

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[EPA-R01-OAR-2005-ME-0007; A-1-FRL-8027-5]

**Approval and Promulgation of Air Quality Implementation Plans; Maine; Nitrogen Oxides Exemption Request for Northern Maine****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is approving a request for an exemption from the requirements for the control of nitrogen oxide (NO<sub>x</sub>) emissions contained in section 182(f) of the Clean Air Act (CAA or Act) for northern Maine (specifically Aroostook, Franklin, Oxford, Penobscot, Piscataquis, Somerset, Washington, and portions of Hancock and Waldo Counties). This exemption request, submitted by the State of Maine, is based on a demonstration that NO<sub>x</sub> emissions in the exemption area are not impacting Maine's ozone nonattainment areas or other ozone nonattainment areas in the Ozone Transport Region (OTR) during times when elevated ozone levels are monitored in those areas. As such, additional reductions in NO<sub>x</sub> emissions from this area beyond what the state regulations already provide for are not necessary for future attainment in any of Maine's ozone nonattainment areas or any other ozone nonattainment area in the OTR. Thus, as provided for in section 182(f)(2), additional NO<sub>x</sub> reductions in these areas constitute excess reductions, and EPA will waive them.

**DATES:** *Effective Date:* This rule will become effective on March 6, 2006.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2004-ME-0007. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible,

you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333-0017.

**FOR FURTHER INFORMATION CONTACT:**

Richard P. Burkhart, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114-2023. Phone: 617-918-1664, Fax: (617) 918-0664, E-mail: [burkhart.richard@epa.gov](mailto:burkhart.richard@epa.gov).

**SUPPLEMENTARY INFORMATION:** On August 24, 2005 (70 FR 49526), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Maine. The NPR proposed approval of a request for an exemption from the requirements for NO<sub>x</sub> control contained in section 182(f) of the Clean Air Act for northern Maine. Specifically the area includes Aroostook, Franklin, Oxford, Penobscot, Piscataquis, Somerset, Washington, and portions of Hancock and Waldo Counties. The portions of Waldo and Hancock Counties included are those that are designated unclassifiable/attainment for the 8-hour ozone standard. In Waldo County, this includes only the following towns: Belfast, Belmont, Brooks, Burnham, Frankfort, Freedom, Jackson, Knox, Liberty, Lincolnville, Monroe, Montville, Morrill, Northport, Palermo, Prospect, Searsport, Searsport, Stockton Springs, Swanville, Thorndike, Troy, Unity, Waldo, and Winterport. In Hancock County, this includes only the following towns and townships: Amherst, Aurora, Bucksport, Castine, Dedham, Eastbrook, Ellsworth, Franklin, Great Pond, Mariaville, Orland, Osborn, Otis, Penobscot, Verona, Waltham, Qqiton Township (T4 ND), T3 ND, T39 MD, T40 MD, T41 MD, T32 MD, T34 MD, T35 MD, T28 MD, T22 MD, T16 MD, T8 SD, T9 SD, T10 SD, and T7 SD. The Maine Department of Environmental Protection (DEP) submitted the request on March 24, 2005, with supplemental submittals on April 19, 2005 and June 28, 2005.

EPA received two sets of comments on the August 24, 2005 Notice of Proposed Rulemaking. One comment

was from McCain Foods USA, Inc. in Easton, Maine, which supported Maine DEP's NO<sub>x</sub> exemption request for northern Maine. The other comments were from the Penobscot Indian Nation, which had concerns about the NO<sub>x</sub> exemption request. EPA offers the following in response to the adverse comments received. Other information and the rationale for EPA's action are explained in the NPR and technical support document and will not be restated here.

**Response to Comments**

*Comment 1.* The commenter raised concerns about the lack of tribal consultation with EPA on this rulemaking.

*Response 1:* EPA took appropriate steps to provide Maine tribes with the opportunity to consult with EPA concerning the proposed rulemaking. Prior to signature of the Notice of Proposed Rulemaking, EPA sent an e-mail to all of the tribes in Maine summarizing Maine DEP's NO<sub>x</sub> exemption request and EPA's forthcoming Notice of Proposed Rulemaking. In the message, EPA invited the tribes to contact us if they had any questions on the forthcoming proposed rulemaking. EPA also invited the tribes to submit any comments they had on the proposed action, and the Penobscot Nation did submit comments. In addition to the responses to the Penobscot Nation's comments presented in this notice, EPA held a conference call with representatives of the Nation and the Passamaquoddy Tribe on November 2, 2005 to explain to the tribes the Agency's reasons for approving this NO<sub>x</sub> waiver. See memorandum to the docket for this action dated November 3, 2005 describing the call.

*Comment 2.* The commenter raised concerns, that because Maine is not included in the Clean Air Interstate Rule (CAIR), there needs to be a mechanism to reduce NO<sub>x</sub> emissions in Maine. The commenter acknowledged that NO<sub>x</sub> emissions in the exemption area are not the only reason for increased ozone levels in Maine, but appears to believe that reducing these emissions "would influence the development of ozone in some areas." The commenter asked for an explanation of why northern Maine NO<sub>x</sub> sources should be exempt from reasonably available control technology (RACT) controls.

*Response 2:* EPA acknowledges that Maine is not required to adopt additional NO<sub>x</sub> controls pursuant to EPA's CAIR rule. The proposed rulemaking notice for Maine DEP's NO<sub>x</sub> exemption request explains that EPA

ozone modeling performed to support the CAIR rule demonstrates that Maine's NO<sub>x</sub> emissions are not contributing significantly to future ozone nonattainment anywhere in the eastern United States. Thus, EPA is not requiring the State of Maine to adopt further NO<sub>x</sub> controls to help mitigate interstate ozone transport. This finding adds support to Maine DEP's NO<sub>x</sub> exemption request.

In addition, as explained fully in the August 24, 2005 Notice of Proposed Rulemaking and the technical support document, EPA agrees with Maine DEP's demonstration that NO<sub>x</sub> emissions in the exemption area are not impacting Maine's nonattainment areas or other nonattainment areas in the Ozone Transport Region during times when elevated ozone levels are monitored in those areas. The commenter does not offer any scientific evidence that disputes this assertion. As such, EPA sees no basis for changing our conclusion that additional reductions of NO<sub>x</sub> emissions from the waiver area beyond what the state regulations already provide for would not contribute to and would not be necessary for future attainment in any of Maine's ozone nonattainment areas or other ozone nonattainment areas in the OTR. In acting on the NO<sub>x</sub> waiver request for northern Maine under the one-hour standard the Agency adapted our guidance to address the circumstances of this attainment/unclassifiable area in the extreme northeast corner of the OTR, and EPA's approach here is consistent with that taken in approving the one-hour NO<sub>x</sub> waiver. 60 FR 66748 (Dec. 26, 1995).

Moreover, based on preliminary 2003–2005 ozone air quality data, each of Maine's ozone nonattainment areas now have air quality better than the 8-hour ozone standard. We believe that it is likely that once the 2005 data have been quality assured and quality controlled, attainment with the 8-hour ozone standard will be shown throughout the State of Maine. As this improvement in air quality occurred without additional NO<sub>x</sub> reductions resulting from the installation of RACT in the northern Maine waiver area, it supports the conclusion that additional reductions in NO<sub>x</sub> emissions from the waiver area beyond what the state regulations already provide for are not necessary for future attainment in any of Maine's ozone nonattainment areas.

*Comment 3.* The commenter had concerns with the EPA statement that this NO<sub>x</sub> exemption, if granted, will not have tribal implications.

*Response 3:* EPA is required to review new rules for tribal implications. In the

NPR, EPA stated that “This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).” This statement was based on our conclusion that the action of approving a NO<sub>x</sub> exemption under the Clean Air Act for northern Maine will not result in the imposition of any new CAA requirements on tribes or impact any existing sources of air pollution on tribal lands. Furthermore, EPA agrees with DEP's analysis that shows NO<sub>x</sub> emissions in the waiver area do not contribute to the elevated ozone levels in Maine. Therefore, EPA concluded that this action would not have a substantial effect on air quality in tribal lands. Again, EPA has not seen any evidence that would cause the Agency to change this conclusion.

*Final Action:* EPA is approving a request for an exemption from the requirements contained in section 182(f) of the Clean Air Act. This approval exempts major sources of nitrogen oxides in Aroostook, Franklin, Oxford, Penobscot, Piscataquis, Somerset, Washington, and portions of Hancock and Waldo Counties from (1) the requirements to implement controls meeting reasonably available control technology under the Clean Air Act, and (2) nonattainment area new source review (NSR) for new sources and modifications. If EPA determines based on future air quality analyses that NO<sub>x</sub> controls in these areas are necessary, EPA may initiate rulemaking to revoke this NO<sub>x</sub> exemption.

### **I. Statutory and Executive Order Reviews**

#### *A. Executive Order 12866, Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993) we must determine whether a regulatory action is “significant” and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines “significant regulatory action” as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal

governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel or legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has exempted this regulatory action from Executive Order 12866 review.

#### *B. Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all “collections of information” by EPA. The Act defines “collection of information” as a requirement for “answers to \* \* \* identical reporting or recordkeeping requirements imposed on ten or more persons \* \* \*” 44 U.S.C. 3502(3)(A). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995.

“Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.”

#### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 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 final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. This waiver approval under section 182(f) of the Clean Air Act does not create any requirements on small entities but simply approves a State's request for an exemption from Federal requirements.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt a least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an Alternative other than the least costly, most cost effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially

affected small governments, enabling officials of affected small governments to have a meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves a waiver request and imposes no new requirements. Therefore, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Therefore, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect the small governments.

#### *E. Executive Order 13132, Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that 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."

This rule does not have federalism implications. This rule will 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, because it merely approves a state request for a waiver from Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### *F. Executive Order 13175, Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA

to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175, because the action of approving a NO<sub>x</sub> exemption under the Clean Air Act for northern Maine will not result in any new CAA requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands. Thus, Executive Order 13175 does not apply to this rule.

Although Executive Order 13175 does not apply to this rule, EPA e-mailed a description of this action to the Indian tribes in Maine before publication of the Notice of Proposed Rulemaking informing them of our proposed action. The Region also offered to discuss the waiver with the tribes. One Indian tribe commented on this action, and EPA's response to those concerns is provided in the Response to Comments section of this rulemaking.

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

Executive Order 13045: *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not a significant regulatory action under Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children [additional reductions in NO<sub>x</sub> emissions from this area beyond what the state regulations already provide for are not necessary for future attainment in any of Maine's ozone nonattainment areas or any other ozone nonattainment area in the Ozone Transport Region].

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs 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 that are developed or adopted by voluntary consensus standard bodies. The NTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that VCS are inapplicable to this action.

This waiver of certain control requirements does not require the public to perform activities to which to the use of VCS would be relevant.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective March 6, 2006.

*K. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 4, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the

purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: January 27, 2006.

**Stephen L. Johnson,**  
*Administrator.*

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

**PART 52—[AMENDED]**

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

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

**Subpart U—Maine**

■ 2. Section 52.1023 is amended by adding paragraph (d) to read as follows:

**§ 52.1023 Control strategy: Ozone.**

\* \* \* \* \*

(d) *Approval.* EPA is approving an exemption request from the NO<sub>x</sub> requirements contained in Section 182(f) of the Clean Air Act for northern Maine. The exemption request was submitted by the Maine Department of Environmental Protection on March 24, 2005, and supplemented on April 19 and June 28, 2005. This approval exempts major sources of nitrogen oxides in Aroostook, Franklin, Oxford, Penobscot, Piscataquis, Somerset, Washington, and portions of Hancock and Waldo Counties from the requirements to implement controls meeting reasonably available control technology under the Clean Air Act, and nonattainment area new source review (NSR) for new sources and modifications. In Waldo County, this area includes only the following towns: Belfast, Belmont, Brooks, Burnham, Frankfort, Freedom, Jackson, Knox, Liberty, Lincolnville, Monroe, Montville, Morrill, Northport, Palermo, Prospect, Searsmont, Searsport, Stockton Springs, Swanville, Thorndike, Troy, Unity, Waldo, and Winterport. In Hancock County, this area includes only the following towns and townships: Amherst, Aurora, Bucksport, Castine, Dedham, Eastbrook, Ellsworth, Franklin, Great Pond, Mariaville, Orland, Osborn, Otis, Penobscot, Verona, Waltham,

Oqiton Township (T4 ND), T3 ND, T39 MD, T40 MD, T41 MD, T32 MD, T34 MD, T35 MD, T28 MD, T22 MD, T16 MD, T8 SD, T9 SD, T10 SD, and T7 SD.

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**BILLING CODE 6560-50-P**

**LEGAL SERVICES CORPORATION**

**45 CFR Part 1631**

**Expenditure of Grant Funds**

**AGENCY:** Legal Services Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule deletes in its entirety the Legal Services Corporation's regulation at 45 CFR part 1631, Expenditure of Grant Funds. The deletion is warranted because the statutory authority for part 1631 is no longer the prevailing rule of law.

**DATES:** This final rule becomes effective March 6, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Mattie C. Condray, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007; 202-295-1624 (ph); 202-337-6519 (fax); [mcondray@lsc.gov](mailto:mcondray@lsc.gov).

**SUPPLEMENTARY INFORMATION:** Part 1631 provides that LSC grant recipients may not expend LSC funds except as in accordance with the restrictions and provisions contained in the Corporation's Fiscal Year 1986 appropriations measure (Pub. L. 99-180, 99 Stat. 1136), unless such funds are expended pursuant to a waiver from the Corporation. Part 1631 was promulgated in 1986 in response to Congressional concerns that some pre-1982 funds were being held by recipients and spent on activities which were not prohibited at the time the funds were appropriated, but which were later prohibited (and on which recipients could not spend currently appropriated funds). 51 FR 24826 (July 9, 1986).

In 2005, there is no longer any concern that recipients have any pre-1982 funds to spend. In addition, in 1996, Congress adopted new restrictions and provisions applicable to recipients of LSC funds which supersede the restrictions in Public Law 99-180, Public Law 104-134, 110 Stat. 1321. These restrictions have been incorporated by reference in each subsequent appropriation, including the current appropriation. Public Law 108-447, 118 Stat. 2809. These restrictions have been separately incorporated into LSC's regulations and removal of part 1631 will have no effect on the later