

member" after the words "membership on the board".

7. In § 1160.201, paragraph (b) is revised to read as follows:

§ 1160.201 Term of office.

* * * * *

(b) No member shall serve more than two consecutive terms, except that any member who is appointed to serve for an initial term of one or two years shall be eligible to be reappointed for two three-year terms. Appointment to another position on the Board is considered a consecutive term.

§ 1160.209 Duties of the board.

8. In § 1160.209, paragraph (b) is revised to read as follows:

* * * * *

(b) To prepare and submit to the Secretary for approval a budget for each fiscal period of the anticipated expenses and disbursements in the administration of this subpart, including a description of and the probable costs of consumer education, promotion and research projects;

* * * * *

9. In § 1160.211, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 1160.211 Assessments.

(a)(1) Each fluid milk processor shall pay to the Board or its designated agent an assessment of \$.20 per hundredweight of fluid milk products processed and marketed commercially in consumer-type packages in the United States by such fluid milk processor. Producer-handlers required to pay assessments under section 113(g) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(g)), and not exempt under § 1160.108, shall also pay the assessment under this subpart. No assessments are required on fluid milk products exported from the United States. The Secretary shall have the authority to receive assessments on behalf of the Board.

(2) The Secretary shall announce the establishment of the assessment each month in the Class I price announcement in each milk marketing area by adding it to the Class I price for the following month. In the event the assessment is suspended for a given month, the Secretary shall inform all fluid milk processors of the suspension in the Class I price announcement for that month. The Secretary shall also inform fluid milk processors marketing fluid milk in areas not subject to milk marketing orders administered by the Secretary of the establishment or suspension of the assessment.

* * * * *

10. Section 1160.501 is amended by removing paragraph (a), redesignating paragraphs (b) through (d) as paragraphs (a) through (c), removing the the cross reference "1160.501(c)" in paragraph (c) and adding in its place "1160.501(b)", and revising newly designated paragraphs (a) and (b)(2) to read as follows:

§ 1160.501 Continuation referenda.

(a) The Secretary at any time may conduct a referendum among those persons who the Secretary determines were fluid milk processors during a representative period, as determined by the Secretary, on whether to suspend or terminate the order. The Secretary shall hold such a referendum at the request of the Board or of any group of such processors that marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed in the United States by fluid milk processors voting in the preceding referendum.

(b) * * *

(1) * * *

(2) By fluid milk processors voting in the referendum that marketed during a representative period, as determined by the Secretary, 40 percent or more of the volume of fluid milk products marketed in the United States by fluid milk processors voting in the referendum.

11. In § 1160.605, paragraph (a) is removed, paragraphs (b) through (c) are redesignated as paragraphs (a) through (b), and newly designated paragraph (b)(2) is revised to read as follows:

§ 1160.605 Date of referendum.

* * * * *

(b) * * *

(1) * * *

(2) Upon request of the Board or upon request of any group of fluid milk processors that among them marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed by fluid milk processors voting in the preceding referendum.

Dated: August 30, 1996.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 96-22788 Filed 9-5-96; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[Notice No. 839]

RIN 1512-AB41

Definitions for the Categories of Persons Prohibited From Receiving Firearms (95R-051P)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the regulations to provide definitions for the categories of persons prohibited from receiving or possessing firearms. The proposed definitions will facilitate the implementation of the national instant criminal background check system (NICS) required under the Brady Handgun Violence Prevention Act.

DATES: Written comments must be received on or before December 5, 1996.

ADDRESSES: Send written comments to: Chief, Regulations Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091-0221; ATTN: Notice No. 839.

FOR FURTHER INFORMATION CONTACT: James P. Ficareta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8230).

SUPPLEMENTARY INFORMATION:

Background

On November 30, 1993, Public Law 103-159 (107 Stat. 1536) was enacted, amending the Gun Control Act of 1968 (GCA), as amended (18 U.S.C. Chapter 44). Title I of Pub. L. 103-159, the "Brady Handgun Violence Prevention Act" (hereafter, "Brady" or "Brady law"), imposed a waiting period of 5 days before a licensed importer, licensed manufacturer, or licensed dealer may transfer a handgun to a nonlicensed individual (interim provision). Brady requires that the chief law enforcement officer within 5 business days make a reasonable effort to determine whether the nonlicensed individual (transferee) is prohibited by law from receiving or possessing the handgun sought to be purchased. The waiting period provisions of the law became effective on February 28, 1994, and will cease to apply on November 30, 1998.

Brady also provides for the establishment of a national instant criminal background check system (NICS) that a firearms licensee must contact before transferring any firearm to nonlicensed individuals (permanent provision). Brady requires that NICS be established not later than November 30, 1998.

Section 922(g) of the GCA prohibits certain persons from receiving, possessing, shipping, or transporting any firearm. These prohibitions apply to any person who—

- (1) Is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- (2) Is a fugitive from justice;
- (3) Is an unlawful user of or addicted to any controlled substance;
- (4) Has been adjudicated as a mental defective or who has been committed to a mental institution;
- (5) Is an alien illegally or unlawfully in the United States;
- (6) Has been discharged from the Armed Forces under dishonorable conditions;
- (7) Having been a citizen of the United States, has renounced his citizenship; or
- (8) Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner.

To implement NICS, Brady authorizes the development of hardware and software systems to link State criminal history check systems into the national system. It also authorizes the Attorney General to obtain official information from any U.S. department or agency on persons for whom receipt of a firearm would be in violation of the law.

In order to establish NICS in such a way that it incorporates the information needed for all the categories of prohibited persons mentioned above, records systems from both Federal and State agencies must be included in the national system. For example, records on fugitives are needed from State and Federal law enforcement agencies. Records on aliens who are illegally or unlawfully in the United States are needed from the Immigration and Naturalization Service, and records on citizenship renunciations are needed from the Department of State. To ensure that the information provided to the national system is accurate, the categories of prohibited persons must be clearly defined in the regulations.

The current regulations already provide a definition for “crime punishable by imprisonment for a term exceeding 1 year.” In the following

paragraphs ATF is proposing additional regulations for the various categories of persons who are prohibited from receiving or possessing firearms. In some instances, the proposed definition merely clarifies an existing regulation. In other cases, the proposed definitions are new.

Persons Who Are Under Indictment for a Crime Punishable by Imprisonment for a Term Exceeding 1 Year

The definition of “indictment” is based on 18 U.S.C. § 922(n) which makes it unlawful for any person who is under indictment for a crime punishable by imprisonment for a term exceeding one year to ship, transport, or receive firearms in interstate commerce. The proposed definition includes any formal accusation of a crime made by a prosecuting attorney (e.g., information), as distinguished from an “indictment” issued by a grand jury. In addition, the proposed definition includes criminal charges referred to a court-martial.

Persons Who Are Fugitives From Justice

The definition of “fugitive from justice” in the GCA includes any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding. 18 U.S.C. § 921(a)(15). The legislative history of this provision indicates that the term includes both felonies and misdemeanors. The Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90–351, Title IV, § 921(a)(14), 82 Stat. 226 (1968), limited the definition to crimes “punishable by imprisonment for a term exceeding one year.” However, the GCA amended Title IV to include any crime. To be a fugitive from justice, it is not necessary that the person left a State with the intent of fleeing the charges. *See, e.g., United States v. Spillane*, 913 F.2d 1079 (4th Cir. 1990). Rather, a person is a fugitive from justice if the person, knowing that charges are pending, purposefully leaves the State of prosecution and does not appear before the prosecuting tribunal. On the other hand, the definition does not include persons who are charged with crimes and there is no evidence that they left the State. For example, a person is not a fugitive from justice merely because he or she has outstanding traffic citations.

Persons Who Are Unlawful Users of or Addicted to Any Controlled Substance

With respect to the definition of “unlawful user of any controlled substance,” Federal law, 18 U.S.C. § 802, defines a controlled substance as a drug or other substance, or immediate precursor, included in schedules I–V.

For example, opium and cocaine are controlled substances, whereas alcoholic beverages and tobacco are specifically excluded from the definition.

Moreover, under the proposed definition, a person must be a current user of a controlled substance to be prohibited by the GCA from acquiring or possessing firearms. Although there is no statutory definition of current use, applicable case law indicates that a person need not have been using drugs at the precise moment that he or she acquired or possessed a firearm to be under firearms disabilities with respect to acquiring or possessing a firearm as an unlawful user of a controlled substance. In *United States v. Corona*, 849 F.2d 562 (11th Cir. 1988), a defendant purchased nine firearms from a dealer on six different occasions during a 3-year period. The Government proved unlawful use during the entire 3-year period with testimony of an acquaintance of the defendant who had used cocaine with the defendant, testimony of a psychiatrist that he treated the defendant for 2 years and that the defendant admitted drug use, and records of a rehabilitation center. The court noted that it was not necessary to show that the person was an illegal user or addict at the precise moment that the firearms were purchased. Furthermore, in *United States v. Ocequeda*, 564 F.2d 1363 (9th Cir. 1977), the Government proved the firearms disability by evidence of prolonged use of heroin before, during, and after the firearms purchases.

The proposed definition is also consistent with the definition of “current drug user” applied by the Department of Labor in its administration of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101–12213. Regulations issued pursuant to the ADA indicate that the term “current user” is not intended to be limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use occurred recently enough to indicate that the individual is actively engaged in such conduct. 29 CFR Part 1630, Appendix.

Similarly, the definition of “addicted to any controlled substance” is based on Federal law, 21 U.S.C. § 802, and defines an “addict” as an individual who uses any narcotic drug and who has lost the power of self-control with respect to the use of the narcotic drug.

Persons Who Have Been Adjudicated as Mental Defectives or Been Committed to a Mental Institution

Under the GCA, it is unlawful for any person who has been adjudicated a mental defective or committed to a mental institution to ship, transport, receive, or possess firearms. The legislative history of the GCA makes it clear that a formal adjudication or commitment by a court, board, commission or similar legal authority is necessary before firearms disabilities are incurred. H.R. Rep. 1956, 90th Cong., 2d Sess. 30 (1968). The plain language of the statute makes it clear that a formal commitment, for any reason, e.g., drug use, gives rise to firearms disabilities. However, the mere presence of a person in a mental institution for observation or a voluntary commitment to a mental hospital does not result in firearms disabilities.

With respect to the term "adjudicated as a mental defective," ATF has examined the legislative history of the term, applicable case law, and the interpretation of the term by other Federal agencies. The legislative history makes it clear that Congress would broadly apply the prohibition against the ownership of firearms by "mentally unstable" or "irresponsible" persons. 114 Cong. Rec. 21780, 21791, 21832, and 22270 (1968).

The legislative history of the GCA is reviewed in detail in *Huddleston v. United States*, 415 U.S. 814 (1974). The Court stated that "the principal purposes of the federal gun control legislation * * * was to curb crime by keeping 'firearms out of the hands of those not legally entitled to possess them, because of age, criminal background, or incompetency.'" 415 U.S. at 824 (citation omitted). Citing remarks by Congressman Celler, the Court added that " * * * no person can dispute the need to prevent persons with a history of mental disturbances from buying, owning or possessing firearms." *Huddleston*, 415 U.S. at 828. See also S. Rep. No. 1097, 90th Cong., 2d Sess. 2 (1968), U.S. Code Cong. & Ad. News 1968, pp. 2113-2114.

The Supreme Court also addressed the disability in *Barrett v. United States*, 423 U.S. 212 (1976). As the Court observed, the GCA demonstrated that Congress sought to keep firearms away from those persons Congress classified as potentially irresponsible and dangerous. "These persons are comprehensively barred by the Act from acquiring firearms by any means." *Barrett* 413 U.S. at 218.

Another case held that the GCA is designed to prohibit the receipt and

possession of firearms by individuals who are potentially dangerous, including those individuals who are mentally incompetent or are afflicted with mental illness. *U.S. v. Waters*, 23 F.3d 29, 35 (2d Cir. 1994), cert. den. 115 S. Ct. 185 (1994). In addition, the disability has been held to apply to persons in criminal cases who are found not guilty by reason of insanity. See *Buffaloe v. United States*, 449 F.2d 779 (4th Cir. 1971).

ATF has also examined the definition of "mental incompetent" used by the Department of Veterans Affairs. That definition covers persons who because of injury or disease lack the mental capacity to contract or manage their own affairs. 38 CFR § 3.353.

Based on the above, the proposed regulation will define "adjudicated as a mental defective" as a determination by lawful authority that persons are of marked subnormal intelligence, mentally ill, or mentally incompetent AND are found to be either a danger to themselves or to others as a result of mental disease or illness or because of injury or disease lack the mental capacity to contract or manage their own affairs. The term shall also include defendants in criminal cases who are determined by a verdict to be insane. It will not include persons who suffer from mental illness but have not been adjudicated by a lawful authority or committed to a mental institution. It would also not include persons who have been adjudicated to be suffering from a mental illness but who are not a danger to themselves or to others or do not lack the capacity to contract or manage their own affairs.

For purposes of this disability, the proposed regulations define "mental institution" to include mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

Persons Who Are Aliens and Are Illegally or Unlawfully in the United States

Another category of prohibited persons under the GCA includes aliens who are illegally or unlawfully in the United States. Based on the statutory language and relevant case law, the proposed definition of "alien illegally or unlawfully in the United States" includes any alien: who has entered the country illegally; nonimmigrant whose authorized period of admission has expired; student who has failed to maintain status as a student; alien under order of deportation whether or not he

or she has left the United States. The definition does not include aliens who are in "immigration parole" status in the United States pursuant to the Immigration and Naturalization Act. The proposed definition will provide that aliens who enter the country illegally and have not applied for legal status are subject to firearms disabilities. *United States v. Garcia*, 875 F.2d 257 (9th Cir. 1989). Further, students who enter the country legally but fail to maintain the student status required by their visas are illegal aliens subject to Federal firearms disabilities. *United States v. Bazargan*, 992 F.2d 844 (8th Cir. 1993).

Persons Who Have Been Discharged From the Armed Forces Under Dishonorable Conditions

The GCA makes it unlawful for persons who have been discharged from the Armed Forces under dishonorable conditions to receive or possess firearms. The legislative history of this provision shows that the prohibition originally applied to persons discharged under "other than honorable conditions." The Omnibus Crime and Safe Streets Act of 1968, Pub. L. 90-351, Title VII, § 1202(2), 82 Stat. 226 (1968). However, Title VII was amended by the GCA to limit the prohibition to persons discharged under "dishonorable conditions." Therefore, the proposed definition makes it clear that the prohibition applies only to persons discharged under dishonorable conditions but not to include persons separated from the Armed Forces as a result of other types of discharges, e.g., a bad conduct discharge.

Persons Who Have Renounced Their United States Citizenship

With respect to persons who have renounced their United States citizenship, Federal law provides that renunciation can only occur in a formal manner before a diplomatic or consular officer of the United States in a foreign state or before an officer designated by the Attorney General when the United States is in a state of war. 8 U.S.C. § 1481(a) (5) and (6).

Persons Who Are Subject to a Court Order Restraining Them From Committing Domestic Violence

ATF is proposing a definition of "actual notice" with respect to persons subject to court-issued restraining orders (§ 178.32). The Violent Crime Control and Law Enforcement Act of 1994 (the Act), Public Law 103-322, 108 Stat. 2014, September 13, 1994, amended the GCA to make it unlawful for persons subject to an order

restraining a person from harassing, stalking, or threatening an intimate partner of the person (e.g., spouse) to receive, ship, transport, or possess firearms. The Act provides that such restraining orders must have been issued after a hearing of which actual notice was given to the person and at which the person had an opportunity to participate. However, the Act does not define "actual notice." The proposed definition of actual notice conforms with the generally recognized legal definition of that term, i.e., notice that is either expressly and actually given or inferred from an examination of surrounding facts and circumstances. The definition would not include publication of notice in a newspaper.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined in E.O. 12866, because the economic effects flow directly from the underlying statute and not from this notice of proposed rulemaking. Accordingly, this proposal is not subject to the analysis required by this Executive order.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. This notice proposes definitions for the categories of persons prohibited from receiving or possessing firearms. The proposed definitions are necessary to implement the national instant criminal background check system required under the Brady law. This notice does not propose any reporting or recordkeeping requirements on firearms licensees. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Public Participation

ATF requests comments on the proposed regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC.

Drafting Information. The author of this document is James P. Ficareta, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspection, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

27 CFR Part 178—COMMERCE IN FIREARMS AND AMMUNITION is amended as follows:

Paragraph 1. The authority citation for 27 CFR Part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921-930; 44 U.S.C. 3504(h).

Par. 2. Section 178.11 is amended by revising the definitions for "discharged under dishonorable conditions", "fugitive from justice", and "indictment", and by adding definitions for "addicted to any controlled substance", "adjudicated as a mental defective", "alien illegally or unlawfully in the United States", "committed to a mental institution", "controlled substance", "mental institution", "renounced U.S. citizenship", and "unlawful user of any controlled substance" to read as follows:

§ 178.11 Meaning of terms.

* * * * *

Adjudicated as a mental defective. (a) A determination by a court, board, commission, or other lawful authority

that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

(1) Is a danger to himself or to others; or

(2) Lacks the mental capacity to contract or manage his own affairs.

(b) The term shall include a finding of insanity by a court in a criminal case.

Alien illegally or unlawfully in the United States. (a) Aliens who are unlawfully in the United States or are not in a valid nonimmigrant or immigrant status. The term includes any alien—

(1) Who has entered the country illegally;

(2) Nonimmigrant whose authorized period of admission has expired;

(3) Student who has failed to maintain status as a student; or

(4) Under an order of deportation, whether or not he or she has left the United States.

(b) The term does not include aliens who are in "immigration parole" status in the United States pursuant to the Immigration and Naturalization Act (INA).

* * * * *

Committed to a mental institution. A formal commitment of a person to a mental institution by a court, board, commission, or other legal authority. The term includes a commitment to a mental institution involuntarily. The term includes a commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

Controlled substance. A drug or other substance, or immediate precursor, as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802. The term includes, but is not limited to, marijuana, depressants, stimulants, and narcotic drugs. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in Subtitle E of the Internal Revenue Code of 1986, as amended.

* * * * *

Discharged under dishonorable conditions. Separation from the U.S. Armed Forces resulting from a Dishonorable Discharge. The term does not include separation from the Armed Forces resulting from any other discharge, e.g., a bad conduct discharge or a dismissal.

* * * * *

Fugitive from justice. Any person who has fled from any State to avoid

prosecution for a felony or a misdemeanor; or any person who leaves the State to avoid giving testimony in any criminal proceeding. The term also includes any person who knows that misdemeanor or felony charges are pending against such person and who leaves the State of prosecution.

* * * * *

Indictment. Includes an indictment or any formal accusation of a crime made by a prosecuting attorney, in any court under which a crime punishable by imprisonment for a term exceeding 1 year may be prosecuted or where a case has been referred to court-martial if the person is in the military.

* * * * *

Mental institution. Includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

* * * * *

Renounced U.S. citizenship. A person has renounced his U.S. citizenship if the person, having been a citizen of the United States, has renounced citizenship either—

(a) Before a diplomatic or consular officer of the United States in a foreign state pursuant to 8 U.S.C. § 1481(a)(5) and (6); or

(b) Before an officer designated by the Attorney General when the United States is in a state of war.

* * * * *

Unlawful user of or addicted to any controlled substance. A person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance; and any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person seeks to acquire a firearm or receives or possesses a firearm. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year, or multiple arrests for such offenses within the past five years if the

most recent arrest occurred within the past year.

* * * * *

Par. 3. Section 178.32(e) is added to read as follows:

§ 178.32 Prohibited shipment, transportation, possession, or receipt of firearms and ammunition by certain persons.

* * * * *

(e) The actual notice required by paragraphs (a)(8)(i) and (d)(8)(i) of this section is notice expressly and actually given, and brought home to the party directly, including service of process personally served on the party and service by mail. Actual notice also includes proof of facts and circumstances that raise the inference that the party received notice including, but not limited to, proof that notice was left at the party's dwelling house or usual place of abode with some person of suitable age and discretion residing therein; or proof that the party signed a return receipt for a hearing notice which had been mailed to the party. It does not include notice published in a newspaper.

Signed: May 29, 1996.

John W. Magaw,
Director.

Approved: June 6, 1996.

John P. Simpson,
Deputy Assistant Secretary, (Regulatory,
Tariff and Trade Enforcement).
[FR Doc. 96-22827 Filed 9-5-96; 8:45 am]

BILLING CODE 4810-31-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-146-2-9608b; FRL-5554-5]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Approval of Revisions To Permit Requirements, Definitions and Administrative Requirements

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the revisions to the Nashville/Davidson County portion of the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee for the purpose of revising the current regulations for the permit requirements for major sources of air pollution, including revisions to the general definitions, permit requirements, the Board's powers and duties, the variances and

hearings procedures, the measurement and reporting of emissions, and the testing procedures. In the final rules section of this Federal Register, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by October 7, 1996.

ADDRESSES: Written comments on this action should be addressed to Karen Borel, at the EPA Regional Office listed below. Copies of the documents relative to this 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 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.
Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Bureau of Environmental Health Services, Metropolitan Health Department, Nashville-Davidson County, 311-23rd Avenue, North, Nashville, Tennessee 37203.
Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 9th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1531.

FOR FURTHER INFORMATION CONTACT:

Interested persons wanting to examine documents relative to this action should make an appointment with the Region 4 Air Programs Branch at least 24 hours before the visiting day. To schedule the appointment or to request additional information, contact Karen Borel, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 EPA, 345 Courtland