

§ 561.95 2-(*m*-Chlorophenoxy) propionic acid.

A feed additive regulation is established for residues of the plant growth regulator 2-(*m*-chlorophenoxy) propionic acid in or on the following commodity:

Commodity	Part(s) per million (ppm)
Pineapple bran	3.0

[FR Doc. 81-33916 Filed 11-23-81; 8:48 am]

BILLING CODE 6560-22-M

21 CFR Part 561

[FAP 1H5286/T77; PH-FRL-1992-5]

Thidiazuron; Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a feed additive regulation related to the experimental use of the defoliant thidiazuron on cotton. The regulation was requested by Nor-Am Agricultural Products, Inc. This rule will permit the marketing of cottonseed hulls while further data are collected on thidiazuron.

EFFECTIVE DATE: Effective on: November 24, 1981.

ADDRESS: Written objections may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1830).

SUPPLEMENTARY INFORMATION: On March 3, 1981, the EPA announced (46 FR 14959) that Nor-Am Agricultural Products, Inc., 350 West Shuman Boulevard, Naperville, IL 60566, had filed a feed additive petition (FAP 1H5286) proposing the establishment of a regulation permitting residues of the herbicide thidiazuron (*N*-phenyl-*N*-1,2,3-thiadiazol-5-ylurea) and its aniline-containing metabolites in or on cottonseed hulls resulting from application of the defoliant to cotton for defoliation of cotton leaves prior to harvest in a proposed experimental

program with a tolerance limitation of 0.8 part per million (ppm) in accordance with an experimental use permit (2139-EUP-23) that has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended. The proposed tolerance of 0.8 ppm for cottonseed hulls supersedes the level of 0.4 ppm for that commodity. No comments were received by the Agency in response to this notice of filing.

The scientific data reported and other relevant material have been evaluated, and it has been determined that the defoliant may be safely used in accordance with the provisions of the experimental use permit issued under FIFRA. It has further been determined that since residues of the pesticide may result in or on cottonseed hulls from the agricultural uses provided for in the experimental use permit, the feed additive regulation should be established and should include a tolerance limitation.

The data submitted in this petition and other relevant material have been evaluated. The data considered in support of the proposed tolerance included radiotracer metabolism studies in cotton plants, rats, lactating goats, and laying hens; rat and mouse acute oral toxicity studies with a median lethal dose (LD₅₀) of 4 grams (g)/kilogram (kg) body weight (bw) and 5 g/kg bw respectively; a 90-day dog feeding study with a no-observable-effect-level (NOEL) of 200 ppm and a 90-day dog feeding study with a NOEL of 300 ppm. The acceptable daily intake (ADI) for humans is 0.0038 mg/kg bw/day based on a 300 ppm NOEL determined in the 90-day dog feeding study and a 2,000-fold safety factor. The requested feed additive tolerance of 0.8 ppm in or on cottonseed hulls will not affect the theoretical maximum residue contribution (TMRC). Proposed temporary tolerances of 0.4 ppm in or on cottonseed and 0.05 in milk, yield a TMRC of 0.0661 mg/day/1.5/kg of diet for a 60-kg human, which is equivalent to 30.25 of the ADI.

A regulatory action was pending against thidiazuron based upon Industrial Bio-Test Laboratories (IBT) data of the two 90-day subacute and acute studies, but this was resolved after these data were validated.

The metabolism of thidiazuron is adequately understood, and an adequate analytical method (gas-liquid chromatography) using electron capture detector is available for enforcement purposes.

No permanent tolerances have previously been established for residues of thidiazuron, and no desirable data are

lacking from the petition, nor are any other considerations involved in establishing the proposed tolerance. A related document establishing a temporary tolerance for residues of thidiazuron in or on cottonseed at 0.4 ppm appears elsewhere in this issue of the Federal Register. The tolerances in eggs; milk; and the meat, fat, and meat byproducts of cattle are adequate to cover residues resulting from the proposed feed additive use.

The pesticide is considered useful for the purpose for which the tolerance is sought. Therefore the regulation establishing a tolerance of 0.8 ppm in or on cottonseed hulls by amending 21 CFR Part 561 is established as set forth below.

Any person adversely affected by this regulation may, on or before December 24, 1981, file written objections with the Hearing Clerk, EPA Rm. M-3708 (A-110), 401 M St., SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, the EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this regulation from the OMB review requirement of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that the regulations establishing new food and feed additive levels, or conditions for safe use of additives, or raising such food and feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24945).

Effective on: November 24, 1981.

(Sec. 409(c)(1), 72 Stat. 1786, 21 U.S.C. 348(c)(1))

Dated: November 16, 1981.

Edwin L. Johnson,
Director, Office of Pesticide Programs.

**PART 561—TOLERANCES FOR
PESTICIDES IN ANIMAL FEEDS
ADMINISTERED BY THE
ENVIRONMENTAL PROTECTION
AGENCY**

Therefore, 21 CFR 561.385 is amended by revising paragraphs (a) and (b) to read as follows:

§ 561.385 Thidiazuron.

(a) A tolerance of 0.8 part per million is established for the combined residues of thidiazuron (*N*-phenyl-*N'*-1,2,3-thiadiazol-5-ylurea) and its aniline containing metabolites in or on cottonseed hulls resulting from the preharvest application of the defoliant thidiazuron to cotton in accordance with an experimental use permit that expires July 1, 1983.

(b) Residues in cottonseed hulls not in excess of 0.8 part per million resulting from the use described in paragraph (a) of this section remaining after expiration of the experimental program will not be considered to be actionable if the defoliant is legally applied during the term of and in accordance with the provisions of the experimental use permit and the feed additive tolerance.

(FR Doc. 81-33918 Filed 11-23-81; 8:45 am)
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**DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

Food and Drug Administration

21 CFR Part 640

[Docket No. 80N-0436]

**Additional Standards for Human Blood
and Blood Products; Source Plasma
(Human)**

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to make clear that an active plasmapheresis donor, who is to be immunized for the production of high-titer plasma, does not need to be reexamined before the first immunization injection if the same donor has previously received a physical examination for plasmapheresis in accordance with § 640.63(b)(1). This rule eliminates a burden on the individual plasmapheresis donor and the plasmapheresis center.

EFFECTIVE DATE: December 24, 1981.

FOR FURTHER INFORMATION CONTACT: Rada Proehl, Bureau of Biologics (HFB-620), Food and Drug Administration,

8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

SUPPLEMENTARY INFORMATION: After reviewing inspection reports of establishments collecting plasma, the Bureau of Biologics (the Bureau) discovered that 21 CFR 640.63(b)(2) was being misinterpreted. The inspection reports revealed that active plasmapheresis donors who were to be immunized for the production of high-titer plasma were required to undergo another medical examination even though they previously had undergone the medical examination for plasmapheresis. In the Federal Register of November 28, 1980 (45 FR 79092), FDA proposed to clarify the number of initial medical examinations required for an active plasmapheresis donor who subsequently may be immunized for the production of high-titer plasma. This final rule will make clear that § 640.63(b)(2) does not require a donor who is to be immunized for the production of high-titer plasma to undergo another medical examination before the first immunization injection if the same donor has previously undergone a medical examination for plasmapheresis according to § 640.63(b)(1).

Interested persons were given until January 27, 1981, to file written comments. Two comments were received and supported the proposed rule. In addition, one comment suggested that the phrase "within and not more than 7 days prior to" be substituted for the phrase "within no more than 1 week before" in the second sentence of § 640.63(b)(2). Because "21 days" is used in the last sentence of this paragraph, the comment believed that to be consistent, other time frames in that paragraph should be stated in "days" rather than "weeks." The agency disagrees and advises that the expression of the time interval as "1 week" instead of "7 days" in the second sentence of proposed § 640.63(b)(2) is consistent with the time interval expressed as 1 week in § 640.63(b)(1) and 8 weeks in § 640.63 (e) and (e)(1). The agency believes that, for consistency, the time interval expressed as 3 weeks should be substituted for 21 days in the last sentence of proposed § 640.63(b)(2).

In addition, the agency advises that proposed § 640.63(b)(2) has been rearranged for clarity by further subdividing the section into subparagraphs (i) and (ii). Section 640.63(b)(2)(i) requires that a donor who is to be immunized for the production of high-titer plasma be examined by a qualified licensed physician within no

more than 1 week before the first immunization injection. The medical examination for plasmapheresis does not need to be repeated, if that donation occurs within 3 weeks after the first injection. Section 640.63(b)(2)(ii) requires that a donor who is an active participant in a plasmapheresis program, and has been examined in accordance with paragraph (b)(1) of this section, need not be reexamined before immunization for the production of high-titer plasma.

The economic impact of this rule has been assessed in accordance with Executive Order 12291. This rule is not a major rule as defined by that Order. Specifically, the rule will eliminate a burden on the individual plasmapheresis donor and the plasmapheresis center by the clarification of § 640.63(b)(2) to prevent an unnecessary duplication of the medical examination on the same donor, thereby resulting in no major increase in costs for the plasmapheresis centers. The assessment for making the determination that this is not a major rule has been placed on file with the Dockets Management Branch, Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**PART 640—ADDITIONAL STANDARDS
FOR HUMAN BLOOD AND BLOOD
PRODUCTS**

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)), Part 640 is amended in § 640.63 by revising paragraph (b)(2), to read as follows:

§ 640.63 Suitability of donor.

(b) * * *

(2)(i) A donor who is to be immunized for the production of high-titer plasma shall be examined by a qualified, licensed physician. The medical examination shall be performed within no more than 1 week before the first immunization injection. The medical examination for plasmapheresis need not be repeated, if the first donation occurs within 3 weeks after the first injection.

(ii) A donor who is an active participant in a plasmapheresis program, and has been examined in accordance with paragraph (b)(1) of this section, need not be reexamined before immunization for the production of high-titer plasma.

Effective date, December 24, 1981.

[Sec. 351, 58 Stat. 701 as amended (42 U.S.C. 262)]

Dated: November 3, 1981.

William F. Randolph,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 81-33628 Filed 11-23-81; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[T.D. 7796]

Reporting Requirements for Certain Grantor Trusts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations modifying the current information and reporting requirements for certain grantor trusts. The grantor-trustee of trusts covered by these regulations will no longer be required to file Form 1041. This regulation will provide guidance to taxpayers and others responsible for filing income tax returns in the case of certain grantor trusts.

DATE: These regulations are effective for tax years beginning on or after January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Stephen J. Small of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224. Attention: CC:LR:T, 202-566-3238, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 1980, proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 671 of the Internal Revenue Code of 1954 (Code) and to the Regulations on Procedure and Administration (26 CFR Part 301) under sections 6012 and 6109 of the Code were published in the *Federal Register* (45 FR 70478). These amendments were proposed to modify the reporting requirements for certain grantor trusts.

After consideration of all written comments received, the proposed regulations are adopted as herein revised. There are two substantive revisions to the proposed regulation and one revision for administrative purposes.

First, a number of commenters asked that the proposed rule be expanded to

include the typical husband and wife grantor trust in community property states. The final rule goes beyond that by bringing within its scope all qualifying grantor trusts when one or both spouses are grantors and when the spouses file a joint income tax return.

Second, the proposed rule was limited to grantor trusts when the grantor was also the sole trustee. A number of commenters asked that the rule be expanded to include grantor trusts when the grantor is a co-trustee. This suggestion has been adopted and is also made applicable in the case of husband and wife grantor trusts.

Additional comments included suggestions to broaden the effect of the regulation even further. These suggestions were rejected because current reporting requirements for trusts outside the scope of the rule herein adopted serve a useful informational purpose.

Finally, although the new rule is mandatory for qualifying trusts created in tax years beginning on or after January 1, 1981, the rule is made optional for qualifying trusts, with an employer identification number, that have filed on Form 1041 on or before November 24, 1981. If the grantor of such a trust wishes to take advantage of the new reporting rule in the future, the grantor must file a final Form 1041 for the trust for the current tax year, with a notation on the front of the Form that will alert the Service to prospective filing changes. Without this procedure, a grantor who filed a Form 1041 for 1980 but failed to file a Form 1041 for 1981 might be asked to reply to an inquiry from the Internal Revenue Service about the status of the trust.

Some commenters were concerned about the difficulty of identifying trust assets at the death of the grantor when the annual requirement for filing the Form 1041 is eliminated. These commenters are reminded that accurate recordkeeping for trust assets will continue to be the responsibility of the grantor after this rule is adopted.

Drafting Information

The principal author of this regulation is Stephen J. Small of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1 and 301 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. Section 1.671-4 is amended as follows:

a. The undesignated paragraph in Section 1.671-4 is redesignated § 1.671-4 (a).

b. Section 1.671-4 Paragraph (a) as redesignated by this document is revised to read as set forth below.

c. A new paragraph (b) is inserted to read as set forth below.

d. A new paragraph (c) is inserted to read as set forth below.

§ 1.671-4. Method of reporting.

(a) *Portion of trust income taxed to grantor.* Except as provided in paragraphs (b) (1) and (2) of this section, items of income, deduction, and credit attributable to any portion of a trust which, under the provisions of subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Code, are treated as owned by the grantor or another person should not be reported by the trust on Form 1041, but should be shown on a separate statement to be attached to that form.

(b) *Trust income taxed entirely to grantor.* (1) In the case of a trust when (i) The same individual is both grantor and trustee (or co-trustee), and (ii) That individual is treated as owner for the taxable year of all of the assets of the trust by the application of section 676,

A Form 1041 should not be filed. Instead, all items of income, deduction, and credit from the trust should be reported on the individual's Form 1040 in accordance with its instructions. For provisions dealing with taxpayer identifying numbers, see § 301.6109-1 (Regulations on Procedure and Administration).

(2) In the case of a trust when (i) A husband and wife are the sole grantors, and

(ii) One spouse is trustee or co-trustee with a third party or both spouses are trustees or co-trustees with a third party, and

(iii) One or both spouses are treated as owners of all of the assets of the trust for the taxable year by the application of section 676, and

(iv) The husband and wife for the taxable year make a single return jointly of income taxes under section 6013,

A Form 1041 should not be filed. Instead, all items of income, deduction, and credit from the trust should be reported on the spouses' Form 1040 in accordance with its instructions.

(3) The grantor of a trust described in § 1.671-4(b) (1) or (2) who filed a Form 1041 on or before November 24, 1981 may continue to report income, deductions, and credits of the trust pursuant to § 1.671-4(a). Alternatively, the grantor of such a trust may file a final Form 1041 for the trust's current taxable year pursuant to § 1.671-4(a). In such a case, the grantor must write across the front of the Form 1041 a statement in substance saying "Pursuant to § 1.671-4(b), this is the final Form 1041 for this grantor trust." For the next taxable year, the grantor must furnish payers of income with his or her social security number, pursuant to § 301.6109-1(a)(2), and must follow the rule of § 1.671-4(b) (1) or (2), as the case may be.

(4) This paragraph (b) of this section shall not apply to a trust if the situs of the trust or any of the assets of the trust are not in the United States.

(c) *Effective date.* Paragraphs (b) (1) and (2) of this section apply to trusts created in tax years beginning on or after January 1, 1981. Paragraph (b)(3) of this section is effective immediately.

Par. 2. Section 1.6012-3 is amended by inserting a new paragraph (a)(9) as set forth below.

§ 1.6012-3 Returns by fiduciaries.

(a) *For estates and trusts* * * *

(9) *Certain grantor trusts.* A grantor who is trustee of a grantor trust to which § 1.671-4(b) (1) or (2) apply should not file a Form 1041 for the trust. See, however, § 1.671-4(b)(3). Instead, all items of income, deduction, and credit from the trust should be reported on the grantor's Form 1040 in accordance with its instructions. For provisions dealing with taxpayers identifying numbers see § 301.6109-1 (Regulations on Procedure and Administration).

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. Section 301.6109-1 is amended as follows:

a. Paragraph 301.6109-1(a) is redesignated § 301.6109-1(a)(1).

b. Section 301.6109-1(a)(1) as redesignated by this document is amended by inserting the paragraph heading "(1) Social Security numbers and employer identification numbers." immediately before the first sentence.

c. A new paragraph (a)(2) is inserted to read as set forth below.

§ 301.6109-1 Identifying numbers.

(a) *In general.*—(1) *Social security numbers and employer identification numbers.* * * *

(2) *Certain grantor trusts.* A grantor trust described in § 1.671-4(b) shall not obtain an employer identification number until such time as the trust is no longer described in § 1.671-4(b). Instead, the grantor of such a trust must furnish his or her social security number (or, when applicable, his or her employer identification number) to payers of income, and payees must report income as if paid to the grantor, not the trust.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: October 26, 1981.
John E. Chapoton,
Assistant Secretary of the Treasury.
[FR Doc. 81-33837 Filed 11-23-81; 8:45 am]
BILLING CODE 4830-01-M

26 CFR Part 301

[T.D. 7798]

Procedure and Administration; Periodic Report of Actuary

AGENCY: Internal Revenue Service,
Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to periodic actuarial reports filed for defined benefit pension plans. Changes to the applicable tax law were made by the Employee Retirement Income Security Act of 1974 ("ERISA"). The regulations provide necessary guidance to plan administrators who are required to file the report and to actuaries who must prepare the report.

DATES: In the case of a plan in existence on January 1, 1974, the regulations are effective for plan years beginning after December 31, 1975. In the case of a plan not in existence on January 1, 1974, the regulations are effective for plan years beginning after September 2, 1974.

FOR FURTHER INFORMATION CONTACT: George B. Baker of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T:EE-27-78, 202-566-3422 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1980, the Federal Register published at 45 FR 45926 proposed amendments to the Procedure and Administration Regulations (26 CFR Part 301) under sections 6059 and 6692 of the

Internal Revenue Code of 1954, as added by section 1033 of ERISA. A public hearing on the proposed regulations was held on November 12, 1980. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Actuarial Report

Code section 6059 requires that the plan administrator of a defined benefit pension plan subject to the minimum funding standards of ERISA periodically file an actuarial report of the plan. Under the regulations, the report is to be filed on Schedule B as an attachment to the Annual Return/Report of Employee Benefit Plan (Form 5500 series).

Actuary's Certification

Code section 6059(b) requires that an enrolled actuary certify on the actuarial report that to the best of his or her knowledge the report is complete and accurate, and that in the aggregate the actuarial assumptions used are reasonably related to the experience of the plan and to reasonable expectations and represent the actuary's best estimate of anticipated experience under the plan. Under the proposed regulations, an actuarial report would not be accepted as satisfying the filing requirements of Code section 6059 if the actuary in any manner sought to limit or qualify this required certification.

Several persons commenting on the proposed regulations took issue with this absolute prohibition. Others requested additional guidance on what might constitute a prohibited limitation or qualification. In this regard, several commentators expressed concern that the rule in the proposed regulations would discourage an enrolled actuary from including statements that the actuary believes necessary to fully describe how the report was prepared or to adequately disclose the actuarial position of the plan. Others expressed concern that the proposed rule might preclude an actuary from relying upon information customarily provided by other persons when the actuary has no reason to doubt the substantial accuracy of that information.

In response to these comments the proposed regulations have been revised by describing statements that, if included by an enrolled actuary, will not be considered to impermissibly qualify the required certification of the report's substantial accuracy or the reasonableness of the actuarial assumptions used. In general, the final regulations provide that an actuary's certification is not materially qualified

by a statement on the report that the actuary relied upon information provided by another person, and that the actuary has no reason to doubt the substantial accuracy of the information. Further, if the actuary encounters error in information provided by another person, the actuary may note that the error was disregarded in preparing the report, but that the effect of the error is not material. An actuary is also free to note that any statement regarding the actuarial position of the plan is made only in light of a regulation or ruling, or in light of an interpretation of a statute, regulation or ruling, including an interpretation inconsistent with a position taken by the Internal Revenue Service. These statements by an enrolled actuary are permitted by the final regulations, but are not required.

The final regulations provide that the rules precluding the actuary from materially qualifying the required certification shall apply only with respect to reports filed for plan years ending after January 25, 1982.

Group Deferred Annuity Contracts

One person commenting on the proposed regulations proposed that where a plan is funded entirely by the purchase of group deferred annuity contracts, an enrolled actuary should be permitted to decline any certification of the reasonableness of the actuarial assumptions specified in the contract. The final regulations provide no such exception. However, an actuary may rely upon Rev. Rul. 72-557, 1972-2 C.B. 227, which sets forth three conditions which, if satisfied, will result in the actuarial assumptions underlying the contributions under the contract being deemed reasonable. As described in the Revenue Ruling, where the three conditions are not satisfied, the assumptions used will be considered reasonable only if, in combination, they produce reasonable results.

Joint Liability for Penalty for Failure To File

The proposed regulations under Code section 6692 provided that in any case in which two or more persons are responsible for a failure to file the actuarial report, then all such persons are jointly and severally liable for the \$1,000 penalty imposed by that section. Under section 6692, the penalty for a failure to file an actuarial report is imposed on the plan administrator. The final regulations revise the rule relating to joint liability to make it clear that the rule should not be construed as making any person not a plan administrator liable for the penalty.

Drafting Information

The principal author of this regulation is George B. Baker of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, the amendments to 26 CFR Part 301 as proposed are adopted, subject to the changes indicated below:

Paragraph 1. Section 301.6059-1, as set forth in paragraph 1 of the notice of proposed rulemaking, is revised by setting forth the provisions of proposed paragraph (c)(1) in a new paragraph (c), by revising the provisions of proposed paragraph (c)(2) and setting forth such revised provisions in a new paragraph (d), and by redesignating proposed paragraphs (d) and (e) as paragraphs (e) and (f), respectively. As revised and added, paragraphs (c) and (d) read as set forth below.

Par. 2. Section 301.6692-1, as set forth in paragraph 2 of the notice of proposed rulemaking, is changed by revising paragraphs (a) and (d) to read as set forth below.

This Treasury decision is issued under the authority contained in sections 6059 and 7805 of the Internal Revenue Code of 1954 (88 Stat. 947, 68A Stat. 917; 26 U.S.C. 6059, 7805).

Joseph T. Davis,

Acting Commissioner of Internal Revenue.

Approved: October 21, 1981.

John E. Chapoton,

Assistant Secretary of the Treasury.

PART 301—PROCEDURE AND ADMINISTRATION

Sections 301.6059-1 and 301.6692-1 are added to read as follows:

§ 301.6059-1 Periodic report of actuary.

(a) *In general.* The actuarial report described in this section must be filed on behalf of a defined benefit plan to which the minimum funding standards of section 412 apply. The actuarial report must be filed by the plan administrator (within the meaning of section 414(g)) on Schedule B as an attachment to the annual Return/Report of Employee Benefit Plan (Form 5500 series). The instructions accompanying the Form 5500 series prescribe the place and date for filing Schedule B.

(b) *Plan years for which report required.* In the case of a plan in

existence on January 1, 1974, Schedule B must be filed for the first plan year beginning after December 31, 1975, for which the minimum funding standards apply to the plan, and for each plan year thereafter for which the Schedule must be filed under the instructions accompanying the Schedule and the Form 5500 series. In the case of a plan not in existence on January 1, 1974, Schedule B must be filed for the first plan year beginning after September 2, 1974, for which the minimum funding standards apply to the plan, and for each plan year thereafter for which the Schedule must be filed under the instructions accompanying the Schedule and the Form 5500 series. For rules relating to when a plan is considered to be in existence, see § 1.410(a)-2(c). For purposes of this section, "plan year" means the plan year as determined for purposes of the minimum funding standards.

(c) *Contents of report.* The actuarial report of a plan filed on Schedule B must contain—

(1) The date of the actuarial valuation applicable to the plan year for which the report is filed (see section 412(c)(9) for rules relating to the frequency with which an actuarial valuation of the plan is required to be made).

(2) A description of the funding method and actuarial assumptions used to determine costs under the plan.

(3) A certification of the contribution necessary to reduce the accumulated funding deficiency (as defined in section 412(a)) to zero.

(4) A statement by the enrolled actuary signing the report that to the best of the actuary's knowledge the report is complete and accurate.

(5) A statement by the enrolled actuary signing the report that in the actuary's opinion the actuarial assumptions used are in the aggregate (i) reasonably related to the experience of the plan and to reasonable expectations, and (ii) represent the actuary's best estimate of anticipated experience under the plan.

(6) Such other information as may be necessary to fully and fairly disclose the actuarial position of the plan, and

(7) Such other information as may be required by Schedule B or the instructions accompanying the Schedule and the Form 5500 series.

(d) *Certification by enrolled actuary.* The actuarial report filed on Schedule B must be signed by an enrolled actuary (within the meaning of section 7701(a)(35)) or there may be attached to the report a statement signed by the actuary that contains the statements

described in paragraph (d)(1)(v) and paragraph (c) (4) and (5) of this section.

An actuarial report filed for a plan year ending after January 25, 1982, does not satisfy the requirements of this section if the actuary seeks to materially qualify such statements. For this purpose, the following are not considered to materially qualify a statement required by paragraph (c) (4) or (5) of this section:

(1) A statement that the report is based in part on information provided to the actuary by another person, that such information would customarily not be verified by the actuary, and that the actuary has no reason to doubt the substantial accuracy of the information (taking into account the facts and circumstances that are known or reasonably should be known to the actuary, including the contents of any other actuarial report prepared by the actuary for the plan).

(2) A statement that the report is based in part on information provided by another person, that the actuary believes such information is or may be inaccurate or incomplete, but that the inaccuracies or omissions are not material, the inaccuracies or omissions are not so numerous or flagrant as to suggest that there may be material inaccuracies, and that therefore the actuarial report is substantially accurate and complete and fairly discloses the actuarial position of the plan.

(3) A statement that the report reflects the requirement of a regulation or ruling, and that any statement regarding the actuarial position of the plan is made only in light of such requirement.

(4) A statement that the report reflects an interpretation of a statute, regulation or ruling, that the actuary has no reason to doubt the validity of that interpretation, and that any statement regarding the actuarial position of the plan is made only in light of such interpretation.

(5) A statement that in the opinion of the actuary the report fully reflects the requirements of an applicable statute, but does not conform to the requirements of a regulation or ruling promulgated under the statute that the actuary believes is contrary to the statute, or

(6) A statement reflecting the requirements of paragraph (c)(6) of this section.

A statement otherwise described in a subparagraph of this paragraph (d) shall not be considered to satisfy the requirements of such subparagraph unless the statement identifies, with particularity, that matter to which the statement relates and the facts and circumstances surrounding the

statement. In addition, a statement otherwise described in subparagraph (5) of this paragraph (d) shall not be considered to satisfy the requirements of that subparagraph unless the statement indicates whether an accumulated funding deficiency or a contribution that is not wholly deductible may result if the actuary's belief is determined to be incorrect.

(e) *Relief from filing.* Notwithstanding paragraph (a) of this section, the Commissioner may, in the Commissioner's discretion, relieve a plan administrator from filing Schedule B or from reporting information required by Schedule B or paragraph (c) of this section.

(f) *Penalty.* For the penalty imposed in the case of a failure to file the actuarial report required by this section, see section 6692 and § 301.6692-1.

§ 301.6692-1 Failure to file actuarial report.

(a) *Penalty.* In each case in which the plan administrator (within the meaning of section 414(g)) of a defined benefit plan to which the minimum funding standards of section 412 apply fails to file the actuarial report described in section 6059 and § 301.6059-1 within the time prescribed, the plan administrator shall pay a penalty of \$1,000. A failure to provide a material item of information called for in the actuarial report is considered a failure to file the report. For this purpose, the signature of an enrolled actuary (see § 301.6059-1(d)) is considered a material item of information.

Further, for any report filed for a plan year ending after January 25, 1982, if the actuary seeks to materially qualify a statement required by § 301.6059-1(c) (4) or (5) there is a failure to provide a material item of information called for in the report. For rules relating to statements not considered as materially qualifying the required statements, see § 301.6059-1(d).

(b) *Failure to make actuarial valuation.* Section 412(c)(9) and the regulations thereunder prescribe the time for making an actuarial valuation of a defined benefit plan. For purposes of this section, the failure to base information called for in the actuarial report upon an actuarial valuation of the plan which is made within the time prescribed by section 412(c)(9) and the regulations thereunder is considered a failure to file the actuarial report.

(c) *Showing of reasonable cause.* The penalty imposed by this section does not apply if it is established to the satisfaction of the appropriate district director or the director of the Internal Revenue Service Center at which the

actuarial report is required to be filed that the failure to file the report was due to reasonable cause. An affirmative showing of reasonable cause must be made in the form of a written statement setting forth all the facts alleged as reasonable cause. The statement must contain a declaration by the appropriate individual that the statement is made under the penalties of perjury.

(d) *Joint liability.* If more than one person is responsible as a plan administrator for a failure to file the actuarial report, all such persons are jointly and severally liable with respect to the failure.

(e) *Manner of payment.* The penalty imposed for the failure to file an actuarial report shall be paid in the same manner as a tax upon the issuance of notice and demand therefor.

(f) *Effective dates.* In the case of a plan in existence on January 1, 1974, this section is effective beginning with the first plan year beginning after December 31, 1975, for which the minimum funding standards of section 412 apply to the plan. In the case of a plan not in existence on January 1, 1974, this section is effective beginning with the first plan year beginning after September 2, 1974, for which the minimum funding standards apply to the plan.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-1977-7]

Approval and Promulgation of Implementation Plans; Alabama: Alternate TSP Control Plan for Kimberly-Clark

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves changes in the Alabama State Implementation Plan (SIP). On February 4, 1981 the Alabama Air Pollution Control Commission (AAPCC) submitted to EPA revisions in Part 4.8 of the AAPCC's Rules and Regulations; supplemental information was submitted on August 31, 1981. These changes are being made to allow Kimberly-Clark to operate the #3 bark boiler of its Coosa Pines kraft pulp mill on wood waste alone rather than a combination of wood wastes with either gas or residual fuel oil.

This approval action will be effective January 25, 1982, unless notice is