§ 165.T01–117 Security Zone; Queen Mary II Visit, Portland, Maine, Captain of the Port Zone.

(a) *Location.* The following area is a security zone:

All navigable waters within the Portland, Maine, Captain of the Port Zone, extending from the surface to the sea floor, within a 300-yard radius of the Queen Mary II while it is underway, anchored, moored, or in the process of mooring.

(b) *Effective period.* This section is effective from 12:01 a.m. EDT on September 27, 2004, through 12:01 a.m. EDT on October 10, 2004.

(c) *Regulations.* (1) In accordance with the general regulations contained in § 165.33 of this part, entry into or movement within these zones is prohibited unless previously authorized by the Coast Guard Captain of the Port (COTP), Portland, Maine or his designated representative.

(2) All persons and vessels must comply with the instructions of the COTP, or the designated on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state and federal law enforcement vessels.

(3) The Captain of the Port, Portland Maine or his designated representative will notify the maritime community of periods during which these zones will be enforced. Emergency response vessels are authorized to move within the zone, but must abide by restrictions imposed by the COTP or his designated representative.

(d) *Enforcement.* The COTP will enforce this zone and may enlist the aid and cooperation of any Federal, state, county, municipal, or private agency to assist in the enforcement of the regulation.

Dated: September 23, 2004.

Stephen P. Garrity,

Captain, U. S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 04–22138 Filed 9–30–04; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7812–8]

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interpretative rule.

SUMMARY: This interpretative rule concerns the applicability of the NESHAP for secondary aluminum producers, 40 CFR part 63, subpart RRR, to a specific type of facility which thermally delaminates aluminum foil from paper and plastic and then mechanically granulates the recovered metal. We decided to reconsider this matter after reviewing two applicability determinations which were issued by EPA regional offices for facilities of this type operated by the U.S. Granules Corporation in Plymouth, IN, and Henrietta, MO. We concluded that these applicability determinations reflected conflicting constructions of subpart RRR, and that the determinations should be vacated while we undertook a review to develop a uniform national construction of the rule.

In today's interpretative rule, we conclude that a delamination chamber of the type operated by the U.S. Granules facilities is a ''scrap dryer/delacquering kiln/decoating kiln'' as that term is defined in 40 CFR 63.1503. Accordingly, we believe that the facilities operated by U.S. Granules in Plymouth and Henrietta, and any other facilities which may engage in similar operations, are subject to the emission control requirements of subpart RRR.

EFFECTIVE DATE: This interpretative rule will take effect on November 1, 2004. After that date, this interpretative rule will govern all decisions concerning the applicability of 40 CFR part 63, subpart RRR, to affected facilities by EPA and by State and local permitting authorities.

FOR FURTHER INFORMATION CONTACT: For specific questions concerning the interpretation of 40 CFR part 63, subpart RRR, adopted in this notice, contact Scott Throwe at EPA by telephone at: (202) 564–7013, or by e-mail at: *throwe.scott@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* This interpretative rule concerns applicability of 40 CFR part 63, subpart RRR, to specific facilities that thermally delaminate aluminum foil from paper and plastic and then mechanically granulate the recovered metal. This interpretative rule determines that these facilities are secondary aluminum production facilities as defined by subpart RRR, and that such facilities are therefore subject to regulation under that subpart. This interpretative rule does not govern determinations regarding the applicability of subpart RRR to other types of activities or operations, although the rationale for the conclusions in this interpretative rule may be relevant in other contexts.

Judicial Review. This interpretative rule is based on a determination of nationwide scope and effect. Under section 307(b)(1) of the CAA, judicial review of this interpretative rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by November 30, 2004. Moreover, under section 307(b)(2) of the CAA, any judicial review of this interpretative rule must be obtained pursuant to section 307(b)(1) and this interpretation may not be subjected to separate judicial review in any civil or criminal proceedings for enforcement.

I. Background for This Interpretative Rule

This interpretative rule is the outcome of a review by EPA of the applicability of the NESHAP for secondary aluminum producers, 40 CFR part 63, subpart RRR, to a specific type of facility which thermally delaminates aluminum foil from paper and plastic and then mechanically granulates the recovered metal. This review was undertaken following the decision of EPA to vacate two applicability determinations which were previously made by the EPA regional offices concerning facilities of this type owned and operated by the U.S. Granules Corporation.

One of these applicability determinations concerned the U.S. Granules facility in Plymouth, Indiana and was made by the EPA Region 5 Air Enforcement and Compliance Assurance Branch on August 21, 2002, in response to a request for such a determination by U.S. Granules dated August 14, 2002. Notice of this applicability determination (Control No. M020112) was published in the **Federal Register** on February 13, 2003. 68 FR 7373. EPA Region 5 based its conclusions in this determination on a phrase in the definition in subpart RRR of a ''scrap dryer/delaquering kiln/decoating kiln'' which states that such units are used to remove contaminants from aluminum scrap ''prior to melting.'' EPA Region 5 concluded that the delamination chamber at the Plymouth facility does not fit within this definition because all processing of the recovered aluminum at the Plymouth facility is entirely mechanical and the recovered aluminum is never melted.

The other applicability determination concerned the U.S. Granules facility in Henrietta, Missouri, and was made by the EPA Region 7 Air Permitting and Compliance Branch on October 22, 2002, in response to a request for such a determination by U.S. Granules dated

October 11, 2002. Notice of this applicability determination (Control No. M020117) was also published in the **Federal Register** on February 13, 2003. 68 FR 7373. In the determination concerning the Henrietta facility, Region 7 concluded that the delamination chamber at the Henrietta facility is within the definition of a ''scrap dryer/delacquering kiln/decoating kiln'' even though the recovered aluminum is not melted at the Henrietta facility. Region 7 reasoned that the phrase ''prior to melting'' in the definition is merely intended to indicate that the recovery process is normally performed before the recovered aluminum is placed in a furnace to be melted. Region 7 noted that it is the use of heat to remove contaminants from scrap aluminum that generates the emissions of dioxins and furans that subpart RRR is intended to control. Region 7 also found that a unit at the Henrietta facility that dries alumninum chips was a ''thermal chip dryer'' subject to subpart RRR.

After issuance of these two applicability determinations, EPA determined that these determinations reflected conflicting constructions concerning the applicability of subpart RRR to aluminum delamination operations like those conducted at the U.S. Granules facilities. EPA also determined that the retention of such conflicting constructions would be inappropriate as a matter of law and policy. Accordingly, EPA decided to vacate both of these applicability determinations and to commence a process to adopt a single uniform construction of subpart RRR which would apply to all operations like those conducted at the U.S. Granules facilities.

The decision to vacate the determination concerning the Plymouth facility was announced in a letter to U.S. Granules dated June 19, 2003. The decision to vacate the Henrietta determination was announced in a letter to U.S. Granules dated June 23, 2003. Although the vacature of each of these applicability determinations was final and effective on the date that each letter announcing that vacature was signed, EPA also published a notice announcing vacature of these two applicability determinations. 68 FR 42397, September 3, 2003.

Following issuance of the affirmative determination concerning the applicability of subpart RRR to the Henrietta facility, U.S. Granules Corporation brought an action seeking judicial review of that determination. *U.S. Granules Corp.* v. *Whitman,* No. 03–1946 (8th Circuit). After EPA vacated the Henrietta determination and published the notice of vacature, U.S. Granules moved to dismiss its petition for review. That case was dismissed on September 4, 2003.

II. Interpretation Adopted by This Rule

After EPA decided to adopt a single uniform construction of subpart RRR which would apply to all operations like those conducted at the U.S. Granules facilities, EPA concluded that the appropriate vehicle to announce such a uniform construction is an interpretative rule. The interpretation adopted in an interpretative rule is binding on all EPA offices and permitting authorities, thereby assuring a uniform and predictable outcome. However, the reasonableness of the construction of subpart RRR adopted in this interpretative rule is still subject to appropriate judicial review.

This interpretative rule is limited solely to the question of whether a delamination chamber of the type operated at the Plymouth and Henrietta U.S. Granules facilities is a ''scrap dryer/delacquering kiln/decoating kiln'' as that term is defined in 40 CFR 63.1503. Although we believe that the affirmative applicability determination concerning the unit that dries aluminum chips at the Henrietta facility was correct, we do not believe it is necessary to revisit that determination because counsel for U.S. Granules advised EPA in a letter dated December 23, 2002, that U.S. Granules did not contest the determination concerning the chip dryer and that U.S. Granules intended to decomission and remove the chip dryer from that facility before the effective date of subpart RRR.

This interpretative rule is intended to be nationwide in scope and effect. It applies to any and all facilities that operate delamination units similar to those operated at the U.S. Granules Plymouth and Henrietta facilities, although we note that U.S. Granules believes that there are no other sources in North America that thermally delaminate aluminum scrap and then mechanically granulate the recovered metal.

We note at the outset that subpart RRR applies to ''each new and existing scrap dryer/delacquering kiln/decoating kiln'' at a facility that is a major source or area source of hazardous air pollutants. 40 CFR 63.1500(b)(3) and 63.1500(c)(2). 40 CFR 63.1503 defines a ''scrap dryer/delacquering kiln/decoating kiln'' as ''a unit used primarily to remove various organic contaminants such as oil, paint, lacquer, ink, plastic, and/or rubber from aluminum scrap (including used beverage containers) prior to melting.''

The delamination chambers at the U.S. Granules Plymouth and Henrietta facilities use heat to separate aluminum foil from paper and plastic in scrap, but the chambers operate at a maximum temperature of 900 degrees Fahrenheit and no melting of the recovered aluminum occurs in the chamber. If an identical delamination unit were located at a facility that itself melts the recovered aluminum, there would be no question that it would fit within this definition, and we do not understand U.S. Granules to dispute that conclusion. It is also clear that the delamination units used by U.S. Granules perform the same general type of operations for recovery of aluminum from scrap that EPA intended to regulate in subpart RRR. However, we acknowledge that the use of the phrase ''prior to melting'' in the definition of a scrap dryer/delacquering kiln/decoating kiln cannot simply be disregarded. In its affirmative applicability determination, Region 7 argues that the phrase ''prior to melting'' indicates that the recovery of aluminum from scrap would normally occur prior to melting. However, we think this argument is not persuasive unless the phrase in question was intended to be solely illustrative, and that is not clear on the face of the definition. If our conclusion turned solely on this factor, we would be more inclined to amend the rule in a manner which resolved the ambiguity than to try and construe the existing definition.

Fortunately, we need not resolve this issue to conclude that the delamination chambers at the U.S. Granules facilities are within the definition. The negative applicability determination by Region 5 appears to be based on the argument by U.S. Granules that the recovered aluminum must be melted at the same facility in order for the definition to apply. However, nothing in the definition indicates that the subsequent melting of recovered aluminum must occur at the same facility that conducts the recovery operation. Our discussions with U.S. Granules personnel and our review of the company's Web site indicate that some of the customers who buy the recovered aluminum granules from U.S. Granules subsequently melt the purchased material to produce new aluminum products. While some customers may use the aluminum granules without melting them, those granules which are subsequently melted are produced by an identical recovery process. This is sufficient to confirm that the operations to recover aluminum from scrap at the U.S. Granules facilities should not be treated differently from otherwise similar operations at sources

who themselves melt the recovered aluminum.

If we were to construe the definition in any other way, this would permit other sources to evade the applicability of emission controls required by the rule by merely moving those operations which melt the recovered secondary aluminum to another site. This result would violate our established requirement that sources may not fragment an operation in order to avoid regulation under an applicable standard. *See* 40 CFR 63.4(b)(3). We decline to construe the definitions in subpart RRR in a manner which would allow secondary aluminum production facilities to fragment their operations to evade emission control requirements.

Based on this analysis, we conclude that the delamination chambers operated by the U.S. Granules Plymouth and Henrietta facilities, and any similar secondary aluminum operations which may be conducted now or in the future at other sources, are governed by subpart RRR. Although this interpretative rule will take effect on November 1, 2004, we note that subpart RRR itself is already in effect. That is why the letters that we sent to U.S. Granules vacating the two previous conflicting applicability determinations stated that, if we were to adopt a construction of subpart RRR resulting in a new positive applicability determination for the affected facilities, we would afford U.S. Granules a reasonable period to undertake any activities required to come into compliance or to establish continued compliance with subpart RRR. Consequently, U.S. Granules will be required to comply with subpart RRR within 240 days of the effective date of this Interpretative Rule.

III. Other Review Requirements

Under Executive Order 12866, (58 FR 51736, October 4, 1993), this interpretative rule is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget.

Section 553(b)(3)(A) of the Administrative Procedure Act provides that interpretative rules are not subject to notice-and-comment requirements under the Administrative Procedure Act. Interpretative rules which do not involve the internal revenue laws of the United States are not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because notice-and-comment requirements do not apply to this interpretative rule, this rule is also not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532 and 1535).

In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This interpretative rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This interpretative rule will not have significant 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 (64 FR 43255, August 10, 1999).

This interpretative rule is also not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This interpretative rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

In issuing this interpretative rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the interpretative rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This interpretative rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Our compliance with statutes and Executive Orders in promulgating the rule which is interpreted herein (40 CFR part 63, subpart RRR) is discussed in the **Federal Register** notice concerning the original promulgated rule (63 FR 15690, March 23, 2000), and in the **Federal Register** notice concerning subsequent amendments to that rule (67 FR 79808, December 30, 2002).

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. We have established an effective date of November 1, 2004. 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: August 18, 2004.

Thomas V. Skinner,

Acting Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 04–22084 Filed 9–30–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7822–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion for the Dubose Oil Products Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Dubose Oil Products Site in Cantonment, Florida, from the National Priorities List (NPL), which is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA requests comments on this deletion. The EPA and the State have determined that all appropriate Fund-financed responses under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, the EPA and the State have determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment. However, this deletion does not preclude future actions under Superfund.

DATES: Effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Caroline Robinson, Remedial Project Manager, U.S. Environmental Protection