Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

United States Standards for Grades of Grapefruit Juice

Correction

In FR Doc. 83-24699 beginning on page 40875 in the issue of Monday, September 12, 1983, make the following corrections:

1. On page 40875, the third column, the first complete paragraph, the sixteenth line, the phrase "after the floating" should read "after removing the floating".

2. On the same page, the same column, the second complete paragraph, the twelfth line, the ratio "13.01:1" should read "13.0:1".

BILLING CODE 1505-01-M

7 CFR Part 908

[Valencia Orange Reg. 317]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

Correction

In the issue of Thursday, September 15, 1983, on page 41369, third column, in the line above the **BILLING CODE,** "FR Doc. 83-25393" should have read "FR Doc. 83-25387".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Air Pacific Limited

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Air Pacific Limited to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: August 1, 1983.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 Eye Street NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: This amendment to 8 CFR 238.3 is published pursuant to 5 U.S.C. 552. The Commissioner of Immigration and Naturalization Service entered into an agreement with Air Pacific Limited on August 1, 1983 to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportational lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 122291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

PART 238—CONTRACTS WITH TRANSPORTATION LINES

Accordingly, 8 CFR Part is amended as follows:

§ 238.3 [Amended]

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by adding in alphabetical sequence, "Air Pacific Limited".

* * * * *

(Secs. 103, 66 Stat. 173 (8 U.S.C. 1103); 238, 66 Stat. 202 (8 U.S.C. 1228))

Dated: September 15, 1983.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 83-25646 Filed 9-20-83; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 337

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation ("FDIC")

ACTION: Final rule.

SUMMARY: The FDIC is amending section 337.3(b) of its regulations to (1) eliminate the current requirement for prior approval by a majority of a bank's board of directors of all extensions of credit or lines of credit exceeding in the aggregate $25,000 that are made to one of the bank's directors, executive officers, principal shareholders, or any related interest of any such person, and (2) substitute a prior approval formula whereby all extensions of credit or lines of credit that exceed in the aggregate five percent of capital and unimpaired surplus of $25,000, whichever is larger, must receive prior approval of the Board of Directors. In no event, however, may

any extension of credit or line of credit that exceeds in the aggregate $500,000 be made without prior approval.

EFFECTIVE DATE: The amendment is effective September 21, 1983.

FOR FURTHER INFORMATION CONTACT: Pamela E. F. LeCren, Senior Attorney, Legal Division, (202–389–4171), Room 4126E, 550 17th Street, NW., Washington, D.C. 20429, or Ken A. Quincy, Examination Specialist, Division of Bank Supervision, (202–389–4141), Room 760–F, 1709 New York Avenue, NW., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Section 22(h) of the Federal Reserve Act (12 U.S.C. 375b) places certain restrictions on extensions of credit to "insiders" of member banks (directors, executive officers, principal shareholders and related interests of such persons) and is made applicable to nonmember banks to the same extent and in the same manner as if they were member banks by section 18(j)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1828(j)(2)). Section 22(h) was amended by the Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97–320, 96 Stat. 1469) so as to delete the express requirement in section 22(h) that a majority of a bank's board of directors give prior approval for all extensions of credit or lines of credit to a bank insider that exceed in the aggregate $25,000. Substituted in its place was the requirement that prior approval be obtained for all extensions of credit that exceed in the aggregate an amount fixed by regulation of the appropriate federal banking agency. Effective October 22, 1982, the FDIC amended Part 337 of its regulations concerning unsafe and unsound banking practices to (1) clarify the extent to which nonmember banks are subject to the requirements of Federal Reserve Board Regulation O (12 CFR Part 215) which implements section 22(h) of the Federal Reserve Act, and (2) to continue the $25,000 threshold prior approval figure on an interim basis. (See 47 FR 47002).

On May 2, 1983, the Board of Directors adopted a proposed amendment to Part 337 providing that a majority of the board of directors of an insured nonmember bank must give prior approval for all extensions of credit or lines of credit to its directors, executive officers, principal shareholders, or any related interests of any such person, if the extension of credit or line of credit exceeds, in the aggregate, five percent of the bank's capital and unimpaired surplus or $25,000, whichever is greater. It further provided that in no event may an insured nonmember bank grant any extension of credit or line of credit that exceeds, in the aggregate, $500,000 unless prior board approval is obtained. (See 48 FR 20240).

The proposal was published for a 60-day comment period which closed on July 5, 1983. The FDIC received a total of 146 comments. Of the total comments, only two were not in favor of the proposed amendment. Out of the 144 in favor of the proposal, seven suggested substantive changes. One commentor suggested that a ten percent of capital sliding scale be used rather than a five percent sliding scale. Another individual indicated that there is no need for a cap on the amount of extensions of credit that can be made without prior approval of the board where the particular extension of credit is secured by marketable collateral. Another individual suggested that the cap be raised to $750,000 whereas another suggested that it be eliminated altogether. Two commentors suggested that the $500,000 cap was too high for moderate size banks and that it should be lower. Finally, the following three-tier formula based upon a bank's year-end asset size was suggested as an alternative: "(1) If a bank's assets are less than or equal to $100 million, prior board approval should be required for loans in excess of $150,000; (2) if a bank's assets are greater than $100 million but less than $500 million, prior board approval should be required for debt exceeding $350,000; and (3) if the bank's total assets are greater than $500 million, prior board approval should be required for debt exceeding $500,000." It was suggested that the substitute formula would be easier to comply with as the dollar figure upon which board approval rested would not be continuously changing. Lastly, the two comments that were opposed to the proposal indicated that the FDIC should not relax the rules concerning insider lending as many bank failures are associated with insider lending.

In view of the overwhelming support for the proposal, the FDIC has determined to adopt the amendment in final with no changes. The FDIC is rejecting the suggestion of raising or eliminating the cap after which all extensions of credit or lines of credit will require prior board approval. The FDIC feels that the $500,000 cap is reasonable and will ensure that extensions of credit that could have an adverse impact on a bank are subject to proper review. The suggested alternative of a sliding scale using ten percent of capital and unimpaired surplus rather than five percent was rejected for much the same reasoning. The FDIC also does not feel that using a sliding scale based upon a percentage of capital and unimpaired surplus will be difficult for banks to comply with or for the FDIC to administer. Insured nonmember banks already are subject to insider lending limits based upon a percentage of capital and unimpaired surplus that keys into the most recent Report of Condition. We have no reason to believe that insured nonmember banks have had difficulty complying with that requirement. Nor has the FDIC had any difficulty in its administration.

The final amendment operates as follows. The formula sets $25,000 as the floor for prior approval on extensions of credit or lines of credit to bank insiders and $500,000 as the ceiling in excess of which all extensions of credit or lines of credit must be approved. Any insured nonmember bank that has total capital in excess of $500,000 would have a higher prior approval trigger under the new formula than under the existing regulations. As ninety-six percent of the total number of insured nonmember banks have total capital in excess of $500,000, the final amendment reduces the existing prior approval burden for the majority of insured nonmember banks. Only the very smallest insured nonmember bank would still be subject to a $25,000 prior approval requirement. Not only does the final rule not change the status quo for such banks, setting a $25,000 floor avoids setting an unrealistically low threshold figure that would otherwise operate in the case of small banks if a straight percentage test were used. The $500,000 cap serves as a check for the very largest of insured nonmember banks. The sliding scale that operates for all other insured nonmember banks has the advantage of more closely aligning the prior approval requirement with the potential threat posed to any particular bank's capital position by insider lending.

The final rule, which is being made immediately effective upon publication in the **Federal Register** under authority of section 553(d)(1) of the Administrative Procedure Act (5 U.S.C. 553(d)(1)), does not establish any additional recordkeeping or reporting requirements and will not affect the competitive position of banks. Both the Comptroller of the Currency and the Board of Governors of the Federal Reserve System proposed a similar amendment to their respective regulations concerning prior approval of extensions of credit and lines of credit to insiders of national banks and member banks. If the Comptroller of the Currency and the Federal Reserve Board adopt their proposals in final as FDIC is doing, insured nonmember banks would

be under the same restrictions regarding prior approval of insider transactions as national and member banks.

Regulatory Flexibility Analysis

The Board of Directors in proposing the amendment certified that the proposal would not have a significant economic impact on a substantial number of small entities. The Board based its conclusion in part on the fact that, for the very smallest of insured nonmember banks, the proposed amendment would not affect the status quo. For the large majority of insured nonmember banks that would be affected by the change, the proposal would reduce some of the existing prior approval burden. The Board also indicated that it did not associate any economic impact with raising the prior approval trigger as it only related to the oversight function of a bank's board of directors and neither increased nor decreased a bank's ability to make extensions of credit or grant lines of credit. The Board of Directors in approving the final amendment reiterates those conclusions.

List of Subjects in 12 CFR Part 337

Banks, Banking, State nonmember banks.

In consideration of the foregoing, the FDIC is amending Part 337 of title 12 of *Code of Federal Regulations* as follows:

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for Part 337 is as follows:

Authority: Sec. 9, 64 Stat. 881–882, 12 U.S.C. 1819; sec. 18(j)(2), 92 Stat. 3864, 12 U.S.C. 1828(j)(2); sec. 422, 96 Stat. 1469, Pub. L. No. 97–320.

2. Paragraph (b) of § 337.3 is amended by removing "$25,000" where it appears and inserting in lieu thereof the following: "the greater of $25,000 or five percent of the bank's capital and unimpaired surplus,[3] or $500,000".

[3] For the purposes of § 337.3, an insured nonmember bank's capital and unimpaired surplus shall have the same meaning as found in § 215.2(f) of Federal Reserve Board Regulation O (12 CFR 215.2(f)).

By order of the Board of Directors, this 12th day of September, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 83-25686 Filed 9-20-83; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 30826-177]

Pipelaying Tractors to the Soviet Union: Validated Export License Not Required

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Export Administration Regulations by removing the requirement for a validated export license to export pipelaying tractors to the Soviet Union. Current controls relate to oil and gas exploration and production equipment. Pipelaying tractors are related to transmission, rather than exploration or production, of oil and gas. In addition, they do not involve high technology and are available from a number of other countries.

EFFECTIVE DATE: August 20, 1983. Comments must be received by the Department November 21, 1983.

ADDRESS: Written comments (six copies) should be sent to: Richard J. Isadore, Director, Operations Division, Office of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: 0Archie Andrews, Director, Exporters' Service Staff (Telephone: (202) 377–4811).

SUPPLEMENTARY INFORMATION: In 1978, President Carter placed controls on the export of oil and gas exploration and production equipment to the Soviet Union. Pipelaying tractors were included among the controlled items, under foreign policy export controls.

In 1981, President Reagan placed controls on exports of oil and gas transmission and refinery equipment to the Soviet Union; these controls were part of the sanctions imposed by the United States to show its disapproval of the imposition of martial law in Poland. These controls were lifted in 1982, but pipelaying tractors remained under control. However, the Office of Export Administration routinely granted approval on applications for an export license.

Current controls relate to oil and gas exploration and production equipment. Pipelaying tractors are related to transmission, rather than exploration or production, of oil and gas. In addition, they do not involve high technology and are available from a number of other countries. Accordingly, the licensing requirement for these tractors is removed. Other oil and gas equipment remains subject to foreign policy controls.

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Under section 13(a) of the Export Administration Act of 1979 (Pub. L. 96–72, 50 U.S.C. app. 2401 *et seq.*) ("the Act"), this rule is exempt from the public participation in rulemaking procedures of the Administrative Procedure Act. This rule does not impose new controls on exports, and is therefore exempt from section 13(b) of the Act, which expresses the intent of Congress that where practicable "regulations imposing controls on exports" be published in proposed form.

2. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. This rule involves a "foreign affairs" function of the United States and, therefore, is exempt from the requirements of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subject in 15 CFR Part 399

Exports.

Accordingly, Part 399 of the Export Administration Regulations, is amended as follows:

1. ECCN 6390F of the Commodity Control List, Supplement No. 1 to § 399.1, is amended by revising the phrase "pipelaying, pipecoating, or pipewrapping" to read "pipelaying (except pipelaying tractors), pipecoating or pipewrapping" in the introductory paragraph.

2. Interpretation 29, General Industrial Equipment, of Supplement No. 1 to Section 399.2, is amended by inserting a new entry—"Pipelaying tractors"—between "Pipe line cleaning" and "Plastic working, n.e.s."

Authority: Sections 6, 13 and 15, Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*; Executive Order No. 12214 (45 FR 29783, May 6, 1980).

Dated: September 16, 1983.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 81-25773 Filed 9-20-83; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 82F-0370]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of (*n*-octyl)tin *S,S',S"*-tris(isooctylmercaptoacetate) as a stabilizer in polyvinyl chloride and vinyl chloride copolymers intended for use in contact with food. This action responds to a petition filed by M&T Chemicals, Inc.

DATES: Effective September 21, 1983; objections by October 21, 1983. The Director of the **Federal Register** approves the incorporation by reference of certain publications at 21 CFR 178.2650, effective on September 21, 1983.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 28, 1982 (47 FR 57775), FDA announced that a petition (FAP 3B3680) had been filed by M&T Chemicals, Inc., P.O. Box 1104, Rahway, NJ 07065, proposing that the food additive regulations be amended to provide for the safe use of (*n*-octyl)tin *S,S',S"*-tris(isooctylmercaptoacetate) as a stabilizer in polyvinyl chloride and vinyl chloride copolymers intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe and that the regulations should be amended as set forth below. The editorial amendment in § 178.2650(b)(1)(ii) has been made to indicate that total octyltin stabilizers are to be determined by the atomic absorption spectrometric method. This replaces the naming of the individual additives.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment, and therefore an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Incorporation by reference, Sanitizing solutions.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), § 178.2650 is amended by revising the introductory text of paragraph (a), by adding new paragraph (a)(4), and by revising the second sentence of paragraph (b)(1)(ii) to read as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

§ 178.2650 Octyltin stabilizers in vinyl chloride plastics.

* * * * *

(a) For the purpose of this section, the octyltin chemicals are those identified in paragraph (a)(1), (2), (3), and (4) of this section.

* * * * *

(4) (*n*-Octyl)tin *S,S',S"*-tris(isooctylmercaptoacetate) is an octyltin chemical having the formula $n\text{-}C_8H_{17}Sn(SCH_2CO_2C_8H_{17})_3$ (CAS Reg. No. 26401-86-5) having 13.4 to 14.8 percent by weight of tin (Sn) and having 10.9 to 11.9 percent by weight of mercapto sulfur. It is made from (*n*-octyl)tin trichloride. The isooctyl radical in the mercaptoacetate is derived from oxo process isooctyl alcohol. The (*n*-octyl)tin trichloride has an organotin composition that is not less than 95 percent by weight (*n*-octyl)tin trichloride, not more than 5 percent by weight total of di(*n*-octyl)tin dichloride and/or tri(*n*-octyl)tin chloride and/or higher (more than eight (8) carbons) alkyltin chlorides, not more than 0.2 percent by weight total alkyltin derivatives, and not more than 0.1 percent by weight lower (less than eight (8) carbons) homologous alkyltin derivatives.

(b) * * *

(1) * * *

(ii) * * * These tests shall yield total octylin stabilizers not to exceed 0.5 per million as determined by analytical method entitled "Atomic Absorption Spectrometric Determination of Sub-part-per-Million Quantities of Tin in Extracts and Biological Materials with Graphite Furnace," *Analytical Chemistry*, Vol. 49, p. 1090-1093 (1977), which is incorporated by reference. * * *

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before October 21, 1983 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective September 21, 1983.

(Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 48))

Dated: September 15, 1983.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-25636 Filed 9-20-83; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[FAP 1H5321/R139B; PH-FRL 2438-2]

Tolerances for Pesticides in Food and Animal Feed; Dicamba; Extension of Time for Filing Objections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Rule; extension of time for filing objections.

SUMMARY: This notice provides a second 30-day extension for interested persons to submit objections to EPA's establishment of regulations permitting the combined residues of the herbicide dicamba and its metabolite in or on the commodity sugarcane molasses.

DATE: Written objections should be submitted on or before October 21, 1983.

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

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a regulation published in the **Federal Register** of March 16, 1983 (48 FR 11113) permitting the combined residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its sugarcane metabolite 3,6-dichloro-5-hydroxy-*o*-anisic acid in or on the food (21 CFR 193.465) and feed (21 CFR 561.427) commodity sugarcane molasses at 2.0 parts per million. EPA, in the **Federal Register** of July 27, 1983 (48 FR 34024) issued a notice which provided additional information about the level of DMNA (dimethyl-*N*-nitrosoamine) contamination as an impurity and the methodology used in calculating the risk in response to objections by the National Resources Defense Council, Inc. The July 27, 1983 notice also provided a 30-day period for interested persons to submit objections to the establishment of the regulations.

EPA is issuing a second 30-day extension to provide time for persons who may wish to file objections and afford the Agency additional time to respond and clarify other issues that may be raised before the final tolerance regulations are established.

Dated: September 2, 1983.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

[FR Doc. 83-25690 Filed 9-20-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-145; Reference Notice Numbers 360, 404]

North Coast Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This rule establishes a viticultural area located in Napa, Sonoma, Mendocino, Solano, Lake, and Marin Counties, California, named "North Coast." This final rule is the result of a petition submitted by the California North Coast Grape Growers Association, and of written comments and oral testimony given regarding the proposed viticultural area.

The Bureau of Alcohol, Tobacco and Firearms believes the establishment of North Coast as a viticultural area and its subsequent use as an appellation of origin in wine labeling and advertising will allow wineries to designate their specific grape-growing area and will help consumers identify the wines they purchase.

EFFECTIVE DATE: October 21, 1983.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 allow the establishment of definite viticultural areas. These regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. Section 9.11, Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Subpart C of Part 9 lists approved American viticultural areas. Under § 4.25a(e)(2), any interested person may petition ATF to establish a grape-growing region as an American viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historic or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.), which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Labeling of North Coast Wines. The term North Coast has been used for several years on wine labels as an appellation of origin for wines derived from grapes grown in the coastal mountain ranges north of San Francisco. In 1974, in response to a request from the California North Coast Grape Growers Association, ATF took the position that North Coast or North Coast Counties, when used as an appellation of origin on wine labels, meant that the grapes originated in Napa, Sonoma, and Mendocino Counties. T.D. ATF-53 set out new rules for wine labeling using appellations of origin. As of January 1, 1983, the only appellations authorized for domestic wines are the terms "United States," state or multistate appellations, county appellations, multicounty appellations, or viticultural areas representing distinctive grape-growing areas established under 27 CFR 4.25a(c). However, Industry Circular 82-4, May 24, 1982, allowed the appellation "North Coast" to be used to indicate wine made with grapes originating in Napa, Sonoma, and Mendocino Counties, until the final outcome of the petition for a "North Coast" viticultural area.

Petition for North Coast. In September of 1979, the California North Coast Grape Growers Association (CNCGGA) petitioned ATF to establish a North Coast viticultural area comprising the entire counties of Napa, Sonoma, and

Mendocino. This petition was made under 27 CFR 4.25a(e) to establish a distinctive grape-growing or viticultural area.

Notice Number 360. ATF proposed a North Coast viticultural area composed of these three counties in Notice No. 360 issued December 15, 1980, [45 FR 82275]. In that notice ATF stated we would consider comments concerning possible alternative boundaries, and comments concerning viticultural and geographical characteristics distinguishing the viticultural area from surrounding areas.

Only 11 written comments were received in response to Notice No. 360; however, 35 persons testified during a public hearing on January 12, 1981, in Santa Rosa, California. During this hearing, representatives of the CNCGGA testified in favor of a North Coast viticultural area restricted to Napa, Sonoma, and Mendocino Counties. Representatives of grape growers in Lake and Solano Counties presented testimony seeking the inclusion of the western grape-growing areas of those counties in the North Coast viticultural area. Finally, some grape growers from Napa County expressed concern over approval of a North Coast viticultural area because the [then] proposed Napa Valley viticultural area had not received final approval. On the basis of all written comments and oral testimony, ATF issued a second notice of proposed rulemaking amending the boundaries of the North Coast viticultural area.

Notice Number 404. This notice issued January 11, 1982, [47 FR 1151], proposed the inclusion of the western portion of Lake County and the Green Valley and Suisun Valley portions of Solano County in the North Coast viticultural area. Additionally the eastern portion of Napa County was excluded since its climate was significantly hotter than the western portion of the county. The northern portion of Mendocino County was deleted since there was no evidence of current grape growing.

ATF received 418 written comments in response to Notice No. 404. Four hundred and ten respondent favored adoption of the North Coast viticultural area as including the wine growing portions of Lake and/or western Solano Counties. These respondents included 55 grape growers in Lake and Solano Counties, four wineries located in Lake and Solano Counties, one grape grower association in each county, the Lake County and Solano County Boards of Supervisors, the Napa Valley Grape Growers Association, 11 wineries located in Napa, Sonoma and Mendocino Counties, three wineries located elsewhere in California, 325 individual consumers favoring Lake County and additional petitions, bearing 401 signatures, which favored the inclusion of one or both counties in the North Coast.

Five individual responses, all filed by or on behalf of the California North Coast Grape Growers Association favored restricting North Coast to Napa, Sonoma, and Mendocino Counties.

Herbert M. Rowland, Jr. of Ignatio, California, submitted a comment proposing the inclusion of Marin County in the North Coast viticultural area; two other respondents supported including Marin County.

Based on all available evidence, ATF is issuing this final rule adopting the North Coast viticultural area as including portions of Napa, Sonoma, Mendocino, Lake, Solano, and Marin Counties. Following is a summary of the evidence concerning the North Coast viticultural area.

Name

William F. Heintz, a wine historian testifying on behalf of the CNCGGA, presented evidence of the use of the term North Coast in describing a region in California. He testified that "Northern Coast Range" was first used in 1884 in a University of California bulletin describing soil analyses from Napa, Solano and Yolo Counties. In 1888, John Muir's book *Picturesque California* contained a chapter entitled "The Foothill Range of the Northern Coast Range: Sonoma, Napa and Solano Counties." Heintz also cited a book written by Charles Aiken in 1903 entitled *California Today*. In his book Aiken defines the phrase "North Coast" to mean the counties lying adjacent to the waters of the San Francisco Bay and to the border of Oregon. Chapter V, The North Coast Counties, contains a description of the counties of Napa, Sonoma, Lake, Mendocino, Humboldt, Del Norte, Trinity, and Marin.

Heintz's testimony then centered on defining North Coast as a grape-growing region. He noted that grape production in Lake, Solano and Marin Counties sharply declined after 1930, and that by 1950 only Napa, Sonoma and Mendocino Counties were major wine producing counties of the North Coast. These three counties produced 98% of all wine grapes produced in the North Coast in 1969, and over 95% of the grapes in 1976. Heintz also pointed out how the concept of a North Coast winegrowing district evolved from the *Wine & Vines* yearbook in 1940 which pictured a map showing seven viticultural districts in California including Napa-Solano, and Sonoma-Mendocino. The Wine Institute's *Story of Wine* booklet included these same districts. The Wine Institute also prepared production statistics for the wine industry. These statistics published in the Wine Press magazine showed "Mendocino, Napa and Sonoma" as one of the five reporting districts. Finally, Heintz cited the 1975 *New York Times Book of Wine* as expressly restricting North Coast to Napa, Sonoma and Mendocino Counties.

The California North Coast Grape Growers Association also pointed to their own incorporation in 1964, as an association of grape growers located in the three-county area, and to their registered trademark "North Coast" as further evidence that North Coast refers only to Napa, Sonoma, and Mendocino Counties. CNCGGA noted that in 1974, ATF recognized the term "North Coast" to mean the counties of Napa, Sonoma, and Mendocino. Today some wineries in California use North Coast as an appellation of origin on labels for wine made with grapes grown in these three counties.

Charles L. Sullivan, a historian, testified on behalf of the Lake County Wine Producers. He presented evidence that Lake County was grouped with Mendocino County as a wine producing region in the 1880s, and was later also grouped with Napa and Sonoma Counties. However, he stated that North Coast was a term not used before Prohibition, and only began to be used following Repeal. He cited Horatio Stoll, the founder and original publisher of *Wines & Vines* as listing the northern counties of the Coast Region as Marin, Napa, Sonoma, Lake, Mendocino, Solano, Humboldt and Trinity. In 1931 in *The Grape Districts of California*, Stoll described the Coast Region as being one of "valleys between the coast ranges running parallel to the Pacific Ocean shore and the lower slopes of these ranges * * *" Sullivan also cited numerous published works and statistical data, which since 1934 have included Lake County with other North Coast counties.

Wine growers from both Lake and Solano Counties noted that the vast majority of their grapes are shipped to wineries in Napa, Sonoma, or Mendocino Counties for crushing and were considered the same as other North Coast grapes. They further stated that the term North Coast as an appellation of origin on wine is of recent origin dating back only to 1967, and that some Solano and Lake County grapes were labeled as North Coast wines prior to ATF's letter to the CNCGGA in 1974.

Conclusion. ATF finds the evidence shows that the viticultural area is known by the name "North Coast" and

therefore meets the criteria of 27 CFR 4.25a(e)(2)(i). AFT finds that Marin, Sonoma, Napa, Solano, Mendocino and Lake Counties are known as North Coast.

ATF rejects the CNCGGA argument that North Coast refers exclusively to Napa, Sonoma and Mendocino Counties because of prior ATF approval of the term. In 1974 ATF approved "North Coast" and "North Coast Counties" as a "place" or "region" under § 4.25. This approval recognized North Coast as a multicounty designation, but in no way implied this was a viticultural area. In 1975, ATF further clarified its position on North Coast by stating that it would be descriptive of Napa, Sonoma or Mendocino wines only until the terms "appellation of origin" and "viticultural area" were defined in regulations. T.D. ATF-53 defined those terms, and drew a clear distinction between appellations of origin which are viticultural (grape-growing) areas, and those which are based on political boundaries such as county or multi-county areas. This Treasury decision did not grandfather existing approvals of appellations of origin under § 4.25 for "places" or "region," and its preamble states that *all* viticultural areas will be established pursuant to the Administrative Procedure Act (5 U.S.C. 553(e)). Therefore, ATF rejects the argument that recognition of North Coast in 1974 as a multi-county appellation qualifies that appellation as a viticultural area under § 4.25a(e).

Geographical Features

Climate. Climate is the major factor in distinguishing the North Coast viticultural area from surrounding areas.

In their testimony and written comments, the California North Coast Grape Growers Association stated that the North Coast is influenced by intrusions of cooler, damper marine air and fog. They also stated that this maritime influence ends at the eastern boundaries of Napa and Mendocino Counties, and does not influence any portion of Lake or Solano Counties. Additionally, they noted that Lake and Solano Counties receive less rainfall than Napa, Sonoma and Mendocino Counties with an average of 28.6 inches at 3 stations versus 36.2 inches at 6 stations in Napa, Sonoma and Mendocino. CNCGGA also stated that coastal fog does not extend into Lake County, and that the absence of cooler marine air causes Lake and Solano Counties to be without natural stands of redwood trees. CNCGGA further noted that Napa, Sonoma and Mendocino Counties experience heat summation readings placing them in Regions I through III on the scale developed by Winkler and Amerine of the University of California to measure degree days above 50° Fahreheit for the months of April through October. They stated, however, that the lowest degree day reading for Lake County places it in Region III and that Solano County is a Region IV area. Finally, CNCGGA commented on the isolation of Lake County and its rough terrain.

Grape-growers from western Solano County testified that the Green Valley and Suisun Valley areas of the county enjoy a similar climate as adjoining Napa County and should be included in the North Coast viticultural area. Evidence given was that Suisun Valley is Region III, averaging 3368 degree days over a 14-year period, and that Green Valley is only slightly warmer, averaging 3591 degree days, making it a low Region IV. Both valleys receive a prevailing west wind which cool them; in addition they receive fog. Geographically, Suisun Valley and Green Valley are flat valleys lying within the coastal mountain ranges. While growers presented evidence that Green Valley and Suisun Valley have a climate similar to other North Coast areas, they testified that the remainder of Solano County is very hot and similar to the Central Valley. Vacaville with 3780 degree days is a Region IV area similar to other interior regions, such as Sacramento with 3830 degree days.

Grape-growers from Lake County presented evidence that the western portion of the county is unlike the Central Valley, but enjoys a climate like nearby Mendocino County. While confirming that Lake County does not receive coastal fog, evidence was presented that coastal air flows through gaps in the mountains and across Clear Lake, cooling the area surrounding the Lake; this coastal air does not penetrate the high mountains to the east of Clear Lake. Thus, western Lake County is influenced by the ocean, and enjoys Region II and III climates, with Upper Lake at 2967 degree days, and Kelseyville with 3367 degree days. Middletown, also in western Lake County, is slightly warmer in Region IV with 3742 degree days. To the east of the mountain ranges west of Clear Lake, the climate is characterized as Region IV and warmer, similar to the Central Valley.

ATF has received evidence that rainfall in western Lake County averages 38.9 inches at 5 stations, ranging from 28.9 inches at Clearlake Highlands to 62.2 inches at Middletown. This rainfall is similar to that of Mendocino County, which averages 39.7 inches at 3 stations, and to Sonoma County which averages 34.7 inches at 5 stations. Lake County grape-growers also pointed out that western Lake County is characterized by bottom land and tillable hills surrounded by mountain ranges, similar to other North Coast counties, while eastern Lake County consists of rugged mountains, similar to the northern portion of Mendocino County.

Herbert M. Rowland, Jr. of Ignatio, California, filed written comments requesting the inclusion of Marin County in the North Coast viticultural area. He presented evidence showing that Marin County is influenced by coastal air and fog and he noted that redwood trees grow in the county. Rainfall and heat summation data are also similar to other North Coast counties. Three stations show an average of 2757 degree days, making Marin County a mid Region II area. Finally, Marin County has topography similar to other North Coast counties.

Although most of Marin County has a similar climate to the North Coast, evidence presented shows that Point Reyes, on the Pacific Coast, is significantly cooler than the rest of the county.

Topography. The Coast Region has been characterized as "valleys between the coast ranges running parallel to the Pacific Ocean shore and the lower slopes of these ranges * * * it is exceptionally suited for the growing of wine grapes of the highest quality." The majority of Sonoma, Napa, Marin, Mendocino, and western Lake County, as well as the Green Valley and Suisun Valley areas of Solano County meet this definition, being composed of flat valleys or tillable hillsides surrounded by higher mountains of the coast range.

Eastern Lake County is extremely mountainous and consists of rugged terrain which is heavily forested. In addition, most of eastern and northern Lake County is National Forest, and unavailable for cultivation. Similarly, northern Mendocino County consists of heavily forested, rugged mountains, and again, a portion of the county is composed of National Forest. The topography of these areas of Lake and Mendocino Counties does not resemble other areas in the North Coast.

Solano County east of the Vaca Mountains is flat, open land which does not resemble other areas in the North Coast.

Conclusion. ATF has concluded that the North Coast viticultural area encompasses portions of Marin, Sonoma, Napa, Solano, Mendocino, and Lake Counties. Due to the enormous size

of the North Coast, variations exist in climatic features such as temperature, rainfall, and fog intrusion. In general, ATF finds that the climate is characterized as influenced by intrusions of cooler, damper coastal marine air and fog, by temperatures which are cooler than the Central Valley, and by greater rainfall than surrounding areas.

The North Coast viticultural area is generally characterized as having climatic Regions I–III, while the Central Valley is much hotter; Davis (Yolo) experiences 3780 degree days; Vacaville (eastern Solano) 3780 days; Sacramento (Sacramento) 3830 days; Woodland (Yolo) 4210 days; and Red Bluff (Tehama) 4930 degree days.

Rainfall also sets the North Coast apart from surrounding areas. Within the North Coast, rainfall varies widely from 24.8 inches at Napa State Hospital to 62.2 inches in Middletown. However, rainfall for all areas within the North Coast viticultural area exceeds the average of 21 inches in the Central Valley.

All of the areas within the North Coast viticultural area receive marine air and most receive fog. Western Lake County, although not receiving fog, receives cooler marine air through gaps in the mountains. This cooler marine air and fog does not penetrate inland to the Central Valley.

Finally, topography throughout the North Coast viticultural area is characterized as flat valleys and tillable hillside surrounded by mountains. Areas outside the viticultural area consist of either extremely rugged mountains, such as eastern Lake County and northern Mendocino County, or are flat, open land, such as eastern Solano County and the area to the east of the coast mountain ranges. To the south, the San Francisco Bay and San Pablo Bay separate the North Coast viticultural area from adjacent land masses.

Boundaries

The boundaries of the North Coast viticultural area are adopted substantially as proposed in Notice No. 404 with three changes.

The eastern portion of Marin County has been included; however, the cooler area adjacent to the Pacific Ocean has not been included because of evidence showing it experiences a significantly cooler climate. The area within Marin County included in the North Coast viticultural area includes the area east of a line drawn from the intersection of Americano Creek with State Highway 1 on the Sonoma-Marin County boundary, to the peak of Barnabe Mountain, to the peak of Mount Tamalpais (western peak), and to the confluence of San Rafael Creek with San Rafael Bay.

The boundary in Solano County has been simplified by using the Southern Pacific Railroad right of way through Jameson Canyon east to Suisun City as the southern boundary, and by using a straight line from the Southern Pacific Railroad junction in Suisun City to the southeastern corner of Napa County as the eastern boundary. This change greatly simplifies the boundary and eliminates the need for three U.S.G.S. maps, but does not alter the viticultural area as proposed.

The final boundary change includes a portion of the Eel River Valley in Mendocino County within the viticultural area. From Pine Mountain (elevation 4057 feet) in western Lake County, the boundary proceeds in a straight line to the peak of Sanhedrin Mountain, to the peak of Brushy Mountain, to the confluence of Redwood Creek and the Noyo River, and then following the river to the Pacific Ocean. This change is being made to include a portion of the Eel River Valley in the viticultural area, since the topography of this portion of the Eel River Valley is similar to other areas within the North Coast viticultural area.

Exact boundaries of the North Coast viticultural area are specified in the regulatory language set forth in § 9.30.

Trademark Issue

In 1976, the California North Coast Grape Growers Association obtained registration of a certification mark on the Principal Register of the U.S. Patent Office. The mark consists of a seal depicting a wooded hillside and the legends "NAPA SONOMA-MENDOCINO" and "NORTH COAST." The certificate of registration states, "The mark certifies that the wines represented by the mark in question are made from 100% North Coast grapes." CNCGGA claims that use of the "North Coast" appellation by wineries using grapes originating from outside of Napa, Sonoma, and Mendocino Counties will constitute infringement of the mark under the Lanham Act, 15 U.S.C. Chapter 22.

In the event a direct conflict arises between some or all of the rights granted by a registered certification mark under the Lanham Act and the right to use the name of a viticultural area established under the FAA Act, it is the position of ATF that the rights applicable to the viticultural area should control. Since the evidence shows that portions of Napa, Sonoma, Mendocino, Solano, Lake, and Marin Counties meet the requirements for a viticultural area as set forth in 27 CFR 4.25a(e), the North Coast viticultural area includes portions of all six counties.

Overlapping Viticultural Areas

The approved North Coast viticultural area contains over 4700 square miles, slightly more than three million acres. Within the boundaries of the North Coast viticultural area are ten approved viticultural areas: Napa Valley, Guenoc Valley, Sonoma Valley, McDowell Valley, Suisun Valley, Green Valley of Solano, Cole Ranch, Dry Creek Valley, Los Carneros, and Anderson Valley; and eight proposed viticultural areas: Green Valley of Sonoma, Chalk Hill, Alexander Valley, Russian River Valley, Knights Valley, Potter Valley, Northern Sonoma, and Howell Mountain. ATF has received petitions for other viticultural areas to be included within the North Coast.

Although the North Coast viticultural area is large, ATF finds this area satisfies the criteria established in 27 CFR 4.25a(e) for approval of a viticultural area. This section places no limit on the size of a viticultural area. Moreover, approval of this viticultural area does not preclude approval of additional areas, either wholly contained with the North Coast, or partially overlapping the North Coast, when the individual viticultural areas satisfy the criteria of name, historic or current evidence concerning the boundaries, and evidence relating to geographical features and climate. It is ATF's experience that smaller viticultural areas tend to be more uniform in their geographical and climatic characteristics, while very large areas such as the North Coast tend to exhibit generally similar characteristics, in this case the influence of maritime air off of the Pacific Ocean and San Pablo Bay.

Viticultural Significance

The North Coast viticultural area is currently planted [1980] in over 68,000 acres of wine grapes. Primary varieties include Cabernet Sauvignon, Chardonnay, French Colombard, Zinfandel, Pinot Noir, Johannisburg Riesling, and Sauvignon Blanc, but other varieties are also grown. There are in excess of 200 bonded wineries within the North Coast viticultural area.

Regulatory Flexibility Act

The notice of proposed rulemaking which resulted in this final rule contained a certification under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that if promulgated as a final rule, it would not have a significant impact on a

substantial number of small entities. Therefore, the requirement contained in the Regulatory Flexibility Act (5 U.S.C. 603, 604) for a final regulatory flexibility analysis does not apply to this final rule.

Compliance With Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981, because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this final rule is Charles N. Bacon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

Accordingly, under the authority contained in 27 U.S.C. 205, the Director is amending 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of sections in 27 CFR Part 9 is amended to add § 9.30. As amended, the table of sections reads as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

* * * * *

9.30 North Coast.

* * * * *

Paragraph 2. Subpart C is amended by adding § 9.30. As amended, § 9.30 reads as follows:

§ 9.30 North Coast.

(a) *Name.* The name of the viticultural area described in this section is "North Coast."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the North Coast viticultural area are three U.S.G.S. maps. They are entitled:

(1) "San Francisco, Cal.", scaled 1:250,000, edition of 1956, revised 1980;

(2) "Santa Rosa, Cal.", scaled 1:250,000, edition of 1958, revised 1970; and

(3) "Ukiah, Cal.", scaled 1:250,000, edition of 1957, revised 1971.

(c) *Boundaries.* The North Coast viticultural area is located in Lake, Marin, Mendocino, Napa, Solano, and Sonoma Counties, California. The beginning point is found on the "Santa Rosa, California" U.S.G.S. map at the point where the Sonoma and Marin County boundary joins the Pacific Ocean.

(1) Then east and southeast following the boundary between Marin and Sonoma Counties to the point where Estero Americano/Americano Creek crosses State Highway 1 east of Valley Ford;

(2) Then southeast in a straight line for approximately 22.0 miles to the peak of Barnabe Mountain (elevation 1466 feet);

(3) Then southeast in a straight line for approximately 10.0 miles to the peak of Mount Tamalpais (western peak, elevation 2604 feet);

(4) Then northeast in a straight line for approximately 5.8 miles to the confluence of San Rafael Creek and San Rafael Bay in San Rafael;

(5) Then north and northeast following San Rafael Bay and San Pablo Bay to Sonoma Creek;

(6) Then north following Sonoma Creek to the boundary between Napa and Solano Counties;

(7) Then east and north following the boundary between Napa and Solano Counties to the right-of-way of the Southern Pacific Railroad in Jameson Canyon;

(8) Then east following the right-of-way of the Southern Pacific Railroad to the junction with the Southern Pacific in Suisun City;

(9) Then north in a straight line for approximately 5.5 miles to the extreme southeastern corner of Napa County;

(10) Then north following the boundary between Napa and Solano Counties to the Monticello Dam at the eastern end of Lake Berryessa;

(11) Then following the south and west shore of Lake Berryessa to Putah Creek;

(12) Then northwest following Putah Creek to the boundary between Napa and Lake Counties;

(13) Then northwest in a straight line for approximately 11.4 miles to the peak of Brushy Sky High Mountain (elevation 3196 feet);

(14) Then northwest in a straight line for approximately 5.0 miles to Bally Peak (elevation 2288 feet);

(15) Then northwest in a straight line for approximately 6.6 miles to the peak of Round Mountain;

(16) Then northwest in a straight line for approximately 5.5 miles to Evans Peak;

(17) Then northwest in a straight line for approximately 5.0 miles to Pinnacle Rock Lookout;

(18) Then northwest in a straight line for approximately 8.0 miles to Youngs Peak (elevation 3683 feet);

(19) Then northwest in a straight line for approximately 11.2 miles to the peak of Pine Mountain (elevation 4057 feet);

(20) Then northwest in a straight line for approximately 12.1 miles to the peak of Sanhedrin Mountain (elevation 6175 feet);

(21) Then northwest in a straight line for approximately 9.4 miles to the peak of Brushy Mountain (elevation 4864 feet);

(22) Then southwest in a straight line for approximately 17.6 miles to the confluence of Redwood Creek and the Noyo River;

(23) Then west following the Noyo River to its mouth at the Pacific Ocean;

(24) Then southeast following the Pacific Ocean shoreline to the point of beginning.

Signed: August 5, 1983.

Stephen E. Higgins,

Director.

Approved: September 6, 1983.

David Q. Bates,

Deputy Assistant Secretary (Operations).

[FR Doc. 83-25730 Filed 9-20-83; 8:45 am]

BILLING CODE 4810-M-31

POSTAL SERVICE

39 CFR Part 111

Mail Forwarding Period for First-Class and Express Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purposes of the final rule are to: (1) Provide an eighteen month retention period for change of address information; (2) temporarily extend the

forwarding period for First-Class Mail and Express Mail to eighteen months (the temporary period is limited to three years); (3) provide senders of these classes of mail an opportunity to improve the quality and accuracy of their address lists; and (4) provide address correction service beyond month twelve, to assist the mailer in maintaining accurate address lists.

EFFECTIVE DATE: October 22, 1983.

FOR FURTHER INFORMATION CONTACT: Eugene Columbo, (202) 245-5784.

SUPPLEMENTARY INFORMATION: On June 20, 1983, the Postal Service published, for comment, proposed changes to the Domestic Mail Manual, 48 Federal Register 28116. Interested persons were invited to submit written comments concerning the proposed change by July 20, 1983.

Written comments were received from ten businesses, associations and individuals. All ten commenters were in favor of the proposal. Three of the commenters endorsed the new rule as proposed.

One commenter misinterpreted the eighteen months retention period for change of address to be applicable only to First-Class Mail. The portion of the rule dealing with extended forwarding applies only to First-Class Mail and Express Mail, but the extended eighteen-month availability of change of address information applies to all classes of mail. In addition, during months thirteen through eighteen, third-class and fourth-class mail will be eligible for address correction service.

Three commenters suggested the change of address retention and forwarding periods be extended to twenty-four months rather than eighteen. One insurance industry commenter cited that the industry's annual type of mailing would be better benefited if the recipients had two opportunities (months twelve and twenty-four) to receive their premium notice and a change of address reminder. We believe the proposed extended retention period should adequately alleviate the problem of lost contact with many customers because of the additional amount of time we will provide address correction service. During the eighteen month period, whenever the "Address Correction Requested" endorsement is placed on the mail piece, a correction notice will be provided to the mailer.

Two commenters wanted the proposed eighteen month forwarding period to be made permanent. One of the commenters recommended we delete the "temporary" concept and evaluate the validity of the proposal after a three-year test period.

The purpose of the "temporary grace period" is to provide extended forwarding for a reasonable time (three years) to give mailers an opportunity to improve their methods of developing mailing lists that contain accurate and current address information, not simply to provide additional forwarding.

Two commenters wanted the eighteen month forwarding period to include third-class mail. In the October 29, 1981, **Federal Register**, 46 FR 53458, we published several proposed changes for the handling of third-class mail. Although that proposal did not include extension of the forwarding period for third-class mail, it would substantially enhance the processing of that mail. We are still in the process of implementing the third-class mail changes, and no final ruling can yet be made. One other commenter wanted the eighteen-month forwarding period extended to include special fourth-class rate and library rate mail. This commenter stated that publishers use the same mailing list for First-Class Mail and fourth-class mail; they do not maintain two separate lists for the mailing of invoices and books. Hence, since the mailing lists are usually identical, the same forwarding and retention periods should apply to both classes of mail. The Postal Service does not necessarily presume that separate mailing lists are maintained by publishers for different classes of mail. We do not believe the mailing list used has any impact on whether an article is to be given extended forwarding options. Also, in the case of third-class mail or fourth-class mail the publisher will have the opportunity to receive accurate address information through month eighteen if an address correction is requested.

Several concerns or recommendations were offered by the commenters. One person was concerned that the emphasis placed on "mailing lists" in the proposed rule would be construed as applying only to large mailers. The Postal Service wishes to dispel this misconception; the proposed rule applies to all volume levels of mailers.

One commenter was concerned about the confusion created for the customers when we differentiate between the forwarding periods for First-Class Mail and Express Mail versus fourth-class mail. The Postal Service does not foresee any substantial customer confusion associated with implementation of this mail forwarding change, particularly since the customer is accustomed to receiving mail for twelve months only. Also, if a customer inquires as to the rationale for this temporary change, he may contact his local post office for information. Once again, the reason why the extended forwarding option for First-Class Mail and Express Mail is only a temporary change is that it is designed to facilitate improvement in the methods used by mailers in developing mailing lists, not simply to provide additional forwarding.

The following recommendations were also offered for the Postal Service's consideration.

1. Provide one additional year of forwarding automatically for boxholders;

2. Provide a national address correction service using data assembled by the Postal Service;

3. Improve the current address correction service provided in § 159.3 of the Domestic Mail Manual.

We reviewed these recommendations. Item numbers one and two cannot be implemented at this time. The concepts are valid but impractical under present operational circumstances. Recommendation number three is being studied to determine regulation revisions which would improve the present correction system.

After careful consideration of all of the comments received, the Postal Service hereby adopts, with minor editorial changes, the proposed regulations published in the **Federal Register** on June 20, 1983, 48 FR 28116. The forwarding period for First-Class Mail and Express Mail under change of address orders already on file will be 18 months from the effective date of the change of address order rather than one year, to the extent the Postal Service can operationally identify such mail as forwardable. Address correction service requests now in force also will apply for eighteen months instead of one year. The Domestic Mail Manual, which is incorporated by reference in the **Federal Register**, 39 CFR 111.1, is revised, effective October 22, 1983, as follows:

List of Subjects in 39 CFR Part 111

Postal Service.

Part 159—Undeliverable Mail

1. Revise 159.213 to read as follows:

159.213 Time Limit of Change of Address Order.

a. Time Limit Specified by Addressee (may not exceed 18 months). Customers must state beginning and ending dates in the change of address order. Customers should cancel the change of address order when they return to their old address or move to another permanent address within the specified period.

b. Time Limit Not Specified by Addressee. Records of permanent change of address orders (other than those subject to 159.213d) are kept by post offices for 18 months for forwarding and for address correction purposes from the end of the month in which the change becomes effective.

Exception: When a boxholder has notified the post office of a permanent change in mailing address, or the Postal Service has administratively changed a customer's mailing address, the postmaster may extend the forwarding period for one additional year if mail is being regularly received addressed to the old address. To qualify, the addressee must demonstrate that an economic or financial hardship will ensue if extended forwarding is not granted and that reasonable effort is being made to notify correspondents of the new mailing address.

c. Retention and Use of Change of Address Orders. All post offices must retain change of address orders for a period of 18 months from the end of the month in which the change becomes effective. During this period, they will continue to be used for administrative purposes, providing mailing list service (see 945) and releasing address change information to the public under provisions of the Freedom of Information Act (see 352 of the Administrative Support Manual).

d. Change From General Delivery at City Delivery Office. A record of change of address orders to a permanent local address is kept six months. A record of change of address orders to other than a permanent local address is kept 30 days.

Part 291—Forwarding

2. Revise 291 to read as follows:

291 Forwarding. Express Mail is forwarded for a period of one year when the new address is known. Pieces forwarded are handled and transported as Express Mail. No additional postage is collected for forwarding.

Exception: For the period beginning October 22, 1983, and ending October 21, 1986, the Postal Service will provide forwarding of Express Mail for eighteen months at no additional charge as an aid to mailer efforts to improve the quality and accuracy of their address lists.

Part 391—Forwarding

3. Revise 391 to read as follows:

391 Forwarding

391.1 Pieces Weighing 12 Ounces or Less. Pieces mailed at the regular single piece rate, card rate or presort rate are forwarded free for a period of one year when the new address is known.

391.2 Pieces Weighing Over 12 Ounces. Pieces mailed at the First-Class Zone Rated (Priority) rates are forwarded and charged additional postage at the zoned (priority) rates, based on the distance between the forwarding and destination post offices. The additional postage is collected on delivery.

391.3 Exception to Forwarding Period. For the period beginning October 22, 1983, and ending October 21, 1986, the Postal Service will provide forwarding of First-Class Mail for eighteen months as an aid to mailer efforts to improve the quality and accuracy of address lists.

A transmittal letter making these changes in the pages of the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided in 39 CFR 111.3.

(39 U.S.C. 401(a), 403)

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 83-25707 Filed 9-20-83; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-3-FRL 2437-6; EPA Docket No. AWO15DE]

Approval of Revisions of the Delaware State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today approves several revisions Delaware has requested to its State Implementation Plan (SIP) for the attainment and maintenance of air quality standards. These revisions consist of the inclusion in the SIP of a stack height regulation and of a public notification plan, the deletion from the SIP of an ambient air quality standard for hydrocarbons which is no longer required, and of certain other miscellaneous changes. EPA is approving these SIP revisions since they conform to the requirements of Section 110(a)(2) of the Clean Air Act and of 40 CFR Part 51.

EFFECTIVE DATE: This action will be effective on November 21, 1983 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to Mr. Bernard E. Turlinski of EPA Region III (address below). Copies of the SIP revisions and accompanying support documents are available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs & Energy Branch, Curtis Building, Sixth & Walnut Streets, Philadelphia, PA 19106; Attn: Mr. Daniel Ryan

Delaware Department of Natural Resources and Environmental Control, Air Resources Section, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19901; Attn: Mr. Robert R. French

Public Information Reference Unit, EPA Library, Room 2922, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Ryan at the EPA Region III office whose address is given above or call 215/597-8555.

SUPPLEMENTARY INFORMATION: EPA today approves several revisions Delaware has requested to its State Implementation Plan (SIP) for the attainment and maintenance of air quality standards. EPA is approving these revisions since it has found that they meet the requirements of Section 110(a)(2) of the Clean Air ACt and of 40 CFR Part 51. The revisions consist of the inclusion in the SIP of a stack height regulation and of a public notification plan, the deletion from the SIP of an ambient air quality standard for hydrocarbons which is no longer required, and of certain other miscellaneous changes. The revisions were submitted to EPA by John E. Wilson, III, Secretary of the Delaware Department of Natural Resources and Environmental Control, on April 20, 1983. Delaware held a publec hearing regarding the revisions on February 23, 1983. The revisions are discussed below in greater detail.

I. Stack Height Regulation

Delaware developed its stack height regulation (Regulation XXVII) to require sources to attain and maintain air quality standards in their vicinity through the installation of adequate emission control equipment rather than through the construction of tall stacks. Tall stacks cause pollutants to be widely dispersed, lowering their concentrations in the immediate vicinity