



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2015-0593; A-1-FRL-9939-24-Region 1]

Air Plan Approval; ME; Repeal of the Maine's General Conformity Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision removes State Regulation Chapter 141 - Conformity of General Federal Actions from the SIP. The intended effect of this action is to remove the repealed State Regulation and leave the Federal General Conformity provisions in place to demonstrate conformity with the applicable SIP as required by section 176(c) of the Clean Air Act. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective **[Insert date 60 days from date of publication in the Federal Register]**, unless EPA receives adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2015-0593 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. E-mail: arnold.anne@epa.gov .
3. Fax: (617) 918-0047.
4. Mail: "Docket Identification Number EPA-R01-OAR-2015-0593", Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912.
5. Hand Delivery or Courier. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R01-OAR-2015-0593. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through <http://www.regulations.gov>, or e-mail, information that you consider to be CBI or otherwise protected. The <http://www.regulations.gov> website is an "anonymous access" system,

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

Docket: All documents in the electronic docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <http://www.regulations.gov> or at U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

In addition, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State

Air Agency; the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333-0017.

FOR FURTHER INFORMATION CONTACT: Ariel Garcia, Air Quality Unit, U.S.

Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square - Suite 100, (Mail code OEP05-2), Boston, MA 02109 - 3912, telephone number (617) 918-1660, fax number (617) 918-0660, email garcia.ariel@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. State Submittal
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background and Purpose

Section 176(c) of the Clean Air Act, as amended (the Act), prohibits Federal entities from taking actions in nonattainment or maintenance areas which do not conform to the State Implementation Plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS). Therefore, the purpose of conformity is to: (1) ensure Federal activities do not interfere with the emission budgets in the SIPs; (2) ensure actions do not cause or contribute

to new violations; and (3) ensure attainment and maintenance of the NAAQS. Section 176(c) of the Act also requires EPA to promulgate criteria and procedures for demonstrating and ensuring conformity of Federal actions to an applicable implementation plan developed pursuant to Section 110 and Part D of the Act. EPA promulgated a final rulemaking on November 30, 1993 consisting of 40 CFR part 93, subpart B “Determining Conformity of General Federal Actions to State or Federal Implementation Plans,” which applied to Federal agencies immediately (hereafter referred to as the General Conformity rule); and 40 CFR part 51, subpart W “Determining conformity of general Federal Actions to State or Federal Implementation Plans” which established requirements for States in submitting SIPs. The general conformity rules, except for the 40 CFR 51.851(a) language requiring State submission of a SIP revision, were repeated at 40 CFR part 93, subpart B. The General Conformity rule establishes the criteria and procedures governing the determination of conformity for all Federal actions, except Federal highway and transit actions.¹

The General Conformity rule also establishes the criteria for EPA approval of SIPs. See 40 CFR 51.851 and 93.151. These criteria provide that the state provisions must be at least as stringent as the requirements specified in EPA’s General Conformity rule, and that they can be more stringent only if they apply equally to Federal and non-Federal entities (§§ 51.851(b)). Following EPA approval of the State conformity provisions in a SIP revision, the approved State criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in 40 CFR part 51 and part 93 would apply only for the portion, if any, of

¹ Conformity to State or Federal Implementation Plans of transportation plans, programs, and projects which are developed, funded or approved under Title 23 U.S.C. or the Federal Transit Laws are implemented under 40 CFR part 51, subpart T, and 40 CFR part 93, subpart A.

the State's conformity provisions that is not approved by EPA. Finally, all SIP-approved requirements relating to general conformity remain enforceable until the State revises its SIP to specifically remove them from the SIP and that revision is approved by EPA.

On October 11, 1996, the State of Maine submitted a formal revision to its SIP. The SIP revision consisted of incorporating-by-reference 40 CFR 51.850 through 51.860 (with the exception of § 51.851) thereby establishing general conformity criteria and procedures in the Maine SIP no more stringent than the Federal rule and not imposing any additional controls on non-Federal entities. EPA approved Maine's General Conformity SIP through a direct final rule published in the Federal Register on September 23, 1997, (62 FR 49608–49611) and effective November 24, 1997.

On June 29, 2007, the State of Maine submitted a second revision to its General Conformity SIP. This SIP revision consists of incorporating by reference 40 CFR 51.852 (Definitions), and 51.853 (Applicability), of 40 CFR part 51, subpart W, “Determining Conformity of General Federal Actions to State or Federal Implementation Plans,” as amended on July 17, 2006 in the Federal Register (71 FR 40420 – 40426). By incorporating by reference the amended General Conformity rule, Maine's Chapter 141 “Conformity of General Federal Actions,” is no more stringent than the Federal rule and does not impose any additional controls on non-Federal entities. EPA approved Maine's revision to its General Conformity SIP through a direct final rule published in the Federal Register on February 20, 2008 (73 FR 9203-9206) and effective on April 21, 2008.

On April 5, 2010, EPA revisited the Federal General Conformity Requirements Rule to clarify the conformity process, authorize innovative and flexible compliance approaches, remove outdated or unnecessary requirements, reduce the paperwork burden, provide transition tools for implementing new standards, address issues raised by Federal agencies affected by the rules, and provide a better explanation of conformity regulations and policies. EPA's April 2010 revised rule simplified state SIP requirements for general conformity, eliminating duplicative general conformity provisions codified at 40 CFR Part 93, Subpart B and 40 CFR Part 51, Subpart W by removing section 51.850, and sections 51.852 through 51.860. Finally, the April 2010 revision updated the Federal General Conformity Requirements Rule to reflect changes to governing laws passed by Congress since EPA's 1993 rule.

The "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users," (SAFETEA-LU) passed by Congress in 1995 contains a provision eliminating the Clean Air Act requirement for states to adopt general conformity SIPs. As a result of SAFETEA-LU, EPA's April 2010 General Conformity rule eliminated the Federal regulatory requirement for states to adopt and submit general conformity SIPs, instead making submission of a general conformity SIP a state option.

The 2010 General Conformity amendments (Sections 51.851(c) as well as section 93.151) restated the requirement that in the absence of an EPA approved General Conformity SIP, Federal agencies shall use the provisions of 40 CFR part 93, subpart B to demonstrate conformity with the applicable implementation plan as required by section 176(c) of the Clean Air Act (42 U.S.C. 7506).

II. State Submittal

On August 18, 2015, the Maine Department of Environmental Protection submitted a formal SIP revision to remove Chapter 141 - Conformity of General Federal Actions. Maine's Chapter 141 regulation incorporated-by-reference 40 CFR Part 51, Subpart W "Determining Conformity of General Federal Actions to State or Federal Implementation Plans" as published in the November 30, 1993, Federal Register (58 FR 63247 – 63253) and amended in the July 17, 2006 Federal Register, (71 FR 40420 – 40426). As stated above all of the general conformity provisions referenced in Maine's General Conformity regulation were deleted as duplicative on April 5, 2010. At the time they were approved into the SIP, provisions of Maine's General Conformity SIP were no less stringent than the Federal General Conformity regulations, nor did the SIP establish more stringent conformity criteria and procedures applying equally to non-Federal as well as Federal entities.

As the State of Maine did not revise its SIP-approved Chapter 141 - Conformity of General Federal Actions following EPA's April 5, 2010 General Conformity amendments, the current State rule with a state effective date of April 19, 2007, does not provide any flexibility, or relaxation to the general conformity criteria and procedures as allowed by the amendments.

Maine Department of Environmental Protection repealed Chapter 141 in July 2015 after public notice and opportunity for public hearing. The removal of Chapter 141 – Conformity of General Federal Actions from the SIP will leave the Federal General Conformity Regulations at 40 CFR 93.150 through 93.165 as well as 40 CFR 51.851, in place for administrative and

enforcement purposes. Once EPA approves the removal of Chapter 141 from Maine's SIP, Federal actions can take advantage of the flexibility provided by the Federal General Conformity Rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Final Action

EPA is approving Maine's August 18, 2015, SIP revision to remove Chapter 141 – Conformity of General Federal Actions from the SIP. EPA has evaluated this SIP revision and has determined that the State has complied with its administrative procedures to repeal Chapter 141. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of this SIP revision. Finally, EPA has determined that removing Chapter 141 from the Maine SIP will result in Federal agencies using the provisions of 40 CFR part 93, subpart B to demonstrate conformity with the applicable implementation plan as required by section 176(c) of the Clean Air Act (42 U.S.C. 7506). Federal actions can take advantage of the flexibility provided by the Federal General Conformity Rule which includes EPA's April 2010 General Conformity Amendments.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed.

This rule will be effective **[Insert date 60 days from date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**.

If EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[Insert date 60 days from date of publication in the Federal Register]** and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. 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 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 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 (Public Law 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this

action published in the proposed rules section of the **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 5, 2015.

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

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

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart U – Maine

§52.1020 [Amended]

2. In §52.1020(c), the table is amended by removing the entry for Chapter 141, “Conformity of General Federal Actions.”

[FR Doc. 2015-29825 Filed: 11/23/2015 8:45 am; Publication Date: 11/24/2015]