(3) The grantor of a trust described in § 1.671–(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 ths 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 Adminstration).

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

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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 on 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 acturial 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 acturial 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.

[FR Doc. 81–33721 Filed 11–23–81; 8:45 am]
BILLING CODE 4830–01–M

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

received within 30 days that someone wishes to submit adverse or critical comments.

DATE: This action is effective January 25, 1982.

ADDRESSES: Copies of the materials submitted by Alabama may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.
Office of the Federal Register, Room 8401, 1100 L Street, N.W., Washington, D.C. 20005.
Library, Environmental Protection Agency, EPA Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365.
Alabama Air Pollution Control Commission, 645 South McDonough Street, Montgomery, Alabama 36130.

Comments should be addressed to the Air Programs Branch, EPA Region IV, at the address above.

FOR FURTHER INFORMATION CONTACT: Archie Lee of the Air Programs Branch at the EPA Region IV address above or call 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION: The Alabama Air Pollution Control Commission (AAPCC) on July 26, 1972 adopted regulations for the control of particulate emissions from wood waste boilers. On March 27, 1974, Kimberly-Clark was issued an operating permit by the AAPCC. Since that time Kimberly-Clark has maintained this permit by compliance with all required conditions, including periodic testing for particulate emissions (by approved methods) to verify compliance with the 0.30 grain per standard dry cubic foot (gr/dscf) limit. Test results have been submitted to the Alabama Air Pollution Control Commission as required.

The Commission later adopted regulations requiring continuous monitoring of stack gas opacity and establishing an opacity limit on a case-by-case basis. The boiler is presently being operated to comply with these requirements also.

The 0.30 gr/dscf limit of the 1972 Alabama regulations was developed for boilers burning a combination of wood waste and fossil fuels (gas or oil). Under the present revision, Kimberly-Clark will be allowed to emit from its #3 bark boiler a stack gas of greater particulate concentration, 0.45 gr/dscf, when burning wood waste alone, but total particulate emissions will be the same (259 pounds per hour) as the boiler would emit if burning a combination of fuels in compliance with the 0.30 gr/dscf limit, provided the boiler operates at a reduced rate. The facility's permit stipulates that automated fuel feed must be used to assure that the boiler does not exceed a steam production rate of 164,000 pounds per hour. These changes will have no effect on air quaility and will permit a substantial saving of fossil fuels.

Action. Accordingly, EPA is today approving the SIP revision submitted by Alabama. This is being done without prior proposal because the change is noncontroversial and of limited impact, and no comments are anticipated. The public should be advised that this revision will be effective January 25, 1982. However, if notice is received within 30 days of the date of this notice that someone wishes to submit adverse or critical comments, the approval action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing comment period.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities. This action only approves state actions. It imposes no new requirements. In addition, it applies to a single facility.

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it merely ratifies State actions and imposes no new burden on sources.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, judicial review of EPA's approval of this action is available only by the filing of a petition for review in the United States Court of Appeals of the appropriate circuit within 60 days of today. Under 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Incorporation by reference of the State Implementation Plan for the State of Alabama was approved by the Director of the Federal Register on July 1, 1981.

(Sec. 110 of the Clean Air Act (42 U.S.C. 7410))

Dated: November 19, 1981.

Anne M. Gorsuch,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart B—Alabama

In § 52.50, paragraph (c) is amended by adding subparagraph (33) as follows:

§ 52.50 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * *

(33) Alternative particulate control requirements for Kimberly-Clark Corporation's #3 bark boiler, Coosa Pines (revisions in Part 4.8 of the Alabama regulations), submitted by the Alabama Air Pollution Control Commission on February 4 and August 31, 1981.

[FR Doc. 81-33911 Filed 11-23-81; 8:45 am]
BILLING CODE 6560-38-M

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40 CFR Part 52

[A4-FRL 1971-8]

Approval and Promulgation of Implementation Plans; Florida: Continuous Monitoring Regulations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On January 27, 1978, the Department of Environmental Regulation submitted to EPA regulatory revisions in the Florida State Implementation Plan: definitions for "Emission Limits," "Capacity Factor," and "Continuous Monitoring System" are revised, and regulation 17-2.08, (formerly 17-2.07) sampling and testing for continuous monitoring, is amended. (On June 10, 1981 the State again recodified this section and 17-2.08 became 17-2.710.) The changes satisfy the requirements of Appendix P to 40 CFR Part 51 and EPA is today approving them. This action will be effective January 25, 1982, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

DATE: This action is effective January 25, 1982.

ADDRESSES: Copies of the materials submitted by Florida may be examined