EPA-APPROVED REGULATIONS AND STATUTES IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
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[FR Doc. 05–8606 Filed 4–28–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R01–OAR–2004–ME–0002; A–1–FRL–7903–9]

Approval and Promulgation of Plan for the Control of Designated Pollutants; Maine; Total Reduced Sulfur From Existing Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a revision to Maine's plan for controlling air pollution under section 111(d) of the Clean Air Act (''111(d) plan''). This revision to Maine's regulations at Chapter 124, ''Total Reduced Sulfur Control From Kraft Pulp Mills'' (''Chapter 124''), extends the compliance date for existing brownstock washers to April 17, 2007. This action is being taken in accordance with section 111(d) of the Clean Air Act (''CAA'').

EFFECTIVE DATE: This rule is effective on May 31, 2005.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA 02114–2023; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–108, 1301 Constitution Avenue, NW., Washington DC ; and 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: Ian D. Cohen, (617) 918–1655.

SUPPLEMENTARY INFORMATION: The following table of contents describes the format for the **SUPPLEMENTARY INFORMATION** section:

1. Background

On March 1, 2005, EPA published a Direct Final Rule (''DFR'') approving a revision to the State of Maine's 111(d) plan for the control of TRS from existing kraft pulp mills at Chapter 124. 70 FR 9872. A detailed explanation of EPA's rationale for approving the 111(d) plan revision was provided in the March 1, 2005 DFR. In accordance with direct final rulemaking procedures, on March 1, 2005, EPA also published a companion notice of proposed rulemaking of this revision. 70 FR 9901. On March 5, 2005, EPA received one adverse comment on its proposed approval, which is summarized and addressed in section 2 below.[1] EPA therefore published a withdrawal of the DFR on March 15, 2005. 70 FR 12591.

2. Adverse Public Comment and EPA Response

The Agency received one adverse comment on EPA's proposed approval of Maine's 111(d) plan revision. A summary of that comment and EPA's response is provided below.

Comment: The commenter submitted a comment by electronic mail on March 5, 2005, stating that EPA's approval of Maine's 111(d) plan revision gives ''corporate polluters more time to pollute'' and that this compliance extension should not be approved. The commenter asserts that it is ''illegal to kill your fellow citizens when you have a choice'' to spend money to protect the health of American citizens, and that ''anything less equates to terrorism and war on [A]mericans.''

Response: The commenter makes blanket allegations about injury to the public with no support. EPA does not anticipate that Maine's 111(d) plan revision will endanger the public health and, therefore, disagrees with the commenter.

The term ''total reduced sulfur'' refers to a combination of compounds consisting primarily of hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide. These compounds are emitted when sulfur-based chemicals are used to dissolve wood chips as part of the paper making process. 70 FR 9872, 9874 (Mar. 1, 2005). These sulfides are extremely odorous. 41 FR 42012 (September 24, 1976) (proposed new source performance standards (NSPS) for kraft pulp mills).

As EPA explained in both the Agency's 1979 Emission Guideline for kraft pulp mills (EPA Guidelines Series, ''Kraft Pulping: Control of TRS Emissions from Existing Mills'' (March 1979) (''TRS Emission Guideline'')) and EPA's 1978 new source performance standards for kraft pulp mills (43 FR 7568 (February 23, 1978)), studies analyzing the effects of TRS emissions from kraft pulp mills have focused on the odor associated with those emissions. *See* TRS Emission Guideline at 2–8. Based on those studies, and given the low concentrations of TRS compounds found near existing kraft pulp mills, EPA determined that TRS emissions from the brownstock washer systems at these facilities were not likely to endanger the public health. *Id.* at 2–12. The commenter has submitted no information to the contrary.

The Administrator has determined that TRS emissions from kraft pulp mills may cause or contribute to endangerment of the public welfare but

[1] EPA also received a written comment from the Edison Electric Institute (''EEI''), objecting to EPA's description of CAA section 111(d) in the March 1, 2005 DFR. EEI's comment had nothing to do with the substance of the DFR, as EEI itself notes in its comment letter, but rather concerned one sentence included in the statutory background section of the DFR. EEI noted in its comments that the one sentence description of CAA section 111(d) was incorrect because it did not account for amendments to section 111(d) enacted in 1990, and that the description of section 111(d) was inconsistent with EPA's proposed Utility Rule, which specifically addressed the 1990 amendments to section 111(d). *See* 69 FR 4652 (Jan. 30, 2004) (proposed rule). EPA agreed with this comment and, for that reason, issued a ''correcting amendment'' to the statutory background section of the DFR on March 15, 2005. *See* 70 FR 12591 (Mar. 1, 2005); *see* also 70 FR 15994, 16029–32 (Mar. 29, 2005) (final rule containing EPA's interpretation of CAA section 111(d)). As explained in the March 15, 2005 notice, EEI's comment, and EPA's response to that comment, have no bearing on the substance of EPA's approval of Maine's 111(d) plan revision and, therefore, are not addressed further in this final rule.

has not found adverse effects on public health. *Id.* at 1–4, 2–12; 41 FR at 42012 (stating that TRS compounds have an adverse effect on public welfare). Therefore, TRS emissions are considered ''welfare-related pollutants'' for purposes of CAA section 111(d). TRS Emission Guideline at 2–1. EPA regulations at 40 CFR part 60, subpart B, which provide the procedures under which states submit 111(d) plans to control existing sources of designated pollutants, allow states to ''balance the emission guidelines, compliance times, and other information provided in the applicable guideline document against other factors of public concern in establishing emission standards, compliance schedules, and variances' for welfare-related pollutants. 40 CFR 60.24(d). Thus, states have more flexibility in establishing plans for the control of TRS emissions, including establishing compliance schedules, than would be the case if public health might be affected. TRS Emission Guideline at 1–3, 1–4.

EPA has previously approved other revisions to Maine's section 111(d) plan consistent with the provisions of 40 CFR part 60. EPA has determined that the limited extension of the compliance date for brownstock washer systems at existing kraft pulp mills in Maine is reasonable and consistent with our regulations for the reasons discussed in the DFR and below. As an initial matter, EPA's recommended guideline emission limit for brownstock washers at existing kraft pulp mills is ''no control.'' TRS Emission Guideline at 1–7, 10–12. This is due to both safety concerns and excessive costs associated with the retrofit of existing brownstock washer systems to control vent gases in comparison to the marginal amount of TRS reduction that would be achieved by such controls (about 1 percent of total mill TRS emissions). *Id.* at 10–12, 10–13. *See* also 43 FR 7568, 7570 (February 23, 1978) (final NSPS for kraft pulp mills explaining safety concerns and prohibitive costs associated with altering existing brownstock washers to achieve more effective TRS control). Maine's approved 111(d) plan governing TRS emissions from brownstock washers at existing kraft pulp mills is more stringent than EPA's emission guideline, because Chapter 124 establishes a specific emission limit and control requirements for TRS emissions from existing brownstock washer systems. Specifically, Chapter 124 requires that TRS emissions greater than 0.75 pounds per hour or 5 parts per million from brownstock washer systems at existing facilities be collected and controlled so as to meet the specified emission limit, unless the gases are combusted in accordance with other specific requirements of the rule. Maine Department of Environmental Protection Regulations, Chapter 124, section 3(D).

As explained in the preamble to EPA's National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (''Pulp and Paper MACT''), the emission controls needed to comply with the Pulp and Paper MACT rule, which is a rule that directly affects brownstock washers, are expected to also reduce TRS emissions from kraft pulp mills. 63 FR 18504, 18507 (Apr. 15, 1998). The compliance date for kraft pulp mills in the Pulp and Paper MACT is April 17, 2006. 40 CFR 63.440(d)(1). EPA or a state may, however, allow an extension of up to 1 year from a MACT compliance date if a source needs additional time to install controls. CAA section 112(i)(3)(B); 40 CFR 63.6(i)(4). Maine recently granted a 1-year compliance extension to the Pulp and Paper MACT rule to four existing kraft pulp mills in the state. Consistent with 40 CFR 63.6(i), the extension of compliance will be incorporated into the sources' Title V operating permits. *See* 40 CFR 63.6(i)(4), (9)–(12). These four sources, therefore, will have until April 17, 2007 to obtain and install effective controls for purposes of compliance with the Pulp and Paper MACT. These same sources are subject to Chapter 124. Because the controls needed to achieve compliance with Chapter 124 are the same as those needed to achieve compliance with the Pulp and Paper MACT, Maine submitted for EPA approval a revision to Chapter 124 that extends the compliance date for the brownstock washer systems to April 17, 2007.

It is reasonable and cost-effective to coordinate the compliance deadline for brownstock washer systems in Chapter 124 with the Pulp and Paper MACT compliance deadline, given that the four facilities affected by the 111(d) plan revision need additional time to obtain and install the control technology needed to achieve compliance with both Chapter 124 and the Pulp and Paper MACT. Such consideration of economic and technological difficulties associated with retrofitting existing facilities is consistent with the requirements of 40 CFR Part 60, Subpart B. EPA is approving Maine's 111(d) plan revision because it is not anticipated to endanger the public health, and because it is consistent with the requirements of CAA section 111(d) and 40 CFR part 60, subpart B.

I. Final Action

EPA is approving the revised 111(d) plan controlling TRS emissions from existing kraft pulp mills as submitted by ME DEP on June 23, 2004. The revised plan, which consists of the revised regulation entitled ''Chapter 124: Total Reduced Sulfur from Kraft Pulp Mills,'' requires brownstock washers at existing kraft pulp mills to be in compliance with Chapter 124 by April 17, 2007. This action affects four existing kraft pulp mills in the State of Maine.

II. Statutory and Executive Order Reviews

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). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

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). 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), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power

and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d) submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d) submission, to use VCS in place of a 111(d) submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection 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 June 28, 2005. 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 62

Environmental protection, Air pollution control, Total reduced sulfur.

Dated: April 17, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Part 62 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart U—Maine

■ 2. Section 62.4845 is amended by adding paragraph (b)(6) to read as follows:

§ 62.4845 Identification of plan.

* * * * *

(b) * * *

(6) A revision to the plan controlling TRS from existing kraft pulp mills which extends the final compliance date for brownstock washers to April 17, 2007, was submitted on June 23, 2004.

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[FR Doc. 05–8603 Filed 4–28–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 383

[Docket No. FMCSA–2001–11117]

RIN 2126–AA70

Limitations on the Issuance of Commercial Driver's Licenses With a Hazardous Materials Endorsement

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim final rule.

SUMMARY: The Federal Motor Carrier Safety Regulations (FMCSRs) prohibit States from issuing, renewing, transferring or upgrading a commercial driver's license (CDL) with a hazardous materials endorsement unless the Transportation Security Administration (TSA) has first conducted a security threat assessment of the applicant and determined the applicant does not pose a security risk warranting denial of the hazardous materials endorsement. The FMCSRs currently provide a specific date on which States become subject to the new requirement. This interim final rule amends the FMCSRs to cross-reference the TSA's compliance date as the date when FMCSA's companion requirements also become applicable. Consistent with TSA regulations, FMCSA also reduces the amount of advance notice that States must provide to drivers that a security threat assessment will be performed when they renew a hazardous materials endorsement. This rule is being issued as an IFR because it relates back to an existing substantive IFR published on May 5, 2003. This IFR will be subsumed into that rulemaking when it is finalized. All outstanding comments on these issues will be addressed in that final document.

DATES: This rule is effective on April 29, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Office of Safety Programs, (202) 366–9579, FMCSA, 400 7th Street, SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: This interim final rule is available for inspection and copying between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays at the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. An electronic version of this document along with all documents entered into this docket is available on the Internet at *http://dms.dot.gov.*

Summary of Today's Action

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act [Pub. L. 107–56, 115 Stat. 272] was enacted on October 25, 2001. Section 1012 of the USA PATRIOT Act amended 49 U.S.C. Chapter 51 by adding a new sec. 5103a titled ''Limitation on issuance of hazmat licenses.'' Section 5103a(a)(1) provides:

''A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Transportation has first determined, upon receipt of a notification under subsection (c)(1)(B), that the individual does not pose a security risk warranting denial of the license.''

FMCSA shares with TSA responsibility for implementing sec. 1012 of the USA PATRIOT Act. TSA has established the security threat assessment, including security risk factors, citizenship/immigration requirements for the hazardous