

encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close June 11, 1993. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482-5653.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730-799) is amended as follows:

PART 799—[AMENDED]

1. The authority citation for 15 CFR part 799 is revised to read as follows:

Authority: Public Law 90-351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Public Law 93-153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Public Law 94-163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Public Law 94-258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Public Law 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Public Law 95-242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Public Law 95-372, 92 Stat. 668 (43 U.S.C. 1354); Public Law 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Public Law 103-10, 107 Stat. 40); sec. 125, Public Law 99-64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

2. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 5 (Telecommunications and "Information Security"), Section I (Telecommunications), ECCN 5A02A is amended by revising the Requirements section to read as follows:

5A02A "Telecommunications transmission equipment" or systems and specially designed components and accessories therefor, having any of the following characteristics, functions or features.

Requirements

Validated License Required: QSTVWYZ.

Unit: Equipment in number; parts and accessories in \$ value.

Reason for Control: NS.

GLV: \$5,000.

GCT: Yes.

GFW: Yes for items identified in Telecommunications Advisory Notes 11, 14, 19, 20, and 21 and for modems described in 5A02.c.1 with a "data signalling rate" not exceeding 19,200 bits per second.

* * * * *

Dated: May 7, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93-11261 Filed 5-11-93; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N-0172]

Misleading Containers; Nonfunctional Slack-Fill

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, in accordance with section 6(b)(3)(D)(ii) of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) to the Federal Food, Drug, and Cosmetic Act (the act), the regulation that it proposed on January 6, 1993 (58 FR 2957), to implement section 403(d) of the act in accordance with section 6 of the 1990 amendments is now considered a final regulation. The proposed regulation defines the circumstances in which the slack-fill within a package is nonfunctional and, therefore, misleading.

DATES: The final regulation implementing section 403(d) of the act will become effective on May 10, 1993.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Center for Food Safety and Applied Nutrition (HFS-150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4561.

SUPPLEMENTARY INFORMATION:

I. Background

The 1990 amendments to the act became law on November 8, 1990. Section 6 of the 1990 amendments established a procedure under which FDA was given 30 months from the date of their enactment to promulgate final rules implementing that section. Pursuant to that procedure, FDA published a proposal on January 6, 1993 (58 FR 2957), to amend its regulations to define the circumstances in which a food is misbranded under section 403(d) of the act.

Section 6(b)(3)(D)(ii) of the 1990 amendments provides that, if the final rule to implement section 403(d) of the act is not promulgated within 30 months, then the regulation proposed to implement this section is to be considered a final regulation. Further, this section provides that States and political subdivisions shall be preempted with respect to section 403(d) of the act at that time.

The 30-month period established by the 1990 amendments expired on Saturday, May 8, 1993. Therefore, FDA

is issuing this document announcing that the regulation that it proposed in January 1993 is now considered a final regulation by operation of law. The agency proposed that 21 CFR part 100 be amended as follows:

PART 100—GENERAL

2. New subpart F, consisting of § 100.100, is added to read as follows:

Subpart F—Misbranding for Reasons Other Than Labeling

§ 100.100 Misleading containers.

In accordance with section 403(d) of the act, a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. "Slack-fill" is the difference between the actual capacity of a container and the volume of product contained therein. "Nonfunctional slack-fill" is the empty space in a package that is filled to substantially less than its capacity for reasons other than:

- (1) Protection of the contents of the package;
- (2) The requirements of the machines used for enclosing the contents in such package;
- (3) Normal product settling during shipping and handling;
- (4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly labeled; or
- (5) The fact that the product is a gift product consisting of a food or foods combined with a reusable gift container, where the container is intended for further use after the food is consumed.

(b) [Reserved]

The 1990 amendments state that FDA is to promptly publish notice of the new status of the proposed regulation in the *Federal Register*. This notice is issued in response to that requirement.

The agency notes that this document is part of a separate rulemaking contemplated by Congress if the final regulation was not issued by May 8, 1993. It bears a separate docket number from the one assigned to the January 1993 rulemaking to distinguish it from that rulemaking, which is ongoing. The agency intends to issue a regulation in the near future that will supersede the regulation that is considered final by operation of law. FDA intends to issue a final regulation based on the comments it received in the January 1993 rulemaking.

Dated: May 5, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-11024 Filed 5-10-93; 3:32 pm]

BILLING CODE 4180-01-F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD9-93-08]

Drawbridge Operation Regulations, Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: The Coast Guard is hereby providing notice that the City of Chicago has been granted permission to temporarily deviate from regulations governing the opening of certain drawbridges over the Chicago River, from April 26 to May 31, 1993, for the purpose of evaluating the reasonableness of possible changes to the permanent regulations. This deviation reduces the periods during which the City must open the draws for recreational vessels, requires the vessels to give advance notice, and requires the vessels to pass through the draws in organized flotillas.

EFFECTIVE DATES: The period of deviation to from the beginning of Monday, April 26, 1993, to the beginning of Monday, May 31, 1993.

ADDRESSES: Comments may be sent to Robert W. Bloom, Jr., Bridge Program Manager, Ninth Coast Guard District, room 2083D, 1240 East Ninth Street, Cleveland, Ohio 44199-2060, telephone (216) 522-3993.

FOR FURTHER INFORMATION CONTACT: Contact Robert W. Bloom, Jr., Bridge Program Manager, Ninth Coast Guard District, room 2083D, 1240 East Ninth Street, Cleveland, Ohio 44199-2060, telephone (216) 522-3993.

SUPPLEMENTARY INFORMATION: Presently, the bridges owned and operated by the City of Chicago are governed in accordance with 33 CFR 117.39 which allows the City to not open the draws during peak vehicle traffic periods during the morning and afternoon rush hours. In addition, certain bridges need not open unless notice is given in advance of a vessel's time of intended passage through the draws. The boat yards that are located on the North and South Branches of the Chicago River are faced with two critical periods when there are as many as five to twenty-five boats per day leaving the Chicago River

system in the spring and returning in the fall. The City has requested that multiple boat transits be restricted to only Saturday and Sunday mornings, unless there is a special event on these days, at which time a bridge may not be required to open for vessel traffic to pass. In addition, the City submits that it is unduly burdensome to open the bridges for the passage of single recreational vessels within the Chicago River System. This temporary period of deviation is being granted to the City of Chicago in order to evaluate the reasonableness of possible changes to the permanent regulations. The deviation is intended to best accommodate both recreational vessels transiting the Chicago River System and the City of Chicago. During information discussions with representatives of the City and the marinas, it became apparent that it might be most practical to accommodate both interests by establishing a regulatory structure which requires the formation of organized flotillas for the passage of recreational vessels. Traditionally, the Coast Guard has sought to avoid regulations which specify the type and number of vessels entitled to demand an opening. However, it appears that this may be a case in which such a regulatory structure is appropriate, and this deviation is intended to provide an evaluation period which will provide the Coast Guard a valuable test of the reasonableness of such a regulatory structure.

Request for Comments

The Coast Guard encourages interested persons to participate in this evaluation of possible changes to the regulations governing bridges operated by the City of Chicago by submitting written data, views, or arguments to the address above. Persons submitting comments should include their name and address, identify this docket number (CGD9-93-08) and specific provisions to which each comment applies, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. At such time as it appears appropriate to propose a permanent change to the regulations, the Coast Guard plans to publish a notice of proposed rulemaking which will again request comments, and which will state a different period for the consideration of comments for those proposed regulations.

Notice

Notice is hereby given that:

(1) The Coast Guard has granted the City of Chicago, Department of Transportation, a temporary deviation from the operating requirements at 33 CFR 117.391 governing certain bridges owned by the City of Chicago over the Chicago River, as follows:

Main Branch

Lake Shore Drive
Columbus Drive
Michigan Avenue
Wabash Avenue
State Street
Dearborn Street
Clark Street
La Salle Street
Wells Street
Franklin-Orleans Street

South Branch

Lake Street
Randolph Street
Washington Street
Madison Avenue
Monroe Street
Adams Street
Jackson Boulevard
Van Buren Street
Eisenhower Expressway
Harrison Street
Roosevelt Road
18th Street
Canal Street
South Halsted Street
South Loomis Street
South Ashland Avenue

North Branch

Grand Avenue
Ohio Street
Chicago Avenue
North Halsted Street

(2) This deviation from normal operating regulations is authorized in accordance with the provisions of title 33 of the Code of Federal Regulations, § 117.43, for the purpose of evaluating possible changes to the permanent regulations. This temporary deviation applies only to passage of recreational vessels. Under the deviation the bridges listed above operated by the City of Chicago need not open for the passage of recreational vessels unless the City of Chicago receives a twenty-four hour advance notice for passage, and need not open for recreational vessels except during the following periods, subject to the conditions indicated:

(a) From 6 a.m. on Saturdays through 7 p.m. on Sundays, the draws shall open for the passage of organized flotillas consisting of no less than five and not more than twenty-five vessels.

(b) On Tuesdays and Thursdays the draws shall open for the passage of organized flotillas consisting of no less than five and not more than twenty-five vessels, from 6:30 p.m. until all organized flotillas have safely completed passage.

(3) Notwithstanding this deviation, the City of Chicago, after receiving notice twenty-four hours in advance of the intended passage of the flotilla through the draws of the bridges, shall ensure that:

(a) The necessary bridgetenders are provided for the safe and prompt opening of the draws;

(b) The operating machinery of each draw is maintained in a serviceable condition; and

(c) The draws are operated at sufficient intervals to assure their satisfactory operation.

(4) The Kinzie Street bridge, mile 1.81 across the North Branch, and Cermak Road bridge, mile 4.05 across the South Branch, shall continue to operate in accordance with requirements presently established in 33 CFR 117.391.

(5) All draws shall open for commercial vessels in accordance with current regulations in 33 CFR 117.391. In accordance with current regulations, including 33 CFR 117.391, government vessels of the United States, state and local vessels used for public safety, and vessels in distress shall be passed through the draws of all bridges as soon as possible at all times.

(6) This period of deviation is effective from the beginning of Monday, April 26 1993, to the beginning of Monday, May 31, 1993.

Dated: 30 April 1993.

A.B. Shepard,

Captain, U.S. Coast Guard, Commander,
Ninth Coast Guard District.

[FR Doc. 93-11236 Filed 5-11-93; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900-AF90

Rules of Practice; Hearings Before the Board on Appeal

AGENCY: Department of Veterans Affairs.
ACTION: Final rule.

SUMMARY: This document contains amendments to the Department of Veterans Affairs (VA) final Rules of Practice of the Board of Veterans' Appeals concerning hearings before the Board. References to hearings held by VA employees acting as "agents" for the Board at VA regional offices have been deleted. This amendment is intended to clarify the opportunities available for hearings before the Board.

EFFECTIVE DATE: May 12, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Steven L. Keller, Counsel to the

Chairman (01C), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2978.

SUPPLEMENTARY INFORMATION: The final regulations that are the subject of these amendments are the Board of Veterans' Appeals Rules of Practice concerning hearings.

The current regulations refer to hearings conducted by VA personnel acting as "agents" for the Board of Veterans' Appeals. This procedure will no longer be used. Therefore, this final rule removes references to hearings conducted by VA personnel acting as "agents" for the Board.

The Board of Veterans' Appeals has reexamined its relationship with the Veterans Benefits Administration (VBA) as it relates to the conduct of adjudicatory proceedings by both organizations. As a result of this review, we have concluded that a clear demarcation should exist between the conduct of hearings by the Board and hearings conducted by VBA employees at regional offices. The establishment of this demarcation resulted in the cessation of Board of Veterans' Appeals hearings being conducted by VBA employees as "agents" of the Board. The VBA will still conduct hearings by its hearing officers as part of its adjudicatory process, and a record of those hearings will be made a part of the claims file for review by the Board in the event an appeal is certified to the Board. The Board will, at its level in the appellate process, continue to afford an opportunity to each claimant to have a hearing before a Member or Members of the Board either in Washington, DC., or at a VA regional office.

This change will have the effect of providing an appellant an opportunity for a hearing before VBA personnel and then an opportunity for another hearing at the Board level.

In addition to deleting references to hearings held by regional office personnel acting as "agents" for the Board, amendments clarifying the opportunities for hearings held before the Board have been made.

This regulation is effective immediately. Notice of proposed rulemaking does not apply to this regulation under the exception provided in 5 U.S.C. section 553(b)(A) for interpretative rules, general statements of policy, or rules of agency organizations, procedure or practice.

The Secretary has determined that these regulations do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The regulations will not have a \$100 million annual effect on the economy and will

not cause a major increase in costs or prices for anyone. They will have no 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.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that the regulations have only a limited effect on claimants/appellants and their representatives. Therefore, pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

There are no Catalog of Federal Domestic Assistance numbers associated with these regulatory amendments.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal services, Veterans.

Approved: April 13, 1993.

Jesse Brown,
Secretary of Veterans Affairs.

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

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

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

Authority: 38 U.S.C. 501(a)

2. In part 20, the heading for Subpart H is revised as follows:

Subpart H—Hearings before the Board on Appeal

* * * * *

3. In 38 CFR part 20, § 20.700 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 20.700 Rule 700. General.

* * * * *

(c) *Nonadversarial proceedings.* Hearings conducted by the Board are ex parte in nature and nonadversarial.

* * * * *

4. Section 20.701 is revised to read as follows:

§ 20.701 Rule 701. Who may present oral argument.

Only the appellant and/or his or her authorized representative may appear and present argument in support of an appeal. At the request of an appellant, a Veterans Benefits Counselor of the Department of Veterans Affairs may present the appeal at a hearing before the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 7102, 7104(a), 7105)

5. In section 20.702, the heading, and paragraphs (a), (c), (d), and (e) are revised to read as follows:

§ 20.702 Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC.

(a) *General.* To the extent that officials scheduling hearings for the Board of Veterans' Appeals determine that necessary physical resources and qualified personnel are available, hearings will be scheduled at the convenience of appellants and their representatives, with consideration of the travel distance involved. While a Statement of the Case should be prepared prior to the hearing, it is not a prerequisite for a hearing and an appellant may request that the hearing be scheduled prior to issuance of the Statement of the Case.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

(b) * * *

(c) *Requests for changes in hearing dates.* (1) The appellant or the representative may request a different date for the hearing within 60 days from the date of the letter of notification of the time and place of the hearing, or not later than two weeks prior to the scheduled hearing date, whichever is earlier. The request must be in writing, but the grounds for the request need not be stated. Only one such request for a change of the date of the hearing will be granted, subject to the interests of other parties if a simultaneously contested claim is involved. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, such requests for a new hearing date must be filed with: Chief, Hearing Section (0141F), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420.

(2) After the period described in paragraph (c)(1) of this section has passed, or after one change in the hearing date is granted based on a request received during such period, the date of the hearing will become fixed. After a hearing date has become fixed, an extension of time for appearance at a hearing will be granted only for good cause, with due consideration of the interests of other parties if a

simultaneously contested claim is involved. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. The motion for a new hearing date must be in writing and must explain why a new hearing date is necessary. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. Ordinarily, however, hearings will not be postponed more than 30 days. In the case of a hearing conducted by the Board of Veterans' Appeals in Washington, DC, whether good cause for establishing a new hearing date has been shown will be determined by the presiding Member of the hearing panel assigned to conduct the hearing. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the motion for a new hearing date must be filed with: Chief, Hearing Section (0141F), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a), 7105A)

(d) *Failure to appear for a scheduled hearing.* If an appellant (or when a hearing only for oral argument by a representative has been authorized, the representative) fails to appear for a scheduled hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear must be in writing; must be submitted not more than 15 days following the original hearing date; and must set forth the reason, or reasons, for the failure to appear at the originally scheduled hearing and the reason, or reasons, why a timely request for postponement could not have been submitted. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the motion must be filed with: Chief, Hearing Section (0141F), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. If good cause is

shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed. Ordinarily, however, hearings will not be postponed more than 30 days. In the case of hearings before the Board of Veterans' Appeals in Washington, DC, whether good cause for such failure to appear has been established will be determined by the presiding Member of the hearing panel to which the case was assigned.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a), 7105A)

(e) *Withdrawal of hearing requests.* A request for a hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a hearing may not be withdrawn by an appellant's representative without the consent of the appellant. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the notice of withdrawal must be sent to: Chief, Hearing Section (0141F), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))
(Approved by the Office of Management and Budget under control number 2900-0085.)

6. Section 20.705 is revised as follows:

§ 20.705 Rule 705. Where hearings are conducted.

A hearing on appeal before the Board of Veterans' Appeals may be held in one of the following places at the option of the appellant:

- (a) In Washington, DC, or
- (b) Before a traveling Section of the Board of Veterans' Appeals at Department of Veterans Affairs facilities having adequate physical resources and personnel for the support of such hearings.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a), 7110)

7. Section 20.708 is revised to read as follows:

§ 20.708 Rule 708. Prehearing conference.

An appellant's authorized representative may request a prehearing conference with the presiding Member of a hearing panel in order to clarify the issues to be considered at a hearing on appeal, obtain rulings on the admissibility of evidence, develop stipulations of fact, establish the length of argument which will be permitted, or take other steps which will make the hearing itself more efficient and

productive. With respect to hearings to be held before Members of the Board at Washington, DC, arrangements for a prehearing conference must be made through: Chief, Hearing Section (0141F), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Requests for prehearing conferences in cases involving hearings to be held before traveling Sections of the Board must be addressed to the office of the Department of Veterans Affairs official who signed the letter giving notice of the time and place of the hearing.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

8. In section 20.714, paragraph (b) is removed, and paragraph (c) is redesignated as the new paragraph (b) and is revised to read as follows:

§ 20.714 Rule 714. Record of Hearings.

(a) * * *

(b) *Copy of hearing tape recording or written transcript.* One copy of the tape recording of hearing proceedings before the Board of Veterans' Appeals, or the written transcript of such proceedings when such a transcript has been prepared in accordance with the provisions of paragraph (a) of this section, shall be furnished without cost to the appellant or representative if a request is made in accordance with § 1.577 of this chapter.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

9. Section 20.715 is revised to read as follows:

§ 20.715 Rule 715. Recording of hearing by appellant or representative.

An appellant or representative may record the hearing with his or her own equipment. Filming, videotaping or televising the hearing may only be authorized when prior written consent is obtained from all appellants and contesting claimants, if any, and made a matter of record. In no event will such additional equipment be used if it interferes with the conduct of the hearing or the official recording apparatus. In all such situations, advance arrangements must be made. In the case of hearings held before the Board of Veterans' Appeals in Washington, DC, arrangements must be made with the Chief of the Hearing Section (0141F), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings held before traveling Sections of the Board, arrangements must be made through the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

10. Section 20.716 is revised to read as follows:

§ 20.716 Rule 716. Correction of hearing transcripts.

The tape recording on file at the Board of Veterans' Appeals or a transcript prepared by the Board of Veterans' Appeals is the only official record of a hearing before the Board. Alternate transcript versions prepared by the appellant and representative will not be accepted. If an appellant wishes to seek correction of perceived errors in a hearing transcript, the appellant or his or her representative should move for the correction of the hearing transcript within 30 days after the date that the transcript is mailed to the appellant. The motion must be in writing and must specify the error, or errors, in the transcript and the correct wording to be substituted. In the case of hearings held before the Board of Veterans' Appeals, whether in Washington, DC, or in the field, the motion must be filed with the Chief, Hearing Section (0141F), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The ruling on the motion will be made by the presiding Member of the hearing panel concerned.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a), 7110)

11. In section 20.717, paragraphs (c) and (d) are revised to read as follows:

§ 20.717 Rule 717. Loss of hearing tapes or transcripts—motion for new hearing.

(a) * * *

(b) * * *

(c) *Where motion for a new hearing is filed.* In the case of hearings held before the Board of Veterans' Appeals, whether in Washington, DC, or in the field, the motion must be filed with: Chief, Hearing Section (0141F), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(d) *Ruling on motion for a new hearing.* Except as noted hereinafter, the ruling on the motion for a new hearing will be made by the presiding Member of the hearing panel concerned. If the presiding Member of the hearing panel is no longer available, the ruling on the motion may be made by any other member of the hearing panel who is available. In cases in which a final Board of Veterans' Appeals decision has already been promulgated with respect to the appeal in question, the ruling on the motion will be by the Chairman of the Board. Factors to be considered in ruling on the motion include, but will not be limited to, the extent of the loss of the record in those cases where only a portion of a hearing tape is unintelligible or only a portion of a

transcript has been lost or destroyed, and the extent and reasonableness of any delay in moving for a new hearing. If a new hearing is granted in a case in which a final Board of Veterans' Appeals decision has already been promulgated, a supplemental decision will be issued.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a), 7110)

[FR Doc. 93-11163 Filed 5-11-93; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM-14-1-5585; FRL-4651-3]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Revision to the State Implementation Plan; Addressing New Source Review in Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This document approves a revision to the New Mexico State Implementation Plan (SIP) to include revisions to Air Quality Control Regulation (AQCR) 709, the existing SIP-approved New Source Review (NSR) regulation for nonattainment areas in the State of New Mexico outside the boundaries of Indian Lands and Bernalillo County. These revisions were made in response to the NSR requirements outlined in the Clean Air Act Amendments (CAAA) of 1990.

DATES: This action will become effective on July 12, 1993 unless notice is received within 30 days of publication that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AP), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733

Mr. Jerry Kurtzweg (ANR-443), Environmental Protection Agency,

401 M Street, SW., Washington, DC 20460

New Mexico Environment Department, Air Quality Bureau, 1190 St. Francis Drive, Room So. 2100, Santa Fe, New Mexico 87503

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Telephone (214) 655-7258.

SUPPLEMENTARY INFORMATION: One area in the State of New Mexico, Anthony, was designated nonattainment for PM-10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act (Act), upon enactment of the CAAA of 1990. PM-10 is defined as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers. One of the required items to be included in the Anthony PM-10 SIP was a revision to the existing nonattainment permit program. These revisions were to be submitted by June 30, 1992, to meet the requirements of section 173 of the Act for the construction and operation of new and modified major stationary sources of PM-10. Please reference section 189(a)(1)(A) of the Act. By cover letter dated June 12, 1992, the Governor of New Mexico submitted to the EPA revisions to AQCR 709, entitled Permits Nonattainment Areas, addressing NSR in nonattainment areas in the State of New Mexico outside the boundaries of Indian Lands and Bernalillo County. The revisions to AQCR 709 were filed with the State Records and Archives Center on June 25, 1992. AQCR 709 was initially approved by the EPA on June 4, 1990 (55 FR (FR) 22784). Further revisions were approved on August 21, 1990 (55 FR 34013), and on November 12, 1991 (56 FR 57492). The reader should refer to the previously cited Federal Register notices for the background information, history, and issues associated with this regulation. The current revisions to AQCR 709 discussed in this notice are straightforward and minimal as outlined below.

Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable

notice and public hearing.¹ Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see Section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 56 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

The State of New Mexico held a public hearing on June 12, 1992, to entertain public comment on proposed revisions to AQCR 709 addressing NSR. No public comments were received. Following the public hearing the SIP revision was adopted by the State and signed by the Governor on June 12, 1992. The SIP revision was received by the EPA on July 2, 1992.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991). A letter dated July 29, 1992, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. As noted in today's action, the EPA is approving this New Mexico NSR SIP submittal.

2. Revisions to Nonattainment NSR Permit Program

The State of New Mexico has revised AQCR 709 in order to meet requirements found in section 173 of the Act for the construction and operation of new and modified major stationary sources of PM-10. As referenced above, the State of New Mexico already has in place a Federally enforceable regulation for nonattainment NSR (AQCR 709). Very few revisions to AQCR 709 were required to incorporate new nonattainment NSR requirements outlined in the CAAA of 1990. The specific revisions to AQCR 709 are discussed below.

The CAAA of 1990 now requires that emission reductions obtained pursuant to section 173(c)(1), pertaining to

¹ Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of Section 110(a)(2).

"Offsets", assure that the total tonnage of increased emissions of an air pollutant from a new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area. The State of New Mexico has revised the language in section D(3)(a) of AQCR 709 to adequately address this new requirement.

The CAAA of 1990 in section 173(a)(5) now also provides that as a condition for issuing a permit to construct a major stationary source or major modification in a nonattainment area, an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. The State of New Mexico has added this language to AQCR 709 in section D(5).

The CAAA of 1990 in section 189(b)(3) also specifies that for any serious PM-10 nonattainment area, the terms "major source" and "major stationary source" include any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 70 tons per year of PM-10. In addition, section 173(e) specifies alternative offsetting requirements for the permitting of increased emissions from rocket engines or motors. The State of New Mexico does not have to incorporate these provisions into AQCR 709 at this time because the State currently contains only one moderate nonattainment area (Anthony, New Mexico) in which the threshold level for a major source or major stationary source is 100 tons per year. Also, rocket engine and motor firing facilities in the State of New Mexico (e.g., White Sands Missile Range) are currently located in unclassified areas for the PM-10 National Ambient Air Quality Standards (NAAQS). No such facilities are located in the Anthony, New Mexico, PM-10 nonattainment area.

The remainder of the revisions being approved today result from clarifying, renumbering, and updating certain sections of AQCR 709. These changes, discussed in detail in the Technical Support Document, represent small and noncontroversial revisions to AQCR 709.

The EPA is currently in the process of revising its regulations in accordance with the CAAA of 1990 and expects to propose an amended 40 CFR 51.165

within the near future. These revisions to 40 CFR 51.165 will reflect the new nonattainment NSR provisions added by the CAAA of 1990 in sections 172 and 173. Thus, once the EPA promulgates final nonattainment NSR rules pursuant to the CAAA of 1990, the State of New Mexico will have to review AQCR 709 against the requirements found in the final promulgated regulations and submit any additional required revisions to the EPA for SIP approval.

Final Action

The EPA is today approving a revision to the New Mexico SIP to include revisions to AQCR 709 addressing NSR in nonattainment areas in the State of New Mexico outside the boundaries of Indian Lands and Bernalillo County. These revisions to AQCR 709 were filed with the State Records and Archives Center on June 25, 1992, and received by the EPA on July 2, 1992. The revisions incorporate new requirements in section 173 of the Act mandated by the CAAA of 1990 for the construction and operation of new and modified major stationary sources of PM-10 in nonattainment areas. However, the EPA is currently in the process of revising its regulations in accordance with the CAAA of 1990 and expects to propose an amended 40 CFR 51.165 within the near future. These revisions to 40 CFR 51.165 will reflect the new nonattainment NSR provisions added by the CAAA of 1990 in sections 172 and 173. Thus, once the EPA promulgates final nonattainment NSR rules pursuant to the CAAA of 1990, the State of New Mexico will have to review AQCR 709 against the requirements found in the final promulgated regulations and submit any additional required revisions to the EPA for SIP approval.

The EPA has reviewed these revisions to the New Mexico SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective July 12, 1993 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective July 12, 1993.

The EPA has reviewed this request for revision of the Federally-approved SIP for conformance with the provisions of the 1990 CAAA enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements.

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

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order 12291

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

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Note: Incorporation by reference of the SIP for the State of New Mexico was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 23, 1993

Russell F. Rhoades,

Acting Regional Administrator (6A).

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(48) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

(48) A revision to the New Mexico SIP to include revisions to Air Quality Control Regulation 709—*Permits—Nonattainment Areas*, as filed with the State Records and Archives Center on June 25, 1992.

(i) Incorporation by reference.

(A) Revisions to New Mexico Air Quality Control Regulation 709—*Permits—Nonattainment Areas*, Section D, "Source Requirements," Subsections D(2), D(3)(a), D(5), D(6); Section G, "Emission Offsets," Subsection G(5); Section I, "Air Quality Benefit," Subsection I(1); and Section J, "Public Participation and Notification," Subsection J(2) (first paragraph), as filed

with the State Records and Archives Center on June 25, 1992.

[FR Doc. 93-11225 Filed 5-11-93; 8:45 am]

BILLING CODE 5550-50-P

40 CFR Part 52

[IA-8-1-5750; FRL-4618-6]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The state of Iowa has submitted a State Implementation Plan (SIP) revision which revises and updates certain state air regulations. EPA is taking final action to approve these changes. This action is necessary to make the changes federally enforceable and to keep the SIP current with changes to the state regulations.

EFFECTIVE DATE: This action will be effective July 12, 1993 unless notice is received by June 11, 1993 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the *Federal Register*.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; Iowa Department of Natural Resources, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319; and Jerry Kurtzweg (ANR-443), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne A. Kaiser at (913) 551-7603.

SUPPLEMENTARY INFORMATION: On January 5, 1993, the Iowa Department of Natural Resources (IDNR) submitted a revision to its SIP. This submittal contained revisions to the following air quality rules: Chapter 20, Definitions; Chapter 22, Controlling Pollution; Chapter 23, Emission Standards for Contaminants; Chapter 24, Excess Emission; Chapter 25, Measurement of Emissions; and Chapter 29, Qualification in Visual Determination of the Opacity of Emissions. Additionally, revisions were made to the Compliance Sampling Manual (CSM), referenced in Chapter 25. The major purpose for the revision was to update references to the Code of Federal Regulations (CFR) which are adopted by reference, to make minor corrections and revisions, and to update the test procedures contained in

the CSM. Relevant actions are discussed below.

In Chapter 20, Definitions, the state added a definition of "ambient air" which is consistent with the EPA definition at 40 CFR 50.1(e). The definition of "opacity" was revised to include a reference to Chapter 29, which provides for the federal method of determination of opacity and the requirements for a qualified observer. Also, the definition of "Ringelmann chart" was deleted since it is replaced with the definition of opacity elsewhere in the state rules.

In Chapter 22, Controlling Pollution, subrule 22.3(1), Stationary sources other than anaerobic lagoons, a restriction was added which requires the state to withhold issuance of a construction or conditional permit if a source is in violation of a permit condition or compliance schedule. This enhances the state's enforcement powers. In subrule 22.4, Special requirements for major stationary sources in areas designated attainment or unclassified (prevention of significant deterioration (PSD)), and subrule 22.5, Special requirements for nonattainment areas, the state reference to the federal PSD rule at 40 CFR 52.21 was updated, as well as the reference to the attainment status designations table for Iowa at 40 CFR 81.316.

In Chapter 23, Emission Standards for Contaminants, subrules 23.3(2) (relating to sources generally), and 23.4(12) (relating to incinerators), the limitation on opacity deleted the reference to the Ringelmann chart so that the limitation is expressed as 40 percent opacity. In subrule 23.3(3), Sulfur compounds, the averaging period for sulfur dioxide emission limitations was changed from two hours to three hours, which makes it consistent with the test method requirements of 40 CFR parts 60.8 and 60.46. The test method in the CSM for sulfur dioxide continues to adopt by reference the federal method at 40 CFR Part 60, Appendix A, Method 6.

Minor revisions were made to Chapter 24, Excess Emission.

Chapter 25, Measurement of Emissions, subrule 25.1(7), Test by owner, was revised to require the source to provide the state with 30 instead of 15 days' notice of a scheduled test, requires a pretest meeting between the source and the state, requires that new equipment be tested within a certain time period, requires the source to submit test results to the state within a specified time period, and gives the state authority to require testing of existing equipment. Subrule 25.1(9), Methods and procedures, was revised to update the reference to 40 CFR part 60, Appendix B—Performance

Specifications, and Appendix F—Quality Assurance Procedures, was added. Also, a provision was added to give the state authority to require testing to determine compliance with a permit condition. Chapter 25 references the state CSM, which in turn references federal test methods and procedures for source emission testing. The state made numerous revisions to the CSM and updated the reference to it in this rule. These revisions updated references to EPA methods and state rules, clarified existing language, and made minor corrections. The net effect is to improve the accuracy and enforceability of the document and Chapter 25.

Chapter 29, Qualification in Visual Determination of the Opacity of Emissions, was revised to delete the state requirements for visual determination of opacity of emissions and requirements for qualified observers and replacing it with adoption by reference of the federal method at 40 CFR part 60, appendix A, Method 9.

The state provided opportunity for public notice and comment prior to the adoption of these revisions pursuant to the requirements of 40 CFR 51.102.

Additional information on this rulemaking is contained in the Technical Support Document which is available from the EPA information contact above. EPA ACTION: EPA is taking final action to approve revisions to the Iowa SIP which amend and update the state air rules.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective July 12, 1993 unless, June 11, 1993 notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective July 12, 1993.

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

Under the Regulatory Flexibility Act, 5 U.S.C 600 *et seq.*, EPA must prepare a regulatory flexibility analysis

assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions from the requirements of Section 3 of Executive Order 12291. The Office of Management and Budget has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 1993. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Dated: April 7, 1993.

William W. Rice,
Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

SUBPART Q—Iowa

2. Section 52.820 is amended by adding paragraph (c)(57) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *
(57) On January 5, 1993, the Iowa Department of Natural Resources (IDNR) submitted air quality rule revisions to Iowa Administrative Code, Chapters 20, 22, 23, 24, 25, 29, and revisions to the Compliance Sampling Manual.

(i) Incorporation by reference.
(A) Revisions to Chapter 20 (20.2), Scope of Title-Definitions-Forms-Rules of Practice; Chapter 22 (22.3(1), 22.4, 22.5(2)), Controlling Pollution; Chapter 23 (23.2(3), 23.3(2), 23.3(3), 23.4(12)), Emission Standards for Contaminants; Chapter 24 (24.1(1), 24.1(5)), Excess Emission; Chapter 25, (25.1(7), 25.1(9)), Measurement of Emissions and rescind 25.1(10)d; and Chapter 29 (29.1), Qualification in Visual Determination of the Opacity of Emissions. These revisions were adopted by the Iowa Environmental Protection Commission on December 21, 1992, and became effective on February 24, 1993.

(ii) Additional material.
(A) Letter from Larry Wilson, IDNR, to Morris Kay, EPA, dated January 5, 1993, and the Compliance Sampling Manual, revised December 1992.

[FR Doc. 93–11226 Filed 5–11–93; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 721

[OPPTS–50578A; FRL–4077–7]

Alkali Metal Nitrites; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) which will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of alkali (e.g.,