

burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 19, 2004. 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: January 8, 2004.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

■ Part 52, 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 F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(321) to read as follows:

#### § 52.220 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(321) New and amended regulations for the following APCDs were submitted on November 4, 2003, by the Governor's designee.

(i) Incorporation by reference.

(B) San Joaquin Valley Unified Air Pollution Control District.

(1) Rule 4902, adopted on June 17, 1993.

\* \* \* \* \*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[SC-112L-2004-1-FRL-7623-8]

#### Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry; State of South Carolina

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

**ACTION:** Direct final rule.

**SUMMARY:** Pursuant to section 112(l) of the Clean Air Act (CAA), South Carolina Department of Health and Environmental Control (SC DHEC) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. The Environmental Protection Agency had reviewed this request and had found that it satisfies all of the requirements necessary to qualify for approval. Thus, the EPA is hereby granting SC DHEC the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after EPA has approved the State's alternative requirements.

**DATES:** This direct final rule is effective April 19, 2004, without further notice, unless EPA receives adverse comment by March 18, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written Comments must be submitted to Lee Page, Air Toxics Assessment and Implementation Section; Air Toxics and Monitoring Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

Comments may also be submitted electronically, or through hand delivery/courier by following the detailed instructions described in (part (I)(B)(1)(i) through (iii)) of the

#### SUPPLEMENTARY INFORMATION.

**FOR FURTHER INFORMATION CONTACT:** Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9131. Mr. Page can also be reached via electronic mail at [page.lee@epa.gov](mailto:page.lee@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

*A. How Can I Get Copies of This Document and Other Related Information?*

1. The Regional Office has established an official public rulemaking file for this action under SC-112L-2004-1 that is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. 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, 9 to 3:30 excluding Federal holidays.

2. Copies of the State submittal and supporting documents are also available for public inspection during normal business hours, by appointment at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, 2600 Bull Street, Columbia, South Carolina 29201.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulation.gov Web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published

in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

#### *B. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking SC-112L-2004-1" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD-ROM you submit, and in any cover letter accompanying the disk or CD-ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to

*page.lee@epa.gov*. Please include the text "Public comment on proposed rulemaking SC-112L-2004-1" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulation.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at <http://www.regulations.gov>, then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD-ROM.* You may submit comments on a disk or CD-ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Please include the text "Public comment on proposed rulemaking SC-112L-2004-1" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Lee Page; Air Toxics Assessment and Implementation Section; Air Toxics and Monitoring Branch; Air, Pesticides and Toxics Management Division 12th floor; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding Federal holidays.

#### *C. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically to EPA.

You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD-ROM, 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 CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any 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 official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD-ROM, mark the outside of the disk or CD-ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

#### *D. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## **II. Background**

On April 15, 1998, the Environmental Protection Agency (EPA) promulgated the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (see 63 FR 18504) which was codified in 40 CFR part 63, subpart S, "National Emission Standards for Hazardous Air Pollutants

from the Pulp and Paper Industry” (Pulp and Paper MACT I). The International Paper Georgetown Mill in Georgetown, South Carolina, is one of seven pulp and paper mills operating in the State and subject to subpart S.

On November 21, 2003, South Carolina Department of Health and Environmental Control (SC DHEC) requested delegation of subpart S under § 63.94 for the International Paper Georgetown Mill. EPA received the request on November 25, 2003. SC DHEC requested to implement and enforce approved alternative title V permit terms and conditions in place of the otherwise applicable requirements of subpart S under the process outlined in 40 CFR 63.94. As part of its request to implement and enforce alternative terms and conditions in place of the otherwise applicable Federal section 112 standards, SC DHEC also requested approval of its demonstration that SC DHEC has adequate authorities and resources to implement and enforce all Clean Air Act (CAA) section 112 programs and rules. The purpose of this demonstration is to streamline the approval process for future CAA section 112(l) applications.

### III. Analysis of State's Submittal

Under CAA section 112(l), EPA may approve State or local rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 Federal rules, emission standards, or requirements. The Federal regulations governing EPA's approval of State and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E (see 65 FR 55810, dated September 14, 2000). Under these regulations, a State or local air pollution control agency has the option to request EPA's approval to substitute alternative requirements and authorities that take the form of permit terms and conditions instead of source category regulations. This option is referred to as the equivalency by permit (EBP) option. To receive EPA approval using this option, the requirements of 40 CFR 63.91 and 63.94 must be met.

The EBP process comprises three steps. The first step (see 40 CFR 63.94(a) and (b)) is the “up-front approval” of the State EBP program. The second step (see 40 CFR 63.94(c) and (d)) is EPA review and approval of the State alternative section 112 requirements in the form of pre-draft permit terms and conditions. The third step (see 40 CFR 63.94(e)) is incorporation of the approved pre-draft permit terms and conditions into a specific title V permit and the title V permit issuance process itself. The final approval of the State

alternative requirements that substitute for the Federal standard does not occur for purposes of the Act, section 112(l)(5), until the completion of step three.

The purpose of step one, the “up-front approval” of the EBP program, is three fold: (1) It ensures that SC DHEC meets the § 63.91(b) criteria for up-front approval common to all approval options; (2) it provides a legal foundation for SC DHEC to replace the otherwise applicable Federal section 112 requirements with alternative, federally enforceable requirements that will be reflected in final title V permit terms and conditions; and (3) it delineates the specific sources and Federal emission standards for which SC DHEC will be accepting delegation under the EBP option.

Under §§ 63.94(b) and 63.91, SC's request for approval is required to include the identification of the sources and the source categories for which the State is seeking authority to implement and enforce alternative requirements, as well as a one time demonstration that the State has an approved title V operating permit program that permits the affected sources.

### IV. Final Action

After reviewing the request for approval of SC DHEC's EBP program for subpart S, EPA has determined that this request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.94. Accordingly, EPA approves SC DHEC's request to implement and enforce alternative requirements in the form of title V permit terms and conditions for International Paper Georgetown Mill for subpart S. This action is contingent upon SC DHEC including, in title V permits, terms and conditions that are no less stringent than the Federal standard. In addition, the requirement applicable to the sources and the “applicable requirement” for title V purposes remains the Federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the section 112(l) provisions should adverse comments be filed. This rule will be effective April 19, 2004, without further notice unless

the Agency receives adverse comments by March 18, 2004.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 19, 2004, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### V. Statutory and Executive Order Reviews

#### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). Also, this action is not subject to Executive Order 13045, entitled, “Protection of Children from Environmental Health Risks and Safety Risks,” because it is not an “economically significant” action under Executive Order 12866.

#### B. Executive Order 13175

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 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule.

#### C. Executive Order 13132

This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a State program implementing a Federal program, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this rule.

#### D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* 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 not-for-profit enterprises, and small governmental entities with jurisdiction over populations of less than 50,000. This rule will not have a significant impact on a substantial number of small entities because approvals under 40 CFR 63.94 do not create any new requirements but simply allows the State to implement and enforce permit terms in place of Federal requirements that the EPA is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

#### E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate, or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either state, local, or tribal governments in the aggregate, or to the

private sector. This Federal action allows South Carolina to implement equivalent alternative requirements to replace pre-existing requirements under Federal law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### F. Submission to Congress and the Comptroller General

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).

#### G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 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 (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### H. 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 19, 2004. 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 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 5, 2004.

**J.I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

■ Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

#### PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

#### Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by adding paragraph (a)(40) to read as follows:

#### § 63.99 Delegated Federal authorities.

(a) \* \* \*

(40) South Carolina

(i) [Reserved]

(ii) South Carolina Department of Health and Environmental Control (SC DHEC) may implement and enforce alternative requirements in the form of title V permit terms and conditions for International Paper Georgetown Mill, Georgetown, South Carolina, for subpart S of this part—National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. This action is contingent upon SC DHEC including, in title V permits, terms and conditions that are no less stringent than the Federal standard. In addition, the requirement applicable to the source remains the Federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

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