

■ **Par. 2.** Section 1.817-5 is amended as follows:

- 1. Paragraphs (f)(2)(ii) and (g) *Example 3* are removed.
- 2. Paragraph (f)(2)(iii) is redesignated as paragraph (f)(2)(ii).
- 3. The first sentence of paragraph (g) *Example 1* is revised.
- 4. Paragraph (g) *Example 4* is redesignated as paragraph (g) *Example 3*.
- 5. Paragraph (h)(6) is revised.
- 6. New paragraph (i)(2)(v) is added.

The revisions read as follows:

**§ 1.817-5 Diversification requirements for variable annuity, endowment, and life insurance contracts.**

\* \* \* \* \*

(g) \* \* \*

*Example 1.* (i) The assets underlying variable contracts issued by a life insurance company consist of two groups of assets: (a) a diversified portfolio of debt securities and (b) interests in P, a partnership. \* \* \*

\* \* \* \* \*

(h) \* \* \*

(6) *Security.* The term *security* shall include a cash item and any partnership interest, whether or not registered under a Federal or State law regulating the offering or sale of securities. The term shall not include any interest in real property, or any interest in a commodity.

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \*

(v) A segregated asset account in existence before March 1, 2005, will be considered to be adequately diversified if—

(A) As of March 1, 2005, the account was adequately diversified within the meaning of section 817(h) and this regulation as in effect prior to that date; and

(B) By December 31, 2005, the account is adequately diversified within the meaning of section 817(h) and this regulation.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: February 15, 2005.

**Eric Solomon,**

*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. 05-3825 Filed 2-28-05; 8:45 am]

**BILLING CODE 4830-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 62**

[R01-OAR-2004-ME-0002a; A-1-FRL-7876-8 ]

**Approval and Promulgation of Air Quality Implementation Plans; Maine; Control of Total Reduced Sulfur From Kraft Pulp Mills**

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a revision to Maine's plan for controlling air pollution according to section 111(d) of the Clean Air Act (*i.e.*, a "111(d) plan"). This revision changes state regulations controlling the emission of total reduced sulfur ("TRS") from existing kraft paper mills by making April 17, 2007 the compliance date for brownstock washers. This action is being taken in accordance with section 111(d) of the Clean Air Act ("CAA").

**DATES:** This direct final rule will be effective May 2, 2005, unless EPA receives adverse comments by March 31, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to Lucy Edmondson, acting Unit Manager, Air Permits, Toxics and Indoor Program Unit, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114-2023. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in Part (I)(B)(1)(i) through (iii) of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Ian D. Cohen, Air Permits, Toxics, and Indoor Air Programs Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAP), Boston, MA 02114-2023, [cohen.ian@epa.gov](mailto:cohen.ian@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 available for inspection at the Regional Office.* EPA has established an official

public rulemaking file for this action under R01-OAR-2004-ME-0002. 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 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 Federal holidays.

2. *Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency.* Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333-0017; Division of Air Quality Control.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the [Regulations.gov](http://www.regulations.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 R01-OAR-2004-ME-0002" 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 [edmondson.lucy@epa.gov](mailto:edmondson.lucy@epa.gov), please include the text "Public comment on proposed rulemaking R01-OAR-2004-ME-0002" 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 [Regulations.gov](http://www.regulations.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. *Regulations.gov.* Your use of [Regulations.gov](http://www.regulations.gov) is an alternative method of submitting electronic comments to EPA. Go directly to [Regulations.gov](http://www.regulations.gov) at <http://www.regulations.gov>, then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as Agency name to search on. 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: Lucy Edmondson, acting Unit Manager, Air Permits, Toxics and Indoor Program Unit, Office of Ecosystem Protection (mail code CAP), U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114-2023. Please include the text "Public comment on proposed rulemaking R01-OAR-2004-ME-0002" in the subject line on the first page of your comment

3. *By Hand Delivery or Courier.* Deliver your comments to: Lucy Edmondson, acting Unit Manager, Air Permits, Toxics and Indoor Program Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 11th floor, (CAP), Boston, MA 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 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.

### II. Rulemaking Information

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- A. Background and Purpose.
- B. Summary of Change.

### III. Summary of SIP Revision

- A. What Is Total Reduced Sulfur?
- B. What Is a Brownstock Washer?
- C. What Is Maine's Requested Change to Chapter 124?
- D. Why Is Maine requesting This Change?
- E. What Actions Did Maine Take To Satisfy the Federal Public Hearing Requirement?
- F. Why Is EPA Approving This Change?

### IV. Final Action

### V. Statutory and Executive Order Reviews

### II. Rulemaking Information

#### A. Background and Purpose

Section 111(d) of the CAA allows EPA to approve state plans to regulate emissions from existing sources of "designated pollutants," *i.e.*, pollutants not listed as criteria pollutants under CAA section 108(a) nor as hazardous air pollutants ("HAPs") under section 112(b)(1), but to which a standard of performance for new sources applies under section 111. TRS is a designated pollutant. EPA does not regulate emissions of TRS from existing sources.

Maine DEP originally submitted chapter 124, "Total Reduced Sulfur Control From Kraft Pulp Mills" ("chapter 124" or "TRS Rule") to EPA on February 15, 1990. EPA approved Maine's TRS Rule under CAA section 111(d) on September 19, 1990 (55 FR 38545). On October 4, 1994, EPA approved a revision to Chapter 124 (59 FR 50506). The revision extended the compliance date for brownstock washer systems from January 1, 1994 to September 30, 1998. Maine extended the compliance date to give existing mills more time to comply with the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (Pulp and Paper MACT), which was in preparation at the time.

EPA published the Pulp and Paper MACT on April 15, 1998 (63 FR 18617, codified at 40 CFR Part 63 Subpart S). Although TRS compounds are not HAPs and therefore not subject to the Pulp and Paper MACT, Maine subsequently

submitted a request to revise Chapter 124 to apply certain control provisions from the MACT standard to TRS emissions. EPA approved this revision to the 111(d) plan on May 1, 2003 (68 FR 23209). The compliance date for brownstock washers in the revised TRS Rule was April 17, 2005, which is one year earlier than the compliance date for kraft pulping systems in the Pulp and Paper MACT. See 40 CFR 63.440(d)(1).

Maine's TRS Rule governs emissions of TRS from existing kraft pulp mills. New mills are subject to the New Source Performance Standards (NSPS) in 40 CFR Part 60 Subpart BB.

#### B. Summary of Change

Maine is requesting one change to Chapter 124. The previous version called for existing kraft pulp mills to bring their brown stock washers into compliance by April 17, 2005. This is one year before such mills must be in compliance with the HAP emission standards in 40 CFR 63 Subpart S. Maine has requested a 111(d) plan revision to extend the compliance date for brownstock washers in Chapter 124 to April 17, 2007. EPA is approving this revision.

### III. Summary of SIP Revision

#### A. What Is Total Reduced Sulfur?

The term "total reduced sulfur" refers to a mixture of four compounds: 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. TRS compounds have a strong, unpleasant odor. In concentrations found near paper mills, they can cause health problems such as sore throats and nausea.

#### B. What Is a Brownstock Washer?

Brownstock (sometimes called brown stock) washer systems are part of the kraft pulping system. After pulp has been made from dissolved wood chips, brownstock washers rinse the pulp and remove excess chemicals from it. If emissions from these systems are not controlled, they can release TRS into the atmosphere.

#### C. What Is Maine's Requested Revision to Chapter 124?

On April 26, 2004, Maine revised Chapter 124 to extend the compliance date for brownstock washer controls from April 17, 2005 to April 17, 2007. On June 23, 2004, Maine submitted a request to revise its CAA 111(d) plan accordingly. EPA is approving this revision to Maine's 111(d) plan.

#### D. Why Is Maine Requesting This Change?

Maine last revised its 111(d) plan on February 17, 2000. At the time it appeared that all of the affected mills would be able to bring their brownstock washers into compliance with Chapter 124 by April 17, 2005. This has been more difficult than expected and three mills in Maine have requested extensions to April 2007.

The compliance date for kraft pulping systems 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. 40 CFR 63.6(i)(4). Maine has determined that these mills need the additional time to obtain and install the best equipment for controlling TRS emissions.

#### E. What Actions Did Maine Take To Satisfy the Federal Public Hearing Requirement?

Maine certified that a public hearing on the revision to Chapter 124 was held in Augusta, ME on January 15, 2004 in accordance with the requirements of 40 CFR 60.23(d).

#### F. Why Is EPA Approving This Change?

The change Maine wishes to make is consistent with Section 111(d) of the Clean Air Act and with the MACT compliance date for the control of HAPs. EPA has determined that this rule will benefit air quality by providing existing kraft paper mills with additional time to properly install pollution control equipment.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective May 2, 2005 without further notice unless EPA receives adverse comments by March 31, 2005.

If 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. 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 May 2, 2005 and no further action will be taken on the proposed rule.

### IV. 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," will affect three existing kraft pulp mills in the State of Maine.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective May 2, 2005 without further notice unless the Agency receives relevant adverse comments by March 31, 2005.

If EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 2, 2005 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### V. 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 (P.L. 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) plan revisions, 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) plan revision, to use VCS in place of a 111(d) plan revision 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 May 2, 2005. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. 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, Total reduced sulfur.

Dated: February 10, 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. 7411(d).

#### 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.

\* \* \* \* \*

[FR Doc. 05-3908 Filed 2-28-05; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CG Docket No. 02-278; DA 05-342]

### Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for declaratory ruling, comments requested.

**SUMMARY:** This document seeks comment on a Petition for Declaratory Ruling filed by TSA Stores, Inc. asking the Federal Communications Commission ("Commission") to preempt a provision of the Florida Statutes as applied to interstate telephone calls.

**DATES:** Comments are due on or before March 31, 2005, and reply comments are due on or before April 15, 2005.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See supplementary information for further filing instructions.

#### FOR FURTHER INFORMATION CONTACT:

Kelli Farmer, Consumer Policy Division, Consumer & Governmental Affairs Bureau, (202) 418-2512 (voice), [Kelli.Farmer@fcc.gov](mailto:Kelli.Farmer@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document, CG Docket No. 02-278, DA 05-342, released February 9, 2005. On July 3, 2003, the Commission released a *Report and Order (2003 TCPA Order)*, 68 FR 44144, July 25, 2003. In the *2003 TCPA Order*, the Commission stated its belief that any state regulation of interstate telemarketing calls that differed from our rules under section 227 almost certainly would conflict with and frustrate the federal scheme and would be preempted. The Commission will consider any alleged conflicts between state and federal requirements and the need for preemption on a case-by-case basis. Accordingly, any party that believes a state law is inconsistent with section 227 or our rules may seek a *Declaratory Ruling* from the Commission. When filing comments, please reference CG Docket No. 02-278. Comments may be