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Substances Act and its implementing regulations. As a consequence, such use of the mail by dispensers of such medicine would be allowed to the same extent that distribution via any carrier is permitted under the Controlled Substances Act and implementing regulations.

**DATES:** Comments must be received by January 21, 1994.

**ADDRESSES:** Address all comments to Anita Bizzotto, Manager, Business Mail Acceptance, U.S. Postal Service, 475 L'Enfant Plaza, SW., room 8430, Washington, DC 20260-6808. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8430 at the above address.

**FOR FURTHER INFORMATION CONTACT:** Robert Adams (202) 268-5168.

**SUPPLEMENTARY INFORMATION:** Domestic Mail Manual (DMM) CO42.6.9 currently states that "[p]rescription medicines containing narcotic drugs may be mailed only by Veterans Administration medical facilities to certain veterans." Some commercial suppliers have reported that they routinely ship such medicines via carriers which compete with the Postal Service, the shipments not being prohibited by the Controlled Substances Act, 21 U.S.C. 801 *et seq.*, and its implementing regulations, 21 CFR Parts 1300-1316. These suppliers claim that they would prefer to make these shipments via the Postal Service, and would do so, but for the foregoing restriction in our regulations.

Upon review, the Postal Service has found no need for provisions in its regulations on mailing controlled substances which would be stricter than those applicable to shipments via competing carriers. Whatever the means of carriage, such shipments must comply with the Controlled Substances Act and the regulations implementing it which provide a comprehensive system for protecting the public. Our proposed revisions will make postal regulations fully consistent with that protective system. While adopting this proposal may lead to substantial increases in the amount of mailed medicines containing narcotics, compliance with our regulations' preparation and packaging prerequisites should yield secure transit for those shipments.

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553 (b) and (c)) regarding proposed rulemaking by 39 U.S.C. 410 (a), the Postal Service invites comment on the following proposed revision of the Domestic Mail Manual, which is incorporated by reference in

the Code of Federal Regulations, 39 CFR 111.1.

#### List of Subjects in 39 CFR Part 111

##### Postal Service.

##### PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552 (a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. Domestic Mail Manual CO42.6.8 is hereby revised to read as follows:

##### Controlled Substances 6.8

A "controlled substance" is any anabolic steroid, narcotic, hallucinogenic, stimulant, or depressant drug in Schedules I through V of the Controlled Substances Act (Pub. L. 91-513), 21 U.S.C. 801 *et seq.*, and 21 CFR Parts 1300-1316. Because controlled substances are potentially addictive and abusable, if distribution of a controlled substance is unlawful under 21 U.S.C. 801 *et seq.*, and any relevant implementing regulations in 21 CFR Parts 1300-1316, such distribution by mail is also unlawful under 18 U.S.C. 1716. Section 1716(a) prohibits matter capable of killing or injuring a person from being conveyed in the mail.

3. Domestic Mail Manual CO42.6.9 is hereby revised to read as follows:

##### Mailing Requirements 6.9

Under 18, U.S.C. 1716(b), the Postal Service may permit the mailing of matter not outwardly or of its own force dangerous or injurious to a person's life or health. Such mailability is conditioned upon compliance with any preparation and packaging requirements imposed by the Postal Service. Accordingly, if distribution of a controlled substance is lawful under 21 U.S.C. 801 *et seq.*, and any relevant implementing regulations in 21 CFR Parts 1300-1316, the Postal Service considers such distribution by mail to constitute the mailing of matter not outwardly or of its own force dangerous or injurious to a person's life or health, provided that it satisfies the following preparation and packaging requirements.

a. The inner container of any parcel containing controlled substances must be marked and sealed under the applicable provisions of the Controlled Substances Act, 21 U.S.C. 801 *et seq.*, and the regulations implementing it, 21 CFR Parts 1300-1316.

b. If the controlled substances consist of prescription medicines, the inner container must also be labeled to show the prescription number and the name and address of the pharmacy,

practitioner, or other person dispensing for prescription.

c. The inner container of every parcel containing controlled substances must be placed in a plain outer container or securely overwrapped in plain paper.

d. The outside wrapper or container must be free of markings that would indicate the nature of the contents.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 93-30955 Filed 12-21-93; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL-4816-5]

#### State Implementation Plans for Lead Nonattainment Areas; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990

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

**ACTION:** Addendum to General Preamble for future proposed rulemakings.

**SUMMARY:** Areas of the country which violate national ambient air quality standards for any of the six criteria pollutants (lead, sulfur dioxide (SO<sub>2</sub>), particulate matter, ozone, carbon monoxide, and nitrogen dioxide) may be designated nonattainment as provided by the Clean Air Act (Act), as modified by the 1990 Amendments. States containing these areas are required by title I of the statute to develop plans to timely attain the standards.

The General Preamble for the Implementation of title I of the 1990 Amendments was published on April 16, 1992. It provides preliminary guidance to the States and other interested parties regarding what EPA generally considers acceptable plan submittals for implementing certain requirements of title I of the Act.

This document adds the lead addendum to the General Preamble which provides more detailed guidance on meeting the statutory requirements for reasonably available control measures (RACM) (including reasonably available control technology (RACT)), reasonable further progress (RFP) for lead, and contingency measures. In general, the guidance contained in the addendum parallels existing guidance previously provided for other

pollutants, such as PM-10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) and SO<sub>2</sub>.

**ADDRESSES:** References cited herein are available from the Public Docket No. A-92-25. The docket is located at the U.S. EPA Air Docket, room M-1500, Waterside Mall, LE-131, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. to 12 noon and from 1:30 p.m. to 3:30 p.m. on weekdays, except for legal holidays. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Laura D. McKelvey, Air Quality Management Division, Mail Drop 15, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711; (919) 541-5497.

**SUPPLEMENTARY INFORMATION:**

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In accordance with 1 CFR 5.9(c), this document is published in the proposed rules category.

**I. Background**

The draft addendum was made available to the public on July 16, 1992 with a 6-week public comment period. The EPA also held a public meeting on July 30, 1992. No comments were received from industry or the general public on the addendum. Copies of the draft addendum were also provided to the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO); the Lead Issue Group endorsed the draft

guidance and provided a few comments. Responses to those comments have been placed in the docket.

**A. Statutory Background**

Any State containing an area designated as nonattainment with respect to the lead national ambient air quality standards (NAAQS) must develop and submit a State implementation plan (SIP) meeting the requirements of part D, title I, of the Act providing for attainment (see sections 191(a) and 192(a) of the Act). As indicated in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (see 57 FR 13498, 13550; April 16, 1992), all components of the lead part D SIP must be submitted within 18 months of an area's nonattainment designation. The general part D nonattainment plan provisions are set forth in section 172 of the Act. Section 172(c) specifies that SIP's submitted to meet the part D requirements must, among other things, include RACM (which includes RACT), provide for RFP, include an emissions inventory, require permits for the construction and operation of major new and modified stationary sources (see also section 173), contain contingency measures, and meet the applicable provisions of section 110(a)(2). The EPA has provided guidance for implementing some of the above provisions in the April 16, 1992 "General Preamble." It is important to note that nonattainment lead SIP's must meet all of the part D requirements including those specified in section 172(c) even if EPA does not issue guidance for each and every provision, e.g., applicable provisions of section 110(a)(2).

**B. Guidance Development**

On May 31, 1991 EPA issued preliminary SIP development guidance for lead nonattainment areas, "Lead Nonattainment Area State Implementation Plan (SIP) Guidance: Final Staff Work Product." This guidance was largely incorporated into the General Preamble referenced above (57 FR 13549-13551). The EPA indicated that in developing RACM for lead nonattainment areas, States should rely on the RACM guidance issued for particulate matter that was set out in detail in the General Preamble (57 FR 13550). In fact, the portion of this guidance addressing RACM for lead nonattainment areas parallels EPA's interpretation of RACM for particulate matter.

A notice announcing this addendum to the General Preamble, available in draft form, was published on July 16,

1992 (see 57 FR 31477). The EPA entertained written and oral comments on the draft. The EPA received no public or industry comments, and only limited comments from STAPPA/ALAPCO. Therefore, EPA is issuing this guidance in final form largely unchanged. Responses to comments can be found in the docket referenced above.

**C. Guidance Legal Effect**

This document describes EPA's nonbinding views on how EPA should interpret certain lead nonattainment area SIP requirements. These interpretations will be given binding effect only after final rulemaking action on a specific SIP submittal for a particular area. During the course of such rulemaking action, the public will be afforded an opportunity to comment on the application of any interpretations advanced in this guidance to the particular area in question. Thus, EPA will consider the factual circumstances associated with a particular lead nonattainment area and the submissions made by any persons before giving the preliminary interpretations set out in this guidance binding legal effect.

**II. Reasonably Available Control Measures (Including Reasonably Available Control Technology)**

**A. Introduction**

As a general rule, most, if not all, of the lead nonattainment areas are attributed to specific stationary sources. That is, violations of the lead NAAQS are caused by current and in some cases historical emissions (see discussion below) from specific stationary sources. Therefore, to meet the part D requirements, lead SIP's must contain RACM (including RACT) which addresses both historical emissions as well as current direct emissions.

As a general rule, the stationary sources in these lead nonattainment areas tend to emit a relatively large amount of particulate matter containing lead. At primary lead smelters, for example, the process of reducing concentrate ore to lead involves a series of steps, some of which are completed outside buildings or inside buildings which are not totally enclosed. Over a period of time, emissions from these sources have been deposited in the neighboring community (e.g., on roadways, parking lots, yards, and off-plant property). This historically-deposited lead, when disturbed, is reentrained in the ambient air. When reentrained, the fugitive lead-bearing dust may contribute to violations of the lead NAAQS.

### B. Reasonably Available Control Measures

The suggested starting point for specifying RACM in each SIP is shown in the listing of available control measures for fugitive lead-bearing dust contained in appendix 1. If a State receives substantive public comment demonstrating through appropriate documentation that additional control measures may well be reasonably available in a particular circumstance, those measures should be added to the list of available measures for consideration for that area. The RACM is then determined for the affected area's SIP. While EPA does not presume that these control measures are reasonably available in all areas, a reasoned justification for rejection of any available control measure should be prepared. If it can be shown that one or more measures are unreasonable because emissions from the sources affected are insignificant, those measures may be excluded from further consideration as they would not represent RACM for the area.<sup>1</sup> The resulting available control measures should then be evaluated for reasonableness, considering their technological feasibility and the cost of control in the area to which the SIP applies. In the case of public sector sources and control measures, this evaluation should consider the impact of the reasonableness of the measures on the municipal or other governmental entity that must bear the responsibility for their implementation (e.g., paving of unpaved public roads). The EPA anticipates that in some cases, States will consider whether the sources responsible for depositing lead emissions in the affected community should bear some of the responsibility for implementation of what are generally viewed as public sector control measures. It is important to note that a State should consider the feasibility of implementing measures in part when full implementation would be infeasible. A reasoned justification for partial or full rejection of any available control measures, including

<sup>1</sup> Where the sources affected by potentially available control measures contribute only negligibly to ambient concentrations that exceed the NAAQS, EPA's policy is that it would be unreasonable and therefore would not constitute RACM to require controls on the sources. Not only would RACM not require the imposition of controls in such a circumstance but the inherent authority of administrative agencies to exclude de minimis situations from regulation has been recognized in contexts such as this where an agency is invoking a de minimis exclusion as "a tool to be used in implementing the legislative design" (see *Alabama Power Co. v. Costle*, 636 F.2d 323, 360 (D.C. Cir. 1979)).

those considered or presented during the State's public hearing process should be prepared. The justification should contain an explanation, with appropriate documentation, why each rejected control measure is infeasible or otherwise unreasonable.

When the process of determining RACM for an area is completed, the individual measures should then be converted into a legally-enforceable vehicle (e.g., a regulation or permit program) (see sections 172(c)(6) and 110(a)(2)(A) of the Act). The regulations or other measures submitted should meet EPA's criteria regarding the enforceability of SIP's and SIP revisions. These criteria were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation; Thomas L. Adams, Jr., Assistant Administrator for Enforcement and Compliance Monitoring; and Francis S. Blake, General Counsel, Office of the General Counsel; entitled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency." As stated in this memorandum, SIP's and SIP revisions which fail to satisfy the enforceability criteria should not be forwarded for approval. If they are submitted, they will be disapproved if, in EPA's judgment, they fail to satisfy applicable statutory and regulatory requirements.

The technical guidance that discusses in detail the suggested initial measures identified in appendix 1 and that a State should consider in determining which of the measures in appendix 1 are reasonable, considering technical feasibility and the cost of control in a particular area, is contained in "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures"<sup>2</sup> (EPA-450/2-92-004), September 1992. This document reflects EPA's most recent assessment of available control measures for sources of fugitive dust and may serve as an example in analyzing control costs for a given area. Copies of this document may be obtained by contacting the National

<sup>2</sup> Much of the guidance in this document was previously found in the "Control of Open Fugitive Dust Sources" document (EPA-450/3-88-008). This latter document was developed with substantial input from State and local agencies, trade groups and associations, and control experts.

This information has been updated and replaced in the "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures." Further, the more recent document is designed to be updated as new information becomes available. Therefore, the latter should be referred to as the starting point for identifying available control measures for lead-bearing fugitive dust.

Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

### C. Reasonably Available Control Technology

This guidance follows EPA's historic definition of RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.<sup>3</sup> The RACT applies to the "existing sources" of lead stack, process fugitive, and fugitive dust emissions (e.g., haul roads, unpaved staging areas) (see section 172(c)(1)). The EPA recommends that stationary sources which actually emit a total of 5 tons per year of lead or lead compounds measured as elemental lead be the minimum starting point for RACT analysis.<sup>4</sup> Generally, EPA recommends that available control technology be applied to those existing sources in the nonattainment area that are reasonable to control in light of the attainment needs of the area and the feasibility of such controls. Thus, a State's control technology analyses may need to include sources which actually emit less than 5 tons per year of lead or lead compounds in the area, or other sources in the area that are reasonable to control, in light of the area's attainment needs and the feasibility of control.<sup>5</sup>

<sup>3</sup> See, for example, 44 FR 53762 (September 17, 1979) and footnote 3 of that notice. Note that EPA's emissions trading policy statement has clarified that the RACT requirement may be satisfied by achieving "RACT equivalent" emission reductions in the aggregate from the full set of existing stationary sources. See also EPA's economic incentives proposal which reflects the Agency's more recent policy guidance with respect to emissions trading, 58 FR 11110, February 23, 1993.

<sup>4</sup> The EPA's regulations adopted prior to the 1990 Amendments define a point source for lead or lead compounds measured as elemental lead, as any stationary source that actually emits a total of 5 tons per year or more (see 40 CFR 51.100(k)).

The EPA simply notes that past usage in 40 CFR 51.100(k) as evidence that the 5 tons per year has been a historically important threshold level for lead and, as such, has been selected here to be the minimum starting point for RACT analysis. The Act Amendments of 1990 included a general savings clause which provides that regulations (or guidance, etc.) in effect before enactment of the Amendments shall remain in effect after enactment (see section 193 of the amended Act). However, the savings clause also provides that such regulations (or guidance, etc.) shall remain in effect "except to the extent otherwise provided under this Act, inconsistent with the provision of this Act, or revised by the Administrator." Id.

<sup>5</sup> Note that Congress has not used the word "all" in conjunction with RACT in either the earlier law or as now amended. Thus, it is possible that a State could demonstrate that an existing source in an area should not be subject to a control technology, especially where such control is unreasonable in light of the area's attainment needs or infeasible. Even if EPA was required to impose control<sup>1</sup>

Specific guidance on the evaluation of the technological and economic feasibility of control technology for existing stationary sources is contained in appendix 2.

#### *D. Previously Approved Lead SIP's*

Prior to the 1990 Amendments, EPA believed that the implementation and maintenance of the lead NAAQS should be in accordance with the SIP requirements set forth in section 110 and not part D (see 57 FR 13549). Since 1979, EPA has taken action to approve a number of lead area SIP's. These SIP's were required to demonstrate attainment. Although there is no statutory requirement for RACT in section 110, generally the available technology-based measures for controlling lead emissions have not changed substantially. Therefore, it is possible that some previously-approved lead SIP's require RACT equivalent technology. For example, for areas that requested attainment date extensions, EPA may have approved SIP's that required controls that would now be considered RACT for existing stationary sources of lead. However, because prior approval of any such control technology did not involve a RACT determination under part D, because there may have been new developments in available control technology, and because the area is not in attainment with the lead NAAQS (and therefore the previous plan did not in fact provide for attainment), it is not appropriate to presume that existing control technology satisfies the RACT requirement now applicable to lead nonattainment areas under part D (see section 172(c)(1)). Therefore, with respect to controls on stack and process fugitive emission points in previously-approved lead SIP's, EPA specifically recommends that the emission limits be reviewed under the guidance for

technology on every existing stationary source, where a State demonstrates that available control technology for a source is infeasible or otherwise unreasonable, EPA would conclude that "reasonably" available control technology for that source constitutes no control or, stated differently, that no control technology for the source is "reasonably" available.

As referenced above, section 172(c) of the amended Act provides that RACT should apply to "existing sources in the area." This is the same language that appeared in the RACT requirements under the Act prior to the 1990 Amendments (see section 172(b)(3) of the pre-amended law). Under the pre-amended law, EPA, in effect, interpreted the phrase "existing sources in the area" as it is interpreted here. The EPA believes that Congress has placed its imprimatur on, if not adopted, EPA's prior interpretation of RACT (see, e.g., section 182(a)(2)(A) of the amended Act, see also section 193 of the amended Act (savings clause preserving prior EPA guidance except where inconsistent with the amended Act)).

nonattainment area RACT provided in this notice in light of any newly identified attainment needs of the area and improvements in control technology and reductions in control costs that may now make lower emission limits reasonable (see appendix 2). Thus, in those lead nonattainment areas that have previously-approved lead SIP's, the lead regulations for existing sources should be reviewed to determine whether additional controls are necessary to meet part D RACT requirements, and whether the regulations meet EPA's enforceability criteria.

Section 110(n)(1) of the amended Act specifies that any provision of any lead SIP, including any revisions, approved or promulgated by EPA before enactment of the 1990 Amendments, shall remain in effect until EPA approves or promulgates a revision to the SIP under the new law. Section 110(l) of the Act prohibits EPA from approving any SIP revision that interferes with any applicable requirement of the Act including, for example, reasonable further progress and attainment. Further, the General Savings Clause, section 193 of the Act, states that any control requirement in effect or required to be adopted by a SIP in effect before enactment of the 1990 Amendments for any area which is a nonattainment area for any air pollutant may not be modified unless the modification ensures equivalent or greater emission reductions of such air pollutant. Thus, under section 110(n)(1), existing provisions of lead SIP's remain in effect in areas designated nonattainment for lead until such provisions are revised under the new law. Further, under section 110(l) EPA is barred from approving a SIP revision which interferes with any applicable Act requirement. Finally, under section 193, no revision of a control requirement can occur unless it ensures at least equivalent emission reductions.

#### *E. SIP's That Demonstrate Attainment*

The SIP's for lead nonattainment areas should provide for the implementation of control measures for area sources and control technology for stationary sources of lead emissions which demonstrate attainment of the lead NAAQS as expeditiously as practicable but no later than the applicable statutory attainment dates. Therefore, if a State adopts less than all available measures but demonstrates, adequately and appropriately, that reasonable further progress (discussed later) and attainment of the lead NAAQS are assured, and application of all such available measures would not

result in attainment any faster, then a plan which requires implementation of less than all technologically and economically available measures may be approved (see 44 FR 20375 (April 4, 1979) and 56 FR 5460 (February 11, 1991)). The EPA believes it would be unreasonable to require that a plan which demonstrates attainment include all technologically and economically available control measures even though such measures would not expedite attainment. Thus, for some sources in areas which demonstrate attainment, it is possible that some available control measures may not be "reasonably" available because their implementation would not expedite attainment.

#### **III. Reasonable Further Progress**

Part D SIP's must provide for RFP (see section 172(c)(2) of the Act). Section 171(1) of the Act defines RFP as "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D) or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." Historically, for some pollutants, RFP has been met by showing annual incremental emission reductions sufficient generally to maintain linear progress toward attainment by the specified deadline. Requiring linear emission reduction progress to maintain RFP may be appropriate where:

1. Pollutants are emitted by numerous and diverse sources.
2. The relationship between any individual source and the overall air quality is not explicitly quantified.
3. There is a chemical transformation involved.
4. The emission reductions necessary to attain the standard are inventory wide.

Requiring linear progress to maintain RFP is less appropriate where:

1. There are a limited number of sources.
2. The relationships between individual sources and air quality are relatively well defined.
3. There is not a chemical transformation.
4. Emission controls system utilized (e.g., at major point sources) will result in swift and dramatic emission reductions.

The EPA believes it may not be reasonable to require linear reductions in emissions in SIP's for lead nonattainment areas because the air quality problem is not usually due to a vast inventory of sources. However, this is not to suggest that generally it would

be unreasonable for EPA to require annual incremental reductions in emissions in lead nonattainment areas. The RFP for lead nonattainment areas should be met, at least in part, by "adherence to an ambitious compliance schedule" <sup>6</sup> which is expected to periodically yield significant emission reductions, and as necessary, linear progress. The EPA recommends that SIP's for lead nonattainment areas provide a detailed schedule for compliance with RACM (including RACT) in the areas and accurately indicate the corresponding annual emissions reductions to be achieved. In reviewing the SIP, EPA will determine whether, in light of the statutory objective to ensure timely attainment of the lead NAAQS, the annual incremental emission reductions to be achieved are reasonable. Additionally, EPA believes that it is appropriate to expect early implementation of less technology-intensive control measures (e.g., controlling fugitive dust emissions at the stationary source) while phasing in the more technology-intensive control measures, such as those involving the installation of new hardware. Finally, note that failure to implement the SIP provisions required to meet annual incremental reductions in emissions (i.e., RFP) in a particular area could result in the application of sanctions as described in sections 110(m) and 179(b) of the Act (pursuant to a finding under section 179(a)(4)), and the implementation of contingency measures required by section 172(c)(9) of the Act.

#### IV. Contingency Measures

Section 172(c)(9) of the Act defines contingency measures as measures in a SIP which are to be implemented if an area fails to maintain RFP or fails to attain the NAAQS by the applicable attainment date. Contingency measures become effective without further action by the State or the Administrator, upon determination by the Administrator that the area has failed to maintain reasonable further progress or attain the lead NAAQS by the applicable statutory deadline. Contingency measures should consist of available control measures that are not included in the primary control strategy.

Contingency measures are important for lead, which is generally a stationary source problem (as discussed earlier), for several reasons. First, the current process and area fugitive emissions from

these stationary sources and the reentrainment of historically-deposited emissions are difficult to quantify. Therefore, the analytical tools for determining the relationship between reductions in emissions and resulting air quality improvements can be subject to uncertainties. Second, emission estimates and attainment analyses can be influenced by overly-optimistic assumptions about control efficiency with respect to fugitive emissions.

Examples of contingency measures for controlling area fugitives include paving more roads, stabilizing more storage piles, increasing the frequency of street cleaning, etc. Examples of contingency measures for process fugitive emissions include increasing enclosure of buildings, increasing air flow in hoods, increasing operation and maintenance procedures, etc. Examples of contingency measures for stack sources include reducing hours of operations, changing the feed material to lower lead content, and reducing the occurrence of malfunctions by increasing operation and maintenance procedures, etc.

Section 172(c)(9) provides that contingency measures should be included in the SIP for a lead nonattainment area and shall "take effect \* \* \* without further action by the State or the Administrator." The EPA interprets this requirement to be that no further rulemaking actions by the State or EPA would be needed to implement the contingency measures (see generally 57 FR 13512 and 13543-13544). The EPA recognizes that certain actions, such as the notification of sources, modification of permits, etc., would probably be needed before a measure could be implemented. However, States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review. After EPA determines that a lead nonattainment area has failed to maintain RFP or to timely attain the lead NAAQS, EPA generally expects all actions needed to affect full implementation of the measures to occur within 60 days after EPA notifies the State of such failure. The State should ensure that the measures are fully implemented as expeditiously as practicable after they take effect.

#### V. Other Requirements

##### A. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether an action is "major" and, therefore, subject to the requirements of a regulatory impact

analysis. The Agency has determined that this action is exempt from classification as "major" because it is a compilation of interpretive rule and general statements of policy as defined in the Administrative Procedure Act (APA). Nevertheless, this notice was submitted to the Office of Management and Budget (OMB) for review.

A copy of the draft notice as submitted to OMB, any documents accompanying the draft, any written comments received from other agencies (including OMB), and any written responses to these comments have been included in the docket.

##### B. Regulatory Flexibility Act

Whenever the Agency is required by section 553 of the APA or any other law to publish general notice and proposed rulemaking for any proposed rule, the Agency shall propose and make available for public comment an initial regulatory flexibility analysis. The regulatory flexibility requirements do not apply for the lead addendum to the General Preamble because it is not a regulatory action in the context of the APA or the Regulatory Flexibility Act.

##### List of Subjects in 40 CFR Part 52

Environmental protection, Reasonably available control measures, Reasonably available control technology, Contingency measures, Reasonable further progress.

Dated: December 13, 1993.

Carol M. Browner,  
Administrator.

#### Appendix 1—Available Fugitive Lead-Bearing Dust Control

##### A. Background

The available control measures listed below apply to all fugitive lead-bearing dust sources except those to which RACT is applicable (i.e., fugitive lead-bearing dust associated with traditional stationary sources). Fugitive lead-bearing dust is particulate matter suspended in the air either by mechanical disturbance of the surface material or by wind action blowing across the surface. Mechanical disturbance includes resuspension of particles from vehicles traveling over roadways, parking lots, and other open areas. Wind action includes dust blown off inadequately stabilized open areas. The quantity of fugitive lead-bearing dust emissions is dependent upon several factors such as the size of the source, emission rate, and control efficiency. The EPA's policy is to reduce fugitive lead-bearing dust emissions, with an emphasis on preventing, rather than mitigating, them. For example, past

<sup>6</sup> As previously stated most of the lead nonattainment problems are caused by point sources. For this reason EPA believes that the RFP for lead should parallel the RFP policy for SO<sub>2</sub> (see the General Preamble, 57 FR 13545, April 16, 1992).

efforts to control emissions from paved roads have usually relied on street cleaning to reduce silt loading. The new approach would put a higher priority on measures to prevent silt from getting on the road surface. Mitigative measures should be reserved for those areas/situations where prevention is not feasible or the only way to reduce the impact is to remove historically-deposited emissions. Technical guidance on fugitive dust control measures is found in "Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures" (EPA-450/2-92-004, September, 1992).

#### B. List of Available Control Measures

1. Pave, vegetate, or chemically stabilize access points where unpaved traffic surfaces adjoin paved roads.
2. Require dust control plans for construction or land-clearing projects.
3. Require haul trucks to be covered.
4. Provide for traffic rerouting or rapid clean up of temporary (and not readily preventable) sources of dust on paved roads (water erosion runoff, mud/dirt carryout areas, material spills, skid control sand). Delineate who is responsible for cleanup.
5. Require paving, chemically stabilizing, or otherwise stabilizing permanent unpaved haul roads, and parking or staging areas at commercial, municipal, or industrial facilities.
6. Develop traffic reduction plans for unpaved roads. Use of speed bumps, low speed limits, etc., to encourage use of other (paved) roads.
7. Limit use of recreational vehicles on open land (e.g., confine operations to specific areas, require use permits, outright ban).
8. Require curbing and pave or stabilize (chemically or with vegetation) shoulders of paved roads.
9. Pave or chemically stabilize unpaved roads.
10. Pave, vegetate, or chemically stabilize unpaved parking areas.
11. Require dust control measures for material storage piles.
12. Provide for storm water drainage to prevent water erosion onto paved roads.
13. Require revegetation, chemical stabilization, or other abatement of wind erodible soil, including lands subjected to water mining, abandoned farms, and abandoned construction sites.
14. Rely upon the soil conservation requirements (e.g., conservation plans, conservation reserve) of the Food Security Act to reduce emissions from agricultural operations.
15. Require washing of undercarriages and wheels of vehicles immediately prior to leaving the plant area.

16. Require that water used for dust suppression and vehicle washing contain a limited amount of lead (e.g., less than or equal to 0.1 ppm).

#### Appendix 2—RACT Determinations for Stationary Sources

##### A. Background

Congress has for the second time in amending the Act specifically required that RACT be applied to existing stationary sources in areas designated nonattainment. In section 172(b)(3) of the Act, as amended in 1977, Congress specified that nonattainment area plans were to "require \* \* \* reasonable further progress \* \* \* including such reduction in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology." Thus, RACT was required in SIP's developed for areas that were designated nonattainment. Although, under the 1977 Amendments, the lead NAAQS were not implemented through the nonattainment area planning provisions; in the 1990 Amendments, Congress reaffirmed the application of the RACT requirement in any area designated nonattainment by largely incorporating the 1977 section 172(b)(3) RACT requirement into section 172(c)(1) which is applicable to lead nonattainment areas. Specifically, section 172(c)(1) of the Act, as amended in 1990 (Nonattainment Plan Provisions—In General), requires that nonattainment area plans provide for " \* \* \* such reductions in emissions from existing sources in the (nonattainment) area as may be obtained through the adoption, at a minimum, of reasonably available control technology." Thus, RACT is now required for lead nonattainment area SIP's.

The EPA recommends that the nonattainment area RACT for a particular source continues to be determined on a case-by-case basis considering the technological and economic feasibility of reducing emissions from that source (through process changes or add-on control technology). The following technological and economic parameters should be considered in determining part D RACT for a particular source.

##### B. Technological Feasibility

The technological feasibility of applying an emission reduction method to a particular source should consider the sources process and operating procedures, raw materials, physical plant layout, and any other environmental impacts such as water

pollution, waste disposal, and energy requirements. The process, operating procedures, and raw materials used by a source can affect the feasibility of implementing process changes that reduce emissions and the selection of add-on emission control equipment. The operation and longevity of control equipment can be significantly influenced by the raw materials used and the process to which it is applied. The feasibility of modifying processes or applying control equipment is also influenced by the physical layout of the particular plant. The space available in which to implement such changes may limit the choices and will also affect the costs of control.

Reducing air emissions may not justify adversely affecting other resources by increasing pollution of bodies of water, creating additional solid waste disposal problems, or creating excessive energy demands. In other words, an otherwise available lead control technology may not be reasonable if these other environmental impacts cannot reasonably be mitigated. For analytic purposes, a State may consider a lead control measure technologically infeasible if, considering the availability (and cost) of mitigative adverse impacts of that control on other pollution media, the control would not, in the State's reasoned judgment, provide a net environmental benefit. In many instances, however, lead control technologies have known energy penalties and adverse effects on other media, but such effects and the cost of their mitigation are also known and have been borne by owners of existing sources in numerous cases. Such well-established adverse effects and their costs are normal and assumed to be reasonable and should not, in most cases, justify nonuse of the lead control technology. The costs of preventing adverse water, solid waste, and energy impacts will also influence the economic feasibility of the lead control technology.

Approaches to reducing emissions of lead are discussed in "Control Techniques for Lead Air Emissions,"<sup>7</sup> Volume I—Chapters 1-3, and Volume II—Chapter 4—Appendix B, (EPA-450/2-77-012), December 1977. The many processes that generate lead air pollutants are described individually in this report. Information on the selection and performance of alternative control techniques applicable to lead emitting facilities within specific source categories is presented. Information on capital and annualized costs of

<sup>7</sup>Note that this document is currently being revised by EPA.

installing lead emission controls is also presented. Since it is not possible, in most cases, to distinguish between costs of particulate control and costs of lead control, control costs are presented for particulate control equipment which coincidentally reduce potential lead emissions. Also presented, for most source categories, are estimates of the environmental and energy impacts associated with the control of lead emissions.

Alternative approaches to reducing emissions of particulate matter (which would include lead) are discussed in "Control Techniques for Particulate Emissions from Stationary Sources"—Volume I (EPA-450/3-81-005a) and Volume II (EPA-450/3-81-005b), September 1982. The design, operation and maintenance of general particulate matter control systems such as mechanical collectors, electrostatic precipitators, fabric filters, and wet scrubbers are discussed in Volume I. The collection efficiency of each system is discussed as a function of particle size. Information is also presented regarding energy and environmental considerations and procedures for estimating costs of particulate matter control equipment. The emission characteristics and control technologies applicable to specific source categories are discussed in Volume II. Secondary environmental impacts are also discussed.

Additional sources of information on control technology are background information documents for new source performance standards and "Identification, Assessment, and Control of Fugitive Particulate Emissions," EPA-600/8-86-023, August 1986.

In some instances, control technologies more modern or more advanced than those described in the documents referenced may exist. In such cases, the State's nonattainment RACT analysis for a source should consider such available technology.

#### C. Economic Feasibility

Economic feasibility considers the cost of reducing emissions and the difference in costs between the particular source and other similar sources that have implemented emission reductions. As discussed above, EPA presumes that it is reasonable for similar sources to bear similar costs of emission reductions. Economic feasibility rests very little on the ability of a particular source to "afford" to reduce emissions to the level of similar sources. Less efficient sources would be rewarded by having to bear lower emission reduction costs if

affordability were given high consideration. Rather, economic feasibility for RACT purposes is largely determined by evidence that other sources in a source category have in fact applied the control technology in question.

The capital costs, annualized costs, and cost effectiveness of an emission reduction technology should be considered in determining its economic feasibility. The "OAQPS Control Cost Manual, Fourth Edition," EPA-450/3-90-006, January 1990, describes procedures for determining these costs. The above costs should be determined for all technologically-feasible emission reduction options.

States may give substantial weight to cost effectiveness in evaluating the economic feasibility of an emission reduction technology. The cost effectiveness of a technology is its annualized cost (\$/year) divided by the amount of lead emission reductions (i.e., tons/year) which yields a cost per amount of emission reductions (\$/ton). Cost effectiveness provides a value for each emission reduction option that is comparable with other options and other facilities.

If a company contends that it cannot afford the technology that appears to be nonattainment area RACT for that source or group of sources, the claim should be supported with such information as the impact on:

1. Fixed and variable production costs (\$/unit).
2. Product supply and demand elasticity.
3. Product prices (cost absorption versus cost pass-through).
4. Expected costs incurred by competitors.
5. Company profits.
6. Employment.

If a company contends that available control technology is not affordable and would lead to closing the facility, the costs of closure should be considered. Closure may incur costs for demolition, relocation, severance pay, etc.

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BILLING CODE 6560-50-P

#### 40 CFR Part 52

[AK-4-1-6027; FRL-4817-6]

#### Approval and Promulgation of Implementation Plan; Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes approval of the State Implementation Plan (SIP)

revision submitted by the state of Alaska for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10). The implementation plan was submitted by the state to satisfy certain federal Clean Air Act (CAA) requirements for an approvable moderate nonattainment area PM-10 SIP for Mendenhall Valley, Alaska due on November 15, 1991. EPA is also proposing approval of the contingency measures submitted by the state of Alaska for the Mendenhall Valley and Eagle River moderate PM-10 nonattainment areas.

**DATES:** Comments on this proposed action must be postmarked by January 21, 1994.

**ADDRESSES:** Written comments should be addressed to: Christi Lee, United States Environmental Protection Agency, Air and Radiation Branch (AT-082), 1200 6th Avenue, Seattle, Washington 98101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at: Air and Radiation Branch (AK-4-1-6027), United States Environmental Protection Agency, 1200 Sixth Avenue (AT-082), Seattle, Washington 98101, and the Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska 99801.

**FOR FURTHER INFORMATION CONTACT:** Christi Lee, Air and Radiation Branch (AT-082), United States Environmental Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553-1814.

#### SUPPLEMENTAL INFORMATION:

##### I. Background

The Mendenhall Valley, Alaska, area was designated nonattainment for PM-10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act, upon enactment of the Clean Air Act Amendments of 1990. See 56 FR 56694 (Nov. 6, 1991) (40 CFR 81.302 specifying PM-10 air quality designation for the Mendenhall Valley area). The air quality planning requirements for moderate PM-10 nonattainment areas are set out in subparts 1 and 4 of Part D, Title I of the Act.<sup>1</sup> The EPA has issued a "General Preamble," describing EPA's preliminary views on how EPA intends

<sup>1</sup> The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. 101-549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. sections 7401, *et seq.*

to review SIP's and SIP revisions submitted under Title I of the Act, including those state submittals containing moderate PM-10 nonattainment area SIP requirements [see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in the proposal and the supporting rationale. EPA is proposing to apply its interpretations to Alaska's moderate PM-10 SIP submittal for Mendenhall Valley taking into consideration the specific factual issues presented. Additional information supporting EPA's action on this particular area is available for inspection at the addresses indicated above. EPA will consider any timely submitted comments before taking final action on today's proposal.

Those states containing initial moderate PM-10 nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every three years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM-10 also apply to major stationary sources of PM-10 precursors except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM-10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM-10 by June 30, 1992 (see section 189(a)). Such states also must submit contingency measures by November 15,

1993 which become effective without further action by the state or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM-10 NAAQS by the applicable statutory deadline (see section 172(c)(9) and 57 FR 13543-44).

## II. Analysis of State Submission

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565-66). In this action, EPA is proposing to approve the Mendenhall Valley plan revision which was signed by the Lieutenant Governor on June 8, 1993 and received by EPA on June 22, 1993 because it meets all of the applicable requirements of the Act.

### 1. Procedural Background

The Act requires states to observe certain procedural requirements in developing the implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and 110(l) of the Act provides that each implementation plan and plan revision submitted by a state must be adopted after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA six months after receipt of the submission.

After providing adequate public notice and holding a public hearing, the Alaska Department of Environmental Conservation (ADEC) submitted a SIP revision which was developed under the CAA prior to the amendments of 1990 and certified by the Lieutenant Governor on June 21, 1991. A revised submittal addressing additional 1990 CAAA requirements was signed by the Lieutenant Governor on June 8, 1993 and became effective on July 8, 1993. Prior to the Lieutenant Governor's signature, the state provided adequate public notice and a public hearing (May 12, 1993) on the Mendenhall Valley SIP revision. EPA received an official SIP submitted by the Governor on June 22, 1993. The June 22, 1993 submittal wholly superseded the June 21, 1991 SIP revision and therefore is the subject of this proposal.

The June 22, 1993, SIP revision was reviewed by EPA to determine completeness shortly after its submittal,

in accordance with the completeness criteria set out at 40 CFR part 51, Appendix V. The submittal was found to be complete and a letter dated July 15, 1993 was forwarded to the Commissioner of ADEC indicating the completeness of the submittal and the next steps to be taken in the review process.

### 2. PM-10 Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Because the submission of the emissions inventory (EI) is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the EI must be received with the demonstration (see 57 FR 13539).

A comprehensive EI (base year 1987) was developed for Mendenhall Valley by Engineering Science, Inc. in 1988. There have been no major industrial developments nor major increases in residential development in the Valley since the inventory was developed.

The principal focus of the study was to adequately quantify spring and fall emissions. The contractor developed an annual inventory of emissions and an inventory of maximum seasonal 24-hour emissions. The EI showed the largest contributor of spring and fall seasonal PM-10 emissions to be from vehicular traffic along paved and unpaved roads in the Mendenhall Valley. On an annual basis 46 percent of the PM-10 is attributed to paved streets, 40 percent is attributed to unpaved streets, 9 percent attributed to residential wood combustion (RWC), 1 percent attributed to point sources and 4 percent other.

EPA is proposing to approve the EI because it generally appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the CAA.

### 3. Control Strategy—RACM

As noted, the initial moderate PM-10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539-45 and 13560-61).

The Mendenhall Valley attainment plan targets fugitive dust from unpaved streets for PM-10 emission reductions. Emission reduction credits are not being claimed for the residential wood combustion control measures currently implemented. However, recently, the City and Borough of Juneau (CBJ) Ordinance No. 91-52 changed the air quality alert level to 75  $\mu\text{g}/\text{m}^3$  and several of the fines were increased for offenses of the woodsmoke code through the CBJ Ordinance No. 91-53. In addition the CBJ Building Code has now been amended to require minimum insulation standards of R-30 ceilings and R-19 walls and floors. Formulas were also adopted for the percentage of window coverage allowed. Regulations were adopted which disallow wood stoves as a sole source of heat and require a backup system capable of heating the living areas of a house to 70 degrees Fahrenheit. Even though emission reduction credits are not being claimed for the residential wood combustion control measures all program components, including the ordinances referred to above, will improve air quality in both the short and long term and therefore, are part of the federally enforceable Alaska SIP.

ADEC's attainment strategy is proposing to build on the current PM-10 control strategy, by developing a comprehensive and reasonable program to control soil dust entrainment from unpaved roads, commonly referred to as "fugitive dust." Fugitive dust impacts have historically been a component of the Juneau particulate matter problem from both a TSP and PM-10 perspective. But, on the basis of 24-hour exposures as well as chemical apportionment, the PM-10M control program has, in the past, focused upon wood smoke sources. However, as indicated in part II.2 above, the EI and recent assessments of microscale PM-10 filters indicates a significant portion of the particulate emissions is a result of fugitive dust.

Fugitive dust impacts can be significant during the late fall and early spring at the two ends of the heating season, when the ground is not snow covered and wintertime high pressure systems exist limiting precipitation. Fugitive dust impacts can also occur during the summer under extended periods of dry weather.

The Mendenhall Valley's attainment strategy to control fugitive dust emissions from unpaved roads is based on a Valley-wide street paving project. The success of this strategy is based on two funding sources: (1) The Federal Department of Transportation's Congestion Mitigation and Air Quality

(CMAQ) funding and (2) the City and Borough of Juneau's ordinances (Serial No. 93-01, 93-06 and 93-39) which created Local Improvement Districts 75, 76 and 77.

As of 1992, approximately 15 miles in the Mendenhall Valley nonattainment area were unpaved. The proposed schedule for the 1993 construction year calls for roughly 13,000 feet (2.5 miles) of "Local Improvement District" (LID) funded paving in the Valley. (The extreme weather conditions in Alaska determine the length of the construction season which dictates how much of the paving program is completed in one season.) The LID paving is accomplished through a joint funding arrangement between adjacent property owners and the city government. Completion of the 1993 construction projects will meet the requirement for RACM by providing for the implementation of control measures that are economically and technologically feasible. However, it will not reduce the unpaved portion of Valley roadways to a level that will allow for compliance with the PM-10 standard. The SIP provides for additional paving initiatives that are feasible for the state to implement after 1993. The remaining paving activity is scheduled for the 1994 construction year.

LID funding and a portion of the \$2 million in CMAQ funds is expected to enable the paving of approximately 43,000 feet (7.6 miles) of unpaved roads in the Mendenhall Valley in 1994. Portions of these unimproved roads will need significant "road-base" improvements as well as major drainage or road utility easement work. Juneau's limited construction season of about 40 to 80 workdays per year, depending on the weather, will be the major factor in this work schedule. Based on the state program and in light of the potential extreme weather conditions, EPA views this control measure as adequately implemented.

Once the control strategy has been implemented, approximately 5 miles of roadway will be left unpaved. Of that 5 miles, ADEC is proposing as a contingency measure to pave approximately 1.5 miles if the Valley does not reach attainment of the NAAQS by December 1994.

#### 4. Demonstration Of Attainment

Initial moderate PM-10 nonattainment areas are required to submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by such

date is impractical (see sections 188(c)(1) and 189(a)(1)(B) of the Act). Generally, attainment is to be demonstrated, "by means of a proportional model or dispersion model or other procedure which is shown to be adequate and appropriate for such purposes" (40 CFR 51.112). The preferred method, according to the PM<sub>10</sub> SIP Development Guideline (June 1987), is the use of dispersion and receptor modeling in combination. The guideline also identifies other acceptable techniques. EPA has developed a supplemental attainment demonstration policy, memo issued by John Calcagni, Director, Air Quality Management Division, dated March 4, 1991, that provides additional flexibility in meeting the PM-10 attainment demonstration requirements. This memo is "Attachment 5" to the April 2, 1991 "PM-10 Moderate Area SIP Guidance: Final Staff Work Product." Attachment 5 provides that in certain circumstances "modified demonstrations" may be accepted on a case-by-case basis.

Where Attachment 5 is applied, the "modified demonstration" should:

- Explain why the alternative modeling techniques set forth in the Guideline were not used;
- Document the procedures or analyses used;
- Show that the modified procedure demonstrates, adequately and appropriately, area-wide attainment; and
- When the design value is based on monitoring data, show that the SIP is based on adequate data from an approved network, and review the monitoring network and data. If the analysis reveals a need for additional monitoring, the demonstration must provide for conducting the appropriate follow-up monitoring to ensure that the monitoring network in place as of January 1, 1994 will be adequate to evaluate attainment. The Mendenhall Valley Plan demonstrated area-wide attainment using the most recent (1988) receptor modeling study (EPA Version 6.0 CMB and QSAS III CMB programs, EPA guidance, May 1987) and rollback. Dispersion modeling was not performed for the Mendenhall Valley SIP because of uncertainties associated with source emission rates and a lack of representative meteorological data. Given the foregoing limitations and the limitations and the character of the monitoring network, receptor modeling offered an adequate level of confidence with which to evaluate the relative contribution of the various sources.

The results of the 1988 receptor modeling study determined the largest

source impact in Juneau was crustal dust which accounted for 69.6% (102.2  $\mu\text{g}/\text{m}^3$ ) of the mass. Wood smoke was the second largest source of PM-10 in Juneau accounting for 13.8% (20.3  $\mu\text{g}/\text{m}^3$ ) of the PM-10.

To achieve the ambient PM-10 24-hour standard attainment goal of 150  $\mu\text{g}/\text{m}^3$  or less by December 1994, ADEC in concert with ADOT and the CBJ are implementing emission reduction strategies as discussed in the previous section (Control Strategy—RACM). Two simple rollback approaches were undertaken by ADEC and a proportional rollback based on the 1988 receptor modeling study was conducted by EPA Region 10 all of which demonstrated attainment of the PM-10 air quality standard by December 1994. Thus, three different modeling methods were employed in assessing whether the control strategy is adequate to demonstrate timely attainment.

The two simple rollback approaches used a background of 35  $\mu\text{g}/\text{m}^3$ , a design concentration of 277  $\mu\text{g}/\text{m}^3$ , a control efficiency of 90 percent for the paving of unpaved roads, and an emissions inventory prepared by Engineering Science (1988). EPA has estimated the background concentration to be 25  $\mu\text{g}/\text{m}^3$  when exceptional events data are not reflected in the calculation. This change in background concentration does not change the overall conclusions derived from the attainment demonstration calculations. An overall emission reduction of 64 percent (52 percent calculated by EPA) is necessary to demonstrate attainment for Mendenhall Valley.

ADEC's first approach at simple rollback relied on best professional judgement to proportion the percent emissions resulting from three main sources: Paved roads, RWC and cleared areas. After implementation of the control strategies, this approach yielded an ambient emission level of about 77  $\mu\text{g}/\text{m}^3$  which is significantly below the PM-10 standard.

A second approach was included in the SIP to assess the ADEC attainment strategy. This method proportions the percent emissions of unpaved road sources, wood burning, windblown dust and residential fuel, based on annual emissions levels (see SIP table III.D.3-7). ADEC did not take into consideration additional emissions in the nonattainment area which were reflected in the 1988 EI. ADEC believed these emission sources (e.g. airport-jet exhaust, airport sanding, power plants, commercial gravel operations and mobile sources) which total 3 percent of the EI were insignificant contributors to the current PM-10 problem in the

Mendenhall Valley. This approach yielded an ambient value of about 101  $\mu\text{g}/\text{m}^3$ . This is about 24 percent greater than ADEC's initial analysis, not 12 percent as claimed in the SIP.

A proportional rollback using the 1988 receptor modeling study, which takes into account all the emission sources in the nonattainment area, was conducted by EPA to further evaluate the adequacy of the control strategy. EPA used a design value of 277  $\mu\text{g}/\text{m}^3$ , a road dust emission percentage of 69.6, a residential wood combustion component of 13.7 percent and 16.7 percent was attributed to other sources. This approach yielded an ambient concentration of 103  $\mu\text{g}/\text{m}^3$  after the control measures are in place.

The PM-10 EI and receptor modeling both conclude that fugitive dust constitutes a majority of PM-10 in Mendenhall Valley. The rollback analysis predicts annual emissions to be below the attainment threshold by 1994. EPA considers receptor modeling in conjunction with rollback analysis to be adequate for assessing whether the control strategy will provide for area-wide, timely attainment in Mendenhall Valley.

EPA has reviewed the Mendenhall Valley PM-10 ambient air monitoring network and has found that it meets the requirements for sampling frequency, precision and accuracy. Mendenhall Valley also has at least one full year of monitoring data which meets the requirement of 75 percent data capture for each quarter. See, e.g. section 2.3, 40 CFR part 50, app. K.

Saturation sampling or expansion of the existing monitoring network might provide additional data for assessing the current plan's adequacy. However, based on EPA's assessment of the network and data, these analyses do not appear to be necessary to adequately predict attainment by 1994 in the Mendenhall Valley. The increment of information to be gained from such analyses does not justify either their expense or the delay in taking action on the Mendenhall Valley submittal. However, a saturation study is recommended to assess whether, in fact, the Mendenhall Valley has achieved timely PM-10 NAAQS attainment.

Finally, ambient data shows that the area has never approached an exceedance of the annual PM-10 standard. Since no violations of the annual NAAQS have been monitored with the current EI and since the inventory was "rolled back" to show attainment of the 24-hour NAAQS, no violations of the annual NAAQS are likely. Therefore, EPA believes it is reasonable that the attainment

demonstration for the area was based on the 24-hour NAAQS.

##### 5. PM-10 Precursors

The control requirements which are applicable to major stationary sources of PM-10, also apply to major stationary sources of PM-10 precursors unless EPA determines such sources do not contribute significantly to PM-10 levels in excess of the NAAQS in that area (see section 189(e) of the Act).

The EI for the Mendenhall Valley nonattainment area did not reveal any significant stationary sources of PM-10 precursors, and stationary sources as a whole provide an insignificant contribution (1 percent based on the 1988 emission inventory) to Mendenhall Valley's ambient PM-10 concentrations. Thus, ambient PM-10 precursor concentrations in the Mendenhall Valley nonattainment area are considered to be de minimis and EPA is proposing to grant the area the exclusion from PM-10 precursor control requirements authorized under section 189(e) of the Act.

##### 6. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM-10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every three years until the area is redesignated to attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). RFP is defined in section 171(1) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

For initial moderate PM-10 nonattainment areas (i.e. those designated nonattainment under section 107(d)(4)(B) of the Act) that demonstrate timely attainment, the emissions reduction progress made between the SIP submittal date of November 15, 1991 and the attainment date of December 31, 1994 (only 46 days beyond and the attainment date of December 31, 1994 (only 46 days beyond the November 15, 1994 milestone date) will satisfy the first milestone requirement (57 FR 13539). The de minimis timing differential makes it administratively impracticable to require separate milestone and attainment demonstrations.

The SIP submittal for Mendenhall Valley demonstrates attainment by 1994 and continued maintenance. The emission reduction progress to be

provided by the road paving initiative adequately satisfies RFP for the area. Therefore, EPA proposes to find that the SIP satisfies the initial quantitative milestone requirement (see 57 FR 13539) and RFP for the area.

#### 7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the state and EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). EPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The CBJ, State Department of Transportation and ADEC are solving the resuspended road dust problem through road paving. To achieve the emission reduction goals, the CBJ has developed ordinances (Serial No. 93-01, 93-06 and 93-39) which authorize funding for the paving or bituminous surface treatment of unpaved roadways within the Mendenhall Valley nonattainment area through 1994. In addition, federal Congestion Mitigation and Air Quality funding, allocated to the Alaska Department of Transportation, has been authorized to help enable paving of roads in the Valley. The state has authority to enforce CBJs ordinance under AS 46.03.220. EPA proposes to determine that the SIP measures to address PM-10 emissions are enforceable.

#### 8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures (see generally 57 FR 13543-44). These measures must be submitted by November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the state or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM-10 NAAQS by the applicable statutory deadline.

##### *Mendenhall Valley:*

The contingency measures for the Mendenhall Valley nonattainment area consist of additional road paving. The control strategy to reach attainment by 1994, consisting of paving roads to

decrease fugitive dust emissions, is anticipated to provide adequate reductions in emissions to bring the Valley into compliance with the PM-10 standard by December 31, 1994. However, if the paving initiatives described in Part II.3 do not, in fact, provide for timely attainment of the PM-10 NAAQS, the state will surface approximately 7,250 feet of additional roads during the 1994/95 construction season. Implementation of this measure would result in a net reduction of 12.1 tons/yr, as calculated by EPA. This measure would be implemented upon a determination by EPA that the area has failed to attain the standard.

##### *Eagle River:*

EPA has previously announced its approval of Alaska's October 15, 1991 SIP submittal for Eagle River as meeting those moderate PM-10 plan requirements due on November 15, 1991. See 58 FR 43084 (August 13, 1993). In that notice EPA also indicated that additional provisions such as contingency measures were due at a later date. EPA is now announcing its proposed approval of the moderate area PM-10 contingency measures submitted by Alaska for Eagle River.

The contingency measures for the Eagle River nonattainment area consist of additional road surfacing. The principle control strategy to reach attainment by 1994, (see EPA's March 12, 1993 proposal for a discussion of the Eagle River control strategy, 58 FR 13572) consisting of paving roads to decrease fugitive dust emissions, is anticipated to provide adequate reductions in emissions to bring the area into compliance with the PM-10 standard by December 31, 1994. However, if the surfacing does not, in fact, provide for timely attainment of the PM-10 NAAQS, the Municipality will employ two contingency measures. Public works agrees to implement these measures in the event EPA determines that Eagle River has failed to timely achieve the PM-10 air quality standards. The Eagle River Rural Road Service Area, through a grant of 1.5 million dollars which was appropriated in HB 13, has allocated funds as a contingency reserve for the following projects.

The first measure entails surfacing two additional miles of roadway within the nonattainment area with recycled asphalt (RAP). The second contingency measure involves applying an asphalt emulsion to two miles of existing RAP surfaced roads to seal the wearing surface, thus providing a greater degree of dust control. The selected roads would be the most heavily traveled roads in the problem zone. The asphalt

emulsion would be reapplied on an as-needed basis. The implementation of these contingency measures, in combination with the primary measures already employed, will provide an estimated total Fall season PM-10 emission reduction of over 60 percent. A reduction of only 40 percent is projected to be necessary to achieve attainment.

#### III. Implications of This Action

EPA is proposing to approve the plan revision submitted to EPA on June 24, 1993, for the Mendenhall Valley nonattainment area as meeting those moderate PM-10 SIP requirements due on November 15, 1991. Among other things, ADEC has demonstrated that the Mendenhall Valley Moderate PM-10 nonattainment area will attain the PM-10 NAAQS by December 31, 1994. EPA is also proposing to approve the moderate area PM-10 contingency measures Alaska has submitted for Mendenhall Valley as well as those submitted for Eagle River.

As noted, additional submittals for the initial moderate PM-10 nonattainment areas are due at later dates (e.g., permit programs for the construction and operation of new and modified stationary sources of PM-10). EPA will determine the adequacy of any such submittal as appropriate.

#### IV. Request for Public Comments

EPA is requesting comments on all aspects of today's proposal. As indicated at the outset of this notice, EPA will consider any comments postmarked by January 20, 1994.

#### V. Administrative Review

This action has been classified as a Table 2 action by the Acting Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12991 for a period of two years. The U.S. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively,

EPA may certify 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 government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Ozone, and Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: December 13, 1993.

Gerald A. Emison,

Acting Regional Administrator.

[FR Doc. 93-31270 Filed 12-21-93; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 180

[PP 3E4192/P571; FRL-4743-6]

RIN No. 2070-AC18

#### Pesticide Tolerance for Chlorpyrifos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** This document proposes that a tolerance be established for residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate] in or on the raw agricultural commodity sugarcane. The

proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

**DATES:** Comments, identified by the document control number (PP 3E4192/P571), must be received on or before January 21, 1994.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

**SUPPLEMENTARY INFORMATION:** The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 3E4192 to EPA on behalf of the Agricultural Experiment Stations of Florida and Hawaii. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a tolerance for residues of chlorpyrifos in or on the raw agricultural commodity sugarcane at 0.01 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data

considered in support of the proposed tolerance include:

1. A voluntary human study with a no-observed-effect level (NOEL) for cholinesterase (ChE) inhibition of 0.03 milligram (mg)/kilogram (kg)/day (based on 20 days of exposure at this level).

2. A 2-year feeding study in dogs fed diets containing 0, 0.01, 0.03, 0.1, 1.0, or 3 mg/kg/day with a NOEL for systemic effects of 1.0 mg/kg/day based on increased liver weight at the 3.0 mg/kg/day dose level. The NOEL's for ChE inhibition were as follows: 0.01 mg/kg/day for plasma, 0.1 mg/kg/day for red blood cells, and 1.0 mg/kg/day brain cells.

3. A 2-year carcinogenicity study in mice fed diets containing 0, 5, 50, or 250 ppm (equivalent to 0, 0.89, 8.84, or 45.2 mg/kg/day for males and 0, 0.938, 9.79, or 48.1 mg/kg/day for females) with a systemic NOEL of 50 ppm based on decreased body weight and feed consumption in males, increased mean water consumption in females, and increased incidence of gross clinical findings (ocular opacity and hair loss) and nonneoplastic lesions (keratitis and hepatocytic fatty vacuolation) in high-dose males and females. Plasma ChE activity was significantly reduced at all treatment levels; brain ChE activity was significantly decreased in mice in the high-dose group. No carcinogenic effects were observed under the conditions of the study.

4. A 2-year carcinogenicity study in rats fed diets containing 0, 0.2, 5, or 100 ppm (equivalent to 0, 0.0132, 0.33, or 6.99 mg/kg/day for males, and 0, 0.146, 0.365, or 7.78 for females). The systemic NOEL for this study was established at 5 ppm based on decreased body weight in males and females, and increased incidence of nonneoplastic lesions (cataracts and diffuse retinal atrophy) in females at the 100-ppm dose level. No carcinogenic effects were observed under the conditions of the study.

5. A second 2-year chronic toxicity/carcinogenicity study in rats fed diets containing 0, 0.05, 0.1, 1, or 10 mg/kg/day with a systemic NOEL of 1 mg/kg/day based on decreased erythrocyte and hemoglobin levels, and increased platelet count during the first year. The ChE NOEL for this study was established at 0.1 mg/kg/day based on decreased plasma and brain ChE activity. No carcinogenic effects were observed under the conditions of the study.

6. A three-generation reproduction study in rats with no reproductive effects observed at the dietary levels tested (0, 0.1, 0.3, and 1.0 mg/kg/day).

7. A developmental toxicity study in rats given gavage doses of 0.1, 3.0, and

15 mg/kg/day with no developmental toxicity observed under the conditions of the study. A maternal NOEL was established at 0.1 mg/kg/day based on cholinesterase inhibition at the 3.0 mg/kg/day dose level.

8. A second developmental toxicity study in rats given gavage doses of 0.5, 2.5, and 15 mg/kg/day with NOEL's for developmental and maternal effects of 2.5 mg/kg/day. Maternal systemic toxicity consisted of decreases in food consumption and body weight gain. Developmental toxicity consisted of post implantation embryo loss at the 15 mg/kg/day dose level.

9. A developmental toxicity study in mice given gavage doses of 0, 1, 10, or 25 mg/kg/day with a NOEL for fetotoxicity of 10 mg/kg/day based on decreased fetal length and increased skeletal variants. No developmental toxicity was observed under the conditions of the study.

10. An acute delayed neurotoxicity study in hens that was negative at 50 and 100 mg/kg/day.

11. Chlorpyrifos did not induce gene mutation in bacteria or mammalian cells with or without metabolic activation. The insecticide tested negative for chromosomal aberrations using *in vivo* and *in vitro* assays. Chlorpyrifos tested positive for genotoxic effects in a DNA repair test and a gene conversion/mitotic recombination assay using bacterial cells, but was negative for unscheduled DNA synthesis.

12. A metabolism study in rats demonstrates that chlorpyrifos is primarily excreted in urine (84 percent recovered within 72 hours) and that the major animal metabolite is 3,5,6-trichloro-2-pyridinol (a metabolite that is not considered to be of toxicological concern).

A reference dose (RfD) of 0.003 mg/kg/day is established for chlorpyrifos based on the NOEL of 0.03 mg/kg/day from the human voluntary ChE study and a 10-fold uncertainty factor. The anticipated residue contribution (ARC) from published uses of chlorpyrifos utilizes 27 percent of the RfD for the general U.S. population. The theoretical maximum residue contribution (TMRC) from the proposed tolerance for sugarcane would utilize an additional 0.3 percent of the RfD. Dietary exposure from existing uses and the proposed use on sugarcane will not exceed the reference dose for any subpopulation (including infants and children), based on the information available from EPA's Dietary Risk Evaluation System.

The nature of the residue is adequately understood, and an adequate analytical method, gas chromatography, is available for enforcement purposes.

An analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual (PAM), Vol. II. Established tolerances are adequate to cover secondary residues resulting from the use of sugarcane and sugarcane byproducts as livestock feed commodities. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency the tolerance established by amending 40 CFR 180.342 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the *Federal Register* that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 3E4192/P571]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or

the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements 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 24950).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 1, 1993.

**Stephen L. Johnson,**  
*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

**PART 180—[AMENDED]**

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 371.

2. By amending § 180.342(c) by adding and alphabetically inserting the raw agricultural commodity sugarcane and by revising paragraph (d) introductory text to read as follows:

**§ 180.342 Chlorpyrifos; tolerances for residues.**

\* \* \* \* \*  
(c) \* \* \*

Commodity	Parts per million
Sugarcane .....	0.01

(d) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the pesticide chlorpyrifos (*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate) in or on the following commodities: