

**POSTAL SERVICE****39 CFR Part 265****Release of Information****AGENCY:** Postal Service.**ACTION:** Final rule.

**SUMMARY:** This final rule changes the procedures for the release of information about holders of postage meter licenses. The procedures are necessary to ensure individual privacy while providing for the release of information needed for customer protection.

**DATES:** This rule is effective July 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** Wayne Wilkerson, 703-292-3782, or by fax, 703-292-4050.

**SUPPLEMENTARY INFORMATION:** The Postal Service published a proposed rule on May 9, 2002, to amend 39 CFR part 265, Release of Information, giving new procedures for releasing the name and address of a particular holder of a postage meter license. The new procedures will ensure that legitimate expectations of individual privacy are met, while providing for the release of information needed for consumer protection. The new procedures remove the processing of requests for information about meter license holders from field locations, and enables Postage Technology Management at Postal Service Headquarters to ensure that information is released appropriately. Comments on the proposed rule were due on or before June 10, 2002. We received no comments objecting to the proposed rule or requesting any changes. Therefore, the rule is adopted as final without any changes.

**List of Subjects in 39 CFR Part 265**

Administrative practice and procedure, Postal Service.

**The Amendment**

For the reasons set out in this document, the Postal Service is amending 39 CFR part 265 as follows:

**PART 265—RELEASE OF INFORMATION**

1. The authority citation for part 265 continues to read as follows:

**Authority:** 5 U.S.C. 552; 5 U.S.C. App. 3, 39 U.S.C. 401, 403, 410, 1001, 2601.

2. Amend § 265.6 by revising paragraphs (d) introductory text and (d)(2); by redesignating paragraphs (d)(3) through (d)(8) as paragraphs (d)(4)

through (d)(9), respectively; and by adding a new paragraph (d)(3) to read as follows:

**§ 265.6 Availability of records.**

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(d) *Disclosure of names and addresses of customers.* Upon request, the names and addresses of specifically identified Postal Service customers will be made available only as follows:

\* \* \* \* \*

(2) *Name and address of permit holder.* The name and address of the holder of a particular bulk mail permit, permit imprint or similar permit (but not including postage meter licenses), and the name of any person applying for a permit in behalf of a holder will be furnished to any person upon the payment of any fees authorized by paragraph (b) of § 265.9. For the name and address of a postage meter license holder, see paragraph (d)(3) of this section. (Lists of permit holders may not be disclosed to members of the public. See paragraph (e)(1) of this section.)

(3) *Name and address of postage meter license holder.* The name and address of the holder of a postage meter license authorizing use of a postage meter printing a specified indicium will be furnished to any person upon the payment of any fees authorized by paragraph (b) of § 265.9, provided the holder is using the license for a business or firm. The request for this information must be sent to the manager of Postage Technology Management, Postal Service Headquarters. The request must include the original or a photocopy of the envelope or wrapper on which the meter indicium in question is printed, and a copy or description of the contents to support that the sender is a business or firm and not an individual. (Lists of postage meter license holders may not be disclosed to members of the public. See paragraph (e)(1) of this section.)

\* \* \* \* \*

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 02-17712 Filed 7-12-02; 8:45 am]

**BILLING CODE 7710-12-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 63****[A-1-FRL-7240-7]**

**Approval and Promulgation of Section 112(I) Authority for Regulating Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emissions Standards for Hazardous Air Pollutants From the Pulp and Paper Industry; State of Maine**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a delegation request submitted by the State of Maine. Pursuant to section 112(I) of the Clean Air Act (CAA), Maine Department of Environmental Protection (ME DEP) 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. EPA is granting ME DEP 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. This action is being taken in accordance with the Clean Air Act.

**EFFECTIVE DATE:** This rule will become effective on August 14, 2002.

**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.

**FOR FURTHER INFORMATION CONTACT:** Ian D. Cohen, Office of Ecosystems Protection, U.S. Environmental Protection Agency, EPA-New England, One Congress Street, Suite 1100 (CAP), Boston, MA 02114-2023, Telephone (617) 918-1655.

**SUPPLEMENTARY INFORMATION:****Outline**

- I. What action is EPA taking?
- II. Why is EPA taking this action?
- III. What events led up to this action?
- IV. In what ways can EPA delegate HAP standards to state governments?
- V. What is the process for approval of an Equivalency by Permit (EBP) program?
- VI. Where is Maine's EBP program in the delegation process?
- VII. What are the legal standards governing the EBP program?
- VIII. How much oversight authority does EPA have over an EBP program?

IX. What comments did EPA receive and how did we respond?

X. Administrative Requirements

### **I. What Action Is EPA Taking?**

EPA is approving a delegation request submitted by ME DEP under section 112 of the Clean Air Act (CAA), 42 U.S.C. 7412. On January 17, 2002, EPA proposed to approve ME DEP's delegation request for authority to substitute approved state permit terms and conditions for otherwise applicable federal section 112 standards (67 FR 2390). This action finalizes our approval of ME DEP's delegation request.

### **II. Why Is EPA Taking This Action?**

On April 15, 1998, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for the Pulp and Paper Industry (63 FR 18617), which has been codified in 40 CFR part 63, subpart S. These standards regulate emissions of air toxics, or hazardous air pollutants (HAPs), within the pulp and paper production source category. The standards require both new and existing major sources within this category to control HAP emissions using the maximum achievable control technology (MACT). We will refer to these section 112 standards as "the Pulp and Paper MACT."

When Congress enacted the CAA amendments in 1990, it recognized that some state, local, and tribal (S/L/T) air pollution control agencies had developed their own air toxics rules. Congress therefore revised section 112(l) of the CAA to allow the EPA to approve S/L/T rules and regulations to be implemented and enforced in place of section 112 rules and requirements when the S/L/T agency demonstrates that such alternative standards or programs are no less stringent than EPA's rules (65 FR 55810 (September 14, 2000)).

EPA is approving ME DEP's alternative program because ME DEP has demonstrated that its requirements will be no less stringent than the Pulp and Paper MACT.

### **III. What Events Led Up to This Action?**

On July 16, 1999, EPA delegated its authority to implement and enforce the Pulp and Paper MACT to ME DEP. Lincoln Pulp and Paper, in Lincoln, ME (LPP) is one of several sources in Maine currently subject to the Pulp and Paper MACT. On September 25, 2001, ME DEP requested authority to implement and enforce alternative requirements to the Pulp and Paper MACT at LPP. The EPA Regional Office in Boston has been working closely with ME DEP and LPP to define the alternative requirements.

ME DEP will continue to implement and enforce the Pulp and Paper MACT without changes for all other pulp and paper mills in Maine.

ME DEP also asked us to approve its demonstration that it has adequate authorities and resources to implement and enforce all CAA section 112 programs and rules. This demonstration, when approved, will streamline the approval process for future CAA section 112(l) applications.

### **IV. In What Ways Can EPA Delegate HAP Standards to State Governments?**

The provisions in 40 CFR part 63, subpart E ("delegation rule") outline the procedures for delegating the authority to implement and enforce HAP standards and other requirements to S/L/T governments. Subpart E contains several options to allow S/L/Ts to demonstrate equivalency with corresponding federal requirements. These include: slight amendments to the federal section 112 rule (40 CFR 63.92); rule for rule substitution (40 CFR 63.93); program substitution (substituting for part or all of the air toxics program) (40 CFR § 63.97); or equivalency by permit (substituting rules through the operating permit program) (40 CFR 63.94). Under the Equivalency by Permit ("EBP") provisions, approved S/L/T governments can substitute approved alternative requirements through title V operating permit terms and conditions (40 CFR 63.94).

### **V. What Is the Process for Approval of an Equivalency by Permit (EBP) Program?**

The EBP process comprises three steps.

First, EPA gives "up-front approval" to a S/L/T EBP program; in this case, the state has submitted its EBP program. This step ensures that ME DEP meets the 40 CFR 63.91(d) criteria for up-front approval, provides a legal foundation for ME DEP to replace some federal section 112 requirements with alternative, federally enforceable requirements, and delineates the specific sources and federal emission standards for which the state is accepting delegation (65 FR 55816). If EPA approves the program, EPA will amend 40 CFR part 63 to incorporate the approval. The approval is contingent upon the state's including, in title V permits, terms and conditions no less stringent than the federal standard. Until the state writes its approved alternative requirements into the specific title V permit and issues it, the federal section 112 requirements remain applicable to the source (65 FR 55817).

Second, the state submits pre-draft title V permit terms and conditions to EPA for approval. EPA evaluates these terms and conditions, which will apply to the sources identified in step 1, and determines whether as a whole they are as stringent as the federal standard. EPA can identify potential issues with the equivalency demonstration and address them prior to the normal operating permit review process (65 FR 55817).

Third, the state writes the pre-draft permit terms and conditions that EPA approved into its draft title V permits. These then go through the regular title V permit issuance process, during which the public has an opportunity to comment on the submittal (40 CFR 70.7(a)(1)(ii) and (h)). EPA and the public can review the alternative requirements before final delegation occurs (65 FR 55817). EPA does not delegate authority unless the state issues the title V permit with the permit terms exactly as EPA approved them.

### **VI. Where Is Maine's EBP Program in the Delegation Process?**

This rulemaking completes step 1 in the delegation process. ME DEP's EBP program has also completed step 2 in the delegation process. The delegation rule allows a state to submit its pre-draft permit terms and conditions at the same time as its request for up-front approval (40 CFR 63.94(c)(7)). In accordance with 40 CFR 63.94(d)(1)–(3), on January 17, 2002, ME DEP submitted LPP's pre-draft permit terms and conditions in a side-by-side comparison of the alternative requirements with the Pulp and Paper MACT requirements. EPA reviewed the pre-draft title V permit terms and conditions for LPP, identified several issues, and worked closely with ME DEP to ensure that our concerns were addressed. In a letter dated April 15, 2002, the EPA Regional Administrator conditionally approved the pre-draft permit terms and conditions. The approval is conditioned upon LPP meeting a number of requirements, including an initial performance demonstration to document that the alternative approach achieves emission reductions equivalent to or greater than those required by the Pulp and Paper MACT.

To complete the final step, the state will incorporate the approved permit terms and conditions into its draft title V permits for the affected sources (40 CFR 63.94(e)(1)). The permit must be issued or revised according to the provisions of 40 CFR 70.7 before EPA may finally delegate authority to the state to implement alternatives to the Pulp and Paper MACT through issuance of the permit (40 CFR 70.7(a)(1)(ii)).

There will be an opportunity for public comment during this process.

## VII. What Are the Legal Standards Governing the EBP Program?

Section 112(l) of the CAA and 40 CFR part 63 subpart E allow S/L/T governments to develop and submit EBP programs to EPA for approval. If EPA approves a S/L/T's EBP program, the S/L/T can implement and enforce it "in lieu of" the Pulp and Paper MACT requirements through CAA title V permits. Section 112(l) allows us to approve S/L/T programs if the S/L/T can demonstrate that the program "achieves equivalent or better environmental results" as compared to the federal standards (65 FR at 55810). An EBP program "shall not include authority to set standards less stringent than" the federal standards (CAA Section 112(l)(1)).

Sections 63.91(d) and 63.94(b) specify the criteria that a S/L/T must meet for EPA to approve its EBP program. A request for program approval must: (1) To the extent possible, identify all specific sources or source categories for which the S/L/T is seeking authority to implement and enforce section 112 standards, and if any such sources comprise a subset of sources within the S/L/T's jurisdiction, request delegation for the remainder of the sources in those source categories; (2) to the extent possible, identify all existing and future section 112 emission standards for which the S/L/T is seeking authority to implement and enforce alternative requirements; (3) include a one-time demonstration that the S/L/T has an approved title V operating permit program and that the program permits the affected sources; and (4) meet the requirements in 40 CFR 63.91(d) for demonstrating that adequate authority and resources exist to implement and enforce the S/L/T EBP program. ME DEP's EBP program has met these criteria. See 62 FR 7939 (March 24, 1997) and 66 FR 52874 (December 17, 2001); Request for Approval of State Requirements that Substitute for a Section 112 Rule (September 25, 2001) (letter from James Brooks, Director, Maine DEP Bureau of Air Quality, submitting state's EBP program to EPA).

Furthermore, 40 CFR 63.94(d) specifies the criteria that the alternative requirements must meet for EPA to approve them. EPA's delegation of authority to implement the Pulp and Paper MACT is contingent upon the state including in title V permits terms and conditions that are no less stringent than the federal standard and have been approved by EPA (65 FR at 55817).

Pursuant to 40 CFR 63.94(d), all issued or revised title V permits under an approved program must: (1) Identify the specific terms and conditions with which the source would be required to comply pursuant to its title V permit, and contain permit terms and conditions that reflect all of the requirements of the otherwise applicable federal section 112 requirement; (2) identify specifically how the alternative requirements in the form of permit terms and conditions are "the same as or differ from the requirements in the otherwise applicable Federal section 112 rule"; and (3) provide EPA with detailed documentation that demonstrates that the alternative requirements are at least as stringent as the otherwise applicable federal requirements, as specified in 40 CFR 63.93(b).

In this way, the regulations governing the EBP program ensure that the state's program sets environmental standards at least as stringent as those required under the applicable federal regulations, and that each affected source under the program will achieve compliance no later than would be required by the federal regulations. The EBP program simply allows S/L/Ts to meet these requirements by writing its standards into title V permits after EPA has approved the alternative requirements.

## VIII. How Much Oversight Authority Does EPA Have Over an EBP Program?

EPA oversees enforcement and compliance with the federal HAP standards in a number of ways through the EBP process.

First, EPA reviews the S/L/T's EBP program and goes through notice and comment rulemaking during the "up-front approval" step. EPA approves the EBP program only after ensuring that the S/L/T has adequate authority and resources to implement and enforce it consistent with CAA requirements.

Second, even after a S/L/T's EBP program has been approved, EPA may object to a title V permit for noncompliance with applicable CAA requirements. CAA Section 505(b)(1); 40 CFR 70.8(c). Under 40 CFR 70.8(a), a state that is authorized to implement the title V permit program must submit to EPA a copy of each permit application (including any application for permit modification), each proposed permit, and each final title V permit. If EPA determines that any proposed permit is not in compliance with applicable requirements under the CAA and objects to issuance of the permit within 45 days of receipt of the proposed permit and all necessary supporting information, the permit cannot be

issued (40 CFR 70.8(c)). If the state fails, within 90 days after the date of EPA's objection, to revise and submit a proposed permit in response to the objection, EPA will issue or deny the permit in accordance with the requirements of the federal program promulgated under title V of the CAA (40 CFR 70.8(c)(4)).

In each pre-draft, proposed and final permit, ME DEP is required to indicate prominently that the permit contains alternative section 112 requirements. In addition, "[i]n the notice of pre-draft permit availability, the state shall specifically solicit public comments on the alternative requirements" (40 CFR 63.94(e)(2)).

Third, even after the state issues a title V permit, EPA can terminate, modify, or revoke and reissue a permit upon a finding of good cause (40 CFR 70.7(g)). EPA can reopen and revise a permit under a number of circumstances—(e.g. where new CAA requirements apply), where EPA finds that the permit contains a material mistake, or where EPA determines that the permit must be revised or revoked to assure compliance with applicable requirements (40 CFR 70.7(f)). If EPA finds such cause, it will notify the state and the permittee of this finding in writing (40 CFR 70.7(g)). The state must then forward to EPA a "proposed determination of termination, modification, or revocation and reissuance," as appropriate (40 CFR 70.7(g)(2)). If the state fails to submit a proposed determination or fails to resolve any objection that EPA makes to the permit, EPA will ultimately terminate, modify, or revoke and reissue the permit (40 CFR 70.7(g)(5)).

Fourth, EPA retains authority to enforce any applicable rule, emission standard or requirement established under CAA section 112 (40 CFR 63.90(d)(2)). In addition, the CAA authorizes EPA to enforce all rules, programs, state or local permits, or other requirements approved under part 63, including the EBP program, and all resulting title V operating permit conditions (40 CFR 63.90(e)).

Finally, whenever EPA determines that a permitting authority is not adequately administering or enforcing a program in accordance with the requirements of the CAA, EPA must notify the state (40 CFR 70.10(b)(1)). If the state's failure to administer or enforce the program persists after such notice the state may be subject to sanctions under section 179(b) of the Act, and EPA may ultimately promulgate, administer, and enforce a federal permit program (40 CFR 70.10(b)(2)).

Thus, at every step in the EBP process, EPA reviews the S/L/T's program and its implementation to ensure that all applicable federal requirements are met. First, EPA ensures that the S/L/T has adequate authority and resources to implement and enforce the EBP program consistent with CAA requirements. Second, EPA reviews the pre-draft title V permit terms and conditions and can object to any proposed permit that fails to set standards at least as stringent as those required under the applicable federal regulations. Third, throughout the life of a title V permit that has been issued, EPA retains authority to terminate, modify, or revoke and reissue it upon a finding of good cause. Fourth, EPA retains authority to enforce the terms and conditions of any title V permit. Finally, whenever EPA determines that a permitting authority is not adequately administering and enforcing a program, EPA is authorized to implement a federal permit program.

#### **IX. What Comments Did EPA Receive and How Did We Respond?**

On February 7, 2002, in response to the proposed rule, the Penobscot Indian Nation ("the Nation") submitted comments to EPA. EPA did not receive any other comments.

The Nation's reservation includes over 110 islands in the Penobscot River. Many of these islands are downstream of LPP, including Indian Island, seat of the Nation's government. The discharge from LPP's waste treatment system empties into the Penobscot River.

a. *Comment 1:* The Nation is concerned about methanol emissions at LPP. Since its tribal reservation lands are located directly in LPP's discharge flow, the Nation believes that LPP's proposal to move its methanol emissions through its wastewater biological treatment system will significantly impact the Nation's natural resources all along the aquatic ecosystems of the river and islands.

*Response:* EPA recognizes the Nation's concern about methanol releases into the Penobscot River. ME DEP has demonstrated, however, that its EBP program will ensure LPP achieves a level of control at least as stringent as the federal requirements in the Pulp and Paper MACT.

The Pulp and Paper MACT requires kraft pulp mills to control emissions of condensate streams from certain processes (40 CFR 63.440 through 63.459). One control option for kraft pulp mills is to enclose the condensate streams in a closed collection system and route the enclosed streams to a wastewater biological treatment system.

Emissions that would have been emitted from an open sewer system can be captured and then destroyed in a biological treatment unit (40 CFR 63.446). The federal regulation requires kraft pulp mills to either: (1) Reduce or destroy the total HAPs by at least 92% or more by weight; or (2) for mills that perform bleaching, to remove 10.2 pounds per ton or more of total HAP per oven dried ton of pulp (ODP) (40 CFR 63.446(e)).

LPP has proposed an alternative to the Pulp and Paper MACT where the condensate streams are enclosed as required in the federal rule, except that the streams will be routed through the facility's wetwell and primary clarifier prior to reaching the biological treatment unit. The wetwell and the primary clarifier are open to the atmosphere and therefore some HAP emissions will be lost from these units. To compensate for the emissions lost from these locations, LPP has completed a sewer upgrade project which includes sending two waste streams not regulated by the Pulp and Paper MACT through the closed collection system. EPA has calculated, based on preliminary data provided by LPP, that the losses from the wetwell and clarifier are less than the extra reductions from LPP's upgraded sewer project and the control of additional waste streams. EPA has issued a conditional approval of the pre-draft permit terms and conditions that requires LPP to conduct an initial performance demonstration to document equivalency. The alternative, therefore, must result in emission reductions that are at least equivalent to those required by the Pulp and Paper MACT.

Whether LPP complies with the Pulp and Paper MACT or with alternative requirements through an approved EBP program, it must destroy HAPs by at least 92% or remove at least 10.2 lb/ODT of HAPs. Therefore, the alternative proposed by LPP will not significantly impact the Nation's natural resources in comparison with continued enforcement of the Pulp and Paper MACT. In addition, adequate monitoring provisions are in place to ensure that when LPP does emit too much methanol into the river or the air, the state and EPA can take appropriate actions to restore the performance required by the MACT.

b. *Comment 2:* The Nation believes that EPA's approval of ME DEP's program will affect enforcement of and compliance with the federal standards.

*Response:* As discussed above in section VII, the legal framework governing the EBP program ensures that the state's program sets environmental

standards at least as stringent as those required under the applicable federal regulations. EPA has worked closely with ME DEP and LPP to ensure that the alternative requirements for LPP will achieve equivalent or better environmental results. In addition, as discussed in section VIII, EPA's delegation in no way impairs the Agency's authority to oversee and enforce those equivalent requirements. EPA's delegation therefore will not affect enforcement of and compliance with the federal standards.

c. *Comment 3:* The Nation considers approval of ME DEP's EBP program to be inappropriate in light of EPA's trust responsibility to the Nation.

*Response:* The federal government has a trust responsibility to federally-recognized Indian tribes that arises from Indian treaties, statutes, executive orders, and the historical relations between the United States and Indian tribes. EPA acknowledges that it must act in accordance with this trust responsibility when taking actions that affect tribal interests, including consulting with affected tribes and assessing tribal interests and concerns in decision making.

EPA believes its action in approving ME DEP's EBP program is consistent with its trust responsibility to the Nation. As discussed above, EPA has determined that approval of ME DEP's EBP program will not have any adverse effect on the Nation's resources because the program will achieve a level of emissions control at least as stringent as the applicable federal standard and is subject to a level of EPA oversight equivalent to the existing part 63 and part 70 programs.

In addition, upon EPA's receipt of this application from ME DEP in September 2001, EPA immediately recognized the need to consult with the Nation in Maine and initiated such discussions in October. EPA corresponded several times with representatives at the Nation's Department of Natural Resources from December through February, and also met with the Nation's representatives in Maine on February 20, 2002.

During the public comment period, the Nation also raised questions as to how EPA would consult with tribes in our oversight of the CAA permit program. The Regional air permitting program and the Nation have agreed to discuss the issue of identifying facilities that EPA expects to have an impact in Indian country and to work toward developing an approach for consultation with Indian tribes in appropriate cases as permits are being developed. EPA

will seek and carefully consider the Nation's input during this process.

#### Final Action

EPA is approving ME DEP's request to implement and enforce alternative requirements in the form of title V permit terms and conditions for LPP for subpart S.

### X. Administrative Requirements

#### A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review." This rule 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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

EPA has concluded that this final rule may have tribal implications because LPP is located near the Penobscot Nation's territories. This action will not, however, impose substantial direct compliance costs on tribal governments or preempt tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

EPA consulted with tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. After carefully considering the Nation's concerns, as discussed above in EPA's response to comments, EPA has concluded that this action will have no adverse effect on tribal resources because the regulations governing the EBP program ensure that the state's program sets environmental standards at least as stringent as those required under the applicable federal regulations. In addition, EPA's delegation in no way impairs the

Agency's authority to oversee and enforce the state's equivalent standards.

#### C. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action simply allows Maine to implement equivalent alternative requirements to replace a Federal standard, 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. Executive Order 13211 (Energy Effects)

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

#### E. 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 final 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.

#### F. 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 Maine 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.

#### G. 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).

#### *H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 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.

#### *I. 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 September 13, 2002. 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, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 23, 2002.

**Robert W. Varney,**  
*Regional Administrator, EPA New England.*

Title 40, chapter I, 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)(19) to read as follows:

##### **§ 63.99 Delegated Federal authorities.**

(a) \* \* \*

(19) Maine.

(i) [Reserved]

(ii) Maine Department of Environmental Protection (ME DEP) may implement and enforce alternative requirements in the form of title V permit terms and conditions for Lincoln Pulp and Paper, located in Lincoln, Maine, for subpart S—National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry. This action is contingent upon ME DEP including, in title V permits, terms and conditions that are no less stringent than the federal standard and have been approved by EPA. 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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**BILLING CODE 6560–50–U**

#### **FEDERAL EMERGENCY MANAGEMENT AGENCY**

##### **44 CFR Part 65**

**[Docket No. FEMA–D–7525]**

#### **Changes in Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, FEMA

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the base (1% annual change) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

**DATES:** These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any

person has ninety (90) days in which to request through the community that the Acting Administrator reconsiders the changes. The modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) [matt.miller@fema.gov](mailto:matt.miller@fema.gov).

**SUPPLEMENTARY INFORMATION:** The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their flood-plain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

*National Environmental Policy Act*  
This rule is categorically excluded from the requirements of 44 CFR Part 10,