

Dated: March 23, 2017.

**Catherine R. McCabe,**

*Acting Regional Administrator, Region 2.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2015-0648; FRL-9961-24-Region 1]

### Air Plan Approval; ME; Motor Vehicle Fuel Requirements

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine on August 28, 2015. The SIP revision includes a revised motor vehicle fuel volatility regulation that has been updated to be consistent with existing federal regulations which require retailers to sell reformulated gasoline (RFG) in the counties of York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln, as of June 1, 2015. The intended effect of this action is to propose approval of this amendment into the Maine SIP. This action is being taken under the Clean Air Act.

**DATES:** Written comments must be received on or before June 7, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2015-0648 at <http://www.regulations.gov>, or via email to [rogan.john@epa.gov](mailto:rogan.john@epa.gov). For comments submitted at [Regulations.gov](http://Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://Regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please

contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** John Rogan, Air Quality Planning Unit, U.S. Environmental Protection Agency, New England Regional Office, 5 Post Office Square—Suite 100, (Mail code OEP05-2), Boston, MA 02109-3912, telephone (617) 918-1645, facsimile (617) 918-0645, email [rogan.john@epa.gov](mailto:rogan.john@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Maine's Revisions to Its Chapter 119 Motor Vehicle Fuel Volatility Limits
- III. EPA's Evaluation of Maine's SIP Revision
- IV. Proposed Action
- V. Incorporation by Reference
- VI. Removal of Maine's Gasoline Volatility Requirements in Southern Maine—Impacts on the Boutique Fuels List
- VII. Statutory and Executive Order Reviews

#### I. Background and Purpose

On August 28, 2015, the Maine Department of Environmental Protection (DEP) submitted to the EPA a revision to its State Implementation Plan (SIP). The SIP revision consists of Maine's revised Chapter 119 Motor Vehicle Fuel Volatility Limits. Chapter 119 was revised to require retailers to sell reformulated gasoline (RFG) in the counties of York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln (hereinafter, the “Southern Maine Counties”) effective June 1, 2015. RFG is gasoline that is blended to burn more cleanly as compared to conventional gasoline. This regulation was revised to be consistent with existing federal regulations at 40 CFR part 80, subpart D.

In April, 2013, the Maine Legislature enacted Public Law 2013 c.221 calling for the use of RFG in the Southern Maine Counties beginning May 1, 2014. On July 23, 2013, the Governor of Maine formally requested, pursuant to Clean Air Act (CAA) section 211(k)(6)(B), that the EPA extend the requirement for the sale of RFG to these counties beginning on May 1, 2014. The Maine legislature subsequently enacted an emergency law, Public Law 2013 c.452, effective March 6, 2014, to postpone the requirement for the sale of RFG in the Southern Maine Counties until June 1, 2015. Pursuant to that legislation, the

Commissioner of the Maine DEP submitted a request to the EPA on March 10, 2014, modifying Maine's request for the implementation date for the sale of RFG in the Southern Maine Counties to coincide with the new June 1, 2015 effective date.

Per Maine's request, the EPA extended the requirements of the RFG program to the Southern Maine Counties. The final rule, *Regulation of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to Maine's Southern Counties*, was published in the **Federal Register** on February 6, 2015 (80 FR 6658).

#### II. Maine's Revisions to Its Chapter 119 Motor Vehicle Fuel Volatility Limits

On August 28, 2015, the Maine DEP submitted to EPA a SIP revision containing Maine's revised Chapter 119 Motor Vehicle Fuel Volatility Limits rule adopted on May 21, 2015. The rule's prohibition on selling or dispensing motor vehicle fuel having a Reid Vapor Pressure (RVP) greater than 7.8 pounds per square inch (psi), in the Southern Maine Counties, during the period of May 1 through September 15 was revised to apply through September 15 of 2014, and a new provision, requiring retailers who sell gasoline in the Southern Maine Counties to only sell RFG in those counties year round, was added to the rule. The revisions to Chapter 119 maintain the 9.0 psi maximum RVP requirement in the remainder of the State during the period of May 1 through September 15 each year.

#### III. EPA's Evaluation of Maine's SIP Revision

EPA previously approved Maine's Chapter 119 into the Maine SIP on March 6, 2002 (67 FR 10100). EPA has reviewed Maine's revised Chapter 119 Motor Vehicle Fuel Volatility Limits rule and has concluded that Maine's August 28, 2015 SIP revision is consistent with the anti-back sliding requirements of CAA section 110(l). The previous version of Chapter 119 currently in the Maine SIP states that in the Southern Maine Counties “no owner or operator shall dispense, sell, or supply as fuel for motor vehicles a gasoline having a RVP greater than 7.8 psi during the period of May 1 through September 15 of each year.” The revised rule instead requires RFG in the Southern Maine Counties year-round beginning June 1, 2015, without the 7.8 psi RVP requirement, and maintains the 9.0 psi RVP requirement in the remainder of the State. Requiring a lower RVP for fuels means less evaporative emissions, and therefore removal of such a

requirement might be of concern. In this case, however, although the low RVP requirement for the Southern Maine Counties has been removed, it has been replaced with a requirement for the sale of RFG. The requirement for RFG, in practice, results in a similar RVP for the fuel. Specifically, an analysis of summer time RFG for 2011–2015 indicates an annual average RVP between 7.01 and 7.13 psi, with a standard deviation of approximately 0.19 psi.<sup>1</sup> Therefore, Maine's revised Chapter 119 meets the CAA section 110(l) anti-back sliding requirements and EPA is proposing to approve the revised regulation.

#### IV. Proposed Action

EPA is proposing to approve Maine's August 28, 2015 SIP revision. Specifically, EPA is proposing to approve, and incorporate into the Maine SIP, Maine's revised Chapter 119 Motor Vehicle Fuel Volatility Limits rule. EPA is proposing to approve this SIP because it meets all applicable requirements of the CAA and relevant EPA guidance, and it will not interfere with any applicable requirement concerning National Ambient Air Quality Standards (NAAQS) attainment and reasonable further progress or with any other applicable requirement in the Clean Air Act.

#### V. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Maine regulation referenced in Section IV. of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov> and/or in hard copy at the appropriate EPA office.

#### VI. Removal of Maine's Gasoline Volatility Requirements in Southern Maine—Impacts on the Boutique Fuels List

Section 1541(b) of the Energy Policy Act of 2005 required EPA in consultation with the U.S. Department of Energy to determine the number of fuels programs approved into all SIPs as of September 1, 2004 and to publish a list of such fuels. On December 28, 2006, EPA published the list of boutique fuels. (See 71 FR 78192.) EPA maintains the current list of boutique fuels on its Web site at: <https://www.epa.gov/>

*gasoline-standards/state-fuels*. The final list of boutique fuels was based on a fuel type approach. CAA section 211(c)(4)(C)(v)(III) requires that EPA remove a fuel from the published list if it is either identical to a federal fuel or is removed from the SIP in which it is approved. Under the adopted fuel type approach, EPA interpreted this requirement to mean that a fuel would have to be removed from all SIPs in which it was approved in order for it to be removed from the list. (See 71 FR 78195)

The 7.8 psi RVP fuel program, which is approved into Maine's SIP, is a fuel type that is included in EPA's boutique fuel list, 71 FR 78198–99; (<https://www.epa.gov/gasoline-standards/state-fuels>) and the specific counties in Southern Maine where the 7.8 psi RVP gasoline was required are identified on EPA's Gasoline Reid Vapor Pressure Web page (<https://www.epa.gov/gasoline-standards/gasoline-reid-vapor-pressure>). If today's proposed approval of the removal of Maine's 7.8 psi RVP requirement from the State's SIP is subsequently granted final approval, EPA intends to update the State Fuels and Gasoline Reid Vapor Pressure Web pages on the effective date of the removal. While EPA intends to delete the entry for Maine from the list of boutique fuels, this would not result in an opening on the boutique fuels list because the 7.8 psi RVP fuel type remains in other state SIPs.

#### VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 21, 2017.

**Deborah A. Szaro,**

*Acting Regional Administrator, EPA New England.*

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<sup>1</sup> See EPA memorandum, "Volatility of Reformulated Gasoline" (October 3, 2016), available in the docket for today's action.