.gov/air-emissions-modeling/2016v2-platform.*

control technology review, called Best Available Control Technology (BACT), and an air quality analysis to demonstrate that the proposed new or modified emissions source will not cause or contribute to a violation of any NAAQS or PSD increment. Like LAER, BACT is a case-by-case decision for the facility and examines state-of-the-art pollution controls, although for BACT, the permitting authority considers the energy, environmental, and economic impacts and other costs, that are not considered in LAER determinations. However, depending on the type of facility and the cost effectiveness of controls, or other factors, there may not always be significant differences between the level of control that would be required under BACT versus LAER.

Moreover, for much of the area being removed from the OTR in Maine, the change from LAER to BACT for $NO_X$ for new and modified sources is not new. As discussed in the proposal, Maine has applied for and obtained $NO_X$ waivers under CAA section 182(f) for nearly every ozone standard (all except the most recent 2015 ozone NAAQS). *See* 86 FR 23315. Consequently, for the 1979 1-hour, 1997 8-hour, and 2008 8-hour ozone NAAQS, many of the counties at issue in this action were exempt from requirements to implement NNSR for new sources and modifications that are major for $NO_X$, $NO_X$ RACT requirements, the $NO_X$-related general conformity provisions, and the $NO_X$-related transportation conformity provisions. *Id.* With these waivers in place, with respect to NSR, new sources and modifications were therefore already subject to BACT for $NO_X$ control, as they will be with finalization of this rule. For minor NSR sources and modifications in areas being removed from the OTR, the permitting requirements also will not change. These smaller new sources and modifications will continue to be subject to Maine's minor NSR permitting program, which does not have different requirements based on a location's attainment status. An important feature of Maine's minor NSR program is that its control technology standard is also BACT, so it applies the same control review that Maine requires for larger sources that are subject to PSD. (This is more stringent than federal requirements, since neither the CAA nor the EPA's regulations specify a minimum control requirement for minor NSR permits.) In addition, Maine's minor NSR program requires air quality impact analyses for new minor sources and minor modifications if their emissions exceed 50 tons per year of $NO_X$, and Maine can require air quality analyses even for permits under 50 tons per year of $NO_X$. Finally, granting Maine's petition does not materially alter opportunities for public involvement in the permitting process, as Maine's permitting regulations contain procedures for the opportunity for public participation for permitting actions for both major and minor stationary sources under their minor NSR, PSD, and NNSR permitting regulations.

Consequently, it is not the case that the changes associated with NSR requirements resulting from the removal of the areas from the OTR are as drastic as commenter suggests. For VOCs, NNSR requirements will be replaced by PSD for sources subject to major NSR, and the PSD program has already long been the primary set of controls for new or modified sources for $NO_X$ in much or all of Maine under the state's CAA section 182(f) $NO_X$ waivers for every ozone standard except the 2015 ozone NAAQS. Furthermore, the minor NSR program will continue to apply BACT and, in many cases, an air quality assessment to smaller sources seeking permits to construct. Therefore, even though we cannot precisely predict whether and to what extent emissions will increase as a result of sources choosing to construct or modify in the area to be removed from the OTR, the information we have does not indicate that emissions will drastically increase, as they would likely need to do in order to have significant impacts on nonattainment in any area of the OTR. The projected ongoing downward emissions trends are due primarily to national mobile source measures that will continue to take effect, and new and modified stationary sources will be subject to PSD BACT for $NO_X$ controls, which has already been the primary regulatory regime for much of the area being removed from the OTR for decades.

Because the EPA does not agree that it is reasonable to assume drastic emissions increases as a result of the final action, we also do not think it is reasonable to assume that the health, environmental, and relational [22] consequences raised by commenters would come to pass. As indicated in Table 2, all air quality monitors in the areas of Maine that are being removed from the OTR are not only meeting the current 70 ppb 2015 ozone NAAQS; these monitors are all 10 or more ppb *below* the 70 ppb NAAQS. Further, health and environmental effects of air pollution are addressed in the NAAQS setting and revision process rather than in the implementation of the NAAQS. CAA section 109 requires the EPA to set the primary NAAQS at a level to protect the public health with an adequate margin of safety, and the secondary NAAQS at a level to protect public welfare from any known or anticipated adverse effects. In assessing impacts to public welfare, the EPA looks at damage to trees and crops. Given the level of Maine's contributions to any nonattainment or maintenance problems in the OTR and given the current air quality at the monitors located in the portions of the state to be removed from the OTR, it is not necessary to separately analyze in the first instance each of the potential public health and welfare consequences commenters raise concerns about. These concerns are not enumerated as factors the Agency must consider under CAA section 176A(a)(2), and all are premised on commenters' speculation—with which we disagree—that ozone precursor emissions in Maine will drastically increase as a result of the regulatory changes associated with this action.

In addition to the factual circumstances above that support the EPA's determination that emissions are not likely to increase drastically as a result of this action, we also note that the CAA's other structural requirements and protections will continue to apply in Maine. Any revisions to Maine's SIP would be subject to CAA section 110(l) anti-backsliding requirements.[23] If the EPA revises the ozone standard in the future, any area determined to be violating that standard will be designated nonattainment with the attendant CAA requirements associated with that designation. Similarly, the issuance of any new NAAQS will also trigger Maine's obligation to submit a SIP addressing its significant contributions to nonattainment or interference with maintenance in any other state under CAA section 110(a)(2)(D)(i)(I). And finally, CAA section 184 and CAA section 176A clearly provide that the EPA retains its authority to revise membership of the OTR whenever the EPA has ''reason to believe'' a state or portion of a state is

[22] With respect to commenter's concern that Maine's partial removal from the OTR would interfere with its ''clean hands'' reputation or its relationship to other states and Canada, we note that under the cooperative federalism structure of the Act, that is a consideration for the state rather than the EPA. Under CAA section 176A(a), the Governor of a State may submit a petition to be removed or partially removed from a transport region, and the EPA must act on it.

[23] The granting of this petition is not itself a revision to Maine's SIP, and all EPA-approved elements of the state's SIP remain in place and enforceable.

significantly contributing to nonattainment.

III. Comments Regarding Consistency With CAA Section 184

*Comment:* One commenter asserts that the EPA misapplies the *Chevron* doctrine in its statutory interpretation by failing to discuss CAA section 184(a), which applies the removal and addition procedures of CAA section 176(a)(1) and (a)(2) to the OTR, ''except to the extent inconsistent with the provisions of this section.'' The commenter claims that the proposal to remove portions of Maine is inconsistent with CAA section 184(b)(1)(B), which it interprets to require state-wide implementation of RACT for sources covered by a CTG, regardless of whether that portion of the state is in the OTR, because if the EPA's proposal were finalized, Maine would only be required to have CTG RACT for those sources in the portions of the state remaining in the OTR. The commenter also claims that the proposal is inconsistent with CAA section 184(d), because that provision instructed the EPA to promulgate criteria for purposes of determining the contribution of sources in one area to concentrations of ozone in other areas that are nonattainment for ozone. The commenter asserts that because the EPA never promulgated such criteria, the EPA cannot grant Maine's petition. Moreover, the commenter argues that the EPA cannot claim that it used the best available air quality modeling techniques and best available data in its proposal, because ''[t]he determination here does not use OSAT/APCA. Instead, it relies on weaker analyses: HYSPLIT back-trajectories and emissions trends.'' With respect to air quality monitoring, the commenter states that it is ''implausible'' that the EPA's promulgated air quality monitoring network requirements satisfy the requirement in section 184(d) to use the ''best available'' air quality monitoring techniques. Finally, the commenter states that the EPA cannot claim that it is using the ''best available'' monitoring data for its proposal because more current data for all OTR states are available and argues that the EPA has provided no basis in its record that the ozone monitoring network criteria have been met.

*Response:* The commenter is correct that CAA section 176A(a)(2) governs the Agency's action on Maine's request to remove part of its state from the OTR by virtue of CAA section 184(a)'s application of 176A(a)(2) to states in the OTR. However, we disagree with the commenter that granting Maine's request is ''inconsistent with the provisions of'' CAA section 184. We respond to each of the commenter's assertions on this point in turn.

The commenter contends that to be ''consistent'' with CAA section 184, whenever approving the removal of any portion of a state from the OTR under CAA section 176A(a)(2), the EPA would need to clearly require the state to prepare SIP submissions and require implementation of RACT for all sources of VOCs covered by a CTG throughout the entire state, regardless of whether those sources are located in the portions of the state located in the OTR. The commenter claims that ''the plain language of section 184(b)(1)(B)'' requires this by virtue of the reference in that provision to the ''state'' rather than to the area of the state in the OTR. We do not agree. We think the statutory context and legislative history support the EPA's longstanding interpretation that the CAA section 184(b) SIP requirements for the OTR apply only within the OTR, and not in the portions of a state that are outside the region. We recognize that CAA section 184(b)(1)(B) could be read, as the commenter suggests, to impose VOC CTG RACT requirements statewide, even for sources that are not in the portions of states that are in the OTR. But we do not think this is the only, or even a better, reading of the statute.

First, the vast majority of the jurisdictions comprising the OTR are entire states—of the 13 entities that make up the OTR (including the District of Columbia), 12 have their entire jurisdiction in the region. Only Virginia, of which a very small portion of the state is in the ''Consolidated Metropolitan Statistical Area that includes the District of Columbia,'' did not have its entire state boundary included in the OTR. It is therefore not surprising that in CAA section 184(b)(1)(B), the statute would use the term ''all sources . . . in the State'' to describe the extent of the VOC RACT requirement even if what was intended was that the OTR requirements would apply only within the OTR.

Second, the last sentence of CAA section 184(b) defines the threshold for major stationary sources ''[f]or purposes of this section'' and states that such sources are subject to the requirements that would apply ''if the *area*'' was classified as a Moderate ozone nonattainment area (emphasis added). This requirement, which imposes Moderate area requirements—including $NO_X$ RACT for major stationary sources—applies only to those areas of a state which are in the OTR. Commenter's interpretation would therefore mean that Congress imposed a system of OTR controls that required *statewide* stationary source obligations for VOC CTG RACT but OTR-specific obligations for all other major stationary source requirements and I/M. We think it very unlikely that Congress would have set up a bifurcated approach in which stationary sources would be subject to some OTR requirements but not others, with no explanation in the legislative history (see below).

Third, as the commenter notes, the EPA has been interpreting the OTR requirements in CAA section 184(b) to apply only to areas within the OTR since the 1990 Amendments were passed, and in the intervening 30 years, Congress has never indicated that the Agency's interpretation was incorrect. *See* 57 FR 13527, n.10 (April 16, 1992) (''Each state in a transport region must adopt VOC RACT regulations for sources located within that portion of the State included in a transport region[.]''); *id.* (''EPA interprets section 176A as establishing a process whereby a portion of a State can be removed from the region and exempted from the requirements[.]'').

Fourth, we do not agree with the commenter that a comparison of the drafting of CAA sections 184(b)(1)(A) and (B) demonstrates that statewide CTG RACT is compelled regardless of OTR boundaries. The commenter emphasizes the statute's use of the term ''areas'' in CAA section 184(b)(1)(A) to assert that Congress could have used the term ''areas'' in CAA section 184(b)(1)(B) had it intended to limit CTG RACT requirements to only those areas of a state that are within the OTR. But there is a more natural reason for the use of the term ''areas'' in CAA section 184(b)(1)(A)—that provision on its face is a requirement designed specifically for urban areas that experience relatively higher volumes of mobile sources. The provision states ''that each area in such State that is in an ozone transport region, and that is a metropolitan statistical area or part thereof with a population of 100,000 or more . . .'' are subject to enhanced vehicle inspection and maintenance requirements. The use of the term ''area'' in that provision naturally flows from the fact that this requirement is limited to metropolitan areas and linguistically fits with the second clause of the sentence—''and that is a metropolitan statistical area.'' This reason for the use of the term ''area'' in CAA section 184(b)(1)(A) is at least as plausible as the reasoning commenter puts forth. Commenter's argument would have it that Congress intended—without any other indication in the statute or legislative history—to require

just one of the OTR requirements to apply statewide, regardless of OTR status, while all other requirements in CAA section 184(b) are limited only to that area of the state in the OTR.

Fifth, adopting commenter's interpretation would also undercut the purpose of the authority granted to the EPA in CAA section 176A(a)(1) and (2) to add or remove portions of a state to the OTR. If one of the major, substantive OTR requirements applies statewide, without regard to which portions of that state were in the OTR or not, there would be little purpose to providing the Agency with the authority to tailor the boundaries of the OTR not to include entire states. While commenter may view the authority to tailor transport region boundaries as somehow ''inconsistent'' with CAA section 184, Congress did just that when it included only the northern portion of Virginia in the OTR by statute, *in CAA section 184.*

We also do not think the legislative history supports commenter's interpretation. Nothing in the House Report accompanying the Amendments suggests Congress intended OTR requirements to be imposed outside of the OTR (*e.g.,* application of VOC CTG RACT in the entire state of Virginia, as opposed to the portion of the state within the OTR). That would have been a drastic departure from the overall structure of CAA sections 176A and 184 about which we do not think Congress would have been silent. There are also two amendments Congress considered that may shed light on whether Congress was contemplating a state's inclusion in the OTR as being the operative condition (commenter's interpretation) or whether the actual inclusion of an area in the OTR was the operative condition for imposing OTR requirements (the EPA's interpretation). During the development of the 1990 Amendments, Congress considered creating a special permit program for small sources. In delineating the small sources that would need such a program, Congress identified those ''located within a nonattainment area, ozone transport *area,* or subject to a standard under section 112 consistent with the other provisions of this title.'' H.R. Rep. 101–490 (May 17, 1990) (see Sec. 407) (emphasis added). Similarly, in drafting a version of the $NO_X$ waiver provision that was ultimately adopted in CAA section 182(f), Congress contemplated two types of determinations under which major stationary source plan provisions would not apply for major stationary sources of $NO_X$—one type of determination for non-OTR areas and a different type of determination for OTR areas. While these provisions were not ultimately adopted in the 1990 Amendments, they shed light on what the legislative drafters considered to be the operative trigger for the application of requirements: In neither of these provisions does the drafted language suggest that a source's location within a state that was in the OTR to be the trigger; instead, both drafts suggest an intent that being in the OTR was the condition upon which the difference in the waiver requirements would hinge.

Finally, commenter does not offer any coherent policy rationale for its interpretation of CAA section 184(a)(1)(B). As explained previously, under this interpretation, RACT for sources of VOCs covered by a CTG would apply statewide for any state if any portion of that state is in the OTR. But under the last sentence of CAA section 184(b), RACT for major stationary sources of $NO_X$ only applies in the areas of a state within the OTR. The EPA has previously explained that ''authoritative assessments of ozone control approaches have concluded that VOC reductions are generally most effective for addressing ozone locally, including in dense urbanized areas and 'immediately downwind.' '' 82 FR 51238, 51248 (November 3, 2017) (citing 82 FR 6517; 76 FR 48222; and 63 FR 57381). Further,

> The EPA continues to believe that $NO_X$ emission reductions strategies are more effective than VOC reductions in lowering ozone concentrations over longer distances. The EPA believes that regional ozone formation is primarily due to $NO_X$, but VOCs are also important because VOCs influence how efficiently ozone is produced by $NO_X$, particularly in dense urban areas. Reductions in anthropogenic VOC emissions will typically have less of an impact on the long-range transport of ozone, although these emissions reductions can be effective in reducing ozone in nearby urban areas where ozone production may be limited by the availability of VOCs. Therefore, a combination of localized VOC reductions in urban areas with additional $NO_X$ reductions across a larger region will help to reduce ozone and precursors in nonattainment areas, as well as downwind transport across the eastern U.S. 82 FR 51238.

Commenter's interpretation thus runs contrary to the EPA's longstanding understanding of how to most effectively reduce ozone levels: If any ozone precursor should be reduced on a broader geographic scale, it should arguably be $NO_X$, not VOCs. But commenter's rendering of the statute would produce the opposite result, imposing VOC-reduction requirements on a broad geographic scale beyond the borders of the OTR, while $NO_X$ RACT is limited to the OTR itself.

We also do not agree with the commenter's assertion that granting Maine's petition would not be ''consistent'' with CAA section 184 because the EPA did not promulgate criteria precisely according to CAA section 184(d). We do not think this is a reasonable way to read the intersection of the statutory provisions at issue, particularly because, contrary to commenter's assertion, the EPA has substantively satisfied Congress' aims in CAA section 184(d), both in general, and with respect to its analysis of Maine's request. CAA section 184(d) required the EPA, not later than 6 months after November 15, 1990, to ''promulgate criteria for purposes of determining the contribution of sources in one area to concentrations of ozone in another area which is a nonattainment area for ozone. Such criteria will require that the best available air quality monitoring and modeling techniques be used for purposes of making such determinations.''

The EPA may not have issued a rule expressly addressing CAA section 184(d) by June 1991, but it is simply not the case that the Agency has not issued and continually updated criteria for the purposes of determining how upwind contributions affect downwind ozone air quality. The EPA has issued multiple rules related to the interstate transport of ozone under CAA section 110(a)(2)(D)(i)(I), and for each of these rules, the Agency has put forth its criteria for determining linkages and contributions between upwind areas and downwind air quality problems (both for areas in nonattainment, per CAA section 184(d), but also for areas that may be meeting the NAAQS but could face problems maintaining the standards). In each of these transport rules, the Agency has used quality-assured, certified air quality monitoring data and state-of-the-science air quality modeling.[24]

[24] *See, e.g.,* Air Quality Modeling Technical Support Document for the $NO_X$ SIP Call, September 23, 1998 (explaining the EPA's use of two types of modeling to assess interstate contributions—state-by-state zero-out modeling using UAM–V and state-by-state source apportionment modeling using CAMx APCA), available at *https://www.epa.gov/sites/default/files/2020-10/documents/nox_sip.pdf;* Air Quality Modeling Final Rule Technical Support Document, June 2011 (setting forth the EPA's use of source apportionment techniques in CAMx air quality modeling to quantify interstate contributions), available at *https://www.epa.gov/sites/default/files/2017-06/documents/epa-hq-oar-2009-0491-4140.pdf;* Air Quality Modeling Technical Support Document for the Final Revised Cross-State Air Pollution Rule Update, March 2020 (reiterating the EPA's use of the OSAT/APCA technique in CAMx air quality modeling), available at *https://www.epa.gov/sites/default/files/2021-03/*

Continued

The commenter acknowledges the body of work the EPA has developed with respect to assessing interstate contributions using air quality modeling in these transport rules, but erroneously claims that those techniques and expertise were not used in the proposed action. Agreeing that the Ozone Source Apportionment Technology (OSAT)/Anthropogenic Precursor Culpability Assessment (APCA) technique in the CAMx air quality model is an ''available'' tool and noting that the EPA has previously identified this technique to be an appropriate tool for quantifying interstate air quality contributions, the commenter states, ''The [proposed] determination does not use OSAT/APCA. Instead, it relies on weaker analyses: HYSPLIT back-trajectories and emissions trends.'' This is simply incorrect. In its proposal analyzing Maine's request, the EPA used the same source apportionment modeling techniques employed by all of the transport rules. The EPA additionally looked at back trajectories under HYSPLIT and analyzed relevant emissions inventory data. We also do not agree with the commenter's contention that the EPA's proposal cannot move forward because it relied on ''stale'' monitoring data, which it claims cannot be the ''best available.'' We note that CAA section 184(d) requires the use of ''the best available air quality monitoring and modeling *techniques*'' (emphasis added). We do not read this provision to prohibit the Agency from moving forward with an action if newer data became available or certified shortly before issuance of that action; and in any case, the Agency considered up-to-date monitoring data in the context of its proposal and for this final action.

## IV. Comments Regarding Exempting an Area of the OTR From OTR Requirements for Future Ozone Standards

*Comment:* One commenter asserts that the EPA cannot exempt an OTR area from OTR requirements for future ozone standards. The commenter states that under the plain text of CAA section 176A(a), the establishment of a transport region as well as the addition and removal of a state or portion of a state from that region is based on a demonstration with respect to a particular standard (emphasizing the statute's use of the term ''*the* standard''). The commenter further argues that even if the statute is ambiguous, that it is arbitrary and capricious to remove a state from the OTR with respect to a future standard when the EPA does not know when that standard will be promulgated, what its level will be, and whether the subject area will exceed the contribution threshold for that standard. The commenter states that because the EPA's assessment of nonattainment and maintenance issues is tied to particular ozone standards, the EPA may not exempt areas from future ozone standards.

*Response:* The EPA does not agree with the commenter that CAA section 176A(a)(1) and (2)'s reference to ''the standard'' requires a reading of the Act such that the EPA's addition or removal of a state or portion of a state from the OTR must be specific only to one ozone standard. Such a reading is contrary to the larger statutory context and design, and is not compelled by the language of the Act. The EPA has interpreted the establishment of ozone transport regions, including the Congressionally created OTR in CAA section 184(a), to endure across updates to the NAAQS. We have never interpreted the Act to require a new reconstitution of an OTR specific to each NAAQS. Implementing the Act in the way that commenter suggests is required would mean that states would be added or removed, but only as to specific standards, and so a region could be a patchwork of states subject to different requirements depending on whether they were added or removed as to certain NAAQS for that CAA.

The commenter ignores the other references to the NAAQS present in CAA section 176A and section 184, which as the commenter notes, cross-references section 176A and governs the substantive requirements that apply to OTR states and other states designated in an ozone transport region. In CAA section 176A(a), the statute provides that ''whenever . . . the Administrator has reason to believe'' that interstate transport of pollutants contributes significantly to a violation of ''*a* national ambient air quality standard,'' the Administrator may establish a transport region for ''such pollutant'' that includes the involved states (emphasis added). The language governing the timing of an establishment of an OTR is therefore not tied to the promulgation of a NAAQS (unlike, for example, states' obligations to update their SIPs to address CAA section 110(a)(2)(D)(i)(I) interstate transport obligations within 3 years of the promulgation of a standard). Further, the basis for creating a transport region is the Administrator's belief that there is significant contribution to a violation of ''a'' NAAQS, not one particular NAAQS. That section also makes clear that the establishment of the transport region is for ''such pollutant,'' not such standard. The statutory language and structure comports with the EPA's longstanding interpretation of a transport region being established and existing across updates to a standard. Section 184 similarly references the establishment of transport regions ''for ozone'' (*see, e.g.,* CAA section 184(a), section 184(b)(1), section 184(c)(1)).

We do not agree that it is arbitrary and capricious to remove a state or portion of a state from general transport region obligations when they have met the required showing under CAA section 176A(a)(2) based on the NAAQS in effect at the time of the action. If, under a future ozone standard the EPA finds that there is significant contribution from Maine or other states to a violation of that standard, CAA section 176A(a)(1) clearly provides authority for the EPA to add such state or portion of a state to a transport region. Further, commenter's argument on this point would reduce CAA section 176A(a)(2) to a nullity. Effectively, no state or portion of a state could ever be removed from a transport region because there is always the hypothetical chance that the Agency will promulgate some more stringent NAAQS in the future and would be unable to evaluate transport without knowing what that standard is. The Congress that enacted CAA section 176A(a)(2) could not have intended this result.

## V. Comments Regarding Environmental Justice

*Comment:* Two commenters contend that the EPA failed to consider environmental justice. One commenter contends that the EPA failed to consider Executive Order 12898 and notes that the EPA's EJSCREEN tool shows that there are potentially impacted environmental justice communities in Maine and other nearby states. The commenter contends that the counties where the EPA proposes to allow more emissions are also home to low-income households, and, in some instances, also tribal communities. The commenter points out that the areas the EPA proposes to remove from the OTR include populations that are sensitive to ozone pollution (the elderly, children and adults active outdoors, and people with asthma and other respiratory diseases). In particular, the commenter notes that Maine has a higher incidence of asthma among adults (11.2 percent) compared to the national average (7.7 percent), and that certain counties such as Androscoggin County, most of which is to be removed from the OTR, has an

*documents/air_quality_modeling_tsd_final_revised_csapr_update.pdf.*

even higher incidence (14 percent of all county residents between 2011–2014). Another commenter suggests that the EPA's action may contravene the CAA's purpose, set out in CAA section 101(b)(1), to assure that air quality is protected and enhanced while supporting the productive capacity of all regions in the country.

*Response:* Under Executive Order (E.O.) 12898, the EPA is directed, to the greatest extent practicable and permitted by law, to make environmental justice (EJ) part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. Consistent with E.O. 12898 and the Presidential Memorandum that accompanies it, the EPA's EJ policies promote justice by focusing attention and efforts on addressing the types of EJ harms and risks that are prevalent among minority, low-income, and indigenous populations. E.O. 12898 and the EPA's EJ policies do not mandate particular outcomes from an action, but they require that decisions involving the action be informed by a consideration of EJ issues. With respect to this petition, the EPA determined that removing the requested areas from the OTR will not significantly contribute to nonattainment or interfere with maintenance of any ozone NAAQS in any area of the OTR, including areas where there are minority and low-income populations.

The EPA acknowledges that the area to be removed from the OTR includes areas with minority populations and low-income populations. Of the approximately 737,000 people who live in the area to be removed from the OTR, approximately 5.7 percent identify as people of color, and approximately 35 percent are identified as low income.[25] Maine has four federally recognized tribes: The Passamaquoddy, Penobscot, Maliseet and Micmac tribes. All four tribes include populations that live in the area to be removed from the OTR. Additionally, there are populations in the area to be removed from the OTR that could be sensitive to ozone, including children and those with pre-existing health conditions like asthma and chronic obstructive pulmonary disease (COPD). Maine has one of the highest rates of adult asthma in the United States.[26] Asthma is a chronic lung disease with symptoms including wheezing, coughing, chest tightness, and shortness of breath. A wide range of indoor and outdoor allergens and irritants can trigger or exacerbate asthma, including tobacco smoke, pollen, pet dander, mites, mold, and air pollution from stationary and mobile sources.[27] Pollutants including ozone, nitrogen dioxide, sulphur dioxide, and $PM_{2.5}$ have been shown to trigger or exacerbate asthma symptoms.

In 2019, the adult asthma rate in Maine was 11.8 percent, as compared to 8.0 percent for the United States.[28] While higher than the adult asthma rate in the United States, the adult asthma rate in Maine does not necessarily correlate with high ozone levels. For example, of the ozone monitoring sites in Maine located in areas that will be removed from the OTR, the monitor with the highest 2020 ozone design value of 57 ppb (and historically having higher design values) is located in Washington County, a county with one of the lowest rates of adult asthma in Maine.[29] [30] Further, other factors, such as the state's dense forests, high pollen levels, and heavy reliance on wood burning stoves for home heating, contribute to the high rate of asthma in Maine.[31]

The EPA has identified minority, low-income, and other at-risk populations that could be impacted by this action and considered whether removal of the requested part of Maine from the OTR could have disproportionately high and adverse human health or environmental effects on those populations. As explained above in the response to comments about a potential increase in ozone precursor emissions, the EPA believes that a substantial increase in ozone precursor emissions resulting from this action is highly unlikely in any area of Maine or the OTR. Thus, the EPA does not expect the action to result in disproportionally high and adverse human health or environmental effects on any population in Maine or the OTR, including minority, low-income, and at-risk populations.

## IV. Final Action To Grant Maine's CAA Section 176A Petition

Based on the considerations outlined at proposal, consideration of all public comments, and for the reasons described in this notice, the EPA finds that the portion of the state requested to be removed from the OTR does not contribute to a violation of any ozone standard in any area of the OTR, and that further control of emissions from that portion of Maine will not significantly contribute to the attainment of any ozone standard in any area of the OTR. Thus, the EPA is granting Maine's CAA section 176A petition to remove a portion of the state from the OTR.

## V. Judicial Review and Determinations Under Sections 307(b)(1) and 307(d) of the CAA

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of publication of any final action. Filing a petition for reconsideration by the Administrator of this rule will not affect the finality of the rule for the purposes of judicial review nor will 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. The Administrator of the EPA, hereby, determines that this action is subject to CAA section 307(d), as authorized by CAA section 307(d)(1)(V).

## VI. Statutory Authority

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

## List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Carbon oxides, Greenhouse gases, Intergovernmental relations, Lead, National parks, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Sulfur

[25] U.S. EPA Environmental Justice Screening and Mapping Tool (EJSCREEN), which utilizes U.S. Census Bureau American Community Survey (ACS) data from 2014–2018. The American Community Survey information and data is available at *https://www.census.gov/programs-surveys/acs.* The EJSCREEN tool is available at *https://ejscreen.epa.gov/mapper/.*

[26] ''Current Asthma Demographics'' Current Adult Asthma by State. *American Lung Association.* Data from Centers for Disease Control and Prevention, Behavioral Risk Factor Surveillance System 2011–2018. Analysis by the American Lung Association Epidemiology and Statistics Unit. *https://www.lung.org/research/trends-in-lung-disease/asthma-trends-brief/current-demographics.*

[27] ''Common Asthma Triggers'' Centers for Disease Control and Prevention. *https://www.cdc.gov/asthma/triggers.html.*

[28] ''Most Recent Asthma State or Territory Data'' State or Territory Adult Current Asthma Prevalence by State or Territory (2019). Centers for Disease Control and Prevention. *https://www.cdc.gov/asthma/most_recent_data_states.htm.*

[29] *See* Table 2 for current design values and the ozone design value spreadsheet located in the docket for this action for historical design values.

[30] For asthma data, *see* information provided in the Maine Environmental Public Health Tracking Program using data provided by the Maine Behavioral Risk Factor Surveillance System and analyzed by the Chronic Disease & Maternal & Child Health Epidemiology Team. Available at *https://data.mainepublichealth.gov/tracking/data-topics/asthma-content.*

[31] ''Asthma in Maine'' Maine Center for Disease Control and Prevention Division of Disease Prevention. Maine Department of Health and Human Services. *https://www.maine.gov/dhhs/mecdc/population-health/mat/asthma-information/asthma-in-maine.shtml.*

oxides, Volatile organic compounds, Wilderness areas.

**Michael Regan,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. Subpart E, consisting of §§ 81.455 and 81.457, is added to read as follows:

### Subpart E—Identification of Interstate Transport Regions

**§ 81.455 Scope.**

This subpart identifies interstate transport regions established for national ambient air quality standards pursuant to section 184 or section 176A of the Clean Air Act.

**§ 81.457 Ozone Transport Region.**

Except as provided in paragraph (a), the Ozone Transport Region is comprised of the areas identified by Congress under 42 U.S.C. 7511c(a).

(a) *Ozone Transport Region boundary.* As of March 14, 2022, the boundary for the Ozone Transport Region consists of the entire States of Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont; portions of Maine identified in this section under Table 1; and the Consolidated Metropolitan Statistical Area that includes the District of Columbia and the following counties and cities in Virginia: Arlington County, Fairfax County, Loudoun County, Prince William County, Strafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

TABLE 1 TO PARAGRAPH (a)—MAINE TOWNS AND CITIES IN THE OZONE TRANSPORT REGION

| Maine towns and cities in the ozone transport region |
|---|
| *Androscoggin County (only the following town):* Durham. |
| *Cumberland County (only the following towns and cities):* Brunswick, Cape Elizabeth, Casco, Cumberland, Falmouth, Freeport, Frye Island, Gorham, Gray, Harpswell, Long Island, New Gloucester, North Yarmouth, Portland, Pownal, Raymond, Scarborough, South Portland, Standish, Westbrook, Windham, and Yarmouth. |
| *Hancock County (only the following towns and cities):* Bar Harbor, Blue Hill, Brooklin, Brooksville, Cranberry Isles, Deer Isle, Frenchboro, Gouldsboro, Hancock, Lamoine, Mount Desert, Sedwick, Sorrento, Southwest Harbor, Stonington, Sullivan, Surry, Swans Island, Tremont, Trenton, and Winter Harbor. |
| *Knox County (only the following towns and cities):* Camden, Criehaven, Cushing, Friendship, Isle au Haut, Matinicus Isle, Muscle Ridge Shoals, North Haven, Owls Head, Rockland, Rockport, St. George, South Thomaston, Thomaston, Vinalhaven, and Warren. |
| *Lincoln County (only the following towns and cities):* Alna, Boothbay, Boothbay Harbor, Breman, Bristol, Damariscotta, Dresden, Edgecomb, Monhegan, Newcastle, Nobleboro, South Bristol, Southport, Waldoboro, Westport, and Wiscasset. |
| *Sagadahoc County (all towns and cities).* |
| *Waldo County (only the following town):* Islesboro. |
| *York County (only the following towns and cities):* Alfred, Arundel, Berwick, Biddeford, Buxton, Dayton, Eliot, Hollis, Kennebunk, Kennebunkport, Kittery, Limington, Lyman, North Berwick, Ogunquit, Old Orchard Beach, Saco, Sanford, South Berwick, Wells, and York. |

(b) *Applicability.* As of March 14, 2022, the provisions of 42 U.S.C. 7511c will no longer be applicable in the following areas of Maine: The State of Maine, with the exception of the towns and cities listed in this section under table 1 to paragraph (a).

[FR Doc. 2022–02653 Filed 2–9–22; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

### 42 CFR Parts 403, 405, 410, 411, 414, 415, 423, 424, and 425

**[CMS–1751–F2]**

**RIN–0938–AU42**

## Medicare Program; CY 2022 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Provider Enrollment Regulation Updates; Provider and Supplier Prepayment and Post-Payment Medical Review Requirements; Corrections

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

**ACTION:** Final rule; correction and correcting amendment.

**SUMMARY:** In the November 19, 2021 issue of the **Federal Register**, we published a final rule entitled ''Medicare Program; CY 2022 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Provider Enrollment Regulation Updates; and Provider and Supplier Prepayment and Post-Payment Medical Review Requirements'' (referred to hereafter as the ''CY 2022 PFS final rule''). The effective date was January 1, 2022. This document corrects a limited number of technical and typographical errors identified in the November 19, 2021 final rule.

**DATES:** This document is effective February 10, 2022, and is applicable beginning January 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Terri Plumb, (410) 786–4481, Gaysha Brooks, (410) 786–9649, or Annette Brewer (410) 786 6580.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In FR Doc. 2021–23972 of November 19, 2021, the CY 2022 PFS final rule (86 FR 64996), there were technical errors that are identified and corrected in this