

rule based on this comment, although we will consider issuing additional rules in the future consistent with this comment.

Section 20.1106 is located in subpart L of part 20 of title 38, Code of Federal Regulations. Part 20 of title 38 contains the Rules of Practice of the Board of Veterans' Appeals. Subpart L of part 20 contains the Board's rules concerning the finality of decisions of the Board and VA regional offices. Section 20.1106 provides that, with certain exceptions, issues involved in a survivor's claim for death benefits will be decided without regard to any prior disposition of those issues during the veteran's lifetime. This rule has been stated in the Board's rules of practice since 1980. In 1992, we amended the rule to clarify that it did not apply to claims under 38 U.S.C. 1318. This final rule will further amend § 20.1106 to clarify that the rule does not apply to claims under 38 U.S.C. 1311.

Part 3 of title 38, Code of Federal Regulations, contains substantive and procedural rules governing adjudication of claims for disability compensation, pension, DIC and other benefits. Part 3 includes 38 CFR 3.22, which states VA's interpretation of 38 U.S.C. 1318, and 38 CFR 3.5(e), which essentially reiterates the statutory provisions of 38 U.S.C. 1311(a)(2) without elaboration. However, part 3 does not include a rule stating the principle in § 20.1106 that, except in cases under 38 U.S.C. 1311 and 1318 and certain other statutes, issues in DIC claims generally will be decided without regard to any prior disposition of such issues during the veteran's lifetime.

The commenter states that the principle stated in § 1106 would apply to all VA decisions on DIC claims, whether such decisions are made by the Board or by a VA regional office. Accordingly, the commenter asserts that those principles should be stated in part 3.

VA agrees that the principle stated in § 20.1106 applies to DIC claims before either a VA regional office or the Board. The principles stated in § 20.1106 reflect VA's interpretation of the statutory provisions applicable to DIC claims before both VA regional offices and the Board. VA has consistently applied that interpretation to DIC claims decided at both regional-office and Board levels, and will continue to do so. However, we will make no change to the proposed rule based on this comment.

In the *NOVA* case, the Federal Circuit concluded that there was an apparent conflict between 38 CFR 3.22 and 38 CFR 20.1106. The court directed VA to conduct expedited rule making to revise

either of those regulations or to explain the basis for the apparent inconsistency. The court further directed VA to stay all proceedings involving claims under 38 U.S.C. 1318 pending the completion of such rule making. As stated in our December 2001 NPRM, VA concluded that it was necessary to revise § 20.1106 to remove the apparent inconsistency cited by the court.

In view of the time limit imposed by the court for completing rule making and the fact that DIC claims have been stayed until this rule making is completed, we limited our proposed rule to addressing the apparent inconsistency identified by the Federal Circuit and did not propose additional changes to part 3, such as those recommended by the commenter. We believe it is appropriate to retain the Board's longstanding rule of practice in subpart L of part 20 of title 38, Code of Federal Regulations, because that rule pertains to subject matter addressed by that subpart.

Nevertheless, we understand the commenter's concern that it would be logical to include a provision similar to § 20.1106 in part 3 of title 38 of the CFR, to make clear that the same principles apply to claims before VA regional offices. We will make no change to part 3 in this final rule, because any such change would be beyond the scope of the proposed rule. However, we will consider whether to issue additional rules in the future consistent with this comment.

#### *Unfunded Mandates*

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of \$100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

#### *Paperwork Reduction Act*

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

#### **Executive Order 12866**

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

#### **Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities as

they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612, inasmuch as this final rule applies to individual claimants for veterans' benefits and does not affect such entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirement of sections 603 and 604.

There is no Catalog of Federal Domestic Assistance number for this final rule.

#### **List of Subjects in 38 CFR Part 20**

Administrative practice and procedure, Claims, Veterans.

Approved: March 29, 2002.

**Anthony J. Principi,**  
*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 20 is amended as follows:

#### **PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE**

1. The authority citation for part 20 continues to read as follows:

**Authority:** 38 U.S.C. 501(a) and as noted in specific sections.

2. Section 20.1106 is revised to read as follows:

#### **§ 20.1106 Rule 1106. Claim for death benefits by survivor-prior unfavorable decisions during veteran's lifetime.**

Except with respect to benefits under the provisions of 38 U.S.C. 1311(a)(2), 1318, and certain cases involving individuals whose Department of Veterans Affairs benefits have been forfeited for treason or for subversive activities under the provisions of 38 U.S.C. 6104 and 6105, issues involved in a survivor's claim for death benefits will be decided without regard to any prior disposition of those issues during the veteran's lifetime.

(Authority: 38 U.S.C. 7104(b))

[FR Doc. 02–8201 Filed 4–4–02; 8:45 am]

BILLING CODE 8320–01–P

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 63**

[FRL–7155–9]

#### **National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production**

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

**ACTION:** Direct final rule; amendments.

**SUMMARY:** We are taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for solvent extraction for vegetable oil production plants which were promulgated on April 12, 2001 under authority of section 112 of the Clean Air Act (CAA). The amendments will clarify the startup, shutdown, and malfunction requirements for owners or operators subject to the Vegetable Oil NESHAP. The amendments will also clarify the applicability of the NESHAP General Provisions.

**DATES:** This direct final action rule will be effective on June 4, 2002 without further notice, unless significant adverse comments are received by May 6, 2002.

If significant adverse comments are received we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

**ADDRESSES:** *Comments.* By U.S. Postal Service, submit written comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-97-59, U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, submit comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A-97-59, Room M-1500, U.S. EPA, 401 M Street, SW., Washington DC 20460. We request that a separate copy of each public comment also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick Colyer, Minerals and Inorganic

Chemicals Group (C504-05), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-5262, electronic mail (e-mail): [colyer.rick@epa.gov](mailto:colyer.rick@epa.gov).

**SUPPLEMENTARY INFORMATION:**

*Comments.* We are publishing this direct final rule without proposal because we view the amendments as noncontroversial and do not anticipate adverse comments. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed.

If we receive any significant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time.

**Docket**

The docket is an organized and complete file of the administrative record compiled developing this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to help you to readily identify and locate documents so that you can effectively participate in the rulemaking process. Along with the proposed and promulgated rules and their preambles, the contents of the docket will serve as

the record in the case of judicial review. (See section 307(d)(7)(A)) of the CAA.) You may obtain the regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260-7548. We may charge a reasonable fee for copying docket materials. You may also obtain docket indexes by facsimile, as described on the Office of Air and Radiation, Docket and Information Center Website at <http://www.epa.gov/airprogm/oar/docket/faxlist.html>.

**Worldwide Web**

In addition to being available in the docket, an electronic copy of this direct final rule will also be available through the Worldwide Web (WWW). Following signature, a copy of the direct final rule will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at <http://www.epa.gov/ttn/oarpg>. The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541-5384.

**Regulated Entities**

If your facility produces vegetable oil from corn germ, cottonseed, flax, peanuts, rapeseed (for example, canola), safflower, soybeans, or sunflower, it may be a "regulated entity." Categories and entities potentially regulated by this action include:

| Category                            | NAICS  | Examples of regulated entities  |
|-------------------------------------|--------|---|
| Industry .....                      | 311223 | Cottonseed oil mills.   |
|                                     | 311222 | Soybean oil mills.  |
|                                     | 311223 | Other vegetable oil mills, excluding soybeans and cottonseed mills.                 |
|                                     | 311223 | Other vegetable oil mills, excluding soybeans and cottonseed mills.                 |
|                                     | 311119 | Prepared feeds and feed ingredients for animals and fowls, excluding dogs and cats. |
|                                     | 311211 | Flour and other grain mill product mills.   |
|                                     | 311221 | Wet corn milling.   |
| Federal government .....            | .....  | Not affected.   |
| State/local/tribal government ..... | .....  | Not affected.   |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.2832 of the rule. If you have any questions regarding the applicability of these amendments to a particular entity, consult the appropriate EPA Regional Office representative.

**Judicial Review**

Under section 307(b)(1) of the CAA, judicial review of this direct final rule is available after the effective date by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit no later than June 4, 2002. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public

comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by this direct final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

## I. Why Are We Publishing These Amendments as a Direct Final Rule?

On May 26, 2000, we proposed National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production (65 FR 34252). The proposed rule included requirements for limiting emissions during vegetable oil production, including requirements during startup, shutdown, and malfunction (SSM) of vegetable oil production processes. As with all NESHAP, the regulatory development process included an examination of which specific provisions in the General Provisions at 40 CFR part 63, subpart A, should be applicable to sources subject to subpart GGGG. Based on a review of the General Provisions promulgated on March 16, 1994 (59 FR 12408), we determined that 40 CFR 63.6(e), which contains various procedures related to operation and maintenance and SSM, would apply to sources subject to subpart GGGG.

Based on public comments, we made one major change to the proposed regulation, which was to allow the use of an accounting month rather than a calendar month to determine solvent losses and quantities of oilseed processed by an affected source. There were no substantive public comments on the proposed SSM provisions and they were not changed in the final rule. On April 12, 2001, we promulgated National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production (66 FR 19006).

On March 23, 2001 (66 FR 16318), we proposed amendments to the General Provisions to part 63. The proposed amendments included several changes to the SSM requirements. Among others, these changes included proposed 40 CFR 63.6(e)(3)(iii) requiring records related to malfunctions; proposed 40 CFR 63.6(e)(3)(iv) which requires reporting of actions inconsistent with the startup, shutdown, and malfunction plan (SSMP); and proposed 40 CFR 63.6(e)(3)(viii) which requires reporting modifications to the SSM plan in the semiannual report. In addition, the proposed changes to the General Provisions SSMP clarify that the title V permit must require that an SSMP be prepared and followed but the SSMP is not itself part of the title V permit.

In the preamble to the proposed General Provisions amendments, we specifically requested comment on "any conflicts \* \* \* that result solely from applying these proposed amendments to the General Provisions to promulgated part 63 subparts." One commenter

identified such a conflict between SSM provisions of the Vegetable Oil Production NESHAP and those provisions in the General Provisions. Specifically, the commenter noted that proposed 40 CFR 63.6(e)(3)(iii), which requires records related to malfunctions under 40 CFR 63.10(b), should not apply to subpart GGGG, as subpart GGGG states that 40 CFR 63.10(b)(2)(ii) through (iii) relating to malfunction records do not apply. Also, proposed 40 CFR 63.6(e)(3)(iv), which requires reporting of actions inconsistent with the SSMP if the emissions exceed the relevant standard, does not comport with subpart GGGG. The Vegetable Oil Production NESHAP require reporting of such actions regardless of whether the standard was exceeded. The commenter also specifically noted that proposed 40 CFR 63.6(e)(3)(viii), the requirement to report modifications to the SSM plan in the semiannual report, should not apply to sources subject to subpart GGGG, as subpart GGGG does not require a semiannual report.

We agree with the commenter that these proposed provisions conflict with those in the promulgated Vegetable Oil Production NESHAP. As we proposed to codify in 40 CFR 63.1(a)(4)(i), each relevant part 63 standard should identify explicitly whether each provision in subpart A is or is not included in each standard. This regulatory language is based on our conviction that each NESHAP must determine which of the General Provisions do or do not make sense for a particular source category. It was not our intent to alter the SSMP requirements of the Vegetable Oil Production NESHAP.

We have discussed the implications of the General Provisions amendments with the commenter and as a result are editing subpart GGGG to correct the inconsistencies. These changes will ensure the minimization of emissions at all times, clarify the SSM requirements, and specify the relationship of the General Provisions to Vegetable Oil Production NESHAP affected sources.

## II. What Are the Amendments to the Final Rule?

With this direct final action, we are amending several provisions related to SSM requirements. Specifically, we are amending the explanation column of Table 1 of 40 CFR 63.2870 as it applies to 40 CFR 63.6(e) to state, "implement your plan as specified in § 63.2852." Table 1 also now indicates that 40 CFR 63.6(e)(3)(iii), (iv) and (viii) do not apply to Vegetable Oil Production NESHAP affected sources.

We are also amending the first sentence of 40 CFR 63.2861(d) to clarify that owner/operators must submit an immediate SSM report if an SSM is handled differently from the procedures in the SSM plan and the emission standards are exceeded.

We are also amending the third sentence of 40 CFR 63.2852 to clarify that the SSMP does not have to be incorporated into the title V permit.

These changes will ensure the minimization of emissions at all times, clarify the SSM requirements, and specify the relationship of the General Provisions to Vegetable Oil Production NESHAP affected sources.

Please note that these changes are contained within the Vegetable Oil Production NESHAP and that they are being made for consistency with the General Provisions amendments, where appropriate. The Vegetable Oil Production NESHAP, however, also contains specifically tailored SSMP provisions for this industry and one should look expressly to that rule for the applicable SSMP provisions.

## III. What Are the Administrative Requirements?

### A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that these amendments do not constitute a "significant regulatory action" because they do not meet any of the above criteria. Consequently, this action was

not submitted to OMB for review under Executive Order 12866.

#### *B. Executive Order 13132, Federalism*

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

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of Executive Order 13132 do not apply to this direct final rule.

#### *C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

These rule amendments do not have tribal implications, as specified in Executive Order 13175. No tribal governments are known to own or operate solvent extraction for vegetable oil production facilities. Thus, Executive Order 13175 does not apply to these rule amendments.

#### *D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria,

the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This direct final rule is not subject to the Executive Order because it is based on technology performance and not on health or safety risks.

#### *E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use*

The direct final rule amendments are not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because they are not significant regulatory actions under Executive Order 12866.

#### *F. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect

small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or in the private sector in any 1 year. Thus, the amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that these amendments contain no regulatory requirements that might significantly or uniquely affect small governments, because they contain no requirements that apply to such governments or impose obligations on them. Therefore, today's amendments are not subject to the requirements of section 203 of the UMRA.

#### *G. Regulatory Flexibility Act, As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that has less than 750 employees and is unaffiliated with a larger domestic entity; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse

economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the proposed rule on small entities.” 5 U.S.C. sections 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The amendments better clarify and make the startup, shutdown, and malfunction plan consistent with the amended part 63 subpart A; the effect is to clarify that sources do not have to modify their title V permit each time the SSMP is changed. We have therefore concluded that today’s direct final rule will relieve regulatory burden for all small entities.

#### H. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, the EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. The OMB has previously approved the information collection requirements for the subject facilities under the Paperwork Reduction Act (OMB Control No. 2060–0471). The amendments contained in this direct final rule will have no net impact on the information collection burden estimates made previously. Consequently, the ICR has not been revised.

#### I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (March 7, 1996) (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable

law or would be otherwise impractical. Voluntary consensus standards are technical standards (for example, material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when EPA does not use available and applicable voluntary consensus standards.

This action does not involve the use of any new technical standards. Accordingly, the NTTAA requirement to use applicable voluntary consensus standards does not apply to this direct final rule.

#### J. The Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 5, 2002.

**Christine Todd Whitman,**  
*Administrator.*

For the reasons cited in the preamble, part 63, title 40, chapter I of the Code of Federal Regulations is amended as follows:

#### PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

#### Subpart GGGG—[AMENDED]

2. Section 63.2852 is amended by revising the first three sentences to read as follows:

##### **§ 63.2852 What is a startup, shutdown, and malfunction plan?**

You must develop a written SSM plan in accordance with § 63.6(e)(3) and implement the plan, when applicable. You must complete the SSM plan before the compliance date for your source. You must also keep the SSM plan on-site and readily available as long as the source is operational. \* \* \*

3. Section 63.2861 is amended by revising the first sentence of paragraph (d) introductory text to read as follows:

##### **§ 63.2861 What reports must I submit and when?**

\* \* \* \* \*

(d) *Immediate SSM reports.* If you handle a SSM during an initial startup period subject to § 63.2850(c)(2) or (d)(2) or a malfunction period subject to § 63.2850(e)(2) differently from procedures in the SSM plan and the relevant emission requirements in § 63.2840 are exceeded, then you must submit an immediate SSM report. \* \* \*

\* \* \* \* \*

4. Table 1 of § 63.2870 is amended by revising the entry to § 63.6(e) to read as follows:

##### **§ 63.2870 What parts of the General Provisions apply to me?**

\* \* \* \* \*

TABLE 1 OF § 63.2870.—APPLICABILITY OF 40 CFR PART 63, SUBPART A, TO 40 CFR PART 63, SUBPART GGGG

| General provisions citation  | Subject of citation                     | Brief description of requirement | Applies to subpart | Explanation   |
|--|---|----------------------------------|--------------------|---|
| * * *  | * * *                                   | * * *                            | * * *              | * * *   |
| § 63.6(e)(1) through (e)(3)(ii) and § 63.6(e)(3)(v) through (vii). | Operation and maintenance requirements. | .....                            | Yes .....          | Implement your SSM plan, as specified in § 63.2852.     |
| § 63.6(e)(3)(v)(iii) .....   | Operation and maintenance requirements. | .....                            | No .....           | Implement your plan, as specified in § 63.2852.         |
| § 63.6(e)(3)(iv) .....   | Operation and maintenance requirements. | .....                            | No .....           | Report SSM and in accordance with § 63.2861(c) and (d). |

TABLE 1 OF § 63.2870.—APPLICABILITY OF 40 CFR PART 63, SUBPART A, TO 40 CFR PART 63, SUBPART GGGG—Continued

| General provisions citation | Subject of citation                     | Brief description of requirement | Applies to subpart | Explanation  |
|-----------------------------|---|----------------------------------|--------------------|--|
| § 63.6(e)(3)(viii) .....    | Operation and maintenance requirements. | .....                            | Yes .....          | Except, report each revision to your SSM plan in accordance with § 63.2861(c) rather than § 63.10(d)(5) as required under § 63.6(e)(3) (viii). |
| *                           | *                                       | *                                | *                  | *  |

[FR Doc. 02-5862 Filed 4-4-02; 8:45 am]

BILLING CODE 6560-50-P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 52****[CC Docket No. 99-200; CC Docket No. 96-98; CC Docket No 96-116; FCC 02-73]****Numbering Resource Optimization****AGENCY:** Federal Communications Commission.**ACTION:** Final rule; clarification.

**SUMMARY:** In this document, the Federal Communications Commission (FCC or Commission), on its own motion, reconsiders its findings in the *Numbering Resource Optimization Third Report and Order*, regarding the local number portability (LNP) and thousands-block number pooling requirements for carriers in the 100 largest Metropolitan Statistical Areas (MSAs). Specifically, the Commission reverses its clarification that the requirements extend to all carriers within the largest 100 MSAs, regardless of whether they have received a specific request from another carrier to provide LNP.

**FOR FURTHER INFORMATION CONTACT:** Pam Slipakoff, (202) 418-7705 or e-mail at [pslipako@fcc.gov](mailto:pslipako@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Third Order on Reconsideration in CC Docket No. 99-200 (Third Order on Reconsideration)*, FCC 02-73, adopted on March 13, 2002 and released on March 14, 2002. The full text of this document is available for inspection and copying during normal business hours in the Commission Reference Center, 445 12th Street, SW, Washington, DC 20554. The complete text may also be obtained through the world wide web at <http://www.fcc.gov/Bureaus/CommonCarrier/Orders>, or may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street,

SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail at [qualexint@aol.com](mailto:qualexint@aol.com).

**Synopsis of the Third Order on Reconsideration in CC Docket No. 99-200**

1. On its own motion, the Commission reconsiders its findings in the *Numbering Resource Optimization Third Report and Order*, 67 FR 6431 (Feb. 12, 2002), regarding the local number portability (LNP) and thousands-block number pooling requirements for carriers in the 100 largest Metropolitan Statistical Areas (MSAs). Specifically, the Commission reverses its clarification that these requirements extend to all carriers within the largest 100 MSAs, regardless of whether they have received a specific request from another carrier to provide LNP.

2. In the *Numbering Resource Optimization Third Report and Order*, the Commission extended LNP and thousands-block number pooling requirements to all carriers in the largest 100 MSAs, and gave non-compliant carriers six months from the effective date of the order to deploy LNP. This decision was driven by questions raised when certain state commissions began implementing thousands-block number pooling trials and discovered that some LECs had not deployed LNP in some of the largest 100 MSAs. Apparently, some carriers and state commissions differed on the current status of the LNP requirements. Specifically, they were not sure whether LNP is required for all carriers within the 100 largest MSAs, or only for those carriers that receive a request from a competing carrier. Thus, the Commission sought to clarify the issue.

3. In attempting to clarify the issue, however, the Commission reversed the decision on LNP deployment reached by the Commission in the *Number Portability First Order on Reconsideration*, 62 FR 18280 (April 15, 1997), without providing an adequate opportunity for comment on this

specific issue. The Commission now reverses this clarification and provides interested parties an opportunity to comment on whether carriers should be required to deploy LNP and participate in thousands-block number pooling in the 100 largest MSAs, regardless of whether they have received a specific request to provide LNP from another carrier.

4. Pursuant to sections 1, 3, 4, 201-205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201-205, and 251, this *Third Order on Reconsideration* in CC Docket 99-200 is hereby *adopted*.

Federal Communications Commission.

**William F. Caton,***Acting Secretary.*

[FR Doc. 02-8249 Filed 4-4-02; 8:45 am]

BILLING CODE 6712-01-P

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 660****[Docket No. 000831250-0250-01; 032602D]****Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Reopening of Directed Fishery for Pacific Mackerel**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Reopening of the directed fishery for Pacific mackerel.

**SUMMARY:** NMFS announces the reopening of the directed fishery for Pacific mackerel in the U.S. exclusive economic zone off the Pacific coast at 12 midnight local time (l.t.) on March 31, 2002. A significant portion of the Pacific mackerel harvest guideline remains unharvested; therefore, the incidental catch allowance that has been in effect