

rule. 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 stays the applicability of a currently promulgated rule and does not impose any additional enforceable duty beyond that already required, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. 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). This action merely stays the applicability of a currently promulgated 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 SIP 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 SIP submission, to use VCS in place of a SIP 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.*).

#### *B. 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. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, the EPA has made such a good cause finding, including the reasons therefore, and established an effective date of April 15, 2004. The 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### *C. 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 June 14, 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 indefinitely staying the April 17, 2003 conditional approval of the District of Columbia's, Maryland's and Virginia's SIP revisions for the D.C. Area 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, Volatile organic compounds.

Dated: April 2, 2004.

**Donald S. Welsh,**

*Regional Administrator, Region III.*

[FR Doc. 04-8096 Filed 4-14-04; 8:45 am]

BILLING CODE 6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

[MD161-3110a; FRL-7648-3]

#### **Approval and Promulgation of Air Quality Implementation Plans; Maryland; Revisions to the 2005 ROP Plan for the Cecil County Portion of the Philadelphia-Wilmington-Trenton 1-Hour Ozone Nonattainment Area to Reflect the Use of MOBILE6**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maryland. These revisions amend the 2005 rate-of-progress (ROP) plan in the Maryland SIP for the Cecil County portion of the Philadelphia-Wilmington-Trenton nonattainment severe 1-hour ozone nonattainment area. The intent of these revisions is to update the Cecil County 2005 ROP plan's mobile emissions inventories and motor vehicle emissions budgets (MVEBs) to reflect the use of MOBILE6 and to amend the contingency measures associated with that plan. These revisions are being approved in accordance with the Clean Air Act (the Act).

**DATES:** This rule is effective on June 1, 2004, without further notice, unless EPA receives adverse written comment by May 17, 2004. If EPA receives such comments, it 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:** Submit your comments, identified by MD161-3110 by one of the following methods:

A. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

B. E-mail: [Budney.Larry@epa.gov](mailto:Budney.Larry@epa.gov)

C. Mail: Larry Budney, Mailcode 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. MD161-3110. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

**FOR FURTHER INFORMATION CONTACT:** Larry Budney, Mail Code 3AP23, Energy, Radiation and Indoor Environment Branch, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia Pennsylvania 19103, (215) 814-2184, or by e-mail at [Budney.Larry@epa.gov](mailto:Budney.Larry@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Clean Air Act Requirements**

The Clean Air Act (the Act) requires that for certain ozone nonattainment areas, states are to submit plans demonstrating a reduction in volatile organic compound (VOC) emissions of at least three percent per year, grouped in consecutive three year periods, through the area's specified attainment

date. This is known as the rate-of-progress, commonly referred to as ROP, requirement of the Act. The first ROP requirement covers the period 1990-1996 and is commonly known as the 15 Percent Plan. Subsequent ROP milestone years are grouped in three year intervals beginning after 1996. The ROP milestone years for Cecil County are 1999, 2002, and 2005. To qualify for SIP credit in ROP plans, emission reduction measures, whether mandatory under the Act or adopted at the state's discretion, must ensure real, permanent and enforceable emission reductions.

Section 172(c)(9) of the Act requires moderate and above ozone nonattainment areas to adopt contingency measures to be implemented should the area fail to achieve ROP or to attain by its attainment date. In addition, section 182(c)(9) of the Act requires serious and above areas to adopt contingency measures which would be implemented if the area fails to meet any applicable milestone. States are required to develop contingency measures in the event an area fails to meet ROP in a given milestone year.

Under EPA's transportation conformity rule, like an attainment plan, an ROP plan is referred to as a control strategy SIP (62 FR 43780, August 1, 1997). A control strategy SIP identifies and establishes the MVEBs to which an area's transportation improvement program and long range transportation plan must conform. Conformity to a control strategy SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standard (NAAQS), the 1-hour standard for ozone in this case. Maryland is required to identify MVEBs for both NO<sub>x</sub> and VOCs in the Cecil County ROP plans for all milestone years.

On September 19, 2001 (66 FR 48209), EPA approved a 2005 ROP plan the Cecil County portion of the Philadelphia area which was based on the EPA emissions model MOBILE5. That plan included mobile source emissions inventories for 1990 and 2005 and MVEBs budgets for the milestone year 2005.

**II. The Revisions to the Cecil County, Maryland 2005 ROP Plan**

On March 8, 2004, the State of Maryland submitted a SIP revision to EPA. This SIP revision, submitted by the Maryland Department of the Environment (MDE), amends the Cecil County 2005 ROP plan to reflect the use of the MOBILE6 emissions model. This

SIP revision revises the 1990 and 2005 motor vehicle emissions inventories and explicitly identifies the 2005 MVEBs developed using the MOBILE6 emissions model. The March 8, 2004 submittal also amends the contingency measures associated with the 2005 ROP plan for Cecil County. The revised 2005 ROP Plan for Cecil County submitted on March 8, 2004, continues to demonstrate that the 2005 requirement for ROP is met.

*A. The Emission Inventories*

Table 1 summarizes the revised motor vehicle emissions inventories for Cecil County in tons per day (tpd). The revised 1990 base year inventories were updated using the MOBILE6 model. The 2005 inventories were developed using MOBILE6 and the latest planning assumptions, including 2002 vehicle registration data, vehicle miles traveled (VMT), speeds, fleet mix, and 2005 SIP control measures. Only VOC inventories are addressed here because Cecil County's ROP Plan does not rely on any NO<sub>x</sub> substitution to meet the 2005 ROP emission reduction target for VOC.

**TABLE 1.—PROJECTED UNCONTROLLED MOTOR VEHICLE VOC EMISSIONS INVENTORIES IN CECIL COUNTY'S 2005 ROP PLAN**

Nonattainment area	1990 VOC (tpd)	2005 VOC (tpd)
Cecil County .....	8.59	5.00

EPA has articulated its policy regarding the use of MOBILE6 in SIP development in its "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity"<sup>1</sup> EPA's policy guidance required the State to consider whether growth and control strategy assumptions for non-motor vehicle sources (*i.e.*, point, area, and non-road mobile sources) were still accurate at the time the March 8, 2004, submittal was developed. Maryland reviewed the growth and control strategy assumptions for non-motor vehicle sources, revised those which were not current and concluded that the remaining assumptions continue to be valid for the 2005 ROP plan. Maryland's March 8, 2004 submittal satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions

<sup>1</sup> Memorandum, "Policy Guidance of the Use of MOBILE6 for SIP development and Transportation Conformity," issued January 18, 2002. A copy of this memorandum can be found on EPA's Web site at <http://www.epa.gov/otaq/transp/traqconf.htm>.

calculated using MOBILE6 continue to support ROP for the projected attainment of the 1-hour ozone NAAQS by the attainment date of 2005 for the Cecil County portion of the Philadelphia-Wilmington-Trenton area. EPA is approving these revisions to the 1990 and 2005 motor vehicle emission inventories of the 2005 ROP plan for Cecil County, Maryland.

*B. The Revised Motor Vehicle Emissions Budgets (MVEBs)*

Table 2 summarizes the revised MVEBs identified in MDE's March 8, 2004, submittal to EPA. These MVEBs were developed using the latest planning assumptions, including 2002 vehicle registration data, VMT, speeds, fleet mix, and 2005 SIP control measures. Maryland's March 8, 2004, submittal satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support ROP for the projected attainment of the 1-hour NAAQS for ozone by Cecil County's November 15, 2005 attainment date. These MOBILE6-based 2005 ROP MVEBs, as shown Table 2, replace the previously approved MOBILE5-based MVEBs in the 2005 ROP plan for Cecil County. EPA is approving these MOBILE6-based budgets as revisions to the Cecil County 2005 ROP plan.

**TABLE 2.—MARYLAND MOTOR VEHICLE EMISSION BUDGETS FOR CECIL COUNTY**

Nonattainment area	2005 ROP	
	VOC (tpd)	NO <sub>x</sub> (tpd)
Cecil County .....	3.0	11.3

*C. Demonstration That the 2005 Rate-of-Progress Target Continues To Be Met*

The State of Maryland's March 8, 2004 submittal of the revised 2005 ROP plan for Cecil County details how the 2005 ROP emission reduction target is calculated in tons of VOC per day. For the year 2005, it also projects what the uncontrolled VOC emissions from all sources (point, mobile, and area) would be, the calculated creditable VOC reductions from all Federal measures and SIP-approved emission control measures, and the emission level obtained from implementation of those measures. The revised 2005 ROP Plan for Cecil County submitted on March 8, 2004 continues to demonstrate that the 2005 ROP target level is met. EPA is approving the MOBILE6-based revisions

to the 1990 and 2005 motor vehicle emissions inventories and the 2005 MVEBs of the 2005 ROP plan for Cecil County because that plan continues to demonstrate that the required ROP target level for 2005 is met. Table 3 summarizes the ROP demonstration.

**TABLE 3.—SUMMARY OF 2005 ROP DEMONSTRATION FOR CECIL COUNTY**

Cecil County 2005 ROP Plan	VOC tpd
Projected Uncontrolled Emissions from All Sources of VOC (includes growth) .....	17.26
Reductions From All Creditable Emission Control Measures .....	9.86
Emission Level Obtained (uncontrolled emissions minus emission reductions from creditable control measures) .....	* 7.41
Projected 2005 ROP Target Level Surplus Emission Reductions (target level minus emission level obtained) .....	7.73
	0.32

\*Note: Numbers are rounded.

*D. Contingency Measures*

Section 172(c)(9) of the Act requires moderate and above ozone nonattainment areas to adopt contingency measures that would have to be implemented should the area fail to achieve ROP or to attain by its attainment date. In addition, section 182(c)(9) of the Act requires serious and above areas to adopt contingency measures which would be implemented if the area fails to meet any applicable milestone. EPA previously approved the 2005 ROP plan for Cecil County (66 FR 48209, September 19, 2001) including contingency measures. In the March 8, 2004, revision to Cecil County's 2005 plan, Maryland outlines its approach for using the NO<sub>x</sub> reductions from its SIP-approved rule banning open burning for contingency purposes. EPA encourages the early implementation of required control measures and of contingency measures as a means of guarding against failure to meet a milestone. EPA allows for the substitution of NO<sub>x</sub> emission reductions for VOC in contingency plans for ROP provided NO<sub>x</sub> reductions are necessary for attainment. The emission reduction measures listed to meet the 2005 target level for VOCs are expected to result in more emission reductions than are needed to meet ROP requirements (see Table 3). Maryland's March 8, 2004, submittal indicates that it is now dedicating all of the VOC emission reductions from its control measures to control strategy portion of the 2005 ROP plan to ensure that the ROP requirement (emission reduction target) is met. If contingency measure

credits are needed in the future to ensure that the 2005 reduction in VOC emissions has been met, the excess NO<sub>x</sub> emission reductions achieved through the open burning ban rule will be used. If needed, a reduction of 0.74 tpd of NO<sub>x</sub> from the open-burning ban rule is available to meet the VOC contingency requirement of the 2005 ROP plan utilizing NO<sub>x</sub> substitution. The open burning ban rule was adopted and implemented as a part of the Maryland SIP's attainment demonstration for the Philadelphia area approved by EPA (66 FR 54977, October 29, 2001), which demonstrated that NO<sub>x</sub> reductions are needed for attainment. EPA is approving the revisions to the contingency measures associated with the 2005 ROP plan for Cecil County.

**III. EPA's Evaluation of the March 8, 2004 SIP Revisions**

On March 8, 2004, the State of Maryland submitted SIP revisions to EPA for review and approval. These SIP revisions update the Cecil County 2005 ROP plan's mobile source emissions inventories and MVEBs to reflect the use of MOBILE6, and amend the contingency measures associated with that plan. EPA has evaluated Maryland's March 8, 2004, SIP revision submittal amending Cecil County's 2005 ROP plan for consistency with the Act, applicable EPA regulations, policies and guidance. The revised Cecil County 2005 ROP continues to demonstrate that the three percent per year emissions reduction requirement of section 182(b)(1) of the Act has been met. All control measures in the ROP demonstration have been adopted and implemented by the State of Maryland or are Federal measures being implemented at the national level. All state control measures have been approved by EPA into the Maryland SIP and are permanent and enforceable. A Technical Support Document (TSD) has been prepared to support this rulemaking action. Copies of the TSD may be obtained by contacting Larry Budney at Mail Code 3AP23, Energy, Radiation and Indoor Environment Branch, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia Pennsylvania 19103, by phone at (215) 814-2184, or by e-mail at [Budney.Larry@epa.gov](mailto:Budney.Larry@epa.gov).

**IV. Final Action**

EPA is approving the SIP revisions submitted by the State of Maryland on March 8, 2004. These revisions amend the Cecil County 2005 ROP plan to update the plan's 1990 and 2005 motor vehicle emissions inventories and MVEBs to reflect the use of the MOBILE6 emissions model. The

revisions also amend the contingency measures associated with the Cecil County 2005 ROP plan. The revised 2005 ROP for Cecil County submitted on March 8, 2004 continues to demonstrate that the required ROP emission reduction target for year 2005 is met. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on June 1, 2004, without further notice unless EPA receives adverse comment by May 17, 2004. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

## V. Statutory and Executive Order Reviews

### A. General Requirements

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 (Pub. 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). This action 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 SIP 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 SIP submission, to use VCS in place of a SIP 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.*).

### B. 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### C. 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 June 14, 2004.

Filing a petition for reconsideration by the Administrator of this final rule approving revisions to the motor vehicle emission inventories and MVEBs of the 2005 ROP plan for Cecil County, Maryland to reflect the use of the MOBILE6 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, Volatile organic compounds.

Dated: April 7, 2004.

Judith M. Katz,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 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 V—Maryland

■ 2. Section 52.1076 is amended by adding paragraph (f)(3) to read as follows:

#### § 52.1076 Control strategy plans for attainment and rate-of-progress: Ozone.

\* \* \* \* \*

(f) \* \* \*

(3) EPA approves revisions to the Maryland State Implementation Plan, submitted by the Secretary of the Maryland Department of the Environment on March 8, 2004, for the rate-of-progress (ROP) plan for year 2005 for the Cecil County portion of the Philadelphia-Wilmington-Trenton 1-hour ozone nonattainment area. These revisions update Cecil County's 2005 ROP plan's 1990 and 2005 motor vehicle emissions inventories and motor vehicle emissions budgets to reflect the use of the MOBILE6 emissions model, establish motor vehicle emissions budgets of 3.0 tons per day (tpd) of volatile organic compounds and 11.3 tpd of nitrogen oxides, and amend the

contingency measures associated with the 2005 ROP plan for Cecil County.

[FR Doc. 04-8580 Filed 4-14-04; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[VA001-1001a; FRL-7648-4]

#### 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; Commonwealth of Virginia

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

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving a request from the Commonwealth of Virginia's Department of Environmental Quality (DEQ) for authority to implement and enforce state permit terms and conditions in place of those of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Pulp and Paper Industry, with respect to the operations of International Paper Company's Franklin Mill, located in Franklin, Virginia. Thus, the EPA is hereby granting the Virginia DEQ the authority to implement and enforce alternative requirements in the form of Clean Air Act (CAA) Title V permit terms and conditions after EPA has approved the State's alternative requirements. The EPA is approving this request because it has found that the Virginia DEQ has satisfied the requirements for approval set forth at 40 CFR part 63, subpart E, entitled, "Approval of State Programs and Delegation of Federal Authorities."

**DATES:** This rule is effective on June 14, 2004 without further notice, unless EPA receives adverse written comment by May 6, 2004. If EPA receives such comments, it 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:** Submit your comments, identified by VA001-1001, by one of the following methods:

A. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

B. E-mail: [Campbell.Dave@epa.gov](mailto:Campbell.Dave@epa.gov).

C. Mail: David J. Campbell, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency,

Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. VA001-1001. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://regulations.gov) or e-mail. The federal [regulations.gov](http://regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Copies of all comments should also be sent to the Virginia Department of Environmental Quality. Copies of written comments should be sent to John M. Daniel, Jr., Director, Air Division, Virginia Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240. Copies of electronic comments should be sent to [jmdaniel@deq.state.va.us](mailto:jmdaniel@deq.state.va.us). Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

**FOR FURTHER INFORMATION CONTACT:** Ray Chalmers, (215) 814-2061, or by e-mail at [chalmers.ray@epa.gov](mailto:chalmers.ray@epa.gov).

## SUPPLEMENTARY INFORMATION:

### I. Background

Pursuant to section 112 of the Clean Air Act (CAA), the Environmental Protection Agency (EPA) promulgates NESHAP for various categories of air pollution sources. On April 15, 1998, EPA promulgated a NESHAP for the Pulp and Paper Industry, as codified at 40 CFR part 63, subpart S, §§ 63.440 through 63.459. (See, 63 FR 18504.) International Paper Company operates a pulp and paper mill called the Franklin Mill, located in Franklin, Virginia, which is subject to the requirements of this NESHAP.

Under section 112(l) of the CAA, EPA may approve State or local rules or programs to be implemented and enforced in place of certain otherwise applicable Federally promulgated CAA section 112 rules, emission standards, or requirements. EPA's approval of State and local rules or programs under section 112(l) is governed by regulations found at 40 CFR part 63, subpart E. (See, 65 FR 55810, dated September 14, 2000). Under the provisions of subpart E found at 40 CFR 63.94, a State or local air pollution control agency may seek approval, for affected sources permitted by the State or local agency under a CAA Title V permitting program developed pursuant to the EPA regulations found at 40 CFR part 70, of State or local CAA Title V permit terms and conditions to be implemented and enforced in lieu of specified existing and future Federal CAA section 112 rules, emissions standards, or requirements. This option is referred to as the equivalency by permit (EBP) option. To receive EPA approval using this option, the State or local agency must meet the requirements of 40 CFR 63.91 and 63.94.

Approval of alternative requirements under the EBP process comprises three steps. The first step is EPA granting "up-front approval" of a State's EBP program. (See, 40 CFR 63.94(a) and (b).) The second step is EPA review and approval of the State's proposed alternative CAA section 112 requirements in the form of pre-draft permit terms and conditions. (See, 40 CFR 63.94(c) and (d).) The third step is incorporation of the approved pre-draft permit terms and conditions into a specific CAA Title V permit and the CAA Title V permit issuance process itself. (See, 40 CFR 63.94(e).)

The first step, obtaining EPA's "up-front approval" of a State's EBP program, enables EPA to ensure that: (1) A State meets the criteria at 40 CFR 63.91(d) for up-front approval common to all approval options; (2) a legal