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**Report to the Joint Standing Committee on Environment and Natural  
Resources**

**127<sup>th</sup> Legislature, First Session**

# **Feasibility of Easing Multiple Gasoline Requirements in the State of Maine**

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## Executive Summary

The 126<sup>th</sup> Maine Legislature enacted LD 1796<sup>1</sup> “An Act to Delay Implementation of Reformulated Gasoline Requirements in Maine” which set an implementation date of June 1, 2015 for Reformulated Gasoline (RFG) to be sold at gasoline retailers in Maine’s seven southern counties. The enacting legislation also required the Maine Department of Environmental Protection (the Department) to review the feasibility of easing the multiple gasoline requirements in the State and achieving the use of a single type of gasoline for all of Maine.

In 1991 Maine volunteered to phase into the RFG program and began selling RFG in the seven southern counties in January of 1995. Prior to 2005, methyl tertiary-butyl ether (MTBE) was used in gasoline throughout the United States to reduce carbon monoxide and ozone forming pollutants caused by auto emissions. MTBE is more water soluble than other gasoline components and is persistent in ground water. MTBE began appearing in public and private water supplies more frequently and at higher concentrations than had been reported in prior years. Based on the risk to ground water posed by MTBE, Maine petitioned the United States Environmental Protection Agency (EPA) to allow the state to opt-out of the RFG program. EPA approved the petition provided several conditions were met, including implementing a replacement fuel program that achieved reductions of certain air emissions, such as volatile organic compounds (VOCs), that were equivalent to the use of RFG. In 1999, the Maine Board of Environmental Protection (BEP) adopted Chapter 119 Motor Vehicle Fuel Volatility Limit, which required 7.8 Reid Vapor Pressure (RVP) (a measure of volatility) gasoline in the seven southern counties from May 1st to September 15th of each year.

In 2013 and 2014, the fuel industry requested the enacting legislation that allows Maine to discontinue the use of a “boutique” 7.8 RVP fuel during the summer months and switch to the more widely used RFG to avoid supply interruption and price volatility. The federal RFG program reduces auto emissions of air toxics by 25 percent year round and volatile organic compounds by 25 percent during the ozone season. Opting to include the remaining northern counties into the RFG program would ensure emission benefits gained from using RFG in southern Maine are realized statewide. According to the Clean Air Act Amendments (CAAA) of 1990 Section 211 (k)(6)(B)(ii)<sup>2</sup>, once Maine opts-in to the RFG program it must remain in the program for 4 years. Therefore only RFG was evaluated as a potential statewide fuel. In addition, if Maine were to opt-out of RFG in 4 years, the emission reductions from the RFG program must be maintained. Maine must maintain air pollution control strategies to meet the air quality goals stipulated in the State Implementation Plan (SIP).

As part of the evaluation, the Department met with representatives of the Maine Energy Marketers Association (MEMA), terminal operators, refiners, and fuel distributors. Many of these discussions led to a general agreement that there could be a sufficient supply of RFG on the market to meet Maine’s needs; however the sources of Maine’s fuel supply may change. Switching to a single fuel supply may benefit Maine by opening the market to diversified fuel suppliers and result in less reliance on a significant supplier. Switching to one fuel statewide would eliminate intrastate border issues and allow distributors to more effectively use their trucks. If Maine adopts the same fuel statewide as southern New England states have done, new markets may open for Maine

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<sup>1</sup> See Appendix A

<sup>2</sup> See Appendix B

businesses. Switching to one fuel statewide will increase storage capacity which may buffer against minor supply disruptions. Industry members provided the rack price or the cost of gasoline at the terminal for both 9.0 conventional fuel and RFG. The average cost differential during the summer of 2014 was one cent more per gallon for RFG, and for 24 days the rack price was less for RFG than conventional gasoline. It appears that the price difference between conventional fuel and RFG has been trending down, possibly due to market forces such as economies of scale. Retail data collected by the United States Energy Information Administration indicates that on average across New England RFG is less than a tenth of a cent *less* expensive than conventional gasoline.

## 1.0 Introduction

The 126<sup>th</sup> Maine Legislature enacted L.D. 1359 “An Act to Update and Simplify Maine Gasoline Requirements”<sup>3</sup> which required retailers who sell gasoline in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, or Lincoln County to sell only federal reformulated gasoline (RFG) commencing May 1, 2014. The enacting legislation also required the Maine Department of Environmental Protection (the Department) to review the feasibility of easing the multiple gasoline requirements in the State and achieving the use of a single type of gasoline for all of Maine.

Maine Energy Marketers Association (MEMA) requested the enacting legislation to ease the price inequity for retailers on the county borders. The use of RFG in the seven southern counties will allow Maine to discontinue the use of a “boutique” 7.8 Reid Vapor Pressure (RVP) fuel during the summer months, which was a previously required alternative gasoline for the State of Maine. The only other area in the northeast that uses this boutique gasoline is western Pennsylvania. The intent was to switch to a more widely used fuel supply to avoid supply interruption and price volatility.

Following the enacted legislation, industry requested a delay in implementation due to supply concerns with meeting the May 1, 2014 date. In response, the 126th Maine Legislature enacted L.D. 1796 “An Act to Delay Implementation of Reformulated Gasoline Requirements in Maine”<sup>4</sup> extending the implementation date to June 1, 2015 for the sale of RFG in the southern seven counties. The legislation also required the Department to study the feasibility of easing the multiple gasoline requirements in this State and submit a report to the Joint Standing Committee on Environment and Natural Resources by January 30, 2015.

## 2.0 Background

The federal RFG program reduces auto emissions of air toxics by 25 percent year round and volatile organic compounds by 25 percent during the ozone season. Initially, to comply with the RFG program, gasoline had to meet a minimum oxygen content requirement. Oxygenates were added to RFG to reduce emissions by improving overall combustion efficiency. Refiners previously complied with the oxygenate requirement by selling RFG containing methyl tertiary-butyl ether (MTBE).

MTBE is a gasoline additive that replaced lead as an octane booster. Prior to 2005 MTBE was used in gasoline throughout the United States to reduce carbon monoxide and ozone forming pollutants caused by auto emissions. Previous RFG formulations contained MTBE at levels of approximately 11 percent by volume. In comparison, conventional gasoline mostly contained MTBE in amounts of a few percent by volume.

In 1991 Maine volunteered to phase into the RFG program and began selling RFG in the seven southern counties in January of 1995. States with voluntary RFG programs were required to decide by December 30, 1997, whether they wanted to remain in the program, otherwise federal program

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<sup>3</sup> See Appendix A

<sup>4</sup> See Appendix A

guidelines required them to stay in the program. The RFG delivered in Maine contained higher levels of MTBE than gasoline sold in Maine prior to implementing the program. Subsequently, MTBE began appearing in public and private water supplies more frequently and at higher concentrations than had been reported in prior years. MTBE is more water soluble than other gasoline components and is persistent in ground water. MTBE is considered by the United States Environmental Protection Agency (EPA) as a possible human carcinogen, and is easily detected by smell and taste.

These groundwater contamination issues prompted Maine to petition the EPA to allow the state to opt-out of the RFG program based on the risk to ground water posed by MTBE. EPA approved the petition provided several conditions were met, including implementing a replacement fuel program that achieved reductions of certain air emissions, such as volatile organic compounds (VOCs), that were equivalent to the use of RFG. Therefore, the Maine Board of Environmental Protection adopted Chapter 119 *Motor Vehicle Fuel Volatility Limit*, which required 7.8 RVP gasoline in the seven southern counties from May 1<sup>st</sup> to September 15<sup>th</sup> of each year. Having met the conditions, the effective date for withdrawal from the RFG program was March 10, 1999. In May of 2001, the Department submitted a fuels waiver request for 7.8 RVP fuel under the authority of 211 (c)<sup>5</sup> of the Clean Air Act Amendments (CAAA) of 1990, which became effective on April 5, 2002.

## 2.1 Existing Conditions

Currently two areas in Maine have RVP restrictions during the ozone season from May 1 to September 15<sup>th</sup> of each year. The first area encompasses the seven southern counties which originally had RFG in 1995, and currently requires retailers in York, Cumberland, Kennebec, Androscoggin, Knox, Lincoln, and Sagadahoc Counties to sell gasoline with an RVP limit of 7.8. This current fuel is defined by EPA as a boutique fuel which is a special fuel required by states to meet air quality goals adopted under state law and approved by EPA in the State Implementation Plan (SIP). Currently 12 states have 15 boutique fuel programs meeting this definition. The Energy Policy Act of 2005 includes provisions that limit the future growth of new boutique fuels allowable under the CAAA Section 211(c)(4)(c)<sup>6</sup> to maximize motor fuel fungibility and supply, and reduce motor fuel price volatility. The current Maine law requires the seven southern counties currently using the 7.8 RVP fuel to begin using RFG as of June 1, 2015.

The second area has a federal RVP limit during ozone season which encompasses the northern nine Maine counties using conventional fuel with an RVP limit of 9.0. Gasoline retailers in Aroostook, Franklin, Hancock, Oxford, Penobscot, Piscataquis, Somerset, Waldo, and Washington sell conventional fuel year round but with an RVP limit of 9.0 during ozone season.

Northern New Hampshire and all of Vermont also sell conventional fuel year round with an RVP limit of 9.0 during ozone season as required under Section 211 (h)<sup>7</sup> of the CAAA. Southern New England sells only RFG all year which has a limited RVP during the ozone season of approximately

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<sup>5</sup> See Appendix C

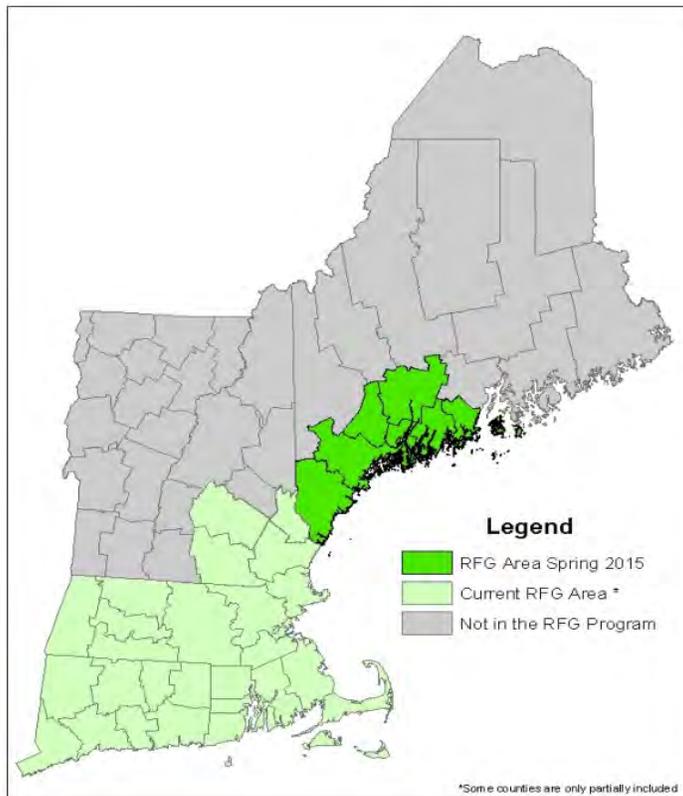
<sup>6</sup> See Appendix C

<sup>7</sup> See Appendix E

6.8 RVP. Section 211 (k)(3)(B) of the CAAA<sup>8</sup> requires RFG to meet certain performance standards including 25 percent less emissions of ozone forming VOCs during the ozone season and 25 percent less emissions of air toxics than conventional fuel during the entire year.

RFG is readily available and used in counties that have opted-in to the RFG program throughout New England. The status of RFG usage throughout New England is shown in Figure 1.

**Figure 1. Status of RFG Implementation in New England**



## 2.2 EPA Regulatory Requirements

The Clean Air Act Amendments prohibit the sale of conventional gasoline (i.e., any gasoline that is not reformulated gasoline) in certain areas of the country that were not meeting the federal 1990 ground level ozone standards. In addition to these areas of mandatory RFG use, Section 211(k)(6)(A) and (B)<sup>9</sup> of the CAAA allow areas that are classified as Marginal, Moderate, Serious or Severe ozone nonattainment, or areas within the Ozone Transport Region (OTR) to opt into the RFG program at the request of the Governor.

Since Maine is in the OTR as established under Section 184 of the CAAA, the Governor can petition EPA to apply the prohibition against the use of selling or dispensing of conventional gasoline to any area in the State pursuant to Section 211(k)(6)(B)<sup>10</sup> of the CAAA. Under these

<sup>8</sup> See Appendix B

<sup>9</sup> See Appendix B

<sup>10</sup> See Appendix B

provisions, EPA must extend the prohibition against conventional gasoline “as soon as practicable, but no later than 2 years after the date of approval by the EPA Administrator of the application of the Governor of the State”. In the event EPA determines the supply of RFG to be insufficient to meet demand, it may extend the RFG program commencement date for up to three years beyond the Governor’s request. In addition, the Administrator may grant a waiver if there is a supply shortage. EPA, working with the Department of Energy, responds quickly to address fuel supply disruptions caused by, for example, refinery or pipeline infrastructure damage as the result of a hurricane or other natural disaster, by issuing emergency waivers of certain fuel standards in affected areas.

Under 40 CFR Part 80.27<sup>11</sup> (Controls and Prohibitions on Gasoline Fuel Volatility), and the CAAA under Section 211 (h)<sup>12</sup>, the EPA regulates the RVP of gasoline in each state. Maine petitioned EPA for approval to opt-in to the RFG program in the southern seven counties beginning on June 1, 2015. EPA published the proposed RFG requirements in the August 28, 2014 Federal Register Vol. 79, No. 167.<sup>13</sup> EPA received no comments. EPA issued the final rule on January 23, 2015. The CAAA section 211 stipulates that the period of applicability for the RFG program is no less than 4 years after the commencement date. Therefore after June 1, 2015, the southern seven Maine counties must remain in the RFG program until June 1, 2019. If after four years Maine chooses to opt-out of the RFG program it will no longer receive the reductions in VOCs, Nitrogen Oxides (NOx) and air toxics that are expected from this program. Maine would then be required to develop alternative control strategies to meet air pollution goals as stipulated under the State Implementation Plan. For these reasons the focus of the report is to evaluate the feasibility of implementing the RFG program statewide.

### **3.0 Implementation Opportunities and Potential Problems**

#### **3.1 Extensive investigation and discussions with gasoline suppliers and distributors**

In seeking to understand the impacts of implementing a single fuel statewide the Department met and communicated with members of the regulated community. These entities included representatives of trade organizations, terminal operators, refiners, and fuel distributors. The Department began its investigation by meeting with MEMA, a trade group representing various entities involved with the supply and distribution of gasoline in Maine. The Department also solicited input from operators and corporate management of multiple terminals in Maine, including Cold Brook Energy, Citgo Petroleum, Buckeye Energy, Gulf Oil, and Irving Oil; representatives that transport gasoline H.A. Mapes, C.N. Brown, and Daigle Oil; representatives of refineries operated by Phillips 66, Paulsboro Refining Company, and North Atlantic Refining Company and a representative of the American Petroleum Institute, the only national trade association that represents all aspects of America’s oil and natural gas industry. In addition to being involved with terminals in Maine, Irving Oil also owns and operates a refinery in St. John, New Brunswick which currently has a significant role in Maine’s gasoline supply. These meetings helped to form the basis of the Department’s understanding regarding the impacts of using a single gasoline statewide.

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<sup>11</sup> See Appendix D

<sup>12</sup> See Appendix E

<sup>13</sup> See Appendix F

### 3.2 Supply

The Department met with members of industry to obtain an understanding of gasoline logistics in Maine. Owners and operators of terminals have differing views on the availability of RFG, likely due to different business models and level of experience with RFG. This environment along with differences in terminal configuration and operations accounts for the variety of responses to Department inquiries. A smaller terminal, which relies on another terminal for its supply, did not believe that a transition to a single fuel statewide would impact their business. The remaining operators indicated that there was a sufficient supply of RFG available or did not express concern over availability; however they indicated it may alter the sources of supply of Maine's gasoline. Opinions regarding the source of this RFG diverged; the amount of RFG that European refiners can produce was a point of disagreement. It appears that a transition to RFG will not exclude the European suppliers from the market, but the exact countries that supply Maine's fuel or components thereof and the extent of their participation may shift. Also the terminals did not agree whether Maine's RFG would be supplied from foreign sources, the Boston area, New York Harbor, or the Gulf Coast. This is likely due to their current business practices; most terminals rely on a large supplier for gasoline, which has voiced concern with RFG (discussed below). This adds to the terminals' concern regarding future supply structures; however information received from industry leads to the belief that there could be sufficient RFG available on the market for Maine to switch to a single fuel.

### 3.3 Refinery Perspectives

The closest refinery to Maine is located in St. John, New Brunswick and is a major supplier of gasoline sold in Maine through business arrangements with multiple terminals. At its meeting with the Department, the refinery operator noted that there is a healthy supply of RFG elsewhere in the United States, however they believe this supply could be constrained by several transportation-related factors, including: capacity limitations on the Colonial Pipeline from the Gulf Coast; the limited availability of Jones Act vessels<sup>14</sup> out of New York Harbor; and an increased demand for oil barges due to the recent increase in domestic crude oil production. As a result, the refinery operator believes that the current supply structure (for conventional fuel) is the most stable and beneficial to Maine. In order to provide RFG to the State of Maine this refinery would have to undergo some reconfiguration, incurring a cost. In addition, they indicate that the RFG would be more expensive for them to refine. These conversion and refining costs would be passed along to the consumer. It should be noted however, that the USEPA Tier III gasoline requirements requiring a reduction in gasoline sulfur content will go into effect in 2017. If foreign or domestic refineries require modifications to meet the new Tier III sulfur limits, facilities may be able to combine any Tier III modifications with RFG reconfigurations to more efficiently meet the market and regulatory demands.

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<sup>14</sup> The Jones Act requires vessel transporting between two domestic ports to be U.S. built, flagged, insured, and crewed.

While the New Brunswick refinery currently produces some amount of RFG, the Department was unable to ascertain whether it would be able to supply RFG statewide which may allow other suppliers currently producing or distributing fuel in other RFG markets to begin serving Maine. Refiners in New Jersey, who primarily produce RFG, stated they could supply RFG to Maine, but indicated that foreign refineries, including Canadian refineries, would continue to supply the majority of Maine's gasoline. Refinery operators indicated that any refinery must be taken offline for maintenance and upgrades, or for repairs in the event of malfunctions. In these situations Maine would be dependent on other sources of fuel for the duration of the shutdown. Switching to a single fuel, RFG, statewide could result in a diversification of fuel suppliers lessening the impact from downtime from a single major supplier.

### **3.4 Distribution**

Regarding distribution, the industry participants the Department met with generally agreed a single fuel statewide could benefit gasoline haulers operating in Maine or would not impact their operations.

Currently a border issue exists between the two fuel types (7.8 and 9.0 RVP) within the State during the ozone season; with the transition to RFG in the seven southern counties this border issue will exist year-round. Small gasoline transporters operating near this border cannot use a single truck to simultaneously transport fuels and supply stations on both sides of the border. The 7.8 RVP requirements and the cost difference between 7.8 and 9.0 RVP fuel mean that it is either illegal to purchase or cost prohibitive to distribute fuel intended for the other side of this border. Even with the implementation of RFG in the seven southern counties this border may continue to exist in some capacity. If this barrier is removed by converting to a single fuel it may allow local fuel delivery businesses to more efficiently service more stations with existing equipment. The fuel border also poses a logistical challenge to long-range haulers; if eliminated they could distribute gasoline anywhere in the state, resupply their trucks, and back haul without running into issues created by a fuel border. The Department is unaware of any fuel distribution in Maine originating from terminals located in Canada, as a result, a change in Maine's fuel type is not likely to result in conflict with Canadian fuel requirements. For both local and long-haul distribution, eliminating the intrastate fuel border could permit Maine businesses to use their existing equipment more effectively.

If storage constraints are eased, as discussed below, statewide RFG may open additional distribution opportunities for Maine businesses. Some terminals indicated that an increased supply of RFG could open new markets, such as Southern New Hampshire or even into Massachusetts, which both require RFG. At least one Portland based fleet currently serves areas which have already transitioned to RFG; these trucks must travel empty to Massachusetts to be filled with RFG. This imposes an additional cost and also reduces the time a driver can distribute fuel, as their hours are limited by federal regulations. If Maine adopts a fuel type which has a large presence in the Northeast, new markets may open to Maine based businesses, however one terminal expressed concern that if Maine transitioned to RFG statewide it may complicate their ability to supply conventional gasoline to northern New Hampshire.

### 3.5 Storage

Currently, all of Maine shares a single fuel outside of the ozone season. This allows terminals to more easily remove tanks from service for inspection, cleaning, repair, or upgrade without disrupting operations. During the ozone season the tanks are split between 7.8 and 9.0 RVP fuels; the need to provide segregated fuel storage capacity makes taking a tank out of service significantly more difficult and increases the risk of a supply disruption. RFG is a year-round program and once it is implemented storage at terminals split between conventional fuel and RFG year-round will result in the loss of flexibility to service tanks during the year. It is unlikely that additional storage capacity will be constructed due to constraints of regulation and location. Therefore, utilizing a single fuel year-round will increase storage capacity and operational flexibility for the remainder of the year. This increase in storage capacity may help to buffer against minor irregularities in supply where smaller interruptions currently could impact part of the state. The addition in storage may also allow Maine based businesses to expand their distribution range. These simplifications of terminal operations could also result in lower operating costs.

### 3.6 Challenges of Potential Reconfiguration at Terminals

In the Department's meetings with terminal operators a potential issue was raised with operating a dual fuel system comprised of RFG and conventional. One terminal operator believes that in order to meet federal regulations they will have to keep reformulated blendstock and conventional blendstock completely separated while blending a midgrade fuel and when moving product off of a ship and within the terminal. They anticipate the associated reconfiguration and piping for terminals in this position of handling both conventional fuel and RFG, including the designation of a "break-out" tank to place any comingled blendstock, would require a significant investment.

Although is not likely to complicate operations for retail stores or transporters which are already keeping two fuel types (e.g. 7.8 and 9.0 RVP) segregated; terminals may need to reconfigure their operations to accommodate RFG. Terminals are configured in different manners, including number of tanks; number of lines connecting the terminal to ships; how tanks are interconnected; and where and how ethanol is blended. While the terminals have been handling two fuels for some time, RFG may require different handling procedure than the present 7.8 RVP fuel which is a conventional fuel. As such, terminal operators have different levels of familiarity with the RFG program making differences between terminals and the change in fuel type difficult to determine potential challenges to each terminal's operations. However, the Department was given the impression that the terminals could be able to make this transition successfully.

### 3.7 Air Quality Evaluation

To assess the emissions benefits of using RFG fuel statewide, the Department relied on staff knowledge, a limited literature review and the results of a modeling analysis. The RFG program is designed to reduce auto emissions of VOCs, NOx and air toxic emissions (e.g. benzene, 1,3 butadiene, formaldehyde, acetaldehydes)<sup>15</sup>. RFG has a lower RVP than conventional fuel and should

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<sup>15</sup> <http://www.epa.gov/otaq/consumer/02-toxic.pdf>

achieve greater VOC reductions. NO<sub>x</sub> and VOCs are the primary contributors to the formation of ground level ozone. Opting to include the remaining nine northern counties into the RFG program could ensure emissions benefits gained from using RFG in southern Maine are realized statewide.

The Department utilized the EPA Office of Transportation and Air Quality's (OTAQ) Motor Vehicle Emission Simulator (MOVES) modeling systems for estimating mobile source emissions covering a broad range of pollutants. In this analysis, the Department focused on VOC and NO<sub>x</sub> emissions estimates. Both modeling scenarios use the same combination of local and national inputs for the year 2011 (best available data) to estimate the total emissions from the on-road mobile sector in the northern nine counties. The 'business as usual' scenario was conducted using weighted average values of fuel parameters gathered from fuel terminals that sell conventional gasoline in the northern counties.

The MOVES model results indicate that this proposed change in the northern nine counties would decrease summer emissions for VOC by 8.4 percent and NO<sub>x</sub> by 2.0 percent annually (Table 1).

**Table 1. MOVES Model Estimated Summer (May-September) Emission Reductions in the Region of Change (Northern Nine Counties)**

Pollutant	Conventional Fuel	RFG Fuel	Emission Reductions (TONS)	Emission Reductions (%)
NO <sub>x</sub>	2016.6	1975.8	40.8	2.02
VOC	1400.7	1282.7	118.0	8.42

Starting in the fall of 2013 the Department expanded its existing ambient Hazardous Air Pollutants (HAPs) monitoring program to include an additional site, increased sampling frequency and additional compounds to be analyzed. Compounds identified as likely or known emissions from mobile sources and associated fuels are being measured and tracked. These monitoring changes are intended to capture ambient air quality changes, if any, to the pollutant composition associated with the transition to RFG in southern Maine and compare it to conventional fuel in the rest of the state. The Department anticipates this expanded monitoring will also allow for greater data assessment related to air quality after RFG is introduced in the southern part of the state as per Maine law. Subsequent to this report, this monitoring will give the Department a greater understanding of the effects on air quality, if any, from mobile sources and related fuels and more clearly determine any net environmental benefit by implementing RFG statewide.

### 3.8 Price difference between RFG and Conventional

To supply Maine with RFG statewide there is uncertainty over where it would be sourced and how it would be transported to Maine. This uncertainty is reflected in the opinions of industry regarding potential costs. These estimates comparing 9.0 RVP gasoline to RFG range from "a few cents", four to five cents, and up to 8 to 10 cents with the possibility of spikes during potential supply irregularities. Industry members provided the Department with rack prices (Table 2), the cost of gasoline at the terminal, for both 9.0 RVP and reformulated gasolines. The RFG cost was

from a terminal in Massachusetts and a terminal in South Portland for conventional 9.0 RVP; any possible

costs associated with transporting RFG to Maine were not included. Based on the data from May 1, 2014 to September 15, 2014, on average RFG was one cent per gallon more expensive at the rack than the gasoline used in northern Maine, and on 24 days the rack price of RFG was less than that of conventional gasoline. During the same period in 2013 the cost difference was 5.78 cents per gallon, and there were no days with RFG selling below conventional. In 2012, information was available starting May 30<sup>th</sup> and the market displayed a price difference of 8.88 cents per gallon, at no time was RFG less expensive than conventional gasoline in 2012. It appears that the cost difference between conventional fuel and RFG has been trending down, possibly due to market forces such as economies of scale.

**Table 2. Average Daily Difference of Rack Price for RFG and Conventional Gasoline per Gallon as Provided to the Department.**

	2014	2013	2012
Average Reformulated Gasoline	\$2.93	\$2.97	\$3.01
Average Conventional (9.0) Gasoline	\$2.92	\$2.91	\$2.92
Average Daily RFG Price Difference*	+\$0.01	+\$0.06	+\$0.09

\*The average is of each daily difference and not the difference of the average fuel cost over the same period.

The United States Energy Information Administration (EIA) collects the retail prices of gasoline across the country and also sorts the data by region. This can illuminate the price difference between conventional gasoline and RFG. Like the rack pricing it has shortcomings; the EIA only collects their data for conventional and reformulated gasolines and does not distinguish between conventional 7.8 and 9.0 RVP. When comparing local rack prices the Department was able to differentiate between the costs of 7.8 and 9.0 conventional fuels, however at the EIA no such distinction was possible. Looking at fuel prices in PADD 1A (New England), since 2006 the average cost for premium grade RFG was 0.8 cents more than conventional; midgrade RFG was 1.5 cents more expensive; regular grade RFG was 0.001 cents *less* expensive; and the overall sale of all grades of RFG was 0.1 cents *less* expensive. (See graph below for EIA price trends) While there are other factors that were not captured within the dataset, the retail price difference between RFG and conventional fuel in New England averaged less than a tenth of a cent.

**Weekly Retail Gasoline and Diesel Prices (November 2014)**

Source: U.S. Energy Information Administration

### 3.8.1 Additional Factors Influencing Cost

There are many variables that influence the price of gasoline, which makes it difficult to predict the potential effects of changing Maine's gasoline blend. The majority of the fuel in the State of Maine currently comes from a single supplier; the Department has been unable to confirm that this arrangement will be possible if RFG is implemented on a statewide basis. However, RFG is refined in various locations including Europe, the United States Gulf Coast, the East Coast, and Canada. In discussion with members of the fuel industry the Department was given information that there should be a sufficient supply of RFG from these and other sources to meet Maine's needs if it is implemented statewide.

A transition to RFG may result in Maine's gasoline being sourced from different, and perhaps a greater variety of sources. In this scenario, it is difficult to determine the impact on fuel cost. Market forces such as increased competition, increased distribution efficiency (as discussed above), and simplified terminal operations (by eliminating the need for terminals to carry multiple fuels) may help to control or reduce costs. But, obtaining gasoline from additional sources may involve more complex logistics and could result in additional costs. Gasoline from the Gulf Coast travels to the Northeast via the Colonial Pipeline, which is already nearing maximum capacity. It is possible that gasoline delivered to the New York area, from sources such as the Gulf Coast or other domestic and foreign refineries would require a ship to bring it to Maine. Any ship transporting oil between U.S.

ports, be it from the Gulf Coast, New York Harbor, or Boston, must comply with the Jones Act. This means the vessel must be U.S. built, flagged, owned, and crewed which may result in increased shipping costs. Any fuel from Massachusetts would also potentially incur additional transportation cost. The variations in price provided by industry, the variety of fuel suppliers and the differing methods of transporting gasoline highlight the ever evolving a fluctuating nature of fuel supply. This makes predicting the economics of fuel pricing difficult as many factors can influence the retail price.

### **3.9 Border Areas**

Currently Maine has 3 gasoline borders, excluding the international border with Canada. The seven southern counties in Maine border both RFG and conventional gasoline areas in New Hampshire and there is also a border between the northern Maine counties using conventional gasoline and the seven southern counties which will be using RFG. When the seven southern counties transition from 7.8 RVP to RFG, in June 2015, the border between the seven southern counties and the portion of New Hampshire requiring RFG will cease to exist. If Maine transitions to RFG statewide there would only be one gasoline border between RFG in Maine and conventional gasoline in northern New Hampshire. The Department is aware that conditions at these border areas can result in price differentials which consumers may choose to take advantage of when purchasing fuel.

In addition, the removal of the intrastate fuel border should ensure that the environmental benefits of RFG gained in the seven southern counties will be realized statewide.

## **4 Conclusions**

In conclusion, transitioning to RFG may alter the gasoline supply landscape in Maine. This landscape may include a different number of suppliers of gasoline, some of whom may not currently participate significantly in Maine's gasoline market, making it difficult to determine how costs will differ from those presently incurred. Data by industry from terminals in South Portland and Massachusetts and data collected by the EIA across all of New England indicate that the prices of RFG and conventional gasoline have been, on average, similarly priced, however gasoline market forces could dramatically and rapidly affect this pattern. In discussion with members of the fuel industry the Department was informed that there should be a sufficient supply of RFG from these and other sources to meet Maine's needs if RFG is implemented RFG statewide, however much like the present blends of gasoline, the factors discussed in this report are constantly changing and may result in unforeseen transient difficulties.

Since EPA will need to amend federal regulations to require RFG statewide; a process that can be expected to take 6 months or more, a CAAA Section 211(k)(6)(B)<sup>16</sup> petition to expand the use of RFG should request an implementation date no sooner than one-year after the petition is submitted.

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<sup>16</sup> See Appendix B

## **Appendix A**

L.D. 1359 and L.D. 1796

## **An Act To Update and Simplify Maine Gasoline Requirements**

**Emergency preamble. Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** in order to meet federal Clean Air Act requirements, from May 1st to September 15th, retailers who sell gasoline in 7 southern counties in the State may sell only gasoline that has a Reid vapor pressure no greater than 7.8 psi; and

**Whereas,** before the State can require the 7 counties to sell only reformulated gasoline during the summer months, the Department of Environmental Protection must submit a request to the United States Environmental Protection Agency; and

**Whereas,** sufficient lead time is necessary for submittal of the State's request by the Department of Environmental Protection and review of the State's request by the United States Environmental Protection Agency prior to the 2014 summer season; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 38 MRSA §582, sub-§10-B** is enacted to read:

**10-B. Reformulated gasoline.** "Reformulated gasoline" has the same meaning as in 40 Code of Federal Regulations, Section 80.2(ee) (2012).

**Sec. 2. 38 MRSA §585-N** is enacted to read:

**§ 585-N. Reformulated gasoline**

Beginning May 1, 2014, a retailer who sells gasoline in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox or Lincoln County may sell only reformulated gasoline in those counties.

**Sec. 3. Report.** The Department of Environmental Protection shall study the feasibility of easing the multiple gasoline requirements in this State and achieving the use of a single type of gasoline for all of the State. The Department of Environmental Protection shall submit a report and implementing legislation directing the State to use a single type of gasoline to the Joint Standing Committee on Environment and Natural Resources by December 4, 2013. The Joint Standing Committee on Environment and Natural Resources may report out a bill on the subject matter of the department's report to the Second Regular Session of the 126th Legislature.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective 90 days following adjournment of the 126th Legislature, First Regular Session, unless otherwise indicated.

## **An Act To Delay Implementation of Reformulated Gasoline Requirements in Maine**

**Emergency preamble. Whereas,** acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** current law requires the sale of reformulated gasoline in 7 southern counties in the State beginning on May 1, 2014; and

**Whereas,** due to recent developments in the gasoline supply network, gasoline distributors in the State are unable to meet this requirement without significant expense, which could impact pricing across the State; and

**Whereas,** in order to meet federal Clean Air Act requirements, from May 1st to September 15th, retailers who sell gasoline in 7 southern counties in the State may sell only gasoline that has a Reid vapor pressure no greater than 7.8 psi; and

**Whereas,** before the State can require the 7 counties to sell only reformulated gasoline during the summer months, the Department of Environmental Protection must submit a request to the United States Environmental Protection Agency; and

**Whereas,** sufficient lead time is necessary for submission of the State's request by the Department of Environmental Protection and review of the State's request by the United States Environmental Protection Agency prior to the 2015 summer season; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 38 MRSA §585-N,** as enacted by PL 2013, c. 221, §2, is amended to read:

### **§ 585-N. Reformulated gasoline**

Beginning ~~May 1, 2014~~ June 1, 2015, a retailer who sells gasoline in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox or Lincoln County may sell only reformulated gasoline in those counties.

**Sec. 2. Report.** The Department of Environmental Protection shall study the feasibility of easing the multiple gasoline requirements in this State and achieving the use of a single type of gasoline for all of the State. The Department of Environmental Protection shall submit a report and implementing legislation directing the State to use a single type of gasoline to the joint standing committee of the Legislature having jurisdiction over environment and natural

resources matters by January 30, 2015. The joint standing committee may report out a bill on the subject matter of the department's report to the First Regular Session of the 127th Legislature.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective 90 days following adjournment of the 126th Legislature, Second Regular Session,  
unless otherwise indicated

## **Appendix B**

Clean Air Act Amendments of 1990 Section 211 (k)

***(k) Reformulated gasoline for conventional vehicles******(1) EPA regulations******(A) In general***

Not later than November 15, 1991, the Administrator shall promulgate regulations under this section establishing requirements for reformulated gasoline to be used in gasoline-fueled vehicles in specified nonattainment areas. Such regulations shall require the greatest reduction in emissions of ozone forming volatile organic compounds (during the high ozone season) and emissions of toxic air pollutants (during the entire year) achievable through the reformulation of conventional gasoline, taking into consideration the cost of achieving such emission reductions, any nonair-quality and other air-quality related health and environmental impacts and energy requirements.

***(B) Maintenance of toxic air pollutant emissions reductions from reformulated gasoline******(i) Definition of PADD***

In this subparagraph the term “PADD” means a Petroleum Administration for Defense District.

***(ii) Regulations concerning emissions of toxic air pollutants***

Not later than 270 days after August 8, 2005, the Administrator shall establish by regulation, for each refinery or importer (other than a refiner or importer in a State that has received a waiver under section 7543(b) of this title with respect to gasoline produced for use in that State), standards for toxic air pollutants from use of the reformulated gasoline produced or distributed by the refiner or importer that maintain the reduction of the average annual aggregate emissions of toxic air pollutants for reformulated gasoline produced or distributed by the refiner or importer during calendar years 2001 and 2002 (as determined on the basis of data collected by the Administrator with respect to the refiner or importer).

***(iii) Standards applicable to specific refineries or importers******(I) Applicability of standards***

For any calendar year, the standards applicable to a refiner or importer under clause (ii) shall apply to the quantity of gasoline produced or distributed by the refiner or importer in the calendar year only to the extent that the quantity is less than or equal to the average annual quantity of reformulated gasoline produced or distributed by the refiner or importer during calendar years 2001 and 2002.

***(II) Applicability of other standards***

For any calendar year, the quantity of gasoline produced or distributed by a refiner or importer that is in excess of the quantity subject to subclause (I) shall be subject to standards for emissions of toxic air pollutants promulgated under subparagraph (A) and paragraph (3)(B).

***(iv) Credit program***

The Administrator shall provide for the granting and use of credits for emissions of toxic air pollutants in the same manner as provided in paragraph (7).

***(v) Regional protection of toxics reduction baselines******(I) In general***

Not later than 60 days after August 8, 2005, and not later than April 1 of each calendar year that begins after August 8, 2005, the Administrator shall publish in the Federal Register a report that specifies, with respect to the previous calendar year—

(aa) the quantity of reformulated gasoline produced that is in excess of the average annual quantity of reformulated gasoline produced in 2001 and 2002; and

(bb) the reduction of the average annual aggregate emissions of toxic air pollutants in each PADD, based on retail survey data or data from other appropriate sources.

***(II) Effect of failure to maintain aggregate toxics reductions***

If, in any calendar year, the reduction of the average annual aggregate emissions of toxic air pollutants in a PADD fails to meet or exceed the reduction of the average annual aggregate emissions of toxic air pollutants in the PADD in calendar years 2001 and 2002, the Administrator, not later than 90 days after the date of publication of the report for the calendar year under subclause (I), shall—

(aa) identify, to the maximum extent practicable, the reasons for the failure, including the sources, volumes, and characteristics of reformulated gasoline that contributed to the failure; and

(bb) promulgate revisions to the regulations promulgated under clause (ii), to take effect not earlier than 180 days but not later than 270 days after the date of promulgation, to provide that, notwithstanding clause (iii)(II), all reformulated gasoline produced or distributed at each refiner or importer shall meet the standards applicable under clause (iii)(I) beginning not later than April 1 of the calendar year following publication of the report under subclause (I) and in each calendar year thereafter.

(vi) Not later than July 1, 2007, the Administrator shall promulgate final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels, as provided for in section 80.1045 of title 40, Code of Federal Regulations (as in effect on August 8, 2005), and as authorized under section 7521(l)<sup>5</sup> of this title. If the Administrator promulgates by such date, final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels that achieve and maintain greater overall reductions in emissions of air toxics from reformulated gasoline than the reductions that would be achieved under subsection (k)(1)(B) of this section as amended by this clause, then subsections (k)(1)(B)(i) through (k)(1)(B)(v) of this section shall be null and void and regulations promulgated thereunder shall be rescinded and have no further effect.

## **(2) General requirements**

The regulations referred to in paragraph (1) shall require that reformulated gasoline comply with paragraph (3) and with each of the following requirements (subject to paragraph (7)):

### **(A) NO<sub>x</sub> emissions**

The emissions of oxides of nitrogen (NO<sub>x</sub>) from baseline vehicles when using the reformulated gasoline shall be no greater than the level of such emissions from such vehicles when using baseline gasoline. If the Administrator determines that compliance with the limitation on emissions of oxides of nitrogen under the preceding sentence is technically infeasible, considering the other requirements applicable under this subsection to such gasoline, the Administrator may, as appropriate to ensure compliance with this subparagraph, adjust (or waive entirely), any other requirements of this paragraph or any requirements applicable under paragraph (3)(A).

### **(B) Benzene content**

The benzene content of the gasoline shall not exceed 1.0 percent by volume.

### **(C) Heavy metals**

The gasoline shall have no heavy metals, including lead or manganese. The Administrator may waive the prohibition contained in this subparagraph for a heavy metal (other than lead) if the Administrator determines that addition of the heavy metal to the gasoline will not increase, on an aggregate mass or cancer-risk basis, toxic air pollutant emissions from motor vehicles.

## **(3) More stringent of formula or performance standards**

The regulations referred to in paragraph (1) shall require compliance with the more stringent of either the requirements set forth in subparagraph (A) or the

requirements of subparagraph (B) of this paragraph. For purposes of determining the more stringent provision, clause (i) and clause (ii) of subparagraph (B) shall be considered independently.

**(A) Formula**

**(i) Benzene**

The benzene content of the reformulated gasoline shall not exceed 1.0 percent by volume.

**(ii) Aromatics**

The aromatic hydrocarbon content of the reformulated gasoline shall not exceed 25 percent by volume.

**(iii) Lead**

The reformulated gasoline shall have no lead content.

**(iv) Detergents**

The reformulated gasoline shall contain additives to prevent the accumulation of deposits in engines or vehicle fuel supply systems.

**(B) Performance standard**

**(i) VOC emissions**

During the high ozone season (as defined by the Administrator), the aggregate emissions of ozone forming volatile organic compounds from baseline vehicles when using the reformulated gasoline shall be 15 percent below the aggregate emissions of ozone forming volatile organic compounds from such vehicles when using baseline gasoline. Effective in calendar year 2000 and thereafter, 25 percent shall be substituted for 15 percent in applying this clause, except that the Administrator may adjust such 25 percent requirement to provide for a lesser or greater reduction based on technological feasibility, considering the cost of achieving such reductions in VOC emissions. No such adjustment shall provide for less than a 20 percent reduction below the aggregate emissions of such air pollutants from such vehicles when using baseline gasoline. The reductions required under this clause shall be on a mass basis.

**(ii) Toxics**

During the entire year, the aggregate emissions of toxic air pollutants from baseline vehicles when using the reformulated gasoline shall be 15 percent below the aggregate emissions of toxic air pollutants from such vehicles when using baseline gasoline. Effective in calendar year 2000 and thereafter, 25 percent shall be substituted for 15 percent in applying this clause, except that the Administrator may adjust such 25 percent requirement to provide for a lesser or greater reduction based on technological feasibility, considering the

cost of achieving such reductions in toxic air pollutants. No such adjustment shall provide for less than a 20 percent reduction below the aggregate emissions of such air pollutants from such vehicles when using baseline gasoline. The reductions required under this clause shall be on a mass basis.

Any reduction greater than a specific percentage reduction required under this subparagraph shall be treated as satisfying such percentage reduction requirement.

#### **(4) Certification procedures**

##### **(A) Regulations**

The regulations under this subsection shall include procedures under which the Administrator shall certify reformulated gasoline as complying with the requirements established pursuant to this subsection. Under such regulations, the Administrator shall establish procedures for any person to petition the Administrator to certify a fuel formulation, or slate of fuel formulations. Such procedures shall further require that the Administrator shall approve or deny such petition within 180 days of receipt. If the Administrator fails to act within such 180-day period, the fuel shall be deemed certified until the Administrator completes action on the petition.

##### **(B) Certification; equivalency**

The Administrator shall certify a fuel formulation or slate of fuel formulations as complying with this subsection if such fuel or fuels—

- (i) comply with the requirements of paragraph (2), and
- (ii) achieve equivalent or greater reductions in emissions of ozone forming volatile organic compounds and emissions of toxic air pollutants than are achieved by a reformulated gasoline meeting the applicable requirements of paragraph (3).

##### **(C) EPA determination of emissions level**

Within 1 year after November 15, 1990, the Administrator shall determine the level of emissions of ozone forming volatile organic compounds and emissions of toxic air pollutants emitted by baseline vehicles when operating on baseline gasoline. For purposes of this subsection, within 1 year after November 15, 1990, the Administrator shall, by rule, determine appropriate measures of, and methodology for, ascertaining the emissions of air pollutants (including calculations, equipment, and testing tolerances).

#### **(5) Prohibition**

Effective beginning January 1, 1995, each of the following shall be a violation of this subsection:

(A) The sale or dispensing by any person of conventional gasoline to ultimate consumers in any covered area.

(B) The sale or dispensing by any refiner, blender, importer, or marketer of conventional gasoline for resale in any covered area, without (i) segregating such gasoline from reformulated gasoline, and (ii) clearly marking such conventional gasoline as “conventional gasoline, not for sale to ultimate consumer in a covered area”.

Any refiner, blender, importer or marketer who purchases property <sup>6</sup> segregated and marked conventional gasoline, and thereafter labels, represents, or wholesales such gasoline as reformulated gasoline shall also be in violation of this subsection. The Administrator may impose sampling, testing, and recordkeeping requirements upon any refiner, blender, importer, or marketer to prevent violations of this section.

## **(6) Opt-in areas**

### **(A) Classified areas**

#### **(i) In general**

Upon the application of the Governor of a State, the Administrator shall apply the prohibition set forth in paragraph (5) in any area in the State classified under subpart 2 of part D of subchapter I of this chapter as a Marginal, Moderate, Serious, or Severe Area (without regard to whether or not the 1980 population of the area exceeds 250,000). In any such case, the Administrator shall establish an effective date for such prohibition as he deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later. The Administrator shall publish such application in the Federal Register upon receipt.

#### **(ii) Effect of insufficient domestic capacity to produce reformulated gasoline**

If the Administrator determines, on the Administrator's own motion or on petition of any person, after consultation with the Secretary of Energy, that there is insufficient domestic capacity to produce gasoline certified under this subsection, the Administrator shall, by rule, extend the effective date of such prohibition in Marginal, Moderate, Serious, or Severe Areas referred to in clause (i) for one additional year, and may, by rule, renew such extension for 2 additional one-year periods. The Administrator shall act on any petition submitted under this subparagraph within 6 months after receipt of the petition. The Administrator shall issue such extensions for areas with a lower ozone classification before issuing any such extension for areas with a higher classification.

***(B) Ozone transport region******(i) Application of prohibition******(I) In general***

On application of the Governor of a State in the ozone transport region established by section 7511c(a) of this title, the Administrator, not later than 180 days after the date of receipt of the application, shall apply the prohibition specified in paragraph (5) to any area in the State (other than an area classified as a marginal, moderate, serious, or severe ozone nonattainment area under subpart 2 of part D of subchapter I of this chapter) unless the Administrator determines under clause (iii) that there is insufficient capacity to supply reformulated gasoline.

***(II) Publication of application***

As soon as practicable after the date of receipt of an application under subclause (I), the Administrator shall publish the application in the Federal Register.

***(ii) Period of applicability***

Under clause (i), the prohibition specified in paragraph (5) shall apply in a State—

(I) commencing as soon as practicable but not later than 2 years after the date of approval by the Administrator of the application of the Governor of the State; and

(II) ending not earlier than 4 years after the commencement date determined under subclause (I).

***(iii) Extension of commencement date based on insufficient capacity******(I) In general***

If, after receipt of an application from a Governor of a State under clause (i), the Administrator determines, on the Administrator's own motion or on petition of any person, after consultation with the Secretary of Energy, that there is insufficient capacity to supply reformulated gasoline, the Administrator, by regulation—

(aa) shall extend the commencement date with respect to the State under clause (ii)(I) for not more than 1 year; and

(bb) may renew the extension under item (aa) for 2 additional periods, each of which shall not exceed 1 year.

***(II) Deadline for action on petitions***

The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.

**(7) Credits**

(A) The regulations promulgated under this subsection shall provide for the granting of an appropriate amount of credits to a person who refines, blends, or imports and certifies a gasoline or slate of gasoline that—

(i) has an aromatic hydrocarbon content (by volume) that is less than the maximum aromatic hydrocarbon content required to comply with paragraph (3);

or

(ii) has a benzene content (by volume) that is less than the maximum benzene content specified in paragraph (2).

(B) The regulations described in subparagraph (A) shall also provide that a person who is granted credits may use such credits, or transfer all or a portion of such credits to another person for use within the same nonattainment area, for the purpose of complying with this subsection.

(C) The regulations promulgated under subparagraphs (A) and (B) shall ensure the enforcement of the requirements for the issuance, application, and transfer of the credits. Such regulations shall prohibit the granting or transfer of such credits for use with respect to any gasoline in a nonattainment area, to the extent the use of such credits would result in any of the following:

(i) An average gasoline aromatic hydrocarbon content (by volume) for the nonattainment (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) higher than the average fuel aromatic hydrocarbon content (by volume) that would occur in the absence of using any such credits.

(ii) An average benzene content (by volume) for the nonattainment area (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) higher than the average benzene content (by volume) that would occur in the absence of using any such credits.

**(8) Anti-dumping rules****(A) In general**

Within 1 year after November 15, 1990, the Administrator shall promulgate regulations applicable to each refiner, blender, or importer of gasoline ensuring that gasoline sold or introduced into commerce by such refiner, blender, or importer (other than reformulated gasoline subject to the requirements of paragraph (1)) does not result in average per gallon emissions (measured on a mass basis) of (i) volatile organic compounds, (ii) oxides of nitrogen, (iii) carbon monoxide, and (iv) toxic air pollutants in excess of such emissions of such pollutants attributable to gasoline sold or introduced into commerce in calendar

year 1990 by that refiner, blender, or importer. Such regulations shall take effect beginning January 1, 1995.

***(B) Adjustments***

In evaluating compliance with the requirements of subparagraph (A), the Administrator shall make appropriate adjustments to insure that no credit is provided for improvement in motor vehicle emissions control in motor vehicles sold after the calendar year 1990.

***(C) Compliance determined for each pollutant independently***

In determining whether there is an increase in emissions in violation of the prohibition contained in subparagraph (A) the Administrator shall consider an increase in each air pollutant referred to in clauses (i) through (iv) as a separate violation of such prohibition, except that the Administrator shall promulgate regulations to provide that any increase in emissions of oxides of nitrogen resulting from adding oxygenates to gasoline may be offset by an equivalent or greater reduction (on a mass basis) in emissions of volatile organic compounds, carbon monoxide, or toxic air pollutants, or any combination of the foregoing.

***(D) Compliance period***

The Administrator shall promulgate an appropriate compliance period or appropriate compliance periods to be used for assessing compliance with the prohibition contained in subparagraph (A).

***(E) Baseline for determining compliance***

If the Administrator determines that no adequate and reliable data exists regarding the composition of gasoline sold or introduced into commerce by a refiner, blender, or importer in calendar year 1990, for such refiner, blender, or importer, baseline gasoline shall be substituted for such 1990 gasoline in determining compliance with subparagraph (A).

***(9) Emissions from entire vehicle***

In applying the requirements of this subsection, the Administrator shall take into account emissions from the entire motor vehicle, including evaporative, running, refueling, and exhaust emissions.

***(10) Definitions***

For purposes of this subsection—

***(A) Baseline vehicles***

The term “baseline vehicles” mean representative model year 1990 vehicles.

**(B) Baseline gasoline****(i) Summertime**

The term “baseline gasoline” means in the case of gasoline sold during the high ozone period (as defined by the Administrator) a gasoline which meets the following specifications:

BASELINE GASOLINE FUEL PROPERTIES	
API Gravity	57.4
Sulfur, ppm	339
Benzene, %	1.53
RVP, psi	8.7
Octane, R+M/2	87.3
IBP, F	91
10%, F	128
50%, F	218
90%, F	330
End Point, F	415
Aromatics, %	32.0
Olefins, %	9.2
Saturates, %	58.8

**(ii) Wintertime**

The Administrator shall establish the specifications of “baseline gasoline” for gasoline sold at times other than the high ozone period (as defined by the Administrator). Such specifications shall be the specifications of 1990 industry average gasoline sold during such period.

**(C) Toxic air pollutants**

The term “toxic air pollutants” means the aggregate emissions of the following:

Benzene

1,3 Butadiene  
Polycyclic organic matter (POM)  
Acetaldehyde  
Formaldehyde.

***(D) Covered area***

The 9 ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design value during the period 1987 through 1989 shall be “covered areas” for purposes of this subsection. Effective one year after the reclassification of any ozone nonattainment area as a Severe ozone nonattainment area under section 7511(b) of this title, such Severe area shall also be a “covered area” for purposes of this subsection.

***(E) Reformulated gasoline***

The term “reformulated gasoline” means any gasoline which is certified by the Administrator under this section as complying with this subsection.

***(F) Conventional gasoline***

The term “conventional gasoline” means any gasoline which does not meet specifications set by a certification under this subsection.

## **Appendix C**

Clean Air Act Amendments of 1990 Section 211 (c)

***(c) Offending fuels and fuel additives; control; prohibition***

(1) The Administrator may, from time to time on the basis of information obtained under subsection (b) of this section or other information available to him, by regulation, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle, motor vehicle engine, or nonroad engine or nonroad vehicle if, in the judgment of the Administrator, any fuel or fuel additive or any emission product of such fuel or fuel additive causes, or contributes, to air pollution or water pollution (including any degradation in the quality of groundwater) that may reasonably be anticipated to endanger the public health or welfare, or (B) 2 if emission products of such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulation to be promulgated.

(2)(A) No fuel, class of fuels, or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (A) of paragraph (1) except after consideration of all relevant medical and scientific evidence available to him, including consideration of other technologically or economically feasible means of achieving emission standards under section 7521 of this title.

(B) No fuel or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (B) of paragraph (1) except after consideration of available scientific and economic data, including a cost benefit analysis comparing emission control devices or systems which are or will be in general use and require the proposed control or prohibition with emission control devices or systems which are or will be in general use and do not require the proposed control or prohibition. On request of a manufacturer of motor vehicles, motor vehicle engines, fuels, or fuel additives submitted within 10 days of notice of proposed rulemaking, the Administrator shall hold a public hearing and publish findings with respect to any matter he is required to consider under this subparagraph. Such findings shall be published at the time of promulgation of final regulations.

(C) No fuel or fuel additive may be prohibited by the Administrator under paragraph (1) unless he finds, and publishes such finding, that in his judgment such prohibition will not cause the use of any other fuel or fuel additive which will produce emissions which will endanger the public health or welfare to the same or greater degree than the use of the fuel or fuel additive proposed to be prohibited.

(3)(A) For the purpose of obtaining evidence and data to carry out paragraph (2), the Administrator may require the manufacturer of any motor vehicle or motor vehicle engine to furnish any information which has been developed concerning the emissions from motor vehicles resulting from the use of any fuel or fuel additive, or the effect of such use on the performance of any emission control device or system.

(B) In obtaining information under subparagraph (A), section 7607(a) of this title (relating to subpoenas) shall be applicable.

(4)(A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting any characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine—

(i) if the Administrator has found that no control or prohibition of the characteristic or component of a fuel or fuel additive under paragraph (1) is necessary and has published his finding in the Federal Register, or

(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such characteristic or component of a fuel or fuel additive, unless State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

(B) Any State for which application of section 7543(a) of this title has at any time been waived under section 7543(b) of this title may at any time prescribe and enforce, for the purpose of motor vehicle emission control, a control or prohibition respecting any fuel or fuel additive.

(C)(i) A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 7410 of this title so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity under this subparagraph even if the plan for the area does not contain an approved demonstration of timely attainment.

(ii) The Administrator may temporarily waive a control or prohibition respecting the use of a fuel or fuel additive required or regulated by the Administrator pursuant to subsection (c), (h), (i), (k), or (m) of this section or prescribed in an applicable implementation plan under section 7410 of this title approved by the Administrator under clause (i) of this subparagraph if, after consultation with, and concurrence by, the Secretary of Energy, the Administrator determines that—

(I) extreme and unusual fuel or fuel additive supply circumstances exist in a State or region of the Nation which prevent the distribution of an adequate supply of the fuel or fuel additive to consumers;

(II) such extreme and unusual fuel and fuel additive supply circumstances are the result of a natural disaster, an Act of God, a pipeline or refinery equipment failure, or another event that could not reasonably have been foreseen or prevented and not the lack of prudent planning on the part of the suppliers of the fuel or fuel additive to such State or region; and

(III) it is in the public interest to grant the waiver (for example, when a waiver is necessary to meet projected temporary shortfalls in the supply of the fuel or fuel additive in a State or region of the Nation which cannot otherwise be compensated for).

(iii) If the Administrator makes the determinations required under clause (ii), such a temporary extreme and unusual fuel and fuel additive supply circumstances waiver shall be permitted only if—

(I) the waiver applies to the smallest geographic area necessary to address the extreme and unusual fuel and fuel additive supply circumstances;

(II) the waiver is effective for a period of 20 calendar days or, if the Administrator determines that a shorter waiver period is adequate, for the shortest practicable time period necessary to permit the correction of the extreme and unusual fuel and fuel additive supply circumstances and to mitigate impact on air quality;

(III) the waiver permits a transitional period, the exact duration of which shall be determined by the Administrator (but which shall be for the shortest practicable period), after the termination of the temporary waiver to permit wholesalers and retailers to blend down their wholesale and retail inventory;

(IV) the waiver applies to all persons in the motor fuel distribution system; and

(V) the Administrator has given public notice to all parties in the motor fuel distribution system, and local and State regulators, in the State or region to be covered by the waiver.

The term “motor fuel distribution system” as used in this clause shall be defined by the Administrator through rulemaking.

(iv) Within 180 days of August 8, 2005, the Administrator shall promulgate regulations to implement clauses (ii) and (iii).

(v) 3 Nothing in this subparagraph shall—

(I) limit or otherwise affect the application of any other waiver authority of the Administrator pursuant to this section or pursuant to a regulation promulgated pursuant to this section; and

(II) subject any State or person to an enforcement action, penalties, or liability solely arising from actions taken pursuant to the issuance of a waiver under this subparagraph.

(v)(I) 3 The Administrator shall have no authority, when considering a State implementation plan or a State implementation plan revision, to approve under this paragraph any fuel included in such plan or revision if the effect of such approval increases the total number of fuels approved under this paragraph as of September 1, 2004, in all State implementation plans.

(II) The Administrator, in consultation with the Secretary of Energy, shall determine the total number of fuels approved under this paragraph as of September 1, 2004, in all State implementation plans and shall publish a list of such fuels, including the States and Petroleum Administration for Defense District in which they are used, in the Federal Register for public review and comment no later than 90 days after August 8, 2005.

(III) The Administrator shall remove a fuel from the list published under subclause (II) if a fuel ceases to be included in a State implementation plan or if a fuel in a State implementation plan is identical to a Federal fuel formulation implemented by the Administrator, but the Administrator shall not reduce the total number of fuels authorized under the list published under subclause (II).

(IV) Subclause (I) shall not limit the Administrator's authority to approve a control or prohibition respecting any new fuel under this paragraph in a State implementation plan or revision to a State implementation plan if such new fuel—

(aa) completely replaces a fuel on the list published under subclause (II); or

(bb) does not increase the total number of fuels on the list published under subclause (II) as of September 1, 2004.

In the event that the total number of fuels on the list published under subclause (II) at the time of the Administrator's consideration of a control or prohibition respecting a new fuel is lower than the total number of fuels on such list as of September 1, 2004, the Administrator may approve a control or prohibition respecting a new fuel under this subclause if the Administrator, after consultation with the Secretary of Energy, publishes in the Federal Register after notice and comment a finding that, in the Administrator's judgment, such control or prohibition respecting a new fuel will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas.

(V) The Administrator shall have no authority under this paragraph, when considering any particular State's implementation plan or a revision to that State's implementation plan, to approve any fuel unless that fuel was, as of the date of such consideration, approved in at least one State implementation plan in the applicable Petroleum Administration for Defense District. However, the Administrator may approve as part of a State implementation plan or State implementation plan revision a fuel with a summertime Reid Vapor Pressure of 7.0 psi. In no event shall such approval by the Administrator cause an increase in the total number of fuels on the list published under subclause (II).

(VI) Nothing in this clause shall be construed to have any effect regarding any available authority of States to require the use of any fuel additive registered in accordance with subsection (b) of this section, including any fuel additive registered in accordance with subsection (b) of this section after August 8, 2005.

## **Appendix D**

40 CFR 80.27

## Code of Federal Regulations

### Title 40 - Protection of Environment

Volume: 16 Date: 2010-07-01 Original Date: 2010-07-01 Title: Section 80.27 - Controls and prohibitions on gasoline volatility. Context: Title 40 - Protection of Environment. CHAPTER I - ENVIRONMENTAL PROTECTION AGENCY (CONTINUED). SUBCHAPTER C - AIR PROGRAMS (CONTINUED). PART 80 - REGULATION OF FUELS AND FUEL ADDITIVES. Subpart B - Controls and Prohibitions.

**§ 80.27 Controls and prohibitions on gasoline volatility.**(a)(1) *Prohibited activities in 1991.* During the 1991 regulatory control periods, no refiner, importer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall sell, offer for sale, dispense, supply, offer for supply, or transport gasoline whose Reid vapor pressure exceeds the applicable standard. As used in this section and § 80.28, “applicable standard” means the standard listed in this paragraph for the geographical area and time period in which the gasoline is intended to be dispensed to motor vehicles or, if such area and time period cannot be determined, the standard listed in this paragraph that specifies the lowest Reid vapor pressure for the year in which the gasoline is being sampled. As used in this section and § 80.28, “regulatory control periods” mean June 1 to September 15 for retail outlets and wholesale purchaser-consumers and May 1 to September 15 for all other facilities.

Applicable Standards 1State [Pre-1992]	May	June	July	Aug.	Sept.
Alabama	10.5	10.5	9.5	9.5	10.5
Arizona:					
North of 34 degrees latitude and east of 111 degrees longitude	9.5	9.0	9.0	9.5	9.5
All areas except North of 34 degrees latitude and east of 111 degrees longitude	9.5	9.0	9.0	9.0	9.5
Arkansas	10.5	10.5	9.5	9.5	10.5
California: 2					
North Coast	10.5	9.5	9.5	9.5	9.5
South Coast	9.5	9.5	9.5	9.5	9.5
Southeast	9.5	9.5	9.5	9.5	9.5
Interior	9.5	9.5	9.5	9.5	9.5
Colorado	10.5	9.5	9.5	9.5	9.5
Connecticut	10.5	10.5	10.5	10.5	10.5
Delaware	10.5	10.5	10.5	10.5	10.5
District of Columbia	10.5	10.5	10.5	10.5	10.5

Florida	10.5	10.5	10.5	10.5	10.5
Georgia	10.5	10.5	9.5	9.5	10.5
Idaho	10.5	10.5	10.5	10.5	10.5
Illinois:					
North of 40 Latitude	10.5	10.5	10.5	10.5	10.5
South of 40 Latitude	10.5	10.5	9.5	9.5	10.5
Indiana	10.5	10.5	10.5	10.5	10.5
Iowa	10.5	10.5	10.5	10.5	10.5
Kansas	10.5	10.5	9.5	9.5	10.5
Kentucky	10.5	10.5	10.5	10.5	10.5
Louisiana	10.5	10.5	9.5	9.5	10.5
Maine	10.5	10.5	10.5	10.5	10.5
Maryland	10.5	10.5	10.5	10.5	10.5
Massachusetts	10.5	10.5	10.5	10.5	10.5
Michigan	10.5	10.5	10.5	10.5	10.5
Minnesota	10.5	10.5	10.5	10.5	10.5
Mississippi	10.5	10.5	9.5	9.5	10.5
Missouri	10.5	10.5	9.5	9.5	10.5
Montana	10.5	10.5	10.5	10.5	10.5
Nebraska	10.5	10.5	10.5	10.5	10.5
Nevada:					
North of 38 Latitude	10.5	9.5	9.5	9.5	9.5
South of 38 Latitude	9.5	9.5	9.5	9.5	9.5

New Hampshire	10.5	10.5	10.5	10.5	10.5
New Jersey	10.5	10.5	10.5	10.5	10.5
New Mexico:					
North of 34 Latitude	9.5	9.0	9.0	9.5	9.5
South of 34 Latitude	9.5	9.0	9.0	9.0	9.5
New York	10.5	10.5	10.5	10.5	10.5
North Carolina	10.5	10.5	9.5	9.5	10.5
North Dakota	10.5	10.5	10.5	10.5	10.5
Ohio	10.5	10.5	10.5	10.5	10.5
Oklahoma	10.5	9.5	9.5	9.5	9.5
Oregon:					
East of 122 Longitude	10.5	10.5	10.5	10.5	10.5
West of 122 Longitude	10.5	10.5	10.5	10.5	10.5
Pennsylvania	10.5	10.5	10.5	10.5	10.5
Rhode Island	10.5	10.5	10.5	10.5	10.5
South Carolina	10.5	10.5	9.5	9.5	10.5
South Dakota	10.5	10.5	10.5	10.5	10.5
Tennessee	10.5	10.5	9.5	9.5	10.5
Texas:					
East of 99 Longitude	9.5	9.0	9.0	9.0	9.5
West of 99 Longitude	9.5	9.0	9.0	9.0	9.5
Utah	10.5	9.5	9.5	9.5	9.5
Vermont	10.5	10.5	10.5	10.5	10.5

Virginia	10.5	10.5	10.5	10.5	10.5
Washington:					
East of 122 Longitude	10.5	10.5	10.5	10.5	10.5
West of 122 Longitude	10.5	10.5	10.5	10.5	10.5
West Virginia	10.5	10.5	10.5	10.5	10.5
Wisconsin	10.5	10.5	10.5	10.5	10.5
Wyoming	10.5	10.5	10.5	10.5	10.5

1 Standards are expressed in pounds per square inch (psi).

2 California areas include the following counties:

North Coast—Alameda, Contra Costa, Del Norte, Humbolt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, and Trinity.

Interior—Lassen, Modoc, Plumas, Sierra, Siskiyou, Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Kern (except that portion lying east of the Los Angeles County Aqueduct), Kings, Madera, Mariposa, Merced, Placer, Sacramento, San Joaquin, Shasta, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, Yuba, and Nevada.

South Coast—Orange, San Diego, San Luis Obispo, Santa Barbara, Ventura, and Los Angeles (except that portion north of the San Gabriel mountain range and east of the Los Angeles County Aqueduct).

Southeast—Imperial, Riverside, San Bernardino, Los Angeles (that portion north of the San Gabriel mountain range and east of the Los Angeles County Aqueduct), Mono, Inyo, and Kern (that portion lying east of the Los Angeles County Aqueduct).

**(2) Prohibited activities in 1992 and beyond.** During the 1992 and later high ozone seasons no person, including without limitation, no retailer or wholesale purchaser-consumer, and during the 1992 and later regulatory control periods, no refiner, importer, distributor, reseller, or carrier shall sell, offer for sale, dispense, supply, offer for supply, transport or introduce into commerce gasoline whose Reid vapor pressure exceeds the applicable standard. As used in this section and § 80.28, “applicable standard” means:(i) 9.0 psi for all designated volatility attainment areas; and(ii) The standard listed in this paragraph for the state and time period in which the gasoline is intended to be dispensed to motor vehicles for any designated volatility nonattainment area within such State or, if such area and time period cannot be determined, the standard listed in this paragraph that specifies the lowest Reid vapor pressure for the year in which the gasoline is sampled. Designated volatility attainment and designated volatility nonattainment areas and their exact boundaries are described in 40 CFR part 81, or such part as shall later be designated for that purpose. As used in this section and § 80.27, “high ozone season” means the period from June 1 to September 15 of any calendar year and “regulatory control period” means the period from May 1 to September 15 of any calendar year.

Applicable Standards 1 1992 and Subsequent YearsState	May	June	July	August	September
Alabama	9.0	7.8	7.8	7.8	7.8
Arizona	9.0	7.8	7.8	7.8	7.8

Arkansas	9.0	7.8	7.8	7.8	7.8
California	9.0	7.8	7.8	7.8	7.8
Colorado 2	9.0	7.8	7.8	7.8	7.8
Connecticut	9.0	9.0	9.0	9.0	9.0
Delaware	9.0	9.0	9.0	9.0	9.0
District of Columbia	9.0	7.8	7.8	7.8	7.8
Florida	9.0	7.8	7.8	7.8	7.8
Georgia	9.0	7.8	7.8	7.8	7.8
Idaho	9.0	9.0	9.0	9.0	9.0
Illinois	9.0	9.0	9.0	9.0	9.0
Indiana	9.0	9.0	9.0	9.0	9.0
Iowa	9.0	9.0	9.0	9.0	9.0
Kansas	9.0	7.8	7.8	7.8	7.8
Kentucky	9.0	9.0	9.0	9.0	9.0
Louisiana:					
Grant Parish 4	9.0	9.0	9.0	9.0	9.0
All other volatility nonattainment areas	9.0	7.8	7.8	7.8	7.8
Maine	9.0	9.0	9.0	9.0	9.0
Maryland	9.0	7.8	7.8	7.8	7.8
Massachusetts	9.0	9.0	9.0	9.0	9.0
Michigan	9.0	9.0	9.0	9.0	9.0
Minnesota	9.0	9.0	9.0	9.0	9.0
Mississippi	9.0	7.8	7.8	7.8	7.8

Missouri	9.0	7.8	7.8	7.8	7.8
Montana	9.0	9.0	9.0	9.0	9.0
Nebraska	9.0	9.0	9.0	9.0	9.0
Nevada	9.0	7.8	7.8	7.8	7.8
New Hampshire	9.0	9.0	9.0	9.0	9.0
New Jersey	9.0	9.0	9.0	9.0	9.0
New Mexico	9.0	7.8	7.8	7.8	7.8
New York	9.0	9.0	9.0	9.0	9.0
North Carolina	9.0	7.8	7.8	7.8	7.8
North Dakota	9.0	9.0	9.0	9.0	9.0
Ohio	9.0	9.0	9.0	9.0	9.0
Oklahoma	9.0	7.8	7.8	7.8	7.8
Oregon	9.0	7.8	7.8	7.8	7.8
Pennsylvania	9.0	9.0	9.0	9.0	9.0
Rhode Island	9.0	9.0	9.0	9.0	9.0
South Carolina 3	9.0	9.0	9.0	9.0	9.0
South Dakota	9.0	9.0	9.0	9.0	9.0
Tennessee:					
Knox County	9.0	9.0	9.0	9.0	9.0
All other volatility nonattainment areas	9.0	7.8	7.8	7.8	7.8
Texas	9.0	7.8	7.8	7.8	7.8
Utah	9.0	7.8	7.8	7.8	7.8
Vermont	9.0	9.0	9.0	9.0	9.0

Virginia	9.0	7.8	7.8	7.8	7.8
Washington	9.0	9.0	9.0	9.0	9.0
West Virginia	9.0	9.0	9.0	9.0	9.0
Wisconsin	9.0	9.0	9.0	9.0	9.0
Wyoming	9.0	9.0	9.0	9.0	9.0

1 Standards are expressed in pounds per square inch (psi).

2 The Colorado Covered Area encompasses the Denver-Boulder-Greeley-Ft. Collins-Loveland, CO, 8-hour ozone nonattainment area (see 40 CFR part 81).

3 The standard for nonattainment areas in South Carolina from June 1 until September 15 in 1992 and 1993 was 7.8 psi.

4 The standard for Grant Parish from June 1 until September 15 in 1992 through 2007 was 7.8 psi.

(b) *Determination of compliance.* Compliance with the standards listed in paragraph (a) of this section shall be determined by the use of the sampling methodologies specified in § 80.8 and the testing methodology specified in § 80.46(c).(c) *Liability.* Liability for violations of paragraph (a) of this section shall be determined according to the provisions of § 80.28. Where the terms refiner, importer, distributor, reseller, carrier, ethanol blender, retailer, or wholesale purchaser-consumer are expressed in the singular in § 80.28, these terms shall include the plural.(d) *Special provisions for alcohol blends.* (1) Any gasoline which meets the requirements of paragraph (d)(2) of this section shall not be in violation of this section if its Reid vapor pressure does not exceed the applicable standard in paragraph (a) of this section by more than one pound per square inch (1.0 psi).(2) In order to qualify for the special regulatory treatment specified in paragraph (d)(1) of this section, gasoline must contain denatured, anhydrous ethanol. The concentration of the ethanol, excluding the required denaturing agent, must be at least 9% and no more than 10% (by volume) of the gasoline. The ethanol content of the gasoline shall be determined by the use of one of the testing methodologies specified in § 80.46(g). The maximum ethanol content shall not exceed any applicable waiver conditions under section 211(f) of the Clean Air Act.(3) Each invoice, loading ticket, bill of lading, delivery ticket and other document which accompanies a shipment of gasoline containing ethanol shall contain a legible and conspicuous statement that the gasoline being shipped contains ethanol and the percentage concentration of ethanol.(e) *Testing exemptions.* (1)(i) Any person may request a testing exemption by submitting an application that includes all the information listed in paragraphs (e)(3), (4), (5) and (6) of this section to: DIRECTOR (6406J), FIELD OPERATIONS AND SUPPORT DIVISION, U.S. ENVIRONMENTAL PROTECTION AGENCY, 1200 PENNSYLVANIA AVE., NW., WASHINGTON, DC 20460(ii) For purposes of this section, "testing exemption" means an exemption from the requirements of § 80.27(a) that is granted by the Administrator for the purpose of research or emissions certification.(2)(i) In order for a testing exemption to be granted, the applicant must demonstrate the following:(A) The proposed test program has a purpose that constitutes an appropriate basis for exemption;(B) The proposed test program necessitates the granting of an exemption;(C) The proposed test program exhibits reasonableness in scope; and(D) The proposed test program exhibits a degree of control consistent with the purpose of the program and the Environmental Protection Agency's (EPA's) monitoring requirements.(ii) Paragraphs (e)(3), (4), (5) and (6) of this section describe what constitutes a sufficient demonstration for each of the four elements in paragraphs (e)(2)(i) (A) through (D) of this section.(3) An appropriate purpose is limited to research or emissions certification. The testing exemption application must include a concise statement of the purpose(s) of the testing program.(4) With respect to the necessity that an exemption be granted, the applicant must demonstrate an inability to achieve the stated purpose in a practicable manner, during a period of the year in which the volatility regulations do not apply, or without performing or causing to be performed one or more of the prohibited activities under §

80.27(a). If any site of the proposed test program is located in an area that has been classified by the Administrator as a nonattainment area for purposes of the ozone national ambient air quality standard, the application must also demonstrate an inability to perform the test program in an area that is not so classified.(5) With respect to reasonableness, a test program must exhibit a duration of reasonable length, effect a reasonable number of vehicles or engines, and utilize a reasonable amount of high volatility fuel. In this regard, the testing exemption application must include:(i) An estimate of the program's duration;(ii) An estimate of the maximum number of vehicles or engines involved in the test program;(iii) The time or mileage duration of the test program;(iv) The range of volatility of the fuel (expressed in Reid Vapor Pressure (RVP)) expected to be used in the test program; and(v) The quantity of fuel which exceeds the applicable standard that is expected to be used in the test program.(6) With respect to control, a test program must be capable of affording EPA a monitoring capability. At a minimum, the testing exemption application must also include:(i) The technical nature of the test program;(ii) The site(s) of the test program (including the street address, city, county, State, and zip code);(iii) The manner in which information on vehicles and engines used in the test program will be recorded and made available to the Administrator;(iv) The manner in which results of the test program will be recorded and made available to the Administrator;(v) The manner in which information on the fuel used in the test program (including RVP level(s), name, address, telephone number, and contact person of supplier, quantity, date received from the supplier) will be recorded and made available to the Administrator;(vi) The manner in which the distribution pumps will be labeled to insure proper use of the test fuel;(vii) The name, address, telephone number and title of the person(s) in the organization requesting a testing exemption from whom further information on the request may be obtained; and(viii) The name, address, telephone number and title of the person(s) in the organization requesting a testing exemption who will be responsible for recording and making available to the Administrator the information specified in paragraphs (e)(6)(iii), (iv), and (v) of this section, and the location in which such information will be maintained.(7) A testing exemption will be granted by the Administrator upon a demonstration that the requirements of paragraphs (e)(2), (3), (4), (5) and (6) of this section have been met. The testing exemption will be granted in the form of a memorandum of exemption signed by the applicant and the Administrator (or his delegate), which shall include such terms and conditions as the Administrator determines necessary to monitor the exemption and to carry out the purposes of this section. Any violation of such a term or condition shall cause the exemption to be void.

[54 FR 11883, Mar. 22,  
1989]

## **Appendix E**

### Clean Air Act Section 211 (h)

**(h) Reid Vapor Pressure requirements****(1) Prohibition**

Not later than 6 months after November 15, 1990, the Administrator shall promulgate regulations making it unlawful for any person during the high ozone season (as defined by the Administrator) to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure in excess of 9.0 pounds per square inch (psi). Such regulations shall also establish more stringent Reid Vapor Pressure standards in a nonattainment area as the Administrator finds necessary to generally achieve comparable evaporative emissions (on a per-vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors.

**(2) Attainment areas**

The regulations under this subsection shall not make it unlawful for any person to sell, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure of 9.0 pounds per square inch (psi) or lower in any area designated under section 7407 of this title as an attainment area. Notwithstanding the preceding sentence, the Administrator may impose a Reid vapor pressure requirement lower than 9.0 pounds per square inch (psi) in any area, formerly an ozone nonattainment area, which has been redesignated as an attainment area.

**(3) Effective date; enforcement**

The regulations under this subsection shall provide that the requirements of this subsection shall take effect not later than the high ozone season for 1992, and shall include such provisions as the Administrator determines are necessary to implement and enforce the requirements of this subsection.

**(4) Ethanol waiver**

For fuel blends containing gasoline and 10 percent denatured anhydrous ethanol, the Reid vapor pressure limitation under this subsection shall be one pound per square inch (psi) greater than the applicable Reid vapor pressure limitations established under paragraph (1); **Provided, however**, That a distributor, blender, marketer, reseller, carrier, retailer, or wholesale purchaser-consumer shall be deemed to be in full compliance with the provisions of this subsection and the regulations promulgated thereunder if it can demonstrate (by showing receipt of a certification or other evidence acceptable to the Administrator) that—

(A) the gasoline portion of the blend complies with the Reid vapor pressure limitations promulgated pursuant to this subsection;

(B) the ethanol portion of the blend does not exceed its waiver condition under subsection (f)(4) of this section; and

(C) no additional alcohol or other additive has been added to increase the Reid Vapor Pressure of the ethanol portion of the blend.

***(5) Exclusion from ethanol waiver***

***(A) Promulgation of regulations***

Upon notification, accompanied by supporting documentation, from the Governor of a State that the Reid vapor pressure limitation established by paragraph (4) will increase emissions that contribute to air pollution in any area in the State, the Administrator shall, by regulation, apply, in lieu of the Reid vapor pressure limitation established by paragraph (4), the Reid vapor pressure limitation established by paragraph (1) to all fuel blends containing gasoline and 10 percent denatured anhydrous ethanol that are sold, offered for sale, dispensed, supplied, offered for supply, transported, or introduced into commerce in the area during the high ozone season.

***(B) Deadline for promulgation***

The Administrator shall promulgate regulations under subparagraph (A) not later than 90 days after the date of receipt of a notification from a Governor under that subparagraph.

***(C) Effective date***

***(i) In general***

With respect to an area in a State for which the Governor submits a notification under subparagraph (A), the regulations under that subparagraph shall take effect on the later of—

(I) the first day of the first high ozone season for the area that begins after the date of receipt of the notification; or

(II) 1 year after the date of receipt of the notification.

***(ii) Extension of effective date based on determination of insufficient supply***

***(I) In general***

If, after receipt of a notification with respect to an area from a Governor of a State under subparagraph (A), the Administrator determines, on the Administrator's own motion or on petition of any person and after consultation with the Secretary of Energy, that the promulgation of regulations described in subparagraph (A) would result in an insufficient supply of gasoline in the State, the Administrator, by regulation—

(aa) shall extend the effective date of the regulations under clause (i) with respect to the area for not more than 1 year; and

(bb) may renew the extension under item (aa) for two additional periods, each of which shall not exceed 1 year.

***(II) Deadline for action on petitions***

The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.

***(6) Areas covered***

The provisions of this subsection shall apply only to the 48 contiguous States and the District of Columbia.

## **Appendix F**

Federal Register Vol. 79, No. 167 Thursday August 28, 2014



51288

Federal Register / Vol. 79, No. 167 / Thursday, August 28, 2014 / Proposed Rules

**ENVIRONMENTAL PROTECTION AGENCY**

40 CFR Part 80

[EPA-HQ-OAR-2014-0283; FRL 9915-08-OAR]

RIN 2060-AS19

**Regulation of Fuels and Fuel Additives: Extension of the Reformulated Gasoline Program to Maine's Southern Counties**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to extend the Clean Air Act's (CAA) prohibition against the sale of conventional gasoline in reformulated gasoline (RFG) areas to the southern Maine counties of York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln. This proposal is based on a request from the Governor of the State of Maine for areas within the ozone transport region established under the CAA. The CAA does not give the EPA discretion to deny a Governor's request on this matter. The scope of the EPA's discretion is limited to establishing the date that the prohibition commences. Consistent with the Governor's request, the EPA proposes that this prohibition commence on May 1, 2015 for all refiners, importers, and distributors in the Maine counties referenced in the Governor's request, and on June 1, 2015 for all retailers and wholesale purchaser-consumers in those counties. The EPA is also adding in its RFG opt-out rules a provision to reflect that there is a four-year minimum opt-in period for areas that opt into the RFG program on the basis of their location within the ozone transport region. This clarification will align the federal regulation for RFG opt-out requirements with the CAA.

**DATES:** Comments must be received on or before September 29, 2014 unless a public hearing is requested by September 12, 2014. If the EPA receives such a request, we will publish information related to the timing and

location of the hearing and a new deadline for public comment.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2014-0283, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* [a-and-r-Docket@epa.gov](mailto:a-and-r-Docket@epa.gov).
- *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2014-0283. Please include a total of two copies.
- *Hand Delivery:* Air and Radiation Docket, EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004, Attention Docket ID No. EPA-HQ-OAR-2014-0283. Please include two copies. Such deliveries are accepted only during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2014-0283. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](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 information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through [www.regulations.gov](http://www.regulations.gov) your email 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Patty Klavon, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan 48105; telephone number: (734) 214-4476; fax number: (734) 214-4052; email address: [klavon.patty@epa.gov](mailto:klavon.patty@epa.gov).

**SUPPLEMENTARY INFORMATION:** The contents of this preamble are listed in the following outline:

- I. General Information
- II. Public Participation
- III. Background and Proposal
- IV. Environmental Impact
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**I. General Information**

*A. Does this action apply to me?*

Entities potentially affected by this rule are fuel producers and distributors who do business in Maine.

Examples of potentially regulated entities	NAICS <sup>1</sup> codes
Petroleum refineries .....	324110
Gasoline Marketers and Distributors .....	424710
	424720
Gasoline Retail Stations .....	447110
Gasoline Transporters .....	484220
	484230

<sup>1</sup> North American Industry Classification System.

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. The table lists the types of entities of which the EPA is aware that potentially could be affected by this rule. Other types of entities not listed on the table could also be affected by this rule. To determine whether your organization could be affected by this rule, you should carefully examine the regulations in 40 CFR 80.70. If you have questions regarding the applicability of this action to a particular entity, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

*B. What should I consider as I prepare my comments?*

#### 1. Submitting CBI

Do not submit CBI to the EPA through [www.regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

#### 2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

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

#### 3. Docket Copying Costs

You may be required to pay a reasonable fee for copying docket materials.

## II. Public Participation

### A. Public Comments

Clean Air Act (CAA) section 211(k)(6)(B) states that, “[o]n application of the Governor of a State in the ozone transport region established by [section 184(a) of the CAA], the Administrator . . . shall apply the prohibition” against the sale of conventional gasoline to any area of the State other than an area classified as a marginal, moderate, serious, or severe ozone nonattainment area. CAA section 211(k)(6)(B) provides the EPA limited discretion to establish the date that this prohibition commences based on consideration of whether there is sufficient capacity to supply RFG to the area. However, the CAA does not give the EPA discretion to deny a Governor’s request for an RFG opt-in for a qualifying area.

The EPA is acting on a request made by the Governor of the State of Maine to extend the CAA prohibition against the sale of conventional gasoline in RFG areas to the southern Maine counties of York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln (the “Southern Maine Counties”) which are part of the ozone transport region established by CAA Section 184(a). The State of Maine requested that the prohibition commence on June 1, 2015. Therefore, the scope of today’s action is limited to proposing the date on which the prohibition commences for the Southern Maine Counties’ opt-in to the federal RFG program, and not whether those counties should opt in to the federal RFG program. Thus, the EPA is not soliciting comments that support or oppose participation by the Southern Maine Counties in the federal RFG program. The EPA is, however, requesting comment regarding whether there will be a sufficient capacity to supply RFG to these seven counties beginning May 1, 2015 for refiners, importers, and distributors, and on June 1, 2015 for retailers and purchaser-consumers.

Additionally, the EPA is adding in its opt-out regulations at 40 CFR 80.72 a provision to reflect that there is a four-

year minimum opt-in period for areas that opt into the RFG program on the basis of their location within the ozone transport region. This clarification will align the federal regulation for RFG opt-out requirements with CAA section 211(k)(6)(B)(ii)(II).

### B. Public Hearing

The EPA will not hold a public hearing on this matter unless a request is received by the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble by September 12, 2014. If the EPA receives such a request, we will publish information related to the timing and location of the hearing and a new deadline for public comment.

## III. Background and Proposal

### A. Background on the Federal Reformulated Gasoline Program

The purpose of the federal RFG program is to improve air quality in certain areas through the use of gasoline that is reformulated to reduce motor vehicle emissions of tropospheric ozone-forming compounds, as set forth in CAA section 211(k)(1). The EPA first published regulations for the federal RFG program on February 16, 1994. (59 FR 7716). RFG makes up over 30 percent of the volume of motor vehicle gasoline consumed in the United States<sup>2</sup> and is used in 17 states and the District of Columbia.<sup>3</sup>

CAA section 211(k)(5) prohibits the sale of conventional gasoline (i.e., gasoline that the EPA has not certified as reformulated) in certain ozone nonattainment areas beginning January 1, 1995. CAA section 211(k)(10)(D) defines the areas initially covered by the federal RFG program as ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design values during the period 1987 through 1989.<sup>4</sup> In addition, under CAA section 211(k)(10)(D), any area reclassified as a severe ozone nonattainment area under CAA section 181(b) is also included in the federal RFG program. Finally, CAA sections 211(k)(6)(A) and (B) allow areas classified as Marginal, Moderate, Serious, or Severe ozone nonattainment

<sup>2</sup> See the U.S. Energy Information Administration statistics on consumption and sales of petroleum and other liquids at: <http://www.eia.gov/petroleum/reports.cfm?i=164>.

<sup>3</sup> For a map showing current RFG areas, please visit the EPA’s Web site at: <http://www.epa.gov/otaq/fuels/gasoline/fuels/rfg/areas.html>.

<sup>4</sup> Applying these criteria, the EPA has determined the nine covered areas to be the metropolitan areas including Los Angeles, Houston, New York City, Baltimore, Chicago, San Diego, Philadelphia, Hartford, and Milwaukee.

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areas, or areas within the ozone transport region established under CAA section 184, to opt into the RFG program at the request of the Governor of the State in which the area is located.

Maine is in the ozone transport region established under CAA section 184, and its request to opt into the RFG program was made pursuant to CAA section 211(k)(6)(B). That provision specifies that upon petition of the Governor of a State in the ozone transport region in which the area is located, the EPA is to apply the prohibition against selling or dispensing of conventional gas in RFG covered areas in any area in the State other than an area classified as marginal, moderate, serious, or severe ozone nonattainment area under subpart 2 of part D of subchapter 1 of the Clean Air Act. This prohibition is to "commence as soon as practicable but not later than 2 years after the date of approval by the Administrator of the application of the Governor of the State," CAA section 211(k)(6)(B)(ii)(I). However, if the EPA determines that there is insufficient capacity to supply RFG, the EPA may extend the commencement date by no more than a year, and may renew that extension for two additional one-year periods. CAA section 211(k)(6)(B)(iii). The area may not opt out of the federal RFG program earlier than 4 years after the RFG commencement date. CAA section 211(k)(6)(B)(ii)(II).

#### B. Request From the State of Maine

In 2013, the State of Maine enacted Public Law 2013 c. 221 calling for the use of RFG in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln counties beginning May 1, 2014. On July 23, 2013, the Governor of Maine formally requested, pursuant to 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. 453, effective March 6, 2014, to postpone the requirement for the sale of RFG in these counties until June 1, 2015. Pursuant to that legislation, the Commissioner for the State of Maine's Department of Environmental Protection (DEP) submitted a request to the EPA dated March 10, 2014, modifying Maine's request for the implementation date for the sale of RFG in the Southern Maine Counties to coincide with June 1, 2015.<sup>5</sup>

<sup>5</sup> The EPA has determined that the original petition from the Governor of Maine, together with the revised Maine legislation and the Commissioner's letter, serve as a petition from the

Copies of the Commissioner's letter, the letter from the Governor of the State of Maine dated July 23, 2013, and the Maine legislation establishing the use of RFG in the Southern Maine Counties are available in the docket at EPA-HQ-OAR-2014-0283.

#### C. Proposed Date for the Commencement of a Prohibition on the Sale of Conventional Gasoline in the Southern Maine Counties

Based on our evaluation of the appropriate lead time and start dates, and pursuant to Maine's request for a June 1, 2015 implementation date and the provisions of CAA section 211(k)(6), the EPA is proposing to extend the CAA section 211(k)(5) prohibition against the sale of conventional (i.e., non-reformulated) gasoline in RFG covered areas to the Southern Maine Counties. The Southern Maine Counties are part of the ozone transport region as defined in CAA section 184. They are not currently classified under subpart 2 of Part D of CAA subchapter 1 as Marginal, Moderate, Serious, or Severe ozone nonattainment areas. Based on Maine's request for a June 1, 2015 implementation date, the EPA is proposing that a prohibition on the sale of conventional gasoline in the Southern Maine Counties commence as of May 1, 2015 for all regulated entities in these counties other than retailers and wholesale purchaser-consumers (i.e., refiners, importers, and distributors), and as of June 1, 2015 for retailers and wholesale purchaser-consumers. Thus, if this action is finalized as proposed, conventional gasoline could not be sold to consumers in the Southern Maine Counties as of June 1, 2015. Only RFG could be sold to consumers in these counties as of June 1, 2015.

Further, under CAA section 211(k)(6)(B)(ii)(II) the State of Maine would be prohibited from opting out of the federal RFG program for the Southern Maine Counties for four years after the commencement of the area's opt-in. Thus, if this action is finalized as proposed, the State of Maine may not opt out of the federal RFG program for the Southern Maine Counties before May 1, 2019 for all regulated entities other than retailers and purchaser-consumers, and not before June 1, 2019 for retailers and purchaser-consumers, respectively. The EPA is also adding in its RFG opt-out regulation at 40 CFR 80.72 a provision to reflect that there is a four-year minimum opt-in period for areas that opt into the RFG program on

the basis of their location within the ozone transport region. This clarification will align the federal regulation for RFG opt-out requirements with CAA section 211(k)(6)(B)(ii)(II). The EPA believes the dates proposed in today's action would provide a reasonable balance by achieving air quality benefits in southern Maine by the start of the 2015 peak ozone season and providing adequate lead time for industry to prepare for program implementation. The proposed dates are consistent with the State's request that the EPA require RFG to be sold in the Southern Maine Counties to coincide with the beginning of the high ozone season, which begins June 1 of each year. Thus, the dates would provide environmental benefits by allowing southern Maine to achieve volatile organic compound (VOC) reduction benefits for the 2015 VOC control season. The proposed dates are also consistent with the statutory requirement that the EPA set the date for commencement of the prohibition within two years of the EPA's approval of the application by the Governor. The EPA's approval of the Governor's request will occur in the final rule establishing an implementation date.

the basis of their location within the ozone transport region. This clarification will align the federal regulation for RFG opt-out requirements with CAA section 211(k)(6)(B)(ii)(II).

The EPA is seeking comment on whether the refining and distribution industry has the capacity to supply exclusively federal RFG to the Southern Maine Counties as of May 1, 2015 as proposed in this notice. The EPA also seeks comment on whether the dates for commencement of the prohibition proposed today would provide adequate lead time for industry to ensure supply of RFG to retail outlets, and for retail outlets to plan for, and accomplish, a transition from the sale of conventional gasoline to RFG. The EPA requests that, to the extent possible, commenters provide documentation supporting their comments. Comments supported by documentation will be most valuable to the EPA in making a final decision on the commencement date for the prohibition on the sale of conventional gasoline in the Southern Maine Counties.

As noted above in Section II.A. of today's action, CAA section 211(k)(6)(B) directs the EPA to apply RFG requirements in areas subject to a Governor's petition "as soon as practical" within a two-year period following the EPA's approval of a Governor's petition, and may further extend the date RFG requirements commence based on a determination that there is insufficient capacity to supply RFG. However, the EPA does not have discretion to deny a Governor's request for an opt-in for qualifying

Governor under CAA section 211(k)(6)(B) seeking commencement of the prohibition in CAA 211(k)(5) in the Southern Maine Counties on June 1, 2015.

areas. Therefore, the scope of this action is limited to setting a date for commencement of opt-in of the Southern Maine Counties to the federal RFG program; it is not to decide whether the Southern Maine Counties may opt into the federal RFG program. The EPA is requesting comment on the proposed commencement dates and whether there will be a sufficient capacity to supply RFG available to these seven counties as of May 1, 2015 for regulated entities such as refiners, importers, and distributors, and as of June 1, 2015 for retailers and purchaser-consumers.

This proposed action would have no effect on the approved Maine State Implementation Plan (SIP). We understand that if today's action is finalized as proposed, the State of Maine intends to submit a proposed SIP revision requesting the removal of the existing 7.8 Reid Vapor Pressure fuel requirements for the Southern Maine Counties. The EPA will consider Maine's request when it is received.

#### IV. Environmental Impact

The federal RFG program is designed to lead to reductions in ozone-forming emissions. Reductions in ozone precursors are environmentally significant because they lead to reductions in ozone formation, with the associated improvements in human health and welfare. Exposure to ground-level ozone (or smog) can cause respiratory problems, chest pain, and coughing and may worsen bronchitis, emphysema, and asthma. Animal studies suggest that long-term exposure (months to years) to ozone can damage lung tissue and may lead to chronic respiratory illness. The Maine DEP analyzed the emissions benefits which could be achieved by switching from 7.8 RVP fuel to RFG.<sup>6</sup> The Maine DEP used the EPA's motor vehicle emission factor model, MOVES2010, to estimate, for informational purposes, that motor vehicle VOC emissions could be reduced by 123 tons, or by 6 percent and NOx by 28 tons, or by 1 percent.<sup>7</sup>

<sup>6</sup> RFG primarily reduces emissions of VOCs. The RFG regulations at 40 CFR 80.41 establish a performance standard that must be met in order for gasoline to meet RFG requirements. Generally, based on survey data, RFG sold in the northeastern states has an RVP of between 6.8 and 7.0 psi. The lower RVP will result in reduction in VOC emissions. The survey data is available at <http://www.epa.gov/oaq/oaqs/fgsurvey.htm>.

<sup>7</sup> The Governor of Maine submitted this analysis for calendar year 2014 projected emission reductions with his July 23, 2013 letter requesting a May 1, 2014 effective date. However, Maine is not claiming, and the EPA is not proposing to approve in today's action, any specific amount of emission reductions for the RFG program at this time.

#### V. Statutory and Executive Order Reviews

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

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

##### B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3. The OMB has approved the information collection requirements that apply to the RFG program (see 59 FR 7716, February 16, 1994), and has assigned OMB control number 2060-0277 (EPA ICR No. 1591.25).

##### C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) Defined by the Small Business Administration's (SBA) regulations a 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action would not have a significant adverse impact on a substantial number of small entities. In promulgating the RFG regulations for conventional gasoline, the EPA analyzed the impact of the regulations on small entities. The EPA concluded that the regulations may possibly have some economic effect on a substantial number of small refiners, but that the regulations may not

significantly affect other small entities, such as gasoline blenders, terminal operators, service stations and ethanol blenders. See 59 FR 7810-7811 (February 16, 1994). As stated in the preamble to the final RFG rule, exempting small refiners from the RFG regulations would not meet CAA requirements. 59 FR 7810. However, since most small refiners are located in the mountain states or in California, which has its own RFG program, the vast majority of small refiners are unaffected by the federal RFG requirements (although all refiners of conventional gasoline are subject to the RFG requirements). Moreover, all businesses, large and small, maintain the option to produce conventional gasoline to be sold in areas not obligated by the CAA to receive RFG or those areas which have not chosen to opt into the federal RFG program. A complete analysis of the effect of the RFG regulations on small businesses is contained in the Regulatory Flexibility Analysis which was prepared for the RFG rulemaking, and can be found in the docket for that rulemaking. The docket number is: EPA Air Docket A-92-12.

Today's proposed rule would affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the Southern Maine Counties, and gasoline distributors and retail stations in those areas. As discussed above, the EPA determined that, because of their location, the vast majority of small refiners would be unaffected by the RFG requirements. For the same reason, most small refiners would be unaffected by today's action. Other small entities, such as gasoline distributors and retail stations located in the Southern Maine Counties, which would become a covered area if today's proposed rule is finalized as proposed, would be subject to the same requirements as those small entities which are located in current RFG covered areas. The EPA did not find the previous RFG regulations to significantly affect these entities.

We welcome comments on the potential impacts of the proposed rule on small entities. Since the EPA's discretion in this rulemaking is limited to establishment of the date for the application of RFG in the Southern Maine Counties, any comments related to impacts on small entities should be focused on the impact of alternative, and legally permissible, compliance dates.

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*D. Unfunded Mandates Reform Act (UMRA)*

This proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. Although the EPA does not believe that UMRA imposes requirements for this rulemaking, the EPA notes that the environmental and economic impacts of the federal RFG program were assessed in the EPA's Regulatory Impact Analysis for the 1994 RFG regulations.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

*E. Executive Order 13132 (Federalism)*

This action does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule would impose requirements only on certain refiners and other entities in the gasoline distribution system, and not on States. The requirements of the proposed rule would be enforced by the federal government at the national level. Thus, Executive Order 13132 does not apply to this proposed rule.

*F. Executive Order 13175*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Today's proposed rule would affect only those refiners, importers or blenders of gasoline that choose to produce or import RFG for sale in the Southern Maine Counties, and gasoline distributors and retail stations in those areas. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

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

*I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations of the United States.

The EPA has determined that this proposed rule would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

**List of Subjects in 40 CFR Part 80**

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution.

Dated: August 18, 2014.

**Gina McCarthy,**  
Administrator.

For the reasons discussed in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 80 as follows:

**PART 80—REGULATION OF FUELS AND FUEL ADDITIVES**

■ 1. The authority citation for part 80 continues to read as follows:

**Authority** 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

■ 2. Section 80.70 is amended by adding paragraph (n) to read as follows:

**§ 80.70 Covered areas.**

(n) The areas included in paragraph (n) of this section are located within the ozone transport region established under Clean Air Act section 184(a), are not classified as a marginal, moderate, serious, or severe ozone nonattainment area, and have opted into the reformulated gasoline program. They are covered areas for the purposes of subparts D, E, and F of this part.

(1) The southern Maine counties of York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox, and Lincoln are a covered area beginning June 1, 2015. The prohibitions of Clean Air Act section 211(k)(5) apply to all persons other than retailers and wholesale purchaser-consumers in these counties beginning May 1, 2015. The prohibitions of section 211(k)(5) of the Clean Air Act apply to retailers and wholesale purchaser-consumers in these counties beginning on June 1, 2015.

(2) [Reserved]

■ 3. Section 80.72 is amended by adding paragraph (c)(8) to read as follows:

**§ 80.72 Procedures for opting out of the covered areas.**

(c) \* \* \* \* \*

(8) Notwithstanding any other provision of paragraph (c) of this section, for an area that opted in pursuant to Clean Air Act section 211(k)(6)(B), the Administrator shall not set the effective date for removal of the area earlier than four years after the commencement date of opt-in.

[FR Doc. 2014-20177 Filed 8-27-14; 8:45 am]

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