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Federal Register

TUESDAY, OCTOBER 17, 1978

highlights

HOW TO USE THE FEDERAL REGISTER

TAMPA, FLORIDA, WORKSHOPS
October 23, 1978

See inside cover for details.

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TAMPA, FLORIDA, WORKSHOP

HOW TO USE THE FEDERAL REGISTER

FOR: Any person who must use the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register in cooperation with the University of South Florida Library and Department of Library, Media, and Information Studies, the University of Tampa Library, Hillsborough Community College Library and the Tampa Public Library.

WHAT: Free public workshop (approximately 2½ hours) to present:

1. Brief history of the Federal Register system.
2. Difference between legislation and regulations.
3. Relationship of Federal Register and the Code of Federal Regulations.
4. Important elements of a typical Federal Register document.
5. An introduction to the finding aids of the FR/CFR system.

WHEN: October 23, 1978, at 2:00 p.m.

WHERE: University of South Florida Tampa Campus, 4202 Fowler Avenue, College of Education Building, Room 302.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

RESERVATIONS: Call 813–974–2100, Ext. 301 or 813–974–2557.

federal register

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reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

List of Public Laws

This is a continuing listing of public bills that have become law, the text of which is not published in the FEDERAL REGISTER. Copies of the laws in individual pamphlet form (referred to as "slip laws") may be obtained from the U.S. Government Printing Office.

[Last Listing: October 16, 1978]

H.R. 9945 ..... Pub. L. 95-453
To amend the Act creating the Indian Claims Commission to repeal the provision limiting the activities of Commissioners during the two years following their terms of office. (Oct. 12, 1978; 92 Stat. 1110). Price: $.60.

S. 2640 ..... Pub. L. 95-454
"Civil Service Reform Act of 1978". (Oct. 13, 1978; 92 Stat. 1111). Price: $2.40.

H.R. 12603 ..... Pub. L. 95-455
To amend the Great Lakes Pilotage Act of 1960 in order to relieve the restrictive qualification standards for United States registered pilots off the Great Lakes. (Oct. 13, 1978; 92 Stat. 1228). Price: $.60.

S. 2249 ..... Pub. L. 95-456
To prohibit discrimination in rates charged by the Southwestern Power Administration. (Oct. 13, 1978; 92 Stat. 1230). Price: $.60.

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A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

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[3195-01-M]

Title 3—The President

Executive Order 12088 • **October 13, 1978**

Federal Compliance With Pollution Control Standards

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 22 of the Toxic Substances Control Act (15 U.S.C. 2621), Section 313 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1323), Section 1447 of the Public Health Service Act, as amended by the Safe Drinking Water Act (42 U.S.C. 300j-6), Section 118 of the Clean Air Act, as amended (42 U.S.C. 7418(b)), Section 4 of the Noise Control Act of 1972 (42 U.S.C. 4903), Section 6001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6961), and Section 301 of Title 3 of the United States Code, and to ensure Federal compliance with applicable pollution control standards, it is hereby ordered as follows:

1-1. *Applicability of Pollution Control Standards.*

1-101. The head of each Executive agency is responsible for ensuring that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under the control of the agency.

1-102. The head of each Executive agency is responsible for compliance with applicable pollution control standards, including those established pursuant to, but not limited to, the following:

(a) Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*).

(b) Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*).

(c) Public Health Service Act, as amended by the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*).

(d) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

(e) Noise Control Act of 1972 (42 U.S.C. 4901 *et seq.*).

(f) Solid Waste Disposal Act, as amended (42 U.S.C. 6901 *et seq.*).

(g) Radiation guidance pursuant to Section 274(h) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(h); see also, the Radiation Protection Guidance to Federal Agencies for Diagnostic X Rays approved by the President on January 26, 1978 and published at page 4377 of the FEDERAL REGISTER on February 1, 1978).

(h) Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401, 1402, 1411-1421, 1441-1444 and 16 U.S.C. 1431-1434).

(i) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*).

1-103. "Applicable pollution control standards" means the same substantive, procedural, and other requirements that would apply to a private person.

1-2. *Agency Coordination.*

1-201. Each Executive agency shall cooperate with the Administrator of the Environmental Protection Agency, hereinafter referred to as the Adminis-

trator, and State, interstate, and local agencies in the prevention, control, and abatement of environmental pollution.

1-202. Each Executive agency shall consult with the Administrator and with State, interstate, and local agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution.

1-3. *Technical Advice and Oversight.*

1-301. The Administrator shall provide technical advice and assistance to Executive agencies in order to ensure their cost effective and timely compliance with applicable pollution control standards.

1-302. The administrator shall conduct such reviews and inspections as may be necessary to monitor compliance with applicable pollution control standards by Federal facilities and activities.

1-4. *Pollution Control Plan.*

1-401. Each Executive agency shall submit to the Director of the Office of Management and Budget, through the Administrator, an annual plan for the control of environmental pollution. The plan shall provide for any necessary improvement in the design, construction, management, operation, and maintenance of Federal facilities and activities, and shall include annual cost estimates. The Administrator shall establish guidelines for developing such plans.

1-402. In preparing its plan, each Executive agency shall ensure that the plan provides for compliance with all applicable pollution control standards.

1-403. The plan shall be submitted in accordance with any other instructions that the Director of the Office of Management and Budget may issue.

1-5. *Funding.*

1-501. The head of each Executive agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the agency budget.

1-502. The head of each Executive agency shall ensure that funds appropriated and apportioned for the prevention, control and abatement of environmental pollution are not used for any other purpose unless permitted by law and specifically approved by the Office of Management and Budget.

1-6. *Compliance With Pollution Controls.*

1-601. Whenever the Administrator or the appropriate State, interstate, or local agency notifies an Executive agency that it is in violation of an applicable pollution control standard (see Section 1-102 of this Order), the Executive agency shall promptly consult with the notifying agency and provide for its approval a plan to achieve and maintain compliance with the applicable pollution control standard. This plan shall include an implementation schedule for coming into compliance as soon as practicable.

1-602. The Administrator shall make every effort to resolve conflicts regarding such violation between Executive agencies and, on request of any party, such conflicts between an Executive agency and a State, interstate, or a local agency. If the Administrator cannot resolve a conflict, the Administrator shall request the Director of the Office of Management and Budget to resolve the conflict.

1-603. The Director of the Office of Management and Budget shall consider unresolved conflicts at the request of the Administrator. The Director shall seek the Administrator's technological judgment and determination with regard to the applicability of statutes and regulations.

1-604. These conflict resolution procedures are in addition to, not in lieu of, other procedures, including sanctions, for the enforcement of applicable pollution control standards.

1-605. Except as expressly provided by a Presidential exemption under this Order, nothing in this Order, nor any action or inaction under this Order, shall be construed to revise or modify any applicable pollution control standard.

1-7. *Limitation on Exemptions.*

1-701. Exemptions from applicable pollution control standards may only be granted under statutes cited in Section 1-102(a) through 1-102(f) if the President makes the required appropriate statutory determination: that such exemption is necessary (a) in the interest of national security, or (b) in the paramount interest of the United States.

1-702. The head of an Executive agency may, from time to time, recommend to the President through the Director of the Office of Management and Budget, that an activity or facility, or uses thereof, be exempt from an applicable pollution control standard.

1-703. The Administrator shall advise the President, through the Director of the Office of Management and Budget, whether he agrees or disagrees with a recommendation for exemption and his reasons therefor.

1-704. The Director of the Office of Management and Budget must advise the President within sixty days of receipt of the Administrator's views.

1-8. *General Provisions.*

1-801. The head of each Executive agency that is responsible for the construction or operation of Federal facilities outside the United States shall ensure that such construction or operation complies with the environmental pollution control standards of general applicability in the host country or jurisdiction.

1-802. Executive Order No. 11752 of December 17, 1973, is revoked.

Jimmy Carter

THE WHITE HOUSE,
October 13, 1978.

[FR Doc. 78-29406 Filed 10-13-78; 3:40 pm]

EDITORIAL NOTE: The President's statement of Oct. 13, 1978, on signing Executive Order 12088 and his memorandum for the heads of departments and agencies, dated Oct. 13, 1978, on Federal compliance with pollution control standards are printed in the Weekly Compilation of Presidential Documents (vol. 14, no. 41).

[3195-01-M]

PROCLAMATION 4605

National Jogging Day, 1978

By the President of the United States of America

A Proclamation

Millions of Americans have come to view jogging as an enjoyable, affordable, and effective way to keep in shape.

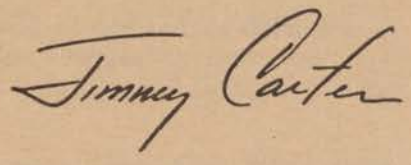
Most medical authorities agree with them, saying that a reasonable and regular program of jogging improves the heart, the circulatory system, and the lungs, while helping runners take off, or ward off, excess weight.

Everyone who has run knows that its most important value is in removing tension and allowing a release from whatever other cares the day may bring. It is a blessing to our Nation that so many of our people have rediscovered this simple pleasure.

By Joint Resolution (H.J. Res. 685) the Congress has designated October 14, 1978, as National Jogging Day.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby declare October 14, 1978, as National Jogging Day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of October, in the year of our Lord nineteen hundred seventy-eight and of the Independence of the United States of America the two hundred and third.



[FR Doc. 78-29430 Filed 10-13-78; 5:01 pm]

[3195-01-M]

REORGANIZATION PLAN NO. 4 OF 1978

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, August 10, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.[1]

Employee Retirement Income Security Act Transfers

SECTION 101. *Transfer to the Secretary of the Treasury.*

Except as otherwise provided in Sections 104 and 106 of this Plan, all authority of the Secretary of Labor to issue the following described documents pursuant to the statutes hereinafter specified is hereby transferred to the Secretary of the Treasury:

(a) regulations, rulings, opinions, variances and waivers under Parts 2 and 3 of Subtitle B of Title I and subsection 1012(c) of Title II of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 note) (hereinafter referred to as "ERISA"),

EXCEPT for sections and subsections 201, 203(a)(3)(B), 209, and 301(a) of ERISA;

(b) such regulations, rulings, and opinions which are granted to the Secretary of Labor under Sections 404, 410, 411, 412, and 413 of the Internal Revenue Code of 1954, as amended, (hereinafter referred to as the "Code"),

EXCEPT for subsection 411(a)(3)(B) of the Code and the definitions of "collectively bargained plan" and "collective bargaining agreement" contained in subsections 404 (a)(1)(B) and (a)(1)(C), 410 (b)(2)(A) and (b)(2)(B), and 413(a)(1) of the Code; and

(c) regulations, rulings, and opinions under subsections 3(19), 3(22), 3(23), 3(24), 3(25), 3(27), 3(28), 3(29), 3(30), and 3(31) of Subtitle A of Title I of ERISA.

SECTION 102. *Transfers to the Secretary of Labor.*

Except as otherwise provided in Section 105 of this Plan, all authority of the Secretary of the Treasury to issue the following described documents pursuant to the statutes hereinafter specified is hereby transferred to the Secretary of Labor:

(a) regulations, rulings, opinions, and exemptions under section 4975 of the Code,

EXCEPT for (i) subsections 4975 (a), (b), (c)(3), (d)(3), (e)(1), and (e)(7) of the Code; (ii) to the extent necessary for the continued enforcement of subsections 4975 (a) and (b) by the Secretary of the Treasury, subsections 4975(f)(1), (f)(2), (f)(4), (f)(5) and (f)(6) of the Code; and (iii)

[1] As amended September 20, 1978.

exemptions with respect to transactions that are exempted by subsection 404(c) of ERISA from the provisions of Part 4 of Subtitle B of Title I of ERISA; and

(b) regulations, rulings, and opinions under subsection 2003(c) of ERISA,

EXCEPT for subsection 2003(c)(1)(B).

SECTION 103. *Coordination Concerning Certain Fiduciary Actions.*

In the case of fiduciary actions which are subject to Part 4 of Subtitle B of Title I of ERISA, the Secretary of the Treasury shall notify the Secretary of Labor prior to the time of commencing any proceeding to determine whether the action violates the exclusive benefit rule of subsection 401(a) of the Code, but not later than prior to issuing a preliminary notice of intent to disqualify under that rule, and the Secretary of the Treasury shall not issue a determination that a plan or trust does not satisfy the requirements of subsection 401(a) by reason of the exclusive benefit rule of subsection 401(a), unless within 90 days after the date on which the Secretary of the Treasury notifies the Secretary of Labor of pending action, the Secretary of Labor certifies that he has no objection to the disqualification or the Secretary of Labor fails to respond to the Secretary of the Treasury. The requirements of this paragraph do not apply in the case of any termination or jeopardy assessment under sections 6851 or 6861 of the Code that has been approved in advance by the Commissioner of Internal Revenue, or, as delegated, the Assistant Commissioner for Employee Plans and Exempt Organizations.

SECTION 104. *Enforcement by the Secretary of Labor.*

The transfers provided for in Section 101 of this Plan shall not affect the ability of the Secretary of Labor, subject to the provisions of Title III of ERISA relating to jurisdiction, administration, and enforcement, to engage in enforcement under Section 502 of ERISA or to exercise the authority set forth under Title III of ERISA, including the ability to make interpretations necessary to engage in such enforcement or to exercise such authority. However, in bringing such actions and in exercising such authority with respect to Parts 2 and 3 of Subtitle B of Title I of ERISA and any definitions for which the authority of the Secretary of labor is transferred to the Secretary of the Treasury as provided in Section 101 of this Plan, the Secretary of Labor shall be bound by the regulations, rulings, opinions, variances, and waivers issued by the Secretary of the Treasury.

SECTION 105. *Enforcement by the Secretary of the Treasury.*

The transfers provided for in Section 102 of this Plan shall not affect the ability of the Secretary of the Treasury, subject to the provisions of Title III of ERISA relating to jurisdiction, administration, and enforcement, (a) to audit plans and employers and to enforce the excise tax provisions of subsections 4975(a) and 4975(b) of the Code, to exercise the authority set forth in subsections 502(b)(1) and 502(h) of ERISA, or to exercise the authority set forth in Title III of ERISA, including the ability to make interpretations necessary to audit, to enforce such taxes, and to exercise such authority; and (b) consistent with the coordination requirements under Section 103 of this Plan, to disqualify, under section 401 of the Code, a plan subject to Part 4 of Subtitle B of Title I of ERISA, including the ability to make the interpretations necessary to make such disqualification. However, in enforcing such excise taxes and, to the extent applicable, in disqualifying such plans the Secretary of

the Treasury shall be bound by the regulations, rulings, opinions, and exemptions issued by the Secretary of Labor pursuant to the authority transferred to the Secretary of Labor as provided in Section 102 of this Plan.

SECTION 106. *Coordination for Section 101 Transfers.*

(a) The Secretary of the Treasury shall not exercise the functions transferred pursuant to Section 101 of this Plan to issue in proposed or final form any of the documents described in subsection (b) of this Section in any case in which such documents would significantly impact on or substantially affect collectively bargained plans unless, within 100 calendar days after the Secretary of the Treasury notifies the Secretary of Labor of such proposed action, the Secretary of Labor certifies that he has no objection or he fails to respond to the Secretary of the Treasury. The fact of such a notification, except for such notification for documents described in subsection (b)(iv) of this Section, from the Secretary of the Treasury to the Secretary of Labor shall be announced by the Secretary of Labor to the public within ten days following the date of receipt of the notification by the Secretary of Labor.

(b) The documents to which this Section applies are:

(i) amendments to regulations issued pursuant to subsections 202(a)(3), 203(b)(2) and (3)(A), 204(b)(3)(A), (C), and (E), and 210(a)(2) of ERISA, and subsections 410(a)(3) and 411(a)(5), (6)(A), and (b)(3)(A), (C), and (E), 413(b)(4) and (c)(3) and 414(f) of the Code;

(ii) regulations issued pursuant to subsections 204(b)(3)(D), 302(c)(8), and 304(a) and (b)(2)(A) of ERISA, and subsections 411(b)(3)(D), 412(c)(8), (e), and (f)(2)(A) of the Code; and

(iii) revenue rulings (within the meaning of 26 CFR Section 601.201(a)(6)), revenue procedures, and similar publications, if the rulings, procedures and publications are issued under one of the statutory provisions listed in (i) and (ii) of this subsection; and

(iv) rulings (within the meaning of 26 CFR Section 601.201(a)(2)) issued prior to the issuance of a published regulation under one of the statutory provisions listed in (i) and (ii) of this subsection and not issued under a published Revenue Ruling.

(c) For those documents described in subsections (b)(i), (b)(ii) and (b)(iii) of this Section, the Secretary of Labor may request the Secretary of the Treasury to initiate the actions described in this Section 106 of this Plan.

SECTION 107. *Evaluation.*

On or before January 31, 1980, the President will submit to both Houses of the Congress an evaluation of the extent to which this Reorganization Plan has alleviated the problems associated with the present administrative structure under ERISA, accompanied by specific legislative recommendations for a long-term administrative structure under ERISA.

SECTION 108. *Incidental Transfers.*

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for

terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

SECTION 109. *Effective Date.*

The provisions of this Reorganization Plan shall become effective at such time or times, on or before April 30, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5, United States Code.

[FR Doc. 78-29497 Filed 10-16-78; 12:05 pm]

LEGISLATIVE HISTORY:

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:
Vol. 14, No. 32: Aug. 10, Presidential message transmitting Reorganization Plan No. 4 of 1978 to Congress. (Also printed as House Document No. 95-375.)
Vol. 14, No. 38: Sept. 20, Presidential message transmitting an amendment to Reorganization Plan No. 4 of 1978. (Also printed as House Document No. 95-384.)
HOUSE REPORT No. 95-1658 accompanying H. Res. 1308 (Comm. on Government Operations).
SENATE REPORT No. 95-1281 accompanying S. Res. 537 (Comm. on Governmental Affairs).
CONGRESSIONAL RECORD, Vol. 124 (1978):
Aug. 10, H. Res. 1308, resolution of disapproval, introduced in House and referred to Committee on Government Operations.
Aug. 11, S. Res. 537, resolution of disapproval, introduced in Senate and referred to Committee on Governmental Affairs.
Oct. 13, H. Res. 1308 rejected by House.
Oct. 13, S. Res. 537 rejected by Senate.

EDITORIAL NOTE: The President's statement of Oct. 14, 1978, on congressional action on Reorganization Plan No. 4 of 1978, is printed in the Weekly Compilation of Presidential Documents (vol. 14, no. 42).

rules and regulations

[1505-01-M]

Title 7—Agriculture

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—EXPORT PROGRAMS

[Amdt. 7]

PART 1488—FINANCING OF SALES OF AGRICULTURAL COMMODITIES

Subpart A—Financing of Export Sales of Agricultural Commodities From Private Stocks Under CCC Export Credit Sales Program (GSM-5)

MISCELLANEOUS AMENDMENTS

Correction

In FR Doc. 78-27926 appearing on page 45551 in the issue of Tuesday, October 3, 1978, in the middle column, the authority citation near the end of the document should read as follows:

(Sec. 5(f), 62 Stat. 1072 (15 U.S.C. 714c); sec. 4, 80 Stat. 1528 (7 U.S.C. 1707a).)

[6210-01-M]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Z; FC-0155]

PART 226—TRUTH IN LENDING

Official Staff Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation(s).

SUMMARY: The Board is publishing the following official staff interpretation of regulation Z, regarding § 226.8(c) disclosures. The agency is taking this action in response to a request for interpretation of this regulation.

EFFECTIVE DATE: On or after November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Glenn E. Loney, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-3867.

SUPPLEMENTARY INFORMATION: (1) Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public subject to certain limitations stated in 12 CFR 261.6.

(2) An opportunity for public comment on an official staff interpretation may be provided upon request of interested parties and in accordance with 12 CFR 226.1(d)(2)(ii). As provided by 12 CFR 226.1(d)(3) every request for public comment must be in writing, should clearly identify the number of the official staff interpretation in question, should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and must be postmarked or received by the Secretary's office before the effective date of the interpretation. The request must also state the reasons why an opportunity for public comment would be appropriate.

(3) 15 U.S.C. 1640(f).

12 CFR Part 226, FC-0155

§ 226.8(c)—Where disclosures required by § 226.8(c) are repetitive or inapplicable, the disclosure of such terms may be combined or omitted, for example, "unpaid balance," "unpaid balance of cash price," and "amount financed."

SEPTEMBER 21, 1978.

This is in response to your letter of * * *, requesting an official staff interpretation of § 226.8(c) of regulation Z.

You state that your client, a publicly held corporation owning and operating health spa facilities, offers spa memberships to the public on credit. You indicate that your client imposes a charge for credit and makes credit sale disclosures pursuant to § 226.8(c).

Although disclosure of the "unpaid balance" is required by § 226.8(c)(5), your client omits this disclosure because no other charges, within the meaning of § 226.8(c)(4), are added to the "unpaid balance of cash price" and consequently, the "unpaid balance" would be identical to the "unpaid balance of cash price." You state that your client relies on the wording of § 226.8(c) that only applicable items need be disclosed to justify omitting the disclosure of "unpaid balance." In addition, you note that public information letters 213, 536, and 740 support this position. These letters reason that, where certain charges are omitted and required terms (for example, "cash price" and "amount financed") are identical in amount, the disclosure of one or more such terms may be inapplicable and the terms may be combined or omitted as appropriate. Letter 536 specifically approved omitting the term "unpaid balance" where there are no other charges to be disclosed pursuant to § 226.8(c)(4) and no prepaid finance charges or required deposit balances to be disclosed pursuant to § 226.8(c)(6).

You request that the staff issue an official interpretation reiterating these informal positions taken previously concerning omission of the term "unpaid balance." In particular, you ask whether it would be proper to make a single disclosure either combining the "unpaid balance of cash price" and the "amount financed" and omitting the "unpaid balance" or combining the "unpaid balance of cash price," the "unpaid balance," and the "amount financed" where there are no § 226.8(c) (4) or (6) charges. The staff believes that the positions taken in the letters previously cited are correct and that either of the combined disclosures which you suggest would be permissible.

However, as you note, there are at least two Federal district courts which apparently have reached decisions contrary to the opinion expressed in this letter. The effect of an official staff interpretation that is contrary to such decisions is uncertain. Therefore, the staff believes that the most prudent course is to follow the court decisions in those jurisdictions in which a court has addressed the issue.

This is an official staff interpretation of § 226.8(c) of regulation Z, issued in accordance with § 226.1(d)(2) of the regulation and limited in its application to the facts and issues discussed herein. It will become effective November 16, 1978, unless a request for public comment made in accordance with the Board's procedures, is received and granted. We will notify you if the effective date of the interpretation is suspended because such a request is received.

Although you enclosed a copy of your client's disclosure form with your letter, nothing herein should be construed as either a review or approval of any portion of that form.

I trust this is responsive to your inquiry.

Sincerely,

NATHANIEL E. BUTLER,
Associate Director.

Board of Governors of the Federal Reserve System, October 6, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-29259 Filed 10-16-78; 8:45 am]

[6210-01-M]

[Reg. Z; FC-0156]

PART 226—TRUTH IN LENDING

Official Staff Interpretations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation(s).

SUMMARY: The Board is publishing the following official staff interpretation of regulation Z, regarding the application of various requirements of § 226.15 to open end vehicle lease transactions that employ a "simple interest" accounting method. The agency is taking this action in response to a request for interpretation of this regulation.

EFFECTIVE DATE: On or after November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Dolores Smith, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2412.

SUPPLEMENTARY INFORMATION: (1) Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public subject to certain limitations stated in 12 CFR 261.6.

(2) An opportunity for public comment on an official staff interpretation may be provided upon request of interested parties and in accordance with 12 CFR 226.1(d)(2)(ii). As provided by 12 CFR 226.1(d)(3) every request for public comment must be in writing, should clearly identify the number of the official staff interpretation in question, should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and must be postmarked or received by the Secretary's office before the effective date of the interpretation. The request must also state the reasons why an opportunity for public comment would be appropriate.

(3) 15 U.S.C. 1640(f).

12 CFR Part 226, FC-0156

§ 226.15(b)—Lessor is not required to disclose, in a "simple interest accounting lease," continued accrual of lease charge when payment is late or vehicle is not returned upon termination as either a late payment charge or as a charge for delinquency or default.

§ 226.15(b)(15)—Limitations on lessee's liability do not apply to additional amounts that have accrued because lessee has failed to make timely payments in a "simple interest accounting lease."

OCTOBER 5, 1978.

This is in response to your letter of * * *, in which you request an official staff interpretation with respect to the consumer leasing disclosure requirements of regulation Z. Certain of your questions are being answered in this official staff interpretation; the others will be dealt with separately in an unofficial interpretation.

Your questions concern the application of various requirements of § 226.15 to open end vehicle lease transactions that employ a "simple interest" accounting method. You explain that simple interest lease transactions are analogous to simple interest loans in consumer credit transactions, and describe the accounting method as involving the application of a periodic rate to the unpaid lease balance (the outstanding balance of the vehicle's capitalized cost and other amounts being financed, such as insurance premiums). That rate (which could be annual or daily rate) is applied to the decreasing lease balance until the vehicle is returned to the lessor. You term the product the "lease charge."

You indicate that disclosure of the schedule of payments required by § 226.15(b)(3) is made on the assumption that all periodic payments will be received by the lessor on their respective due dates, and that the lessee wil return the vehicle to the lessor on the date the lease ends. Because the lease charge is calculated on the actual lease balance when a payment is received, periodic payments made before the scheduled due date will result in a smaller lease charge than anticipated or disclosed, and in a smaller total of periodic payments. Conversely, the receipt by the lessor of a periodic payment after its due date will result in the imposition of an increased lease charge. If the vehicle is not returned to the lessor on the date the lease terminates, the lease charge continues to accrue on the unpaid lease balance until the vehicle is returned.

You first ask whether the simple interest accounting method must be disclosed as the "method of determining the amount of any penalty or other charge for * * * late payments" under § 226.15(b)(10). It is the staff's opinion that the additional lease charge which accrues on the lease balance when a periodic payment is made after the due date does not constitute a penalty or other charge for late payment, and the lessor need not disclose the method of computing the charge under § 226.15(b)(10). This accounting method is analogous to that used in simple interest loans, and the staff believes the analysis regarding the continued accrual of interest in closed end credit transactions set forth in FC-0083 and public information letter 1099 is also applicable to the continued accrual of lease charges.

You also note that the lessor imposes a specified late payment charge if a payment is not received with in 10 days of its due date. This charge, which is imposed in addition to the continued accrual of the lease charge, must, of course, be disclosed under § 226.15(b)(10).

Your second question is whether the continued accrual of the lease charge on the unpaid lease balance after the termination date of the lease must be disclosed as a "penalty or other charge for delinquency [or] default" under § 226.15(b)(10). In the staff's opinion, accrual of the lease charge after termination of the lease because of the lessee's failure to return the vehicle does not constitute a charge under § 226.15(b)(10) in a simple interest lease transaction, so long as the lease charge accrues at the same or a lower rate as under the lease. This position is also analogous to that taken by the staff in FC-0083 with respect to accrual of interest on the unpaid principal balance of a simple interest loan after maturity. Where the lease charge accrues at a higher rate after the lease terminates than during the lease term, the method of determining the additional charge should be disclosed under § 226.15(b)(10). (See public information letter 1282 regarding posttermination default charges for not returning the leased vehicle.)

Your final question is whether the limitations on the lessee's liability at early termination or at the end of the lease term, set forth in section 183(a) of the Consumer Leasing Act and in § 226.15(b)(15)(ii) of the regulation, are applicable to that portion of the vehicle's capitalized cost that remains unamortized at early termination or at the end of the term because of the lessee's failure to make one or more periodic payments on the due date. These provisions provide that, in general, the lessor may not collect more than three times the average monthly payment from the lessee in leases where the lessee is liable for the difference between the estimated and realized values at early termination or at the end of the lease term.

In the staff's opinion, a lessor may collect amounts that have accrued because of the lessee's late payments notwithstanding these limitations on liability. The lessee's liability in these instances arises from the failure to make timely payments (resulting in increased lease charges and slower amortization of the capitalized cost) and is unrelated to the calculations governed by section 183(a) and § 226.15(b)(15)(ii).

This is an official staff interpretation issued pursuant to § 226.1(d)(2) of regulation Z. It will become effective November 16, 1978, unless the Board receives a proper and timely request for public comment. You will be notified if such a request is received.

Sincerely,

NATHANIEL E. BUTLER,
Associate Director.

Board of Governors of the Federal Reserve System, October 11, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-29260 Filed 10-16-78; 8:45 am]

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. C-2926]

PART 13—PROHIBITED TRADE PRACTICES AND AFFIRMATIVE CORRECTIVE ACTIONS

American Service Bureau, Inc.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require a Chicago, Ill., insurance investigation firm to cease soliciting or collecting impermissible information as a means of identifying consumers seeking required disclosure of file contents; and unfairly or deceptively attempting to obtain from consumers authorization to elicit excessive information. Additionally, the firm would be required to provide those persons requesting or disputing file information a prescribed statement regarding their rights under the Fair Credit Reporting Act.

DATE: Complaint and order issued September 7, 1978.[1]

FOR FURTHER INFORMATION CONTACT:

William C. Erxleben, Director, Seattle Regional Office, Federal Trade Commission, 28th Floor, Federal Building, 915 Second Avenue, Seattle, Wash. 98174, 206-442-4655.

SUPPLEMENTARY INFORMATION: On Tuesday, June 27, 1978, there was published in the FEDERAL REGISTER, 43 FR 27849, a proposed consent agreement with analysis in the matter of American Service Bureau, Inc. for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings, and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Confidential Information Unfairly: § 13.1 Acquiring confidential information unfairly. Subpart—Collecting, Assembling, Furnishing or Utilizing Consumer Reports: § 13.382 Collecting, assembling, furnishing or utilizing consumer reports; § 13.382-1 Confidentiality, accuracy, relevancy, and proper utilization; § 13.382-1(a) Fair Credit Reporting Act; § 13.382-5 Formal regulatory and/or statutory requirements; § 13.382-5(a) Fair Credit Reporting Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records. Subpart—Securing Information by Subterfuge: § 13.2168 Securing information by subterfuge.

(Sec. 6, 38 Stat. 721 (15 U.S.C. 46). Interpret or apply sec. 5, 38 Stat. 719, as amended; 82 Stat. 146, 147; 84 Stat. 1127-36; 15 U.S.C. 1601 et seq.)

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-29258 Filed 10-16-78; 8:45 am]

[1] Copies of the complaint, and the decision and order are filed with the original document.

[6355-01-M]

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

PART 1402—CB BASE STATION ANTENNAS, TV ANTENNAS, AND SUPPORTING STRUCTURES

Approval of Data Submission Requirements and Amendment to Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission announces the approval by the General Accounting Office of the CPSC requirement that manufacturers (including importers) of: (1) Outdoor citizens band (CB) base station antennas, (2) outdoor television antennas, and (3) antenna supporting structures, furnish to the CPSC samples of the instructions, labels, and warning statements that are required by the Commission's regulations to address the hazard of contacting electric powerlines when the products are being put up or taken down. This document makes a technical amendment to the regulations to refer to the approval. In addition, the Commission amends the rule requiring that the manufacturers of these products provide instructions, labels, and warning statements to consumers to clarify that the rule does not apply to antenna supporting structures 5 feet or less in height.

DATE: This amendment becomes effective October 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Harleigh Ewell, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, phone 202-634-7770.

SUPPLEMENTARY INFORMATION: On June 29, 1978, the Commission issued 16 CFR part 1402 (43 FR 28392), which requires manufacturers of: (1) Outdoor citizens band (CB) base station antennas, (2) outdoor television antennas, and (3) antenna supporting structures, to provide purchasers with (a) instructions on how to avoid the hazard of contacting electric powerlines with the antenna or supporting structure while putting it up or taking it down, (b) labels on the antennas and supporting structures warning of this hazard and referring the reader to the instructions, and (c) statements on the packaging or parts container, and at the beginning of the instructions, warning of this hazard and referring the reader to the instructions. The rule also requires the manufacturers and importers to provide samples of the instructions, labels, and warning statements to the Commission by October 27, 1978. The rule was issued because the Commission believes that it will help to prevent injuries and death from electric shock caused by contact with electric powerlines when persons put up and take down antennas or antenna supporting structures. (The Commission estimates that approximately 495 persons were electrocuted in incidents involving communication antennas during the 2-year period of 1975-76.)

Pursuant to 44 U.S.C. 3501-3512 and 4 CFR part 10 (the Federal Reports Act of 1942, as amended, and its implementing regulations), the Commission applied to the U.S. General Accounting Office (GAO) for approval of the requirement to submit samples to the Commission. On September 15, 1978, GAO informed the Commission that the requirement had been approved, stating that the information requested does not unnecessarily duplicate information already available from other Federal sources, the burden on respondents has been minimized, and the reporting requirement is otherwise consistent with the provisions of the law.

In order to comply with GAO's regulations (4 CFR 10.12), the Commission is amending part 1402 to include a reference to the approval of the reporting requirement.

In addition, part 1402 is being corrected to point out that it does not apply to supporting structures that are 5 feet or less in length. This limitation on the coverage of the rule was discussed in the preamble of the document issuing the final rule and was also contained in the proposal, but was

inadvertently omitted from the text of the final rule.

Therefore, the Commission amends title 16, chapter II, subchapter B, part 1402, of the Code of Federal Regulations as follows:

§ 1402.4 [Amended]

1. Section 1402.4(b) is amended by adding a new paragraph (b)(3), reading as follows:

* * * * *

(b) * * *

(3) The reporting requirement contained in this section has been approved by the U.S. General Accounting Office under No. B-180232 (R0555).

§ 1402.1 [Amended]

2. The first sentence of § 1402.1(b)(3) is amended to read as follows:

* * * * * *

(b) * * *

(3) Antenna supporting structures, which are elements over 5 feet in length that are intended to support these types of antennas at a higher elevation.

* * * * *

Effective date: This amendment becomes effective October 17, 1978.

Dated: October 12, 1978.

SADYE E. DUNN.
Secretary, Consumer Product Safety Commission.

[FR Doc. 78-29268 Filed 10-16-78; 8:45 am]

[6351-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 30—FRAUD IN CONNECTION WITH COMMODITY TRANSACTIONS

Amendment of Statutory Authority Citations

AGENCY: Commodity Futures Trading Commission.

ACTION: Amendment of statutory authority citations.

SUMMARY: The Commodity Futures Trading Commission has amended the statutory authority citations applicable to § 30.03 of its regulations, 17 CFR 30.03 (1977), which makes unlawful fraudulent activities in connection with so-called leverage transactions in silver or gold bullion or bulk coins. The amendment reflects the enactment of the Futures Trading Act of 1978. Among other things, that Act incorporates into the Commodity Exchange Act the statutory authority formerly contained in section 217 of the Commodity Futures Trading Commission Act of 1974, under which § 30.03 was in part adopted.

DATE: Effective date: October 17, 1978.

ADDRESS: Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT:

Teresa Hermosillo, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, 202-254-5347.

SUPPLEMENTARY INFORMATION: Section 30.03 was adopted after public notice and comment effective June 24, 1975, under the authority conferred by sections 2(a) and 8a of the Commodity Exchange Act, 7 U.S.C. 2 and 12a (1976), and section 217 of the Commodity Futures Trading Commission Act of 1974, 7 U.S.C. 15a (1976).[1] (40 FR 26504 (June 24, 1975).) Section 217 basically provided that no person may offer to enter into, enter into, or confirm the execution of leverage transactions involving gold or silver bullion or bulk coins contrary to Commission rules and regulations designed to insure the financial solvency of the transactions or to prevent manipulation and fraud. On September 30, 1978, the President signed into law the Futures Trading Act of 1978, Pub. L. 95-405, 92 Stat. 865 et seq. Sections 23 and 24 of that Act, among other things, add a new section 19 to the Commodity Exchange Act which incorporates the relevant substantive provisions of section 217 of the Commodity Futures Trading Commission Act of 1974 and simultaneously grant the Commission new regulatory authority over leverage transactions in commodities other than gold and silver coins and bullion. In this connection, section 2 of the Futures Trading Act of 1978 also replaces the reference to section 217 in section 2(a) of the Commodity Exchange Act with a reference to the new section 19.

In order to reflect these statutory changes, the Commission has determined to amend the statutory authority citations applicable to § 30.03. These amendments are technical in nature and do not alter existing law. Thus, fraudulent activity in connection with the transactions in silver or gold bullion or bulk coins described in § 30.03 continues to be a violation of the Commission's regulations, as it has been since June 24, 1975. For the foregoing reasons, the Commission is satisfied that the notice and comment provisions of the Commodity Exchange Act and of the Administrative Procedure Act, 5 U.S.C. 553(d), do not apply to these amendments.

This notice of amendment is issued under the authority of sections 2(a), 8a, and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 2 and 12a and Pub. L. 95-405, 92 Stat. 865, 876-877.

Based upon the foregoing the Commission hereby amends the statutory authority citations applicable to part 30 of chapter I of title 17 of the Code of Federal Regulations to read as follows:

AUTHORITY: Secs. 2(a), 4c, and 8a, 42 Stat. 998, 49 Stat. 1494, 1500, as amended by 49 Stat. 1401, 52 Stat. 205, 54 Stat. 1059, 68 Stat. 913, 69 Stat. 375, 82 Stat. 26, 413, 88 Stat. 1392, 1395, 1412, and secs. 2, 23, and 24 of Pub. L. 95-405 (92 Stat. 865, 876-877); 7 U.S.C. 2, 6c, and 12a.

Issued in Washington, D.C., on October 11, 1978.

By the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc. 78-29212 Filed 10-16-78; 8:45 am]

[1] Sec. 2(a) of the Commodity Exchange Act grants the Commission exclusive jurisdiction over the transactions in gold and silver bullion and bulk coins described in sec. 217 of the Commodity Futures Trading Commission Act of 1974. Sec. 8a of the Act vests the Commission with broad general rulemaking authority.

[4110-03-M]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER A—GENERAL

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

Internal Analgesic Panel

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) announces the termination of the Panel on Review of Internal Analgesic Including Antirheumatic Drugs and amends the regulations to delete it from the list of standing advisory committees. The Panel was terminated because it was no longer needed.

EFFECTIVE DATE: October 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Lee Geismar, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: The Panel's functions were to review the data and information submitted concerning, and to prepare a report on the safety, effectiveness, and labeling of, over-the-counter (OTC) products containing analgesic/antirheumatic ingredients for internal use. The conclusions and recommendations of the Panel were published in the FEDERAL REGISTER of July 8, 1977 (42 FR 35346).

Accordingly, the purpose of the Panel having been served, the Panel is no longer needed. On August 9, 1977, the Secretary of Health, Education, and Welfare terminated the committee's charter.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), part 14 is amended in § 14.100 List of standing advisory committees by deleting paragraph (c)(20)(i)(*b*) and marking it reserved.

EFFECTIVE DATE: Because this is a technical conforming amendment to part 14, the Commissioner finds that there is good cause for the rule to be effective immediately upon pulbication in the FEDERAL REGISTER, October 17, 1978.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a)).)

Dated: October 6, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-29065 Filed 10-16-78; 8:45

[4110-03-M]

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 76F-0260]

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

Antioxidants and/or Stabilizers for Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The food additive regulations are amended to provide for the safe use of 2,6-di-α-methyl benzyl)-4-methyl phenol as an antioxidant and/or stabilizer in olefin copolymers. This rule is based on a petition proposing such a regulation.

DATES: Effective October 17, 1978; objections by November 16, 1978.

ADDRESS: Written objections to the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: A notice published in the FEDERAL REGISTER of August 4, 1976 (41 FR 32635) announced that a food additive petition (FAP 6B3200) had been filed by Uniroyal Chemical, Division of Uniroyal, Inc., Elm Street, Naugatuck, Conn. 06770, proposing that § 178.2010 Antioxidants and/or stablizers for polymers (21 CFR 178.2010, formerly § 121.2566, prior to recodification published in the FEDERAL REGISTER of March 15, 1977 (42 FR 14609)), be amended to provide for the use of 2,6-di-α-methyl benzl)-4-methyl phenol as an antioxidant and/or stabilizer in olefin copolymers complying with § 177.1520(c), item 3.4 in the tabular listing. Having evaluated data in the petition and other relevant material, the Commissioner of Food and Drugs concludes that § 178.2010 should be amended. Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 348(c)(1))) and under authority delegated to the Commissioner (21 CFR 5.1), § 178.2010 is amended by alphabetically adding to the list of substances under paragraph (b) a new item as follows:

§ 178.2010 **Antioxidants and/or stabilizers for polymers.**

* * * * *

(b) * * *

Substances	Limitations
* * * *	* * * *
2,6-Di(α-methyl benzyl)-4-methyl phenol (Chemical Abstracts Service Registry No. 1817-68-1).	For use only at levels not to exceed 0.2 pct by weight of olefin polymers complying with item 3.4 in § 177.1520(c) of this chapter, provided that such olefin polymers are limited to use at a level not to exceed 25 pct by weight in other olefin polymers complying with § 177.1520 of this chapter; and the total amount in such finished olefin polymers not to exceed 0.05 pct by weight, including the level that may be contributed by its presence at 6 pct in the item "butylated, styrenated cresols * * *" listed in this paragraph; and further provided that the finished olefin polymers are intended for contact with foods, except those containing more than 8 pct alcohol.
* * * *	* * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before November 16, 1978, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office be-

tween the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date: This regulation shall become effective October 17, 1978.

Dated: October 6, 1978.

JOSEPH P. HILE,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-29066 Filed 10-16-78; 8:45 am]

[4110-03-M]

[Docket No. 77N-0035]

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

Aconitic Acid

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that aconitic acid is generally recognized as safe (GRAS) as a direct human food ingredient. The safety of this ingredient has been evaluated under the comprehensive safety review being conducted by this agency.

EFFECTIVE DATE: November 16, 1978.

ADDRESS: Written objections to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of August 30, 1977 (42 FR 43642), the Commissioner of Food and Drugs proposed to affirm that aconitic acid is generally recognized as safe for use as a direct human food ingredient. This action is in accord with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

Under § 170.35 (21 CFR 170.35), relating to the affirmation of GRAS food ingredients, copies of the scientific literature review on aconitic acid and the report of the Select Committee on GRAS Substances are available for public review in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

In addition to proposing to affirm the GRAS status of aconitic acid, the Commissioner gave public notice that he was unaware of any prior-sanctioned food ingredient use for this ingredient other than for the proposed conditions of use. Persons asserting additional or extended uses, under approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of such sanctions so that the safety of any prior-sanctioned uses could be determined at this time. That notice was also an opportunity to have prior-sanctioned uses of aconitic acid approved by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181), provided the prior-sanctioned use could be affirmed as safe on the basis of information and data now available to the Commissioner. The Commissioner also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert such sanction at any future time.

No reports of prior-sanctioned uses for aconitic acid were submitted in response to the proposal. Therefore, in accordance with that proposal, any right to assert a prior sanction for a use of aconitic acid under conditions different from those set forth in this regulation has been waived.

A proposed amendment, published in the FEDERAL REGISTER of March 14, 1978 (43 FR 10577), corrected an error that occurred in the August 30, 1977, proposal. The August proposal incorrectly stated that aconitic acid is used in nonalcoholic beverages rather than correctly stating that it is used in alcoholic beverages. No comments were received in response to either proposal. The Commissioner therefore concludes that the proposal to affirm the GRAS status of aconitic acid should be promulgated as amended on March 14, 1978.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))), and under authority delegated to the Commissioner (21 CFR 5.1), parts 182 and 184 are amended as follows:

§ 182.60 [Amended]

1. In part 182, § 182.60 Synthetic flavoring substances and adjuvants is amended by deleting the entry for "Aconitic acid (equisetic acid, citridic acid, achilleic acid)."

2. In part 184 by adding new § 184.1007 to read as follows:

§ 184.1007 Aconitic acid.

(a) Aconitic acid (1,2,3-propenetricarboxylic acid ($C_6H_6O_6$), CAS Reg. No. 000499-12-7) occurs in the leaves and tubers of *Aconitum napellus* L. and other *Ranunculaceae*. Transaconitic acid can be isolated during sugarcane processing, by precipitation as the calcium salt from cane sugar or molasses. It may be synthesized by sulfuric acid dehydration of citric acid, but not by the methanesulfonic acid method.

(b) The ingredient meets the following specifications:

(1) *Assay.* Not less than 98.0 percent of $C_3H_3(COOH)_3$, using the Food Chemicals Codex, 2d ed. (1972)[1] test for citric acid, which is incorporated by reference, and a molecular weight of 174.11.

(2) *Melting point.* Not less than 195° C and the determination results in decomposition of aconitic acid.

(3) *Heavy metals (as Pb).* Not more than 10 parts per million.

(4) *Arsenic (as As).* Not more than 3 parts per million.

(5) *Oxalate.* Passes test.

(6) *Readily carbonizable substances.* Passes Food Chemicals Codex, 2d ed. (1972)[1] test for citric acid, which is incorporated by reference.

(7) *Residue on ignition.* Not more than 0.1 percent as determined by Food Chemicals Codex, 2d ed. (1972)[1] test for citric acid, which is incorporated by reference.

The substance should have infrared absorption bands at 3030, 2630, 1720, 1430, 1300, 1240, 910, 860, 780, and 750 cm^{-1}. Also, an aqueous solution of the substance should have major absorption peaks at 411 and 432 nanometers with little or no absorption at 389 nanometers.

(c) The ingredient is used as a flavoring substance and adjuvant as defined in § 170.3(o)(12) of this chapter.

(d) The ingredient is used in food, in accordance with § 184.1(b)(1), at levels not to exceed good manufacturing practice. Current good manufacturing practice results in a maximum level, as served, of 0.003 percent for baked goods as defined in § 170.3(n)(1) of this chapter, 0.002 percent for alcoholic beverages as defined in § 170.3(n)(2) of this chapter, 0.0015 percent for frozen dairy products as defined in § 170.3(n)(20) of this chapter, 0.0035 percent for soft candy as defined in § 170.3(n)(38) of this chapter, and 0.0005 percent or less for all other food categories.

(e) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation is effective November 16, 1978.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a)).)

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[1] Copies may be obtained from National Academy of Sciences, 2101 Constitution Avenue NW., Washington, D.C. 20037.

NOTE.—Incorporation by reference was approved by the Director of the Office of the Federal Register on July 10, 1973, and is on file in the Federal Register Library.

Dated: October 6, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 78-29067 Filed 10-16-78; 8:45 am]

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-4667]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: This rule lists communities where the sale of flood insurance, as authorized under the National Flood Insurance Program (NFIP), will be suspended because of noncompliance with the flood plain management requirements of the program.

EFFECTIVE DATE: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of the Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), administered by the Federal Insurance Administration, enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (24 CFR Part 1909 et seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date subsidized flood insurance is no longer available in the community.

In addition, the Federal Insurance Administration has identified the special flood hazard areas in these communities by publishing a flood hazard boundary map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, provides that no direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP, with respect to which a year has elapsed since identification of the community as having flood prone areas, as shown on the Federal Insurance Administration's initial flood insurance map of the community. This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

In each entry, a complete chronology of effective dates appears for each listed community.

Section 1914.6 is amended by adding in alphabetical sequence new entries to the table.

§ 1914.6 List of suspended communities.

State	County	Location	Effective dates of authorization of sale of flood insurance for area	Hazard area identified	Community No.	Date [1]
•	•	•	•	•	•	•
Florida	Palm Beach	Atlantis, city of	Aug. 23, 1974, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	Dec. 6, 1974	120193-A	Nov. 1, 1978.
Do	do	Lake Clarke Shores, town of	May 19, 1975, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	Jan. 9, 1974 Oct. 24, 1975	120211-B	Do.
Illinois	Cook	East Chicago Heights, village of.	Apr. 11, 1975, emergency, Sept. 29, 1978, regular, Nov. 1, 1978, suspended.	Apr. 5, 1974 June 11, 1976	170084-B	Do.
Kansas	Pratt	Pratt, city of	Apr. 4, 1975, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	Apr. 5, 1975 Oct. 24, 1975	200278-B	Do.
Louisiana	Calcasieu	Unincorporated areas	Dec. 31, 1971, emergency, Sept. 29, 1978, regular, Nov. 1, 1978, suspended.	Sept. 13, 1974	220037-A	Do.
Maryland	Prince Georges	Laurel, city of	Sept. 10, 1971, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	Aug. 9, 1974 Dec. 19, 1975	240053-C	Do.
Minnesota	Winona	Elba, city of	July 30, 1974, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended..	Aug. 9, 1974 June 11, 1976	270527-C	Do.
Do	Rice	Fairbault, city of	Apr. 19, 1974, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	Jan. 21, 1977	27404-C	Do.
Do	Itasca	Unincorporated areas	June 18, 1973, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	Nov. 1, 1978	270200-A	Do.

State	County	Location	Effective dates of authorization of sale of flood insurance for area	Hazard area identified	Community No.	Date [1]
Minnesota	Kanabec	Unincorporated areas	July 25, 1973, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	Nov. 1, 1978	270214-A	Nov. 1, 1978.
Do	Scott and LeSeur	New Prague, city of	Apr. 30, 1974, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	May 10, 1974 Mar. 26, 1976	270249-B	Do.
Do	Carver	Watertown, city of	Mar. 14, 1975, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	Nov. 5, 1976	270056-A	Do.
Missouri	Pemiscot	Hyati, city of	Feb. 14, 1975, emergency, Sept. 29, 1978, regular, Nov. 1, 1978, suspended.	Apr. 12, 1974 June 25, 1976	290276-B	Do.
New York	Allegany	Bolivar, village of	Sept. 12, 1977, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	Jan. 7, 1977	360026-B	Do.
Do	Orleans	Carlton, town of	Apr. 5, 1973, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	Aug. 2, 1974 Dec. 19, 1975	360542-B	Do.
Do	Livingston	Dansville, village of	Apr. 17, 1973, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	Oct. 22, 1976	360383-A	Do.
Do	Suffolk	Huntington, town of	Nov. 1, 1973, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	Aug. 2, 1974 Feb. 20, 1976	360796-B	Do.
Do	Monroe	Rochester, city of	Apr. 9, 1973, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	June 28, 1974 Aug. 27, 1976	360431-B	Do.
North Carolina	Wake	Fuquay-Varina, town of	Jan. 27, 1975, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	Apr. 11, 1975	370239-A	Do.
Ohio	Mahoning	Canfield, city of	June 25, 1975, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	May 17, 1974 Apr. 23, 1976	390369-B	Do.
Oregon	Douglas	Canyonville, city of	June 3, 1975, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	June 7, 1974 Feb. 6, 1976	410060-B	Do.
Pennsylvania	Lackawanna	Dalton, borough of	June 6, 1973, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	June 28, 1974 May 14, 1976	420998-B	Do.
Tennessee	Anderson	Lake City, town of	Oct. 23, 1970, emergency, Feb. 26, 1978, regular, Nov. 1, 1978, suspended.	Feb. 26, 1971	475436-B	Do.
Texas	Bandera	Unincorporated areas	Jan. 21, 1974, emergency, Nov. 1, 1978, regular, Nov. 1, 1978, suspended.	June 18, 1976	480020-A	Do.
Missouri	Johnson and Clay	Kansas City, city of	June 11, 1971, emergency, Sept. 29, 1978, regular, Nov. 1, 1978, suspended.	Nov. 8, 1974	290173	Do.

[1] Date certain Federal assistance no longer available in special flood hazard area.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: October 10, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-29102 Filed 10-16-78; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 984-6]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, takes no action on changes to the Monterey Bay Unified Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: November 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, Attention: Wallace Woo, 415-556-7288.

SUPPLEMENTARY INFORMATION: On March 3, 1978, EPA published a notice of proposed rulemaking for revisions to the Monterey Bay Unified APCD's rules and regulations submitted on October 13, 1977, by the California Air Resources Board for inclusion in the California SIP.

Changes to the rules which are being acted upon by this notice include additon of a rule specifying wood wastes burning and addition of a rule specifying continuous emissions monitoring.

A list of the rules being considered by this action was published as part of the 43 FR 8809 notice of proposed rulemaking (Mar. 3, 1978). The proposed rulemaking provided 30 days for public comments.

Comments were received from the Monterey Bay Unified APCD requesting approval of Rule 422, Burning of Wood Wastes, as a SIP revision. The Monterey Bay Unified APCD pointed out that such burning has been allowed in the district since 1974, the emissions allowed are insignificant when compared to districtwide emissions, and the district believes that such burning has no impact on air quality.

Since the district submitted data showing that there will be no resultant increase in emissions and the 1977 air quality data shows ambient levels below the national standards, EPA is approving the rule.

It is the purpose of this notice to approve the revisions contained in the October 13, 1977, submittal as specified above and incorporate them into the California SIP.

Rule 215, Stack Monitoring, submitted October 13, 1977, is approved since it requires continuous monitoring for specified sources, and thereby partially fulfills the requirements of 40 CFR 51.19(e). It is noted, however, that rule 215 does not meet all of the requirements of 40 CFR 51.19(e) and appendix P of part 51.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110, 301(a), Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: October 10, 1978.

DOUGLAS M. COSTLE,

Administrator.

Subpart F of part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c)(41)(vii) is added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(41) * * *
(vii) Monterey Bay Unified APCD.
(A) New rules 215, 422.

* * * * *

2. Section 52.234, paragraph (e)(8) is added as follows:

§ 52.234 Source surveillance.

* * * * *

(e) * * *
(8) North Central Coast Intrastate AQCR:
(i) Monterey Bay Unified APCD.

* * * * *

[FR Doc. 78-29205 Filed 10-16-78; 8:45 am]

[6560-01-M]

[FRL 982-2]

PART 65—DELAYED COMPLIANCE ORDERS

Delayed Compliance Order for the Town of Presque Isle, Maine

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby issues a delayed compliance order to the town of Presque Isle, Maine. The order requires the town to bring air emissions from its conical refuse incinerator into compliance with certain regulations contained in the federally approved Maine State Implementation Plan (SIP). The town of Presque Isle's compliance with the order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the order during the period the order is in effect.

DATE: This rule takes effect on October 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert O'Meara, engineer, 617-223-5610, or Mr. Wesley Marshall, attorney, 617-223-5600, both at EPA, Region I, Room 2103, J. F. K. Federal Building, Boston, Mass. 02203.

ADDRESS: The delayed compliance order, supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing issuance of the order are available for public inspection and copying during normal business hours at: EPA, Region I, Room 2103, J. F. K. Federal Building, Boston, Mass. 02203.

SUPPLEMENTARY INFORMATION: On July 5, 1978, the Regional Administrator of EPA's Region I Office published in the FEDERAL REGISTER 43 FR 2905, a notice setting out the provisions of a proposed delayed compliance order for the town of Presque Isle, Maine. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed order. No public comments or requests for a public hearing were received in response to the proposed notice.

Therefore, a delayed compliance order effective this date is issued to the town of Presque Isle, Maine, by the Administrator of EPA pursuant to the authority of section 113(d)(1) of the Clean Air Act, 42 U.S.C. 7413(d)(1). The order places the town of Presque Isle, Maine, on a schedule to bring its solid waste disposal system into compliance as expeditiously as practicable with section 100.4.2 of the Maine Department of Environmental Protection Air Pollution Control Regulations, a part of the federally approved Maine State Implementation Plan. The order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the Act, and reporting requirements. Although section 113(d)(C) of the Act normally requires emission monitoring in an order, no reasonable system of emission monitoring for the town of Presque Isle's incinerator exists. If the conditions of the order are met, it will permit the town of Presque Isle to delay compliance with the SIP regulations covered by the order until July 1, 1979. The town is unable to immediately comply with these regulations.

EPA has determined that the order shall be effective upon publication of this notice because of the need to immediately place the town of Presque Isle, Maine, on a schedule for compliance with the applicable requirement of the Maine State Implementation Plan.

(AUTHORITY: 42 U.S.C. 7413(d), 7601.)

Dated: October 10, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

Subpart U—Maine

1. By amending the table in § 65.240 Federal delayed compliance orders issued under section 113(d)(1), (3), and (4) of the act, by adding the following entry:

* * * * *

Source	Location	Order No.	SIP regulation involved	Date of FR proposal	Final compliance date
Town of Presque Isle	Maine	A-SS-76-449	§ 100.4.2	July 5, 1978	July 1, 1979

[FR Doc. 78-29206 Filed 10-16-78; 8:45 am]

[6560-01-M]

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

PART 85—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES

Enforcement of Clean Air Act Requirements in the Northern Mariana Islands; Motor Vehicle Importation and Fuel Prohibitions

AGENCY: Environmental Protection Agency.

ACTION: Notice of suspension of enforcement of certain provisions and regulations.

SUMMARY: This notice announces that the enforcement of certain provisions of the Clean Air Act, as amended, and certain regulations promulgated under the Act, will be suspended with respect to the Northern Mariana Islands until June 1, 1979. These provisions and regulations concern importation of motor vehicles which do not meet Federal emission standards and the use of leaded and unleaded fuels in motor vehicles. This action is being taken to relieve undue hardship on local motor vehicle importers, dealers, and purchasers, and on retail fuel outlets due to the current unavailability of unleaded fuel in the Northern Mariana Islands.

DATE: Suspension of the affected provisions and regulations will be effective until June 1, 1979.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 4534 (42 FR 56594 (1978)) made effective as of January 8, 1978, section 502(a)(2) of Pub. L. 94-241 which makes applicable to the Northern Mariana Islands all laws which are applicable to Guam and which are of general application to the several States. All States and Guam currently are subject to the imports and fuels sections of Clean Air Act, as amended (Act), and the regulations promulgated under them, so that those provisions are now applicable to the Northern Mariana Islands. Section 203(a)(1) of the Act prohibits the importation, by any person, of motor vehicles or motor vehicle engines that are not certified by EPA to meet Federal emission standards. Regulations promulgated under section 211(c) generally prohibit the introduction of leaded fuel into vehicles requiring unleaded fuel and require that retail distributors make unleaded fuel available.

However, immediate enforcement by the Environmental Protection Agency (EPA) of the fuels and imporatation prohibitions would impose undue hardship upon local motor vehicle importers, dealers, and purchasers, and retail fuel oulets due to the current unavailability of unleaded fuel in the Northern Mariana Islands. Many vehicles are certified to meet U.S. emission standards with lead-sensitive emission control systems and must be operated on unleaded fuel. These certified vehicles would have to be operated on leaded fuel until adequate supplies of unleaded fuel become available. Emission control systems requiring unleaded fuel (in particular, catalytic converters) would be rendered partially inoperative when operated on the only type of fuel available, leaded fuel. Enforcement of the section 203(a)(1) prohibitions would result in imposition upon vehicle importers and purchasers of the costs of certification and incorporation of catalysts for vehicles that would not remain controlled in actual use due to the effect of unleaded fuel on the emission control systems.

Enforcement of that provision of the fuels regulations which prohibits retail outlets from introducing leaded fuel into vehicles certified to operate on unleaded gasoline (40 CFR 80.22(a)) would effectively prohibit operation of these vehicles because proper fueling with unleaded gasoline would be impossible until such time as unleaded fuel is made available by the supplier, Mobil Oil of Micronesia. Similarly, the requirement that retail fuel outlets with specified sales volumes offer for sale unleaded gasoline (40 CFR 80.22(b)(1)) would be impossible to comply with by the five retail outlets currently subject to this provision until Mobil Oil of Micronesia completes the necessary changes in its production and delivery in order to supply the subject outlets with unleaded fuel. The Agency has determined that the period from the present date until June 1, 1979, is a reasonable time period within which the supplier and local retailers may procure the necessary equipment for compliance.

Therefore, notice is hereby given by EPA that enforcement of the following provisions of the Act and regulations promulgated thereunder, will be suspended with respect to the Northern Mariana Islands until June 1, 1979:

1. Regulations promulgated under section 211(c) of the Act which:

(a) Prohibit fuel retailers and wholesale purchaser-consumers from introducing, causing, or allowing the introduction of leaded gasoline into any motor vehicle labeled "unleaded gasoline only" or equipped with a gasoline tank filler inlet which is designed for the introduction of unleaded gasoline (40 CFR 80.22(a));

(b) Require retail fuel outlets located in urban areas which sold 200,000 or more gallons of gasoline during any calendar year beginning with 1971, or retail outlets located in rural areas which sold 150,000 or more gallons of gasoline during any calendar year beginning with 1971, to offer for sale unleaded gasoline (40 CFR 80.22(b)(1)); and

2. The section 203(a)(1) prohibition against importation, sale, introduction, or delivery for introduction into commerce of motor vehicles or engines not covered by a certificate of conformity with Federal emission standards and applicable regulations at 40 CFR Part 85.

The suspension is intended to provide relief to local motor vehicle importers and dealers, retail fuel outlets, and other individuals who are subject to the importation and fuels prohibitions under the Act.

No significant air quality impact will result from the suspension since the number of uncertified vehicles to be imported and sold in the Northern Mariana Islands until June 1, 1979, will be a small percentage of the approximately 3,500 vehicles presently operated there.

FOR FURTHER INFORMATION CONTACT:

Maureen D. Smith, Attorney-Adviser, Mobile Source Enforcement Division (EN-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, 202-426-9436.

Dated: October 4, 1978.

MARVIN B. DURNING,
Assistant Administrator for Enforcement.

[FR Doc. 78-29107 Filed 10-16-78; 8:45 am]

[6560-01-M]

[FRL 988-5; PP 6F1849 and 7F1995/R167]

SUBCHAPTER E—PESTICIDE PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Aldicarb

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide aldicarb on soybeans, dry beans, and sweet potatoes. The requests were submitted by Union Carbide Corp. This regulation establishes maximum permissible levels for residues of aldicarb on the above crops.

EFFECTIVE DATE: Effective on October 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. James Rea, Product Manager (PM) 12, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW, Washington, D.C. 20460, 202-755-9315.

SUPPLEMENTARY INFORMATION: On September 24, 1976, and October 27, 1977, notices were given (41 FR 4196 and 42 FR 56643, respectively) that Union Carbide Corp., 1730 Pennsylvania Avenue NW., Washington, D.C. 20006, had filed pesticide petitions with the EPA. Pesticide petition (PP) 6F1849 proposed that 40 CFR 180.269 be amended to establish tolerances for residues of the insecticide and nematocide aldicarb (2 - methyl- 2 - (methylthio)propionaldehyde *O* - (methylcarbamoyl)oxime) and its cholinesterase - inhibiting metabolites 2 - methyl - 2 - (methylsulfinyl)propionaldehyde *O* - (methylcarbamoyl)oxime) and 2 - methyl - 2 - (methylsulfonyl)propionaldehyde *O* - (methylcarbamoyl)oxime in or on the raw agricultural commodities soybeans (succulent) at 0.02 part per million (ppm), soybeans (dry) at 0.1 ppm, soybean straw at 0.4 ppm, and dry beans at 0.1 ppm.

Subsequently, the petitioner amended the petition by deleting the tolerances of 0.4 ppm on soybean straw and 0.1 ppm on soybeans (dry). (The petitioner had proposed a tolerance of 0.1 ppm in or on dry beans, but this tolerance was inadvertently omitted by the Agency from the notice of filing. Thus, the tolerance of 0.1 ppm in or on dry beans is being included in this regulation.)

PP 7F1995 proposed that 40 CFR 180.269 be amended to increase the established tolerance for residues of aldicarb and the above cholinesterase-inhibiting metabolites in or on the raw agricultural commodity sweet potatoes from 0.02 ppm to 0.1 ppm. No comments were received in response to these notices of filing.

The data submitted in the petitions and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerances included 2-year rat and dog-feeding studies with a no-observable-effect level (NOEL) of 0.3 milligram (mg)/kilogram (kg) of body weight (bw)/day and 3.3 ppm respectively; an 18-month mouse feeding study with an NOEL of 0.7 mg/kg bw; a rat teratology study (negative at 1 mg/kg bw/day); a hen neurotoxicity study (negative at 4.5 mg/kg bw/day); and a three-generation rat reproduction study with an NOEL of 0.7 mg/kg bw.

Based on the 2-year rat feeding study with an NOEL of 0.3 mg/kg bw/day and using a 100-fold safety factor, the acceptable daily intake (ADI) for man is 0.003 mg/kg bw/day. The theoretical maximal residue contribution (TMRC) in the human diet from the previously established tolerances and the proposed tolerances does not exceed the ADI. (Tolerances have previously been established for residues of aldicarb on a variety of raw agricultural commodities at levels ranging from 1 ppm to 0.002 ppm.)

The metabolism of aldicarb is adequately understood, and an adequate analytical method (gas chromatography using a flame photometric detector) is available for enforcement purposes. No actions are currently pending against continued registration of aldicarb, nor are there any other relevant considerations involved in establishing the proposed tolerances, nor are any desirable data lacking from the petitions.

In the case of the proposed use of aldicarb on sweet potatoes, there is no reasonable expectation of residues in eggs or poultry as delineated in 40 CFR 180.6(a)(3). The established tolerances for residues of aldicarb in meat and milk are adequate to cover residues incurred from the feed use of cull sweet potatoes.

In the case of the proposed use of aldicarb on soybeans and dry beans, there is no reasonable expectation of residues in eggs, meat, milk, or poultry.

The pesticide is considered useful for the purpose for which tolerances are sought, and it is concluded that the tolerances of 0.1 ppm on dry beans and sweet potatoes and 0.02 ppm on soybeans established by amending 40 CFR 180.269 will protect the public health. It is concluded, therefore, that the tolerances be established as set forth below.

Any person adversely affected by this regulation may, on or before November 16, 1978, file written objections with the Hearing Clerk, EPA, Room M-3708, 401 M Street SW., Washington, D.C. 20460. Such objections should specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by the grounds legally sufficient to justify the relief sought.

Effective on October 17, 1978, part 180 is amended as set forth below.

Dated: October 11, 1978.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

(Sec. 408(d)(2) Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)(2)).)

Part 180, subpart C, § 180.269 is amended by alphabetically inserting beans (dry) at 0.1 ppm and soybeans at 0.02 ppm in the table and by revising the item sweet potatoes at 0.02 ppm to read sweet potatoes at 0.1 ppm, as follows:

§ 180.269 Aldicarb; tolerances for residues.

* * * * *

Commodity:	*Parts per million*
* * * * *	
Beans (dry)	0.1
* * * * *	
Soybeans	0.02
* * * * *	
Sweet potatoes	0.1

[FR Doc. 78-29204 Filed 10-16-78; 8:45 am]

[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Second Rev. S.O. No. 1308]

PART 1033—CAR SERVICE

Distribution of Covered Hopper Cars; Decision

OCTOBER 11, 1978.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency order (Second Revised Service Order No. 1308).

SUMMARY: The Union Pacific Railroad Co. and the Illinois Central Gulf Railroad Co. are unable to furnish individual shippers with jumbo covered hopper cars for consecutive shipments of grain as required by the applicable tariffs. Second Revised Service Order No. 1308 waives the consecutive-trip provisions of the applicable tariffs, enabling these railroads to make a more equitable distribution of its supply of covered hopper cars among all potential users of these cars.

DATES: Effective 11:59 p.m., October 12, 1978; expires 11:59 p.m., January 15, 1979.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The order is printed in full below.

*An acute shortage of covered hopper cars for transporting shipments of grain, grain products, soybeans, or soybean meal exists on the Union Pacific Railroad Co. (UP) and the Illinois Central Gulf Railroad Co. (ICG). The UP has published certain rates in Transcontinental Freight Bureau Tariff 45-N, ICC 1850, Item 3208 series, which require the shipment of three consecutive lots of grain, each to comprise 4,750 net tons loaded into more than fifty (50) covered hopper cars of 100-ton capacity, or each to comprise 2,375 net tons loaded into not more than twenty-five (25) covered hopper cars of 100-ton capacity. The ICG has published certain rates in Illinois Central Gulf Tariffs 604-A, ICC 92, Item 350; 608, ICC 77, Item 350; and 609, ICC 99, Item 350, which require shipment of five (5) consecutive trips of grain. The consecutive-trip provisions of these tariff items are preventing the UP and ICG from making an equitable distribution of these covered hopper cars among all prospective shippers having a need to use such cars. The UP and ICG have requested authority to waive the consecutive-trip provisions of the tariff rules to enable them to continue to offer shippers the benefit of the lowest level of freight rates published in these items, while at the same time, making a fair and equitable distribution of their 100-ton covered hopper cars among the potential users of these cars.

It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than 30 days' notice.

It is ordered,

* Change.

§ 1033.1308 Distribution of covered hopper cars.

(a) The Union Pacific Railroad Co. (UP) is authorized to waive the three-consecutive-trip requirements applicable to 4,750-ton shipments or to 2,375-ton shipments of grain or soybeans published in item 3208 series of Transcontinental Freight Bureau Tariff 45-N, ICC 1850, supplements thereto or reissues thereof. All other provisions of that tariff shall remain fully in effect.

*(b) The Illinois Central Gulf Railroad Co. (ICG) is authorized to waive the five-consecutive-trip requirements applicable to shipments of grain or soybeans published in ICG Tariffs 604-A, ICC 92, Item 350; 608, ICC 77, Item 350; and 609, ICC 99, Item 350, supplements thereto or reissues thereof. All other provisions of these tariffs shall remain fully in effect.

(c) *Rules and regulations suspended.* The operation of all other tariff provisions or of other rules and regulations insofar as they conflict with the provisions of this order, is hereby supended.

(d) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(e) *Effective date.* This order shall become effective at 11:59 p.m., October 12, 1978.

(f) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., January 15, 1979, unless otherwise modified, changed, or suspended by order of this Commission.

(49 U.S.C. 1(10-17).)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, Members Joel E. Burns, Robert S. Turkington, and John R. Michael. Member John R. Michael not partfcipating.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-29266 Filed 10-16-78; 8:45 am]

proposed rules

[7535-01-M]

NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR Part 703]

INVESTMENTS AND DEPOSITS

Investment Activities of Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: The purpose of this proposed rule is to restrict Federal credit union involvement in certain investment activities which the Administration believes are unauthorized or otherwise unsafe and unsound. The rule is necessary in order to avoid recurrence of recent incidents involving substantial losses to Federal credit unions.

DATES: Comments must be received on or before December 15, 1978.

ADDRESS: Send comments to Robert S. Monheit, Senior Attorney, Office of General Counsel, National Credit Union Administration, Room 4202, 2025 M Street NW., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT:

Robert F. Schafer, Office of Examination and Insurance, at the above address. Telephone: 202-254-8760.

SUPPLEMENTAL INFORMATION:

1. *Caution*—During the comment period and until a final regulation is published, Federal credit unions should refrain from engaging in the activities described below.

2. *Background*—Section 107(7) of the Federal Credit Union Act (12 U.S.C. 1757(7)) specifies the investments that Federal credit unions are authorized to make; such investments consist primarily of loans to members and purchases of securities guaranteed by the U.S. Government. In recent months the Administration has learned of several instances of Federal credit unions engaging in various transactions involving Government securities for speculative purposes, rather than to meet legitimate investment and liquidity needs. These speculative transactions have included forward placement contracts, futures, repurchase agreements and reverse repurchase agreements. In some cases, abuses involving these related transactions have resulted in substantial losses to Federal credit unions, which may cause a reduction or loss of dividends to memebers, and may present a potential loss to the National Credit Union Share Insurance Fund. The purpose of this rule is to prevent further abuses by setting forth restrictions on Federal credit union involvment in these activities. This purpose would be accomplished by an amendment to Part 703 of the National Credit Union Administration's Rules and Regulations—"Investments and Deposits." Subsection 703.3(b)(1) has been included to provide that Federal credit unions may purchase and sell securities only when the purchase or sale is to be completed within five business days after the agreement is made. Essentially, this rule would provide that when exercising their investment powers, Federal credit unions shoud engage only in immediate cash settlement transactions.

3. *Forward Placement Contracts (Forwards)*—Forward placement contracts (also known as delayed delivery or future delivery contracts) are contracts to purchase or sell a security at a future date. Forwards were developed by the mortgage industry to facilitate the sale of mortgage-backed securities. As it was originally conceived, an institution that intended to package a pool of mortgages and issue a mortgage-backed security would contract with another party to purchase the security at a future date. The practice of delivery securities in the future is necessary because of the time required to originate and process the mortgage loans. Generally it takes between 60 to 120 days to package a mortgage-backed security.

The Administration believes that a forwards market to help facilitate the packaging of mortgage-backed securities is a useful vehicle in providing mortgage financing. However, in recent years, the forwards market has been subjected to numerous abuses by brokers and dealers. These firms and/or individuals have contracted with Federal credit unions for forwards which far exceed the time period necessary to develop a mortgage-backed security. Additionally, brokers and dealers have encouraged credit unions to engage in forwards which exceed the credit union's ability to purchase the underlying security on the settlement date. As a result, Federal credit unions, relying on the expertise of their brokers and dealers, have speculated in a very volatile market.

The Administration believes that some brokers and dealers are not using forwards as they were originally intended, but rather as a means of increasing their own profits and commissions at the expense of their customers.

At the present time the investment authority of Federal credit unions in marketable securities is virtually limited to U.S. government and agency securities. Brokers and dealers dealing exclusively in government securities are exempt from the filing and other requirements of the Securities and Exchange Act of 1934 and the self-regulatory proscriptions of the National Association of Securities Dealers (NASD). Additionally, it appears that brokerage firms which deal in government securities have taken little or no action to police their members.

The Administration cannot foresee when and if the abuses in the forwards market will be corrected. Therefore, the Administration proposes to prohibit Federal credit unions from engaging in the two types of forwards because the transactions are either not authorized under the Act or constitute unsafe and unsound practices as explained below.

a. *Standby Commitment.*—A standby commitment (also known as a standby or optional delivery contract) is an agreement for the sale of a security at a future date whereby the buyer is required to accept delivery of the security at the option of the seller. As consideration for the option, the seller usually pays a negotiated commitment fee to the buyer so that he will "standby" to accept delivery. The commitment fee is paid when the parties enter into the contract and is sometimes called "up front money." The fee is nonrefundable to the seller and is realized by the buyer as income even if the securities are not delivered.

The Administration believes that in a standby commitment one party purchases an option to sell and deliver the securities at a future date. The other party creates the option by agreeing to "standby" to purchase the securities if the first party elects to sell. Thus, the investment powers of Federal credit unions (see, 12 U.S.C. 1757(7)) do not include the authority to purchase or sell such an option. This conclusion is specifically set forth at § 703.3(b)(2), which provides that Federal credit unions may not enter into standby

commitments to purchase or sell securities.

b. *Cash Forward Agreement.*—A cash forward agreement (also known as a mandatory delivery contract) is an agreement to purchase or sell a security at a future date which requires mandatory delivery and acceptance.

The Administration believes that in a properly controlled environment, where suitability standards have been developed and enforced, Federal credit union involvement in cash forward agreements might be a legitimate investment tool. The recurrence of abuses in the presently unregulated government securities market, however, causes the Administration to view Federal credit union involvement in cash forward agreements as an unsafe and unsound investment activity. This conclusion is stated in § 703.3(b)(3) of the rule, which provides that Federal credit unions may not enter into cash forward agreements.

The Administration would reconsider this position should the investment industry develop an adequate self-regulatory structure with respect to dealers of U.S. Government and agency securities.

4. *Reverse Repurchase Agreement (Reverse Repo).*—A reverse repurchase agreement is an agreement whereby a Federal credit union sells securities to a purchaser and repurchases the same securities from the purchaser at an agreed upon future date. The Federal credit union pays interest on the funds received for the sale of the securities at an agreed upon rate and usually continues to receive income from the dividends or interest borne by the securities during the period when they are "sold" to the purchaser. The Administration believes the reverse repurchase agreement is a borrowing activity by the credit union. As such, it is permissible subject to the limitations of section 107(9) of the Federal Credit Union Act (12 U.S.C. 1757(9)) that a Federal credit union may not borrow in excess of 50 percent of its paid in and unimpaired capital and surplus.

Some Federal credit unions have borrowed funds via reverse repos and used those funds to purchase new marketable securities. In some cases, the new securities have been used to borrow additional funds, which are also used to purchase new marketable securities. Credit unions engaging in this type of pyramiding are speculating that either:

a. The market price of the new marketable securities will increase and a profit will result from the sale of those securities, or

b. The market price will remain stable and increased income will result from the arbitrage, the difference between interest paid on the borrowed funds and the dividend or interest earned on the securities.

However, if the market price declines and credit unions are forced to sell the securities, losses will be incurred.

The use of reverse repurchase agreements for this and like speculative purposes is not properly incidental to the Federal credit union's borrowing authority, investment authority or any other express power, and is considered an unsafe and unsound practice. These conclusions are reflected in § 703.3(b)(6). However, Federal credit unions would not be prohibited from using reverse repurchase agreements to meet ordinary and unexpected liquidity needs such as temporary share withdrawals or loan demands.

5. *Repurchase Agreements.*—Having determined that reverse repurchase agreements were loans to credit unions, the Administration was required to consider the converse of that transaction; the repurchase agreement. The Administration recognizes that the repurchase agreement is a constructive investment technique which enables a credit union to invest its excess funds, particularly on an overnight or weekend basis. However, when such a transaction constitutes a loan, the credit union is then limited by seciton 107(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)) to dealing with members, other credit unions, or credit union organizations. For a Federal credit union to engage in a repurchase agreement with organizations other than those cited in section 107(5), all the essential elements of a sale of the security must be present. The distinction between the loan-type and investment-type repurchase agreement is set forth in § 703.3(a)(4). The limitations on each type of repurchase agreement is set forth in § 703.3(b)(4) and 703.3(b)(5).

In addition to the legality of the transaction, the Administration has also considered the safety and soundness of the repurchase agreement. The major element of risk in the investment-type transaction would be the loss of dominion over the security. Therefore, the Administration proposes to authorize the investment-type repurchase agreement provided the Federal credit union takes possession of the securities or there is a segregation of the securities from the assets of the vendor. This requirement is contained in § 703.3(a)(4)(i)(1).

6. *Futures.*—A future is a standardized contract for future delivery of commodities, including certain government securities sold on designed commodities and exchange markets, e.g., the Chicago Board of Trade. Unless the contract represents a bonafide hedging contract incident to the assembly of a pool of mortgages for sale in the secondary market, the transaction represents an investment which is separate and apart from the underlying security. Therefore, Federal credit unions may not purchase a future since it is an investment not authorized by section 107(7) of the Federal Credit Union Act (12 U.S.C. 1757(7)). This determination is reflected in § 703.3(b)(7).

7. *Outstanding Commitments.*—Numerous Federal credit unions are already committed to the transactions noted above. Until a final determination is made on the permissibility of such transactions, Federal credit unions are required to comply with the following guidelines and accounting procedures:

a. Standby commitments to purchase securities.

i. The amount of the standby commitment must be shown as a footnote or memorandum entry on the credit union's Statement of Financial Condition for each month the commitment is outstanding. The footnote will reflect both the agreed upon purchase price and the market price on the statement date.

ii. The commitment fee may not be recognized as income until the date of settlement. Thus when the fee is received, it shall be recorded in account No. 889, Other Deferred Income. On the settlement date the fee will be recorded in account No. 440, Other Non-Operating Income (Expense).

iii. When purchased, the underlying security shall be recorded at the lower of cost or market. Losses, if any, shall be shown in account No. 420, Gain (Loss) on Investments.

b. Standby commitments to sell securities.

i. The amount of the standby must be shown as a footnote or memorandum entry on the credit union's Statement of Financial Condition for each month the commitment is outstanding.

ii. The commitment fee will be recognized as an expense on the date of commitment. The fee will be recorded in account No. 440, Other Non-Operating Income (Expense).

iii. The gain or loss on the sale of the underlying security will not be recognized until the settlement date.

c. Cash forward agreement to purchase securities.

i. The amount of the cash forward agreement must be shown as a footnote or memorandum entry on the credit union's Statement of Financial Condition for each month the commitment is outstanding. The footnote will reflect the agreed upon purchase price and the market price on the statement date.

ii. When purchased, the underlying security shall be recorded at the lower of cost or market. Losses, if any shall

be shown in account No. 420, Gain (Loss) on Investments.

d. Cash forward agreements to sell securities

i. The amount of the cash forward agreement must be shown as a footnote or memorandum entry on the credit union's Statement of Financial Condition for each month the commitment is outstanding.

ii. The gain or loss on the sale of the underlying security will not be recognized until the settlement date.

Examples of accounting entries for standby commitments to purchase and sell securities can be found in Appendixes A and B respectively. Accounting entries for cash forward agreements are the same as those for standbys, except for the commitment fee.

e. Investment-type repurchase agreements.

i. The security purchased will be recorded at cost in the appropriate investment account (series 740).

ii. The credit union's Statement of Financial Condition will be footnoted to reflect the amount of securities which are subject to resale and the date of resale.

iii. Gains and losses on the sale of the securities sold on the settlement date will be reflected in account No. 420, Gain (Loss) on Investments.

iv. The interest or dividend received on the securities during the period of ownership must be reflected in account No. 121, Income on Investments.

An example of the accounting entries for investment-type repurchase agreements can be found in Appendix C.

f. Loan-type repurchase agreements.

i. Loan-type repurchase agreements to members must be made in accordance with and within the limitations established in the Federal Credit Union Act, the Federal Credit Union Bylaws, the National Credit Union Administration Rules and Regulations, and policies established by the board of directors. These requirements include but are not limited to a maximum loan limit of 10 percentum of unimpaired capital and surplus to one member, the receipt of a properly supported loan application, approval of the loan by the credit committee, and execution of a note supported by documentation of the collateral. Account No. 705, Loans Subject to Repurchase Agreements, will be used to record these loans.

ii. Loan-type repurchase agreements to other credit unions must conform with limitations contained in section 107(7)(C) of the Act and Part 703.2 of the NCUA Rules and Regulations. These loans will be recorded in account No. 747, Loans to Other Credit Unions.

iii. Loan-type repurchase agreements to approved credit union organizations must be in compliance with section 107(5)(D) of the Act and NCUA Rules and Regulations.

iv. The securities used as collateral for the loan-type repurchase agreement will be identified in a footnote or memorandum entry on the credit union's Statement of Financial Condition for each month the repurchase agreement is outstanding. The footnote will reflect the market price of the securities on the statement date.

v. Income received from loans to members will be recorded in account No. 111, Interest on Loans. Income received from loans to credit union organizations and loans to other credit unions will be recorded in account No. 121, Income from Investments.

An example of the accounting entries for loan-type repurchase agreements can be found in Appendix D.

g. Reverse repurchase agreements.

i. Funds received from reverse repos will be recorded as borrowed funds in account No. 812, Notes Payable—Other.

ii. The securities used as collateral for the reverse repos will be identified in a footnote or memorandum entry on the credit union's Statement of Financial Condition for each month the reverse repo is outstanding. The footnote will reflect both the book value and the market price on the statement date.

iii. Interest paid on reverse repos will be recorded in account No. 340, Interest on Borrowed Money.

An example of the accounting entries for permissible reverse repurchase agreements can be found in Appendix E.

Appendix A.—Accounting Entries for a Standby Commitment To Purchase a Security

Assume that an FCU entered into a Standby Commitment to purchase at 95 a Federal Agency Security with a par value of $1 million. A one percent of par commitment fee is paid to the FCU and on the settlement date, the market value is 93.

ENTRIES

Date of commitment:
The records of the Federal credit union are footnoted.

Date commitment fee is received:
Dr. cash (731)—10,000.
Cr. other deferred income (889)—10,000.
To record receipt of commitment fee.

Date of settlement (securities not deliv ered):
Dr. other deferred income (889)—10,000.
Cr. other nonoperating income (expense) (44)—10,000.
To recognize income from Standby Commitment.

Date of settlement (securities delivered):
Dr. Federal agency securities (742)—930,000.
Dr. gain (loss) of investments (420)—20,000.
Cr. cash (731)—950,000.
To record purchase of security at lower of cost or market.
Dr. other deferred income (889)—10,000.
Cr. other nonoperating income (expense) (440)—10,000.
To recognize income from standby commitment.
Footnote is removed from records.

Appendix B.—Accounting Entries for a Standby Commitment To Sell a Security

Assume that an FCU entered into a Standby Commitment to sell a Federal Agency Security which has a par value of $1 million and is recorded on the credit union's books at 97. The agreed upon sale price is 98 and the commitment fee is 1½ percent.

ENTRIES

Date of commitment (and fee payment):
The records of the Federal credit union are footnoted.
Dr. other nonoperating income (expense) (440)—15,000.
Cr. cash (731)—15,000.
To record payment of commitment fee.

Date of settlement (securities delivered):
Dr. cash (731)—980,000.
Cr. Federal agency securities (742)—970,000.
Cr. gain (loss) on investments (420)—10,000.
To record sale of security.
Footnote is removed from records.

Appendix C.—Accounting Entries for an Investment-Type Repurchase Agreement

Assume that FCU "A" enters into a repurchase agreement with its broker on April 15 whereby it purchases a $1 million Federal Agency Security at par. It also agrees to resell to the broker a similar type security on April 18. On April 18, the FCU decides to resell the same security, but the fair market value of the security is $99^{31}/_{32}$.

ENTRIES

April 15:
Dr. Federal agency securities (742)—1,000,000.
Cr. cash (731)—1,000,000.
To record purchase of security.
The records of the Federal credit union are footnoted.

April 18:
Dr. cash (731)—999,688.
Dr. gain (loss) on investments (420)—312.
Cr. Federal agency securities (742)—1,000,000.
To record sale of securities.
Dr. cash (731)—667.
Cr. income from investments (121)—667.
To record income from investment for three days.
Footnote is removed from records.

Appendix D.—Accounting Entries for a Loan-Tyhpe Repurchase Agreement

Assume FCU "A" enters into a Repurchase Agreement with FCU "B" whereby "A" lends $1 million to "B" on February 1 and receives as collateral a $1 million Federal Agency security valued at par. FCU "B" agrees to repay the loan on August 1. The interest rate is 6 percent. The value of the security on June 30 is 99.

ENTRIES ON THE BOOKS OF FCU "A"

February 1:

Dr. loans to other credit unions (747)—1,000,000.
Cr. cash (731)—1,000,000.
To record loan.
The records of the Federal credit union are footnoted.

August 1:
Dr. cash (731)—1,030,000.
Cr. loans to other credit unions (747)—1,000,000.
Cr. income from investment (121)—30,000.
To record repayment of loan with interest.
Footnote is removed from records.
Entries for FCU "B" are contained in Appendix E.

APPENDIX E.—ACCOUNTING ENTRIES FOR A PERMISSIBLE REVERSE REPURCHASE AGREEMENT

Referring to Appendix D, FCU "B" would record the transaction as a Reverse Repurchase Agreement. In addition to the information given in that example, assume also that FCU "B" is unable to repay the loan from available funds on settlement date. FCU "B" chooses to sell the underlying security at its fair market value of 99⅛. The security is booked at par.

ENTRIES ON THE BOOKS OF FCU "B"

February 1:
Dr. cash (731)—1,000,000.
Cr. notes payable—other (812)—1,000,000.
To record the reverse repo as borrowed funds.
The records of the Federal credit union are footnoted.

August 1:
Dr. cash (731)—995,000.
Dr. gain (loss) on investments (420)—5,000.
Cr. Federal agency securities (742)—1,000,000.
To record sales of the underlying security recognizing a $5,000 loss.
Dr. notes payable (812)—1,000,000.
Dr. interest on Borrowed money (340)—30,000.
Cr. cash (731)—1,030,000.
To record payment of notes payable and interest due.
Footnote is removed from records.

Accordingly, 12 CFR Part 703 is amended by adding a new section as set forth below.

LAWRENCE CONNELL,
Administrator.

OCTOBER 11, 1978.

AUTHORITY: Sec. 107, 91 Stat. 49 (12 U.S.C. 1757), Sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and Sec. 209, 84 Stat. 1104 (12 U.S.C. 1789).

703.3 Investment activities.

(a) Definitions.

(1) "Standby commitment" means an agreement to purchase or sell a security at a future date, whereby the buyer is required to accept delivery of the security at the option of the seller.

(2) "Cash forward Agreement" means an agreement to purchase or sell a security at a future date more than five days after the agreement is made and that requires mandatory delivery and acceptance.

(3) "Reverse repurchase agreement" means an agreement whereby a Federal credit union enters into an understanding to sell securities to a purchaser and to repurchase the same securities from that purchaser at a future date, irrespective of the amount of consideration paid by the Federal credit union or the purchaser.

(4) "Repurchase agreement" means an agreement whereby a Federal credit union enters into an understanding to buy securities from a vendor and to resell securities at a future date. Repurchase agreements may be of two types:

(i) "Investment-type repurchase agreement" means a repurchase that contains the essential elements of a sale of a security, namely:

(a) The Federal credit union purchasing the securities must take physical possession of the securities or must receive a custodial or safekeeping receipt from a bank or other financial institution evidencing that the securities have been segregated from the general assets of the vendor.

(b) The Federal credit union must not be required to deliver the identical securities in the event of repurchase.

(c) The Federal credit union must assume the risk of market fluctuations in the value of the securities it has purchased.

(d) The Federal credit union must receive the coupon or stated interest rate or dividend on the securities purchased for the time period owned.

(ii) "Loan-type repurchase agreement" means any repurchase agreement that does not qualify as an investment-type repurchase agreement.

(5) "Future" means a standardized contract for the future delivery of commodities, including certain government securities, sold on designated commodities exchanges.

(b) Limitations.

(1) Federal credit unions may purchase or sell securities authorized by 12 U.S.C. 1757(7) only when the purchase or sale is to be completed within five business days after the agreement is made.

(2) Federal credit unions may not enter into standby commitments to purchase or sell securities.

(3) Federal credit unions may not enter into cash forward agreements to purchase or sell securities.

(4) Federal credit unions may not enter into investment-type repurchase agreements unless all the conditions cited in § 703.3(a)(4)(i) are met. Any repurchase agreements that do not meet such requirements constitute loan-type repurchase agreements subject to the limitations of § 703.3(b)(5).

(5) Federal credit unions may enter into loan-type repurchase agreements only with their own members, other credit unions or approved credit union organizations. Loan-type repurchase agreements represent lending and are subject to the limitations of 12 U.S.C. 1757(5).

(6) Federal credit unions may not enter into reverse repurchase agreements with the intent of using the funds received to purchase securities authorized under 12 U.S.C. 1557(7)(B), (D), (E), (F), (I) or 12 U.S.C. 1757(8). Reverse repurchase agreements represent borrowing and are subject to the limitations of 12 U.S.C. 1757(9).

(7) Federal credit unions may not buy or sell a future contract except when used as a hedging contract incident to the assembly of a pool of mortgages for sale in the secondary market.

[FR Doc. 78-29213 Filed 10-16-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 120]

BUSINESS LOAN POLICY

Proposed Rulemaking

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The proposed rule would reflect changes mandated by the enactment of section 301 of Pub. L. 95-89, 91 Stat. 553. The proposed rule broadens the category of applicants eligible to be small contractors, extends the maturity period for SBA financing of small contractor loans, provides that SBA may take back a first or second lien, and places a percentage limit on how much of the loan proceeds may be used for community improvements which benefit more than the project site on which SBA has a lien.

DATE: Comments must be received on or before November 16, 1978.

ADDRESS: Written comments, in duplicate, are to be addressed to the Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT:

Richard L. Wray, Financial Analyst, Small Business Administration, 1441 L. Street NW., Washington, D.C. 20416, 202-653-6470.

SUPPLEMENTARY INFORMATION: The proposed regulation implements section 301 of Pub. L. 95-89, 91 Stat. 553, relating to the small general contractor program. The intent of the statutory amendment was to enlarge the program and to broaden the category of applicants eligible to receive

SBA financial assistance under § 120.2(d)(7). SBA has received further guidance from the legislative history, particularly House Report No. 95-1, 95th Congress, 1st session (1977) and Senate Report No. 95-184, 95th Congress, 1st session (1977).

Under the current regulation, financial assistance must be repaid within 18 months (plus the period of construction or rehabilitation). The present program prohibits renting the property between completion of construction or rehabilitation and sale. In many parts of the country 18 months is too short a time to sell property, especially commercial or multiple housing structures, and many buyers of such property want the property at least partially rented before purchasing it. The proposed regulation changes the time period to 36 months and authorizes the contractor, with the SBA's written permission, to rent the constructed or rehabilitated property pending sale.

The existing program is open to only to small business operating under the Standard Industrial Classification (SIC) code Nos. 1521, 1522, 1531, and 1541. The proposed regulation broadens the category so that the eligible contractor can be a construction contractor, contractor or homebuilder who has demonstrated managerial and technical ability in constructing or renovating projects of comparable size.

The present program prohibits the purchase of vacant land for constructing a new building. In order to insure that the contractor has a dollar equity in the project and to avoid 100-percent financing for unimproved land, the proposed regulation provides that no more than 20 percent of any financial assistance from SBA may be used for the purchase of unimproved vacant land.

The present program is available only on a guaranty basis. The proposed regulation removes this limitation and permits financial assistance on a direct or immediate participation basis. Since SBA personnel do not have detailed knowledge of the real estate market in all rural and urban areas and SBA lacks the personnel to make construction inspections in all parts of any district, the proposed regulation requires the contractor to supply to the participating lender or SBA letters from (a) a mortgage lender, (b) an independent licensed real estate broker, and (c) an independent architect, appraiser or engineer.

The present program requires a first lien on the project site in most instances. One reason for this policy was to assure that the contractor had some equity in the project. The proposed regulation provides that SBA would grant financial assistance if it receives not less than a second lien as security provided that the total amount of all liens on the property could not exceed 80 percent of the fair value of the completed project.

Since Pub. L. 95-89 authorizes contractor loans for sale only, the proposed regulation provides that the financing must be repaid from proceeds received from the sale of the property to parties not affiliated with the borrower.

The present program does not allow proceeds from any contractor loan to be used for streets, curbs, water or sewer mains and other improvements that benefit an entire development. The proposed regulation provides that not more than 5 percent of the SBA financial assistance may be used for such purposes.

Accordingly, notice is hereby given that pursuant to the authority contained in section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, it is proposed to amend § 120.2(d)(7) of Part 120, Chapter I, Title 13 of the Code of Federal Regulations, to read as follows:

§ 120.2(d) Financial assistance will not be granted by SBA.

* * * * *

(7) As a general rule, if the purpose of the financial assistance is to finance the acquisition, construction, improvement, or operation of real property which is, or is to be, held primarily for sale or investment and is not to be used in connection with the applicant's otherwise eligible business: *Provided, however,* That financial assistance may be provided for residential or commercial construction or rehabilitation for sale to applicants which comply with all the following conditions:

(i) Any such financial assistance must be repayable within 36 months (plus the period of construction or rehabilitation);

(ii) An eligible applicant must be a construction contractor, contractor or homebuilder who has demonstrated managerial and technical ability in constructing or renovating projects of comparable size.

(iii) The financial assistance must be used to finance the construction or rehabilitation of residential or commercial real property, or the acquisition and prompt and significant rehabilitation (costing more than one-third of the purchase price) of residential or commercial real property, for sale on completion for the applicant's account. Not more than twenty percent (20%) of any financial assistance is to be used for the purchase of unimproved (vacant) land. No part of such financing may be used to purchase, or free other funds to purchase, building sites or other vacant land, or to operate or hold residential or commerial rental property for the account of the applicant or an affiliate for investment or speculative purposes, except that applicant may, with the written permission of the SBA, rent the constructed or rehabilitated property pending sale.

(iv) Applicant must submit, to the participating lender or SBA, letters from (*a*) a mortgage lender, (*b*) an independent licensed real estate broker, and (*c*) an independent architect, appraiser or engineer. The mortgage lender shall advise whether permanent mortgage money is usually available to qualified borrowers to purchase real property in the project area for property similar to or comparable with the property to be constructed or rehabilitated by the applicant. The broker shall advise whether a sales market exists for the type of building to be constructed or rehabilitated by the applicant and whether the proposed construction or renovation would be compatible with the other buildings in terms of monetary and architectural values; the broker must truthfully state that he has at least three (3) years experience in real estate sales for similar property in the project area. The architect, appraiser or engineer shall agree to make construction inspections and certifications necessary to support interim construction disbursements. The cost of such inspections may be paid by applicant from its own funds or may be added to the loan amount.

(v) The financial assistance must be secured with not less than a second lien on the land and improvements to be acquired, constructed or rehabilitated: *Provided,* That all liens must permit the release of individual parcels of property upon payment of a predetermined amount of money and provide for transfer of clear title to the buyer: *And provided further,* That the total amount of all such liens cannot exceed eighty percent (80%) of the fair market value of the completed project.

(vi) Proceeds of any such financing may not be used as a construction loan to be repaid from permanent financing with the applicant or an affiliate retaining title. The financing must be repaid from proceeds received from the sale of the property to an unaffiliated third party.

(vii) The terms "construction" and "rehabilitation" are intended to include only on-site repair, alteration, conversion, extension, renovation, rehabilitation, new construction, or other improvement of residential or commercial buildings; and on-site underground connections to water, sewer, or gas mains, underground or

aboveground connections for electric or telephone service, septic tank construction, and landscaping of the property: *Provided*, That not more than five percent (5%) of the SBA financing may be used for streets, curbs, open spaces, or construction of public water and sewer mains, or of waste disposal facilities, or costs of community improvements that benefit more than the structure(s) constructed or rehabilitated with SBA financial assistance.

Dated: October 11, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-29282 Filed 10-16-78; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 782 3066]

HERTZ CORP.

Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require a New York City car rental company to provide each charge account customer having five dollars or more as a credit balance with periodic statements reflecting that balance, notify such customers that credit balances are refundable; and automatically refund unclaimed credit balances within seven months of their occurrence. The order would additionally prohibit the company from writing off credit balances, and would require the firm to refund, upon request, any credit balance created during the past six years.

DATE: Comments must be received on or before December 14, 1978.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Lewis H. Goldfarb, Assistant Director for Credit Practices, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580; 202-724-1139.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record, together with material submitted to the Commission that is not exempt from public disclosure under the Freedom of Information Act, for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

HERTZ CORP.

[File No. 782 3066]

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The Federal Trade Commission having initiated an investigation of certain acts and practices of The Hertz Corp., a corporation, and it now appearing that The Hertz Corp., a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated.

It is hereby agreed by and between The Hertz Corp., by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent The Hertz Corp. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 660 Madison Avenue, New York, N.Y. 10021.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby, and understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for a civil penalty in the amount provided by law for each violation of the order after it becomes final.

ORDER

It is ordered, That the Hertz Corp., a corporation, its successors and assigns and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or any other device, in connection with the extension of credit incident to the business of renting of automobiles in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, shall forthwith cease and desist from:

I

A. Failing to mail to each customer having a credit balance in excess of five dollars ($5.00), created after the date of service of this Order, a statement in each billing period following the creation of the credit balance, clearly setting forth such credit balance, except that with respect to central billing customer, as "central billing customer" is defined in Paragraph Four of the Complaint or other customers with accounts cumulatively billed on periodic statements, such statement shall be mailed whenever a credit balance in excess of one dollar ($1.00) is created; *Provided, however*, That no statement need be sent once a credit balance is refunded or a fully offsetting purchase is made; and provided further that if the credit balance is created in connection with a direct billing customer, as "direct billing customer" is defined in Paragraph Four of the Complaint, no statement need be sent if the balance is refunded within thirty (30) days following the time it was created.

B. Failing to notify each customer to whom respondent is required to send a statement under Paragraph I.A. of the customer's right to request and receive a refund in the amount of such credit balance, such notice to be accomplished by a clear and conspicuous disclosure on or enclosed with each statement required by Paragraph I.A. and accompanied by a return envelope, if it is the customary prac-

tice of the division or unit to accompany billing statements with return envelopes. Such notice shall in all material respects be consistent with, but need not be identical to, the following:

"NO PAYMENT REQUIRED

This Credit Balance shown on the enclosed statement represents money we owe you. You may obtain a refund by returning this statement with a request for a refund. If you do not use your account or request a refund, a check will be mailed to you within seven (7) months after you were sent the statement on which this credit was first reflected. But a credit balance of five dollars ($5.00) will not be refunded unless specifically requested."

The notice furnished in compliance with this paragraph shall not provide any additional information relating to credit balances, shall be set forth separately from any other written matter, and shall be made either entirely on the face of the statement, or entirely on the reverse side fo the statement, or entirely on one side of a separate page. In the event such notice is not on the face of the statement, then the statement shall state clearly and conspicuously on its face: "Credit balance. Do not pay. For refund see (enclosed instructions) OR (reverse side)."

C. Failing to refund to each customer with a credit balance of more than five dollars ($5.00) created after the date of service of this Order the full amount of said credit balance no later than the end of the seventh (7th), consecutive month after the first statement reflecting the credit balance was sent to the customer and during which the customer neither transacts any business on the account nor requests a refund, unless such credit balance is not in fact owed to the customer; provided, however, that nothing contained in this Paragraph C. shall prevent such a refund being made by giving a credit certificate or refund letter in the full amount of the credit balance which may, at the customer's option, be applied to subsequent rental charges or returned for a cash refund. Such certificate or refund letter or an accompanying notice attached to the certificate or refund letter shall clearly and conspicuously disclose that it is redeemable for cash if the customer returns the certificate or refund letter by mail with a request for a cash refund or that it may be applied to subsequent rental charges if the customer returns the certificate or refund letter in full or partial payment for such charges.

D. Writing off, deleting or transferring any credit balance of more than one dollar ($1.00) created after the date of service of this Order from a customer's account before a refund has been made or the customer has made a fully offsetting purchase, unless such credit balance is not in fact owed to the customer or unless there has been compliance with Section III. of this Order.

II

It is further ordered, That respondent shall:

A. Within one hundred and eighty (180) days after service of this Order, mail or deliver to each customer having a credit balance in excess of five dollars ($5.00) created during the three (3) year period immediately preceding the date of service of this Order a statement clearly setting forth such credit balance: *Provided, however,* That no statement need be sent if a credit balance has been refunded or a fully offsetting purchase has been made.

B. Within one hundred eighty (180) days after service of this Order, notify each customer to whom respondent is required to send a statement under Paragraph II.A. of the customer's right to request and receive a refund in the amount of such credit balance, such notice to be accompanied by a clear and conspicuous disclosure on or enclosed with the statement required by Paragraph II.A. and accompanied by a return envelope, if it is the customary practice of the division or unit to accompany billing statements with return envelopes. The first such notice shall in all material respects be consistent with, but need not be identical to, the following:

"NO PAYMENT REQUIRED

The Credit Balance shown on the enclosed statement represents money we owe you. You may obtain a refund by returning this statement with a request for a refund. If you do not use you account or request a refund, a check will be mailed to you within seven (7) months."

The disclosure furnished in compliance with this paragraph shall not provide any additional information relating to credit balances, shall be set forth separately from any other written matter, and shall be made either entirely on the reverse side of the statement, or entirely on one side of a separate page. In the event such disclosure is not on the face of the statement, then the statement shall state clearly and conspicuously on its face "Credit balance. Do not pay. For refund see (enclosed instructions) OR (reverse side.)"

C. Refund to each customer with a credit balance of more than five dollars ($5.00) created during the three (3) year period preceding the date of service of this Order the full amount of said credit balance no later than seven (7) months following the date the statement provided in Paragraph B. of this Section II. is sent and the customer neither transacts any business on the account nor requests a refund, unless such credit balance is not in fact owed to the customer; *Provided, however,* That nothing contained in this Paragraph C. shall prevent such a refund from being made by giving a credit certificate or refund letter in the full amount of the credit balance which may, at the customer's option, be applied to subsequent rental charges or returned for a cash refund. Such certificate(s) or refund letter or any accompanying notice attached to the certificate or refund letter shall clearly and conspicuously disclose that it is redeemable for cash if the customer returns the certificate or refund letter by mail with a request for a cash refund or that it may be applied to subsequent rental charges if the customer returns the certificate or refund letter in full or partial payment for such charges.

D. Refrain from writing off or deleting or transferring any credit balance of more than five dollars ($5.00) created during the three (3) year period immediately preceding the date of service of this Order from a customer's account before a refund has been made or the customer has made a fully offsetting purchase, unless such credit balance is not in fact owned to the customer or unless there has been compliance with Section III. of this Order.

III

It is further ordered, That:

A. Each refund required or permitted to be made by this Order shall be given to the customer by mailing a check payable to the order of the customer or mailing a credit certificate or a refund letter which clearly states that it may be returned for a cash refund or returned in full or partial payment of subsequent rental charges. Each statement, notice or refund sent pursuant to Paragraph I.A., I.B., or I.C. of this Order shall be mailed to the customer at the last known billing address of the customer and each such statement, notice, or refund sent pursuant to Paragraph I.A., I.B, I.C. of this Order shall have the notation "Address Correction Requested" appropriately placed on the envelope. In the event that any statement, notice or refund sent pursuant to this Order reflecting a credit in the amount of fifteen dollars ($15.00) or more is returned to respondent by reason of the fact that the customer to whom it was mailed is not located at the address to which it was sent, respondent shall then attempt to obtain from a credit bureau the most current address available for the customer by means of an in-file report or other report on information than existing in the credit bureau's file.

If a new address is obtained, respondent shall remail the check, statement, notice, refund letter or credit certificate to the customer at such address, except that in the case of credit balances created after the date of service of this Order, respondent may, at its option, deduct the cost of obtaining such information from the credit bureau from the amount owing to the customer.

With respect to all customers whose credit balances were created during the three (3) year period immediately preceding the date of service of this Order and who have not been located by the preceding method, respondent shall have no further obligation under this Order except as stated below. For all customers whose credit balances are created after service of this Order and who have not been located by the preceding method, respondent shall retain on the account the amount of the credit balance for one year from the date on which the statement, notice or refund was mailed, and respondent shall be relieved of any further obligation to send any additional statement, notice or refund with respect to the credit balance in question. *Provided, however,* That, in the event any customer should subsequently request a refund of any such credit balance, respondent shall treat such request in the manner provided in Paragraph III.B.

In the event that any statement, notice or refund sent pursuant to this Order reflecting a credit balance in the amount of less than fifteen dollars ($15.00) is returned to respondent by reason of the fact that the customer to whom it was mailed is not located at the address to which it was sent, respondent shall have no further obligation to send any additional statement, notice or refund with respect to the credit balance in question: *Provided, however,* That, in the event said customer should subsequently request a refund of any such credit balance, respondent shall treat such request in the manner provided in Paragraph III.B.

B. When a customer requests by mail, a refund of a credit balance in any amount which had been reflected at any time on such customer's account within the six (6) year period preceding such request, respondent shall, within thirty (30) days from receipt of such request, either refund the

entire amount requested, if owed, or furnish the customer with the reason(s) for refusing to refund the amount requested and supporting documentation, when requested and available, of the reason(s).

IV

It is further ordered, That a credit balance shall be deemed to be created (1) in the case of a central billing account, at the end of the billing period in which the credit balance is first recorded on a customer's account: *Provided, however,* That whenever the recorded amount of an existing credit balance is changed, the new credit balance, if any, resulting from such change shall be deemed to be created at the end of the billing period in which the change occurred, and respondent's obligations under this Order with respect to the credit balance existing prior to such change shall be terminated and shall be replaced by its obligations under this Order with respect to the new credit balance created by said change, and (2) in the case of a direct billing, at the time of receipt of the excess payment.

V

It is further ordered, That notwithstanding the foregoing, the provisions of this Order shall not be applicable to credit balances on accounts administered by third parties.

VI

It is further ordered, That respondent shall maintain the following data: Name and address of each customer who was sent a refund of a credit balance without request; the date the credit balance was created and the date it was refunded; and the amount of the credit balance. Respondent shall also maintain the following data: The names and addresses of all customers who requested a refund of a credit balance but whose request was refused; the date the request was made; the date a refusal was sent to the customer; the amount of the requested refund; a copy of any written explanation for the refusal sent to the customer; and, if no written explanation for the refusal was made, a statement of the reasons for the refusal.

VII

It is further ordered, That respondent shall retain the records required to be maintained by Paragraph VI. of this Order for a period of three (3) years and, upon request, shall produce said records for the purpose of examination and copying by representatives of the Federal Trade Commission.

VIII

It is further ordered, That in the event the Commission promulgates a Trade Regulation Rule affecting or governing the credit practices of companies engaged in the car rental business, the requirements of which Trade Regulation Rule are less onerous with respect to record preservation, notices, and procedures for and timing of refunds than those contained herein, respondent may elect to comply with such provisions in lieu of the corresponding provisions of this Order.

IX

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance with the obligations arising out of this Order.

X

It is further ordered, That respondent shall forthwith distribute a copy of this Order to each of its operating divisions engaged in the receipt of payments for rental of automobiles.

XI

It is further ordered, That respondent shall, within one hundred twenty (120) days after service of this Order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this Order.

THE HERTZ CORP.

[File No. 782-3066]

ANALYSIS OF PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement to a proposed consent order from The Hertz Corporation, a corporation, with its principal place of business located at 660 Madison Avenue, New York, N.Y. 10022.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become a part of the public record. After sixty (60) days, the Commission will again review the consent order and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The proposed complaint alleges that Hertz is now and has been engaged in the offering to rent and renting of automobiles to the general public. Many of these rentals, the complaint alleges, are charged by customers to credit accounts established with Hertz.

The proposed complaint further alleges that, prior to May 1976, Hertz had no system of informing certain of its credit customers that their accounts reflected a credit balance and that they were entitled to request and receive a cash refund of these balances. Furthermore, Hertz did not refund credit balances without a request. The complaint finally alleges that by failing to notify customers whose accouts reflected a credit balance of their right to request, and receive a cash refund and by failing to make such refunds without a request, a number of Hertz' customers have been deprived of the use of substantial sums of money. These acts and practices, the complaint alleges are unfair and are therefore in violation of Section 5 of the Federal Trade Commission Act.

The agreement to the proposed consent order in this matter requires Hertz to:

1. Provide each charge account customer with a credit balance of $5.00 or more periodic statements reflecting that balance.

2. Notify each charge account customer with a credit balance of $5.00 or more of his or her right to request and receive a cash refund of that balance.

3. Automatically refund unclaimed credit balances of $5.00 or more within seven months of their occurrence.

4. Refrain from writing off, transferring or deleting credit balances of $1.00 or more unless there has been compliance with the order in this matter.

5. Refund within 30 days any credit balance requested within six years of its creation.

In addition to correcting the alleged unfair practices, the consent order requires Hertz to refund to customers unclaimed credit balances which were created during the three year period to the date of the order.

The purpose of this analysis is to facilitate public comments on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way the terms of the proposed order.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-29261 Filed 10-16-78; 8:45 am]

[6355-01-M]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1700]

HUMAN PRESCRIPTION DRUGS IN ORAL DOSAGE FORMS

Proposed Exemption of Methylprednisolone From Child-Protection Packaging Requirements

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend the child-resistant packaging regulations to exempt methylprednisolone in tablet form in packages containing nor more than 84 mg. of the drug. (Methylprednisolone is a steroid used as an oral prescription drug.) The exemption is proposed because the information available to the Commission indicates that child-resistant packaging for this product is not necessary to protect young children from serious personal injury or illness, due to the low oral toxicity of the drug and the lack of adverse human experience associated with accidental ingestions. In proposing the exemption, the Commission grants a petition from the Upjohn Co. (Petition PP 78-3).

DATES: Comments on this proposed exemption should be submitted by December 18, 1978. If the Commission issues a final regulation concerning the exemption, the Commission proposes that the exemption be effective on the date the final regulation is published in the FEDERAL REGISTER.

ADDRESS: Comments should be sent to the Office of the Secretary, Consumer Product Safety Commission,

1111 18th Street NW., Third Floor, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT:

Dr. Fred Marozzi, Division of Safety Packaging and Scientific Coordination, Directorate for Engineering and Science, Consumer Product Safety Commission, Washington, D.C. 20207, 301-492-6477.

SUPPLEMENTARY INFORMATION: The regulations issued under the Poison Prevention Packaging Act of 1970 (the "PPPA", 15 U.S.C. 1471-1476) establish child protection packaging requirements (also called "special packaging") for human oral prescription drugs in order to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting these substances (16 CFR 1700.14(a)(10)).

On November 25, 1977, the Consumer Product Safety Commission received a petition from the Upjohn Co. to exempt the Medrol Dosepak containing 21 4-mg. methylprednisolone tablets from the child-resistant packaging requirements. Methylprednisolone is a steroid used in the treatment of a number of conditions, including certain types of endocrine disorders, arthritis, and skin conditions. The petition was supported by packaging specifications, a description of the product, test reports relating to the toxic characteristics of methylprednisolone, and copies of letters of complaint that Upjohn had received from persons who had difficulty opening the child-resistant packaging. After evaluating the material that was originally submitted, the Commission's staff requested additional data from the petitioner concerning the oral toxicity of methylprednisolone. This data was submitted on April 4, 1978.

Methylprednisolone is currently marketed by Upjohn in a child-resistant plastic box that contains 21 4-mg. tablets that are packaged on a cardboard sheet with a foil backing and a plastic blister covering each tablet.

After considering the information available to it, the Commission has decided to grant the petition and to propose an exemption from the child-resistant packaging requirements for the reasons discussed below.

Grounds for Exemption

The Commission's decision to propose the exemption is based on the low acute oral toxicity of the drug and the lack of adverse human experience associated with accidental ingestions. Although it is known that prolonged use of steroids produces adverse effects on the hormonal and lymphatic systems, there appears to be little or no effect after a single large dose. The National Clearinghouse for Poison Control Centers reports 29 ingestions of Medrol by children under 5 years of age from 1969 through 1976. The Food and Drug Administration's review of these reports through 1975 indicates that there were no symptoms caused by these ingestions. The information available from the National Electronic Injury Surveillance System contains no reports of methylprednisolone poisonings to children under 5 years of age during 1977.

In addition, animal toxicity studies indicate the low toxicity of the product. The oral LD-50 (median lethal dose) in rats is over 12 gm. per kg. Extrapolating this data to humans indicates that a typical lethal dose for a 10 kg. (22.05 lb.) child would be in excess of 120 grams, which is over 1,400 times as much of the drug as is in the package to which the proposed exemption would apply.

The Commission also solicited the opinion of the Food and Drug Administration (FDA) on the exemption request. Based on the lack of reported adverse human experience associated with accidental ingestion and the low acute oral toxicity of the drug, FDA concluded that the exemption should be granted.

The Commission also solicited comments from its Technical Advisory Committee on Poison Prevention Packaging. Of the 16 members that commented on the petition, 14 recommended granting the exemption, and 2 recommended denial due to their concern for the potentially harmful effects to the hormonal and lymphatic systems. (However, as discussed above, these adverse effects appear to be associated only with prolonged use of this type of product and not with large single doses.)

Based on its evaluation of the available toxicity information and human experience data, the Commission finds that this drug, in tablet form and in the dosage specified in the proposed exemption, does not pose a risk of serious personal illness or injury to children. The Commission emphasizes that the proposed exemption is limited to methylprednisolone in tablet form in packages containing not more than 84 mg. of the drug and containing no other substance subject to the requirements for special packaging under 16 CFR 1700.14(a)(10). The applicability of § 1700.14(a)(10) to ingredients other than methylprednisolone is not affected by this proposal. Products within the scope of this proposal must continue to be in special packaging until the effective date of any final exemption that may be issued.

In order to help insure that the requested exemption will apply to as many similarly situated manufacturers as possible, the proposed exemption is phrased in terms of the generic name and total amount of the drug that is present in the package rather than in terms of a specific tablet dosage or number of tablets.

Conclusion

Having considered the petition, human experience data as reported to the National Clearinghouse for Poison Control Centers, and other medical and scientific literature, and having consulted with the Technical Advisory Committee on Poison Prevention Packaging as required by section 3 of the Poison Prevention Packaging Act of 1970, the Consumer Product Safety Commission concludes that an exemption from the requirement of special packaging should be proposed for methylprednisolone in tablet form in packages containing not more that 84 mg. of the drug.

Accordingly, under provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91-601; secs. 2(4), 3, 5; 84 Stat. 1670-72; 15 U.S.C. 1471(4), 1472, 1474) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92-573; sec. 30(a); 86 stat. 1371; 15 U.S.C. 2079(a)), the Commission proposes that 16 CFR 1700.14 be amended by adding a new paragraph (a)(10) (xiv) as follows (the introductory portion of paragraph (a)(10), although unchanged, is included for context):

§ 1700.14 Substances requiring special packaging.

(a) * * *

(10) *Prescription drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c), except for the following:

* * * * *

(xiv) Methylprednisolone in tablet form in packages containing not more than 84 mg. of the drug and containing no other substance subject to the provisions of this section.

(Secs. 2(4), 3, 5, Pub. L. 91-601, 84 Stat. 1670-1672 (15 U.S.C. 1471(4), 1472, 1474).)

Interested persons are invited to submit on or before December 18, 1978, written comments regarding this proposed amendment. Comments received after this date will be considered if practicable. Comments and any accompanying data or material should be submitted, preferably in five copies, to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments may be supported by a memorandum or brief. Comments may be seen in the Office of the Secre-

tary, 1111 18th Street, NW., Third Floor, Washington, D.C. 20207.

Dated: October 12, 1978.

SADYE E. DUNN,
Acting Secretary, Consumer
Product Safety Commission.

[FR Doc. 78-29267 Filed 10-16-78; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-4633]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the city of Marine City, St. Clair County, Mich.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Marine City, St. Clair, Mich.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, 300 Broadway, Marine City, Mich.

Send comments to: Mr. James Southworth, City Manager, city of Marine City, City Hall, 300 Broadway, Marine City, Mich. 48039.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Marine City, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a)).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Belle River	1,600 ft downstream of Bridge St.	580
	800 ft upstream of Michigan-29.	581
	1,800 ft upstream of Michigan-29.	582
St. Clair River	At downstream corporate limits.	580
	At upstream corporate limits.	580

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 26, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28937 Filed 10-16-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4634]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Woodland, Hennepin County, Minn.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Woodland, Hennepin County, Minn.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Woodland, Minn.

Send comments to: The Honorable George D. McClintock, Mayor, city of Woodland, City Hall, Woodland, Minn. 55391.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Woodland, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Lake Minnetonka..	Shoreline.....	931

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 26, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28938 Filed 10-16-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4635]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for The City of Tekamah, Burt County, Nebr.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Tekamah, Burt County, Nebr. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the City Hall, Tekamah, Nebr.

Send comments to: The Honorable A. L. Zink, Mayor, City of Tekamah, P.O. Box 143, Tekamah, Nebr. 68061.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for City of Tekamah, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, (national geodetic vertical datum)
North Branch Tekamah Creek.	Confluence with Tekamah Creek.	1,059
	50 ft downstream of 16th St.	1,061
	70 ft upstream of 16th St.	1,066
	50 ft downstream of 17th St.	1,067
	Just upstream of 17th St.	1,073
	Just downstream of P St	1,073
	Just upstream of P St.....	1,083
	Upstream corporate limit.	1,086
	Upstream limit of extraterritorial jurisdiction.	1,163
	1,060 ft upstream of P St. extended.	1,166
	50 ft upstream of 13th St.	1,055
	350 ft upstream of L St. (near 13th St).	1,059
	100 feet downstream of Chicago and Northwestern RR.	1,060
	Upstream corporate limit.	1,065
	Upstream of State Highway 32.	1,077
	Upstream limit of extraterritorial jurisdiction.	1,088

Source of Flooding	Location	Depth In Feet (Above-ground level)
Tekamah Creek.....	Intersection of 8th and K St.	2
	Intersection of 8th and P St.	2
	Intersection of 12th and G St.	2
	Intersection of 12th and Q St.	2
	Intersection of 12th and L St.	3

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 29, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28939 Filed 10-16-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4636]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the township of Hillside, Union County, N.J.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Hillside, Union County, N.J.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at town hall, Liberty and Hillside Avenues, Hillside, N.J.

Send comments to: Honorable Harold Wovsaniker, Mayor, township of Hillside, Town Hall, Liberty and Hillside Avenues, Hillside, N.J. 07205.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Hillside, N.J., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Elizabeth River	North Avenue—100 ft *...	30
	Conrail—100 ft *	39
	Liberty Ave.—100 ft *.....	42
	U.S. Route 22 to 80 ft **.	49
	U.S. Route 22 to 60 ft *...	52
	Garden State Parkway—50 ft *.	55
	Interstate Route 78-100 ft.*.	60
	Union Ave. to 100 ft **....	62
	Union Ave. to 100 ft *.....	66
	Ramps to Interstate Route 78 to 100 ft *.	69

* Upstream of centerline.
** Downstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 26, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28940 Filed 10-16-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4637]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Belfield, Stark County, N. Dak.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Belfield, Stark County, N. Dak.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at city hall, Belfield, N. Dak.

Send comments to: Hon. Frank Kordonowi, Mayor, City of Belfield, P.O. Box 276, Belfield, N. Dak. 58622.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Belfield, N. Dak., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Heart River	U.S. Highway 85 to 100 ft *.	2,573
	Pedestrian Bridge-50 ft *	2,576
	2d Avenue East-30 ft *	2,578
	Main St-30 ft *.....	2,580
	6th Ave.-50 ft.....	2,583

* Upstream of centerline

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Heart River Tributary.	1st Crossing Pedestrian, Bridge-50 ft *.	2,581
	Second Ave. West-20 ft *	2,582
	2nd Crossing Pedestrian Bridge-50 ft *.	2,583
	4th St Northwest-50 ft *.	2,584
	Burlington Northern RR-50 ft *.	2,586

* Upstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 29, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28941 Filed 10-16-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4638]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Village of Fairport Harbor, Lake County, Ohio

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the village of Fairport Harbor, Lake County, Ohio.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the village hall, 220 Third Street, Fairport Harbor, Ohio.

Send comments to: The Hon. Delbert Lintala, Mayor, village of Fairport Harbor, Village Hall, 220 Third Street, Fairport Harbor, Ohio 44077.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the village of Fairport Harbor, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Grand River	At mouth	576
	100 ft downstream of Fairport, Painesville & Eastern RR Bridge.	576
	600 ft upstream of Fairport, Painesville & Eastern RR.	577
	1,400 ft upstream of Fairport, Painesville & Eastern RR.	578
	850 ft downstream of Chessie RR.	579
	1,300 ft upstream of Chessie RR.	580
	100 ft downstream of North St. Clair St..	581
	560 ft upstream from North St. Clair St.	582
	Shoreline opposite Water St.	580
Lake Erie	Shoreline opposite eastern corporate limit.	580

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 26, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28942 Filed10-16-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4639]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Village of Jefferson, Ashtabula County, Ohio

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Village of Jefferson, Ashtabula County, Ohio.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Village Hall, 27 Jefferson Street, Jefferson, Ohio.

Send comments to: The Honorable Roger Brenneman, Mayor, Village of Jefferson, Village Hall, 27 East Jefferson Street, Jefferson, Ohio 44047.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Village of Jefferson, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Cemetery Creek	At Poplar St	866
	200 ft upstream of Poplar St.	868
	600 ft upstream of Poplar St.	870
	250 ft downstream of Elm St.	872
	250 ft upstream of Elm St.	874
	Just downstream of Chestnut St.	882
	Just upstream of Chestnut St.	884
	500 ft upstream of Chestnut St.	885

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 26, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28943 Filed 10-16-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4640]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the City of Mentor-on-the Lake, Lake County, Ohio

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Mentor-on-the-Lake, Lake County, Ohio.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the city hall, 5860 Andrews Road, Mentor-on-the-Lake, Ohio.

Send comments to: The Honorable Neil H. Crookshank, Mayor, City of Mentor-on-the-Lake, City Hall, 5860 Andrews Road, Mentor-on-the-Lake, Ohio 44060.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the city of Mentor-on-the-Lake, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Lake Erie	Entire City of Mentor-on-the-Lake.	576

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78- 28944 Filed 10-16-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4641]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Village of North Perry, Lake County, Ohio

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Village of North Perry, Lake County, Ohio.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Village Hall, North Perry, Ohio.

Send comments to: The Honorable Robert Orosz, Mayor, Village of North Perry, 2656 Antioch Road, North Perry, Ohio 44081.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Village of North Perry, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change

any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Lake Erie	Shoreline of community	581

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 26, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28945 Filed 10-16-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4642]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Village of Waite Hill, Lake County, Ohio

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the village of Waite Hill, Lake County, Ohio.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the village hall, Eagle Road, Waite Hill, Ohio.

Send comments to: The Hon. Arthur Baldwin, Mayor, village of Waite Hill, Village Hall, Eagle Road, Waite Hill, Ohio 44094.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for village of Waite Hill, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Chagrin River	At confluence of east branch Chagrin River (corporate limit).	618
	0.9 mi upstream of Riverside Drive.	625
	0.62 mi downstream of Eagle Rd.	636
	Upstream side of Eagle Rd.	644
	Upstream corporate limit.	651
East branch Chagrin River.	At confluence with Chagrin River.	618
	0.4 mi upstream of Northeast Bound I-90.	620
	0.64 mi downstream of Markell Rd.	628
	0.34 mi downstream of Markell Rd.	631
	Upstream corporate limit.	638

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 26, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28946 Filed 10-16-78; 8:45 am]

[4210-01]

[24 CFR Part 1917]

[Docket No. FI-4643]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Township of Jackson, Northumberland County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Jackson, Northumberland County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the International Order of Oddfellows Lodge (IOOF), Route 225, Dornsife, Pa. 17823. Send comments to: Mr. Norman E. Rothermel, Chairman of Jackson, R.D. 1, Herndon, Pa. 17830.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street

SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Jackson, Northumberland County, Pa., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Susquehanna River.	Downstrean corporate limits.	422
	Confluence of Mahanoy Creek.	426
	Upstream corporate limits.	429
Mahanoy Creek.....	State Route 147	426
	Township Route 377.....	457
	Legislative Route 49020..	468
	Legislative Route 49019 .	483
	Upstream corporate limits.	493
Schwaben Creek....	State Route 225	470
	Confluence of Mouse Creek.	474
	Upstream corporate limits.	481

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28947 Filed 10-16-78; 8:45 am]

[4210-01—M]

[24 CFR Part 1917]

[Docket No. FI-4644]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Borough of Liverpool, Perry County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the borough of Liverpool, Perry County, Pa.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the residence of Ms. Rebecca Hotzapple, 304 South Front Street, Liverpool, Pa. 17045.

Send comments to: Hon. Arthur Earnest, Mayor of Liverpool, Market Street, Liverpool, Pa. 17045.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the borough of Liverpool, Perry County, Pa., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Susquehanna River.	Sewage disposal plant 1500 ft downstream of Barger Run.	390
	Confluence of Barger Run.	392
	Confluence of tributary No. 37 to Susquehanna River.	393

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28948 Filed 10-16-78; 8:45 am]

[4210-01—M]

[24 CFR Part 1917]

[Docket No. FI-4645]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Township of Mifflin, Columbia County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Mifflin, Columbia County, Pa.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Mifflin Township Municipal Building, First Street, Mifflinville, Pa. 18631.

Send comments to: Mr. James R. Disidoro, Chairman of Mifflin, 239 First Street, Mifflinville, Pa. 18631.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Mifflin, Columbia County, Pa., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Susquehanna River.	Confluence with Tenmile Run.	487
	Legislative Route 19013 (upstream).	489
	State Route 93 (upstream).	500
Tributary No. 3 to Susquehanna River.	Conrail (upstream)	495
	West St (upstream)	511
	Fair St (upstream)	555
	Township Route 425 (upstream).	
	Township Route 425 (upstream).	

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28949 Filed 10-16-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4646]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Township of Moon, Allegheny County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of Moon, Allegheny County, Pa.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Moon Township Municipal Building, Moon, Pa.

Send comments to: Mr. Ronald Cost, Chairman of Moon, 1000 Beaver Grade Rd.; Coreopolis, Pa. 15108.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Township of Moon, Allegheny County, Pa., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Ohio River	Northwestern corporate limits.	712
	Dashields Lock and Dam.	714
	Sewickley Bridge	715
	Northeastern corporate limits.	717

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28950 Filed 10-16-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4647]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Borough of Newport, Perry County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Borough of Newport, Perry County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Newport Borough Building, Newport, Pa. 17074. Send comments to: Mr. James McGowan, President of the Council of Newport, 127 South Second Street, Newport, Pa. 17074.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Borough of Newport, Perry County, Pa., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Little Buffalo Creek.	Downstream of ConRail and Pennsylvania Route 34.	393
	Pennsylvania Route 34	393
	Dirt road 50035	405
	Dirt road 500 ft upstream of Road 50035.	408
Juniata River	Confluence of Little Buffalo Creek.	394
	State Route 34	395
	Confluence of Buffalo Creek.	397

(National Flood Insurance Act of 1968 (title XIII of Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719).

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28951 Filed 10-16-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4648]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Township of Oliver, Perry County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Oliver, Perry County, Pa.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Township Municipal Building, Oliver, Pa.

Send comments to: Mr. H. Donald Little, Chairman of the Board of Supervisors of Oliver, South Third Street, Newport, Pa. 17074.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Oliver, Perry County, Pa., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Little Buffalo Creek.	Confluence with Juniata River.	393
	Pa. State Route 34	393
	Road 50035	405
	Dirt Road 500 ft upstream of Road 50035.	408

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Upstream corporate limit of the township of Oliver.	425
Buffalo Creek	Confluence with Juniata River.	397
	Front St	397
	Tributary No. 1 to Buffalo Creek.	400
	Covered Bridge	418
Juniata River	Confluence of Little Buffalo Creek.	394
	Confluence of Buffalo Creek.	397

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28952 Filed 10-16-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4649]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Township of Rye, Perry County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the Township of Rye, Perry County, Pa. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the residence of Ms. Jean Snyder, Township Secretary, P.O. Box 45, Marysville, Pa. Send comments to: Mr. Robert Eichelberger, Chairman of the Board of Supervisors of Rye, R.D. 1, Box 141, Marysville, Pa. 17053.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the Township of Rye, Perry County, Pa. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Fishing Creek West.	Footbridge 2,400 ft downstrean of New Valley Rd.	393
	Footbridge 1,400 ft downstream of New Valley Rd.	395
	New Valley Rd, downstream.	403
	New Valley Rd, upstream.	419
	Footbridge 2,000 ft upstream of New Valley Rd.	427
	Footbridge 160 ft downstrean of Bellview Rd. (extended).	445
	Pennsylvania Route 850, downstream.	462
	Pennsylvania Route 850, Upstream.	477
	Dirt road 1,700 ft upstream of Pennsylvania Route 850.	480
	Footbridge 2,300 ft downstream of Idle Rd.	495
	Idle Rd	505
	Dirt road 4,000 ft upstream of Idle Rd.	516
	Footbridge along extension of dirt road off of Pennsylvania Route 850.	545
Fishing Run	Farm road	506
	Pennsylvania Route 850.	518
	Pine Hill Rd	522
	Dirt road 2,400 ft upstream of Pine Hill Rd.	535
	Dirt road 1,000 ft downstream of Copenhaver Rd.	543
	Copenhaver Rd	547
	Lingle Rd	555
	Kiem Rd	564

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28953 Filed 10-11-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4628]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Township of Watts, Perry County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Watts, Perry County, Pa.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of

the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the residence of R. Pauline Huggins, R.D. 2, Duncannon, Pa. 17020.

Send comments to: Mr. Paul Knuth, Sr., Chairman of the Board of Supervisors of Watts, R.D. 2, Duncannon, Pa. 17020.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Watts, Perry County, Pa., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Juniata River	Downstream corporate limits of the township of Watts.	363
	Confluence of Losh Run	370
	Upstream corporate limits of the township of Watts.	375
Susquehanna River.	Downstream corporate limits of the township of Watts.	364
	Confluence of Buffalo Creek.	367
	Notch Road (extended)..	375

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28968 Filed 10-16-78; 8:45 am]

[4210-01—M]

[24 CFR Part 1917]

[Docket No. FI-4629]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determinations for the Township of Williams, Northampton County, Pa.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the township of Williams, Northampton County, Pa.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Williams Municipal Building, Williams, Pa. 18042.

Send comments to: Honorable E. W. R. Helm, Mayor of Williams, 1885 Morgan Hill Road, Easton, Pa. 18042.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the township of Williams, Northampton County, Pa. in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Lehigh River	Downstream corporate limits.	204
	Upstream corporate limits.	209
Delaware River	Downstream corporate limits.	163
	16,800 ft above downstream corporate limits.	174
	28,800 ft above downstream corporate limits.	180
	Upstream corporate limits.	188

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 25, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28969 Filed 10-16-78; 8:45 am]

[4210-01—M]

[24 CFR Part 1917]

[Docket No. FI-4630]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Gloucester, Providence County, R.I.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Gloucester, Providence County, R.I. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at Town Hall, Main Street, Chepachet, R.I. Send comments to: Mrs. Jacqueline Ericson, President, Town Council, Town of Gloucester, P.O. Drawer B, Chepachet, R.I. 02814.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Gloucester, Rhode Island, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Chepachet River...	Steeres Lower Pond Dam, 50 ft.[1].	357
	U.S. Route 40 (Putnam Pike), 30 ft.[1].	405
	Dam located 325 ft upstream U.S. Route 44 (Putnam Pike):.	
	50 ft [2].....	407
	90 ft [1].....	416

[1] Upstream of centerline.
[2] Downstream of centerline.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28970 Filed 10-16-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-3896]

NATIONAL FLOOD INSURANCE PROGRAM

Revision of Proposed Flood Elevation Determination for the City of Denton, Denton County, Tex.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the city of Denton, Denton County, Tex.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in the FEDERAL REGISTER at 43 FR 6247 on February 14, 1978, and in the Denton Record Chronicle published on December 13, 1977, and December 14, 1977, and hence supersedes those previously published rules.

DATES: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Municipal Building, 215 East McKinney Street, Denton, Tex.

Send comments to: Hon. Eleinor Hughes, Mayor of Denton, 215 East McKinney Street, Denton, Tex. 76201.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the city of Denton, Denton County, Tex., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Cooper Creek.....	U.S. Route 380 (upstream).	583
	Fishtrap Rd. (upstream)	588
	Confluence of Cooper Creek Tributary A.	601
	Old Lee St. (upstream)...	604
	Nottingham Rd. (upstream).	613
	Devonshire Rd. 900 ft upstream of Nottingham Rd. (upstream).	618
	Devonshire Rd. 1,150 ft upstream of Nottingham Rd. (upstream).	620
	Windsor Rd. (upstream)	623
	Sherman Dr. (upstream)	637
	Stuart Rd. (upstream)....	640
	Confluence of Cooper Creek Tributary B.	650
	North Locust St. (upstream).	660
Cooper Creek Tributary A.	Confluence with Cooper Creek.	601
	Broken Arrow Rd. (upstream).	607

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
	Upstream corporate limits.	619
Cooper Creek Tributary B.	Confluence with Cooper Creek.	650
	Yucca St. (upstream).....	655
	Hercules Lane (upstream).	657
	Confluence of unnamed tributary.	664
	North Locust St. (upstream).	667
Pecan Creek.....	Mayhill Rd. (upstream).	571
	Loop 288 (upstream).....	578
	Confluence of Pecan Creek Tributary A.	583
	Confluence of Pecan Creek Tributary B.	592
	Woodrow Lane (upstream).	599
	Wood St. (upstream).....	603
	Confluence of Pecan Creek Tributary C.	604
	Sycamore St. (upstream).	606
	Hickory St. (upstream)...	611
	McKinney St. (upstream).	612
	Frame St. (upstream).....	615
	Blount St. (upstream)	621
	Confluence of North Pecan Creek.	622
	Austin St. (upstream).....	622
	North Locust St. (upstream).	624
	North Elm St. (upstream).	626
	Bolivar St. (upstream)....	627
	Parkway St. (upstream).	628
	North Carroll Blvd. (upstream).	631
	Congress St. (upstream).	633
	Alice St. (upstream).....	635
	Linden St. (upstream)	637
	Crescent St. (upstream).	644
	Cordell St. (upstream)....	645
	Malone St. (upstream)....	649
	Georgetown St. (upstream).	652
	Unnamed dam 2,500 ft downstream from Bonnie Brae St. (downstream).	661
	Unnamed dam 2,500 ft downstream from Bonnie Brae St. (upstream).	679
	Bonnie Brae St. (upstream).	681
	Payne Dr. (upstream).....	682
	Westgate St. (upstream)	704
Pecan Creek Tributary A.	Confluence with Pecan Creek.	583
	Earthfill dam 750 ft upstream of the confluence with Pecan Creek (downstream).	585
	Earthfill dam 750 ft upstream of the confluence of Pecan Creek (upstream).	593
Pecan Creek Tributary B.	Confluence with Pecan Creek.	592
	Shady Oak Dr. (upstream).	608
	Spencer Rd. (upstream).	613
Pecan Creek Tributary C.	Confluence with Pecan Creek.	604
	Prairie St. (upstream).....	604
	Bradshaw St. (upstream).	608
	Lakey St. (upstream).....	612
	Maddox St. (upstream)..	620
	Skinner St. (upstream)...	621
	Industrial Rd. (upstream).	624
	Wainwright St. (upstream).	627
	South Locust St. (upstream).	630
	South Elm St. (upstream).	632
	East Prairie St. (upstream).	633
	Stroud St. (upstream).....	635
North Pecan Creek.	Confluence with Pecan Creek.	622
	Oakland St. (upstream)..	623
	Austin St. (upstream).....	624
	North Locust St. (upstream).	626
	North Elm St. (upstream).	629
	Bolivar St. (upstream)....	631
	Anna St. (upstream).....	635
	Crescent St. (upstream).	637
	Alice St. (upstream).....	648
	Sunset St. (upstream).....	648
	University Dr. West (upstream).	649
	Hinkle Dr. (upstream)....	657
Dry Fork Hickory Creek.	Interstate Highway 35 (upstream).	588
	Downstream corporate limits.	590
	Corporate limits 5,300 ft downstream of Airport Rd.	598
	Airport Rd. (upstream)..	614
	Confluence of unnamed tributary.	622
	Unnamed gravel road 6,900 ft upstream of Airport Rd. (upstream).	624
	Upstream corporate limits.	635
Dry Fork Hickory Creek Tributary A.	Downstream corporate limits.	607 630
	Airport Rd. (upstream)..	
	Channel dam.....	646
Hickory Creek Tributary.	Atchison, Topeka, & Santa Fe Railway.	584
	Railroad spur 3,175 ft downstream of Rose Lawn St.	589
	Rose Lawn St. (upstream).	619
	Confluence of unnamed tributary.	628

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 26, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28971 Filed 10-16-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4631]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Shoreham, Addison County, Vt.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Shoreham, Addison County, Vt.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Town Office, Shoreham, Vt.

Send comments to: The Honorable Donald Treadway, Chairman, Board of Selectmen, Town of Shoreham, Town Office, Shoreham, Vt. 05770.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Shoreham, Vt., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Lake Champlain....	From northern corporate limit to 2,400 ft south of northern corporate limit.	103

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28972 Filed 10-16-78; 8:45 am]

[4210-01-M]

[24 CFR Part 1917]

[Docket No. FI-4632]

NATIONAL FLOOD INSURANCE PROGRAM

Proposed Flood Elevation Determination for the Town of Stonewood, Harrison County, W. Va.

AGENCY: Federal Insurance Administration, HUD.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the town of Stonewood, Harrison County, W. Va.

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the national flood insurance program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed base (100-year) flood elevations are available for review at the Treasurer's Office, Stonewood City Hall, Stonewood, W. Va. 26301.

Send comments to: Hon. D. F. Oliverio, Mayor of Stonewood, 109 Cost Avenue, Stonewood, W. Va. 26301

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410, 202-755-5581 or toll-free line 800-424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for the town of Stonewood, Harrison County, W. Va., in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 24 CFR 1917.4(a).

These elevations, together with the flood plain management measures required by § 1910.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation in feet, national geodetic vertical datum
Elk Creek.....	Downstream corporate limit.	969
	Plainwood Ave. (upstream).	971
	Upstream corporate limit.	974

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001-4128); and Secretary's delegation of authority to Federal Insurance Administrator, 43 FR 7719.)

Issued: September 28, 1978.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 78-28973 Filed 10-16-78; 8:45 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-267-76]

INCOME TAX

Involuntary Conversion of Real Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed income tax regulations relating to the involuntary conversion of real property. Changes to the applicable tax law were made by the Tax Reform Act of 1976. The regulations would provide the public with the guidance needed to comply with that Act.

DATES: Written comments and requests for a public hearing must be delivered or mailed by December 18, 1978. The amendments are proposed to be effective for certain dispositions occurring after December 31, 1974.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, (LR-267-76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

David B. Cubeta, of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) 202-566-3926.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 1033 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to sections 2140 and 1901(a)(128) of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1932, 1785) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

EXPLANATION OF PROVISIONS

These proposed regulations contain the special rule of section 1033(f)(4) relating to the time within which involuntarily converted real property held for productive use in trade or business or for investment must be replaced in order to qualify for nonrecognition of gain. This rule provides

that the period shall commence with the date of the property's disposition as a result of its seizure, requisition, or condemnation (or, if earlier, the date of the threat or imminence thereof) and end 3 years (rather than 2 years as under prior law) after the close of the first taxable year in which any part of the gain is realized.

These regulations are also amended to conform to the statute as amended by the deletion of various obsolete provisions.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of these proposed regulations is David B. Cubeta, of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 are as follows:

PARAGRAPH 1. Section 1.1033 (a)-1 is amended by striking out "§ 1.1033(b)-1" each place it appears and inserting in lieu thereof "§ 1.1033(a)-3", by striking out "§ 1.1033(c)-1" and inserting in lieu thereof "§ 1.1033(b)-1", by striking out §§ 1.1033(d)-1, 1.1033(e)-1, and 1.1033(f)-1" and inserting in lieu thereof "§§ 1.1033(c)-1, 1.1033(d)-1, and 1.1033(e)-1", by striking out "§ 1.1033(g)-1" and inserting in lieu thereof "§ 1.1033(f)-1", and by deleting the next to the last sentence of paragraph (a).

PAR. 2. Section 1.1033(a)-2 is amended by striking out "section 1033(a)(3)" each place it appears and inserting in lieu thereof "section 1033(a)(2)", by striking out "section 1033(c)" each place it appears and inserting in lieu thereof "section 1033(b)", by deleting the first sentence of paragraph (a), by revising the heading of § 1.1033(a)-2, and by adding flush material following subdivision (ii) of paragraph (c)(3). The revised and added material reads as follows:

§ 1.1033(a)-2 Involuntary conversion into similar property, into money or into dissimilar property.

* * * * *

(c) *Conversion into money or into dissimilar property.* * * *

(3) * * *

(ii) * * *

See section 1033(f)(4) and § 1.1033(f)-1 for the circumstances under which, in the case of the conversion of real property held either for productive use in trade or business or for investment, the 2-year period referred to in this paragraph (c)(3) shall be extended to 3 years.

* * * * *

§§ 1.1033(a)-3 and 1.1033(a)-4 [Deleted]

PAR. 3. Sections 1.1033(a)-3 and 1.1033(a)-4 are deleted.

§ 1.1033(b)-1 [Redesignated as § 1.1033(a)-3 and Amended]

PAR. 4. Section 1.1033(b)-1 is redesignated as § 1.1033(a)-3 and is amended by deleting the third and fourth sentences, and by striking out "section 1034(i)(2)" and inserting in lieu thereof "section 1034(i)".

§ 1.1033(c)-1 [Redesignated as § 1.1033(b)-1 and Amended]

PAR. 5. Section 1.1033(c)-1 is redesignated as § 1.1033(b)-1 and is amended by striking out "section 1033(c)" each place it appears and inserting in lieu thereof "section 1033(b)".

§ 1.1033(d)-1 [Redesignated as § 1.1033(c)-1 and Amended]

PAR. 6. Section 1.1033(d)-1 is redesignated as § 1.1033(c)-1 and is amended by striking out "section 1033(d)" each place it appears and inserting in lieu thereof "section 1033(c)".

§ 1.1033(e)-1 [Redesignated as § 1.1033(d)-1]

PAR. 7. Section 1.1033(e)-1 is redesignated as § 1.1033(d)-1.

PAR. 8. Section 1.1033(f)-1 is redesignated as § 1.1033(e)-1 and is amended by striking out "section 1033(f)" each place it appears and inserting in lieu thereof "section 1033(e)"

§ 1.1033(g)-1 [Redesignated as 1.1033(f)-1 and Amended]

PAR. 9. Section 1.1033(g)-1 is redesignated as § 1.1033(f)-1 and is amended by redesignating paragraph (b) as paragraph (c), by addiing a new paragraph (b) and by revising redesignated paragraph (c). The added and revised material reads as follows:

§ 1.1033(f)-1 Condemnation of real property held for productive use in trade or business or for investment.

* * * * *

(b) *Special rule for period within which property must be replaced.* In the case of a disposition described in paragraph (a) of this section, section 1033(a)(2)(B) and § 1.1033(a)-2(c)(3) (relating to the period within which the property must be replaced) shall be applied by substituting 3 years for 2 years. This paragraph shall apply to any disposition described in section 1033(f)(1) and paragraph (a) of this section occurring after December 31, 1974, unless a condemnation proceeding with respect to the property was begun before October 4, 1976. Thus, regardless of when the property is disposed of, the taxpayer has only 2 years to replace it (or apply for an extension) if a condemnation proceeding was begun before October 4, 1976. However, if the property is disposed of after December 31, 1974, and the condemnation proceeding was begun (if at all) after October 4, 1976, then the taxpayer has 3 years to replace it (or apply for an extension). For the purposes of this paragraph, whether a condemnation proceeding is considered as having begun is determined under the applicable State or Federal procedural law.

(c) *Limitation on application of special rule.* This section shall not apply to the purchase of stock in the acquisition of control of a corporation described in section 1033(a)(2)(A).

§ 1.1033(h)-1 [Redesignated as § 1.1033(g)-1 and Amended]

PAR. 10. Section § 1.1033(h)-1 is redesignated as § 1.1033(g)-1 and is amended by striking out "§ 1.1033(f)-1 and § 1.1033(g)-1" and inserting in lieu thereof "§ 1.1033(e)-1 and § 1.1033(f)-1."

§ 1.1034-1(h)(1) [Amended]

PAR. 11. Section 1.1034(h)(1) is amended by striking out "§ 1.1033(b)-1" and inserting in lieu thereof "§ 1.1033(a)-3."

§ 1.1033(a)—1.1033(h) [Deleted]

PAR. 12. The following sections are deleted: § 1.1033(a) and the historical note; § 1.1033(b); § 1.1033(c); § 1.1033(d); § 1.1033(e); § 1.1033(f) and the historical note; § 1.1033(g) and the historical note; and § 1.1033(h) and the historical note.

JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 78-29283 Filed 10-16-78; 8:45 am]

[3410-37-M]

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

[7 CFR Part 2852]

FROZEN GREEN BEANS AND FROZEN WAX BEANS [1]

Proposed United States Grade Standards

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the grading standards for frozen green beans and frozen wax beans. This action is being taken at the request of the frozen food industry. The effect of this proposal would be to impove the standards.

DATE: Comments must be received on or before November 30, 1978.

ADDRESS: Comments should be sent to:
Executive Secretariat, FSQS, Room 3167-S, U.S. Department of Agriculture, Washington, D.C. 20250. Attention: Ann Langlois. Comments will be available for public inspection at the same address during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT:

Howard W. Schutz, Processed Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250 202-447-4693.

SUPPLEMENTARY INFORMATION: The current U.S. Standards for Grades of Frozen Green Beans and Wax Beans classify various stages of overmaturity as defects. These defects (maturity) are grouped with other defects (such as mechanical damage, tough strings, stems, and vines) and applied against a single tolerance or Acceptable Quality Level (AQL). Under this proposed rule, separate tolerances for overmature beans would be established. These tolerance changes would have the net effect of retaining substantially the same quality level for each grade.

Some frozen green beans are intentionally multi-blanched (precooked) for special pruposes, such as frozen dinners. The Current standards downgrade the precooked beans because of dullness, even though the process was intentional. This proposed rule would correct this deficiency by providing for nulti-blanched beans as a separate type of pack.

Other changes are proposed in the interest of clarity and uniformity. These include elimination of dual grade designations, adjustments in AQL's and referencing sampling plans which appear in the general regulations.

Suitable manuals to guide the user of the "Regulation" sampling plans are available to the public. These manuals or information about their content may be obtained from the "contact person" mentioned previously.

Changes under this proposed rule are being made under the authority of the Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624). This proposed rule invites views, comments, and opinions from interested persons.

The rule proposed is:

Sec.
2852.2321 Product description.
2852.2322 Styles.
2852.2323 Style classification and tolerances.
2852.2324 Types.
2852.2325 Kinds of pack.
2852.2326 Definitions of terms.
2852.2327 Recommended sample unit sizes.
2852.2328 Grades.
2852.2329 Factors of quality.
2852.2330 Classification of defects.
2852.2331 Tolerances for defects.
2852.2332 Sample size.
2852.2333 Compliance with style requirements.
2852.2334 Compliance with quality requirements.

AUTHORITY: Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended (7 U.S.C. 1622, 1624).

§ 2852.2321 Product description.

"Frozen green beans" and "frozen wax beans," hereinafter called "frozen beans," means the frozen product prepared from the clean, sound succulent pods of the bean plant. The pod are stemmed, washed, blanched, sorted, and properly drained. The product is then frozen in accordance with good commercial practice and maintained at temperatures necessary for the preservation of the product.

§ 2852.2322 Styles.

(a) *"Whole"* means frozen beans consisting of whole pods of any length.

(b) *"Cut"* means frozen beans consisting of pods that are cut transversely into pieces less than 2¾ inches (7.0 cm) but not less than ¾ inch (1.9 cm) in length.

(c) *"Short Cut"* means frozen beans consisting of pods that are cut transversely into pieces less than ¾ inch (1.9 cm) in length.

(d) *"Mixed"* means a mixture of two or more of the following styles of frozen beans: whole, cut, or short cut.

(e) *"Sliced Lengthwise"* means frozen beans consisting of pods that are sliced lengthwise and may also be known as "French Style," "French Sliced," "Julienne," or "Shoestring."

§ 2852.2323 Style classification and tolerances.

(a) *General.* For the purpose of determining compliance with the styles of "cut" and "short cut", any pieces that are of the lengths specified in table I are considered as minor or major defects. Each "X" represents one defect.

(b) *Compliance.* Tolerances for compliance with style are contained in tables II and III as applicable for the style.

TABLE I—STYLE DEFECT CLASSIFICATION

Style	Defect	Classification	
		Minor	Major
Cut	Pieces shorter than ⅜ in (1.3 cm) in length.	X	
	Pieces longer than 2¾ in (7 cm).		X
Short Cut	Pieces ¾ in (1.9 cm) or longer but not longer than 1¾ in (4.5 cm).	X	
	Pieces longer than 1¾ in (4.5 cm).		X

TABLE II—CUT STYLE

TOLERANCES FOR STYLE COMPLIANCE

	Total [1]	Major
AQL [2]	20.0	2.5

TABLE III—SHORT CUT STYLE

TOLERANCES FOR STYLE COMPLIANCE

	Total [1]	Major
AQ L [2]	20.0	0.65

[1] Total = Minor plus Major.
[2] AQL expressed as percent defective.

§ 2852.2324 Types.

(a) The type of frozen beans is not incorporated in the grades of the finished product, since type of frozen beans is not a factor of quality for the purpose of these grades. The type of frozen beans is described as "round type" or "flat type."

(b) *"Round type"* means frozen beans having a width not greater than 1½ times the thickness of the bean.

(c) *"Flat type"* means frozen beans having a width greater than 1½ times the thickness of the beans.

§ 2852.2325 Kinds of pack.

(a) The kind of pack of frozen beans is not incorporated in the grades of the finished product, since the kind of pack is not a factor of quality for the purpose of these grades. The kind of pack of frozen beans is described as "regular process" or "multi-blanch process."

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

(b) *"Regular process"* means the frozen beans are processed in such a manner that the brightness is not affected by the process.

(c) *"Multi-blanch process"* means the frozen beans are intentionally processed in such a manner that the brightness is affected by the process.

§ 2852.2326 Definitions of terms.

(a) *Acceptable Quality Level (AQL).* The maximum percent of defective units or the maximum number of defects per hundred units of product that, for the purposes of acceptance sampling, can be considered satisfactory as a process average.

(b) *Blemished.* Any unit which is affected or damaged by discoloration or any other means to the extent that the appearance or eating quality is affected: (1) not more than slightly; (2) materially; or (3) seriously.

(c) *Brightness.* The extent that the overall appearance of the sample unit as a mass is affected by dullness. (Applies to regular pack only.)

(1) Grade A—not affected.

(2) Grade B—slightly affected.

(3) Grade C—materially affected.

(4) Substandard—off-color.

(d) *Character*—(1) *Round type*—(i) *Good character.* The pods are full fleshed and tender and the seeds are not mealy.

(ii) *Reasonably good character.* The pods are reasonably fleshy and reasonably tender and the seeds are not mealy.

(iii) *Fairly good character.* The pods have not entirely lost their fleshy structure, are fairly tender, and the seeds may be slightly mealy.

(iv) *Poor character.* The seeds are hard and more than slightly mealy and the pods have no flesh.

(2) *Flat type.*—(i) *Good character.* The pods are tender and have a definite seed pocket. The seeds may be slightly enlarged for the type but are not mealy.

(ii) *Reasonably good character.* The pods are reasonably tender and may not have a definite seed pocket. The seeds may be no more than moderately enlarged for the type and may be slightly mealy.

(iii) *Fairly good character.* The pods are fairly tender and are lacking a seed pocket. The seeds may be enlarged and may be mealy and moderately hard.

(iv) *Poor character.* The pods are not tender and are lacking a seed pocket. The seeds may be enlarged, hard, and mealy.

(e) *Color (Individual units).*—(1) *Green beans.*—(i) *Well colored.* The individual units have a distinct green color that may range from a light shade of green color to a moderately dark shade of green characteristics of the variety.

(ii) *Fairly well colored.* The individual units are lacking a distinct green color such that the color appearance is materially affected.

(iii) *Poorly colored.* The individual units are lacking in green color such that the color appearance is seriously affected.

(2) *Wax beans.*—(i) *Well colored.* The individual units have a color ranging from a distinct green color to a distinct yellow color with intermediate stages of greenish-yellow to yellowish-green.

(ii) *Fairly well colored.* The individual units are lacking a distinct yellow color such that the color appearance is materially affected.

(iii) *Poorly colored.* The individual units have a chalky white color that seriously affects the color appearance of the units or are otherwise seriously affected.

(f) *Defect.* Any nonconformance of a unit(s) of product from a specified requirement of a single quality characteristic.

(g) *Detached stem.* The stem or portion of stem that attaches the bean pods to the vine stem, but has become separated from the pod.

(h) *Extraneous vegetable material.*—(1) *Class 1.*—Tender, green, edible vegetable material similar in color and texture to that of bean pods, including but not limited to: (i) leaves or portions of leaves or grass; or (ii) material from plants other than the bean plant.

(2) *Class 2*—Any material that is not tender, that may be tough or fibrous too hard, brittle, or woody, that may not be green, and includes but is not limited to: (i) discolored leaves or grass or portions thereof; (ii) bean stalk or vine material, including vine stems, regardless of color, length, or diameter; or (iii) material from plants other than the bean plant.

(i) *Fiber.*—(1) *Edible.* Fiber developed in the wall tissue of the bean pod that is noticeable upon chewing but may be consumed with the rest of the bean material without objection.

(2) *Tough.* Fiber developed in the wall tissue of the bean pod that is objectionable upon chewing and tends to separate from the rest of the bean material.

(j) *Flavor.*—(1) *Good flavor.* The product, after cooking, has a good characteristic flavor and odor and is free from objectionable flavors and odors of any kind.

(2) *Fairly good flavor.* The product, after cooking, may be lacking in good flavor and odor but is free from objectionable flavors and odors of any kind.

(k) *Mechanical damage.* Any unit that is broken or split into two parts, or that has very ragged edges, or is crushed, or is damaged by other mechanical means to such an extent that the appearance is seriously affected.

(l) *Sample unit.* The amount of product specified to be used for inspection. It may be:

(1) The entire contents of a container; or

(2) A portion of the contents of a container; or

(3) A combination of the contents of two or more containers; or

(4) A portion of unpacked product.

(m) *Small piece (sliced lengthwise style only).* A piece of pod less than ¾-inch (1.9 cm) in the longest dimension and loose seeds and pieces of seeds.

(n) *Tough strings.* Strings or pieces of strings removed from the cooked bean pod which will support a ½ pound (227 g) weight for not less than 5 seconds.

(o) *Unit.* A bean pod or any individual portion thereof.

(p) *Unsnipped unit.* A unit without an attached stem but with a stem collar that is hard or tough and would be objectionable upon eating.

(q) *Unstemmed unit.* A unit with attached stem or portion thereof that attaches the pod to the vine stem.

§ 2852.2327 Recommended sample unit sizes.

(a) In all styles, other than sliced lengthwise, a mechanically damaged unit that is broken into separate parts will be reassembled to approximate its original size and counted as one unit in the sample unit size.

(b) *Style requirements.* Compliance with the requirements for style is based on the following recommended sample unit sizes:

Cut and short cut—200 units.

(c) *Quality requirements.* Compliance with the requirements for factors of quality is based on the following sample unit sizes for the respective style:

(1) *Classified defects (other than character).* (i) Sliced lengthwise style—250 g (8.8 oz). (Use Table IX of § 2852.38b; Table XIX of § 2852.38c).

(ii) Whole style—100 units.

(iii) All other styles—200 units.

(2) *Character defects.* (i) Sliced lengthwise style—250 g (8.8 oz.).

(ii) Whole style—100 units.

(iii) All other styles—200 units.

§ 2852.2328 Grades.

(a) *"U.S. Grade A"* is the quality of frozen beans that: (1) Meets the following prerequisites in which the beans:

(i) Have similar varietal characteristics;

(ii) Have a good flavor and odor;

(iii) Have a good overall brightness as a mass that is not affected by dullness; (Regular pack only)

(iv) In the style of "sliced lenthwise":

(A) Have not more than 25 g of beans with fairly good character;

(B) Have not more than 2.5 g of beans with poor character;

(v) In the style of "sliced lengthwise," have not more than 70 g of small pieces; and

(vi) Have an appearance or eating quality that is not materially affected by sloughing.

(2) Are within the limits for defects as classified in Table IV or V and specified in Table VI, VII, VIII, or IX, as applicable, for the style.

(b) *"U.S. Grade B"* is the quality of frozen beans that: (1) Meets the following prerequisites in which the beans:

(i) Have similar varietal characteristics;

(ii) Have a good flavor and odor;

(iii) Have a reasonably good overall brightness as a mass which may be slightly dull; (Regular pack only)

(iv) In the style of "sliced lengthwise:"

(A) Have not more than 25 g of beans with fairly good character;

(B) Have not more than 2.5 g of beans with poor character;

(v) In the style of "sliced lengthwise," have not more than 70 g of small pieces; and

(vi) Have an appearance or eating quality that is not seriously affected by sloughing.

(2) Are within the limits for defects as classified in Table IV or V and specified in Table VI, VII, VIII, or IX, as applicable, for the style.

(c) *"U.S. Grade C"* is the quality of frozen beans that: (1) Meets the following prerequisites in which the beans:

(i) Have similar varietal characteristics;

(ii) Have a fairly good flavor and odor;

(iii) Have a fairly good overall brightness as a mass which may be dull but is not offcolor (Regular pack only)

(iv) In the style of "sliced lengthwise":

(A) Have not more than 25 g of beans with poor character.

(2) Are within the limits for defects as classified in Table IV or V and specified in Table VI, VII, VIII, or IX, as applicable, for the style.

(d) *"Substandard"* is the quality of frozen beans that fails to meet the requirements of U.S. Grade C.

§ 2852.2329 Factors of quality.

The grade of a lot of frozen beans is based on compliance with the requirements for the following quality factors:

(a) *Prerequisite quality factors:* (1) similar varietal characteristics; (2) flavor and odor; (3) brightness (regular pack only); (4) freedom from small pieces in sliced lengthwise style; and (5) freedom from sloughing.

(b) *Classified quality factors:* (1) individual unit color; (2) blemished; (3) mechanical damage (all styles except sliced lengthwise); (4) workmanship; (5) extraneous vegetable material; and (6) character (all styles except sliced lengthwise).

§ 2852.2330 Classification of defects.

All defects, other than character defects, are classified as minor, major, severe, or critical. All character defects are classified as reasonably good, fairly good, or poor. Each "X" in Tables IV or V represents "one (1) defect."

TABLE IV—*Classification of Defects (Other Than Character)*

CUT, SHORT CUT, WHOLE, MIXED STYLES

Quality factor	Defects	Classification			
		Minor	Major	Severe	Critical
Individual unit color	Fairly good (in A and B only).		X		
	Poor (in A, B, and C)			X	
Blemished	Slightly	X			
	Materially		X		
	Seriously			X	
Mechanical damage	All styles except sliced lengthwise.	X			
Workmanship	Unstemmed unit			X	
	Detached stem			X	
	Unsnipped unit		X		
Fiber	Edible		X		
	Tough			X	
Tough strings			X		
Extraneous vegetable material.	Class 1			X	
	Class 2				X
SLICED LENGTHWISE STYLE					
Individual (each 2.5 g unit color increment).	Fairly good (in A and B only).		X		
	Poor (in A, B, and C)			X	
Blemished (each 2.5 g increment).	Slightly	X			
	Materially		X		
	Seriously			X	
Workmanship	Unstemmed unit			X	
	Detached stem			X	
	Unsnipped unit		X		
Fiber (each 2.5 g increment).	Edible		X		
	Tough			X	
Tough strings			X		
Extraneous vegetable material.	Class 1			X	
	Class 2				X

TABLE V—CLASSIFICATION OF CHARACTER DEFECTS

CUT, SHORT CUT, WHOLE, MIXED STYLES

Quality Factor	Defect	Reasonably Good	Fairly Good	Poor
Character	B units	X		
	C units		X	
	Substandard units			X

§ 2852.2331 Tolerances for defects.

TABLE VI—CUT, SHORT CUT, AND MIXED STYLES

ALL CLASSIFIED DEFECTS EXCEPT CHARACTER

	AQL [1]			
	Total [2]	Maj	Sev	Crit
Grade A	6.5	2.5	0.65	0.10
Grade B	8.4	4.0	1.5	0.25
Grade C	12.5	5.0	2.5	1.0

[1] AQL expressed as defects per hundred units.
[2] Total = Minor + Major + Severe + Critical.

TABLE VII—WHOLE STYLE

ALL CLASSIFIED DEFECTS EXCEPT CHARACTER

	AQL [1]			
	Total [2]	Maj	Sev	Crit
Grade A	10.0	4.0	1.5	0.10
Grade B	15.0	6.5	2.5	0.25
Grade C	20.0	8.5	4.0	1.0

TABLE VIII—SLICED LENGTHWISE STYLE

ALL CLASSIFIED DEFECTS EXCEPT CHARACTER

	AQL [1]			
	Total [2]	Maj	Sev	Crit
Grade A	6.5	4.0	1.5	0.10
Grade B	8.5	6.5	2.5	0.25
Grade C	12.5	10.0	5.0	1.0

[1] AQL expressed as defects per hundred units.
[2] Total = Minor + Major + Severe + Critical.

TABLE IX—CUT, SHORT, CUT, MIXED, AND WHOLE STYLES

CLASSIFIED DEFECTS FOR CHARACTER ONLY

	Grade A			Grade B		Grade C
	Total [4]	Fairly good	Poor	Total [5]	Poor	Total [6]
AQL [3]	6.5	0.65	0.015	6.5	0.65	6.5

[3] AQL expressed as percent defective.
[4] Total = Reasonably Good + Fairly Good + Poor.
[5] Total = Fairly Good + Poor.
[6] Total = Poor.

§ 2852.2332 Sample size.

The sample size to determine compliance with the requirements of these standards shall be as specified in the sampling plans and procedures in the "Regulations Governing Inspection and Certification of Processsed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products" (7 CFR 2852.1—2852.83) for lot inspection and on-line inspection, as applicable.

§ 2852.2333 Compliance with style requirements.

(a) *Lot inspection.* A lot of frozen beans is considered as meeting the requirements for style if the Acceptable Quality Levels (AQL) in Tables II and III, as applicable for the style, are not exceeded.

(b) *On-line inspection.* A portion of production is considered as meeting the requirements for style if the Acceptable Quality Levels (AQL) in Tables II and III, as applicable for the style, are not exeeded.

(c) *Single sample unit.* Each unofficial sample unit submitted for style evaluation will be treated individually and is considered as meeting the requirements for style if the Acceptable Quality Levels (AQL) in Table II and III, as applicable for the style, are not exceeded.

§ 2852.2334 Compliance with quality requirements.

(a) *Lot inspection.* A lot of frozen beans is considered as meeting the requirements for quality if:

(1) The prerequisite requirements specified in § 2852.2328 are met; and

(2) The Acceptable Quality Levels (AQL) in Tables VI, VII, VIII, and IX, as applicable for the style, are not exceeded.

(b) *On-line inspection.* A portion of production is considered as meeting requirements for quality if:

(1) The prerequisite requirements specified in § 2852.2328 are met; and

(2) The Acceptable Quality Levels (AQL) in Tables VI, VII, VIII, and IX, as applicable for the style, are not exceeded.

(c) *Single sample unit.* Each unofficial sample unit submitted for quality evaluation will be treated individually and is considered as meeting the requirements for quality if:

(1) The prerequisite requirements specified in § 2852.2328 are met; and

(2) The Acceptable Quality Levels (AQL) in Tables VI, VII, VIII, and IX, as applicable for the style, are not exceeded.

NOTE.—The Department of Agriculture has determined that these regulations do not have major economic consequences requiring preparation of a Regulatory Analysis in accordance with sec. 3 of Executive Order 12044 (March 24, 1978).

Done at Washington, D.C., on October 10, 1978.

SYDNEY J. BUTLER,
Acting Administrator,
Food Safety and Quality Service.

[FR Doc. 78-29048 Filed 10-16-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, f ing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-30-M]

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

SPECIAL SUPPLEMENTAL FOOD PROGRAMS FOR WOMEN, INFANTS, AND CHILDREN (WIC)

Program and Administrative Funding Formulas

NOTE.—This document originally appeared in the FEDERAL REGISTER for Wednesday, October 11, 1978. It is reprinted in this issue to meet requirements for publication on an assigned day of the week. (See OFR notice 41 FR 32914, August 6, 1976.)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Food and Nutrition Service is publishing for public comment the formula for distributing funds to State agencies participating in the special supplemental food program for women, infants, and children.

DATED: October 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Jennifer R. Nelson, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8206.

NOTICE: The Secretary of Agriculture has authority to allocate program funds to each State agency on the basis of a formula determined by the Secretary. Notice is hereby given detailing the proposed funding formula selected by the Department. The discussion which follows addresses the background and considerations which led to the selection of the new formula.

LEGISLATIVE BACKGROUND

In June 1977, public hearings were held by the Food and Nutrition Service to consider comments regarding possible legislative changes in the WIC program. Among the concerns raised by those presenting testimony were: The funding formulas employed to distribute available moneys to State agencies; the method by which administrative funds are provided; and the funding available for nutrition education. The level of interest demonstrated at the hearings reinforced the Agency's commitment to explore alternate methods of addressing these areas through the legislative process and administrative actions. As a result, pending legislation carries the provision that the Secretary must design separate funding formulas for the allocation of both program and administrative moneys. When that legislation is passed an administrative funding formula will be proposed.

FUNDING HISTORY

Since the authorization of the WIC program in 1972, the enabling legislation has not provided a mechanism or formula for orderly distribution of the available funds among the States implementing the program. Therefore, the distribution of WIC program funds has had a varied and often controversial history. The Department's initial reluctance to accept the WIC program and release funds to States resulted in a court suit to mandate WIC spending. The Federal district court order of August 1973 (*Dotson* v. *Butz*), required expenditure of the $40 million authorized by Congress for fiscal years 1973 and 1974 at $20 million each year and resulted in a rapid period of expenditure. To accomplish this expansion, grants were made directly through State agencies to local agencies approved by FNS on a first-come, first-served basis. (It was later that funds for the program were channeled directly to State agencies for subsequent distribution to local agencies as the State deemed appropriate.) The time constraints felt by the Department as a result of the Dotson Order were such that elaborate approval procedures were not developed to ensure funding of the most needy areas. In this connection, it was not until the affirmative action stipulation of January 1976 regulations (pursuant to Pub. L. 94-105) that a concerted effort was made to fund areas of greatest need.

Congress moved in November 1973 to expand the WIC program for fiscal year 1975 by authorizing $40 million. In June 1974 the authorization for fiscal year 1975 was increased to $100 million. In the absence of specific appropriating legislation, the enabling act called for the Secretary of Agriculture to use funds made available through section 32 of the Act of August 24, 1935. Section 32 funding was authorized through fiscal year 1977, but a direct appropriation of $250 million for the program was made for fiscal year 1977.

On June 22, 1976, the U.S. District Court of the District of Columbia issued an order in the case of *Durham, et al.*, v. *Butz, et al.*, which ordered the expenditure of the estimated $562.5 million available for the WIC program for the transition quarter and fiscal years 1977 and 1978, plus all funds unspent from fiscal years 1974, 1975, and 1976, during a 27-month period beginning July 1, 1976, through September 30, 1978.

On August 4, 1976, the estimated 27-month funding was initially allocated to each State agency by fiscal period (transition quarter, fiscal year 1977, and fiscal year 1978). To accomplish this the Department used the title V formula, which was currently in use by DHEW's maternal and child health program, as well as the plans for expansion submitted by each State. However, in order to insure compliance with the court order, a plan was also initiated to recover unobligated funds from each State agency and to reallocate the recovered amounts to those State agencies which demonstrated expenditure rates at or near their maximum obligation level.

The reallocation plan identified the maximum obligation level for each State agency and the procedures for reallocating unused funds to State agencies demonstrating the need for additional funds through actual performance. Recoveries of unused funds and reallocation occurred on a quarterly basis.

The criterion for State agency participation in each reallocation was based on their achievement of a prescribed spending performance level, the first being of a level of 65 percent of their monthly obligation level. Subsequent participation in quarterly reallocations required an incremental increase of 5 percent, each quarter, up to an 80 percent spending performance level. Having reached this level, three additional reallocations were done in January, April, and July 1978 with spending performance levels of 90, 95, and 95 percent respectively, as a prerequisite to participation.

This reallocation system resulted in a marked expansion of the WIC program, from 600,000 participants in July 1976 to 1.3 million in July 1978. However, the process and the use of the title V formula have been the sub-

ject of considerable criticism. As a result, the administration undertook a review of possible funding formula alternatives for use in future years.

PUBLIC PARTICIPATION PROCESS

In view of the historical funding problems of the WIC program, the Department and Congress clearly recognized in the development of new legislation that a fresh look at the funding formula was necessary.

In order to allow for varied input into the decision process, it was decided that a panel discussion on these funding issues would be held prior to officially proposing a funding formula to the Secretary. A panel on WIC's program and Administrative Funding Structure convened on September 6–8, 1978, to provide the Department with its recommendations concerning the best allocation method. The following people attended the panel meeting:

Mr. Philip Abadie, WIC Coordinator, Arizona.
Mr. Rims Barber, Children Defense Fund, Mississippi.
Ms. Janet Berkenfield, WIC Coordinator, Massachusetts.
Mr. C. Richard Blount, WIC Director, Missouri.
Mr. Sam Byrd, Idaho Migrant Council.
Mr. Richard Charles, local agency, New York.
Ms. Betsy Clarke, WIC Coordinator, Oregon.
Ms. Mary Egan, DHEW.
Mr. Ed. Epstein, local agency, Illinois.
Ms. Carol Fahey, FNS RO, New Jersey.
Mr. Ron Feazle, WIC Accountant, Choctaws, Oklahoma.
Ms. Stefan Harvey, Childrens' Foundation, Washington, D.C.
Ms. Elizabeth Hensler, WIC Director, Oklahoma.
Ms. Linda Katz, Advocate, Rhode Island.
Mr. Art Kotowski, FNS RO, Illinois.
Mr. Marlyn Lundgren, Finance Officer, Michigan.
Mr. Mike Montgomery, FNS RO, Texas.
Ms. Cynthia Perkins, WIC Director, Georgia.
Ms. Barbara Zang, National Child Nutrition Project, New Jersey.

A paper discussing the considerations, alternatives, and recommendations reached by the panel was then forwarded to the Secretary for the administration's official review. The selection of program and administrative funding formulas resulted from an extensive examination of the issues presented, as well as, consideration for the implication of any given formula on future WIC program operations.

FACTORS BEARING ON THE SELECTION OF A FUNDING FORMULA

In determining what formula to use and how to apply the formula, many considerations had to be taken into account. The law states that funds shall be allocated to "areas most in need of supplemental foods" and the Secretary is instructed to develop a formula to accomplish this. The formula should be designed to reflect the probability of need based on population, poverty, and health conditions by State agency. Since there is no direct means of identifying the potential eligible population universe, factors had to be selected for their realistic use as predictors without discriminating against the peculiar differences in the populations of the State agencies.

In selecting factors to use as a base for the formula for distribution of program funds, consideration was given to the adequacy and availability of the data base, and the degree of relevancy to the legislative mandate.

Athough several other health and income indices exist, the selection of indices was restricted by the fact that not all statistics are available for Indian populations. Special attention therefore was given to insure that the factors selected were also available on Indian State agencies, since in all other respects they are treated on an equal basis with all other State agencies. The review of available Indian data revealed a very limited universe of health and income indices.

Currently, statistics on Indians are gathered by Indian Health Services (IHS) based on counties and service areas. Since WIC program data needs did not alway coincide with the data available from IHS, some assumptions were made in regard to Indian populations, especially as to how they pertain to the WIC program service area as IHS service areas and WIC Indian State agencies service areas do not always agree.

This meant that some data on the Indian populations had to be calculated in order to make this data consistent with data collected for other State agencies. In order to utilize the available data, the assumption was made that all IHS service area Indians fall below 200 percent of the poverty level. Although all Indian populations do not fall in this category, this assumption does apply to the majority of Indian populations. Also, Indian populations tend to be small, thus they have a minimal effect in proportion to the rest of the U.S. population on the formula results.

After considerable review of all available health and income statistics, it was decided that possible statistics which could be used included: infant and neonatal mortality figures, infant mortality rates, live births and rural births and number of children under five years of age at or below the poverty level or 200 percent of the poverty level.

The factors were selected not only because they were available for Indian populations, but also because of the value of each factor in assessing the economic and health need of the WIC target population in each State agency.

The panel discussed the use of these factors at length and in the final analysis recommended two factors as the most appropriate for use in a WIC Program funding formula. The factors selected were infant mortality rate and number of children under five years of age at or below the poverty level or 200 percent of the poverty level.

Infant mortality includes all infant deaths up to one year of age from all causes including health related reasons as well as accidents. It has been determined that 74 percent of all infant mortalities are accounted for by deaths during the first four weeks of life. Infant mortality rate is an expression of the number of infant mortalities per 1,000 live births in the State agency. These factors are considered health related and tend to indicate the "remedial" need in a given area.

It is important to emphasize the use of infant mortality rates rather than the use of raw infant mortality figures. If the total number of infant deaths were used as a determining factor for the distribution of funds, those States with larger populations would receive more funding. A State agency administering a small population may report a low number of total infant deaths, while in actuality the infant mortality rate may be a high figure, possibly reflecting serious nutritional and health care deficiencies.

Evidence has been presented which clearly reflects an inverse relationship between socioeconomic status and infant mortality rate. In a study by MacMahon et al., mortality rates were higher for white infants in lower socioeconomic groups than in higher socioeconomic groups throughout the first year of life. The differences for deaths between lower and higher socioeconomic groups was considerably greater after the first week of life than in very early life. One of the factors accounting for this difference is that women of higher socioeconomic status are often better educated about proper nutrition, and are better able to utilize and afford prenatal and infant health care services. Since the WIC Program uses income level as well as nutritional need to determine eligibility, the relationship between low socioeconomic status and high infant mortality rates strengthens the argument for using these rates as funding distribution criteria.

The data is readily available on a regular basis and is considered to be a good index of the health status of a community. In addition, infant mortality rates are thought to be affected by (also related to) the age of the mother e.g., girls under 17 years of age, prema-

turity, access to prenatal care and other such factors which relate to the WIC target population.

Neonatal mortality was also discussed, but data is more difficult to obtain and is often limited as it only covers a small segment of the total infant population. Therefore, it was determined that infant mortality rate, as it includes neonatal mortalities, was a better health indicator for the purposes of the formula.

The Department also recognized the need for including a population indicator in the WIC distribution formula, since it is the purpose of the Program to provide supplemental foods to persons at nutritional risk because of both inadequate income and inadequate nutrition.

Factors directly relating to population include live births, rural births, population of children from 0–5 years, and birth by age of mother, however, these factors do not specifically target on low income. The factor "children under five years at or below poverty or 200 percent of poverty" has the advantage of being both a poverty factor as well as a population factor.

Additionally, children under five years of age who are members of families with incomes at or below 200 percent of poverty are potentially eligible for WIC. They may be at high nutritional risk and may be critically in need of WIC Program benefits. Further, pending legislation will probably establish an income eligibility requirement of 195 percent of the poverty level, so the use of children under 5 years at or below 200 percent of the poverty level would be consistent with the legislative intent of serving persons at or below 195 percent of poverty.

During early stages of development, children need iron, protein, vitamins and other nutrients. However, according to the "Ten State Nutrition Survey" conducted by the Department of Health, Education and Welfare (DHEW) many low-income families often cannot afford to buy sufficient food meet their children's nutritional needs. Often they must resort to giving their children inexpensive foods which are filling and satisfy the children's hunger but lacking in essential nutrients. Thus, the diets of low-income children often do not provide the nutrients necessary for adequate growth and normal blood levels. Consequently, as it is recognized that children in low-income families are generally at a greater potential risk and can benefit from the preventive health and nutrition aspects of the Program, the Department concluded that allocating funds on the basis of number of children under five years at or below 200 percent of the poverty level would focus funds on the target population which would be eligible under the 195 percent of poverty income eligibility requirement. Poverty should be a key indicator in the distribution of funds.

During the discussion on the factors to use, the Title V formula and the factors used in that formula were addressed. The Title V formula uses per capita income and live births statistics as a basis for distributing funds.

In the past, some States with a predominantly urban population did not believe Title V was an equitable formula because some of the statistical components were broken into urban and rural subsets with the rural subset being given double weight. While enabling legislation for Title V Programs recognized the special needs of rural areas for Maternal and Child Health (MCH) services, WIC Program legislation makes no specific distinction in the funding provision. However, the special needs of rural populations are addressed in other sections of the WIC legislation. Rurality also is reflected in infant mortality rate to some extent.

Besides the concern of urban areas, a number of other technical arguments have been voiced over the Title V formula. The health index does not distinguish between total live births and live births in the low-income population. As the WIC target population is composed of pregnant and breastfeeding women, infants and children under five years who are low-income, it is argued that poverty statistics considered in a formula should focus on these groups. Further, as per capita income is incorporated in the income index, urban areas might be at a disadvantage as the cost of living is generally higher in urban areas. Further, the total live birth index is not congruent to the preventive aspect of the Program in that more funds should go to States where infant mortality is higher relative to the rate of conception.

For these reasons, the per capita income factor was not favored for application into the formula. Although data is readily available, this factor had the limitation of relating to population as a whole, rather than reflecting the low income population which is the target population of the WIC Program. Consequently, the Panel believed that the factors used in Title V and the manner in which the formula applies the factors, were not the best alternative for funds distribution in the WIC Program.

Selection and Application of the Food Funding Formula

Once the Panel had reached a decision on the best factors to use in the formula, the results of several formulas and various modifications were discussed. The Panel concluded that the best option was to utilize a formula which incorported two different funds of money. One fund, amounting to 70 percent of the food fund was to be distributed to State agencies based on each State agency's percent of children under 5 years at or below 200 percent of poverty or percent of children under 5 years at or below poverty and 200 percent of poverty compared to the national total. The other fund, 30 percent of the food funds, was to be distributed based on each State agency's percent of the infant mortality rate compared to the nationwide sum of infant mortality rates.

The Panel believed that this formula brought together the factors which reflected need based on poverty, population, and health factors. Poverty and population are each considered in the factor "children under 5 under poverty or under 200 percent of poverty". Because both poverty and population are to be covered by this one factor, it was given double weight by allocating 70 percent of the funds to be distributed based on this factor. The remaining 30 percent of funds was to be distributed based on infant mortality rate which considers the health need of the population rather than the size of the population.

The Department analyzed the results of this formula to determine the impact on WIC State agencies, and found after the panel meeting had concluded that the formula tended to allocate disproportionately large sums of money into State agencies with small populations. As the Panel concluded that a population/poverty factor should get a double weight (as indicated in giving 70 percent of the food fund based on children under 5 years at or below 200 percent of poverty), the Department believed the result of this formula was at variance with the Panel's intent.

Consequently, an adjustment was made to the formula to assure that the end result was more consistent with the philosophy expressed by the Panel members. The primary problem with the formula emanated from the 30 percent fund which was distributed on the infant mortality rate. This procedure allowed sparsely populated States to get as much money as heavily populated States if their infant mortality rate was the same. If a small State has a significantly higher infant mortality rate than a large State, the small State received a significantly larger portion of the money from this fund.

In order to resolve this inequity, and still remain true to the Panel's intended use of poverty, population and health indices, the Department developed the following formula: Chidren under 5 years at or below 200 percent of poverty multiplied times the result

of the infant mortality rate divided by the national infant mortality rate.

This formula considers the poverty/population factor, but tempers that that factor based on the infant mortality rate of the State. If a State has an infant mortality rate higher than the national average, they receive a funding advantage over a State agency with an infant mortality rate below the national average.

In order to apply the formula, the Panel made several recommendations concerning procedures which would ensure that the most equitable allocation would be accomplished. Following is a discussion of those procedures.

Maximum grant. It was decided that no State agency should receive more funds than needed to serve their universe of potentially eligible WIC participants. Therefore, a maximum grant was computed to ensure that no State agency receives in excess of that Maximum grant amount.

The formula used to determine maximum grant was the number of children under 5 years at or below 200 percent of poverty plus the number of live births, with the sum of those two figures multiplied by the national average food package cost and multiplied by 12 months. (For Indian State agencies, rather than using the national average food package cost, the average food package for each State agency or the average food package cost among all Indian State agencies, whichever is highest, was used). The determination was made that no State agency received more than what their maximum grant allowed.

Hold harmless. It is essential that all State WIC agencies be guaranteed (or held harmless to) their fiscal year 1978 fourth quarter annualized level when the funding formula is applied. The held harmless provision is applied in recognition of the performance level States have attained during the past 27 months. Failure to hold harmless would negate past efforts and discourage future growth efforts and would impact additionally on adjunctive health services as well as local WIC program.

The program has experienced some recent growth in nearly all States. It would make little philosophic or programatic sense to cut back funding in some States while increasing funding in others, as funding cutbacks in States would remove current participants from the program. If all States are held harmless, the current caseload will be assured through fiscal year 1979 in States which would not benefit significantly from the application of the formula at the fiscal year 1979 funding level. The held harmless factor would continue to be used during the life of the formula as long as any State agency loses funds through application of the formula.

An inflation and growth rate factor based on USDA's estimate of projected food package cost increases in fiscal year 1979 was also included in the formula. Fiscal year 1979 funds will be available on a basis which again will allow only a gradual growth rate; therefore, according to Department calculations, each State agency requires an additional 10 percent of its fiscal year 1978 fourth quarter annualized allocation in order to maintain its fourth quarter caseload during fiscal year 1979 and to provide for limited growth in all State agencies in order to establish and maintain a stable system of program administration.

To accomplish this, the funding formula is run for all State agencies and the outcome is compared to their fourth quarter fiscal year 1978 annualized level. All State agencies with fourth quarter annualized amounts over the formula amount are held harmless and given increases of 10 percent.

Other State agencies receive funds via the formula application.

Migrant farmworkers. The needs of the migrant farmworkers and the unique difficulties they present in a funding methodology were also taken into consideration.

According to the National Association of Farmworker Organizations, recent statistics have shown that the infant mortality rate among migrant farmworkers is 25 percent higher than the national average. Also, nine times more births among migrants occur outside of hospitals than among nonmigrants. These figures show that the migrant population is in itself a high risk group and should have special provisions to ensure WIC benefits reach those women, infants and children within the migrant population. However, because migrants travel from State to State in the process of doing their work, and because each State has limited funds, migrants often enter the program and go through another waiting period in a new State which does not have any additional funds. In effect, migrants are penalized for their life style.

Since no realistic count of migrant women, infants and children is available nationwide, migrants could not be included in any funding formula. However, the Panel recommended and the Department concurred that migrant needs could be addressed best through regulatory requirements which mandate the following:

1. State agencies must include in their State Plans of Operation how the State agency will identify the migrant population and their specific needs and what specifically will be done to address migrant needs.

2. State agencies must coordinate with community based farmworker organizations, or other similar groups in order to develop programs to meet migrant needs.

3. FNS must develop specific performance standards and sanctions to ensure State agency compliance with approved plans.

The Department will also consider the need to serve additional migrant farmworkers in the reallocation criteria.

New State Agencies

Outlying territories such as Guam and the Trust Territories as well as Wyoming and the District of Columbia are not included in the apportionment of WIC funds because there are no programs presently operating in those jurisdictions, nor has the Department received a formal application for participation in the program from these potential State agencies. Legislative intent dictates that all appropriated funds should be made available to all State agencies currently participating or having made application to participate in the program. Therefore, any territory or State making application to participate in the program will receive funds from future reallocations of unspent funds in accordance with procedures established herein.

There was some discussion throughout the course of the Panel meeting as to whether a maximum cap should be set to limit State agencies to no more than a set percentage over their fiscal year 1978 fourth quarter annualized level. Although the Panel made no formal recommendation in this regard, the Department believes that given the modest increase provided for fiscal year 1979 over the current annualized level, it is wise to set a cap to prevent some State agencies from receiving a funding allocation which is far greater than what they could realistically spend in the upcoming fiscal year.

To this end, it was decided to set a cap whereby State agencies whose fourth quarter annualized level was over $5 million would receive no more than a 50 percent increase above that annualized level. This will ensure that these State agencies are provided ample funds, but not an amount which would cause expansion poorly integrated with health service. It also ensures that large sums of obligated funds do not remain unspent in a State agency's Letter of Credit because of difficulties in expending a large amount of money in a short time.

In summary, the formula selected for distribution of food monies is applied as follow:

1. The formula is applied to the $550 million appropriated as shown below:

Number of each State's children under 5 under 200 percent poverty

divided by

Sum of all State agencies children under 5, under 200 percent poverty

times

State's infant mortality rate

divided by

National infant mortality rate

2. The results of the formula are then compared to each State agency's fourth quarter annualized level. If the fourth quarter annualized level is more than the amount allocated under the formula, that State agency is held harmless (or guaranteed at least that level of funding).

3. The maxium grant is computed for each State agency and is also compared to the State agency's fourth quarter annualized level. If the fourth quarter annualized level is higher than the maximum grant, the State agency receives the maximum grant (an exception is made for the first quarter of fiscal year 1979; any State agency whose fourth quarter annualized level is higher than the maximum grant will receive their fourth quarter annualized level). As the only State agencies which have reached maximum grant are Indian State agencies, the Department believes it is prudent to do further research on statistics available on Indian populations before applying the maximum grant limitation.

4. All State agences then receive a 10 percent increase over their fourth quarter annualized level (except those State agencies which are at maximum grant and are receiving only their fourth quarter annualized level) and a total is computed.

The total from number 4 is subtracted from the funds available and the formula is run again on the difference for only those State agencies which were not held harmless or at maximum grant.

6. The amount allocated by the 10 percent increase and the amount received through the second run of the formula is added together to arrive at the grant for the State agencies that participated in the second formula run.

At this point an analysis is made to determine if any State agency which has a fourth quarter annualized level of over $5 million has an increase of over 50 percent. For these State agencies, the amount in excess is recaptured, totaled and distributed through a third run of the formula to the other State agencies that participated in the second formula run.

Through the application of the formula, a State agency will receive a grant derived by one of the following:

1. Maximum grant.
2. Fourth quarter annualized level plus a 10 percent increase (hold harmless State agencies).
3. Fourth quarter annualized level plus a 10 percent increase plus a share of the funds from the second and third runs of the formula (State agencies not held harmless).

Shown below is a chart which indicates the first quarter funding level for each State agency. Administrative costs are included and were computed by providing each State agency with 20 percent of their program grant in compliance with P.L. 94-105. Since there is no new authorizing legislation we are currently held to this 20 percent level as specified in P.L. 94-105, the Department feels sure that new legislation will be passed in the near future. As a result of this passage, administrative funds would be determined by a formula rather than the straight 20 percent for the remainder of this fiscal year. Therefore, grant levels will change accordingly with some State agencies increasing while others decrease. The figures listed below represent the first quarter funding only, not one-fourth of the annual funding level.

A number of State agencies have two funding amounts listed. The first amount is their first quarter level; the amount in parenthesis is the first quarter maximum grant level. These State agencies are the ones being held harmless for the first quarter to allow for more accurate computation of maximum grant levels as discussed above.

New England Region		
Connecticut	$2,877,375	
Maine	846,029	
Massachusetts	2,263,972	
New Hampshire	382,181	
Rhode Island	574,761	
Vermont	1,515,842	
Mid-Atlantic Region		
Delaware	$292,773	
Maryland	2,655,619	
New Jersey	2,839,834	
New York	8,876,555	
Pennsylvania	5,567,266	
Puerto Rico	4,073,687	
Seneca Nation, New York	42,669	($39,780)
Virginia	3,294,298	
Virgin Islands	319,697	
West Virginia	1,500,004	
Southeast Region		
Alabama	$2,783,621	
Florida	14,623,516	
Georgia	4,465,363	
Kentucky	3,547,000	
Mississippi	2,893,033	
North Carolina	5,648,598	
South Carolina	3,857,615	
Tennessee	3,423,172	
Seminoles, Florida	24,417	($18,161)
Choctaws, Mississippi	81,453	(64,449)
E. Cherokee, North Carolina	74,400	(65,434)
Southwest Region		
Arkansas	$1,778,064	
Louisiana	3,665,951	
New Mexico	947,459	
Oklahoma	1,369,850	
Texas	9,030,000	
Pueblo of Acoma, New Mexico	46,835	($33,922)
Eight Northern Pueblos, New Mexico	38,483	
Isleta Pueblo, New Mexico	29,165	
Santa Domingo, New Mexico	28,059	(21,968)
Six Dandoval, New Mexico	89,112	(63,342)
WCD Enterprises, Oklahoma	194,370	
Choctaws, Oklahoma	117,942	
Cherokee, Oklahoma	320,702	
Chickasaw, Oklahoma	101,618	
Tonkawa, Oklahoma	16,500	
Midwest Region		
Illinois	$5,731,211	
Indiana	2,415,868	
Michigan	4,139,238	
Minnesota	1,626,897	
Ohio	6,625,613	
Wisconsin	1,805,206	
Mountain Plains Region		
Colorado	$1,186,290	
Iowa	1,367,410	
Kansas	849,734	
Missouri	3,163,177	
Montana	969,079	
Nebraska	623,218	
North Dakota	520,794	
South Dakota	399,186	
Utah	1,323,993	
Shoshone and Araphoe, Wyoming	58,558	($50,787)
Ute Mountain Tribe, Colorado	9,677	
Nebraska IITDC	33,000	(15,447)
Cheyenne River Sioux, South Dakota	72, 260	
Rosebud Sioux, South Dakota	81,909	
Standing Rock, North Dakota	110,000	(26,470)
Western Region		
Alaska	$136,864	
Arizona	3,481,456	
California	8,076,890	
Hawaii	396,887	
Idaho	767,599	
Nevada	596,691	
Oregon	1,732,879	
Washington	2,252,827	
ITCN, Nevada	56,850	

As the Department believes that the public should have an opportunity to comment on the contents of this notice, public comments will be accepted until November 10, 1978. The Department was unable to issue this notice and solicit comments prior to October 1, therefore, the Department feels the public interest is best served by putting this funding formula into effect immediately, based on public input received at the Panel meeting on Funding Structure, to enable State agencies to receive funds to operate the WIC program for the first quarter of fiscal year 1979. The Department is accepting comments for only 30 days so that sufficient time is allowed for a complete analysis of comments before December 15, as letters of credit must be completed by that time. All comments received will be carefully considered before a final decision is reached on a formula to distribute WIC program grants.

Comments may be sent to:

Jennifer R. Nelson, Director, Supplemental Food Programs Divison, Food and Nutrition Service, USDA, Washington, D.C. 20250.

Copies of all written submissions received will be made available for public inspection in Room 4301, 201 14th Street SW., Washington D.C., during regular business hours (8:30 a.m. to 5 p.m.).

Signed at Washington, D.C., on October 6, 1978.

LEWIS B. STRAUS,
Administrator.

[FR Doc. 78-28742 Filed 10-10-78; 8:45 am]

[3410-11-M]

Forest Service

1979 SPRUCE BUDWORM SUPPRESSION PROJECT

Northeastern Area, State and Private Forestry, Broomall, Pa.; Intent To Prepare an Environmental Statement

Pursuant to section 102(2) (C) of the National Environmental Policy Act of 1969, the Forest Service, U.S. Department of Agriculture, in cooperation with the Bureau of Forestry, Maine Department of Conservation, will prepare an environmental statement for the proposed 1979 spruce budworm suppression project.

Environmental statements for annual projects to suppress the current budworm outbreak have been prepared since 1972. The information collected for these statements, comments received on them, the experience gained in carrying out the projects, and public meetings in the form of legislative hearing held in January each year will form the base of the 1979 statement.

The primary means of suppressing budworm populations in the past has been chemical insecticides, and chemical insecticides will probably be the primary means in 1979. Because chemical insecticides may have considerable impact upon the forest environment, an environmental statement will be prepared for the 1979 project. The 1979 project is expected to encompass 4 million acres of spruce-fir forests located throughout the northern half of Maine.

Robert Raisch, Director of the northeastern area, is the responsible Federal official, and Kenneth Knauer is the team leader for the environmental assessment and statement. Lloyd Irland of the Bureau of Forestry (Augusta) will represent the State of Maine.

The environmental assessment will require about 1 month. The draft environmental statement is scheduled for completion by November 22, 1978. This will be followed by a two-month review period. The final environmental statement is scheduled for filing February 2, 1979.

Comments on the notice of intent or on the project should be sent to Robert Raisch, Director, northeastern area, State and Private Forestry, Forest Service, U.S. Department of Agriculture, 370 Reed Road, Broomall, Pa. 19008.

ROBERT D. WOLFE,
Acting Area Director.

OCTOBER 3, 1978.

[FR Doc. 78-29239 Filed 10-16-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Order 78-10-35, Docket Nos. 32708, 33356]

ALLEGHENY AIRLINES, INC.

Order of Consolidation

Issued under delegated authority October 6, 1978.

The prehearing conference in this proceeding was held on September 6, 1978. On that day, Allegheny Airlines, Inc., filed an application and a motion to consolidate the application into docket 32708. Since applications and motions to consolidate were required to be filed by July 12, Allegheny also filed a motion requesting leave to file late.

Allegheny did not show good cause for having filed so late; and, under ordinary circumstances, its motion would have been denied. However, on September 8, 1978, the Board served order 78-9-31, expanding the scope of the investigation, inviting further applications, and extending the time for filing applications to September 28 and answers to October 10. No additional applications were filed. In view of the Board's extension of time, Allegheny's motion to file late is moot, even though its application was not filed in response to the Board's order. The motion to file late will therefore be dismissed; and the motion to consolidate will be granted, since Allegheny's application conforms to the expanded scope of the proceeding.

Accordingly, pursuant to authority delegated by Order 78-9-31:

It is ordered, That:

1. The motion of Allegheny Airlines, Inc., for leave to file late is dismissed;

2. The motion of Allegheny Airlines, Inc., to consolidate its application in Docket 33356 into the investigation in docket 32708 is granted; and

3. Allegheny Airlines, Inc., is made a party to the proceeding in docket 32708.

Persons entitled to petition the Board for review of this order pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within ten days after the service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-29284 Filed 10-16-78; 8:45 am]

[6320-01-M]

[Docket 33363]

FORMER LARGE IRREGULAR AIR SERVICE INVESTIGATION

Hearing

The hearing on the application of Land Air Corp., heretofore announced in the order of the presiding administrative law judge, dated September 29, 1978, will be held one week later. This hearing and the hearing on the application of Miami Air Lease, Inc., will be held in Room 1003, Hearing Room B, Universal Building North, 1875 Connecticut Avenue NW., Washington, D.C. 20428, commencing at 9 a.m., as follows:

Land Air Corp., November 21, 1978.

Miami Air Lease, Inc., November 27, 1978.

Dated at Washington, D.C., October 10, 1978.

RUDOLF SOBERNHEIM,
Administrative Law Judge.

[FR Doc. 78-29285 Filed 10-16-78; 8:45 am]

[6320-01-M]

[Docket 33364]

ROANOKE-PITTSBURGH SERVICE INVESTIGATION

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter will be held on November 30, 1978, at 9:30 a.m. (local time), in Room 1003, Hearing Room C, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and six copies to the judge of (1) proposed statements of issues; (2) proposed stipulations; (3) proposed requests for information and for evidence; (4) statements of positions; and (5) proposed procedural dates. The Bureau of Pricing and Domestic Aviation will circulate its material on or before November 9, 1978, and the other parties on or before November 16, 1978. The submissions of the other parties shall be limited to points on which they differ with the Bureau, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., October 10, 1978.

JOHN J. MATHIAS,
Administrative Law Judge.

[FR Doc. 78-29286 Filed 10-16-78; 8:45 am]

[6335-01-M]

COMMISSION ON CIVIL RIGHTS

CONNECTICUT ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a fact-finding meeting of the Connecticut Advisory Committee (SAC) of the Commission will convene at 7 p.m. and will end at 9:30 p.m. on November 9, 1978, at the Holiday Inn, Meriden, Conn.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 10, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-29242 Filed 10-16-78; 8:45 am]

[6335-01-M]

DELAWARE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Delaware Advisory Committee (SAC) of the Commission will convene at 12 p.m. and will end at 2 p.m. on November 3, 1978, at the Community Legal Services Center, 913 Washington Street, Wilmington, Del. 19801.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street NW., Room 510, Washington, D.C. 20037.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 10, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-29243 Filed 10-16-78; 8:45 am]

[6335-01-M]

FLORIDA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Florida Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 3 p.m. on December 2, 1978, in the Jet Room, Miami International Airport, P.O. Box 2094, Miami, Fla. 33159.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southern Regional Office of the Commission, 75 Piedmont Avenue, N.E., Atlanta, Ga. 30303.

The purpose of this meeting is to discuss proposals of criminal justice survey and State employment project, also identification of proposed Commission programs for fiscal years 1980 and 1981.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 11, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-29244 Filed 10-16-78; 8:45 am]

[6335-01-M]

GEORGIA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Georgia Advisory Committee (SAC) of the Commission will convene at 2 p.m. and will end at 5:30 p.m. on November 3, 1978, in the Savannah Hilton, 15 East Liberty, Hospitality Suite, Savannah, Ga. 31402.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southern Regional Office of the Commission, Citizens Trust Bank Building, room 362, 75 Piedmont Avenue, NE., Atlanta, Ga. 30303.

The purpose of this meeting is to review SAC proposal "Equal Employment in Georgia State Government", national program and to plan for fiscal years 1979 and 1980, and other State civil rights issues.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 11, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-29245 Filed 10-16-78; 8:45 am]

[6335-01-M]

LOUISIANA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Louisiana Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 1 p.m. on November 17, 1978, in the Chateau Capitol (Industrial Room), 201 Lafayette, Baton Rouge, La. 70801.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwestern Regional Office of the Commission, Heritage Plaza, 418 South Main, San Antonio, Tex. 78204.

The purpose of this meeting is to plan for the Louisiana State Advisory Committee.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 11, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-29246 Filed 10-16-78; 8:45 am]

[6335-01-M]

MAINE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Maine Advisory Committee (SAC) of the Commission will convene at 9 a.m. on November 16, 1978 and will end at 3 p.m. on October 17, 1978, in the Augusta Civil Center, Augusta, Maine.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is to discuss the status of civil rights.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 10, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-29247 Filed 10-16-78; 8:45 am]

[6335-01-M]

NEW MEXICO ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the New Mexico Advisory Committee (SAC) of the Commission will convene at 7 p.m. and will end at 10 p.m. on November 13, 1978, at the Four Seasons Motor Inn (Parlor No. 3), 2500 Carlisle Boulevard NE., Albuquerque, N. Mex. 87190.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwestern Regional Office of the Commission, Heritage Plaza, 418 South Main, San Antonio, Tex. 78204.

The purpose of this meeting is to plan for New Mexico SAC.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 11, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-29248 Filed 10-16-78; 8:45 am]

[6335-01-M]

NORTH CAROLINA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the North Carolina Advisory Committee (SAC) of the Commission will convene at 3:30 p.m. and will end at 8:30 p.m. on November 13, 1978, at Velvet Cloak, Queen Anne Room, 1505 Hillsborough Street, Raleigh, N.C. 27605.

Persons wishing to attend this open meeting should contact the Committee Chairperson, of the Southern Regional Office of the Commission, 75 Piedmont Avenue, N.E., Room 362, Atlanta, Ga. 30303.

The purpose of this meeting is to review and draft North Carolina SAC migrant report, national program planning for Fiscal Year 1979 and 1980, and other state civil rights issues.

This meeting will be conducted pursuant to the provisions or the rules and regulations of the Commission.

Dated at Washington, D.C., October 11, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-29249 Filed 10-16-78; 8:45 am]

[6335-01-M]

NORTH DAKOTA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the North Dakota Advisory Committee (SAC) of the Commission will convene at 9:30 a.m. and will end at 12 noon on November 8, 1978, in the United Tribes Conference Room, Building 61, 3315 S. Airport Road, Bismarck, N. Dak.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Rocky Mountain Regional Office of the Commission, 1405 Curtis Street, Denver, Colo. 80202.

The purpose of this meeting is for the SAC to decide on five or six projects that will have priority for fiscal years 1979 and 1980.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 11, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-29250 Filed 10-16-78; 8:45 am]

[6335-01-M]

OKLAHOMA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Oklahoma Advisory Committee (SAC) of the Commission will convene at 7 p.m. and will end at 10 p.m. on November 15, 1978, at the Hilton Inn (West), Room 202, 401 S. Meridian, Oklahoma, Okla. 73108.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwestern Regional Office of the Commission, Heritage Plaza, 418 South Main, San Antonio, Tex. 78204.

The purpose of this meeting is to plan for Oklahoma SAC.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 11, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-29251 Filed 10-16-78; 8:45 am]

[6335-01-M]

RHODE ISLAND ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a factfinding meeting of the Rhode Island Advisory Committee (SAC) of the Commission will convene at 4:30 p.m. and will end at 6:30 p.m. on November 6, 1978, in the Central Congregational Church, Providence, R.I.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 10, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Office.

[FR Doc. 78-29252 Filed 10-16-78; 8:45 am]

[6335-01-M

SOUTH CAROLINA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the South Carolina Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 1 p.m. on November 30, 1978, Burgundy Room, Carolina Town House, 1615 Gervais Street, Columbia, S.C. 29202.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southern Regional Office of the Commission, 75 Piedmont Avenue NE., Room 362, Atlanta, Ga. 30303.

The purpose of this meeting is to discuss future Commission programs, press conference to release municipal

services report, plan follow-up to report.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 11, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-29253 Filed 10-16-78; 8:45 am]

[6335-01-M]

TEXAS ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Texas Advisory Committee (SAC) of the Commission will convene at 1 p.m. and will end at 4 p.m. on November 8, 1978, at the Hilton Inn (Forum Room), 6000 Middle Fiskville Road, Austin, Tex. 78752.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwestern Regional Office of the Commission, Heritage Plaza, 418 South Main, San Antonio, Tex. 78204.

The purpose of this meeting is to plan for Texas SAC members.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 11, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-29254 Filed 10-16-78; 8:45 am]

[6335-01-M]

WEST VIRGINIA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the West Virginia Advisory Committee (SAC) of the Commission will convene at 1 p.m. and will end at 5 p.m. on November 8, 1978, in the U.S. Court House, Post Office Building, 425 Juliana Street, Parkersburg, W. Va. 26101

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street NW., Room 510, Washington, D.C. 20037.

The purpose of this meeting is to discuss civil rights issues within the State.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 10, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-29255 Filed 10-16-78; 8:45 am]

[6325-01-M]

CIVIL SERVICE COMMISSION

PRIVACY ACT OF 1974

Proposed New Routine Use

AGENCY: U.S. Civil Service Commission.

ACTION: Proposal for a new routine use for an existing system of records.

SUMMARY: The purpose of this document is to give notice pursuant to 5 U.S.C. 552a(e)(11) for the Privacy Act of 1974, of intent to establish a new routine use covering the disclosure of information to the Defense Nuclear Agency from the Official Personnel Folders of former civil service employees identified by the Defense Nuclear Agency as having participated in atmospheric nuclear testing between 1945 and 1962.

COMMENT DATE: Any interested party may submit written comments regarding the proposal. To be considered, comments must be received on or before November 20, 1978.

ADDRESS: Address comments to the Assistant Director for Workforce Information, Bureau of Personnel Management Evaluation, U.S. Civil Service Commission (Room 6410), Washington, D.C. 20415. Comments received will be made available for public inspection at the above address between 9 am and 4 pm, Monday through Friday.

FOR FURTHER INFORMATION, CONTACT:

Mr. John Sanet, Office of Advisory Services, Bureau of Personnel Management Evaluation, 202-254-9790.

SUPPLEMENTAL INFORMATION: The published description of the affected system, General Personnel Records (CSC/GOVT-3), appears in the FEDERAL REGISTER of September 8, 1978 (43 FR 40106).

BACKGROUND: The Secretary of Defense has designated the Defense Nuclear Agency as the executive agent for all aspects of the effort to develop information on Department of Defense personnel who participated in atmospheric nuclear weapons testing. The Defense Nuclear Agency has established the Nuclear Test Personnel Review to carry out this task. The purpose of the Nuclear Test Personnel Review is to compile a census of all Department of Defense military and civilian personnel who participated in atmospheric nuclear testing between 1945 and 1962 to assist research organizations in determining if there is a relationship between exposure to low level ionizing radiation and subsequent incidence of disease.

As part of this effort, the Defense Nuclear Agency must be able to locate these individuals and to have access to their medical records in order to ascertain or verify any recorded exposures to ionizing radiation. The Defense Nuclear Agency's efforts will be limited to civilian personnel who were involved in the atmospheric nuclear test program. Military personnel who were involved are being identified by the various uniformed service elements.

The most direct and efficient approach would be to obtain the information from official personnel folders under the control of the Civil Service Commission located at the National Personnel Records Center in St. Louis, Missouri. For those individuals currently employed in the Federal work force, the present duty station will be released. This does not represent an invasion of privacy since the duty station of an employee is one of the listed data elements permitted to be disclosed to a requester under the Commission's regulations implementing the Freedom of Information Act (5 U.S.C. 552). These regulations are found at § 294.702 of Title 5 of the Code of Federal Regulations.

Under the proposed routine use, the Defense Nuclear Agency would provide the name and other identifying information on individuals who participated in the atmospheric testing. The National Personnel Records Center will then search its records and attempt to locate the appropriate official personnel folder, which might contain a forwarding address for the former Federal employees. This information will be provided to the Defense Nuclear Agency.

Though the home address of an individual is not considered to be public information, the benefit to the public in this instance is such as to outweigh the privacy factors involved. In a similar vein, any relevant medical records in the official personnel folder will be provided to the Defense Nuclear Agency.

Proposed routine use. The proposed routine use which follows will be added to the Civil Service Commission Government-wide system of General Personnel Records (CSC/GOVT-3). The current notice of this system is published at 43 FR 40106 et seq. (Sep-

tember 8, 1978). The proposed routine use reads as follows:

* * * * *

x. To disclose to the Defense Nuclear Agency the home address of and medical information concerning those individuals who participated in atmospheric nuclear testing between the years 1945 and 1962, in response to a mandate issued by the Secretary of Defense.

The comment period on the routine use ends at the close of business 30 days after the date of this notice (November 20, 1978). Unless a notice to the contrary is published, this routine use will become effective 30 days after the end of the comment period (December 21, 1978).

UNITED STATES CIVIL SERVICE COMMISSION.
JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-29233 Filed 10-16-78; 8:45 am]

[3510-22-M]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

CARIBBEAN FISHERY MANAGEMENT COUNCIL

Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Caribbean Fishery Management Council, established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss: (1) Consideration of the draft FMP's for Spiny Lobster and for Shallow-Water Reef Fishes; (2) staff presentation on the development of an FMP for Mollusks; (3) selection of candidates for membership in the Scientific and Statistical Committee and the Advisory Panel of the Council; (4) foreign fishing applications; (5) fiscal year 1979 budget appropriations; (6) status of boundary limits and negotiations; (7) administrative matters; and (i) other Council business.

DATE: The meeting will convene at 9 a.m. on Tuesday, November 14, 1978, and will adjourn at approximately 12 noon on Thursday, November 16, 1978. This meeting is open to the public.

ADDRESS: The meeting will take place at the Windward Passage Hotel, Veterans Drive, Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

FOR FURTHER INFORMATION CONTACT:

Mr. Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, P.R. 00918, 809-753-4926.

SUPPLEMENTARY INFORMATION: For information on seating arrangements, changes to the agenda, and/or written comments, contact the Executive Director.

Dated: October 12, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-29219 Filed 10-16-78; 8:45 am]

[3510-25-M]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN COTTON APPAREL PRODUCTS IMPORTED FROM THE POLISH PEOPLE'S REPUBLIC

Adjusting the Level of Restraint

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Adjusting the level of restraint established for cotton tank tops in category 338 pt. (only T.S.U.S.A. Nos. 380.0651 and 380.0652), for the agreement year which began on January 1, 1978, by the application of flexibility and carryforward.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408).)

SUMMARY: Paragraphs 8 and 9(a)(III) of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 9 and January 12, 1978, between the Governments of the United States and the Polish People's Republic provide, respectively, that specific ceilings may be increased by designated percentages for flexibility and that a prescribed amount of yardage may be borrowed from the succeeding year's level, such amount to be deducted from the affected category's limit in the succeeding year. Pursuant to the cited paragraphs of the bilateral agreement, the import restraint level for category 338 pt. (only T.S.U.S.A. Nos. 380.0651 and 380.0652) is being increased from 180,556 dozen to 204,028 dozen.

EFFECTIVE DATE: October 18, 1978.

FOR FURTHER INFORMATION CONTACT:

Jane C. Bonda, International Trade Specialist, Officer of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-5423.

SUPPLEMENTARY INFORMATION: On March 22, 1978, a letter dated March 17, 1978, was published in the FEDERAL REGISTER (43 FR 11845), from the Chairman of the Committee for the implementation of Textile Agreements to the Commissioner of Customs which established the levels of restraint applicable to certain specified categories of cotton textile products which have been produced or manufactured in Poland and exported to the United States during the 12-month period which began on January 1, 1978. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to permit entry of cotton textile products in category 338 pt. (only T.S.U.S.A. Nos. 380.0651 and 380.0052), produced or manufactured in Poland, at the increased level of 204,028 dozen during the agreement year which began on January 1, 1978.

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

OCTOBER 16, 1978.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: On March 17, 1978, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the 12-month period beginning on January 1, 1978, and extending through December 31, 1978, of cotton, wool, and manmade fiber textile products in certain specified categories, produced or manufactured in Poland, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 9 and 12, 1978, between the Governments of the United States and the Polish People's Republic; and in accordance with the provisions of Executive Order 11651 of January 6, 1977, you are directed, effective on October 18, 1978, to increase the 12-month level of restraint for category 338 pt. (only

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of Jan. 9 and 12, 1978, between the Governments of the United States and the Polish People's Republic which provides, in part, that: (1) Within the aggregate and applicable group limits of the agreement, specific levels of restraint may be exceeded by designated percentages, (2) these levels may also be increased for carryover and carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

T.S.U.S.A. Nos. 380.0651 and 380.0652) to 204.028 dozen.[2]

The actions taken with respect to the Government of the Polish People's Republic and with respect to imports of cotton textile products from Poland have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ROBERT E. SHEPHERD,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Domestic Business Development.

[FR Doc. 78-29461 Filed 10-16-78; 10:50 am]

[3128-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 78-006-LNG]

GAS SERVICE, INC.; MANCHESTER GAS CO.

Joint Application To Import Liquefied Natural Gas Into the United States From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of receipt of application and invitation to submit comments and petitions to intervene in the proceeding.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of a joint application under section 3 of the Natural Gas Act from Gas Service, Inc. (GSI), and the Manchester Gas Co. (Manchester) to import liquefied natural gas (LNG) from Gaz Metropolitan, Inc. (Gaz Metro), Montreal, Canada. GSI and Manchester will take delivery at Gaz Metro's truck loading facilities at its existing LNG plant in Montreal, Canada. Gas Inc. of Lowell, Mass., will transport the LNG for GSI and Manchester by tank vehicles to existing storage facilities at Nashua and Manchester, N.H.

DATE: Petitions to intervene, comments and requests for hearing: October 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Finn K. Neilsen, Director, Import/Export Division, 2000 M Street NW., Room 6318, Washington, D.C. 20461 telephone 202-254-9730. Mr. Martin S. Kaufman, Office of General Counsel, 12th and Pennsylvania Avenue NW., Room 5116, Washington, D.C. 20461, telephone 202-566-9380.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On September 22, 1978, Gas Service, Inc., P.O. Box 807, Nashua, N.H. 02060, and Manchester Gas Co., 1260 Elm Street, Manchester, N.H. 03101, jointly filed an application (ERA Docket No. 78-006-LNG) pursuant to section 3 of the Natural Gas Act, and part 153 of the regulations under the Natural Gas Act, requesting authorization to import LNG by tank vehicles, from Canada to the United States as more fully set forth in the application on file with the ERA. The joint application is open to public inspection in ERA's Public Docket Room at 2000 M Street NW., Washington, D.C., Room No. B-120 between the hours of 1 to 5 p.m., Monday through Friday, except for Federal holidays.

GSI and Manchester have contracted individually with Gaz Metro to purchase LNG for a 10-year period commencing November 1, 1978. GSI proposed to purchase and import into the United States 30,879 million British thermal units (MMBtu) of LNG annually beginning November 1, 1978, and ending on October 31, 1988. Manchester proposes to purchase and import into the United States 20,586 MMBtu's of LNG between the period November 1, 1978, to October 31, 1979, and 41,172 MMBtu's of LNG for each subsequent contract year. Each applicant will pay $3.51 per MMBtu for the gas, subject to increase or decrease depending upon the cost of gas to Gaz Metro. Transportation costs are estimated to be 82.6 cents per MMBtu for GSI and 82.0 cents per MMBtu for Manchester. Applicants propose to take delivery of this LNG at Gaz Metro's truck loading facilities at Montreal. GSI and Manchester have contracted with Gas Inc., an ICC motor carrier, to have this LNG transported into the United States and delivered to their market areas. No new or additional facilities are necessary to effect the importation of this LNG.

The ERA hereby invites petitions for intervention, comments on the application in ERA docket No. 78-006-LNG, and requests for hearing to be filed with the Economic Regulatory Administration, Room 6318, 2000 M Street, Washington, D.C., 20461, in accordance with the requirements of the rules of practice and procedure (18 CFR 1.8) and the regulations under the Natural Gas Act (18 CFR 157.10). Such petitions for intervention, comments, or requests for hearing should be marked "ERA Docket No. 78-006-LNG" on the first page and the envelope, and will be accepted for consideration if filed no later than 4:30 p.m., October 31, 1978.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing which may be convened therein must file a petition to intervene in accordance with the above-mentioned rules.

Pursuant to the authority contained in, and subject to the jurisdiction conferred upon the ERA by, section 3 of the Natural Gas Act and the rules of practice and procedure, a formal hearing will not be held on this application if no petition to intervene is filed within the required time, or if the ERA on its own review of the matter finds that a grant of the approval is in the public interest. However, if during the appropriate comment period a request for such hearing is timely filed by an intervener and is granted by ERA, or if the ERA on its own motion believes that such a hearing is required, further notice of such hearing will be duly given.

Issued in Washington, D.C., on October 10, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 78-29257 Filed 10-16-78; 8:45 am]

[3128-01-M]

Office of the Secretary

IMPORTATION AND EXPORTATION OF NATURAL GAS

Delegation of Functions by the Secretary of Energy to the Administrator of the Economic Regulatory Administration and the Federal Energy Regulatory Commission

AGENCY: Department of Energy.

ACTION: Notice of Delegations.

SUMMARY: Notice is hereby given of delegations by the Secretary of Energy to the Administrator of the Economic Regulatory Administration and to the Federal Energy Regulatory Commission respectively. The delegations convey authority to carry out functions vested in the Secretary under the Department of Energy Organization Act as those functions relate to approval or disapproval of applications to import or export natural gas pursuant to the Natural Gas Act and to build and operate border facilites for the import or export of natural gas pursuant to Executive Order No. 10485. The delegation orders are being issued in final form, but in view of the importance of these delegation orders to the administration of the Natural Gas Act and the implementation of the Department of Energy Organization Act, the public is

[2]The level of restraint has not been adjusted to reflect any imports after Dec. 31, 1977.

requested to comment on them in writing. If the public comment demonstrates serious problems created by these delegations the Secretary will consider appropriate changes.

DATE: Written comments by November 13, 1978.

ADDRESS TO: Office of Public Hearing Management, Economic Regulatory Administration, Room 2313, Box TQ, 2000 M Street NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Lynne H. Church, Division of Natural Gas Regulations, Economic Regulatory Administration, Room 3308, 2000 M Street NW., Washington, D.C. 20461, 202-632-4721.

Barry M. Smoler, Department of Energy, Office of General Counsel, 12th and Pennsylvania Avenue NW., Room 5116, Washington, D.C. 20461, 202-566-9380.

Brian J. Heisler, Federal Energy Regulatory Commission, Office of General Counsel, 825 North Capitol Street NE., Room 8100, Washington, D.C. 20426, 202-275-4341.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Proposed delegation orders.
III. Proposed effective date and procedures for written comments.

I. Background

The delegations relate to applications for approval to import or export natural gas under section 3 of the Natural Gas Act (NGA) and applications to build and operate border facilities for the import or export of natural gas pursuant to Executive Order No. 10485. The Secretary of Energy (Secretary) has the authority to approve or disapprove these applications under the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 42 U.S.C. 7101, et seq. (1977). Subsection 301(b) of the DOE Act transfers to, and vests in, the Secretary all the functions of the Federal Power Commission not specifically vested by the DOE Act in the Federal Energy Regulatory Commission (FERC). Included in the transfer to the Secretary are functions under section 3 of the NGA and Executive Order No. 10485. In addition, subsection 402(f) of the DOE Act explicitly reserves to the Secretary exclusive jurisdiction with respect to the regulation of exports and imports of natural gas.

The Secretary's authority to regulate imports and exports of natural gas may be "assigned" in whole or in part to the FERC under subsections 402(e) and (f) of the DOE Act. Furthermore, section 642 of the DOE Act allows the Secretary to "delegate" any of his functions to any officers and employees of the Department he may designate, which would include the FERC. The proposed delegation and assignment order to the FERC is based on both of these sections of the DOE Act.

The Secretary's authority to regulate imports and exports of natural gas originally was delegated to the Administrator of the Economic Regulatory Administration (the Administrator) on October 1, 1977 (Delegation Order No. 0204-4, para. 6, 42 FR 60726, November 29, 1977.) The Administrator currently has pending before him a number of applications to import or export natural gas. Some have been filed directly with the Economic Regulatory Administration (ERA) since it was activated on October 1, 1977, and others have been transferred to ERA after completion of certain procedures before the FERC. (DOE final rule of October 1, 1977, 42 FR 55534, October 17, 1977).

Many of the applications, particularly those to import liquefied natural gas (LNG), require consideration of numerous factors ranging from the effects of an import on U.S. balance of payments to the safety and environmental impact of the terminal facilities proposed to be built. Some of these considerations are specific to the individual applications and are representative of those areas traditionally within the expertise of the FERC's predecessor, the Federal Power Commission. Imports or exports of natural gas also raise significant policy question concerning the nation's security, degree of dependence on foreign supplies, effect of imports or exports on the American economy, and the impact of a particular import or export on national energy stategies.

II. The Delegation Orders

The delegation order to ERA and the delegation and assignment order to the FERC provide a mechanism whereby the Secretary, through his delegate, the Administrator, maintains authority over imports and exports of natural gas to the extent that they broadly concern energy policies on an international, national and interregional scale. Those functions involving the continuing supervision of each of the interstate natural gas pipeline companies would rest within the FERC's jurisdiction.

More specifically, the delegation to the Administrator, which amends Delegation Order No. 0204-4, would allow him to determine whether a proposed import or export of natural gas is not inconsistent with the public interest within the meaning of section 3 of the NGA, based on certain considerations which may include (1) the security of supply, (2) the effect on the U.S. balance of payments, (3) the price proposed to be charged at the point of importation or exportation, (4) national and regional needs for the natural gas to be imported or exported, and (5) in the case of imported natural gas, the eligibility and respective shares of purchasers and participants. In addition, the Administrator would be authorized to determine whether the proposed import or export is consistent with the Department's regulations or statements of policy specifically applicable to natural gas imports and exports. An example would be any statement of policy on the import of LNG which the Department may adopt in accordance with section 301 of the DOE Act.

In considering those aspects of an import or export application within his jurisdiction, the Administrator would also be authorized to attach terms and conditions which he determines to be necessary to make the import or export not inconsistent with the public interest. For example, the Administrator could condition his determination that a proposed import meets the standard of section 3 of the NGA with a requirement that the importer and his foreign supplier change the terms of the import contract with respect to initial price, or duration, or price changing clauses.

Finally, the delegation to the Administrator reserves to the Secretary the right to directly administer the functions vested in him if he deems it necessary or appropriate to do so.

The delegation order to the FERC authorizes it to exercise all other functions under section 3 of the NGA which are not delegated to the Administrator and which have not been previously exercised by him, as well as all functions under sections 4, 5 and 7 of the NGA insofar as authority under those sections may otherwise have been vested in the Secretary. Thus, the FERC would have the authority to approve or disapprove the siting, construction, and operation of particular facilities and the place of entry of imported natural gas. The Administrator would be able to disapprove the siting, construction and operation of particular facilities or the selection of a place of entry only in the implementation of Department regulations or statements of general policy, or on the basis of considerations of the security of supply or the effect on U.S. balance of payments.

Further, under the delegations, if an importer proposed to sell natural gas in interstate commerce for resale, the FERC would review the prices under the public convenience and necessity standard of section 7 of the NGA and the just and reasonable standard of sections 4 and 5 of the NGA. The FERC might thereby disapprove a

natural gas company's charging of rates based on import prices sanctioned by the Administrator. It should also be noted that the Commission itself would determine the applicability of sections 4, 5 and 7 of the NGA in a particular case, subject only to judicial review.

The FERC is delegated and assigned the function of issuing whatever orders, authorizations and certificates as are necessary or appropriate to implement the respective determinations made by the Administrator (to the extent that he determines a proposed import or export is not inconsistent with the public interest) and by the FERC. The delegation order requires that any authorization of an import or export issued by the FERC under section 3 of the NGA must include any terms and conditions previously attached by the Administrator, although the FERC would not be required to authorize an import or export if it determined that the application, as conditioned by the Administrator, is inconsistent with those provisions of the NGA vested in the FERC to administer or which have been delegated or assigned to the FERC to administer.

The mechanism set up in the delegations would apply to all natural gas import and export applications initially submitted to the ERA on or after October 1, 1977, or which were transferred to the Secretary or the Administrator pursuant to the Final Rule dated October 1, 1977, with the following exceptions:

a. Those cases initially pending before the Federal Power Commission and transferred in their entirety by rule to the FERC at the time the Department was activated (10 C.F.R. 1000.1(d); 42 FR 55534, October 17, 1977); and

b. Those functions already delegated by the Secretary to the FERC in DOE Delegation Orders No. 0204-1 (certain functions under the NGA not directly related to imports and exports of natural gas except for cases specifically assigned to the FERC by rule), No. 0204-8 (relating to the approved Alaskan natural gas transportation system) and No. 0204-14 (certain aspects of *Distrigas of Massachusetts Corp., et al.*, ERA Dockets No. 77-007-LNG and No. 77-011-LNG which have not already been decided by the ERA Administrator).

In addition, the mechanism would not apply to ERA Docket No. *77-001-LNG, Pacific Indonesia LNG Co., et al.*, which is in the rehearing stage. The Administrator would continue to exercise final decisional authority under section 3 of the NGA and Executive Order No. 10485.

Following is an example of how the proposed delegation would operate:

Assume Applicant A proposed to import liquified natural gas (LNG) at port X and to construct docking, storage and regasification facilities. A also proposed to resell the regasified product to B for resale in the interstate market. Applicant A would simultaneously file with both ERA and the FERC complete applications for the importation of the LNG, the construction of facilities and the resale of the gas. At the same time B would file a section 7 application with the FERC. If A's application involved a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, ERA would prepare or arrange for the preparation of an environmental impact statement on the project.

The ERA would proceed to obtain the necessary information and hear argument on those issues it would decide. These would include, at a minimum, the security of A's supply, whether the price A would pay at the point of importation or some earlier point is appropriate, whether A's division and direction of the gas to B in the first instance properly reflect national policy and national energy needs, and whether the import is otherwise consistent with Department policy.

If, after hearing, the Administrator decided on the basis of functions delegated to him that the import is not consistent with the public interest, he would deny the application outright. The applicant could then exercise the rights under section 19 of the NGA to apply to the Administrator for rehearing and to the appropriate United States Court of Appeals for judicial review. On the other hand, if the Administrator decided the application favorably on the basis of those considerations within his jurisdiction, he would issue a determination to that effect to the parties and to the FERC. The Administrator's decision approving an application might contain certain conditions to assure that the project is constructed and operated consistent with the terms of the approval. For example, the order could condition approval of A's renegotiating a price with its supplier that does not exceed a specified level.

Upon issuance of a favorable determination by the Administrator, the FERC's formal proceedings would begin and would include, among other things, consideration of any pipeline facilities to be constructed by A or B, the transportation rates, and the justness and reasonableness of the prices proposed to be charged the distribution companies. If the FERC determined to approve the applications, based upon the considerations within its jurisdiction, it would issue an order implementing both its own and the Administrator's determinations. The order would include all the terms and conditions previously imposed by the Administrator. However, if the FERC found, for example, that the import price as proposed to be flowed through would result in a particular tariff's either being unjust and unreasonable within the meaning of section 4 of the NGA or being contrary to the public convenience and necessity under section 7 of the NGA, it could not change the contract and pricing conditions imposed by the Administrator, but could deny the application entirely or impose additional requirements consistent with the Administrator's conditions. Rehearing before the FERC of the FERC's determination would be available at this point.

These delegation orders will be implemented through the promulgation of procedural regulations by ERA and the FERC. These regulations, which will be available for public comment prior to adoption, will be designed to expedite, to the extent possible, the Administrator's and the FERC's final decisions in natural gas import and export cases, while still providing all interested parties with an opportunity to submit evidence and views to both the Administrator and the FERC, as appropriate.

III. Effective Date and Procedures for Written Comments

The delegation orders are effective upon publication.

Delegation orders are internal agency organizational rules and typically are not made available for public comment. However, in view of the importance of these delegations to the administration of the Natural Gas Act and the implementation of the DOE Act, the public is invited to submit views, data or arguments with respect to the orders. If public comment indicates that these delegation orders create substantial problems in the administration of the NGA in import and export cases, the Secretary will consider making appropriate changes. Comments should be submitted to the address indicated above in this notice and should be identified on the outside envelope with the designation "Delegations by the Secretary of Energy Regarding the Importation and Exporation of Natural Gas." Thirty copies should be submitted. All comments received by November 13, 1978 will be considered in evaluating the delegation orders. All comments received will be available for public inspection in the DOE Reading Room, Room 2107, Federal Building, 1200 Pennsylvania Avenue NW., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Any information or data considered to be confidential must be so identified and submitted in a single written copy. We reserve the right to determine the confidentiality of the infor-

mation or data and to treat it according to our determination.

These delegations are procedural only, and the requirement in section 7(c)(1) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, that proposals "affecting the quality of the environment" be reviewed by the Environmental Protection Agency prior to issuance is therefore not applicable.

(Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009, 42 FR 46267.)

Issued in Washington, D.C. on October 10, 1978.

LYNN R. COLEMAN,
General Counsel.

DEPARTMENT OF ENERGY

DELEGATION ORDER NO. 0204-25 TO THE ADMINISTRATOR OF THE ECONOMIC REGULATORY ADMINISTRATION

Pursuant to the authority vested in me as the Secretary of Energy ("Secretary") by the Department of Energy Organization Act ("DOE Act")—

(a) There is hereby delegated to the Administrator of the Economic Regulatory Administration ("Administrator") the authority under Section 3 of the Natural Gas Act and Executive Order 10485, as transferred to the Secretary by Sections 301 and 402(f) of the DOE Act, to determine (except with respect to ERA Docket No. 77-001-LNG) whether importation or exportation of natural gas is not inconsistent with the public interest, insofar as such determination is based on the following considerations:

(1) In the case of imported natural gas, the security of supply and effect on U.S. balance of payments;

(2) The price proposed to be charged at the point of importation or exportation;

(3) Consistency with duly promulgated and published regulations or statements of policy of the Department of Energy specifically applicable to imports or exports of natural gas;

(4) National need for the natural gas to be imported or exported; and

(5) Such other matters within the scope of Section 3 of the Natural Gas Act as the Administrator shall find in the circumstances of a particular case to be appropriate for his determination, including but not limited to:

(A) Regional needs for the natural gas to be imported or exported;

(B) In the case of imported natural gas, the eligibility of purchasers and participants and their respective shares.

(b) In exercising the functions delegated in paragraph (a) (1) through (5) above, the Administrator may attach such terms and conditions as he shall determine to be necessary to make the import or export not inconsistent with the public interest, which terms and conditions the FERC shall include in any order it may issue which authorizes the import or export pursuant to Delegation Order No. 0204-26.

(c) Notwithstanding paragraph (a)(5) above, the Administrator shall not exercise any authority under Section 3 of the Natural Gas Act to approve or disapprove an import or export based upon the construction and operation of facilities, the site at which they shall be located, or the place of entry for imported natural gas, except that the Administrator shall have the authority to disapprove the construction and operation of facilities, the site at which they shall be located, or the place of entry for imported natural gas on the basis of the considerations contained in paragraphs (a)(1) and (a)(3) above.

(d)(1) With respect to ERA Docket No. 77-001-LNG, the Administrator is hereby delegated all functions under Section 3 of the Natural Gas Act, as amended, and Executive Order 10485.

(2) Nothing in this delegation shall be construed to amend or supersede 10 CFR § 1000.1(d) (42 FR 55534, October 17, 1977) or DOE Delegation Orders No. 0204-1, No. 0204-8, and No. 0204-14.

(e) The authority delegated to the Administrator may be further delegated (except to the FERC) in whole or in part, as may be appropriate.

(f) Paragraph 6 of the Delegation Order No. 0204-4, is amended to read as follows:

"6. The functions delegated to the Administrator of ERA by Delegation Order No. 0204-25."

(g) All actions pursuant to any authority delegated prior to the Order, and all actions encompassed within the scope of the authority delegated by this Order but taken prior to and in effect on the date of this Order, are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or superseded.

(h) Nothing in this delegation by the Secretary shall preclude the Secretary from exercising any of the authority so delegated whenever in his judgment his exercise of such authority is necessary or appropriate to administer the functions vested in him.

This order is effective upon publication in the FEDERAL REGISTER.

JAMES R. SCHLESINGER,
Secretary of Energy.

DEPARTMENT OF ENERGY

DELEGATION ORDER NO. 0204-26 TO THE FEDERAL ENERGY REGULATORY COMMISSION

Pursuant to the authority vested in me as the Secretary of Energy ("Secretary") by Sections 402(e) and 642 of the Department of Energy Organization Act ("DOE Act"), there is hereby delegated and assigned to the Federal Energy Regulatory Commission ("FERC") such authority under the Natural Gas Act, Executive Order 10485, and Sections 301 and 402(f) of the DOE Act, as is vested in the Secretary to carry out the following functions with respect to the regulation of exports and imports of natural gas:

(1) Except insofar as such functions have been delegated to the Administrator of the Economic Regulatory Administration ("Administrator"), all functions under Section 3 of the Natural Gas Act to approve or disapprove the construction and operation of particular facilities and the site at which they would be located, and with respect to imports of natural gas, the place of entry.

(2) All other functions under Section 3 of the Natural Gas Act, which are not delegated to the Administrator under paragraphs (a)(1) through (4) or (d)(1) of Delegation Order No. 0204-25, and which have not been previously exercised by the Administrator under paragraph (a)(5) of Delegation Order No. 0204-25.

(3) All functions under Sections 4, 5, and 7 of the Natural Gas Act; and

(4) All functions with respect to issuance of such orders, authorizations and certificates which the FERC determines to be necessary or appropriate to implement the respective determinations made by the Administrator under Delegation Order No. 0204-25 (to the extent that he determines such import or export is not inconsistent with the public interest) and by the FERC under this Order.

This order does not delegate to the FERC authority to authorize an import or export under Section 3 of the Natural Gas Act unless such authorization adopts such terms and conditions as shall have been previously attached by the Administrator pursuant to the authority delegated to him by Delegation Order No. 0204-25. However, nothing in this paragraph shall require the FERC to authorize an import or export under any section of the Natural Gas Act if it determines that the application, as conditioned by the Administrator pursuant to the authority delegated by Delegation Order No. 0204-25, is inconsistent with provisions of the Natural Gas Act which the FERC has been delegated authority to administer by this Order or which are otherwise vested in the FERC.

The authority delegated and assigned to the FERC may be further delegated within the FERC, in whole or in part, as may be appropriate.

All actions pursuant to any authority delegated prior to this Order, and all actions encompassed within the scope of the authority delegated by this Order but taken prior to and in effect on the date of this Order, are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or superseded.

This order is effective upon publication in the FEDERAL REGISTER.

JAMES R. SCHLESINGER,
Secretary of Energy.

[FR Doc. 78-29220 Filed 10-16-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 988-7]

INDIANAPOLIS POWER & LIGHT CO., PATRIOT GENERATING STATION

Final Determination

In the matter of the applicability of Title I, Part C of the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., and the Federal regulations promulgated thereunder at 40 CFR 52.21 (43 FR 26388, June 19, 1978) for Prevention of Significant Deterioration of Air Quality (PSD), to the Indianapolis Power & Light Co. (IPALCO), Patriot Generating Station (also known as Mexico Bottom).

On March 29, 1977, IPALCO submitted an application to the United States Environmental Protection Agency (U.S. EPA), Region V office, for an approval to construct the Patriot Generating Station. The application was

submitted pursuant to the regulations for PSD.

The plant was proposed for a site approximately 30 miles southwest of Cincinnati on the west bank of the Ohio River, in Switzerland County, Ind. The application requested authority to construct three 650-megawatt (1,950 total) coal-fired units with a lime/limestone scrubber system to control sulfur dioxide and an electrostatic precipitator to control particulate matter.

IPALCO was notified on April 21, 1977, that the application contained certain deficiencies and on May 17, 1977, additional information was submitted. On June 6, 1977, IPALCO was notified that the application was complete. However, during the preliminary review, U.S. EPA noted a discrepancy between IPALCO's descriptive methodology and the actual dispersion modelling results. This descrepancy was corrected with a submittal dated July 1, 1977.

On August 7, 1977, the Clean Air Act Amendments effected certain immediate changes in the PSD review. IPALCO submitted the information necessitated by the changes on August 29, 1977. On September 15, 1977, IPALCO was notified that the application was deficient with respect to the Amendments. IPALCO submitted additional information on September 26, 1977, and on October 3, 1977, IPALCO was notified that the application was complete.

On February 23 and 24, 1978, U.S. EPA published notice of its decision to grant a preliminary approval to the Patriot Generating Station. A public hearing was requested as a result of the preliminary approval and on April 20, 1978, U.S. EPA conducted the hearing in Vevay, Ind. Numerous issues were raised, including scrubber reliability and the adequacy of the dispersion modelling used to predict air quality impact. IPALCO responded to the public comments on June 15, 1978, but failed to counter the demonstration made by the State of Kentucky that the PSD Class II 3-hour sulfur dioxide standard would be violated more than once per year (only one excursion is permitted) and to provide sufficient technological data for the proposed scrubber efficiency.

After review and analysis of all materials submitted by IPALCO, the public record established at the hearing, and written comments, on August 7, 1978, IPALCO was notified that U.S. EPA had determined that construction and operation of the Patriot Generating Station as proposed would cause a violation of the applicable Class II, 3-hour increment for sulfur dioxide. The disapproval was based on two technical issues and is reprinted in full below.

The first issue addressed in the final determination is whether IPALCO has demonstrated scrubber efficiency with adequate design information for the proposed scrubber system to achieve an emission rate of 0.554 lbs. of sulfur dioxide per million Btu heat input. IPALCO proposed to control the sulfur dioxide emissions with a lime/limestone scrubber that would be 91 percent efficient in removing sulfur dioxide from the combustion gases, claiming that this type of scrubber will be available for installation by the mid-1980's. Coal with a sulfur content as high as 3.47 percent would be burned with no provision for coal treatment prior to combustion. Nor did IPALCO suggest blending low sulfur coal with the regular fuel mixture in order to reduce sulfur dioxide emissions. Support data for the scrubber efficiency consists solely of letters from scrubber manufacturers attesting to but not guaranteeing that a 91 percent efficiency will be available in the 1980's. Since this documentation does not assure the achievement of the emission limitation, U.S. EPA found this portion of the application inadequate.

The second issue addressed in the final determination is whether it has been demonstrated that the 3-hour Class II PSD increment will not be exceeded more than once annually, as allowed. Although IPALCO submitted modelling data to U.S. EPA which indicated that the Class II increment would not be exceeded more than once, the Kentucky Division of Air Pollution Control (KDAPC) performed an additional modelling analysis of the area and found that on Day 201, and Day 203, 3-hour concentrations in excess of the allowable increment of 512 ug/SO_2/m^3 are predicted. Since IPALCO presented no information to refute KDAPC's modelling analysis, U.S. EPA was required to deny approval of the application under Section 165 of the Clean Air Act.

As a result of the disapproval, any claims IPALCO may have to the Class II increments for sulfur dioxide and particulate matter in Switzerland County and neighboring counties in Indiana, Kentucky, and Ohio, are invalidated.

This disapproval shall in no way abridge the right of IPALCO to prepare and submit to U.S. EPA a revised application for approval to construct the Patriot Generating Station. This disapproval in no way invalidates those other permits or approvals obtained by IPALCO for the purpose of constructing the Patriot Generating Station.

Any commencement of construction of the Patriot Generating Station without approval under 40 CFR 52.21 would constitute a violation of the Clean Air Act.

This determination may now be considered final agency action which is locally applicable under section 307(b)(1) of the Clean Air Act and therefore a petition for review may be filed in the U.S. Court of Appeals for the Seventh Circuit by any appropriate party. In accordance with section 307(b)(1), petitions for review must be filed sixty days from the date of this notice.

It is so determined on this 7th day of August 1978.

Valdas V. Adamkus,
Acting Regional Administrator,
Region V.

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION V

In the matter of Indianapolis Power & Light Co. Proceeding pursuant to the Clean Air Act, as amended, final determination to disapprove construction EPA-5-78-A-4.

AUTHORITY

1. This determination to disapprove construction is issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. (the Act), and the Federal regulations promulgated thereunder at 40 CFR 52.21 (43 FR 26388, June 19, 1978) for the Prevention of Significant Deterioration of Air Quality (PSD).

FINDINGS

2. Indianapolis Power & Light Co. (IPALCO) proposes to construct the Patriot (formerly Mexico Bottom) Generating Station in a Class II area, as determined pursuant to the Act. The area has been designated attainment for all criteria pollutants by the State of Indiana (43 FR 8992, March 3, 1978).

3. On October 3, 1978, the U.S. Environmental Protection Agency (U.S. EPA) determined the application submitted by IPALCO for approval to construct the Patriot Generating Station, pursuant to 40 CFR 52.51, to be complete. The Patriot Generating Station is subject to the requirements of 40 CFR 52.21.

4. On February 6, 1978, U.S. EPA issued a preliminary approval for the Patriot Generating Station.

5. On February 23, 1978, and on February 24, 1978, U.S. EPA, published notice of the preliminary approval in the *Switzerland Democrat* and *Kentucky Post*. The notice sought writtern comments from the public and offered the opportunity for a public hearing on the application submitted by IPALCO and U.S. EPA's preliminary determination to approve construction of the Patriot Generating Station. A public hearing was requested and was held in Vevay, Ind., on April 20, 1978. Public comments were also received in writing until April 28, 1978, at the Region V office of U.S. EPA.

6. IPALCO was given the opportunity to comment on both the written comments and those made at the hearing and has submitted to U.S. EPA its response.

7. After review and analysis of all the materials submitted by IPALCO, the public record established at the hearing and written comments, U.S. EPA has determined that construction and operation of the Pa-

triot Generating Station as proposed would cause a violation of the applicable Class II, three-hour increment for sulfur dioxide. This determination is based on the following:

a. IPALCO has submitted inadequate design information for the proposed scrubber system and has not demonstrated that the lime/limestone scrubber system can reliably achieve a 91 percent efficiency of sulfur dioxide removal. This level of efficiency is necessary to achieve an emission rate of 0.554 lbs. of sulfur dioxide per million BTU heat input. IPALCO proposed that at the above emission rate, the short-term sulfur dioxide PSD Class II increments would not be exceeded more than once annually, as allowed.

b. IPALCO has failed to adequately demonstrate that the three-hour Class II PSD increment for sulfur dioxide will only be exceeded once annually, as allowed.

DISAPPROVAL

1. U.S. EPA hereby disapproves the construction of the proposed Patriot Generating Station consistent with the reasoning above. Any claims IPALCO may have to the Class II increments for sulfur dioxide and particulate matter in Switzerland County and neighboring counties in Indiana, Kentucky, and Ohio are invalidated upon issuance of this disapproval.

2. This disapproval shall in no way abridge the right of IPALCO to prepare and submit to U.S. EPA a revised application for approval to construct the Patriot Generating Station. This disapproval in no way invalidates those other permits or approvals obtained by IPALCO for the purpose of constructing the Patriot Generating Station.

3. Any commencement of construction of the Patriot Generating Station without approval under 40 CFR 52.21 would constitute a violation of the Act.

4. A copy of this disapproval has been forwarded to the Switzerland County Public Library in Vevay, Ind.

VALDAS V. ADAMKUS,
Acting Regional Administrator.

AUGUST 7, 1978.

[FR Doc. 78-29202 Filed 10-16-78; 8:45 am]

[6560-01-M]

[FRL 988-8]

INTERIM NATIONAL MUNICIPAL POLICY AND STRATEGY

Availability

On October 2, 1978, the Environmental Protection Agency issued an Interim Municipal Policy and Strategy to be implemented immediately by EPA Regions and NPDES States while still allowing for future changes or clarifications as necessary.

The Policy and Strategy include significant aspects of the Municipal Enforcement, Permit, and Contruction Grant Programs. The final Policy and Strategy will be disturbed in November or December, 1978.

Anyone wishing to obtain a copy of the Interim National Municipal Policy and Strategy for review and comment before November 15, 1978, should contact David L. Guthrie, P.E., Office of Water Enforcement (EN-338), U.S. EPA, 401 M Street SW., Washington, D.C. 20460, telephone 202-755-0994.

JEFFREY G. MILLER,
Deputy Assistant Administrator for Water Enforcement.

OCTOBER 11, 1978.

[FR Doc. 78-29201 Filed 10-16-78; 8:45 am]

[6560-01-M]

[FRL 989-3; OPP-180172B]

MISSISSIPPI AUTHORITY FOR THE CONTROL OF FIRE ANTS

Proposed Emergency Exemption for Use of Ferriamicide To Control Fire Ants; Comment Period

AGENCY: Environmental Protection Agency, Office of Pesticide Programs (EPA, OPP).

ACTION: Proposed emergency exemption; additional comment period.

SUMMARY: As a result of the September 27, 1978, Memorandum Opinion of the U.S. District Court for the District of Columbia in *Environmental Defense Fund* v. *Blum, et al.*, Civil Action No. 78-0577, EPA is providing additional opportunity for public comment on a proposed emergency exemption to permit use of the pesticide Ferriamicide to control fire ants in Mississippi.

DATE: Comments on Mississippi's application are due ten (10) days after publication of this notice.

ADDRESS: Send comments to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. Timothy A. Gardner, Product Manager 15 (PM 15), Registration Division (TS-767), Office of Pesticide Programs, EPA, Room 229, East Tower, 202-426-9426.

SUPPLEMENTARY INFORMATION:

1. BACKGROUND

On December 16, 1977, the Mississippi Authority for the Control of Fire Ants (Mississippi Authority) submitted to EPA a request for issuance of an exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, to allow the use of Ferriamicide, an unregistered pesticide, to control imported fire ants in Mississippi. On December 28, 1977, EPA published a notice describing the Mississippi Authority's request and soliciting public comment (42 FR 64734). A large number of comments were received, most favoring and some opposing Agency approval of the request. Some 20,000 persons sent brief letters expressing concern about fire ants and in some cases supporting the application. In addition, a number of Federal legislators (most from southern States), State legislators, and other State officials urged approval of Mississippi's request. (Officials of several other States have applied under section 18 for permission to buy Ferriamicide bait from the Mississippi Authority for use in their own States.) (See FEDERAL REGISTER of Aug. 25, 1978 (43 FR 38084).)

On the other hand, a smaller number of commenters (including some Federal legislators) opposed the request. The Environmental Defense Fund, Inc. (EDF) submitted extensive comments in opposition to the use of Ferriamicide.

After extensive EPA staff consideration of the issues raised by the Authority's request, Mr. Steven D. Jellinek, the Agency's Assistant Administrator for Toxic Substances sent to Deputy Administrator Barbara Blum, on March 8, 1978, a document containing a series of recommendations on the matter. Deputy Administrator Blum adopted those recommendations on the same day, and so indicated by concurring on the document. (Attachment A to this notice.)

In March 1978, EDF filed an action in the United States District Court for the District of Columbia, saying that for a variety of reasons the Agency should be enjoined from allowing Mississippi to use Ferriamicide. (*EDF* v. *Blum, et al.*, Civil Action No. 78-0577.)

On June 16, 1978, a hearing was held, at which time the court stated that it appeared the Agency's decision was not yet final or reviewable (because of the certain matters still requiring resolution).[1] The parties then stipulated that the Agency's final decision would be issued on or about July 21, 1978, and that the Court would act in early September (following the filing of briefs by the parties). It was agreed that EPA would not authorize distribution or use of Ferriamicide until a final order was reviewed by the Court. On July 28, 1978, a final order

[1] In its September 27, 1978, Memorandum Opinion, the Court cited as an additional reason for deciding the March 8, 1978, agency memorandum was not a final order the fact that it had not been published in the FEDERAL REGISTER as required by the Agency's regulations (40 CFR § 166.10 (1977)). We note that the cited regulation merely requires the Agency to notify the public after an emergency exemption is granted; an exemption is final for purposes of judicial review as of the date of the grant, not the date of publication in the FEDERAL REGISTER.

was issued (attachment B to this notice) which permitted some limited use of Ferriamicide in Mississippi. This order resolved the open issues from the March 8 memorandum as to the precise conditions imposed upon the use of Ferriamicide. This final order also took into account additional health risk data which had come to light since the March 8 action and contained further quantitative risk analyses of the potential cancer and reproductive effects of the pesticide.

Thereafter the court received additional briefs and heard additional oral argument.

On September 27, 1978, the Court issued its decision. The Court sustained the Agency's determination that fire ant infestation in Mississippi constitutes an emergency, and granted summary judgment for EPA as to the Agency's compliance with the National Environmental Policy Act, and as to EPA's alleged consideration of improper political factors. (EDF filed a notice of appeal on these matters on September 28, 1978.)

The Court, however, remanded the case to the Agency after finding the decision to be procedurally defective because the Agency had considered certain documents without making them available for public comment. The Court noted that "substantial and perhaps decisive information relating to efficacy, health effects and the conditions to be placed on the [use of Ferriamicide]" had not been available for public adversarial comment. This decision was based on the Court's finding that the Ferriamicide decision was rulemaking and therefore subject to notice and comment procedures under the Administrative Procedure Act (5 U.S.C. 553). The Court found that the notice published on December 28, 1977, served to formally close the administrative record as of January 23, 1978, and that documents received after that time, but not made available for public comment, constitute improper *ex parte* communications.

The Court stated that if EPA should wish to pursue its consideration of Mississippi's application further, EPA must: (1) publish in the FEDERAL REGISTER a new notice and comment period, during which interested persons may comment on the documents received by the EPA since January 23, 1978, and introduce any new information relevant to the issues still remaining open; and (2) establish and maintain a file available for public inspection with respect to Mississippi's application, containing all material which has been submitted to the Court by the parties and all information received by the Agency during the new comment period.

2. EPA's Position

EPA does not agree with the Court's determination that Agency actions under section 18 of FIFRA are rules subject to the notice and comment requirements of 5 U.S.C. 553. It is the Agency's position that decisions under section 18 granting an emergency exemption are licenses as the term is defined in 5 U.S.C. 551, which states:

"license" includes the whole or a part of an Agency permit, certificate, approval, registration, charter, membership, *statutory exemption*, or other form of permission. [Emphasis added.]

Since a section 18 exemption is licensing, it is an "order," which is an Agency final disposition "other than rulemaking but including licensing." (5 U.S.C. 551.)

Although the Agency believes the Court's holding was incorrect, the Agency has decided to provide the opportunity for comment which the Court's decision calls for, because the Agency believes this course will lead to the most expeditious resolution of the still-open issues.

3. Notice and Comment

Accordingly, the comment period on the Ferriamicide decision is hereby reopened. The Agency invites comment on its determination that the uses permitted under the specific exemption will not cause unreasonable adverse effects on health or the environment.

The Agency particularly desires comment on its previous decision to permit ground broadcast application in parks, playgrounds, and schoolyards. The Agency will also consider any new information on any other aspects of the Ferriamicide emergency exemption.

Comments are invited on all documents the Agency has placed in the administrative record file which will be available through the Agency contract person designated above. The reading file will contain all documents submitted to the District Court in the Ferriamicide litigation which either the EDF or the EPA has designated as constituting the record in the Ferriamicide action. EPA, in no sense, concedes that all these documents should be designated as part of the administrative record in this proceeding, nor that the Agency should consider all the documents in making its final decision. Many documents are clearly irrelevant to the Agency decision (such as press releases prepared to explain, rather than make, the final Agency determinations); other documents, such as internal Agency drafts, papers indicating internal staff debate on issues, and handwritten notes of Agency staff, are subject to claims of privilege. In order to avoid further disputes on what, at this point, amounts to a procedural issue, however, all documents before the court will be placed in the record.

The comment period on Mississippi's application will remain open for ten (10) days after publication of this notice in the FEDERAL REGISTER. Any comments submitted after the deadline will be considered to the extent possible consistent with orderly Agency decisionmaking.

Dated: October 12, 1978.

STEVEN D. JELLINEK,
Assistant Administrator for Toxic Substances.

ATTACHMENT A

ENVIRONMENTAL PROTECTION AGENCY,

OFFICE OF TOXIC SUBSTANCES

Washington, D.C., March 8, 1978.

Subject: Section 18—Specific Exemption for the Use of Ferriamicide to Control Imported Fire Ants—Action Memorandum.

From: Steven D. Jellinek, Assistant Administrator for Toxic Substances (TS-788).

To: Deputy Administrator (A-101).

Issue.—Should the Agency, pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Part 166 of the FIFRA regulations, issue to the Mississippi Authority for the Control of Fire Ants (hereafter Mississippi Authority or Applicant) an emergency exemption allowing the use in Mississippi of an unregistered pesticide, Ferriamicide, to control imported fire ants, and if so, under what conditions? (If the Agency approves this request eight additional states will probably seek similar exemptions.)

BACKGROUND

A. THE FIRE ANT

Imported fire ants infest approximately 190,000,000 acres in Mississippi and eight other states, in urban, suburban and rural areas. The ants pose a problem for two reasons: (1) the bite of the ant is painful and, in some cases, causes serious reactions in hypersensitive persons; (2) the large mounds built by the ants may interfere with normal agricultural operations such as mowing and harvesting.

B. THE MIREX CANCELLATION

Effective December 1, 1977, pursuant to a Plan submitted by the Mississippi Authority ("Plan") the Administrator cancelled all end-use product registrations of Mirex, an insecticide that has been used to control fire ants since 1962. The Mississippi Authority was the sole remaining registrant of Mirex end-use products. According to

the Plan, existing stocks of one Mirex formulation, 10:5 Bait, may be sold and used for ground broadcast and mound application until June 30, 1978. A discussion of the Administrator's reasons for accepting the Plan, as well as a history of the Mirex proceedings, a summary of evidence, and a discussion of risks and benefits associated with Mirex appears at 41 FR 56694 (December 29, 1976).

Mirex is formulated as a bait that, when properly foraged by the ants, results in reduced ant populations. The pesticide's end-use registrations were voluntarily cancelled, however, following the development of information that Mirex is carcinogenic in rodent test systems and therefore may pose a cancer risk to man. Mirex also exhibits other adverse effects, such as high persistence in the environment, accumulation in living tissue, and high toxicity to aquatic invertebrates (see 41 Fed. Reg. 56698-56700).

C. FERRIAMICIDE

1. *Applicant's request.*—Pursuant to the Plan, the Mississippi Department of Agriculture and Commerce greatly intensified research efforts to develop an alternative to Mirex that would be effective against fire ants but less persistent in the environment. This research has resulted in development of a new formulation of Mirex called Ferriamicide (Mirex plus ferrous chloride and an amine). Under laboratory conditions, the Mirex in Ferriamicide photodegrades considerably faster than Mirex alone.

On December 16, 1977, the Applicant requested a specific exemption to apply Ferriamicide by aerial equipment, ground equipment, or to individual mounds on approximately three million acres of land in Mississippi (see 42 FR 64734). The application requested approval for only a singel aerial application to a given area per year. All aeral and ground broadcast applications would be made by Federal and State applicators who would be certified through state certification programs. Homeowners who have received oral and written guidelines could apply Ferriamicide to individual mounds. Restrictions would apply to aerial applications on aquatic areas, coastral zones, wooded areas, agricultural lands, home sites and developed portions of public areas. Environmental monitoring would continue throughout the affected area. (Application, pp. 34-38.) The application describes the properties of Ferriamicide known at the present time, as well as the efficacy and toxicity tests that have been performed (application pp. 21-32). The Applicant states that it will agree to use no more Mirex than was approved under the original Plan accepted by the Administrator in the Mirex cancellation procedding (application, exhibit G). This means that no more than 11,800 pounds of Mirex would be used to produce Ferriamicide under an emergency exemption. Applicant proposes to use a Ferriamicide formulation containing .05 percent Mirex.

2. *Available data on Ferriamicide*—a. *Chemistry data.* Under laboratory conditions of continuous light, the Mirex in the ferrous chloride-amine-Mirex complex photodegrades rapidly. Applicant estimates a half life of 14-45 days. No photodepradation studies, however, have been conducted under actual field conditions. Since field persistence would be expected to increase in direct proportion to the amount of shade or darkness, the half-life of Ferriamicide in the field is expected to be considerable longer then the laboratory half-life. Laboratory studies on standard Mirex, in fact, yielded a much shorter half-life (124-173 days) than that which actually occurs under field conditions (730-7300 days). Even assuming that Ferriamicide fairly quickly photodegrades under filed conditions, there would be no advantage to this property if the pesticide bait is more quickly consumed by nontarget species. There is no data on the half-life of Ferriamicide in living matter.

The terminal residues of Mirex have not yet been ascertained; however, nono-, di-, tri-, tetra- and penta-hydro derivatives of Mirex have been identified as intermediate products.

b. *Biological activity.* Preliminary studies indicate that Mirex and its photodegradates may be biodegraded by microorganisms if an additional carbon and energy source is available, but not when Mirex or its photodegradates are used as the sole source of carbon and energy.

Several acute toxicity studies of Mirex and Ferriamicide on crayfish, grass shrimp, blue crab, and microorganisms indicated that undegraded Ferriamicide and bait photodegraded for 3 days exhibited the same toxicity as Mirex. After 10 days of degradation Ferriamicide was somewhat less toxic than Mirex. After 21 days of degradation Ferriamicide was significantly less toxic than Mirex.

c. *Unknown factors.* The following significant characteristics are not known about Ferriamicide or its photodegradates:

(1) Rate of photodegradation under actual field conditions;

(2) Identity under field use conditions of the degradation products;

(3) Toxicity of Ferriamicide and its degradation products to terrestrial organisms under actual field use (acute, subacute and chronic studies have not been conducted);

(4) Residues expected in crops, meat, milk, poultry, or eggs (no residue data has been submitted);

(5) Bioaccumulation properties (residue levels, tissue distribution, loss rates, and concentration factors)'

(6) Biomagnification properties;

(7) Toxicity to mammals (no mammalian toxicity studies have been conducted).

In short, very little is known about the properties, toxicity or environmental behavior of either Ferriamicide or its degradation products, although there is considerable knowledge of the characteristics of Mirex, Ferriamicide's active ingredient.

D. COMMENTS ON THE FERRIAMICIDE APPLICATION

EPA has received over 20,000 comments from citizens of Mississippi. The overwhelming majority of the 3,000 examined express general concern about the fire ant problem and the need to have an effective means of control.

The Environmental Defense Fund recommends denial of the emergency exemption request, arguing that (1) there are registered pesticides which could be used to control fire ants; (2) there is insufficient data to support the widespread use of Ferriamicide; (3) the carcinogenicity of Mirex and of Kepone, a degradation product of Ferriamicide, require a risk assessment before the exemption is issued; (4) we do not yet fully understand the population dynamics and biology of fire ants; (5) efficacy data submitted in support of Ferriamicide is not convincing; (6) actual emergency conditions do not exist, since Mirex 10:5 bait may be used until June 30, 1978; and (7) Mirex, itself, has not been effective in controlling fire ants, since the infested acreage has increased even after Mirex use began.

Do Emergency Conditions Exist?

A. STATUTORY AND REGULATORY CRITERIA

The statutory and regulatory criteria for determining whether to issue an emergency exemption are explained and analyzed in the three attached memoranda, transmitted by the Office of General Counsel on February 16, 1978. In summary, the Agency may allow an unregistered pesticide to be used if it finds that emergency conditions exist and that the benefits of the pesticide use would outweigh the risk of its use. This section discusses the criteria for finding whether emergency conditions exist with respect to Ferriamicide.

Section 18 of FIFRA states:

> The Administrator may, at his discretion, exempt any Federal or State Agency from any provision of this Act if the determines

that emergency conditions exist which require such exemption.

Part 166 implements section 18; 40 CFR 166.1 states:

An emergency will be deemed to exist when (a) a pest outbreak has or is about to occur and no pesticide registered for the particular use, or alternative method of control, is available to eradicate or control the pest, (b) significant economic or health problems will occur without the use of the pesticide, and (c) the time available from discovery or prediction of the pest outbreak is insufficient for a pesticide to be registered for the particular use. In determining whether an emergeny condition exists, the Administrator will also give consideration to such additional facts requiring the use of section 18 as are presented by the applicant.

The criteria of clauses (a), (b), and (c) are not exclusive. EPA may find an emergency exists even if one or more of the conditions are absent.

To find an emergency in the case of Ferriamicide the Agency should first examine three basic issues:

(1) Do fire ants cause significant economic or health problems? (See 40 CFR 166.1 (a) and (b).)

(2) Will feasible non-pesticide methods or feasible methods employing registered pesticides be available to control the fire ant in time to reduce the emergency to an acceptable level? (See 40 CFR 166.1 (a) and (c).)

(3) Will Ferriamicide control fire ants? (See 40 CFR 166.1(b).)

Since the § 166.1 (a), and (b), and (c) criteria are not exclusive, the Agency may consider other pertinent factors such as the risks presented by use of registered pesticides that may be available for use against fire ants.

B. IT THERE AN EMERGENCY?

This section describes my reasoning for determining that emergency conditions exist requiring the use of Ferriamicide.

1. Nature of economic and health problems

The fire ant inflicts a painful sting upon humans. The severity of the problem is magnified by the multiple stings that may result if a person disturbs a mound. The stings may give rise to secondary infections if not properly cleansed and cared for, or may cause other complications for a small number of sensitive persons. A large number of people receive fire ant stings in infested States. (See application p. 18-20; 41 FR 56701.)

Fire ant mounds physically interfere with agricultural equipment, especially in areas with clay soils. The ants also have caused injury to farm workers and animals, and damage to pasture land and crops. (See application p. 14-17.)

Applicant estimates that throughout the southern part of the Unite States the ants infest approximately 190,000,000 acres, a considerable portion of which is in Mississippi (see application p. 14-15). Infestation in a given acre can amount to 1 to 200 mounds. According to the application, the imported fire ant is present in all types of locations (other than those covered with water).

From the volume of mail EPA has received it is obvious that citizens in areas infested with these pests are very concerned about having some method of controlling them. The majority of the letters examined express apprehension about the painful stings which the fire ant inflicts.

If no feasible means of fire ant control were available, the problems caused by fire ants could be expected to increase, resulting in even more severe economic and health effects than currently exist. Mirex has been useful in controlling fire ant infestations. As of June 30, 1978, Mirex can no longer be lawfully used. Unless there are available alternative pesticidal or nonpesticidal control measures which will reduce infestations to acceptable levels, the imported fire ant may pose health problems in infested areas where people may disturb the ants and be stung. The ants will also cause some economic damage to farmers.

2. Alternative methods of fire ant control

a. *Nonpesticide alternatives.*—On agricultrual lands where the fire ant mounds interfere with farm machinery a heavy beam may be dragged behind a tractor to disperse the mounds. In many cases this will reduce the problem sufficiently.

b. *Pesticide alternatives.*—The following registered pesticides have been considered:*

(a) Chlordane—Numerous currently registered chlordane labels bear use directions for fire ant mound treatment applications. While the use directions and application rates vary widely, it has been assumed that the majority of the application rates fall within the range prescribed by the two labels held by the basic producer, Velsicol Chemical Corp.:

(1) Chlordane 72 percent EC (Reg. No. 876-102)—This emulsifiable concentrate is applied as a 0.5 percent mound drench. Although the actual percentage may vary. For the sake of comparison with alternative products, it is assumed that all applications shall be made at a rate of 100 mounds to the acre. Individual mound size, presumably, would also have to be taken into consideration in determining the dosage rate. The 72.0 percent EC label prescribes rates ranging to "as much as" 5 gallons of drench per mound depending upon size. It therefore, appears that a range of from 4 to 25 lbs. active ingredient per acre (A.I./A.) is prescribed. The 100-mound parameter could, however, be expected to result in an application rate of approximately 10 lb. A.I./acre.

(2) Chlordane 25 percent G (Reg. No. 876-39)—This granular formulation, according to the label, is applied at the rate of 0.8 to 1.6 cups of formulation per mound without the subsequent application of water. Using the same parameters as above, the possible application rates would result in the distribution of 7 to 14 lb. A.I./A. Again, 10 lbs. A.I./A is a likely application rate.

(b) Heptachlor—See also the chlordane discussion (heptachlor and chlordane are closely related compounds). Heptachlor 5 percent G (Reg. No. 876-187) and 10 percent G (Reg. No. 876-188)—The application directions for the heptachlor granular products provide for the placement of 2 to 4 cups and 1 to 2 cups per mound, respectively, for the 5 percent and 10 percent products. Using the 100-mound-per-acre parameter, the possible application range for both products is from 3.5 to 7.5 lb. A.I./A. A rate on the order of 5.0 lb. A.I./A is expected to be applied.

(c) Propoxur (Baygon)—Only one propoxur product is currently registered for use against fire ants and only for mound application. This product is the recently registered Boyle Midway 2 percent ant trap. Each ant trap consists of a bait formuation housed in a small metal canister. The current use directions limit appliction to the mound site. The Application of this product is further restricted to "* * * home use only." The application of this product to a 100-mound acre would result in the distribution of 0.002625 lb. A.I./A.

(d) Chlorpyrifos (Dursban)—As in the case of propoxur, only a single recently registered product exits. This product is a 6.7 percent emulsifiable concentrate labeled by the Occidental Chemical Corp. Additional distributor labels are anticipated with the Zoecon Corp. providing the major distribution channels. This product is applied as a 0.2 percent mound drench in 1 gallon of water. Again applying the 100-mound-per-acre parameter, the total application would result 0.78125 lb. A.I./A.

*Applications for registration to control fire ants are pending for the following pesticides: Diazinon—four separate formulations. Carbaryl—40.38 percent formulation (Reg. No. 1016-68). 1,1,1 Trichloroethane—94.5 percent formulation. These pesticides are not yet registered, nor are they expected to be available in time to control fire ants for the summer and fall seasons. They may, however, be available in the future.

(e) Lindane—(C.25 percent)+Naled (0.5 percent) (Reg. No. 239-907)—This formulation is a pressurized spray primarily intended for indoor use.

The Ferriamicide bait is a 0.05 percent active ingredient granular formulation. If it is assumed that in mound applications Ferriamicide bait is applied at the rate of 0.25 oz. of formulation per mound site (see 42 FR 6473), a 100-mound acre would receive 0.00078125 lb. A.I./A, or less than one third of a gram.

c. *Evaluation of alternatives.*—(a) Nonpesticidal methods—Mechanical means of mound control are somewhat effective on agricultural lands, but only as a means of eliminating interference with farm equipment. Prevention of other injuries (stings) on farm land will require use of a pesticide.

(b) Chlordane and Heptachlor—The consensus of those researchers recently contacted has been that chlordane and heptachlor provide a reasonable degree of mound reduction and population suppression. There is, however, some reason to question the efficacy of chlordane and heptachlor, because at the time they were registered information gaps existed with respect to fire ant testing methodology. As a result, there exists doubt as to whether chlordane and heptachlor provide total mound kill or promote mound migration. In the past few years much new information has come to light on fire ant movement. For example, the mound is now observed for a longer period to time after application of a pesticide.

It is generally believed that heptachlor is more active against ants than is chlordane, a premise reflected by the currently registered application rates, which require less heptachlor for use on a mound.

Chlordane and heptachlor, like Mirex, have been the subject of litigation because of the hazard which they pose to the environment. They present problems similar to those posed by Mirex.*

Chlordane, when used to control Imported Fire Ants, requires a dosage approximately 10,000 times that required when Mirex is used in the Ferriamicide bait formulation. Heptachlor requires a dosage approximately 5,000 times the Ferriamicide dosage.

(c) Propoxur (BAYGON)—is registered only for use around the home. The compound has not been tested under field conditions. While the efficacy data submitted in support of the registration of this product indicated substantial mound mortality, large scale field testing was not required due to the proposed label restrictions. Efficacy is therefore questionable under field conditions.

(d) Chlorpyrifos (DURSBAN)—Both the data provided for registration support and that made available by USDA researchers indicate very acceptable product performance (average mound reduction rate 90 percent as determined by field test data). This pesticide would not be practical, however, in widespread field use because of the large amount of water required. The dosage required would be about 1,000 times that required for Mirex in the Ferriamicide bait formulation.

Chlorpyrifos would be a practical alternative in some areas where the infestation of fire ants is relatively light. When the infestation is heavy or widespread, large amounts of water would have to be transported in order to use the mound drench. To treat fire ant mounds over a relatively large area it would, in most cases, be impractical to carry more than 5 gallons of water unless the applicator has special equipment. This is especially apparent when one considers that to apply Ferriamicide mound-to-mound all one must carry is a small container and hand dipper to apply approximately one teaspoonful of the formulated pesticide per mound.

(e) Lindane+Naled—This formulation would not be effective for mound control because there would be an insufficient quantity of finished product to saturate the mound.

(f) Ferriamicide—Efficacy testing of Ferriamicide has so far been inconclusive (application pp. 27-32). According to the Applicant, the combination of a very cold winter followed by a very dry early summer caused the fire ant populations to be very unstable, reducing foraging to the point that even proven baits were not effective. In many cases 40-50 percent of the control colonies did not survive for the duration of the test. This made efficacy testing difficult to conduct. (Application p. 30.)

The U.S Department of Agriculture has advised EPA that of materials filed tested up to this time Ferriamicide is the most effective replacement for 4x or 10:5 Mirex bait.

The document entitled "Summary of Evidence and Other Information and Statement of Reasons", published in conjuction with the acceptance of the Plan for the voluntary cancellation of Mirex, concluded that when Mirex, the active ingredient in Ferriamicide, is applied "in adequate amounts near fire ant mounds and properly foraged, the population of fire ants in the mound is severely reduced." (41 FR 56701). Although reinfestation might occur, control at the site is achieved. The efficacy of its active ingredient provides adequate support, for purposes of a Section 18 exemption, to conclude that Ferriamicide will effectively reduce fire ant populations and, thereby, significantly reduce the problems resulting from fire ants.

3. Conclusion regarding whether emergency conditions exist

a. *Areas where an emergency exists.*—(1) *Noncrop areas.* After June 30, 1978, an emergency will exist in Mississippi in noncrop areas where fire ant infestation occurs. This determination is based on the following factors;

(1) the widespread prevalence of fire ants in Mississippi,

(2) injury to humans from insect stings,

(3) the great public concern expressed for the need to control fire ants,

(4) lack of practical, available pesticides to control fire ants in all but areas of relatively light infestation,

(5) lack of available nonpesticide control methods that would be efficacious for noncrop lands.

(6) the expectation that no pesticide currently proposed for registration for fire ant control will be available by June 30, 1978, and

(7) the fact that Mirex may not be used after June 30, 1978.

(2) *Agricultural areas.* No pesticides are registered for fire ant control that are feasible for agricultural uses. Items 1 through 3, 6, and 7 relating to noncrop uses also apply to the determination of an emergency on agricultural lands. In addition, the economic damage on agricultural land could be considerable. In view of the foregoing it is my opinion, that an emergency will exist on agricultural lands after June 30, 1978

To some extent the economic emergency may be alleviated by nonpesticidal methods used to knock down and disperse mounds. No evidence has been presented, however, to indicate that mechanical methods of control, alone, could reduce the adverse effects of fire ants to an acceptable level.

b. *Areas for which feasible alternative are available.*—Chlorpyrifos and Propoxur, registered pesticides for control of fire ants in noncrop areas, are expected to be reasonably available after June 30, 1978. In areas where infestation is not particularly heavy it appears that they would control fire ants. Based upon the § 166.1 (a), (b), and (c) criteria, I cannot recommend finding that an emergency exists in those areas where Chlorpyrifos or Propoxur may be used practically.

* According to the terms of the Administrator's Mar. 6, 1978, order in Velsicol Chemical Corporation, et al., FIFRA Docket No. 336 et al., there will be available no more than 350,000 pounds of technical chlordane for general use on imported fire ants.

SHOULD AN EMERGENCY EXEMPTION BE ISSUED?

A. DISCUSSION OF OPTIONS FOR ISSUING AN EXEMPTION

This section states my opinion and describes my reasons for determining that a conditional emergency exemption should be issued.

1. Emergency conditions

Once it has been determined that emergency conditions exist, the risks and benefits of issuing an exemption for the pesticide must be evaluated to determine whether such exemption should issue and what restrictions, if any, should be impose.

Section 18 of FIFRA authorizes the Agency to grant an exemption if "emergency conditions exist which require such exemption." For the reasons stated above, it is my opinion that emergency conditions exist in those areas of generally heavy infestation, but do not exist in areas of relatively light infestation where practical alternatives are available. There is, however, no practical way for the Agency to distinquish between these areas. In this particular case, the Agency could not effectively segregate the areas where Ferriamicide is needed, unless a survey of infested land were conducted and a study were made to decide where one pesticide would be practicle as opposed to another. I do not believe that such an undertaking is practical or that it could be accomplished before the onset of the expected June 30, 1978, emergency.

2. Health effects

Based on the information we have on the efficacy of Ferriamicide, it is likely that the pesticide will achieve site control of fire ants. Ferriamicide, however, contains Mirex, a substance which may pose a risk of cancer to man. The advantage of Ferriamicide is that the Mirex in it may be expected to photodegrade more rapidly than the Mirex in other formulations. One would expect, therefore, that the hazard from Ferriamicide would be less than the hazard from Mirex alone.

However, the photodegradates of Ferriamicide have not been completely identified and their toxic qualities are not known. No subchronic or chronic toxicity tests have been conducted, while accute toxicity testing has been extremely limited. No mammalian studies have been conducted, and no residue data are available.

It has not, furthermore, been verified that Ferriamicide under field conditions photodegrades as rapidly as is claimed. Mirex, itself, is less persistent in the laboratory than in the field.

Although Ferriamicide is related to Mirex and there is much we do not know about it, the amount proposed to be used in the Ferriamicide formulation is minimal, particularly if the use is restricted to limited ground broadcast and mound-to-mound applications. Assuming mound-to-mound application to a 100-mound acre, no more than one-third gram of Mirex per acre will be applied.

3. Options

The Administrator has four basic options to consider in this matter:

Option A: Grant the exemption as requested by Applicant but only for use after June 30, 1978.

Pro: Will make available an efficacious pesticide for the most economically feasible and efficient method of application.

Con: Leads to the most significant exposure potential to Mirex.

Option B: Deny the exemption in toto.

Pro: Reduces exposure to Mirex to the lowest possible level.

Con: Would leave no feasible means of controlling a pest that causes significant economic and health problems.

Option C: Grant the exemption in part by restricting use to those areas for which practical alternatives are not available, and by imposing restrictions on the method of application. Use will begin only after June 30, 1978.

Pro: Will enable the Administrator to make the pesticide available while keeping exposure low enough to be consistent with avoiding unnecessary health or environmental problems.

Con: (1) Puts the Agency in a position of imposing an unenforceable restriction, e.g., a label which permits use only in areas where infestation is more than, for example, five mounds per acre.

(2) May prevent use of Ferriamicide in areas where it may be needed, e.g., an area where there are ten mounds spread over two or three acres such that large amounts of water would have to be transported were DURSBAN to be used.

Option D: Grant the exemption in part by imposing restrictions on the method of application but permit use of Ferriamicide even in areas where a practical alternative will be available. Use will begin only after June 30, 1978.

Pro: (1) Eliminates the problem of an unenforceable label.

(2) Will insure that Ferriamicide may be used in any area where it is needed.

(3) Additional health or environmental effects will not be significantly increased because of the small amounts of pesticide that will be used.

Con: Would permit Ferriamicide to be used where a registered alternative is available.

B. RECOMMENDATION

Since there will be a need to control the fire ant after June 30, 1978, and minimal amounts of Mirex will be used, I recommend Option D. This will permit the Agency to make Ferriamicide available without causing unreasonable adverse effects to health or the environment. In arriving at this recommendation I have considered the following factors:

(1) Too many significant characteristics of Ferriamicide are unknown;

(2) Ferriamicide contains Mirex, which may pose a risk of cancer to man;

(3) Food residue should be kept as low as possible, since that is the most likely route of exposure to man;

(4) Direct exposure to humans and nontarget organisms should be minimized.

WHAT RESTRICTIONS SHOULD APPLY?

A. DISCUSSION OF OPTIONS FOR RESTRICTING USE

Option E: Authorize a single aerial, ground or mound application of Ferriamicide.

Pro: Aerial and ground broadcast methods are the only way to treat large areas economically.

Con: (1) The possibility of exposure to humans and nontarget organisms is high compared to other methods of application.

(2) Residues of Mirex or its degradates are likely to occur in the food chain.

(3) The Agency would be approving additional aerial application of Mirex, a practice which terminated under the Mississippi Plan on December 1, 1977.

(4) Aerial application could put at risk at least one endangered species—the Red Cockaded Woodpecker.

Option F: Permit limited ground broadcast—only in parks and cemeteries.

Pro: (1) Permits economical treatment in areas where people frequently come into contact with fire ants.

(2) Does not appreciably increase direct human exposure to the pesticide.

(3) Has no effect on food residues.

(4) Number of applicators exposed will be reduced.

Con: (1) There is significant probability that runoff into the water supply will occur.

(2) This option will result in greater exposure to nontarget (mammalian) species.

Option G: Permit mound-to-mound application.

Pro: (1) Minimizes environmental contamination—in a 100-mound acre

less than one-third of a gram of parent compound, Mirex, would be applied.

(2) Provides control of fire ants in areas where the threat to man and livestock is greatest.

Con: (1) Some exposure to the applicator occurs (more applicators required than for ground broadcast).

(2) Uneconomical in widespread infestation because it is too labor intensive.

B. EVALUATION OF OPTIONS FOR RESTRICTING USE

The following paragraphs state my opinion on the relative merits of the options for restricting use.

1. *Aerial and wide-scale ground broadcast*

Mirex, the parent compound of Ferriamicide, presents significant toxicity problems, and we know far too little about the toxicity of Ferriamicide and its photodegradates. Therefore, the possibility of broad exposure from Ferriamicide to the environment and to nontarget organisms that would occur from aerial or wide scale ground broadcast application would pose unreasonable risks of adverse effects.

2. *Limited ground broadcast*

a. *Agricultural lands.*—The fact that ground broadcast increases (over mound-to-mound application) the possibility of food residues of unknown toxicity makes ground broadcast unacceptable for agricultural uses.

b. *Noncrop areas (parks and cemeteries).*—On the other hand, in certain noncrop areas, specifically cemeteries and parks, where humans are subject to contact with heavy infestations over a broad area, ground broadcast provides a practical means of controlling the fire ant while not materially increasing human exposure over mound-to-mound treatment. There is somewhat less applicator exposure, since less applicators are required than for mound-to-mound treatment. In my opinion, therefore, it would be reasonable to permit ground broadcast in cemeteries and parks.

Since ground broadcast does present high possibilities for exposure to nontarget species and entry of the chemical into the environment, it would not be reasonable to permit such application for wide-scale use on other noncrop lands.

3. *Mound-to-mound application*

a. *Agricultural lands.*—Use of mound-to-mound application will pose the least likelihood of food residues of Mirex or the Ferriamicide degradation products. This application method, when used in with the mechanical methods available for mound dispersion, would provide a means to reduce both the economic damage and the health problems (possibility of stings) caused by fire ants.

b. *Noncrop lands.*—Although a greater number of applicators may be needed for mound-to-mound application than for ground broadcast, the area-wide environmental exposure from the mound-to-mound application would be extremely limited. Whatever threats Ferriamicide may pose to health or the environment will be kept to acceptable limits since the amount of toxicant to be applied is minimal, and the bait formulation applied to a mound would have almost no direct effect on nontarget organisms. Furthermore, Ferriamicide can be expected to control the mound populations and reduce infestation by this method in those areas where humans will be most likely exposed to the threat of fire ant stings.

C. CONCLUSION

I recommend, accordingly, that the exemption allow the following uses:

(1) ground broadcast for cemeteries and parks (Options F); and

(2) mound-to-mound application for all uses (Option G).

CONDITIONS TO BE IMPOSED UPON THE EXEMPTION

A. In order to insure that the Applicant continues to proceed with good faith efforts to obtain data to register Ferriamicide or another alternative pesticide for control of fire ants, I recommend that the following conditions be imposed on the emergency exemption.

(1) The exemption will be granted beginning July 1, 1978, and continue for only one year thereafter; and

(2) Granting of any further exemption will depend upon Applicant's good faith efforts to continue research to find an alternative for Mirex to control fire ants (assuming all other conditions required for granting an emergency exemption exist).

B. Before final authorization is issued and any distribution of Ferriamicide is permitted under the authority of a section 18 exemption, I recommend that the Applicant be contacted and that the items stated below be resolved consistent with the recommendations made above in order to reduce the likelihood of adverse effects from application of Ferriamicide:

1. Applicant should agree to commence further appropriate testing to ensure Applicant's continued good faith efforts to develop alternatives to control fire ants. EPA will offer assistance and use of its facilities where appropriate;

2. Applicant should furnish manufacturing process and product composition information, and data demonstrating satisfactory shelf-life of the product;

3. Agreement should be reached on the amount of product to be manufactured for use under this exemption and any other exemptions that may be issued, as well as the time period within which incremental amounts of product will be manufactured;*

4. Package sizes of the manufactured Ferriamicide bait should be such that the different user groups will receive packages of appropriate sizes;

5. We need to know which categories of persons will be authorized to apply Ferriamicide bait, by which methods and what applicator certification training requirements will be imposed;

6. The labeling must be consistent with the terms of the exemption, and must include appropriate use instructions and precautionary language;

7. Applicant should describe the authorized channels of distribution.

Conditions addressing the items contained in paragraph B could be dictated by EPA, but the resulting conditions may not be feasible under the circumstances existing in the State of Mississippi. Since EPA has not adopted the Mississippi proposal, it is appropriate to afford the State an opportunity to submit additional information on these matters, so that the most appropriate conditions and restrictions can be fashioned.

RECOMMENDATION

I recommend granting a specific exemption for use of Ferriamicide for mound-to-mound application and limited ground broadcast application, as discussed in Options D, F, and G, subject to the restrictions stated above, and subject to such further conditions as are determined to be appropriate after the Agency and the Applicant has resolved the outstanding matters discussed in paragraph B of the section titled "Conditions to be Imposed on the Exemption."

Approved in accordance with the reasoning stated here.

Dated: March 8, 1978.

BARBARA D. BLUM.

ATTACHMENT B

OPINION AND ORDER, UNDER § 18 OF THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT, REGARDING USE OF FERRIAMICIDE IN MISSISSIPPI

The Mississippi Authority for the Control of Fire Ants ("Mississippi Authority") has requested, under § 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended ("FIFRA"), 7 U.S.C. 136p, that the Environmental Protection Agency

*The total amount of Ferriamicide produced for the entire period of product development may not contain more than 11,800 pounds of Mirex.

("EPA" or "Agency") issue an exemption from the other provisions of FIFRA to allow the use of an unregistered pesticide called Ferriamicide for the control of imported fire ants in Mississippi.

This Opinion and Order constitute final Agency action by EPA on the Mississippi Authority's application.

I. Background

A. The Fire Ant Problem

Imported fire ants are small ants which were accidentally introduced into this country early in this century and which now thrive in many areas of the Southern United States. They are now found in some 190,000,000 acres in Mississippi and eight other States in the South. They build mounds which can become as high as 1½ feet. When the mound is disturbed, the ants tend to attack the source of disturbance in large numbers. Their bites are very painful, and some persons who are hypersensitive to the ant venom suffer serious reactions to the bites. In addition, the large ant mounds can interfere with certain agricultural operations, such as mowing and combining.

Fire ants generally are most active above ground (and thus most troublesome) in the spring and fall, during warm, moist periods. During hot, dry summers, they tend to remain deep inside their mounds where moisture is available.

B. The Mirex Cancellation

Mirex is a pesticide that has proven to be successful in controlling fire ant infestations. It is a relatively slow-acting insecticide which affects the ant's central nervous system when ingested. Because of its slow action, foraging worker ants will carry Mirex-treated bait into the mound, where it is consumed by other ants, including the queen, often resulting in the death of the entire colony of ants.

For may years Mirex bait formulations were applied widely (by aerial and ground broadcase methods) over large areas of the South, at a rate of approximately 1.7 grams active ingredient/acre.

Mirex is considered desirable for use against fire ants because it is relatively easy to apply, because comparatively small amounts of the active ingredient (when properly formulated and applied) are needed on a per-acre basis, and because it provides relatively inexpensive control.

However, Mirex is also very persistent in the environment, and causes harm to many nontarget species, especially aquatic species, even at low dosages. Test results (while not unambiguous) tend to show it induces cancerous lesions in rodent test species, and it causes a variety of other toxic effects in mammals as well.

Because of these concerns, the Agency in 1973-76 held a hearing to determine whether Mirex registrations should be canceled. This hearing ended when the Mississippi Authority, by then the only Mirex end-use registrant, proposed that the Agency accept a plan providing for the voluntary cancellation of all Mirex end-use registrations. The Administrator accepted this plan in December 1976. Under the plan, Mirex bait could be sold and used for ground-broadcast and mound-to-mound application until June 30, 1978. A discussion of the Administrator's reasons for accepting the plan, with a history of the Mirex proceedings, a summary of evidence presented, and a discussion of the risks and benefits of Mirex appears at 41 FR 56694 et seq. (December 29, 1976).

C. Ferriamicide

The Mississippi Authority has conducted extensive research aimed at developing a pesticide that would be effective against fire ants in much the same manner as Mirex, but would be less persistent in the environment. The Authority has developed a product called Ferriamicide, the active ingredient of which is Mirex in combination with ferrous chloride and an amine. Laboratory tests have shown that the Mirex in Ferriamicide photodegrades (degrades by virtue of a chemical reaction caused when the Ferriamicide "absorbs" energy in the form of light) considerably faster than does Mirex alone.

The bait formulation the Authority proposes to use contains only 0.05 percent Mirex. The remainder of the product consists of inert ingredients, principally ground corncobs and soybean oil.

D. The Authority's Section 18 Application

Much of the testing required for registration of a pesticide under FIFRA section 3 has not yet been performed on Ferriamicide. However, although the voluntary cancellation plan provided that old-style Mirex bait was not to be available for sale or use after June 30, 1978, there was no reason to believe that the fire ants would cease their troublesome activity as of that date.

Accordingly, on December 16, 1977, the Mississippi authority submitted to EPA a request for the issuance of an exemption (under FIFRA section 18) allowing the use of Ferriamicide under certain circumstances even though it could not yet be registered. The Authority sought permission to apply Ferriamicide bait by aerial broadcast and ground broadcast methods over wide areas of Mississippi; these applications were to be made only by trained, certified pesticide applicators. The Authority also asked permission to sell Ferriamicide bait to homeowners and other persons for so-called "mound-to-mound" application (sprinkling the bait directly on the ant mounds). Various limitations and conditions were proposed in the application.

E. Prior EPA Action on the Authority's Request

On December 28, 1977, EPA published a notice describing the Authority's request and soliciting public comments.[1] A large number of comments were received, some favoring and some opposing Agency approval of the request. Some 20,000 Mississippi residents sent brief letters expressing concern about fire ants and in some cases supporting the application. In addition, a number of Federal legislators (most from Southern States), State legislators, and other State officials urged approval of Mississippi's request. (Officials of several other States planned to apply under section 18 for permission to buy Ferriamicide bait from the Mississippi Authority for use in their own States, if EPA approved the Mississippi request.)

On the other hand, a smaller number of commentors (including some Federal legislators) opposed the request. The Environmental Defense Fund, Inc. (EDF) submitted extensive comments in opposition to use of Ferriamicide.

After extensive EPA staff consideration of the issues raised by the Authority's request, Mr. Steven D. Jellinek, the Agency's Assistant Administrator for Toxic Substances sent to me, on March 8, 1978, a document containing a series of recommendations on the matter. I adopted those recommendations on the same day, and so indicated by concurring on the document [attached as Attachment A to this Opinion and Order].

Mr. Jellinek's recommended conclusions, which I adopted, in essence were these:

1. Fire ant infestation in Mississippi is a serious pest problem, which will become more serious once Mirex cannot be used.

2. There are alternative non-pesticidal treatments that provide some degree of relief in avoiding economic damage. There are also registered pesticide that in some circumstances can provide effective control.

3. However, in areas with widespread or heavy infestation, there is no practical method of treatment (other than Ferriamicide). In those areas, an "emergency" exists for purposes of FIFRA section 18.

4. Some of the registered alternative pesticides (notably heptachlor and

[1] 42 FR 64734.

chlordane) are known to pose serious environment hazards.

5. Mirex is very effective against fire ants, and Ferriamicide bait, which contains Mirex, can also be expected to work well.

6. Although the Agency's knowledge of the properties and effects of Ferriamicide is incomplete, we do have a wide range of data on its active ingredient, Mirex.

7. The risks of Ferriamicide use can be kept very low by keeping exposure of humans to Ferriamicide at very low levels (both dietary residues and applicator exposure should be considered).

8. Aerial broadcasting and most ground broadcasting should not be allowed, because of the need to keep exposure levels low. Mound-to-mound application should be allowed primarily because it will pose very little, if, any risk of dietary exposure, yet will allow treatment of those areas where the need is greatest.

9. Practical considerations (primarily the difficulty of defining "heavy infestation" and of enforcing label restrictions) require allowing mound-to-mound treatments of Ferriamicide even where an alternative pesticide (such as chlorpyrifos) could be used.

10. A number of details remained to be resolved by agreement between the Authority and the Agency before final authorization for Ferriamicide use in Mississippi could be granted. Among other things, we needed to decide on the categories of persons who will be allowed to use the pesticide, the training requirements to be imposed, the use instructions and precautions to appear on the labeling, and the channels of distribution to be employed.

11. The exemption would be for one year, and at most could authorize use of 11,800 pounds of technical-grade Mirex for formulation into Feriamicide.[2]

F. THE ENVIRONMENTAL DEFENSE FUND'S COURT CHALLENGE

In March 1978, EDF filed an action [3] in the United States District Court for the District of Columbia, saying that for a variety of reasons the Agency should be enjoined from allowing Mississippi to use Ferriamicide.

On June 16, 1978, a hearing was held, at which time the Court stated that it appeared the Agency's decision was not yet final or reviewable (because of the matters still requiring resolution). The parties then stipulated that the Agency's final decision would be issued on or about July 21, 1978, and that the Court would act in early September (following the filing of briefs by the parties).

II. FINDINGS

A. THE FIRE ANT INFESTATION IN MISSISSIPPI CONSTITUTES "EMERGENCY CONDITIONS" WITHIN THE MEANING OF FIFRA [6] 18

I find that "emergency conditions", within the meaning of FIFRA section 18, exist in those areas of Mississippi which are heavily infested with fire ants, for the reasons set forth on pages 7-12 of Attachment A. I adopt the "Conclusions regarding whether emergency conditions exist," set forth at pages 12-13 of Attachment A, as a part of this finding. The following paragraphs will serve to further explain this finding.

1. *Fire Ants Pose Serious Health and Economic Problems in Mississippi*

The nature of the harm fire ants cause is adequately explained in Attachment A and in the "Background" section of this Opinion, *supra*. Mirex, which has been useful in controlling infestations, can no longer be used in the formerly-registered formulations. The unavailability of Mirex can be expected to increase the degree of the problem where alternative control methods are not available.

2. *Alternatives for Fire Ant Control*

In areas heavily infested with fire ants there are no feasible registered pesicidal or non-pesticidal methods of control that are both safe for use and sufficiently effective to alleviate the emergency. Some pesticides are the subject of pending registration applications, but only for limited use near the home. Attachment A substantially dealt with the alternative methods for fire ant control (pp. 7-12).

The alternatives available for fire ant control fall into three classes.

In the first class of pesticides we have products like chlordane and EDC, both of which are carcinogens. However, these products under current label directions require far greater amounts of active ingredient to perform the same job as Ferriamicide. Chlordane requires 10,000 times the amount of active ingredient (Attachment A); EDC requires 1,000 times the active ingredient. (Attachment B). Methyl Bromide is a mound fumigant that could pose a greater acute hazard than Ferriamicide (Attachment C).

In the second class of pesticides are the many products tested by the USDA but not found to be effective as a fire ant bait. In addition other researchers have examined different pesticides, but found them ineffective (Attachments D and E).

The third class of methods of control have utility, but only in some circumstances. The most effective product in this class appears to be chlorpyrifos (Dursban). Available data indicate that chlorpyrifos works well, and is relatively low in toxicity. The dosage required would be about 1,000 times as much active ingredient as that in the Ferriamicide bait formulation.

Chlorpyrifos would be a practical alternative in some areas where the infestation of fire ants is relatively light. When the infestation is heavy or widespread, large amounts of water would have to be transported to the mounds. (The pesticide must be mixed with water, and one gallon of the mixture is applied per mound.)

In addition, there are other products for which registration applications are pending which might prove practical for use in relatively lightly infested areas around the home, even though their efficacy may not yet have been demonstrated (Attachment E).

3. *Efficacy of Ferriamicide*

It is expected that Ferriamicide will prove effective, based on the efficacy of its active ingredient, Mirex. (See Attachment A, pp. 11-12). There have been some problems to be solved regarding rancidification of the soybean oil in the Ferriamicide bait. When the oil rancidifies, it is no longer attractive to the ants and the product will not be effective for control. The addition of ferrous chloride to the bait not only facilitates the photodegradation of Mirex but could, in the presence of oxygen, cause the soybean oil to rancidify. The manner in which the Ferriamicide bait is formulated has been shown to influence the speed with which rancidification takes place, as does the availability of oxygen.

Mississippi has developed a "cold mix" manufacturing process and a formulation which uses, in addition to the original Ferriamicide formulation, citric acid and propylene glycol (Attachment A). The citric acid acts as an antioxidant, thereby inhibiting rancidification of the soybean oil. Shelf life tests conducted by the USDA facility at Gulfport, Mississippi indicate that the revised formulation maintained satisfactory acceptance by the fire ant (Attachment F). Mississippi has further addressed the shelf-life problem by packaging the one (1) and five (5)

[2] On August 31, 1976, the Mississippi Authority submitted a plan to the Administrator providing among other things, for the suspension of Mirex cancellation hearings which were then in progress, the phase-out of production and use of Mirex, and the voluntary cancellation of Mirex registrations. The Administrator accepted the Plan (See discussion at page 3 of this Opinion). EDF, which was a party to the Mirex proceeding, supported approval of the plan. Under the plan, 35,000 pounds of Mirex could be utilized during the phase-out period to produce Mirex products. However, only 23,200 pounds were in fact used. The maximum amount of Mirex that may be formulated into Ferriamicide is the remaining 11,800 pounds.

[3] *EDF* v. *Blum* et al., Civil Action No. 78-0577 (USDC, D.D.C.).

pound packages in airtight film bags. They will exhaust all oxygen from the bags and replace it with nitrogen at the time Ferriamicide is packaged. By this process the rancidification of the soyben oil cannot begin until the package is opened (Attchment G).

Once the package is opened, tests indicate the bait may be expected to lose its attractiveness to the ants in about 10 weeks (Attachment F). This will be sufficient to maintain usefulness of the product through the fall or spring treatment seasons, when the fire ants are most active. Homeowner purchasers will be informed of this when they buy the product.

Shortly after Attachment A was signed, Mississippi became aware that the way in which Ferriamicide was formulated influenced the amount of Kepone which was formed from the decomposition of Mirex.

The inclusion of propylene glycol and the adoption of the cold mix manufacturing process has reduced the amount of Kepone produced to less than 0.5 percent of the Mirex in the Ferriamicide (Attachment H). Since the Ferriamicide bait itself contains only 0.05 percent Mirex, the level of Kepone introduced into the environment would be at detection limits and should present very little threat to the environment.

B. PERMITTING LIMITED USE OF FERRIAMICIDE SUBJECT TO STRINGENT CONDITIONS WILL NOT CAUSE UNREASONABLE ADVERSE EFFECTS TO THE ENVIRONMENT

The extent to which a use of a pesticide will pose a hazard to humans depends not only on the inherent toxicity of the pesticide, but also on the degree to which humans will be exposed to the pesticide. If exposure can be kept very low, the hazard also will be very low even if the toxicity is high.

We know that Mirex causes various serious toxic effects in test species. Although Ferriamicide is designed to photodegrade rapidly, we do not know how much less inherently toxic than Mirex it is. Accordingly, it is prudent to proceed as if Ferriamicide were as toxic as Mirex. There is no reason to assume it has a higher degree of toxicity then Mirex.

The Agency's approach to the Authority's request for permission to use Ferriamicide has thus centered on the question whether exposure to Ferriamicide could be kept low enough so that the hazard posed by its use would be very small, and would be outweighed by the benefits its use would bring about.

1. *Aerial and ground broadcast application.* In my March 8 decision, I found that because of exposure considerations, it would not be reasonable to allow aerial application of Ferriamicide, nor to allow general ground broadcast application of the pesticide. I now reaffirm those findings, for the reasons stated on page 18 of Attachment A. I also found that ground broadcast application could be permitted in parks and cemeteries, because exposure to humans from that use pattern would be very low. I now reaffirm that finding also, as stated on pages 18-19 of Attachment A.

Mississippi has requested that it be permitted to apply Ferriamicide by ground broadcast on campgrounds, fairgrounds, schoolyards, playgrounds, and levees. I find that the same rationale for permitting this application method in parks and cemeteries applies to all these other areas except levees. Ground broadcast will not be permitted on levees because it is not uncommon for livestock to graze on or near them. Levees are, therefore, more appropriately considered in the same light as agricultural lands.

Ground broadcast rates shall be 1 to 2½ pounds per acre. These rates are derived from the calibrations on existing equipment. The largest amount that may be applied per acre, 2½ pounds, is the equivalent of mound-to-mound application on an acre infested with approximately 150 mounds. The maximum amount of Mirex that will be placed on any acre will be about ½ gram. In many cases the amount of Mirex will be considerable less. In view of the small amounts of Mirex and the fact that there will be no exposure through the food chain in the areas where ground broadcast will be permitted, and the benefits to be obtained by controlling fire ants in areas of widespread human exposure, I do not find the ground broadcast rates to be unreasonable.[4]

2. *Mound-to-mound application.* The remaining question is the extent to which the Agency should permit mound-to-mound application of Ferriamicide bait. Since the March 8 decision, new information has come to EPA's attention that affects my decision on that matter,[5] and further staff analysis has been performed.

The data availabe to the Agency indicate that there are two kinds of toxic effects in humans that we must be especially concerned with in evaluating the Mississippi Authority's request: Carcinogenicity and teratogenic effects. Our analysis indicates that there are only two possible routes of human exposure to Ferriamicide that require serious evaluation: Dietary exposure (from residues in or on food) and dermal absorption exposure of persons who may apply Ferriamicide.

a. *Reproductive (Teratogenic) effects.* One study which has recently come to the Agency's attention studied the effects of Mirex on reproductive performance and offspring development in the prairie vole, *Microtus Ochrogaster.*[6] Statistically significant adverse effects on the behavior of offspring were found when the prairie voles were dosed at 0.1 ppm of the diet, the lowest level tested. This effect level is estimated to be equal to 0.015 mg/kg bw/day, which translates in a 50 kg human to an effect level of 0.75 mg/day (Attachment L). Another recent study on the Swiss mouse [7] has shown serious physiological and behavioral effects in offspring when much higher doses were administered.

Although these tests involved repeated dosages, our analysis has used the conservative assumption that any one of the daily doses might have caused the observed effect in the offspring.

From the available residue data it seems likely that the present human dietary intake of Mirex (resulting from Mirex use in prior years) is no more than about 1 microgram per day (.001 mg/day).[8] That figure resulted from extensive prior aerial application to croplands and other areas at higher dosage rates. Many more pounds of Mirex were applied annually, and many more acres treated annually, than would be the case if mound-to-mound application of Ferriamicide were authorized for 1 year. Accordingly, I find that any dietary exposure that might result from mound-to-mound application of Ferriamicide for

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[4] It has been determined to produce Ferriamicide in 1, 5, and 50 lb bags. The 1 lb bags are for homeowner use and will be marketed for mound-to-mound application only to those persons who can justify the need for the product. The 5 lb bag will be available only to certified applicators for small scale ground broadcast in parks, cemeteries, and for mound-to-mound application for especially large acreage. The 50 lb bags will be available only to certified applicators for large scale ground broadcast.

[5] *Kepone /Mirex/ Hexachlorocyclopentadiene: An Environmental Assessment,* National Academy of Sciences, (1978), at 1-2 [hereafter NAS study]. (Attachment I). The NAS study is one of three studies that have recently come to the Agency's attention and have been key documents in the exposure analysis. None of these studies were available when Mirex was canceled on October 1976.

The other two studies are on the reproductive effects of Mirex:

(1) Shannon, V. C., *The Effects of Mirex on the Reproductive Performance and Behavioral Development of the Prairie Vole Microtus Ochrogaster* (doctoral dissertation, Iowa State University, Ames, Iowa; 1976) (unpublished). (Attachment J). Only the abstract is attached. The 320 pp. study will be available on request.

(2) Holevinski and Massaro, *The Effects of Gestational Exposure to Mirex on Offspring of the Mouse* (Dept. Biochemistry, SUNY School of Medicine, Buffalo, NY.) (available only in abstract) (March 1978) (Attachment K).

[6] See footnote 5 supra.

[7] See footnote 5 supra.

[8] See, NAS study at 34; Attachment M.

1 year will be so low as to pose no appreciable risk of teratogenic or other reproductive effects in humans.

When the possible reproductive/teratogenic effects arising from exposure to Mirex of persons who actually apply the Ferriamicide bait is considered, however, there is more cause for concern.

As already noted, if a pregnant woman were to ingest or otherwise be exposed to 0.75 mg of Mirex in a day, she would have received a daily dose equivalent (on a diet-to-body weight basis) to the dose which cause adverse reproductive effects and offspring behavior abnormalities in the praire vole.

The Agency's staff has prepared an estimate (Attachment N), using a presumed worst-case approach, of the amount of Mirex that might enter the body by dermal absorbtion if a woman were to apply a 1-pound bag of Ferriamicide bait by using her hands (not wearing gloves or using the measuring spoon, and thus violating the use instructions in two ways). If 1 percent of the Mirex content were to come in contact with her skin, and if 10 percent of that 1 percent were to be absorbed dermally, the resulting Mirex "dose" would be about 0.23 mg (0.0046 mg/kg for a 50 kg woman).

This estimated exposure is only one-third of the dose which caused adverse effect in prairie vole offspring. The estimate probably far exceeds the average actual exposure to applicators, since use of gloves and measuring spoons would reduce dermal contact with the bait to practically zero. But it can be expected that some persons will not take these precautions, and for them our estimates show there is no real margin of safety, since the calculated exposure is so close to an observed effect level.

Oral ingestion of 1.5 grams of the bait would also yield the same exposure level that caused prairie vole effects, but it appears that the dermal exposure route is of more concern, since it can be expected that almost everyone will guard against oral ingestion of the pesticide.

I find that the risk of reproductive/teratogenic adverse effects resulting from applicator exposure is serious enough to warrant steps to reduce exposure.

b. *Oncogenic effects.* Tests of the cancer-causing potential of Mirex have yielded results that have been interpreted in various ways.[9] However, for present purposes, Mirex is presumed to be carcinogenic.

The Agency has performed worst-case analysis[10] of the possible cancer risk to humans from two exposure routes: dietary and applicator dermal contact. This analysis has been reviewed by the Agency's Carcinogen Assessment Group (CAG).

The dietary exposure worst-case estimate concludes that in a hypothetical population of 10,000,000 about 0.081 additional cases of cancer per year would result on the average from the incremental use of 3,000 pounds of Mirex. (Attachment Q.) It is very likely that the actual number of cancer incidences would be even lower, because of the very conservative assumptions employed in the analysis.

The applicator dermal exposure analysis was based on the worst-case dermal absorption assumptions described above. It concluded that if one million persons apply the Ferriamicide, and if all of them fail to wear the prescribed rubber gloves and use the measuring spoon, no more than 30 of them would develop cancer as a result.

c. *Exposure-reduction measures to be imposed.* While the worst-case hazard estimates set forth above probably grossly overestimate the actual risks of Ferriamicide use, they do indicate that the benefits that Ferriamicide use might provide are not without their accompanying hazards. It is this Agency's duty to insure to the extent possible that no particular use of a pesticide creates risks that are unnecessarily or unreasonably great, when weighed against the benefits.

The main benefit of Ferriamicide is that the nature of its formulation and the small quantities required to make it easy to apply in areas of heavy and widespread infestation. Although treatment of a mound with chlorpyrifos will probably yield adequate results, chlorpyrifos treatment requires transportation of one gallon of water to each mound to be treated.

It is thus necessary to weigh the greater convenience of Ferriamicide against the hazards that its use presents. I find that in areas where chlorpyrifos can be used with only a modicum of inconvenience or extra work; it would be unreasonable to allow Ferriamicide use.

Although it is not easy to define the areas in which Ferriamicide may be used, it is necessary to draw the boundary somewhere. Accordingly, I find that chlorpyrifos can be used without serious inconvenience whenever there is less than 1 acre, or less than 50 mounds, to be treated. Where a person certifies in writing that he needs to treat more than 50 mounds and 1 acre or more, he will be permitted to purchase Ferriamicide bait from the Mississippi Authority.

In arriving at this conclusion, I have taken into account that fact that most (if not all) small plots of land will be relatively close to a water source; that few small residential plots are likely to now have heavy fire ant infestations; and that the 50-mound minimum will result in prompt use of most or all of a 1-pound bag, thus lessening the likelihood of opened bags being stored in or around homes.

I also find it necessary to require that the labels on all sizes of Ferriamicide must bear the following statement (in bold-face type, immediately below the CAUTION caption): "NOT TO BE APPLIED BY WOMEN OF CHILD-BEARING AGE."

I do not find it unreasonable to permit homeowners and other persons with severe infestations (over 50 mounds) and large acreages (over 1 acre) to use Ferriamicide in view of the extreme need for the product. While most homeowners at risk will be eliminated by the 1 acre, 50 mound restriction, the warning on the label should sufficiently warn the women of child-bearing age who live on the larger acreages.

Since the one pound package will be available to persons who are not certified, trained applicators, it is necessary to ensure that they are adequately informed of the dangers from use of the product. Mississippi will institute television and newspaper campaigns to inform the citizens about Ferriamicide and to instruct them in the proper way to use it. In addition, before being allowed to purchase the one pound bag, a person must read (or have for him) and sign a paper stating several cautions about the pesticide. That paper must contain the following statements:

1. Ferriamicide is not to be applied by women of child-bearing age. Tests on laboratory animals have shown if a pregnant femal is exposed to the active ingredient, harm to offspring may result.

2. Ferriamicide contains Mirex, which has caused tumors in rodent tests and may pose a risk of cancer to man; Mirex is also hazardous to fish and shellfish.

Precutions must be taken to ensure that the product does not come into contact with the skin. Therefore, wear rubber or plastic gloves when applying, and follow all other lable directions.

4. This product may become rancid approximately ten weeks after the package is opened, and, if so, will not be effective against fire ants.

5. The one-pound container will treat approximately 50 fire at mounds. If you do not have a need for that much pesticide within the ten week period after opening the bag, purchase another pesticide instead.

In addition, the paper must contain the following statement to be completed by the purchaser: "I have read the above statements. I have approximate-

[9] See Ulland, et al., *A Carcinogenicity Assay of Mirex in Charles River CD Rats*, J. Natl. Cancer 58:133-140, 1977. (Attachment O).

[10] See Attachments P and Q.

ly fire ant mounds to treat on approximately acres."

For the foregoing reasons, I find that the benefits of the uses permited under this Opinion and Order will outweigh the associated risks, in light of the restrictions imposed. In other words, use of Ferriamicide under these circumstances will not cause unreasonable adverse effects on the environment.

IV. Open Conditions in the March 8 Document

This section states the resolution of the conditions that were left open in the March 8 decision (Attachment A, pages 20–21).

1. *Applicant should agree to commence further appropriate testing to ensure Applicant's good faith efforts to develop alternatives to contol fire ants.*

This condition is designed to prevent repeated annual applications for emergency exemptions based on sparse data and to ensure that diligent efforts are made to find safe alternatives to control fire ants.

Mississippi is proceeding on two fronts. The State is obtaining funding from EPA in order to conduct research into altenatives other than Ferriamicide, and has initiated an extensive program to test Ferriamicide.

In a letter to EPA dated May 15, 1978 (Attachment R), Mississippi informed the Agency of a proposed research program to develop alternative pesticides other than Ferriamicide for fire ant control. Compounds are to be synthesized and a bioassay facility for testing newly developed pesticides will be established. In addition, there will be a team of chemists, zoologists, toxicologists, microbiologists and entomologists engaged in parrallel research. All of these investigations will be integrated into a single large program of synthesis, bioassay and toxicology.

Mississippi has submitted laboratory test protocols and an exensive testing program with the eventual aim of obtaining registration for Ferriamicide (Attachment S). EPA has submitted to Mississippi comments on the adequacy of the testing program (See Attachments T). In response, Mississippi has supplemented the documentation in support of its testing program (Attachment U). At this point I am prepared to find that Mississippi has exhibited good faith efforts to continue to find an alternative method to control fire ants, since in a relatively short period of time Mississippi has developed a testing program on Ferriamicide and appears to be pursuing research into alternatives. I restate my determination in the March 8, 1978, Action Memorandum that any Ferriamicide emergency exemptions requested when this exemption expires will depend very heavily on Mississippi's pursuing the appropriate testing programs.

2. *Applicant should furnish manufacturing process and product composition information and data demonstrating satisfactory shelf-life of the product.* This item is considered in the section of this Opinion concerning the efficacy of Ferriamicide.

3. *Agreement should be reached on the amount of product to be manufactured for use under this exemption and any other exemptions that may be issued, as well as the time period within which incremental amounts of product will be manufactured.* The March 8, 1978, Action Memorandum expressed my decision, which I hereby reaffirm, to limit the total amount of Mirex used in the entire Ferriamicide development program to no more than 11,800 pounds.

The authority has requested permission to distribute, for use in Mississippi, 500,000 pounds of Ferriamicide bait (that amount would require 250 pounds of Mirex). (See Attachment V) That request, however, contemplated some ground broadcast uses not permitted under this Opinion and Order. The Authority's figures indicate that the following amounts of Ferriamicide bait will be needed for permitted uses:

Mound-to-mound application by citizens: 120,000 pounds (number based on past requests from citizens for Mirex bait).

Mound-to-mound application for levees: 20,000 pounds (there are some 20,000 acres to be treated; at 50 mounds per acre, one pound per acre would be needed).

Mound-to-mound application by State employees on other sites, at request of citizens: 31,000 pounds.

Ground broadcast application on parks, fairgrounds, campgrounds, schoolgrounds, and cemeteries: 249,000 pounds (2 pounds per acre on 124,500 acres, including 4,500 acres of schoolgrounds).

Accordingly, it is my determination that not more than 420,000 pounds of Ferriamicide bait may be distributed by the Authority for use in Mississippi (this will require use of 210 pounds of Mirex, and will allow treatment of some 450,000 acres).

The amount of Ferriamicide bait that the Authority may sell for distribution and use in other States will be considered separately in connection with evaluation of the applications filed by the other States.

4. *Package sizes of the manufactured Ferriamicide bait should be such that the different user groups will receive packages of appropriate sizes; and*

5. *We need to know which categories of persons will be authorized to apply Ferriamicide bait, by which method, and what applicator certification training requirements will be imposed.* These two factors were considered in the hazard assessment section.

6. *The labeling must be consistent with the terms of the exemption and must include appropriate use instructions and precautionary language.* The language has been approved for the different Ferriamicide containers. These labels contain appropriate precautions for the different uses. The one pound package label is especially explicit in that it specifically prohibits use of the contents for aerial or ground broadcast use and states that an individual requiring less than one pound may not purchase the product.

All labels contain warnings as to the necessary precautions to avoid harm to humans, domestic animals and aquatic organisms. Instructions require that rubber gloves be worn when applying the pesticide to lessen dermal exposure.

Since Mirex is toxic to aquatic organisms, a special precaution appears relating to keeping the product out of any aquatic areas. Ferriamicide, after photodegradation, has exhibited no toxic effects on certain aquatic animals, but the precaution will appear as an added safety factor.

7. *Applicants should describe the authorized channels of distribution.* The Mississippi Authority for the Control of the Fire Ants is responsible for the manufacture, packaging and labeling of Ferriamicide bait. Within the State of Mississippi, they also will oversee the distribution of Ferriamicide bait.

The State Department of Agriculture and Commerce and the County Extension Services will act as points for end use distribution within the State of Mississippi.

These restrictions will facilitate monitoring of the exemption, since distribution will only take place through state facilities.

V. Ancillary Matters

A. Environmental Impact Statement

Among EDF's allegations in its court action is that EPA has failed to prepare an Environmental Impact Statement as required by the National Environmental Policy Act of 1969 (NEPA). While not conceding that EPA is required to file a NEPA statement with its section 18 exemption, I believe EPA has prepared the substantial equivalent.

Attachment A shows how the Agency considered the environmental impacts of using Ferriamicide. The memorandum actually considered virtually everything known at the time about Ferriamicide, including its relationship to the pesticide Mirex. In addition, it considered the alternatives to Ferriamicide and did not find any acceptable in areas of heavy infestation.

Attachment A and this document clearly constitute the "substantial equivalent" of an environmental impact statement. Admittedly much data concerning the environmental impact of Ferriamicide is lacking, but more will be obtained as we learn more from the experimental programs currently being conducted. The Agency has authorized an experimental use permit for Ferriamicide and is assisting, through the EPA Office of Pesticide Programs, in a research and development program being conducted by Mississippi and the United States Department of Agriculture. (40 CFR § 6.608(a)(5), which requires EPA to prepare environmental impact statements for certain actions involving field testing undertaken by the Office of Research and Development (ORD), does not apply in the case of the Ferriamicide research program, which is funded by the Office of Pesticide Programs.)

B. EDF'S "POLITICAL INFLUENCE" ALLEGATIONS

EDF, in its court challenge, has alleged that the Agency's decision to permit some use of Ferriamicide was reached because EPA was concerned solely or primarily with pleasing the southern Congressional delegation and the residents of southern states. This charge appears to be based mainly on the fact that EPA received and considered communications from Federal legislators and from citizens of Mississippi during the process of reaching its decision.

I wish to state for the record that I do not believe there was anything improper about the manner in which the decision was reached. The Agency certainly did take into account the fact that fire ant control is widely desired by citizens of Mississippi and other southern states. The degree of public concern about a pest problem is certainly relevant to the issue of whether "emergency conditions" exist, although a number of other factors are also relevant. (After all, fire ants are a problem largely because of their proximity to people and their tendency to interfere with everyday human activity; if citizens were not bothered by fire ants, it is unlikely that we would have received the § 18 request in the first place.)

It was in this light that the letters from Mississippi citizens, and from Congressmen and Senators representing infested southern states, were considered. I do not believe that these communications constituted an intrusion into the normal decision-making process of the Agency.

As for the idea that EPA's decision was somehow calculated to please the southern Congressional delegation, it should be pointed out that many of the letters from Congressmen specifically supported the request for approval of aerial application of Ferriamicide. The Agency's complete denial of that request should, it seems to me, indicate that the Agency's decision was not designed to show fawning responsiveness to whatever requests legislators have made.

ORDER

In accordance with the foregoing Opinion, I hereby authorize the Mississippi Authority for the Control of Fire Ants ("Mississippi Authority") to distribute and use Ferriamicide bait to control fire ants in Mississippi, subject to the following conditions:

(1) The bait formulation may contain no more than 0.05 percent Mirex.

(2) This authorization expires on June 30, 1979.

(3) The Mississippi Authority, through its county agents, shall be responsible for all distribution of the pesticide product and shall monitor all distribution and use to ensure compliance with the terms of this Order.

(4) The Ferriamicide bait shall be manufactured by the process and with the product composition approved in the foregoing Opinion so as to inhibit the degradation to kepone and maintain the efficacy of the product (after the package is opened) for at least 10 weeks.

(5) All applications are to be made by either ground broadcast or mound-to-mound application.

(6) Ground broadcast may be performed only in parks, cemeteries, schoolyards, campgrounds, and fairgrounds, only by certified applicators using properly calibrated equipment, at a rate of 1 to 2½ pounds of Ferriamicide bait per acre, and only on infested acreage. Rubber or plastic gloves must be worn when applying the product. Applicators shall take care to avoid mouth or eye contact with the pesticide.

(7) Mound-to-mound application must be made at a rate of no more than ¼ ounce of Ferriamicide bait per mound. The measuring spoon which is to be provided with the product shall be used to sprinkle the bait on the mound. The applicator must wear rubber or plastic gloves when applying the product. Applicators must take care to avoid contact of the bait with the mouth or eyes.

(8) Women of child-bearing age are prohibited from applying Ferriamicide.

(9) The Mississippi Authority may not distribute more than 420,000 pounds of Ferriamicide bait for use in Mississippi.

(10) Ferriamicide bait shall be packaged in 1, 5, and 50-pound bags. The 5-pound and 50-pound bags are to be made available only to certified applicators for ground broadcast and mound-to-mound application.

(11) The one-pound bags shall be used only for mound-to-mound applications, and may only be distributed to persons who have at least 50 mounds, and at least one acre, to treat.

(12) Before releasing a one-pound bag, the distributor must ensure that the purchaser reads (or has read to him), fills in, and signs the document containing the five cautionary statements as required by the Opinion.

(13) Labels shall contain all provisions necessary to ensure they are consistent with the terms of this Order and Opinion. The lables shall contain the provisions previously approved by EPA, with the following changes:

(a) All labels shall contain the following statement in bold-face type, above the Caution statement: "Not to be Used by Women of Child-bearing Age."

(b) The one-pound package's label shall state that the product may not be used by any person who has less than one acre, or less than 50 mounds, to treat.

(14) The Mississippi Authority shall submit all reports required by 40 CFR 166.5.

(15) This order shall not authorize the actual distribution or use of Ferriamicide bait until the Mississippi Authority is notified by the EPA Deputy Assistant Administrator for Pesticide Programs that distribution and use may commence.

Dated: July 28, 1978.

BARBARA BLUM,
Deputy Administrator,
Environmental Protection Agency.

[FR Doc. 78-29223 Filed 10-16-78; 8:45 am]

[6560-01-M]

[FRL 988-4]

MODIFICATION OF SECONDARY TREATMENT REQUIREMENTS FOR DISCHARGES INTO MARINE WATERS

Receipt of Preliminary Applications

AGENCY: U.S. Environmental Protection Agency ("EPA").

ACTION: Notice of Receipt of Preliminary Section 301(h) Applications.

SUMMARY: EPA is today publishing a list of all preliminary applications for a modification of secondary treatment requirements under section 301(h) of the Clean Water Act which have been received by EPA as of the date of this notice.

FOR FURTHER INFORMATION CONTACT:

Thomas P. O'Farrell, Municipal Construction Division (WH-547), 401 M Street SW., Washington, D.C. 20460, 202-426-8976.

SUPPLEMENTARY INFORMATION: Section 301(h) preliminary applications have been received by EPA from the following:

REGION I

Connecticut

Groton

Maine

Bangor
Portland

Massachusetts

Gosnold
Boston.
  Deer Island
  Nut Island
Lynn
New Bedford
Salem
Swampscott
Fall River
Gloucester

Rhode Island

Newport

REGION II

New York

Westchester County
New York City:
  Coney Island
  North River
  Owls Head
  Red Hood
  Newtown Creek
  Bowery Bay
  Hunts Point
  Jamaica
  Oakwood Beach
  Port Richmond
  Tallman Island
  26th Ward
  Wards Island
  Rockaway
Suffolk County
Nassau County:
  Cedar Creek
  Inwood
  Bay Park

Puerto Rico

Arecibo
Aquadilla
Barceloneta
Bayamon
Carolina
Dorado
Fajardo
Guayama
Guayanilla
Humacao
Mayaguez
Ponce

Virgin Islands

St Thomas
St Croix

REGION III

Delaware

Rehoboth Beach
Lewes

Virginia

Hampton Roads:
  Lamberts Point
  Chesapeake-Elizabeth

REGION IV

Florida

Dade County:
  Virginia Key
  North District

REGION IX

Hawaii

Honolulu:
  Sand Island
  Honouliuli
  Waianae
  Kaneohe-Kailua
Pearl Harbor:
  Guam Naval Station
  Midway Naval Station
Hilo

American Samoa

Pago Pago

California

Morro Bay
Monterey
Pismo Beach
Pacifica
Oxnard
Goleta
Santa Cruz
Humbolt Bay Wastewater Authority
San Diego
Orange County
Los Angeles
Los Angeles County
San Diego County
Watsonville
Eureka
Carlsbad
San Francisco:
  Southwest Plant
  Southeast Plant
  Richmond-Sunset Plant
Marin County
Redwood Junior College, Eureka
East Bay Municipal Utility District, Oakland
Marina

Guam

Northern District STP
Agana STP

Marianas Islands

Kilonia
Tofol
Ebeye
Koror
Majuro
Lelu
Tafunsak
Utwe
Malen
Colonia (Yap)
Yap High School
Moen High School
Northern Marianas Islands:
  Agingan Point
  Garapan

REGION X

Washington

Coupeville
Clallum County:
  Sekiu
  Clallum Bay
Pierce County
Port Angeles
Mason County
Lynwood
Sequim
Anacortes
Wasilla
Westside Water District, Tacoma
Mukilteo
Tacoma
Oak Harbor
Seattle:
  Richmond Beach
  Carkeek Park
  West Point
  Alki
  Duwamish
Bellingham
Port Townsend
Southwest Suburban Sewer District, Seattle
* Steilacoom
Friday Harbor

Alaska

Unalaska
Haines
Sitka
Dillingham
Seldovia
Juneau:
  Juneau
  Auke Bay
Wrangell:
  Wrangell
  Wrangell Institute
Kodiak
Skagway
North Slope Borough:
  Anaktuvak Pass
  Point Hope
  Point Lay
  Wainwright
  Atkasook
  Barrow
  Kaktovik
  Nuiqsut
Craig
Elmendorf AFB
Shemya AFB
Anchorage
Wasilla
Ketchikan
Pelican
Seward
Kenai
Whittier
Brevig Mission
Shaktoolik
Kivalina
Koyuk
Shishmaref
Teller
Deering
Gambell
Savoonga
St. Michael
Stebbins
Little Diomede
Perryville
Naknek
Ivanoff Bay
Ekuk
Egegik
Clarks Point
Chignik Lagoon
Yakutat
Klawock
Mekoryak
Toksook Bay
King Cove

Togiak
Pilot Point
Elim
Sand Point
Ouzinkie
Unalakleet
Hoonah
Wales
Golovin
Kasaan
Kipnuk
Kongiganak
Tununak
Quinhagak
Platinum
Kwigillingok
Goodnews Bay
Portage Creek
Port Heiden
South Naknek
Atka
Larsen Bay
Port Lions
Hydaburg
Saxman
English Bay
Kake
Angoon
Metlakatla
Karluk
Akhiok
Kotzebue
St. George
Old Harbor
Chignik
Nikolski
Nelson Lagoon
Akutan
False Pass
Port Graham
Bethel
Petersburg

Applications of communities which are marked with an asterisk were postmarked or delivered to EPA after September 25, 1978.

Any community which submitted an application and whose name does not appear on the above list or which believes it submitted a timely application and is marked with an asterisk should contact Mr. O'Farrell, whose address and telephone number appears above, immediately.

Dated: October 11, 1978.

THOMAS C. JORLING,
Assistant Administrator for Water and Waste Management.

[FR Doc. 78-29203 Filed 10-16-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

[Docket No. 78-37]

RENE D. LYON CO., INC. V. AMERICAN PRESIDENT LINES, LTD.

Notice of Filing of Complaint

Notice is hereby given that a complaint filed by Rene D. Lyon Co., Inc. against American President Lines, Ltd. was served October 11, 1978. Complainant alleges it has been subjected to payment of rates for transportation which were, when exacted and still are, unjust and unreasonable by reason of their being overchanges and as such are in violation of sections 17 and 18(b) of the Shipping Act.

Hearing in this matter, if any is held, shall commence on or before April 11, 1979. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

FRANCIS C. HURNEY
Secretary.

[FR Doc. 78-29262 Filed 10-16-78; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

FICO, INC.

Formation of Bank Holding Company

FICO, Inc., Filley, Nebr., has applied for the Board's approval under 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent (less directors' qualifying shares) of the voting shares of Filley Bank, Filley, Nebr. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 1, 1978.

Board of Governors of the Federal Reserve System, October 10, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-29234 Filed 10-16-78; 8:45 am]

[6210-01-M]

NATIONAL DETROIT CORP.

Proposed Acquisition of Pioneer Mortgage Corp.

National Detroit Corp., Detroit, Mich., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's regulation Y (12 CFR 225.4(b)(2)), for permission to acquire certain assets of Pioneer Mortgage Corp., Upland, Calif. Notice of the application was published on August 21, 1978, in the Press Tribune, a newspaper circulated in Roseville, Placer County, Calif., and in the Daily Report, a newspaper circulated in Ontario, San Bernardino County, Calif. Notice was also published on September 18, 1978, in the Sacramento Bee, a newspaper circulated in Sacramento, Sacramento County, Calif., and on September 19, 1978, in the Los Angeles Times, a newspaper circulated in Los Angeles, Calif.

Applicant states that the proposed subsidiary would engage in the activities of making, acquiring, and servicing for its own accounts and for the accounts of others, mortgage loans and other extensions of credit in connection with the purchase, development, and/or improvement of real property. Such activities have been specified by the Board in section 225.4(a) of regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors, at the Federal Reserve Bank of Chicago, or at the Federal Reserve Bank of San Francisco.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 10, 1978.

Board of Governors of the Federal Reserve System, October 11, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-29235 Filed 10-16-78; 8:45 am]

[6210-01-M]

OK BANCORPORATION, INC.

Formation of Bank Holding Company

OK Bancorporation, Inc., Okemah, Okla., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding

company by acquiring 80 percent or more of the voting shares of the Okemah National Bank, Okemah, Okla. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 2, 1978.

Board of Governors of the Federal Reserve System, October 5, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-29236 Filed 10-16-78; 8:45 am]

[6210-01-M]

SOUTH PLAINS BANCSHARES, INC.

Formation of Bank Holding Company

South Plains Bancshares, Inc., Idalou, Tex., has applied for the Board's approval under section 3 (a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares (less directors' qualifying shares) of Idalou State Bank, Idalou, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than November 2, 1978.

Board of Governors of the Federal Reserve System, October 6, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-29237 Filed 10-16-78; 8:45 am]

[6210-01-M]

THE WALSH BANCORPORATION, INC.

Formation of Bank Holding Company

The Walsh Bancorporation, Inc., Walsh, Colo., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 98.8 percent of the voting shares of the Colorado State Bank of Walsh, Walsh, Colo. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The appliation may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 6, 1978.

Board of Governors of the Federal Reserve System, October 10, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-29238 Filed 10-16-78; 8:45 am]

[4110-88-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

INTERAGENCY COMMITTEE ON FEDERAL ACTIVITIES FOR ALCOHOL ABUSE AND ALCOHOLISM

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisery body scheduled to assemble during the month of November 1978: Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism, November 14; 9 a.m.—Open Meeting, Conference Room 703-A, Hubert Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201. Contact: Mr. James Vaughan, Room 16C-10, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857; 301-443-3888.

Purpose: The Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism (1) evaluates the adequacy and technical soundness of all Federal programs and activities which relate to alcohol abuse and alcoholism and provides for the communication and exchange of information necessary to maintain the coordination and effectiveness of such programs and activities, and (2) seeks to coordinate efforts undertaken to deal with alcohol abuse and alcoholism in carrying out Federal health, welfare, rehabilitation, highway safety, law enforcement, and economic opportunity laws.

Agenda: The meeting will consist of discussions of the Interagency Committee's functions and procedures, and the Federal data gathering contract. A presentation will be given on the Third Report to Congress on Alcohol and Health.

Substantive program information may be obtained from the contact person listed above. The NIAAA Information Officer who will furnish summaries of the meeting and a roster of Committee members is Mr. Harry Bell, Associate Director for Public Affairs, National Institute on Alcohol Abuse and Alcoholism, Room 11A-17, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3306.

Dated: October 11, 1978.

ELIZABETH A. CONNOLLY,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 29208 Filed 10-16-78; 8:45 am]

[4110-88-M]

RAPE PREVENTION AND CONTROL ADVISORY COMMITTEE

Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory body scheduled to assemble during the month of November 1978:

Rape Prevention and Control Advisory Committee, November 27; 9 a.m.—Open Meeting, Conference Room C, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857. Contact: Ms. Elizabeth S. Kutzke, Room 10C-03, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-1910.

Purpose: The Rape Prevention and Control Advisory Committee advises the Secretary, Department of Health, Education, and Welfare, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, through the National Center for the Prevention and Control of Rape, on matters regarding the needs and concerns associated with rape in the United States and makes recommendations pertaining to activities to be undertaken by the Department to address the problem of rape.

Agenda: The entire meeting will be open to the public. The one-day meeting of the Advisory Committee will be devoted to providing input on the National Center's fiscal year 1979 program activities.

Attendance by the public will be limited to space available. Substantive information may be obtained from the contact person listed above.

The NIMH Information Officer who will furnish summaries of the meeting and a roster of Advisory Committee members is Dr. Jacquelyn Hall, Acting Chief, Public Information Branch, Division of Scientific and Public Information, NIMH, Room 15C-17, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4573.

Dated: October 11, 1978.

ELIZABETH A. CONNOLLY,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 78-29209 Filed 10-16-78; 8:45 am]

[4110-03-M]

Food and Drug Administration

ADVISORY COMMITTEES

Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced.

Committee name	Date, time, and place	Type of meeting and contact person
1. Orthopedic Section of the Surgical and Rehabilitation Devices Panel.	Nov. 3, 10:30 a.m., Room 339-A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, D.C.	Closed committee deliberations 9 to 10:30 a.m.; open public hearing 10:30 to 11:30 a.m.; open committee discussion 11:30 a.m. to 5 p.m.; James G. Dillon (HFK-410), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7238.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Closed Committee deliberations. The Panel will review a product development protocol submission from a medical device manufacturer. This portion of the meeting will be closed to permit discussion of trade secret information (5 U.S.C. 552b(c)(4)).

Open public hearing. Interested parties are encouraged to present information pertinent to reclassification petitions before the Panel, clinical and preclinical guidelines, and classification of orthopedic devices to the executive secretary. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify the executive secretary by October 27, 1978, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and an indication of the approximate time required to make presentations.

Open Committee discussion. The Panel will review and comment on the reclassification petition (F780013), as required under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(f)(2) submitted by Howmedica, Inc., concerning: (1) Semiconstrained hip prosthese (ceramic/metal femoral component and ceramic acetabular component)—Friedrichsfeld™, and (2) semiconstrained hip prosthesis (ceramic/metal femoral component and ceramic uncemented acetabular component)-Lindenhof™.

Interested persons may obtain copies of the petitions by writing the Public Records and Documents Center (HFA-305), Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

The Panel will review and discuss clinical and preclinical guidelines for testing orthopedic prosthetic devices. The Panel will also review and make recommendations on the classification of: (1) Nonconstrained ankle prosthesis; (2) constrained hip prosthesis (metal); (3) constrained hip prosthesis (metal/polymer); (4) femoral (hemihip) prosthesis (metal/UHWPE); (5) femoral (hip) resurfacing prosthesis; (6) pelvifemoral (hip) resurfacing prosthesis (metal/polymer); (7) ulnar (hemiwrist) prosthesis; (8) acetabular (hemihip) prosthesis (metal); (9) semiconstrained shoulder prosthesis (uncemented); (10) constrained wrist prosthesis (metal); and (11) glenoid (hemishoulder) prosthesis.

Committee name	Date, time, and place	Type of meeting and contact person
2. Ophthalmic Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel.	Nov. 6 and 7, 9 a.m., Room 727-A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.	Closed committee deliberations Nov. 6, 9 a.m. to 3 p.m.; open public hearing Nov. 7, 9 to 10 a.m.; open committee discussion Nov. 7, 10 a.m. to 5 p.m.; Glenn A. Rahmoeller (HFK-450), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7560.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—closed committee deliberations. Various sponsors of intraocular lens clinical investigations will present, as requested by the committee, a summary of the complications, adverse reactions, and other pertinent data derived from the first 6 months of production and sales figures and as such is proprietary. This portion of the meeting will be closed to permit discussion of trade secrets and commercial and/or financial information (5 U.S.C. 552b(c)(4)).

Open public hearing. Interested parties are encouraged to present information pertinent to the clinical investigations of intraocular lenses and hydrophilic contact lenses to Dr. Max W. Talbott, Bureau of Medical Devices (HFK-460). Submission of data on tentative classification findings is also invited. Those desiring to make formal presentations should notify Dr. Talbott by October 27, 1978, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their presentations.

Open committee discussion. The Committee will discuss the current clinical investigations of intraocular lenses and hydrophilic contact lenses. The Committee will also consider for initial tentative classification a

number of previously unclassified ophthalmic devices. A tentative listing of these devices includes, but may not be limited to: (1) Vision, pupillometer, and keratometer test cards; (2) diploscope; (3) AC-powered gonioscope; (4) haploscope; (5) ocular pressure applicator; (6) oculorotor; (7) pachometer; and (8) specular microscope.

Committee name	Date, time, and place	Type of meeting and contact person
3. Circulatory System Devices Panel	Nov. 20, 9 a.m., Room 1813, FB-8, 200 C St. SW., Washington, D.C.	Open public hearing 9 to 10 a.m.; closed committee deliberations 10 a.m. to 4 p.m.; Glenn A. Rahmoeller (HFK-450), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7559.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to this Panel's classification and premarket approval activities. Those desiring to make formal presentations should notify Glenn Rahmoeller by November 6, 1978, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and an indication of the approximate time required to make their presentations.

Closed committee deliberations. The Panel will be reviewing trade secret information pertaining to applications for premarket approval. This portion of the meeting will be closed to permit discussion of trade secret information (5 U.S.C. 552b(c)(4)).

Committee name	Date, time, and place	Type of meeting and contact person
4. Obstetrics-Gynecology Section of the Obstetrics-Gynecology and Radiologic Devices Panel.	Nov. 20, 9 a.m., Room 6831, FB-8, 200 C St. SW., Washington, D.C.	Open public hearing 9 to 10 a.m.; closed committee deliberations 10 a.m. to 4 p.m.; Lillian Yin (HFK-470), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7555.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendation for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to this Panel's classification and premarket approval activities to Lillian Yin. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify Lillian Yin by November 9, 1978, and submit a brief a statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and an indication of the approximate time required to make their presentations.

Closed committee deliberations. The Panel will be reviewing trade secret information pertaining to applications for premarket approval (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1-hour long unless public participation does not last that long. It is emphasized, however, that the 1-hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for what ever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Person interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permit such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be

closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files complies for law enforcement purposes; information the permature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial infomation submitted to the agency; consideration of matters involving investigatory files complied for law enforcement purposes; and review of matters, such as personnel records, or individual patient records where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigation or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably, deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: October 13, 1978.

JOSEPH P. HILE,
Acting Commissioner of Food and Drugs.

[FR Doc. 78-29294 Filed 10-16-78; 8:45 am]

[4110-35-M]

Health Care Financing Administration

Pharmaceutical Reimbursement Board

Postponement of Public Hearing and Extension of Comment Period

AGENCE: Health Care Financing Administration (HCFA), HEW.

ACTION: Notice.

SUMMARY: The public hearing before the Pharmaceutical Reimbursement Board, originally scheduled for October 18 and 19, 1978, is rescheduled for November 1 and 2, 1978 (9 a.m. to 5 p.m.). The comment period for proposed MAC limits on doxepin HCl capsules and phenylbutazone tablets is extended until October 27, 1978.

DATES: Hearing: November 1 and 2, 1978 (9 a.m. to 5 p.m.). End of extended comment period for doxepin HCl and phenylbutazone: October 27, 1978.

PLACE OF HEARING: Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Peter Rodler, Executive Rodler, Executive Secretary, pharmaceutical Reimbursement Board, 330 C Street SW., 3076 Switzer Building, Washington, D.C. 20201, 202-472-3821.

SUPPLEMENTARY INFORMATION: 1. On August 31, 1978, the Pharmaceutical Reimbursement Board proposed maximum allowable cost (MAC) limits and announced a public hearing concerning the proposed MAC's on various dosage forms and strengths of amoxicillin, erythromycin, penicillin G potassium, and ampicillin. See 43 FR 38941.

The hearing was scheduled for October 18 and 19. Under the provisions of 45 CFR 19.4(b), the Board had intended to make use of outside consultants to advise it during this hearing. However, less than 1 week before the hearing, Congress had not yet enacted an appropriation for the Department for the fiscal year beginning October 1, 1978. Since we were not authorized to incur contractual obligations during this period, we were unable to retain the services of outside consultants. We expect that the funding issue will be resolved before November 1. Therefore, we have rescheduled the hearing for that day, at which time we expect that consultants will be able to serve. The rescheduled hearing coincides with a previously announced hearing on several other proposed MAC's. See 43 FR 40547.

Our original announcement on August 31 indicated that all written comments received by the Board by October 2 concerning the proposed MAC's on amoxilcillin, erythromycin, penicillin G potassium, and ampicillin would be considered. This comment period has ended and the Board will consider no additional written comments. Only one request to appear at the public hearing was received; that request concerned the proposed MAC limits on the erythromycin products. That presentation will be heard on November 1. No additional requests to appear will be granted.

2. On August 18, 1978, the Pharmaceutical Reimbursement Board announced proposed MAC limits on 10 mg, 25 mg, and 50 mg dosage strengths of doxepin HCl capsules. At that time, we specified that the written comment period for those drugs would end on September 18. See 43 FR 36698. On October 2, we announced that, because additional information of possible significance to the setting of MAC limits on doxepin HCl had been received after the close of the original comment period, the comment period was extended until October 11, 1978. See 43 FR 45478.

At the public hearing before the Board on October 4, the sole participant argued that there was a bioequivalence issue with the 10 mg, 25 mg, and 50 mg doxepin HCl capsules, since the Food and Drug Administration had not yet cleared with the Board 100 mg capsules of doxepin HCl. A representative from FDA stated that the studies of the 100 mg capsules had been completed and that there were no bioequivalence problems that would preclude the setting of a MAC on the drug. The Board has decided to reopen he comment period, in order that it might include in the record official written confirmation of this statement before it makes a final determination concerning the adoption of MAC limits on 10 mg, 25 mg, and 50 mg doxepin HCl capsules. The comment period is extended until October 27, 1978.

3. On August 18, 1978, the Pharmaceutical Reimbursement Board proposed a MAC limit on 100 mg phenylbutazone tablets. The comment period for that drug ended on September 18. The MAC for phenylbutazone 100 mg tablets was proposed at $0.0750 per tablet. This figure was based on information obtained from a HCFA-sponsored survey of pharmacy invoice prices. The survey price is based on the 70th percentile of invoice prices. The survey is updated monthly. Our latest survey indicates that the $0.0750 figure is out of date and that the updated figure is now $0.0783 per tablet. The Board will consider this information in its deliberations on a MAC limit for 100 mg phenylbutazone tablets. The comment period for phenylbutazone is extended until October 27, 1978.

Dated: October 13, 1978.

PETER RODLER,
Executive Secretary, Pharmaceutical Reimbursement Board.

[FR Doc. 78-29446 Filed 10-16-78; 10:11 am]

[4110-08-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

REPORT ON BIOASSAY OF CHLOROBENZILATE FOR POSSIBLE CARCINOGENICITY

Availability

Cholorbenzilate (CAS 510-15-6) has been tested for cancer-causing activity with rats and mice in the bioassay program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of technical-grade chlorobenzilate for possible carcinogenicity was conducted using Osborne-Mendel rats and B6C3F1 mice. Applications of the chemical include use as an agricultural pesticide. Chlorobenzilate was administered in the feed, at either of two concentrations, to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay, orally administered chlorobenzilate was carcinogenic in male and female B6C3F1 mice, causing an increased incidence of hepatocellular carcinomas. The results do not, however, provide sufficient evidence for the carcinogencity of chlorobenzilate in Osborne-Mendel rats.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Instituties of Health, Bethesda, Md. 20014.

Dated October 5, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

(Catalog of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

[FR Doc. 78-28780 Filed 10-16-78; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF CLONITRALID FOR POSSIBLE CARCINOGENICITY

Availability

Clonitralid (CAS 1420-04-8) has been tested for cancer-causing activity with rats and mice in the bioassay program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for possible carcinogenicity of clonitralid was conducted using Osborne-Mendel rats and B6C3F1 mice. Applications of the chemical include use as a molluscicide and lamprey killer. Clonitralid was administered in the feed, at either of two concentrations, to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay, there was no convincing evidence that clonitralid was carcinogenic to Osborne-Mendel rats or to female B6C3F1 mice. Poor survival of male mice did not permit an evaluation of carcinogenicity in these animals.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Md. 20014.

Dated: October 5, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

(Catalog of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

[FR Doc. 78-28779 Filed 10-16-78; 8:45 am]

[4110-08-M]

REPORT ON BIOASSAY OF P-ANISIDINE HYDROCHLORIDE FOR POSSIBLE CARCINOGENICITY

Availability

p-Anisidine hydrochloride (CAS 20265-97-8) has been tested for cancer-causing activity with rats and mice in the Bioassay Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for possible carcinogenicity of p-anisidine hydrochloride was conducted using Fischer 344 rats and B6C3F1 mice. Applications of the chemical include use as an intermediate in the manufacture of dyes. p-Anisidine hydrochloride was administered in the feed, at either of two concentrations, to groups of 55 male and 55 female animals of each species.

Under the conditions of this bioassay, the evidence was insufficient to establish the carcinogenicity of p-anisidine hydrochloride in Fischer 344 rats. The compound was not carcinogenic in B6C3F1 mice.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20014.

Dated: October 5, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

(Catalog of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research)

[FR Doc. 78-28778 Filed 10-16-78; 8:45 am]

[4110-89-M]

Office of the Secretary

ADVISORY COUNCIL ON EDUCATION STATISTICS

Notice of Charter Renewal

Notice is hereby given, pursuant to Pub. L. 92-463, that the Charter of the Advisory Council on Education Statistics has been renewed by the Secretary of the Department of Health, Education, and Welfare, Joseph A. Califano, Jr., for a 2-year period to expire on August 20, 1980. The Advisory Council on Education Statistics is mandated by section 406(c) of the General Education Provisions Act, as added by section 501(a) of the Education Amendments of 1974, Pub. L. 93-380 (20 U.S.C. 1221e-1(c)), to advise the Secretary of the Department of Health, Education, and Welfare and the Secretary for Education, and the National Center for Education Statistics; and "shall review general policies for the operation of the Center and shall be responsible for establishing standards to insure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence."

Signed at Washington, D.C., on October 12, 1978.

MARIE D. ELDRIDGE,
Administrator, National Center for Education Statistics.

[FR Doc. 78-29232 Filed 10-16-78; 8:45 am]

[4310-03-M]

DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before 10-6-78. Pursuant to §60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic preservation, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by October 27, 1978.

WILLIAM J. MURTAGH,
Keeper of the National Register.

CONNECTICUT

Fairfield County

Bridgeport, *Black Rock Historic District*, roughly bounded Black Rock Harbor, Grovers Ave., Beacon and Prescott Sts.
Bridgeport, *Hotel Beach (Hotel Barnum)*, 140 Fairfield Ave.
Bridgeport, *Palace and Majestic Theaters*, 1315-1357 Main St.
Bridgeport, *Sterling Block-Bishop Arcade*, 993-1005 Main St.
Stamford, *Hait, Benjamin, House*, 92 Hoyclo Rd.

Hartford County

Hartford, *Roberts-Isham House*, 211 High St.
Marlborough, *Marlborough Tavern (Col. Elisha Buell House)* off CT 66.

Litchfield County

Kent, *Flanders Historic District*, U.S. 7, Cobble Rd., and Cobble Lane.

Middlesex County

Middletown, *Coite-Hubbard House*, 269 High St.
Middletown vicinity, *Plumb House*, W of Middletown at 872 Westfield St.
Old Saybrook Vicinity, *Black Horse Tavern*, SE of Old Saybrook at 175 N. Cove Rd.

New Haven County

Meriden, *Andrews, Moses, House*, 424 W. Main St.
Meriden, *Goffe, Solomon, House*, 677 N. Colony St.
Woodbridge vicinty, *Darling, Thomas, House and Tavern*, E of Woodbridge at 1907 Litchfield Tpke.

New London County

Groton, *U.S.S. Nautilus*, Naval Submarine Base.
Lebanon vicinity, *Clark Homestead*, S of Lebanon on Madley Rd.
North Stonington vicinity, *Randall, John, House*, SE of North Stonington on CT 2.

DELAWARE

Kent County

Little Creek vicinity, *Cherbourg Round Barn*, SW of Little Creek off DE 9.
Magnolia vicinity, *Truitt, Gov. George, House*, SW of Magnolia on Rte. 388.

IDAHO

Kootenai County

Spirit Lake, *Spirit Lake Historic District*, Main St.

ILLINOIS

Cook County

Chicago, *Jewish People's Institute*, 3500 W. Douglas Blvd.

NEW YORK

Onondaga County

Marcellus, *Bradley, Dan, House*, 59 South St.

Queens County

Astoria, *Paramount Studios Complex*, 35th Ave., 35th, 36th, and 37th Sts.

Suffolk County

Westhampton, *Jagger House*, Old Montauk Hwy.

SOUTH CAROLINA

Florence County

Florence, *Gregg, Dr. Benjamin, House*, 315 S. Coit St.

Greenville County

Greenville, *Broad Margin*, 9 W. Avondale Dr.
Greenville vicinity, *Bates, William, House*, E of Greenville on SC 14.

Lexington County

Cayce vicinity, *Manning Archeological Site*, S of Cayce.
Cayce vicinity, *Sam Site*, S of Cayce.

Williamsburg County

Nesmith vicinity, *Gamble House*, W of Nesmith off SC 502.

TENNESSEE

Shelby County

Memphis, *Annesdale Park Historic District*, roughly bounded by Peabody and Goodbar Aves., Cleveland St. and Rosenstein Pl.

UTAH

Sanpete County

Spring City, *Spring City School*, off UT 117.

[FR Doc. 78-28876 Filed 10-16-78; 8:45 am]

[4410-18-M]

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

FUNDING OF JUVENILE-RELATED PROGRAMS PREVIOUSLY FUNDED UNDER THE CRIME CONTROL ACT

Clarification of Policy

Section 228(a) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, et seq., as amended (Pub. L. 93-415, as amended by Pub. L. 94-503 and Pub. L. 95-115) (hereinafter referred to as the Juvenile Justice Act), states as follows:

> In accordance with criteria established by the Administrator, it is the policy of Congress that programs funded under this title shall continue to receive financial assistance providing that the yearly evaluation of such programs is satisfactory.

In many instances, however, juvenile-related programs funded initially under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, Pub. L. 94-503, and Pub. L. 95-115) (hereinafter referred to as the Crime Control Act), have been unable to obtain continuation funding as a result of the assumption of cost feature contained in that legislation, section 303(a)(9), but not found in the Juvenile Justice Act.

LEAA's policy for continuation of juvenile-related projects initially funded under the Crime Control Act is intended to reflect both the continuation funding provision of the Juvenile Justice Act and the assumption of cost provision of the Crime Control Act (see LEAA Office of General Counsel Legal Opinion 76-14, Jan. 5, 1976).

The assumption of cost provision of the Crime Control Act requires that State and local governments demonstrate a willingness to assume the costs of funded projects after a resonable period of Federal assistance. LEAA has determined that a reasonable period of assistance for juvenile justice and delinquency prevention projects may exceed the normal three year funding period established by State Planning Agency Grants Guideline M 4100.1F, Chapter 2, Paragraph 15, January 18, 1977. This determination is based on the continuation funding policy established by Congress for the Juvenile Justice Act and the historic difficulty of institutionalizing successful juvenile programs within State and local governments and providing adequate financial support.

Therefore, it is the policy of LEAA that States may modify their established assumption of cost policy for juvenile justice and delinquency prevention projects initially funded under the Crime Control Act to continue such projects beyond the State's policy for maximum length of funding—either from Crime Control Act Parts C and E or Juvenile Justice Act Part B formula grant funds—provided that the State planning agency determines that individual projects meet the following conditions:

(1) The State planning agency determination to extend the project must be based upon the following criteria:

1. The project has been evaluated and the evaluation indicates that the project is effective and is being operated efficiently;

2. Discontinuation would have a negative impact on State or local juvenile-related activities; and

3. The project has demonstrated a good faith effort to obtain funding elsewhere and intends to continue such efforts over the period of the extension.

(2) Extensions may be granted for 1 year with possible extension for 1 additional year.

JAMES M. H. GREGG,
Assistant Administrator, Office of Planning and Management.

[FR Doc. 78-29240 Filed 10-16-78; 8:45 am]

[4510-43-M]

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-78-33-M]

IDARADO MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is here by given that Idarado Mining Co., Ouray, Colo., has filed a petition to modify the application of 30 CFR 57.19-83 (hoists), to its Idarado Mine, located in Ouray County, Colo., in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of Petitioner's statement is as follows:

(1) The detailed alternate plan and diagram submitted by Petitioner for operating its electric hoist without a motor drive torque device will at all times guarantee no less than the same measure of protection as the above standard.

(2) The plan would include the addition of a horn circuit as an added safety feature in order to remind hoistmen to return the backout switch to the normal position after completing backout operations.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before November 16, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: October 6, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-29183 Filed 10-16-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-40-M]

JESSIE S. MORIE & SON, INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that Jessie S. Morie & Son, Inc., Mauricetown, N.J., has filed a petition to modify the application of 30 CFR 56.16-14(b) (overhead cranes), to its Morie Division Mine, located in Cumberland County, N.J., in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of Petitioner's statement is as follows:

(1) In attempting to use automatic switches to halt uptravel on a prior occasion, Petitioner found that it interfered with the normal upward movement of the crane, causing it to "hang up" and produce a greater danger to miners in the area than the absence of the switch.

(2) Therefore, Petitioner seeks to operate its overhead crane without the use of an automatic uptravel switch.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before November 16, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: October 6, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-28179 Filed 10-16-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-45-M]

NEW JERSEY ZINC CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that the New Jersey Zinc Co. Austinville, Va. 24312, has filed a petition to modify the application of 30 CFR 57.19-11 (drum flanges), Austinville-Ivanhoe Mine, located in Wythe County, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of Petitioner's statement is a as follows:

(1) The present hoist has operated in a multi-layer configuration for nearly thirty years with no history of improper layering or jumping of the flanges by the hoist rope.

(2) Because of limited clearance between the drum flanges and the housing of the hoist's speed reducer, extension of the drum flanges is impractical and would necessitate structural changes to the hoist which could diminish the safety of the miners using it.

For these reasons the petitioner requests that the requirements for 30 CFR 57.19-11 be modified for the above mine so that the minimum radial extension of the flanges beyond the last rope wrap be two rope diameters instead of three.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before (November 16, 1978). Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: October 6, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-29178 Filed 10-16-78; 8:45 am]

[4510-28-M]

Office of the Secretary

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under title II, chapter 2, of the Act in accordance with the provisions of subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 27, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 27, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 29th day of September 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
AMF, Inc., Wheel Goods Division of Recreational Vehicle Group (USWA).	Little Rock, Ark	Sept. 27, 1978	Sept. 26, 1978	TA-W-4,218	Bicycles.
Bedford Knitting Mills (workers)	Brooklyn, N.Y	Sept. 29, 1978	Sept. 21, 1978	TA-W-4,219	Knitwear, women's sweaters.
Bethlehem Contracting Co. (workers).	Bath, Pa	Sept. 27, 1978	Sept. 22, 1978	TA-W-4,220	Contractors of steel buildings and bridges.
Columbia Belt & Novelties, Inc. (company).	Boston, Mass	....do	Sept. 25, 1978	TA-W-4,221	Belts.
E. I. du Pont de Nemours & Co., Inc., Chambers Works (Chemical Workers Association, Inc.).	Deepwater, N.J	Sept. 22, 1978	Sept. 15, 1978	TA-W-4,222	Intermediates, dyes.
Essex Group, Inc. (USWA)	Sault Ste. Marie, Mich	Sept. 26, 1978	Sept. 1, 1978	TA-W-4,223	Wire harnesses for the automobile industry.
William Ornsteen Heel Co., Inc. (workers).	Bradford, Mass	Sept. 25, 1978	Sept. 20, 1978	TA-W-4,224	Wood heels, plastic heels for women's novelty shoes and dress shoes.
S & H Co., Inc. (company)	Boston, Mass	Sept. 27, 1978	Sept. 25, 1978	TA-W-4,225	Handbags.
Standard Patent Co., Inc. (company)	Manchester, N.H	Sept. 29, 1978	.....do	TA-W-4,226	Papers, junks, soles, cuts, woods, die tins, marker papers and fiber markers.
Stop-Fire, Inc. (IAMAW)	New Brunswick, N.J	Sept. 28, 1978	Sept. 26, 1978	TA-W-4,227	Fire extinguishers.
The Lamson & Sessions Co. (company).	Bedford Heights, Ohio	Sept. 25, 1978	Sept. 21, 1978	TA-W-4,228	Threaded screws and nuts of various lengths and dismeters.
United States Steel Corp. Central Furnaces (USWA).	Cleveland, Ohio	Sept. 28, 1978	Sept. 1, 1978	TA-W-4,229	Pig iron.

[FR Doc. 78-29158 Filed 10-16-78; 8:45 am]

[4510-28-M]

[TA-W-3885]

ANDREW WORSTED, INC., PASCOAG, R.I.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3885: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 22, 1978 in response to a worker petition received on June 22, 1978 which was filed on behalf of workers and former workers producing women's and children's sportswear and coats at Andrew Worsted Mills, Inc., Pascoag, R.I. The investigation revealed that woven acrylic piece goods are produced by Andrew Worsted Mills.

The notice of investigation was published in the FEDERAL REGISTER on July 7, 1978 (43 FR 29365-66). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Andrew Worsted Mills, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations or threat thereof, and to the absolute decline in sales or production.

U.S. imports of finished fabric increased from 408 million square yards in 1975 to 464 million square yards in 1976 and then decreased to 453 million square yards in 1977. The ratio of imports to domestic production increased from 1.8 percernt in 1976 to 1.9 percent in 1977. Imports of finished fabric increased from 90 million square yards in the first three months of 1977 to 129 million square yards in the first three months of 1978.

Andrew Worsted Mills produces woven acrylic piece goods on a commission basis for its sister company, Granite Worsted Mills. Respondents to a Departmental survey of Granite's customers indicated that they did not purchase imported finished fabric in 1976, 1977, or the first quarter of 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that all workers of Andrew Worsted Mills, Incorporated, Pascoag, R.I. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-29144 Filed 10-16-78; 8:45 am]

[4510-28-M]

[TA-W-3705]

ASARCO, INC., CORPUS CHRISTI, TEX.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3705: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 15, 1978, in response to a worker petition received on May 8, 1978, which was filed by the United Steelworkers of America on behalf of workers and former workers producing zinc, sulfuric acid, and cadmium at the

Corpus Christi, Tex., refinery of ASARCO, Inc.

The notice of investigation was published in the FEDERAL REGISTER on June 27, 1978 (43 FR 27923). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of ASARCO, Inc., Metals Week, Metal Bulletin, the U.S. Department of Commerce, the U.S. International Trade Commission, the U.S. Department of the Interior, the American Bureau of Metal Statistics, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of slab zinc increased from 380,437 short tons in 1975 to 714,489 short tons in 1976 before declining to 555,147 short tons in 1977. U.S. imports of slab zinc for the first 3 months of 1978 increased to 155,988 short tons from 121,120 short tons for the same period in 1977.

The ratio of imported slab zinc to domestic production increased from 76.7 percent in 1975 to 127.0 percent in 1976 and to 127.9 percent in 1977. The imports to domestic production ratio increased from 94.0 percent for the first 3 months of 1977 to 152.1 percent for the first 3 months in 1978.

Imports of zinc are affected by the differential between the domestic price of zinc established by U.S. producers and the price established by the LME (London Metal Exchange). When the LME price drops more than the estimated transportation cost of 5 cents per pound below the producers' price, the demand for imported zinc increases. Except for brief periods in the spring of 1976 and in March 1977, the price differential between U.S. producers and the LME has exceeded 5 cents per pound. The average U.S. producer price for zinc was 7.6 cents higher than the average LME zinc price in 1977 and 7.1 cents higher in the first quarter of 1978. This is well above the 5-cent limit at which domestic suppliers can remain competitive. Consequently, in the first quarter of 1978 when many domestic zinc producers curtailed production because of the depressed market price of zinc, imports of slab zinc increased 28.8 percent when compared to the same period in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of articles like or directly competitive with zinc produced at the Corpus Chirsti, Tex., refinery of ASARCO, Inc. contributed importantly to the decline in production and to the total or partial separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Corpus Christi, Tex., refinery of ASARCO, Inc. who became totally or partially separated from employment on or after April 30, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-29143 Filed 10-16-78; 8:45 am]

[4510-28-M]

[TA-W-3682]

BRADE SPORTSWEAR, PERTH AMBOY, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3682: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats at Brade Sportswear, Perth Amboy, N.J. The Department's investigation revealed that Brade Sportswear began producing ladies' sportswear; shirts, slacks, jackets, and dresses and blouses and children's clothes in March 1978.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Brade Sportswear, its customers (manufacturers), the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of women's, misses', and children's coats and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. Imports declined from 590,000 dozen in the first quarter of 1977 to 572,000 dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

U.S. imports of women's misses', and children's raincoats decreased from 261,000 dozen in 1976 to 242,000 dozen in 1977. Imports increased from 84,000 dozen in the first quarter of 1977 to 129,000 dozen in the first quarter of 1978. The ratio of imports to domestic production decreased from 45.0 percent in 1976 to 40.3 percent in 1977.

The Department conducted a survey of the sole manufacturer for which Brade Sportswear Inc. worker in 1976 and 1977. This manufacturer reduced purchases from Brade Sportswear and increased purchases of imported ladies' coats and raincoats in 1977 compared to 1976 and in the first quarter of 1978 compared to the first quarter of 1977. In March 1978, the company stopped producing ladies' coats and raincoats and began producing ladies' sportswear. Following the change in product lines, sales at Brade Sportswear increased compared to 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the ladies' coats produced at Brade Sportswear, Perth Amboy, N.J., contributed importantly to the decline in sales and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of Brade Sportswear, Perth Amboy, N.J., who became totally or partially separated from employment on or after March 28, 1977, and before April 1, 1978, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974. All workers who became totally or partially separated from employment at Brade Sportswear, on or after April 1, 1978, are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C., this 6th day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-29145 Filed 10-16-78; 8:45 am]

[4510-28-M]

[TA-W-3889]

DIX MILLS, INC., PASCOAG, R.I.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3889: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 22, 1978, in response to a worker petition received on June 22, 1978, which was filed on behalf of workers and former workers selling women's and children's sportswear produced by Andrew Worsted Mills, Inc. at Dix Mills, Inc., Pascoag, R.I. The investigation revealed that workers are engaged in employment related to the selling of acrylic piece good fabrics owned by Granite Worsted Mills, Inc.

The notice of investigation was published in the FEDERAL REGISTER on July 7, 1978 (43 FR 29365-66). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Dix Mills, Inc., Granite Worsted Mills, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations or threats thereof, and to the absolute decline in sales or production.

U.S. imports of finished fabric increased from 408 million square yards in 1975 to 464 million square yards in 1976 and then decreased to 453 million square yards in 1977. The ratio of imports to domestic production increased from 1.8 percent in 1976 to 1.9 percent in 1977. Imports of finished fabric increased from 90 million square yards in the first 3 months of 1977 to 129 million square yards in the first 3 months of 1978.

Dix Mills, Inc. is an outlet store located within a mill owned by Granite Worsted Mills, Inc., in Pascoag, R.I. Dix Mills sells fabric owned by Granite Worsted and other sewing materials to the general public.

The Department conducted a survey of some of Granite Worsted Mills' customers. Respondents indicated they did not purchase imported finished fabric in 1976, 1977, or the first quarter of 1978.

CONCLUSION

After careful review of facts obtained in the investigation, I conclude that all workers of Dix Mills, Inc., Pascoag, R.I., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-29146 Filed 10-16-78; 8:45 am]

[4510-28-M]

[TA-W-3587]

E & M COAT CO., PATERSON, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3587: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats and rainwear at E & M Coat Co., Paterson, N.J.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of E & M Coat Co., Inc., its customers (manufacturers), the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. The investigation revealed that all the criteria have been met.

U.S. imports of women's, misses', and children's coats and jackets increased from 2,252,000 dozen in 1976 to 2,723,000 dozen in 1977. Imports declined from 590,000 dozen in the first quarter of 1977 to 572,000 dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

U.S. imports of women's, misses', and children's raincoats and other waterproof outer garments declined from 261,000 dozen in 1976 to 242,000 dozen in 1977. Imports increased from 84,000 dozen in the first quarter of 1977 to 129,000 dozen in the first quarter of 1978. The ratio of imports of domestic production declined from 45.0 percent in 1976 to 40.3 percent in 1977.

The Department conducted a survey of the principal manufacturers for which E & M Coat, Inc. worked in 1977. Manufacturers that accounted for a majority of sales in 1977 reduced purchases from E & M Coat, Inc. and increased purchases of imported ladies' coats and rainwear in the first quarter of 1978 compared to the same period of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the ladies' coats produced at E & M Coat Co., Paterson, N.J., contributed importantly to the decline in sales and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of E & M Coat Co., Inc., Paterson, N.J., who became totally or partially separated from employment on or after December 1, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-29147 Filed 10-16-78; 8:45 am]

[4510-28-M]

[TA-W-4012]

F/V "PETER" AND "LINDA," PROVINCETOWN, MASS.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4012: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 31, 1978, in response to a worker petition received on July 26, 1978,

which was filed on behalf of fishermen and former fishermen catching fish for the F/V *Peter* and *Linda*, Provincetown, Mass.

The notice of investigation was published in the FEDERAL REGISTER on August 8, 1978 (43 FR 35130-35131). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the F/V *Peter* and *Linda*, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that a significant number or proportion of the workers in the worker's firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

The F/V *Peter* and *Linda* catches ground and flatfish. Average crewmember earnings aboard the F/V *Peter* and *Linda* increased in 1977 compared to 1976 and in the first 6 months of 1978 compared to same period in 1977. No declines in earnings are threatened.

CONCLUSION

After careful review, I determine that fishermen of the F/V Peter and Linda, Provincetown, Mass., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington D.C., this 6th day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-29148 Filed 10-16-78; 8:45 am]

[4510-28-M]

[TA-W-3890]

GRANITE WORSTED MILLS, INC., PASCOAG, R.I.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3890: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 22, 1978, in response to a worker petition received on June 22, 1978, which was filed on behalf of workers and former workers producing and selling materials to the apparel industry at Granite Worsted Mills, Inc., Pascoag, R.I. The investigation revealed that woven acrylic piece goods are produced and sold by Granite Worsted.

The notice of investigation was published in the FEDERAL REGISTER on July 7, 1978 (43 FR 29365-66). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Granite Worsted Mills, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm of appropriate subdivision have contributed importantly to the separations or threats thereof, and to the absolute decline in sales or production.

U.S. imports of finished fabric increased from 408 million square yards in 1975 to 464 million square yards in 1976 and then decreased to 453 million square yards in 1977. The ratio of imports to domestic production increased from 1.8 percent in 1976 to 1.9 percent in 1977. Imports of finished fabric increased from 90 million square yards in the first 3 months of 1977 to 129 million square yards in the first 3 months of 1978.

Respondents to a departmental survey of Granite Worsted Mills' customers indicated that they did not purchase imported finished fabric in 1976, 1977, or the first quarter of 1978.

CONCLUSION

After careful review of facts obtained in the investigation, I conclude that all workers of Granite Worsted Mills, Inc., Pascoag, R.I., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-29149 Filed 10-16-78; 8:45 am]

[4510-28-M]

[TA-W-3996]

JULIUS ALTSCHUL, INC., BROOKLYN, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3996: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 26, 1978, in response to a worker petition received on July 21, 1978, which was filed by the United Shoe Workers of America on behalf of workers and former workers producing ladies' and children's shoes at Julius Altschul, Inc. of Brooklyn, N.Y. During the course of the investigation, it was established that Julius Altschul, Inc. produces only children's shoes.

The notice of investigation was published in the FEDERAL REGISTER on August 4, 1978 (43 FR 34562). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Julius Altschul, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

The Department's investigation revealed that U.S. imports of children's nonrubber, nonathletic footwear decreased from 15.8 million pairs in 1976 to 13.5 million pairs in 1977. Imports decreased to 3.8 million pairs in the first quarter of 1978 from 4.8 million pairs in the same quarter of 1977. The ratio of imports to domestic production increased from 75.2 percent in 1976 to 82.3 percent in 1977. The ratio of imports to domestic production decreased from 114.3 percent during the first quarter of 1977 to 84.4 percent during the first quarter of 1978.

A survey conducted with the major customers of Julius Altschul, Inc. showed that customers had increased purchases of imported footwear and decreased purchases from Julius Altschul during 1977 as compared to 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with children's shoes produced by Julius Altschul, Inc. of Brooklyn N.Y., contribut-

ed importantly to the decline in sales and production and to the total or partial separation of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers at Julius Altschul, Inc. of Brooklyn, N.Y., who became totally or partially separated from employment on or after July 19, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-29150 Filed 10-16-78; 8:45 am]

[4510-28-M]

[TA-W-3600]

PATERSON CLOAK & SUIT, INC., PATERSON, N.J.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3600: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats and suits at Paterson Cloak & Suit, Inc., Paterson, N.Y. During the course of the investigation it was revealed that Paterson Cloak & Suit no longer produces ladies' suits.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Paterson Cloak & Suit, Inc., its customers (manufacturers), the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the criteria have been met.

U.S. imports of women's, misses', and children's coats and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. Imports declined from 590,000 dozen in the first quarter of 1977 to 572,000 dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

The Department conducted a survey of the sole manufacturer for which Paterson Cloak & Suit, Inc. worked in 1976 and 1977. The manufacturer reduced purchases from Paterson Cloak & Suit, Inc. and increased purchases of imported ladies' coats in the first quarter of 1978 compared to the first quarter of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the ladies' coats produced at Paterson Cloak & Suit, Inc., Paterson, N.J., contributed importantly to the decline in sales and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of Paterson Cloak & Suit, Inc., Paterson, N.J., who became totally or partially separated from employment on or after November 1, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-29151 Filed 10-16-78; 8:45 am]

[4510-28-M]

[TA-W-3403]

PARAMOUNT COAT CO., INC., CAMBRIDGE, MASS.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3403: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 22, 1978, in response to a worker petition received on March 9, 1978, which was filed on behalf of workers and former workers producing men's and women's raincoats at Paramount Coat Co., Inc., Cambridge, Mass.

The notice of investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14775). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Paramount Coat Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

U.S. imports of men's and boys' outer coats and jackets, which includes raincoats, increased from 22,060 thousand units in 1976 and to 27,432 thousand units in 1977. Imports increased from 5,438 thousand units in the first quarter of 1977 to 6,048 thousand units in the first quarter of 1978. The import to domestic production ratio increased from 29.6 percent in 1976 and to 35.3 percent in 1977.

U.S. imports of women's, misses', and children's raincoats decreased from 261,000 dozen in 1976 to 242,000 dozen in 1977. Imports increased from 84,000 dozen in the first quarter of 1977 to 129,000 dozen in the first quarter of 1978. The import to domestic production ratio decreased from 45.0 percent in 1976 to 40.3 percent in 1977.

A Department survey conducted with the manufacturers who contract work to Paramount Coat Co. revealed that these manufacturers experienced increased sales, in value, from 1976 to 1977. These manufacturers did not import men's and women's raincoats or use foreign contractors. A survey of the retail customers of these manufacturers indicated that most respondents did not purchase imported raincoats.

CONCLUSION

After careful review, I determine that all workers of Paramount Coat Co., Inc., Cambridge, Mass., be denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-29152 Filed 10-16-78; 8:45 am]

[4510-28-M]

[TA-W-3471, 3471a]

SUMMERFIELD INDUSTRIES, INC., RAEFORD AND ROCKY MOUNT, N.C.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3471 and 3471a: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 4, 1978, in response to a worker petition received on March 24, 1978, which was filed on behalf of workers and former workers producing double-knit polyester fabric for apparel at the Raeford, N.C., plant of Summerfield Industries, Inc.

The investigation was expanded to include the Rocky Mount, N.C., plant of Summerfield Industries, Inc.

During the course of the investigation it was established that the company produced finished polyester fabric for apparel.

The notice of investigation was published in the FEDERAL REGISTER on April 28, 1978 (43 FR 18360-1). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Summerfield Industries, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. Without regard to whether of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separations, or threat thereof, and to such decline in sales or production.

Imported wearing apparel is not considered like or directly competitive with finished fabric. Imports of fabric must be considered in this case.

U.S. imports of manmade knit finished fabric are negligible. The ratio of imports to domestic production was 1.6 percent or less from 1973 through 1977. The ratio decreased from 0.7 percent in 1975 to 0.6 percent in 1976 and remained at 0.6 percent in 1977.

U.S. imports of finished fabric decreased from 1976 to 1977 and increased in the first quarter of 1978 compared to the same period of 1977. The ratio of imports to domestic production increased from 1.8 percent in 1976 to 1.9 percent in 1977.

Customers representing a substantial proportion of Summerfield Industries' sales in 1977 were surveyed by the Department. Respondents indicated that most do not purchase imported finished fabric. The survey further revealed that most respondents had increased purchases from Summerfield Industries from 1976 to 1977.

CONCLUSION

After careful review of the facts, I determine that all workers of the Raeford and Rocky Mount, N.C., plants of Summerfield Industries, Inc. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-29153 Filed 10-16-78; 8:45 am]

[4510-28-M]

[TA-W-3631]

VERDI FASHION CO., INC., HOBOKEN, N.J.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3631: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' and men's coats at Verdi Fashion Co., Inc., Hoboken, N.J. During the course of the investigation it was discovered that Verdi Fashion Co., Inc., only manufactured ladies' coats.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Verdi Fashion Co., Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated.

Average company employment at Verdi Fashions increased in each of the last three quarters of 1977 when compared to the like quarters of 1976. Employment also increased in the first quarter and in the first 5 months of 1978 when compared to the like periods in 1977.

There have been no significant partial separations. There is no immediate threat of separation to the workers of Verdi Fashion Co.

CONCLUSION

After careful review, I determine that all workers of Verdi Fashion Co., Inc., Hoboken, N.J., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-29154 Filed 10-16-78; 8:45 am]

[4510-28-M]

[TA-W-3820 and 3821]

SWANK REFRACTORIES CO., JOHNSTOWN AND CLAIRTON (LARGE), PA.

Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3820 and 3821: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 7, 1978, in response to worker petitions received on June 1, 1978, which were filed by the United Steelworkers of America on behalf of workers and former workers engaged in employment related to the production of clay and silica refractory products at the Johnstown and Clairton (Large), Pa.,

plants of the Swank Refractories Co. The investigation revealed that only clay products are produced.

The notice of investigation was published in the FEDERAL REGISTER on June 20, 1978 (43 FR 26499). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Swank Refractories, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threats thereof, and to such decline in sales or production.

Evidence developed during the investigation revealed that clay refractory products are used in the molten stages of metal production by the steel industry. Clay refractory products cannot be considered like or directly competitive with steel.

The ratio of imports to the domestic production of clay refractory products has been less than 1 percent from 1972 to 1977 and in the first quarter of 1978.

The Department conducted a survey of some of the customers of clay refractory products of Swank Refractories Co. Only one of the customers reported purchases of imported refractory products in 1977. That customer stated that the type of refractory product imported was not available from Swank and continued to state that the reduction in purchases from Swank in 1977 compared to 1976 was caused by a shift to other domestic sources. All of the respondents stated that imports of refractory products are not adversely affecting the domestic industry.

CONCLUSION

After careful review, I determine that all workers of the Johnstown and Clairton (Large), Pa., plants of the Swank Refractories Co. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-29155 Filed 10-16-78; 8:45 am]

[4510-30-M]

NATIONAL COMMISSION FOR MANPOWER POLICY

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act Pub. L. 92-463; 86 Stat. 770) notice is hereby given that the National Commission for Manpower Policy will cosponsor, together with the U.S. Department of Labor, Bureau of International Labor Affairs, a conference on November 15, 1978. The conference will be held in the Secretary's Conference Room, Room S-2508, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. The meeting will begin at 9 a.m. and adjourn at 5 p.m. The agenda will be concerned with identifying and exploring the employment effects of international trade.

The National Commission for Manpower Policy was established pursuant to title V of the Comprehensive Employment and Training Act of 1973 (Pub. L. 92-203). The Act charges the Commission with the broad responsibility of advising the President, the Congress, the Secretary of Labor, and other Federal agency administrators on national employment and training issues. The Commission is specifically charged with reporting annually to the President and the Congress on its findings and recommendations with respect to the Nation's employment and training policies and programs.

Members of the general public or other interested individuals may attend the conference. Members of the public desiring to submit written statements to the Commission that are germane to the agenda may do so, provided that such statements are in reproducible form and are submitted to the Director no later than 2 days before and 7 days after the conference.

Additionally, members of the general public may request to make oral statements to the Commission to the extent that the time available for the conference permits. Such oral statements must be directly germane to the announced agenda and written applications must be submitted to the Director of the Commission 3 days before the conference. This application shall identify the following: The name and address of the applicant; the subject of his or her presentation and its relationship to the agenda; the amount of time requested; the individual's qualifications to speak on the subject matter. The application shall also include a statement justifying why a written presentation would not suffice. The Chairman reserves the right to decide to what extent public oral presentation will be permitted at the conference. Oral presentations shall be limited to statements of fact and views and shall not include any questions of Commission members or other participants unless these questions have been specifically approved by the Chairman.

Minutes of the meeting, working papers, and other documents prepared for the conference will be available for public inspection 5 working days after the meeting at the Commission's headquarters located at 1522 K Street NW., Suite 300, Washington, D.C.

Signed at Washington, D.C., this 4th day of October 1978.

ISABEL V. SAWHILL,
Director, National Commission for Manpower Policy.

[FR Doc. 78-29157 Filed 10-16-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS; SUBCOMMITTEE ON ADVANCED REACTORS

Meeting

The ACRS Subcommittee on Advanced Reactors will hold an open meeting on November 1, 1978, in Room 1167, 1717 H Street NW., Washington, D.C. 20555, to continue its review of matters related to the NRC-sponsored research on the safety of advanced reactor designs.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978 (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

WEDNESDAY, NOVEMBER 1, 1978

8:30 A.M. UNTIL THE CONCLUSION OF BUSINESS

The Subcommittee may meet in executive session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the executive session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, and their consultants, pertinent to the above topics. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Richard P. Savio, telephone 202-634-3267, between 8:15 a.m. and 5 p.m., e.s.t.

Dated: October 12, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-29318 Filed 10-16-78; 8:45 am]

[7590-01-M]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS; SUBCOMMITTEE ON REACTOR OPERATIONS

Meeting

The ACRS Subcommittee on Reactor Operations, will hold an open meeting on November 1, 1978, in Room 1046, 1717 H Street NW., Washington, D.C. 20555, to review NRC Office of Nuclear Regulatory Research programs being conducted by the Research Support Branch, and will hear a briefing by representatives of the NRC Division of Operating Reactors concerning its policies and activities. Notice of this meeting was published September 21, 1978 (43 FR 42826) as a 2-day meeting, October 31 and November 1.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978 (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the designated Federal employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

WEDNESDAY, NOVEMBER 1, 1978

8:30 A.M. UNTIL THE CONCLUSION OF BUSINESS

The subcommittee may meet in executive session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting.

At the conclusion of the executive session, the subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, and their consultants, pertinent to the agenda items. The subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and to formulate a report and recommendations to the full Committee.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the designated Federal employee for this meeting, Mr. Robert L. Wright, Jr., telephone 202-634-3314, between 8:15 a.m. and 5 p.m., e.s.t.

Dated: October 12, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-29319 Filed 10-16-78; 8:45 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Admin. Pro. File No. 3-5539; File No. 81-374]

BUDD CO.

Notice of Application and Opportunity for Hearing

OCTOBER 6, 1978.

Notice is hereby given that the Budd Co. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act") seeking an exemption from the requirements to file reports pursuant to sections 13 and 15(d) of the Exchange Act.

The Applicant states, in part:

1. The Applicant is a Pennsylvania corporation subject to the reporting provisions of sections 13 and 15(d) of the 1934 Act.

2. On April 25, 1978, pursuant to a merger with Thyssen Acquisition Corp., the Applicant became an indirect wholly owned subsidiary of Thyssen A. G., a West German corporation.

3. As a consequence of the merger, the Applicant's common and preferred shares ceased to be outstanding on April 25, 1978 and its 5¾ percent convertible subordinated debentures were redeemed on May 26, 1978.

In the absence of an exemption, Applicant is required to file reports pursuant to sections 13 and 15(d) of the 1934 Act and the rules and regulations thereunder for the balance of the fiscal year ending December 31, 1978. Applicant believes that its request for an order exempting it from the provisions of sections 13 and 15(d) of the 1934 Act is appropriate in view of the fact that Applicant believes that the time, effort, and expense involved in preparation of additional periodic reports would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street NW., Washington, D.C.

Notice is further given that any interested person not later than November 3, 1978, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) any postponements thereof. At any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-29228 Filed 10-16-78; 8:45 am]

[8010-01-M]

[Admin. Pro. File No. 3-5515; File No. 81-389]

DRISKILL HOTEL CORP.

Notice of Application and Opportunity of Hearing

OCTOBER 6, 1978.

Notice is hereby given that the Driskill Hotel Corp. (the "Applicant") has filed an application, as amended, pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order granting the Applicant a partial exemption from certain provisions of sections 13 and 14 of the 1934 Act.

The Applicant states in part:

1. The Applicant was formed in 1970 to renovate and operate a hotel.

2. All of the assets of the Applicant were sold in 1975.

3. The Applicant's present and intended business is confined solely to collecting receipts pursuant to the contract of sale of the hotel, and applying these receipts to its remaining outstanding obligations.

4. Applicant will collect such receipts in a fixed amount on a semiannual basis through 1979.

5. Beginning in 1980, the Applicant will collect receipts on an annual basis in an amount based upon a percentage of the hotel's profits.

6. The Applicant has approximately 630 shareholders.

7. There has never been any trading in Applicant's common stock.

8. The Applicant requests an exemption from the following provisions:

(a) The requirements pursuant to section 13 of the 1934 Act to file periodic reports, except that the Applicant will file both an annual report on form 10-K containing unaudited financial statements, and current reports on form 8-K, including a report of the receipt of midyear payments under the contract of sale and the application of these proceeds. This portion of the exemption would terminate on December 31, 1980.

(b) The requirement pursuant to section 14 of the 1934 Act and regulation 14C promulgated thereunder to furnish shareholders with an annual report to shareholders in connection with the annual meetings of shareholders to be held in 1978 and 1979, where the only business to be conducted at such meetings is the election of directors. In lieu of this requirement, the information statement will contain a written summary of the material financial results, including the fact that payments have been received as well as the amounts which have been applied to the payment of expenses and to the reduction of the Applicant's outstanding debt. The Applicant will also offer in its information statement to furnish to shareholders either at the annual meeting or by return mail a copy of the Applicant's annual report on form 10-K.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street NW., Washington, D.C.

Notice is further given that any interested person not later than November 3, 1978, may submit to the Commission in writing his views or any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At any time after said date, an order granting the application may be issued upon request or upon the Commisssion's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-29229 Filed 10-16-78; 8:45 am]

[8010-01-M]

[Admin. Pro. File No. 3-5530; File No. 81-371]

EMERY INDUSTRIES, INC.

Notice of Application and Opportunity for Hearing

OCTOBER 6, 1978.

Notice is hereby given that Emery Industries, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), that Applicant be granted an exemption from the reporting provisions of section 15(d) of that Act.

The Applicant states, in part:

1. Applicant is incorporated under the laws of the State of Ohio.

2. As a result of a merger on May 19, 1978, the Applicant became a wholly owned subsidiary of National Distillers & Chemical Corp.

3. At this time the Applicant has only one shareholder, which is National Distillers & Chemical Corp.

In the absence of an exemption, Applicant is required to file reports pursuant to section 15(d) of the 1934 Act. Applicant believes that its request for an order exempting it from the provisions of section 15(d) of the 1934 Act is appropriate in view of the fact that the Applicant is a wholly owned subsidiary with only one shareholder. Applicant believes that the time, effort and expense involved in the preparation of additional periodic reports would be disproportionate to any benefit of the public.

For a more detailed statement of the information presented, interested persons are referred to said application which is on file in the office of the Commission at 500 North Capitol Street, Washington, D.C. 20549.

Notice is further given that not later than November 3, 1978, any interested person may submit to the Commission in writing his views on any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. At Any time after said date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-29230 Filed 10-16-78; 8:45 am]

[8010-01-M]

[Admin. Pro. File No. 3-5535; File No. 81-399]

SOUTHWEST PETRO-CHEM, INC.

Notice of Application and Opportunity for Hearing

OCTOBER 6, 1978.

Notice is hereby given that Southwest Petro-Chem, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (the "1934 Act"), for an order exempting Applicant from the provisions of sections 12(g), 13, 14, 15(d), and 16 of the 1934 Act.

The Applicant states in part:

1. Applicant is incorporated under the laws of the State of Kansas.

2. Prior to the merger with Witco Chemical Corp. ("Witco"), Applicant had one class of equity securities registered under the Securities Act of 1933.

3. Prior to the merger with Witco, Applicant was subject to the provisions of section 15(d) of the 1934 Act and its common stock was registered

pursuant to section 12(g) of the 1934 Act.

4. As a result of the merger, Applicant became a wholly owned subsidiary of Witco on August 31, 1978.

In the absence of an exemption, Applicant is required to file certain reports with the Commission pursuant to sections 12(g), 13, 14, 15(d), and 16 of the 1934 Act because the common stock is registered with the Commission.

Accordingly, Applicant believes that its request for an order exempting it from the provisions of section 12(g), 13, 14, 15(d), and 16 of the 1934 Act is appropriate in view of the fact that Applicant believes that the time, effort, and expense involved in compliance with such provisions would be disproportionate to any benefit to the public.

For a more detailed statement of the information presented, all persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, D.C.

Notice is further given that any interested person not later than November 3, 1978, may submit to the Commission in writing his views of any substantial facts bearing on this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 500 North Capitol Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after said date, an order granting the application may be issued upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-29231 Filed 10-16-78; 8:45 am]

[8010-01-M]

[File No. 1-4829]

AMERICAN SAFETY EQUIPMENT CORP.

5¾-Percent Convertible Subordinated Debentures Due 1983; Notice of Application To Withdraw From Listing and Registration

OCTOBER 10, 1978.

The above-named issuer has filed an application with the Securities and Exchange Commission, pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The 5¾-percent convertible subordinated debentures ("Debentures") of American Safety Equipment Corp. (the "Company") have been listed for trading on the Amex since January 13, 1969. On July 28, 1978, pursuant to a plan and agreement of merger, the Company became a second-tier subsidiary of the Marmon Group, Inc. At the time of the merger, the principal amount of the outstanding Debentures was $1,900,000. As a consequence of the merger, the conversion right of each Debenture, which previously represented a right to convert a $1,000 Debenture into 92.76 shares of the Company's common stock, became a right to receive $973.98 in cash. As of September 30, 1978, the principal amount of the outstanding Debentures has been reduced by $765,000 (40 percent) to $1,135,000 and the number of registered holders has been reduced to less than 150. The Company is of the opinion that the Debentures are now unsuitable for continued trading on a national securities exchange because they lack the characteristics of a security which would benefit from an auction market. No trading in Debentures has occurred since the merger on July 28, 1978.

Any interested person may, on or before November 9, 1978, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission will, on the basis of the application and any other information submitted to it, issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-29227 Filed 10-16-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Proposed License No. 06/06-0204]

CAMERON FINANCIAL CORP.

Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1978)), under the name of Cameron Financial Corp., 1410 Frost Bank Tower, San Antonio, Tex. 78205, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), and the rules and regulations promulgated thereunder.

The proposed officers, directors, and shareholders are as follows:

A. Baker Duncan, President, Director, 336 Geneseo Rd., San Antonio, Tex. 78209.
Goodhue W. Smith III, Vice President, Secretary/Treasurer, Director, 103 Tuttle Rd., San Antonio, Tex. 78209.
J. David Oppenheimer, Director, 233 East Lullwood Ave., San Antonio, Tex. 78212.
Duncan-Smith Co., General Manager, Investment Adviser, 1410 Frost Bank Tower, San Antonio, Tex. 78205.
Cameron Capital Corp., 100 percent shareholder, 1410 Frost Bank Tower, San Antonio, Tex. 78205.

The beneficial holders of 10 percent or more of Cameron Capital Corp.'s voting securities are:

A. Baker Duncan, 36 percent.
Goodhue W. Smith III, 18 percent.
E. Bruce Street, 1035 Normandy, Graham, Tex. 76046, 18 percent.

Mr. Duncan owns 66.7 percent of Duncan-Smith Co., and Mr. Smith owns the remaining one-third.

There is to be only one class of stock with 1 million shares of common stock authorized. Cameron Capital Corp., a venture capital corporation, will own initially all of the issued and outstanding stock.

The applicant licensee proposes to commence operations with net private capital of $500,000. Applicant proposes to conduct its operations principally within the State of Texas.

Applicant will follow a diversified investment policy in providing long-term debt and equity capital to eligible small business concerns.

Duncan-Smith Co., will serve as its investment adviser/manager on a contractual basis pursuant to § 107.809 of the SBA rules and regulations.

Matters involved in SBA's consideration of the application include the general business reputation and character of shareholders and management, and the probability of successful operation of the new company in accordance with the Act and regulations.

Notice is further given that any person, may, not later than November 1, 1978, submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to: Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published by the applicant in a newspaper of general circulation in San Antonio, Tex.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: October 11, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-29271 Filed 10-16-78; 8:45 am]

[8025-01-M]

[License No. 09/09-5167]

CHINESE INVESTMENT CORP. OF CALIFORNIA

License Surrender

Notice is hereby given that Chinese Investment Corp. of California, 1541 Wilshire Boulevard, Suite 100, Los Angeles, Calif. 90017, has surrendered its license to operate as a small business investment company pursuant to 13 CFR 107.105 (1976) of the Small Business Administrations's rules and regulations governing small business investment companies.

Chinese Investment Corp. of California was licensed March 1, 1974, to operate solely under the provisions of section 301(d) of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.).

It has surrendered its license to operate as a section 301(d) license.

Under the authority vested by the Act and pursuant to the cited regulation, the surrender of the license is hereby accepted and all rights, privileges, and franchises therefrom are cancelled.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies.)

Dated: October 11, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-29274 Filed 10-16-78; 8:45 am]

[8025-01-M]

[Proposed License No. 09/09-0227]

CROCKER VENTURES, INC.

Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration pursuant to 13 CFR 107.102 (1978) by Crocker Ventures, Inc., One Montgomery Street, San Francisco, Calif. 94104, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.).

The proposed officers, directors and principal stockholders are:

Name, Title, and Stockholder

John M. Boyle, Acting General Manager, Director, One Montgomery St., San Francisco, Calif. 94104.
David Alan Brooks, Director, One Montgomery St., San Francisco, Calif. 94104.
Donald Andrew Chiesa, Director, One Montgomery St., San Francisco, Calif. 94104.
Owen Howe Harper, Director, One Montgomery St., San Francisco, Calif. 94104.
Charles Mitchell Stockholm, Director, One Montgomery St., San Francisco, Calif. 94104.
Crocker National Bank, One Montgomery St., San Francisco, Calif. 94104, 100 percent.

The applicant which is a California corporation will begin operations with an initial capitalization of $1 million. No concentration in any particular industry is planned. The applicant intends to make investments in small business concerns, with growth potential located primarily within the State of California.

Matters involved in the SBA's consideration of the application include the general business reputation and character of the proposed owners and managerment, including adequate profitability and financial soundness, in accordance with the Act and SBA rules and regulations promulgated thereunder.

Any person may on or before November 1, 1978, submit to the SBA written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in San Francisco, Calif.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: October 5, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-29278 Filed 10-16-78; 8:45 am]

[8025-01-M]

[License No. 09/12-0150]

CROCKER CAPITAL CORP.

Filing of Application for Transfer of Control and Ownership of Licensed Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.701 of the regulations governing small business investment companies (13 CFR 107.701 (1978)) for a transfer of control and ownership of Crocker Capital Corp. (CCC), 111 Sutter Street, Suite 600, San Francisco, Calif. 94104, a Federal license under the Small Business Investment Act of 1958, as amended (Act).

CCC was licensed on February 13, 1970. Its present combined paid-in capital and paid-in surplus (private capital) is $1,250,000. Their indebtedness to SBA approximates $2.2 million. The proposed transfer of control and ownership is subject to and contingent upon approval by SBA.

The outstanding common stock of CCC is presently owned by:

Crocker National Corp., One Montgomery Street, San Francisco, Calif. 94104; 49 percent, a bank holding company.
Crocker Associates, 111 Sutter Street, Suite 600, San Francisco, Calif. 94104, 39 percent, a limited partnership.
11 other individuals each owning less than 5 percent, 12 percent.

The change in control and ownership would result from CCC purchasing back its outstanding stock held by Crocker National Corp. (CNC). The private capital of CCC would be reduced to $895,500 as a result of the purchase. Crocker Associates would have 78 percent of the remaining outstanding stock. Crocker Associates is a limited partnership with Charles Crocker as the general partner. Mr. Crocker holds around 25 percent of the partnership equity. The ownership of Mr. Crocker and the Crocker Family in CNC is de minimus.

CNC is selling its stock in CCC because it has submitted an application for a license for Crocker Ventures, Inc. (CV), to operate as an SBIC. CV would be wholly owned by Crocker National Bank which is wholly owned by CNC. Section 107.702 of the regulations prohibits ten or more percent shareholders in more than one SBIC without prior written SBA approval.

Matters involved in the SBA consideration of the application include the

general business reputation and character of the proposed owners and management, including adequate profitability and financial soundness, in accordance with the Act and SBA rules and regulations promulgated thereunder.

Any person may on or before November 1, 1978, submit to the SBA written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, 1441 L Street NW., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in San Francisco, Calif.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: October 5, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-29281 Filed 10-16-78; 8:45 am]

[8025-01-M]

[License No. 01/02-0329]

FIRST GENERAL CAPITAL CORP.

Surrender of License

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration's rules and regulations governing small business investment companies (CFR 107.105 (1978)), First General Capital Corp. (FGCC), 505 Park Avenue, New York, N.Y. 10022, incorporated under the laws of the State of New York has surrendered its license No. 02/02-0329 issued by the SBA on August 31, 1977.

FGCC has complied with all conditions set forth by SBA for surrender of its license. Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above cited regulation, the license of FGCC is hereby accepted and it is no longer licensed to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: October 11, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-29272 Filed 10-16-78; 8:45 am]

[8025-01-M]

[Proposed License No. 01/01-0293]

HELLMAN, GAL CAPITAL CORP.

Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1978)) under the name of Hellman, Gal Capital Corp. (Applicant), for a license to operate as a Small Business Investment Company under the provisions of the Small Business Investment Act of 1958, as amended (Act), and the rules and regulations promulgated thereunder.

The Applicant was incorporated under the laws of the Commonwealth of Massachusetts and it will commence operation with a capitalization of $150,000, which will be obtained through the sale of its common stock to one investor, Hellman, Gal Investment Associates, a Massachusetts limited partnership. Hellman, Gal Investment Associates will subscribe for additional common stock of the Applicant in the amount of $850,000, such subscription to be made in such installments, and at such times, as Hellman, Gal Capital Corp. may request.

The following will be officers and directors of the Applicant.

Name and Title

Frederick Warren Hellman, North Brookwood Road, Stratton, Vt., Chairman and Director.

Joseph J. Gal, 861 Hale Street, Beverly Farms, Mass., President, Treasurer, and Director.

Paul J. Ferri, 27 Colony Road, Weston, Mass., Vice President and Director.

Richard Testa, 6 Longfellow Road, Wayland, Mass., Clerk.

Andrew E. Taylor, Jr., 28 Fisher Avenue, Newton, Mass., Assistant Clerk.

Messrs. Hellman, Gal, and Ferri are the only general partners of Hellman, Gal Investment Associates, the sole stockholder of the Applicant.

The Applicant will have its principal place of business at One Federal Street, Boston, Mass. 02110, and it intends to make investments principally in the Commonwealth of Massachusetts, and in other areas within the United States, its territories and possessions.

Matters involved in SBA's consideration of the Applicant include the general reputation and character of the proposed owners and management, and the probability of successful operations of the Applicant under their management, including adequate profitability and financial soundness in accordance with the Act and regulations.

Notice is hereby given that any person may on or before November 1, 1978, submit written comments on the Applicant to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Boston, Mass.

(Catalog of Federal Domestic Program No. 59.011, Small Business Investment Companies.)

Dated: October 2, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-29277 Filed 10-16-78; 8:45 am]

[8025-01-M]

[License No. 01/01-0290]

NEW ENGLAND CAPTIAL RESOURCES CORP.

Issurance of License To Operate as a Small Business Investment Company

On April 19, 1978, a notice was published in the FEDERAL REGISTER that New England Capital Resources Corp., 50 Washington Street, South Norwalk, Conn. 06854, had filed an application with the Small Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (13 CFR 107.102 (1978) for a license to operate as a small business investment company.

Interested parties were given until the close of business on June 5, 1978, to submit written comments on the application to the SBA.

Notice is hereby given that no written comments were received, and having considered the application and all other pertinent information, the SBA approved the issuance of License No. 01/01-0290 on Septemer 29, 1978, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: October 11, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-29270 Filed 10-16-78; 8:45 am]

[8025-01-M]

REGION VI ADVISORY COUNCIL MEETING

Public Meeting

The Small Business Administration Region VI Advisory Council, located in the geographical area of New Orleans, La., has changed the date of its public meeting from 9:30 a.m. on Friday, October 27, 1978, to 9:30 a.m. on Wednesday, November 15, 1978, at the Small

Business Administration District Office, Plaza Tower Building, 1001 Howard Avenue, 17th Floor, New Orleans, La., to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Joseph M. Conrad, Jr., District Director, U.S. Small Business Administration, 1001 Howard Avenue, Suite 1724, New Orleans, La. 70113, 504-589-2744.

Dated: October 11, 1978.

K DREW,
Deputy Advocate for Advisory Councils.

[FR Doc. 78-29280 Filed 10-16-78; 8:45 am]

[8025-01-M]

[License No. 09/12-0145]

UNION VENTURE CORP.

Filing of Application for Transfer of Control of a Licensed Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.701 of the regulations governing small business investment companies (13 CFR 107.701 (1978)) for the transfer of control of Union Venture Corp. (the Licensee), licensee No. 09/12-0145, 445 South Figueroa Street, Los Angeles, Calif. 90017, a Federal licensee under the Small Business Investment Act of 1958, as amended (Act).

The Licensee was licensed on September 30, 1967, with paid-in capital and paid-in surplus of $705,000. As of December 31, 1977, the Licensee had private capital of $2,000,000. Union Bank owns 100 percent of the outstanding stock of the Licensee.

On July 14, 1978, Union Bank and its parent corporation Union Bancorp, Inc. (Union Bancorp), entered into an agreement (the Agreement) pursuant to which Union Bancorp will merge with a wholly owned subsidiary of the Standard Chartered Bank Ltd., a English banking corporation (SCB) upon the satisfaction of certain conditions precedent set forth in the Agreement, which conditions include the approval of such merger by the Federal Reserve Board and the California Superintendent of Banks and approval by the shareholders of Union Bancorp. The Agreement provides that SCB shall elect which of Union Bancorp or the other merging corporation shall cease to exist and which of them shall be the surviving corporation in such merger, and further provides that SCB may select the initial directors and officers of the surviving corporation. The Agreement thus provides for the transfer of ultimate control of Licensee from Union Bancorp to SCB.

Matters involved in the SBA's consideration of the application include the general business reputation and character of the proposed transferees and the probability of successful operation of the Licensee under their control and management in accordance with the Act and regulations.

Notice is further given than any interested person may, not later than November 1, 1978, submit their comments, in writing, on the proposed transfer of control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, D.C. 20416.

A similar notice shall be published by the Licensee in a newspaper of general circulation in Los Angeles, Calif.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: October 11, 1978.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc. 78-29273 Filed 10-16-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1535]

VERMONT

Declaration of Disaster Loan Area

The area of (Bellows Falls Square) 38-43 Village Square in the town of Rockingham, Windham County, Vt., constitutes a disaster area because of damage resulting from a fire which occurred on August 19, 1978. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on December 11, 1978, and for economic injury until the close of business on July 11, 1979, at Small Business Administration, District Office, 87 State Street, Montpelier, Vt. 05602, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 11, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-29275 Filed 10-16-78; 8:45 am]

[8025-01-M]

[Declaration of Disaster Loan Area No. 1534]

WISCONSIN

Declaration of Disaster Loan Area

Ashland County and adjacent counties within the State of Wisconsin constitute a disaster area as a result of damage caused by high wind, rainstorm, and flash flooding which occurred on August 22-23, 1978. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on December 8, 1978, and for economic injury until the close of business on July 6, 1979, at Small Business Administration, District Office, 212 East Washington Avenue, Second Floor, Madison, Wis. 53703, or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 6, 1978.

PATRICIA M. CLOHERTY,
Acting Administrator.

[FR Doc. 78-29279 Filed 10-16-78; 8:45 am]

[4910-06-M]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Object Class No. 4910-06]

MINORITY BUSINESS RESOURCE CENTER ADVISORY COMMITTEE

Meeting

Pursuant to section 19(a) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Minority Business Resource Center Advisory Committee to be held on October 31, 1978, at 10 a.m. until 1 p.m. at the Federal Aviation Administration's Auditorium, 800 Independence Avenue SW., Room 318 (Auditorium), Washington, D.C. 20590. The agenda for the meeting is as follows:

Progess Report to Minority Trade and Business Development Organizations.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Minority Business Resource Center not later than the day before the meeting. Information pertaining to the meeting may be obtained from Mr. Harvey C. Jones, Advisory Committee Staff Assistant, Minority Business Resource Center, Federal Railroad Administration, 400 7th Street SW., Washington, D.C. 20590, telephone 202-472-2449.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C., on October 10, 1978.

KENNETH E. BOLTON,
Executive Director.

[FR Doc. 78-29217 Filed 10-16-78; 8:45 am]

[4810-25-M]

DEPARTMENT OF THE TREASURY

Office of the Secretary

THIRD AND FOURTH QUARTER TPM MANUAL

Notice of Publication

The Treasury Department hereby announces the publication of a trigger price manual which incorporates in one volume all trigger prices announced to date. The manual is being used during the third and fourth quarters of 1978 by U.S. Customs officials at ports of entry. The manual is being distributed automatically by the Department of the Treasury to all persons on the Department's steel mailing list.

Since January 3, 1978, when trigger prices were first announced on basic steel mill products, numerous additions, adjustments and corrections have been made. Among other changes, trigger price levels have been adjusted to reflect changes in Japanese costs of production and dollar-yen exchange rates. This handbook consolidates all previously published corrections, adjustments and changes that have been generated by, or have come to the attention of, the Treasury Department and Customs Service Headquarters officials involved in administering the trigger price mechanism.

As previously announced, the applicable trigger price for a given imported steel mill product consists of the base trigger price for that product plus appropriate extras, as well as ocean freight, insurance, interest and handling costs. Each of these components is contained in this handbook.

Ocean freight and related costs are differentiated for each of the four major importing regions—the Atlantic Coast, Gulf Coast, West Coast, and Great Lakes.

The base prices herein are stated in U.S. dollars per metric ton and consist of the Japanese cost of production (including overhead and profit) estimated from Japanese-supplied information and other available evidence. The "extras" lists set forth the prices associated with the additional costs for different specifications, such as width, thickness, chemistry, and surface preparation.

Three types of circumstances commonly arise with respect to extras, and will be treated as follows:

(1) If a product embodies extras which are not listed in the handbook, the product does not become exempt from trigger price scrutiny. Instead, in that circumstance the base trigger price plus whatever applicable extras are listed in the handbook will apply.

(2) If a particular product measurement specification falls between two measurement specifications for which an extra is listed, the higher dollar value extra will be utilized, unless otherwise noted.

(3) If a measurement specification falls above or below the range of measurement specifications for which extras are listed, the product is usually not intended to be covered by trigger prices because it is not commonly made in or imported into the United States.

The trigger prices are published in the sequence of the 32 categories of basic steel mill products defined by the American Iron and Steel Institute. The categories for which there is trigger price coverage may be found in the table of contents. TSUSA numbers and duty rates are listed for the most commonly imported items in each of these categories. It should be noted, however, that these TSUSA numbers do not include all the products covered by trigger prices when the various extras are applied.

In addition to consolidating all published trigger prices in one publication, this Manual also makes changes to correct misprints in previous publications or to revise individual trigger prices based on most recent cost information. Below are listed certain changes of significance:

AISI catalog	Product description	Description of action
2	Spheroidized annealed wire rod, 4037, 9254, 52100	Thermal treatment extras changed to read: Regular anneal only—$21 per metric ton No heat treatment—$63 per metric ton
6	Heavy steel rails	Extras changed to read: Heat treating—$70 per metric ton End hardening—$3 per rail Quantity extras under 200 through 100 metric ton $4 under 100 through 50 metric $5 (previous publications gave these as a percentage).
11	Hot rolled AISI 8620 bar	Thermal treatment extras changed to read: Spheroidized anneal—$63 per metric ton Quench and temper—$116 per metric ton
14	Continuous buttweld pipe	Trigger price for extra strong wall thickness revised to reflect most recent Japanese cost data.
14 and 15	Pipe and tube products	Freight rates table expanded to include sizes up to 48 in.
15	Seamless carbon steel pressure tubing	Added random length deductions.
16	Cold finished spheroidized annealed wire 4037, 9254	Thermal treatment extras changed to read: Regular anneal only—$21 per metric ton No heat treatment—$63 per metric ton
23	Electrolytic tin plate	Published revised extras tables for fourth quarter extras. The 13.77 pct increase for fourth quarter double-reduced extra applies only to double-reduced base weight and coating extras. The 2.39 percent fourth quarter increase for cut length, width and quality applies to both single-reduced and double-reduced ETP.
32	Tin-free steel	Published revised extras tables for fourth quarter extras. The 14.02 pct increase for fourth quarter double-reduced extra applies only to double-reduced base weight extra. The 1.15 pct fourth quarter increase for cut length, width and quality applies to both single-reduced and double-reduced TFS.

All the adjustments to trigger prices being announced here will be used by the Customs Service to collect information at the time of entry on all shipments of the products covered which are exported after the date of publication of this notice.

Due to the number of pages involved, only the table of contents and the substantive changes are published as a part of this notice.

Dated: October 10, 1978.

ROBERT H. MUNDHEIM,
General Counsel.

THIRD AND FOURTH QUARTER TRIGGER PRICE HANDBOOK

Table of Contents

[FR Doc. 78-29256 Filed 10-13-78; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice No. 117]

MOTOR CARRIER TRANSFER PROCEEDINGS

OCTOBER 17, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and transfer rules, 49 CFR Part 1132.

MC-FC 77874. By application filed October 4, 1978, PATRICK J. ENNIS and DOUGLAS J. BRADLEY (noncarrier), a partnership, Popejoy, IA 50227, seeks temporary authority to transfer a portion of the operating rights of Sioux City Bulk Feed Service, Inc., Hwy 75 North, Sioux City, IA 51108, under section 210a(b). The transfer to Patrick J. Ennis and Douglas J. Bradley (noncarrier), a partnership, of a portion of the operating rights of Sioux City Bulk Feed Service, Inc., is presently pending.

MC-FC 77882. By application filed October 6, 1978, LAVONNE R. JAHN, an individual, South Hokah Street, Caledonia, MN 55921, seeks temporary authority to transfer the operating rights of Theodore Ranzenberger, an individual, 403 East Madison, Caledonia, MN 55921, under section 210a(b). The transfer to Lavonne R. Jahn, an individual, of the operating rights of Theodore Ransenberger, an individual, is presently pending.

By the Commission.

H. G HOMME, Jr.,

Acting Secretary.

[FR Doc. 78-29263 Filed 10-16-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

CONTENTS

[6320-01-M]

1

[M-169; Oct. 12, 1978]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 2 p.m., October 19, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Oral Argument—Dockets 33093 and 32128, Domestic Cargo Rules and Revised Air Freight Forwarder Rules.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

[S-2087-78 Filed 10-13-78; 3:45 pm]

[6335-01-M]

2

COMMISSION ON CIVIL RIGHTS.

DATE AND TIME: Monday, September 25, 1978, 9 a.m. to 12 noon; 1:30 to 4:30 p.m.

PLACE: Room 512, 1121 Vermont Avenue NW., Washington, D.C. 20425.

STATUS: Part of the meeting will be open to the public and part of the meeting will be closed to the public.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

I. Approval of agenda.
II. Approval of minutes from last meeting.
III. Staff Director's Report:
A. Status of funds.
B. Personnel report.
C. Correspondence:
1. Letter from Acting Staff Director to SBA.
2. Selected letters re Social Indicators report from: (a) MC Augustus F. Hawkins, (b) MC Louis Stokes, (c) Secretary of Labor Ray Marshall, (d) Acting BLS Commissioner Janet L. Norwood, and (e) Community Services Administration Director Graciela Olivarez.
3. Letter from Commerce Secretary Juanita Kreps re affirmative action.
4. Letter from Asst. Attorney General Drew Days re post-Bakke.
D. Office Director' Reports.
IV. Report on civil rights developments in the Northeast region.
V. Approval of interim appointments to Georgia, Maine, Missouri, Pennsylvania, Tennessee, and Vermont Advisory Committees.
VI. Review of Tennessee Advisory Committee Report on Police-Community Relations in Memphis.
VII. Discussion of Advisory Committee for Pacific Trust Territories.
VIII. Discussion of civil rights compliance in vocational education.
IX. Discussion of State Advisory Committee reports on post-Bakke reaction.

STATUS: Closed to the public.

MATTER TO BE CONSIDERED:

X. Briefing on immigration hearing (approximately 1½ hours).

STATUS: Open to the public, 1:30 to 4:30 p.m.

MATTERS TO BE CONSIDERED:

Review of school desegregation monograph.
Review of media update.

STATUS: Open to the public.

DATE AND TIME: Tuesday, September 26, 1978, 9:00 a.m. to 12 noon.

MATTERS TO BE CONSIDERED: Review of ERA monograph.

FOR FURTHER INFORMATION CONTACT:

Loretta Ward, Public Affairs Unit, 202-254-6697.

[S-2086-78 Filed 10-13-78; 3:41 pm]

[6210-01-M]

3

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS).

TIME AND DATE: 11 a.m., Friday, October 20, 1978.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: October 12, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-2081-78 Filed 10-13-78; 10:42 am]

[6750-01-M]

4

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Friday, October 20, 1978.

PLACE: Room 432, Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Open.

MATTERS TO BE CONSIDERED: Meeting with members of the Chamber of Commerce of the United States to discuss the direction of the Federal Trade Commission in the areas of regulation and competition.

CONTACT PERSON FOR MORE INFORMATION:

Ira J. Furman, Office of Public Information, 202-523-3830, Recorded Message: 202-523-3806.

[S-2083-78 Filed 10-13-78; 10:42 am]

[6820-35-M]

5

LEGAL SERVICES CORPORATION (board of directors meeting).

TIME AND DATE: 9 a.m., Thursday and Friday, October 19-20, 1978.

PLACE: Marvin Center, George Washington University, 800 21st Street NW., Washington, D.C.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED:

1. Adoption of the agenda.
2. Approval of minutes of July 6-7, 1978 meeting.
3. Reports by committees:

a. Committee on Provision of Legal Services

Paper on "Support: Policies and Options for 1979 and Beyond".
Study mandated by section 1007(h) of the Legal Services Corporation Act.
Legal Services Institute proposal.
Reginald Heber Smith Program.

b. Committee on Appropriations and Audit

Status of the annual audit.
Status of the fiscal year 1978 budget.
Proposed allocation of the fiscal year 1979 budget.
Discussion of the fiscal year 1980 budget request.
Renewal of the contract with the Corporation's investment advisor.
Renewal of the agreement with the Treasury Department for disbursement of the fiscal year 1979 appropriations.

c. Committee on Regulations

Consideration of proposed amendments that were published for comment.
1602 Procedures for disclosure or production of information under the Freedom of Information Act.
1609 Fee generating cases.
1620 Priorities in allocation of resources.
Internal staff directives concerning expansion.

d. Committee on Personnel and Facilities

Consultation on: (i) Staff salary adjustments and (ii) compensation of Corporation officers.
Approval of outside compensation of Corporation officers.
4. Reports by the President: The "Next Steps" process.
5. Future meeting dates.
6. Other business.

CONTACT PERSON FOR ADDITIONAL INFORMATION:

Dellanor Young, Office of the President, telephone 202-376-5100.

Issued: October 12, 1978.

THOMAS EHRLICH,
President.

[S-2082-78 Filed 10-13-78; 10:42 am]

[7600-01-M]

6

[Form 1]

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 9:30 a.m., October 27, 1978.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudication process.

CONTACT PERSON FOR MORE INFORMATION:

Ms. Lottie Richardson, 202-634-4015.

Dated: October 13, 1978.

[S-2084-78 Filed 10-13-78; 3:23 pm]

[7910-01-M]

7

THE RENEGOTIATION BOARD.

DATE AND TIME: Tuesday, October 24, 1978; 10 a.m.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Matters 1 through 3 are open to public observation. Matters 4 and 5 are closed to public observation. Matters 6 and 7 are not applicable for status.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of meeting held October 17, 1978, and other Board meetings, if any.

2. Recommended action on contractor's request for a statement of facts and reasons: DeLong Corp., fiscal year ended December 31, 1969.

3. Recommended assignment to a division: Kings Point Industries, Inc., consolidated with: Kings Point Manufacturing Co., Inc., fiscal years ended April 30, 1969, 1970, and 1971; and simultaneous with Victory Enterprises, Inc., fiscal years ended September 30, 1969, 1970, and 1971.

4. Court of Claims case: *Commander Industries, Inc.* v. *United States Court of Claims*, Nos. 288-75, 289-75, and 290-75.

5. Exemption of receipts or accrurals of common carriers of ocean shipments of cargo at, or at rates below, rates filed with the Federal Maritime Commission and under prime contracts or agreements with the Military Sealift Command for transportation of cargo at rates based on the manifest measurement or manifest weight of such cargo, fiscal year ended September 30, 1976.

6. Approval of agenda for meeting to be held November 7, 1978.

7. Approval of agenda for other meetings, if any.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: October 13, 1978.

GOODWIN CHASE,
Chairman.

[S-2085-78 Filed 10-13-78; 3:23 pm]

federal register

TUESDAY, OCTOBER 17, 1978
PART II

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

■

FOOD STAMP PROGRAM

Implementation of the Food Stamp Act of 1977

[3410-30-M]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

[Amdt. No. 132]

FOOD STAMP PROGRAM

Implementing the Food Stamp Act of 1977

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rulemaking implements major aspects of the Food Stamp Act of 1977, including the issuance of allotments at no cost, eligibility criteria, certification and issuance procedures, and fraud disqualification requirements. The changes are intended to tighten eligibility criteria, to facilitate participation by eligible households, to strengthen program administration, and to reduce program fraud and abuse.

EFFECTIVE DATE: October 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Nancy Snyder, Deputy Administrator, Family Nutrition Programs, Food and Nutrition Service, Washington, D.C. 20250, 202-447-8982.

SUPPLEMENTARY INFORMATION:

Introduction

On May 2, 1978, the Department published a comprehensive and detailed proposal concerning major aspects of the Food Stamp Act of 1977. The Department explicitly invited careful public scrutiny of that lengthy proposal and encouraged "detailed written criticism and comment."

In addition to publication in the Federal Register (43 FR 18874-18958), the Department provided 10,000 reprints of the proposal to public interest law and food advocacy groups, State public assistance departments, other Federal agencies, local welfare groups, organizations with technical expertise or specialized knowledge, and other interested organizations or individuals.

Approximately 19,400 pages of comments were received from 7,828 organizations or persons, raising 38,783 specific points. Some comments were signed by more than one person or group; [1] 2,568 different letters were received. Many letters contained detailed recommendations and criticisms concerning many aspects of the proposed rules. A number of letters exceeded 50 pages in length.

This preamble articulates the basis and purpose behind significant changes from the May 2 proposal. The reasons supporting those provisions of the May 2 proposal which are unchanged by these final rules were carefully examined in light of the comments to determine the continued applicability of each justification. Unless otherwise stated, or unless inconsistent with the final rules or preamble, the rationale contained in the proposal should be regarded as a basis for the pertinent final rules. Thus, a thorough understanding of the grounds for the final rules may require reference to the May 2, 1978, publication (43 FR 18874).[2] In light of the massive nature of this rulemaking, the Department considered it cost inefficient to reprint justifications, expressed in the proposal, which the Department considers compelling even in light of the comments.

Moreover, while the Department examined all relevant letters, many comments did not disclose a factual or policy justification, or a significant rationale, for certain recommendations. Other comments requested changes contrary to the Act, or articulated a rationale inconsistent with statutory provisions. Still other recommendations, anticipated in the proposal, were unresponsive to departmental justifications stated in the May 2 preamble. Even though some of the types of comments discussed in this paragraph are addressed in the preamble, it was determined, in light of the large number of significant and responsive comments, that not all the points raised could be addressed in this preamble. Moreover, there were two issues, raised by comments, which need further departmental study. These issues concern the food stamp eligibility of North American Indians whose reservations cross the Canadian border and the food stamp eligibility of persons protected under certain international treaties. After further study, the Department expects to issue final rules on those issues.

Definitions

Approximately 80 individuals and groups commented on this section. A majority of the commenters suggested that additional terms be defined or that some definitions be revised. State and local agencies requested clarification of such definitions as "period of application," "spouse," and "boarder." Some commenters also requested that definitions be added for "child," "tax dependent," and "adult." Some comments suggested a nationwide definition of "adult" for use particularly in relation to the responsibilities of authorized representatives since the definition of "adult" may vary from State to State.

The Department has decided to define technical terms of unique applicability to the food stamp program in the definition section of the regulations. In addition, many terms which apply only to a specific program function are defined in the body of these regulations.

The definitions of "communal dining facility," "coupon," "drug addiction or alcoholic treatment and rehabilitation program" "eligible food," "meal delivery service," "nonprofit cooperative food purchasing venture," "retail food store," "staple food," and "wholesale food concern" are published at 43 FR 43272 (September 22, 1978). Those terms accompany the final rules on retailer and wholesaler participation in the program (parts 278 and 279).

For greater clarity, some definitions have been revised or added in accordance with the comments. These are "application for participation," "general assistance," "spouse," "Food Stamp Act," "project area," and "thrifty food plan."[3]

The definitions of "State" and "State agency" are retained from current rules pending implementation of additional sections of the Food Stamp Act of 1977.

Delegations. The proposed rules provided for the Federal administration of the program by FNS and the assignment of certain administrative responsibilities to State agencies. Pursuant to section 13 of the Act, State agencies were authorized to settle and adjust claims against households.

Fifteen comments on delegations were received, mostly from State and local agencies. Some commenters felt that the claims delegation to State agencies should expedite the clearance of claims. Other commenters preferred retaining the current system

[1] At least 3,800 commenters sent form letters or signed petitions. The Department based the final rules on its analysis of the content of the letters not on the numbers of commenters favoring a position, although strong concensus endorsing a suggestion was noted. Recommendations supported by adequate reasons were carefully considered.

[2] Copies of that rulemaking should be available in many public libraries and almost all law libraries. The Department has some remaining copies which are available upon request.

[3] Some of these changes, in definitions, were largely based on the Food Research and Action Center (FRAC) comment. The Texas Department of Human Resources noted that the reference to common law spouse "could greatly complicate the certification process * * *. Too much time could be expended attempting to ascertain if common law status exists * * *." The Department agrees with that analysis and also fears that common law determinations could depend on specialized legal knowledge of State judicial precedents. The final rule is relatively easy to apply and will obviate the need for a common law analysis in almost all circumstances.

which makes FNS, instead of State agencies, responsible for reviewing most claims against recipients.

The final rules emphasize that the Secretary reserves the ultimate administrative responsibility for the program. As contemplated by the Act, the proposed rules place responsibility for local program functions with the State agency. Delegating the responsibility for handling claims to the State level will eliminate duplication of efforts and the resulting needless paperwork. For example, for each claim on which a household is making payments, the State agency, the Regional Office, and the FNS comptroller currently keep records. Delegation of this responsibility to the States will eliminate this duplicate paperwork. Moreover, household data and financial records are maintained and updated by State agencies, sometimes at central data processing facilities. The Department also believes that claim collection efforts can be more efficiently conducted and assessed at the local level.

Coupons as obligations of the United States, crimes and offenses. Less than 10 individuals and groups commented on coupon issuer penalties and the monitoring of coupon issuer activities. These comments, by and large criticized the criminal penalties provided by the Act. The final regulations restate those statutory penalties.

Complaint procedures. The complaint procedure section of the proposed rules contains a list of FNS Regional Offices and advises that complaints and requests for information may be filed at the appropriate Regional Office, FNS. It should be noted that this complaint procedure is for complaints regarding matters other than discrimination. Discrimination complaints are addressed in section 272.7.

Approximately 30 individuals and groups commented on this section and all comments recommended certain modifications. About half of the comments suggested handling all complaints at the FNS regional and national level, using hotlines for reporting complaints, and establishing a time limit for FNS handling of complaints. Several commenters felt that States should be required to inform clients of the existence of the complaint procedure through notices, advertisements, or news releases. On the other hand, several program agencies wanted all complaints, including discrimination complaints, handled at the State level. It was argued that State processing of complaints would identify frequently occurring problems, and could facilitate corrective action. Two commenters suggested that a time limit be set for filing complaints.

It is the Department's position that State agencies have the primary obligation to handle complaints and to review their own complaint procedures to assure that the procedures are effective. The requirements for State agency handling of complaints will be forthcoming. States have a local organization and staff, ready access to household data and are closer than FNS to witnesses and sources of information about the complaint. Moreover, complaint evaluation is part of the State agency's overall responsibility to maintain the effectiveness of the program. To insure the prompt and effective resolution of problems, the Department believes that FNS Regional Offices should develop procedures, through the performance reporting system, to review the State agency's complaint resolution efforts. To provide an alternative remedy, any complaint will be handled by FNS, upon household request, unless the complainant wishes a fair hearing.

Requirements for Participating State Agencies

General terms and conditions

No aid reduction. Wording from section 8(b) of the Act has been inserted in this paragraph.[4] This language continues the current prohibition on aid reduction. In subsequent rulemaking, the Department will consider whether this section requires more detailed and specific rules to effectively enforce the statutory prohibition, especially in reference to general assistance (GA) grants.

Disclosure. The proposed regulations, which restated the current regulatory language, specified that use or disclosure of information obtained from applicant households shall be restricted to persons directly connected with the administration or enforcement of the provisions of the Act or regulations. Approximately 150 commenters recommended expansion or clarification of this paragraph. Consequently, to achieve greater administrative efficiency, the Department added clarifying language to stress that food stamp case file information is available to persons administering other federally aided, means tested assistance programs, such as AFDC, medicaid, SSI and to those administering general assistance programs, if such programs are subject to the joint processing requirements. Language was also added to provide that during normal business hours case file information must be available to households or their representatives. However, to avoid interfering with enforcement efforts, the State agency may withhold confidential information such as the names of individuals who have disclosed information about the household or the status of pending criminal prosecutions.

Information available to the public. The current regulatory language has been inserted in this section. The Department added State manuals to the list of information that must be maintained for public inspection by State agencies and in FNS, Regional, and National Offices. This requirement conforms with current policy.

Implementation

The Department proposed that the new program be implemented in two distinct phases. Upon publication of the final rules, States were to prepare, print, and distribute necessary instructions and forms, train staff, reprogram data processing equipment, and inform the public of the program changes. States were to be given 3 to 4 months to complete that phase.

The second phase involved converting the current caseload to the new program, as well as certifying all applicants under the new procedures. As households came due for recertification, they were to be converted according to the new regulations. All households which would not normally have been recertified during phase 2 would have been converted through State agency reviews of each case file (desk reviews). At the beginning of the second phase, the purchase requirement was to be eliminated for all households. Households previously certified under the income definition of the Food Stamp Act of 1964 would receive the bonus allotments, as determined by current regulations, at no cost until recertified under the new program rules.

Advocacy groups and participants urged that EPR be made effective immediately; State and local agencies strongly opposed the proposed implementation schedule and urged that they be given more flexibility or more time to prepare for and complete implementation of the new eligibility and benefit rules. The general scheme of the Act, made clear by the legislative history, is that the expansion of the program due to EPR would be offset by the termination or reduction in benefits of higher income households through lower eligibility standards (OMB poverty line cutoff) and the more restrictive income calculations (a standard deduction and a capped dependent care and/or excess shelter cost deduction replacing uncapped itemized deductions). Thus, no implementation schedule which did not closely link EPR with the new income and eligibility factors could be approved.

[4] Sec. 8(b) provides that "no participating State or political subdivision thereof shall decrease any assistance otherwise provided an individual or individuals because of receipt of an allotment under this Act".

In light of the reasons supporting State and local agency recommendations, the Department is concerned about the States' abilities to convert to the new program under the proposed schedule, while maintaining adequate service to recipients. The Department is convinced that the proposed schedule would have represented an unrealistic timetable, which could have resulted in chaotic implementation of the new rules with a high incidence of errors.[5]

As a solution, certain State and local agencies urged that States be given the option to eliminate the purchase requirement as the first step in the conversion phase. They asserted this would achieve a smoother transition, allow for maintenance of adequate services during the conversion, and minimize error rates. It was asserted that advance EPR would provide State agencies an opportunity to rectify any problems arising from implementation of a major aspect of the Act of 1977[6] before facing any difficulties arising during implementation of the new income and eligibility factors.[7] However, the Department believes that the Act and the legislative history demonstrate that EPR and the benefit calculations are closely interrelated.[8] Thus, the final schedule recognizes the close interrelationship between EPR and the new benefit calculations by establishing precise deadlines and short time frames for the transition.[9]

Moreover, section 1303(a) of the Act allows the Secretary to implement the Act in a manner "consistent with the effective and efficient operation of the program." Based on the comments, the final conversion schedule should maintain the efficiency and effectiveness of the program while implementing new rules as expeditiously as possible.[10]

The Department has also revised the implementation schedule for other changes. Based on State agency comments which reasonably demonstrated an inability to meet proposed deadlines, the Department has extended some aspects of the implementation schedule and made it more explicit.[11]

While the choice of any particular date to establish any given deadline may be challenged as not being appropriate for particular States or persons, the Department believes that the overall schedule, detailed in the regulations, is reasonable. Moreover, the issuance of specific timeframes or dates insures a more uniform national implementation and sets deadlines for State agencies to meet.

To provide FNS with flexibility to cope with problems not currently anticipated or serious difficulties in the actual implementation FNS may grant extensions for some of the deadlines, but only where the State agency presents compelling justification in writing and establishes an alternative schedule. Under no circumstances will extensions of more than 120 days be allowed.

One aspect of the special implementation schedule should be explained in more detail. To integrate the current procedures for claims and credits into the new program and to eventually eliminate the need to cope with stale claims and credits which arose under the Act of 1964, the Department shall consider that any causes of action, still existing on November 1, 1978, shall be considered to have arisen on November 1, 1978.

Households shall have until November 1, 1979, to file for benefits lost under the Act of 1964 through underissuances. State agencies shall have until November 1, 1979, to file claims against households for overissuances under the Act of 1964; so long as the cause of action existed on November 1, 1978.

To avoid maintaining active files on lost benefits and to convert to the new procedures, all households entitled to lost benefits at the time of conversion to the new program are entitled to restoration in one lump sum, even if ineligible, as specified in these rules. State agencies are encouraged to implement these procedures concurrently with the elimination of the purchase requirement. In addition, State agencies that can readily identify households that have been unable to receive their entitlement to lost benefits because they are ineligible must notify these households and restore the lost benefits within 4 months of implementation of the lost benefits procedures. In State agencies where these households cannot be readily identified, a one-time-only press release must be issued which notifies ineligible households that their lost benefits can now be restored.

The implementation schedule for the transition to the new allotment and income calculations is:

(1) All States [12] must have eliminated the purchase requirement effective for

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[5] For example, the Department of Social Services for Los Angeles County doubted their "ability to implement a totally new food stamp program within the proposed time schedule." That county recommended EPR 60 days in advance of the caseload conversion. Their letter notes: We fear an inadequate time allowance for a project of this magnitude could create a chaotic situation, which would be detrimental to clients and the agency alike * * *. The size and complexity of our department will require careful planning and coordination to avoid serious errors and logistical problems * * *. Implementation of the new regulations must be spread out to enable staff to maintain adequate service to our clientele during the training and conversion phases.

[6] New Mexico suggested that beginning the conversion process with EPR, would provide additional time to "* * * enable State administrators to analyze * * * manpower requirements * * *." The Legal Services Corporation of Alabama noted: Indeed, early implementation of EPR may simplify later implementation of the rest of the food stamp program by having most of the confusion inherent in this change (mainly, recipients wrongfully believing they will receive their entire allotment at no cost) straightened out first.

[7] Among States requesting EPR as the first step in the implementation of the new benefit calculations were: Vermont, Texas, New Mexico, New York, Colorado, Missouri, Nebraska, Rhode Island, Louisiana, Utah, and Oklahoma.

[8] Section 8(a) of the Act ties coupon allotment levels to the household income calculations found in section 5 of the Act. Moreover, the House Report discusses the close interrelationship of EPR to the new income and eligibility factors.

[9] While the Administrative Procedure Act (5 U.S.C. 553) requires that departments take into consideration compelling arguments raised by commenters, that Act would not allow the promulgation of final rules contrary to the Food Stamp Act.

[10] Shortly after the proposed schedule was published, a court decision concerning that schedule was issued by Federal District Judge Cale Holder, Southern District of Indiana. In *Indiana Welfare Rights Organization (IWRO)* v. *Bergland* (U.S.D.C. S.D. Ind., June 30, 1978) it was argued by IWRO that EPR was not closely interrelated or tied to the new household income calculations and that EPR should be effective Jan. 1, 1977. The Department argued, based on the wording of the Act and the legislative history, that those two aspects of the program were inextricably linked.

The court denied plaintiffs' motion for immediate EPR based on 1303(a) of the Act which, as the court stated, "does not *require* any section of the Act to be implemented sooner than any other section of that Act." (Emphasis added.) The court also found that, "[t]he failure of the defendant Robert Bergland to eliminate the purchase requirement prior to implementation of the rest of the Act does not violate the rights of the plaintiffs * * *."

The Department believes that both the proposed and the revised implementation schedule are consistent with that opinion. While the decision provided that the Secretary is not "required" to implement EPR ahead of other provisions, it does not seem to limit the Secretary's discretion to implement EPR as the first step in a conversion process that recognizes the interrelationship of EPR and the new income calculations.

The fact that one implementation approach is found not inconsistent with the Act does not seem to preclude careful analysis and response to comments, as required by the Administrative Procedure Act, and the development of a different schedule which is also consistent with the Food Stamp Act.

[11] As noted earlier, sec. 1303(a) of the Act allows the Secretary to implement the Act, as expeditiously as possible, consistent with the effective and efficient operation of the program.

[12] The term "States" as used in this schedule, includes the "counterpart local agencies," in States "where such assistance pro-

Footnotes continued on next page

all households no later than the January 1, 1979, issuance.

(2) States must begin implementing the new eligibility and benefit determination rules no later than March 1, 1979.

(3) States may implement EPR earlier than January 1, 1979, provided they begin to convert to the new eligibility and benefit determination rules not later than 3 months from the date they implement EPR.

(4) State agencies may implement the restoration of lost benefits prior to implementation of the other certification rules. The restoration rules shall apply to all households, even those households certified under the Act of 1964. Households entitled to credits for lost benefits which have not received the benefits because of ineligibility, shall be entitled to a restoration of these lost benefits, as soon as the new restoration rules are implemented.

(5) Effective on the first day that the new eligibility and benefit determination rules are applied, those rules must apply to all new applicants and to each household which is recertified. Households certified prior to the first day of the 120-day maximum conversion period, but after the EPR date, shall receive the bonus amount provided under the Food Stamp Act of 1964, instead of the regular allotment, until recertified or until desk reviewed.

(6) States have 120 days from the day they begin implementing the new eligibility and benefit rules to complete the conversion of the existing caseload, through recertification or desk reviews, to the new income and benefit determination rules. No extensions of this rule will be granted.

Program Administration and Personnel Requirements

Merit personnel. The proposed and final regulations specify that certification personnel must be employed in accordance with the current standards for a merit system of personnel administration or any standards later prescribed by the U.S. Civil Service Commission. This language is based on requirements of the Act. Several commenters questioned whether food stamp eligibility workers must be hired under exactly the same merit requirements as are applied to AFDC eligibility workers. In the future, the Department will issue proposed rulemaking addressing this subject. At this time, the Department intends to propose that equivalent personnel standards be applied to AFDC and food stamp eligibility workers.

Several commenters recommended that the use of volunteers be stressed or mandated. The Department agrees that in many instances volunteers can be useful to program administration. A statement was added to encourage State agencies to use volunteers in activities such as outreach, prescreening, assisting applicants in completing applications, and securing needed verification.

Staffing standards. The proposed and final regulations require State agencies to employ sufficient staff to certify and issue benefits to eligible households and to process fair hearing requests within the required timeliness standards. Approximately 780 commenters discussed staffing standards and most were concerned that specific caseload standards were not set by regulation. Prior to issuing definite standards, the Department will contract for a study and evaluation of State agency certification procedures and develop a general method for establishing staffing standards. The Department plans to issue this contract in December of this year so that the study will be conducted after the new eligibility criteria and processing standards are in effect. Comprehensive standards aimed at improving the quality and efficiency of services will be published as proposed rulemaking and comments will be solicited and analyzed prior to adoption of final rules.

Bilingual requirements. The proposed regulations required bilingual services based on the total number of households needing that service compared to the number of low-income households in a given project area. There were separate standards for large and small project areas. Large project areas (over 3,000 low-income households) had to provide bilingual materials and staff if they had at least 150 households of the same single language low-income group.[13] Small project areas (3,000 or less low-income households) had to provide bilingual materials and staff if they had at least 50 such households.

Although many commenters suggested adoption of a uniform percentage test, the Department rejected that concept because it could require bilingual service in sparsely populated areas where only two or three households are of a single language minority group. Conversely, in densely populated low-income areas, hundreds of single-language minority households could be an insufficient number to meet the percentage test required for bilingual services.

Other commenters took issue with the actual numbers (150 if more than 3,000; 50 if 3,000 or less) the Department had chosen. Consequently, to provide adequate bilingual services[14] to non-English speaking households and to also establish a more uniform standard that is equitable to all, regardless of project area population, the Department developed the following criteria. State agencies must provide appropriate language certification materials and bilingual staff or interpreters in each individual certification office that serves an area containing over 100 single-language minority low-income households and in each project area with less than 100 low-income households if a majority of these households are of a single-language minority.[15] Certification materials are defined in the final regulations as including the application form, change report form and notices to households. If State agencies are required to print notices in more than one language other than English, the notice may be printed in English with a summary of the content in all other required languages and with a telephone number to call for more information about the notice. In addition, State agencies must provide appropriate language outreach materials in each project area containing less than 2,000 low-income households if over 100 of those households are single-language minority low-income households. For project areas containing over 2,000 low-income households, bilingual outreach is mandated if over 5 percent of the low-income households are in the same single-language minority. In addition, any project area which is required to provide bilingual staff and certification materials must provide bilingual outreach materials. As previously proposed, project areas with seasonal influxes of non-English speaking households are required to provide bilingual services during those months when enough single-language minority households move into an area to trigger either the bilingual materials and staff or the bilingual outreach requirement.

The proposed regulations required State agencies to develop estimates of the number of households needing bilingual services in each project area. Suggested sources for the information were listed in the regulations. In response to comments, migrant service

Footnotes continued from last page

grams are operated on a decentralized basis," as referred to in sec. 3(n) of the Food Stamp Act of 1977 (7 CFR 270.1(n), current regulations).

[13] This phrase refers to households which speak the same non-English language and which do not contain adults fluent in English as a second language.

[14] Of course, households are permitted to bring their own interpreter with them to interviews.

[15] The Department believes that in sparsely populated areas, in which a non-English language may predominate, that there should be bilingual service regarding that language. For example, in areas of Puerto Rico where Spanish is the predominate language (and English is not spoken as a second language) it seems appropriate to respond to the needs of those households for bilingual service.

organizations were added to the list of source agencies.

Although many commenters, particularly State agencies, stated that the suggested information sources were inadequate to make accurate estimates, the Department has retained the requirement in the final regulations. The Department assumes that many State agencies know in general terms if they have large numbers of non-English speaking residents and that most can make estimates of the number of such households by using the suggested information sources. However, for the benefit of those project areas that cannot determine from those sources whether they are required to provide bilingual materials or staff, the regulations have been expanded to include the following method for arriving at a determination. For a 6-month period, as described in the implementation section of the regulations, certification offices in each such project area should record the total number of single-language minority households that visit the office to make inquiry about the program, file a new application for benefits, or be recertified. If over 100 single-language minority households are served in the 6-month period, that certification office will be required to provide bilingual staff or interpreters.[16] Any project area containing a certification office required to provide such bilingual service (contains over 100 single-language minority households) must provide bilingual outreach materials.[17]

State agencies meeting the requirements for bilingual materials must develop and distribute those materials in accord with standards set by regulation for use by program participants and the potentially eligible. FNS will develop program materials in a number of languages and will provide States with either the actual materials or with the format and language for reproduction by the State. FNS Regional Offices will contact State agencies in the near future about this distribution process.

Training. The proposed regulations required States to designate a training coordinator to develop training materials, supervise training sessions, insure that appropriate personnel receive training, and monitor compliance with the requirement for public participation in training sessions. About 1,100 commenters recommended that the training coordinator be a full-time position. In light of the critical importance of training to the effective operation of the program, the regulations were revised to require a full-time State level training coordinator. In addition, States that can demonstrate to FNS that they can fulfill the training requirements with a part-time coordinator may obtain a waiver from the requirement for a full-time position.

The proposed and final regulations require that training programs cover eligibility criteria, certification procedures, household rights and responsibilities, and other job related responsibilities concerning the certification of households. Interviewing skills and civil rights training have been added as subjects for which training should be provided.

The proposed regulations also required the training of outreach workers and others who prescreen or provide other services to applicants. A requirement that hearing officials be trained at least once during the first year of tenure was also proposed. Many commenters recommended further expansion of the training requirement. In response to such recommendations and in recognition of the significance of training, the final regulations require training for receptionists who prescreen applicants and for hearing officials [18] and performance reporting system reviewers both before the assumption of their duties and periodically as needed.

Advocacy groups and members of the public commented that the rules for public attendance at formal certification training sessions were too restrictive, and the number of public slots should be expanded. A number of State agencies registered an opposing viewpoint, and asked that requirements for public attendance be deleted.

The Department has retained the public attendance requirement, but modified it substantially. Several State agencies commented that certification training is detailed and technical, that it might not be useful to members of the public with only a general interest in the food stamp program, and that the trainees might have to move more slowly and cover less material if these public members were to benefit from the training. The Department agrees with these comments. Accordingly, the final regulations focus public attendance on persons "who represent recipients or organizations working on behalf of recipients, who are knowledgeable about program eligibility rules and certification requirements, and who are actively engaged in work or volunteer activity related to food stamp certification rules." These persons are the members of the public who could benefit most from certification training. Other members of the public can be trained in State training sessions for individuals and organizations involved in outreach or prescreening, which both the proposed and the final rules require.

Because of this focus on a particular group of public representatives, the Department has determined that number of required public slots at these sessions can be reduced. Accordingly, the final rules provide that only 5 percent of the attendance at these training sessions, up to a maximum of five persons, need be set aside for the public. This is half the number required in the May 2 proposal. In addition, to avoid burdening State agencies with having to provide for public attendance in small training sessions, the final rules exempt training sessions of fewer than 20 persons. This exemption is consistent with the exemption contained in the proposed regulations, and retained in the final regulations, for training sessions that are not statewide, citywide, or regional. The comments from the State of Oregon suggested this general approach. Oregon commented that rather than opening these sessions to the general public, the Department should instead authorize States to limit public attendance to knowledgable client representatives. "Limiting public attendance to client advocate groups would better serve the general public," Oregon wrote. In addition, "[I]t would inform these groups on program [sic] while introducing them to the staff that carries out the program. Additionally, problem areas could possibly be resolved without long legal battles. Finally, it would enable them to see program administration from a different prospective."

Some States were also concerned that if they put out general annoucements to the public, far more members of the public would show up than the 10 percent that the proposal envisioned. The Department agrees with this concern. Accordingly, the final rule specifies that States shall directly invite individual members of the public who can attend the session; the States need not issue general announcements.

The Department expects States to invite individuals who are knowledgeable about the rules, and directly engaged in food stamp work on behalf of low-income households. The final rules prohibit the exclusion of qualified individuals due to disagreements between these persons and the State concerning the State's food stamp program.

[16] Of course, the need for bilingual service changes with changing concentrations of persons needing the service.

[17] The presence of a certification office in a project area which is required to provide bilingual service would be, in most cases, indicative of the possible need for bilingual outreach in the entire project area. The relatively low additional costs for bilingual outreach, as compared to regular outreach, justifies these efforts.

[18] FRAC strongly recommended comprehensive ongoing training for hearing officials to insure that their decisions reflect current FNS regulatory requirements.

The Department also received comments from a few States expressing concern that public representatives would disrupt training sessions. Although the Department does not believe this would occur in many instances, the final rules do allow States the option of limiting the role of public attendees to observers. The Department hopes that few States will find it necessary to exercise this option.

The Department considered the comments from advocacy groups that more, not fewer, public representatives should be trained at these sessions. However, the Department believes that these persons can receive training through the required training sessions for persons engaged in outreach or prescreening work.

Because the Department believes that training is criticial to the proper implementation of these regulations, a new paragraph has been added to the final regulations to explain the requirement for training prior to implementation. Eligibility workers and their supervisors must be trained on all new eligibility criteria and certification procedures, including the new processing standards, before households are certified under the new regulations. The requirement for public attendance at training sessions is to be implemented with these preimplementation training sessions. Hearing officials and quality control reviewers must also be trained before they assume their duties under the regulations.

Outreach

Ongoing outreach. The proposed regulations did not contain any new ongoing outreach requirements. As that preamble pointed out, the ongoing outreach requirements will be published in subsequent rulemaking. Current outreach requirements will remain in effect until otherwise specified. There is one change from current requirements. Rather than have State agencies submit outreach plans covering January to June 1979, the final regulations require State agencies to submit outreach plans by December 1, 1978, covering January 1979 through September 1979. It is envisioned that the new outreach requirements will be implemented under approved plans by October 1, 1979. By extending the period of time covered by the next State outreach plan the Department hopes to insure continuity in the States' outreach programs and avoid duplication between ongoing and special transition requirements without requiring interim outreach plans.

Transitional outreach. The proposed regulations set specific requirements for printed information, hotlines, other publicity efforts such as press releases and radio spots, and for contacting organizations that can assist in outreach efforts. Those requirements remain unchanged in the final regulations except for the following revisions.

The proposed regulations required States to comply with the transitional outreach requirements 1 month prior to implementation of any program changes. Many commenters expressed concern that 1 month advance publicity was too early. The felt it would confuse households and cause demands for EPR before the State was prepared. Consequently, the 1-month requirement has been replaced by a 1-week requirement.

The proposed regulations required States administering a supplemental payment program for SSI recipients to mail notices of the food stamp changes to all SSI households. This requirements is deleted. The Social Security Administration has agreed to mail a notice on a nationwide basis (except in the States of Massachusetts, Wisconsin, and California). The Department is currently working with the Social Security Administration to design and print the notice for distribution with February SSI checks.

The proposed and final regulations require States to supply offices which serve the low-income households with brochures or pamphlets that describe the new eligibility criteria, application processes and household rights and responsibilities. In the proposed regulations, general assistance officies were inadvertently omitted from the list of offices subject to these requirements. General assistance offices are sometimes located apart from public assistance and food stamp offices and would represent a useful addition to the list of offices that should be supplied with outreach information. Commenters recommeded that outside agencies be encouraged to distribute the printed materials. Accordingly, the requirements have been expanded to require States to contact local social security offices and State employment offices to enlist their cooperation in distributing the printed materials. FNS will develop suggested content and format for all required printed materials and in some instances will distribute the actual materials to State agencies. FNS regional offices will contact States in the near future to provide more information about this process.

The proposed regulations set forth definite requirements for the number of hotlines in proporation to number of participants in the State agency's caseload. Commenters expressed opposing views on the adequacy of the number of hotlines required in the proposal. The requirement was retained in the final regulations. As noted in the proposal, hotlines, "were chosen as the most expenditious way of disseminating infromation without greatly burdening local project areas."

However, State agencies which can demonstrate that the number of lines is excessive, may contact FNS after 3 months to request permission to reduce the number of hotlines. The Florida State agency and the Children's Foundation suggested that usuage could decline after initial operation.

In response to requests for clarification about hotlines, the following information was added to the final regulations. Hotiine operators should provide the telephone numbers and addresses of local food stamp offices and should explain what documentation or information should be brought to certification interviews. Absolute statements about a caller's eligibility or ineligibility should not be made over a hotline. Upon request, hotline operators should mail food stamp application forms to callers. The hotlines used for food stamp purposes may also be used to disseminate information about other programs administered by State agencies.

Also in response to comments received, a sentence was added which requires State agencies that experience an influx of migrant farmworkers during the transition period to contact local farmworkers organizations to notify them of the availability of training and of printed materials of program requirements.

Nondiscrimination Compliance

Nondiscrimination requirement. The proposed and final regulations prohibit discrimination against any household in any aspect of program administration. In the proposed regulations, the prohibition of discrimination on the basis of color (a prohibition under the Civil Rights Act of 1964) was not made explicit. To insure the equal treatment of all persons, this prohibition has been added to the final regulations. In addition, because of the requirements of the Rehabilitation Act of 1973, a prohibition of discrimination on the basis of handicap has also been added.

Complaints. The proposed regulations required FNS to process all complaints of discrimination. Some State agencies already have nondiscrimination procedures in effect and recommended revision of the regulations to enable States to process nondiscrimination complaints. Accordingly, the final regulations permit States to develop and use a State complaint system. However, the State agency must explain both the FNS and the State complaint system to each person who expresses an interest in filing a complaint. All complainants must be given the opportunity to file a com-

plaint in either or both systems. In addition, the State must submit a report to FNS on each discrimination complaint processed at the State level. FNS review will insure a uniform and consistent review process and facilitate the Department's compliance with the Civil Rights Act. The 180-day time period for filing a complaint is in accord with current departmental regulations (7 CFR 15.6) and was not changed although several commenters suggested a reduction of the time period.

Public notification. In the final regulations reference to the poster "And Justice For All" was deleted because the Department will be distributing a new nondiscrimination poster in the near future.

Data collection..The proposed regulations required the eligibility worker to record the applicant's racial/ethnic category based on observation. In response to the comments, the final regulations allow States to designate a place on the application form for applicants to voluntarily record the households' racial/ethnic category. States that choose this option must use an application form which clearly indicates that the information is voluntary, that it will not affect eligibility or benefits, and that the reason for the information is to insure that program benefits are distributed without regard to race, color, or national origin. The eligibility worker's impression of household racial/ethnic composition, from physical observation of the applicant, is not considered as reliable as a self-declaration made by the applicant. However, if the household fails to make an entry, the eligibility worker should complete the form based on observation.

The proposed regulations set forth a list of racial/ethnic data for the State agencies to collect and maintain in their recordkeeping systems. Many State agencies commented that they do not presently have the capability to collect the required information. The Department recognizes the complexity of the recordkeeping requirement as proposed. In addition, the Department has determined that the proposed data items may not be the best indicators of civil rights compliance. Therefore, the proposed requirement has been deleted from the final regulations. However, the Department continues to believe that increased attention to the treatment of minority group members is a vital part of its administrative responsibilities. Therefore, each data item will be reevaluated and future rulemaking will address requirements for both collecting and reporting racial/ethnic data. Until further notice, State agencies shall continue to report racial/ethnic data on participating households as is currently required.

Household Concept

Household definition. The proposed definition of household [19] was criticized in that it would have allowed spouses, and/or their minor children, to claim separate food stamp household status even though they were living together. Commenters felt it was most unlikely that any of these family members would, in fact, be separate household units. While some spouses (and/or their minor children) that live together could be independent units, the Department has adopted the general rule that separate household status shall not be extended to either spouse,[20] where both spouses live together, or to a minor child living with a parent or guardian.

Correct application of the proposed rule, allowing separate household status for spouses (and/or their minor children) which live together, could have involved intrusions into sensitive areas of family privacy. Yet, failure to examine those familial interrelationships would allow program abuse through unverifiable assertions of separate household status. The revised definition prevents this abuse, protects family privacy and expedites the certification process.[21]

Some commenters suggested that the phrase "unemancipated minor" replace the phrase child "under the parental control of a member of the household." While the proposed phrase, made final by this rulemaking, is not as legally precise as "unemancipated minor," that recommendation would mandate a knowledge of various State statutory and common law requirements and could require time consuming analyses in particular circumstances. In addition, many commenters expressed concern that spouses and other family members who actually comprise one unit could claim separate household status because they eat some of their meals away from home. For example, a married person who is an interstate truck driver could claim that that person "customarily" eats meals away from home. Under the proposed regulations the individual could have claimed household status, separate from spouse and children, even though that person had no other residence.[22] If the household were divided, the family would receive a larger allotment because the individual's income would not be attributed to the household. Under the final regulations, a person like the truck driver cannot claim separate household status.

The description of a group of individuals which make up one household was slightly revised because some readers had strictly interpreted the definition to mean that all household members had to go to the grocery store and cook meals together to be a single household.[23] It was not intended that household status be dependent on which member(s) of the household unit did the shopping or prepared the meals.

Nonhousehold members. Commenters expressed confusion about whether nonhousehold members could receive program benefits as separate households. As a result, a sentence was added to explain that nonhousehold members, who are otherwise eligible, may participate as separate households.

Although many commenters felt that boarders should not be eligible for food stamps, the eligibility of boarders was contemplated by the Act. Commenters also expressed concern that boarders would use food stamps to pay for board. Therefore, a clarification is added that requires that the payment for board be made in cash. The use of food stamps to pay for board would violate section 15 of the Act.

Households making reasonable payments for board may be eligible as separate food stamp households. The proposed regulations provided three reasonable payment standards for board. The proposed payment standards were: (1) the amount of the appropriate thrifty food plan; (2) the local rate, if less than the thrifty food plan; or (3) less than the thrifty food plan if some meals are eaten elsewhere. Many State agencies criticized the use of local community rates as vague and confusing in addition to representing a deviation from national uniform eligibility standards.[24] Consequently, that criterion has been eliminated from the regulations.

Many States also complained about the complexities of determining a reasonable payment for boarders who eat

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[19] Certain comments suggested that the thrifty food plan reflect the increased nutritional needs of pregnant mothers by regarding the unborn fetus as a household member. The Department can find no justification for that position in the Act or in the extensive legislative history.

[20] A definition of spouse is now included in § 271.2 which clarifies that a ceremonial marriage is not always necessary for purposes of the restriction on the separation of households.

[21] Louisiana also noted that "[no] part of these regulations would have a more adverse effect on the image the public has of the food stamp program than to allow a man and wife to be certified as separate households."

[22] As noted in these rules, persons can only apply for food stamps in the project area in which they currently reside.

[23] The California State agency examined this problem in its comment.

[24] The North Carolina, Arkansas, and Pennsylvania comments are representative of this criticism.

some meals outside of the board arrangement. That provision has been retained, however, as the House Report states that, "[a] boarder should be anyone who pays compensation for his meals that is reasonable, whether or not that compensation is less than the allotment for a one-person household or one-fourth of the allotment for a four-person household." In an effort to simplify the administrative complexities of determining what constitutes a reasonable payment, the Department deleted the 60 cents per meal calculation. Instead, the eligibility worker should determine if the boarder generally eats more than two meals per day through the board arrangement. If so the full thrifty food plan amount would be the required board payment. However, if the boarder, on the average, eats two meals or less per day through the board arrangement, a payment equaling two-thirds of the thrifty food plan would be considered reasonable. This provision will prevent boarders from being required to make a full board payment when they eat some meals elsewhere on a routine basis, and yet is much easier to apply, less prone to errors, and more uniform than the proposal.

A commenter asked for clarification of the household status of an individual or family that, because of loss of income, was forced to temporarily move into the home of friends or relatives. Under such circumstances, that person or family which customarily purchases food and prepares meals separately from the household that took them in, could apply as a separate household. This clarification does not represent a change in policy and is consistent with the Act.

Boardinghouse. The proposed regulations defined a boardinghouse as an establishment which is recognized by the community as a commercial enterprise. The phrase "recognized by the community" was criticized as vague and difficult to apply. Commenters suggested that, where available, licensing standards be used. Accordingly, the Department incorporated a licensing standard into the regulations. However, in project areas without licensing requirements, boardinghouse shall be defined as a commercial establishment which offers meals and lodging for compensation with the intention of making a profit.

Head of household. In the proposed regulations, the head of household was defined as the household member responsible for acquiring the greatest amount of earned income within the previous 60 days.

Nearly all of the 300 commenters discussing this section criticized this definition because it would permit a minor to be the household head and would cause the household head to change frequently. Since this regulatory definition was proposed only for purposes of implementing the voluntary quit provision of the Act, it has been modified. States may devise their own method for designating the head of household. However, that definition may be used purely for recordkeeping purposes and cannot be used to impose restrictions on who may apply for food stamps. A definition of primary wage earner will be proposed in subsequent rulemaking in order to implement the voluntary quit provision.

Residents of institutions. The proposed regulations restate the current policy that individuals shall be considered residents of an institution when the institution provides them with the majority of their meals as part of the institution's normal services. In the proposed regulations the remainder of the sentence was inadvertently omitted and it has been added to these regulations. That addition reads "and the institution has not been authorized to accept coupons."

This revision protects the participation rights of the elderly residing in HUD's section 8 housing. Although some commenters suggested that the types of institutions eligible to participate in the program be broadened to include other social service centers, the Act does not allow that expansion.

Authorized representatives. Most States which commented on authorized representatives wanted clarification as to whether State agency employees can serve as authorized representatives. The proposed regulations appear sufficiently explicit. State agency employees may serve as authorized representatives if no one else is available to serve in that capacity and if an agency official, such as the local director, signs a statement approving that relationship.[25]

The proposed regulations required State agencies to maintain lists of authorized representatives who are not members of the household they represent. Several States pointed out that this requirement imposed an unnecessary recordkeeping burden. Consequently, the requirement for the listing has been eliminated.[26] Other commenters stated that employers, such as those that employ seasonal farmworkers, have been known to press households to allow them to act as authorized representatives and have then misrepresented the household's circumstances and/or withheld coupons from the household. Allegedly, a few employers have overstated the household's income to reduce the food stamp allotment and thereby keep the household dependent upon the employer. To avoid these problems the final regulations require States to report such abuses to FNS. FNS will carefully investigate complaints of this nature.

[25] To limit program abuse, the final rules also more thoroughly discuss the ability of persons disqualified for program fraud to act as authorized representatives.

[26] As noted by the Louisiana Department of Health and Human Resources, "historically the function of keeping a listing of authorized representatives has had minimal effect as a deterrent when compared to the administrative time and effort involved by the State agency. This time and effort could be used more advantageously."

Application Processing

Food stamp application form. The proposed rules, and the Act, require that all State agencies use an application form designated by FNS except that State agencies may deviate from the form to accommodate the use of a joint public assistance (PA)/food stamp application form or to accommodate the needs of a computer system or for other exigencies. The Department has designed and tested an application form. The results are now being evaluated and the final forms will be distributed shortly.

Over 1,400 letters contained comments on this section, with the large majority opposing some aspect of the proposal. Many commenters wanted the application to have a detachable receipt with the filing date and an explanation of processing rights and standards. Others requested that FNS devise a simplified form in large type, with easy instructions, and a full explanation of all household rights. A few groups wanted households to be given a copy of the completed form.

The Department is considering these comments, and other relevant comments, in its evaluation of the proposed application form. However, the Department believes that detachable receipts represent an unreasonable processing burden for State agencies. Since applicants have the option of mailing or submitting the initial application in person or through a representative, a complicated procedure for validating the tear-off receipt would have to be devised. In the case of households entitled to expedited service, a tear-off receipt would not be useful because application processing begins almost immediately. However, the Department is aware of the importance of advising applicants of their rights and responsibilities. The form that was tested has a filing page that is detachable and contains information about the applicant's filing rights. Clarification has been added which requires that the State agency document the date the application was filed by recording on the application the date it was received in the appropriate office.

Participant rights on filing and applying. The proposed rules provided

that the household has a right to file an application on the same day it contacts any food stamp office during office hours in the project area in which it resides. The proposed rules also required State agencies to encourage households to apply on the same day contact is made with the food stamp office and to mail applications on the same day an inquiry is received. The State agency must also make applications readily available to potentially eligible households and post a notice of a household's right to file an application in the certification offices.

Approximately 1,600 commenters mentioned some aspect of this section and just over 1,550 expressed some opposition to certain aspects of the requirements. Many comments requested that the final regulations require each certification office to maintain a log indicating when applications are filed. Others recommended that, either in addition to or instead of a log, households be given a receipt showing their filing date and explaining processing standards and also that rights to timely processing and immediate filing be publicized by posters, handouts, and by certification office staff. Several individuals suggested that receptionists be bilingual and be able to explain the application process to potential applicants and that eligibility workers be required to assist households with applications. Many letters from program administrators wanted to extend the same day standard for mailing out forms requested by phone. Some requested that more information be required on an application form prior to considering the form filed. The comments totally in favor of this provision approved of the household's right to receive a form and to file a partially completed application without delay.

In the final rules, the Department has revised the statement on the household's right to file an application to clarify that the processing time begins when the application is filed in the appropriate food stamp office designated by the State agency to accept the household's application. In conjunction with this, the rules contain a procedure for referring applications to the appropriate office by the office which received the application. The Department has also added a statement that the State agency shall provide an application form to anyone who requests it. To protect the household, the State agency will be required to record the date the form was received on the application form.

An additional paragraph has been included which provides for voluntary withdrawal of an application by a household at any time during the certification process. If a household does withdraw, the reason, if given, shall be documented in the case file and the State agency shall confirm the withdrawal with the household.

The same day standard for mailing out forms requested over the phone has been retained to assure that households unable to visit the office are provided with prompt service, especially since some of these households could be entitled to expedited service.

Household cooperation. The proposed rules stated that if the household refuses to cooperate with the State agency in completing the application process, the application shall be denied at the time of refusal. As noted in the proposal, "to be denied, the household must refuse to cooperate, not merely fail to cooperate or be unable to do so."

Nearly 350 comment letters mentioned this provision, and approximately 80 percent of these were negative concerning some aspect of it. Many public and group comments wanted the final regulations to stress that eligibility workers had an affirmative obligation to help applicants with the application process. Several program administrators wanted the regulations to clarify or define the difference between refusal and failure to cooperate. Public and advocacy groups suggested that the regulations include a provision requiring the State to send a notice to households of the intent to deny for failure to cooperate.[27]

They also requested that the rules clearly state that refusal to cooperate must be intentional, not merely a failure to cooperate or an unsuccessful attempt to provide verification.[28] To assure the expeditious handling of applications, State and local agencies were concerned that households must be made more responsible for providing needed information in a timely manner and suggested that the State agency be permitted to establish time frames for the return of information.

The Department has revised the rules to more precisely define a refusal to cooperate. A household must be able to cooperate, but clearly demonstrate that it will not do what is required to complete the application process. The final rules cite, as an example of a refusal, that the household must refuse to be interviewed, not merely fail to appear for the interview. The final regulations further state that if there is any question as to whether the household has refused to cooperate, the household shall not be denied.

Interviews. The Department proposed that the face-to-face interview remain the primary interview technique. The interview facilities were to be of adequate size and layout to preserve privacy and confidentiality and to protect the dignity of the applicants. However, upon household request, the State agency would waive the office interview if the household was unable to appoint an authorized representative and no responsible member was able to visit the office because of age (65 or older) or mental or physical handicap. The State agency would also waive the office interview if it determined that the household was unable to appoint an authorized representative and no responsible member could come to the office because of illness, lack of transportation, prolonged, severe weather or work hours that preclude in-office certification. If an office interview were waived, the State agency could conduct either a telephone interview or a home visit. The rules covering verification requirements and certification periods were the same no matter what interview technique was used.

Of approximately 300 comment letters on interviews, 250 were opposed to some aspect of the provision. the limitations on granting waivers to in-office interviews were of major concern. Several persons and groups felt the waiver should be automatically given to the physcially or mentally handicapped, the elderly (with the age limit reduced to 60 from 65) and all applicants in project areas which are out of compliance with the points and hours standards. Some organizations wanted State agencies to publicize the availability of alternative interview methods and to insure that eligibility workers actively assist households with applications.

State and local agencies saw home visits as a major issue. Several local agencies expressed opposition to prescheduled home visits and wanted the responsibilities of the household and the eligibiliy worker for completing home visits spelled out. Program administrators wanted precise guidelines for privacy standards while advocacy groups wanted the regulations to require adequate waiting rooms for local offices.[29]

The final rules for conducting interviews remain essentially the same as in the proposed rules. However, some language has been added to further clarify State agency requirements. State agencies shall be required to explain to applicants the processing standards and the household's responsibility to report changes. In addition, as an added household protection, State agencies shall reschedule inter-

[27] Any denial for refusal to cooperate may be challenged in a fair hearing under the proposed and final rules.

[28] The Department believes that it is sufficiently clear that the refusal must be intentional before a household may be denied for that reason.

[29] The Department does not believe it can reasonably establish precise nationwide privacy standards, or other office layout requirements, for the variety and multitude of local offices.

views without requiring the household to show good cause for failing to appear at the original interview. If the household fails to appear at the rescheduled interview, the State agency need not initiate any further action unless the household requests that an interview be scheduled.

The Department rejected the suggestion to reduce the age limit for mandatory waiver of the office interview to age 60. State agencies will have the option of allowing households between 60 to 65 to waive the office interview. However, the Department did not believe that a blanket mandatory waiver for this age group was necessary. Many people age 60 to 65 are in good health and do not have mobility problems significantly different from younger individuals.

Language has also been added which enables the office interview to be waived if household is living in a location not served by a certification office as defined in the points and hours regulation when they are published.

Verification and documentation. The Act requires that gross nonexempt income be verified but gives the Secretary broad discretion for setting standards to verify other factors of eligibility. In addition to requiring that gross nonexempt income be verified in all cases, the proposed regulations required verification of the alien status of household members identified on the application as aliens, verification of actual utility bills if they exceed the State's utility standard, and verification of shelter costs if they exceed an amount established by the State agency as reasonable for that shelter component. All other factors of eligibility would be verified only if inconsistent with other information on the application, previous applications, or other documented information known to the State agency.

In the final regulations, State agencies are still required to verify gross nonexempt income, actual utility expenses, and alien status. A few persons objected to the requirement that alien status be verified in all cases. Since many aliens may not know into which technical Federal alien category they have been placed, the Department believes it is essential that the eligibility worker ask the alien to present the appropriate INS documentation. The person's exact alien classification is critical, under the Act, to program eligibility.

The Department recently discovered that the proposed regulations did not deal adequately with INS form I-94. That form does not always precisely indicate whether the alien is in one of the categories eligible for food stamp benefits. The regulations regarding INS form I-94 are revised to indicate that the form is considered definitive verification of eligible alien status only if the form is annotated to indicate that the bearer falls within specific eligible categories. Also, if the INS form I-94 is annotated with the letters "A" through "L" it indicates ineligible alien status. Aliens bearing an INS form I-94 so annotated are classified by INS as nonimmigrants, and accordingly, are ineligible for food stamp benefits unless other evidence of eligible status is provided by the household. If the INS form I-94 does not bear evidence of alien classification that specifically indicates the alien is eligible or ineligible, and the alien has no other acceptable verification of alien status, the State agency must advise the alien of the exact classifications that result in eligibility. Also, the State agency must explain that if the alien acquires acceptable verification from INS, and meets all other eligibility requirements, that will result in eligibility for food stamp benefits. In addition, because of the technical nature of these classifications, the State agency must offer to assist the household by contacting INS for clarification of the alien's status. Although this requirement imposes somewhat of a burden upon both the State agency and the household, it is the only workable solution the Department could devise to conform with the requirements of the Act. These procedures are necessitated by the fact that the Act's classification of eligible and ineligible aliens does not always precisely coincide with INS documents.

The large majority of persons commenting on the verification of alien status strongly suggested that the regulations specify that State agencies be allowed to contact INS only with the written consent of alien. This suggestion is adopted. Under Federal law, aliens are required to have proper INS registration cards with them at all times. State agencies should not, as a matter of course, have to bear the costs and the responsibility of contacting INS on an alien's behalf if the alien has no INS documents. Securing these documents is the alien's responsibility. The final regulations specify that the household may withdraw the application or participate without the alien member, if the alien member cannot provide the proper INS documentation and the alien does not allow the State to contact INS.[30]

Most of the State agencies opposed significant aspects of the proposed verification procedures for the other eligibility factors. They felt the procedures did not give States enough flexibility to adequately verify information and could lessen program accountability.

The final regulations, regarding verification of other eligibility factors, have been considerably changed. The final regulations require that the other eligibility factors be verified only if they are questionable and would affect a household's eligibility or benefit level. Questionable information includes instances when the information on the application is inconsistent with statements made by the applicant, inconsistent with information on the application form or previous applications, or inconsistent with information received by the State agency. Therefore, unlike the proposed regulations, verification may be requested if statements made by the applicant during the interview are inconsistent with information on the application. Instead of requiring that the State agency have documented information which indicates that the information on the application is inconsistent, the State agency may, under the final regulations, request verification if it has received oral or written information that is inconsistent with the information contained on the application. Thus, to protect the integrity of the verification process, States are not limited to seeking verification only if they have documentation, independent of the interview, which indicates doubt regarding certain household information. However, the State agency is required to record in the case file the reason why information is considered questionable such that verification is required.

Several State agencies suggested that information on the application should automatically be verified if the household's total bills exceed its income. The final regulations allow the State agency to verify such circumstances, where the situation is still questionable after the household has had an opportunity to explain. Households may use resources or excluded income to pay bills or may not be paying all of its bills every month. The practice in some States of automatically denying a household when its expenses exceed its income is prohibited. The State agency must fully explore with the household how it is managing its expenses in light of its income and resources.[31]

Several comments on verification of citizenship suggested that State agencies accept as proof of citizenship a signed statement from someone who can attest that the member in question is a U.S. citizen. This suggestion is

[30] This approach is consistent with the House report which states that, "the Committee has no interest in turning food stamp certification workers into adjuncts of the Immigration and Naturalization Service informing on applications as alleged illegal aliens."

[31] It has come to the Department's attention that some households have been denied participation solely because its total bills have exceeded monthly income. This practice is not permissible under the regulations or the Act.

adopted for only those cases where no other form of verification has been obtained, after reasonable efforts were made, and if the household can provide a reasonable explanation as to why verification is not available.

Participation in the AFDC program has also been added as an example of acceptable verification of citizenship if that verification was obtained as part of the AFDC certification process.

Under the proposed regulations, the State agency was required to substantiate that a household member was not a U.S. citizen or an eligible alien before that member could be denied benefits. Several agencies strongly objected to this provision as they believed it would be extremely difficult to prove that someone is not a U.S. citizen or an eligible alien, unless the State was allowed to contact INS. The final regulations place the burden of providing verification of U.S. citizenship on the household. However, verification of citizenship is required only in questionable cases.

Instead of providing that persons remain in the program until the State agency disproves citizenship, the final rules provide that the member whose citizenship is in question be given 2 months to prove citizenship, and be allowed to participate pending the verification of citizenship, if otherwise eligible and if efforts are being made to obtain the necessary verification. If verification is not received within 2 months, that member becomes ineligible.

State agencies were also concerned about verification of liquid resources and loans. Several State agencies felt that they should have more discretion to verify liquid resources and loans. In response to these comments, the final regulations give State agencies the flexibility to verify liquid resources and loans where they feel there is need so long as they verify in every case which is questionable. However, as in the proposal, a simple statement signed by both parties is sufficient to verify that money is exempt because it is a loan. However, to attempt to reduce the possibility of abuse, the final regulations require that the signed statement include language which specifies that the loan will be repaid. In response to public comment, the final regulations allow State agencies to require that the provider of the loan sign an affidavit which states that repayments are being made or will be made in accordance with a repayment schedule in cases where the household receives payments on a recurrent or regular basis from the same source and states that the payments are loans. There is a greater need for verification regarding arrangements involving a series of periodic payments to the household since personal loans are normally made by single payments.

Many commenters recommended that the regulations prohibit the use of a collateral contact without the express written consent of the household. Since the proposed regulations clearly state that the State agency must rely on the household to provide the name of a collateral contact, the Department believes the recommended change is unnecessary.

Several State agencies requested more discretion as to what to verify at recertification. The final regulations respond to these comments by giving State agencies the option of verifying income or actual utility expenses which are unchanged or have changed by $25 or less, provided verification is required when information is questionable. The final regulations also make clear that changes in income or actual utility expenses must be verified if the source has changed or the amount has changed by more than $25. Unlike the proposed regulations, which prohibited State agencies from verifying unchanged information, the final regulations allow State agencies to verify unchanged information if it is questionable. These changes are intended to aid States in helping to maintain program integrity.

Most of the comments regarding verification of the tax dependency status of students suggested that the student should not be denied if the parents did not cooperate in providing verification. The alternative, however, is to allow students to participate whenever the parents failed to respond, even though the student may actually be ineligible. Since the student has the right to request a fair hearing to demonstrate eligibility, and since the Department is unaware of information indicating that most parents of students would be uncooperative in this regard, the Department retains that policy.

Many State agencies were concerned about the extent of their responsibility to assist households in obtaining verification. Verification of shelter costs for unoccupied homes represented a frequent area of concern. The final regulations clarify that State agencies are not required to assist households in obtaining verification of shelter costs for unoccupied homes if verification would have to be obtained from a source outside of the project area.

Several local agencies suggested that households refusing home visits and households which were not at home for a scheduled home visit be denied program eligibility. The final rules provide that when a home visit is warranted under these regulations, a household may be denied for refusal to cooperate if it refuses the home visit. However, if the household is simply not at home for a scheduled home visit, this cannot be considered a refusal to cooperate and the household cannot be denied for this reason. In that situation, however, the household's eligibility would remain undetermined.

Several State agencies felt that a separate BENDEX release form was unnecessary since most social security offices accept the release statement that appears on the application currently used by State agencies. As long as the household member has signed an information release statement, regardless of whether the statement appears on the application form or on a separate form, the State agency has met the regulatory requirements.

Normal processing standards. The proposed rules, in accordance with the Act, require that applications be provided to all persons who make what may reasonably be interpreted as an oral or written request for food stamp assistance. The State may not withhold an application until an interview is scheduled. The 30-day statutory benefit delivery standard was detailed in the proposed rules. The standard began with receipt of an application that need not have been complete, as long as it contained the applicant's name, address, and signature. An opportunity to participate consisted of providing households with an ATP or other authorization and having an issuance facility open and available for the household to obtain its allotment. Within the 30 days following the filing of an application, the household must have completed the appliction, have been interviewed, have had certain information verified, and if eligible, have been provided an opportunity to participate. A standard was also set for processing unverified deductible expenses.

Approximately 200 comment letters touched on this section, and a little over half were critical of some aspect of it. Some comments on this section overlapped other provisions including retroactive benefits, the application form, and application filing rights.

Some groups, while supporting the specificity of both participants' filing rights and processing standards, thought that the regulations should do more to protect the participant and suggested ways for the State agency to be more accountable for meeting the processing standards. A number of groups also believed that the mail delivery of ATP cards would take more than 2 days and suggested alternatives to the 2-day mailing standard, including the use of local variations for mail delivery.

Several comments opposed the requirement that household certified without allowing a deduction for un-

verified deductible expenses [32] are entitled to restoration of lost benefits if the State agency contributed to the household's inability to verify the expense.

Advocacy groups suggested that households be given retroactive benefits whenever verification of the deductible expense is provided, regardless of whether the State agency contributed to the household's inability to verify. Other commenters, especially State agencies, felt that lost benefits were inappropriate for delays or lower benefits caused by the lack of verification.

While the Department carefully considered comments to make processing standards more stringent, no basic changes have been made. The Department contends that the expedited processing standards adequately address the problem of households with a need for immediate delivery of benefits. The comments from State and local administrators regarding the administrative difficulties of the proposed processing standard were also considered. The only change in the final rule was to add clarification regarding when the State agency must mail the ATP to assure that the ATP can be transacted after it is received but before the 30-day standard expires. The language of the proposed regulations seemed to imply that States had to allow 2 days to mail and 2 days for the household to transact its ATP.

Processing delays. The proposed rules provided special procedures when a State agency was not able to determine a household's eligibility because of a delay or incomplete information. If the delay was caused by the household, the State agency was to issue a notice of denial on the 30th day. The State agency would reopen the case without requiring a new application if the household took action to complete the application process within 30 days of the date the notice of denial was mailed. In addition, the State agency was required to allow at least 10 days for the household to provide verification before the delay could be considered to be caused by the household. If the household completed the application process within 30 days from the notice of denial and was found eligible benefits were to be provided retroactive to the month of application.

If a delay occurred and the State agency was at fault, the State was required to notify the household by the 30th day that the application process has not been completed and that the application is still being processed. The State agency would provide benefits retroactive to the month of application if the household was then determined eligible. Benefits delayed more than 60 days were to be restored in accordance with the restoration of lost benefits procedure.

Nearly all of the approximately 200 comment letters mentioning this provision were in opposition to some portion of it. Many of these letters were from program administrators. The largest number of comments concerned processing delays caused by the household. A number of State and local agencies and individuals opposed the proposed system for reopening a case that was denied at the end of 30 days, because of inaction by the household. Most preferred to hold the application pending for 30 additional days while others recommended that the case be denied after 30 days.

Most of the commenters suggested that retroactive benefits be provided in all situations, or suggested that retroactive benefits be provided for State agency delays and restored benefits be given for household-caused delays. Many comments were also opposed to providing benefits back to the month of application when the delay was caused by the household as they felt this provision might encourage households to fail to appear for an interview or provide verification.

The Department has revised this section in a number of respects. The final rules provide specific guidelines for what is a delay caused by the household and what is a delay caused by the State agency. The final rules also establish what procedures the State agency must follow if the delay is the household's fault, and what procedures must be followed when the State is at fault.

If the household is at fault, the State may choose any of several options. First, the State may send the household a notice of denial that informs the household of what additional action the household must take, and notes that if the household takes this action within the next 30 days, the original application shall be reactivated. As an alternative, the State may pend the case for an additional 30 days instead of denying it. If this option is chosen, the State must send the household a notice explaining that action on the case cannot be completed and explaining what additional action the household must take.

A variant of the second option is applicable where the application cannot be processed because the household has not provided all required verfication. In this circumstance, the State may choose to pend the case for 30 days from the date the State first requested the particular piece of verification that is still outstanding. This series of options is presented so that States may choose the option most suitable to them.

If an application is held pending and the household fails to take the necessary action, the final rules do not require any additional notices to be sent when the application is finally denied.

The final regulations also allow States to deny an application at the end of the initial 30-day period, without having to reopen it, if the household has failed to appear for two scheduled interviews and has made no subsequent contact with the State agency to express interest in participating. Such a household must file a new application if it wishes to participate. The application may also be denied if the household has been provided a full 30 days to present veirfication and has not done so. This situation would occur when a household is interviewed and all the needed verification is requested on the same day the household filed its application.

The final rules also modify procedures for providing retroactive benefits when a household is certified after the original 30-day processing period has ended. If the delay was the fault of the household, benefits will not be provided back to the month of application.[33] Instead, benefits will be provided to the month following the month of application.

If the delay was the fault of the State agency, benefits are still retroactive to the month of application. However, if an application cannot be processed in the initial 30 days because of the State's fault, but is subsequently not processed in the second 30 days because of the household's fault, the household shall lose its entitlement to retroactive benefits.

The rules are designed to protect a household's entitlement to retroactive benefits when the delay is the State's fault without rewarding a household for delays it has caused, itself.

Expedited service. The proposed rules implemented the legislative mandate that households with no income, after appropriate exclusions and deductions, be provided expedited certification and issuance services. Under the proposed rules, households would have qualified for expedited service within 2 working days on two separate criteria: (1) Zero net income for the month of application, or (2) a determination that the household was destitute [34] of income at the time the appli-

[32] The paragraph dealing with unverified deductible expenses has been moved to the section on application processing dealing with verification requirements.

[33] If households could delay the application process with impunity, there would be less incentive for households to provide needed information on a timely basis, which could result in the backlogging of pending cases.

[34] To have been considered destitute, the household's only income during the month of application must have been nonrecurring and must not have been in the same quarter of the month the application was filed.

Footnotes continued on next page

cation was filed, but expects to receive or had received income at some other time during the month.

A special same day processing standard was proposed for households eligible for expedited service that (1) had insufficient food to enable them to wait even 2 working days, and (2) had liquid resources less than the value of the thrifty food plan for a one-person household.

The proposed rules also required State agencies to make a collateral contact or other verification of the household's identity and residence prior to receiving expedited service. Households certified under expedited procedures had to be certified for the month of application only. However, if the household provided verificaiton within 30 days of the date the application was filed the State agency could assign a longer certification period. Once a household was certified under expedited procedure, verification had to be completed before the household could be certified again under normal or expedited procedures.

Nearly 3,000 persons or groups submitted at least one comment on this provision. Of these, over 2,500 opposed some aspect of it. Advocacy groups, State agencies, local agencies, and participants were concerned with the complexity of the provision. FRAC summarized this concern: "we are convinced that the proposed procedures are much too complicated, and will confuse case workers and clients alike."[35]

Same- and 2-day service, with varying eligibility criteria, and the definition of "destitute" based on nonrecurring income was also criticized as too complicated, error prone, and administratively difficult. While a majority of letters from the public and organizations preferred same-day service for all households with zero net income, State and local agencies discussed the difficulties of meeting same-day service and wanted a simpler method of determining the need for expedited service.

Most individuals favored determining need for expedited service based only on the household's available income. The alternatives suggested by program administrators were varied but often suggested longer time frames and the use of other relief services for households with immediate need.

Advocacy groups frequently requested that the regulations specify that simple documentary verification be used and that prescreening for expedited service be mandated. Program participants and other individuals and groups expressed concern that expedited services be extended to cover other emergency situations, such as the destruction of one's home.

Because of the large number of comments regarding the complexity of expedited service, the Department has eliminated the requirement for a two tiered expedited service procedure. In the final rules, State agencies must certify the household and mail an ATP or coupons no later than the second working day following the date the application was filed, or may have the ATP or coupons available for the household or its representative to pick up no later than the third working day following the date the application was filed if the applicant wishes to pick them up at the office. This is a maximum standard. State agencies may set a shorter expedited processing standard for all households, or the State agency may set up a multitiered system providing faster service to households with the greatest need of food assistance.

Since the final rules have a single expedited processing standard, the Department has eliminated any special food or asset tests, other than the resource eligibility standards that apply to all households. This will simplify the certification process.

The Department has also revised the definition of a destitute household. Households are destitute if: (1) they do not anticipate income of more than $25 within 10 calendar days from the date the application was filed; (2) any income anticipated after the date of application is from a new source; and (3) any income of more than $25 received between the first of the month of application and the date of application from a terminated source. A more detailed definition of destitute is given in the section entitled "Determining Household Eligibility and Benefits Levels."

The final rules also provide a more detailed description of the kinds of documents that are to be considered acceptable evidence of residency or identity. Acceptable documentation includes such things as a driver's license, work or school I.D., voter registration card, or birth certificate. The rules also allow for additional verification of income provided that delivery of benefits is not delayed beyond the maximum expedited processing standard solely because income verification is pending.

Language in the final rules for assigning certification periods has been revised to require State agencies to assign a normal certification period if verification for the household was not postponed in order to expedite the certification. The final rules give State agencies some latitude in assigning certification periods to households which have postponed completing verification requirements. State agencies may either assign a 1-month certification period or assign a longer certification period if the household's circumstances are stable. However, households must still provide verification before benefits can be continued past the month of application. This procedure is designed to allow State agencies to integrate expedited processing with its normal recertification procedures. In some cases, households which qualify for expedited processing will be stable enough to be assigned a certification period longer than 1 month. As long as the State agency notifies the household that benefits will only continue if verification is completed and that benefits will be adjusted without a notice of adverse action based upon the verification submitted, the Department contends that households certified under expedited procedures should be assigned normal certification periods. The Departmant also recognizes that State agencies have no way of forecasting which households will subsequently submit verification. Thus, an assignment of a certification period based on household circumstances is reasonable even for destitute households or households with zero net income.

The Department has developed separate expedited service standards for residents of drug addiction or alcoholic treatment and rehabilitation centers. For residents who are entitled to expedited service, the State agency shall mail an ATP or coupons or have the ATP or coupons available to be picked up no later than 7 working days following the date the application was filed. As noted in the comments, residents of treatment centers are not in an immediate need of food since the centers provide them with meals. Imposing needless additional administrative burdens on State agencies to immediately process these applications could delay the receipt of benefits to needier households.

A special procedure is included for applicants entitled to both expedited service and a waiver of the office interview. If a household mails an application and it contains sufficient information to indicate that the household is entitled to expedited service and out of office certification, the State agency must conduct an interview by the first working day following the date the application was filed. The benefit delivery standard begins on the date a completed application is received. For example, a household mails an application reporting no income. The State agency conducts a

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(This procedure is explained in more detail in the section entitled "Determining Household Eligibility and Benefit Levels.")

[35]The National Council of Local Public Welfare Administrators of the APWA stated that the proposed expedited service quarter system is, "administratively impossible (and) * * * will lead to numerous errors * * *."

telephone interview based on the information contained in the application, completing the remainder of the application and verifying the identity and residence of the household through a collateral contact. The State agency would then mail the completed application to the household on the same day the telephone interview was conducted, so that the household could sign the application. The benefit delivery standard then begins from the date the signed completed application is received. The Department added this procedure to integrate the expedited service provisions with the out of office interview requirements.

In response to comments questioning the adequacy of prescreening for households entitled to expedited services, the Department has introduced a special benefit delivery standard. If the State's prescreening process does not identify a household as entitled to expedited service and the State agency subsequently discovers that an entitlement exists, the household is still entitled to prompt processing. The benefit delivery standard will start on the date the State agency discovers the entitlement.

Public assistance and general assistance households. A major change between the 1977 Act and the current program is the elimination of the categorical food stamp eligibility of PA and some GA households. According to the House Report, this change was made "* * * to terminate the substantial inequity resulting from the fact that a working household with the same income as a welfare household could find itself ineligible simply because it did not get a welfare supplement to its income." However, Congress was concerned that the elimination of the categorical eligibility could lead to the creation of participation barriers that would discourage the participation of otherwise eligible PA and GA households in the food stamp program. Therefore, several provisions were included in the Act (sec. 11(c)) aimed at minimizing barriers to participation. The intent of the provisions was to spare households which are applying for benefits in both programs from having to go through the same application process for each program.

The proposed rulemaking set forth procedures for the joint processing of food stamp and PA applications. These procedures required that a single application be developed that could be used for both programs and that households applying for both programs be subject to a single interview. To insure that PA food stamp applicants had their applications considered on the same basis as nonassistance food stamp applicants, the joint processing procedures required that the combined PA/food stamp application be processed according to the same timeliness standards as nonassistance food stamp applications. The procedures required that the determination of food stamp eligibility not be delayed because of problems not related to food stamp requirements, such as a household's failure to comply with verification requirements that affect only the PA determination. The joint processing procedures also prohibited State agencies from delaying the processing of the food stamp portion of a case because the public assistance determination had not been made. State agencies were also required to complete the food stamp determination even if the public assistance application was denied. The joint processing procedures also required that State agencies endeavor to extend food stamp benefits to as many eligible PA households as possible.

The final rules require that joint PA/food stamp applications allow households to indicate if they do not want to apply for food stamps. State agencies are required to process all PA applications as food stamp applications unless the application positively indicates that food stamps are not desired. If for some reason it is not clear whether a household wants to be considered for food stamp benefits, the State agency must contact the household to determine whether the household wants to be considered for food stamps. If the household does, the State agency must process the application in accordance with the joint processing procedures.

Many commenters who addressed the proposed joint processing procedures complained that the procedures would force PA eligibility workers to make food stamp eligibility and basis of issuance determinations. The commenters argued that this would add work to already overworked PA workers; would result in food stamp determinations made by workers with little expertise in food stamp policy and procedures; and would make program administration more complex. Some suggestions made to alleviate these problems included: allow State agencies to choose whether they wanted to use the joint application procedures; allow a simultaneous interview by PA and food stamp eligibility workers; or allow two interviews, one for PA one for food stamps, provided that they occur during the same appointment. The Department carefully considered the problems and suggestions raised by the commenters. However, in light of the explicit legislative requirement that households applying for both PA and food stamps be allowed to do so through a single application and single interview, no change was made in the joint processing procedures. However, the joint processing procedures, as they stand, do not require PA eligibility workers to make food stamp eligibility and allotment level determinations. Following the completion of the single interview, State agencies are free to assign the case to two workers: one for PA, one for food stamps.

The comments noted that the joint application processing procedures would require effective lines of communications between the PA and food stamp units within agencies. While the Department agrees with that point, the final regulations were not changed to include specific requirements for such communication lines. There is no one effective method of communication that can be prescribed, nor does the Department feel it is equipped to advise agencies as to the best methods of transmitting information. Therefore, the Department decided to allow each State agency to develop and implement its own method of transmitting information between the PA and food stamp units.

Some commenters expressed confusion about whether the joint processing procedures are applicable to households that contain members not included in the unit applying for public assistance. The proposed rules stated that these households "may be required to file a separate application for food stamps" (§ 273.2(k)(1)(vi)). The final rules expand and clarify the original statement. As it now stands, State agencies have the option of deciding whether or not to process these households through the joint application processing procedures. State agencies are required to develop uniform procedures and not make these decisions on a case by case basis. The Department did not want some households in a project area treated differently than other households if there were no basic difference in household circumstances.

Finally, many commenters had questions about the use of the joint application processing procedures in GA programs. The proposed rules allowed some State agency administered GA programs to use the proposed procedures. Some commenters asked if locally administered GA programs that met the criteria set forth in the rules could jointly process GA and food stamp applications. Other comments asked whether GA programs administered by the Bureau of Indian Affairs could qualify to use the procedures. In response, the Department reexamined and revised the rules pertaining to GA programs. The rewritten rules identify different types of GA programs and specify the appropriate procedures.

GA programs that are administratively integrated with PA or food stamp programs and which use formalized application procedures and eli-

gibility criteria that test levels of income and resources, are required to jointly process GA and food stamp applications according to the rules set forth for the joint processing of PA and food stamp applications. The Department considers GA programs administratively integrated with PA or food stamp programs if the GA program shares eligibility workers with the PA or food stamp programs.

GA programs that are not integrated with the PA or food stamp programs can apply to, and be approved by FNS, for joint processing of GA and food stamp applications if these GA programs use formalized application procedures and eligibility criteria that test income and resource levels. GA programs that meet these criteria but which do not jointly process GA and food stamp applications are required to distribute and accept food stamp applications at GA offices and forward them to food stamp offices for processing. Under those circumstances, the timeliness and procedural standards for processing food stamp applications will take effect when the applications reach the food stamp offices.

The Department recognizes that GA programs are administered in a variety of ways. Not all of these programs are staffed through merit staffing systems. Not all of the programs make use of formalized application procedures or eligibility criteria that test levels of income and resources. With this in mind, the proposed rules allowed those State administered GA programs that had formalized application procedures and used eligibility criteria to test levels of income and resources to jointly process GA and food stamp applications.

Finally, State agencies must attempt to make food stamp applications and food stamp program information available at offices of locally administered GA programs not meeting the above criteria and at offices of GA programs administered by the Bureau of Indian Affairs. The Department hopes that through these efforts most eligible GA households will be given an opportunity to participate in the food stamp program.

Residency

The proposed and final regulations continue to prohibit any durational residency requirement and yet require that an individual live in the project area to receive food stamp benefits. Over 70 commenters expressed concern regarding this provision. Some stressed the need to highlight that applicants should not be denied for failure to live in a fixed residence.

Other commenters indicated that this provision is lax in not denying benefits to transients. The Act does not allow the Department to exclude households which move from place to place. However, applying in several locations for the purpose of obtaining excessive benefits is a criminal offense and is prohibited by the Act. Thus, eligible households which frequently move may participate so long as they reside in the project area at the time they apply and participate in only one project area during any given month. Thus, persons in a project area solely for a vacation (i.e., a brief visit for recreational reasons) may not apply for benefits in that project area. However, students who return home during school breaks and elderly individuals who spend a portion of the year with friends or relatives would not be considered vacationers.

Citizenship and Alien Status

The proposed regulations limit eligibility to U.S. citizens and the five categories of aliens specified in the Act. A few advocacy groups requested clarification on whether refugees covered by the United Nations Protocol on the Status of Refugees (19 United States Treaties 6223) and North American Indians, whose reservations border or cross U.S. borders, are eligible to participate. The Department has decided to more carefully study these issues and to determine if other treaties or international agreements accord an entitlement to food stamp benefits to specific categories of persons. The Department intends to issue final rules on these issues in the near future.

The proposed and final regulations require that the income and resources of ineligible aliens be disregarded when determining the eligibility and benefits of other household members. Comments from State and local agencies generally opposed this provision on the grounds that it could result in increased benefits to households in which a wage earner is an illegal alien. However, as noted in the preamble:

> Consideration of those resources and income could result in the reduction of food stamp benefits for the remainder of the household because of the technical alien status of the ineligible member, even though the remainder of the household is already receiving reduced benefits since the ineligible member is not counted in determining the value of the allotment.

Additionally, the House Report denoted a Congressional intent that the income and resources of the ineligible alien be disregarded. The final rules were revised to make clear that payments from ineligible aliens to the household will be considered as income the same as any other payments from nonhousehold members to a household.

This section has been reorganized and a new paragraph has been added to explain that other eligible household members should be certified even though one or more household members have not verified their asserted alien status. It was felt that the household should not be penalized if verification is not timely received, especially since the time when verification is received is not usually within the control of the household or the person temporarily ineligible. If proper verification is subsequently received, the State agency shall act on it as a reported change in household membership. The requirements regarding actual verification of alien status are found in § 273.2(f), which provides the verification standards for all eligibility criteria.

Tax Dependency

The proposed and final regulations make reference to specific terms as defined in the Internal Revenue Code and Internal Revenue Service (IRS) regulations. Several commenters recommended that the relevant IRS rules be paraphrased and incorporated into these regulations. Instead of adopting that recommendation, the Department will incorporate and explain the IRS rules in the revised Food Stamp Certification Handbook.

The tax dependency verification requirements for students are consolidated into § 273.2(f), with all other verification standards. Several State agencies asked for clarification regarding the initial benefits of a student who, because of pending verification of tax dependency, was not certified along with other household members. As in the section on aliens, a paragraph has been added to explain that, when such a student provides the proper verification, the State agency shall act on the verification as it would on any reported change in household membership. Other revisions to the section on tax dependency merely clarify the proposed regulations.

SSI Cash-Out States

States are allowed, pursuant to Pub. L. 93-233, as amended, and the Food Stamp Act of 1977, to provide SSI recipients the bonus value of their food stamp allotments in cash, in lieu of coupons, by increasing the SSI grant award.

The proposed regulations recognized California and Massachusetts as the two States for which the Secretary of Health, Education, and Welfare had determined that the SSI payments had been specifically increased to include the value of the food stamp allotment.[36] The State of California has been deleted from the regulations since California is no longer classified

[36] Sec. 6(g) of the Act provides that the Secretary of HEW has authority to make this determination.

as a cash-out State.[37] Wisconsin has been added as it has become a cash-out State.

In response to concern for households which experience delays in the processing of application of SSI benefits, a paragraph has been added to clarify that application for SSI benefits does not affect eligibility for food stamps. The applicant must be approved and in receipt of the first SSI check before food stamp benefits are terminated. Section 6(g) of the Act prohibits food stamp participation for each person "who receives * * * (SSI) benefits * * *." However, if the State provides substitute payments equivalent in value to the SSI benefits, initial receipt of those payments will terminate participation in the food stamp program. Equivalent State payments, based on presumptive or actual eligibility for SSI benefits and determined under SSI rules, should be considered as a substitute for SSI payments. Once the SSI recipient begins receiving benefits, ineligibility for food stamp benefits shall remain in effect until the recipient is terminated from the SSI program. If for some reason, such as the theft of an SSI check, benefits are temporarily interrupted, the SSI recipient still cannot receive food stamp benefits. SSI rules will determine the appropriate relief. Several commenters recommended the temporary issuance of food stamp benefits to such individuals. However, the Act and the House Report contemplate that SSI recipients residing in cash-out States will be covered by the appropriate SSI regulations and not served by the food stamp program.[38]

Work Registration

Persons required to register. The proposed regulations specified that all able individuals between the ages of 18 and 60 must comply with the work registration requirement, unless they qualify for an exemption. In response to comments calling for clarification, the paragraph on exemptions was reorganized so that age and poor mental and physical health are listed there as exemptions. A sentence was added to clarify that the State agency shall determine which household members are required to register for employment. Another new sentence requires the State agency to explain to the household both the work registration requirement and the consequences of failure to comply.

State agencies should note that the final regulations direct the State agency to provide work registration forms to the household and to forward the work registration forms to the State employment service office after the household completes the forms and returns them to the food stamp office. State agencies are not permitted to require households to complete the work registration forms at the State employment service office.

Exemptions from work registration. Commenters asked if the work registration requirement would have to be fulfilled the same month a child attains the age that cancels the work registration exemption. To avoid burdening State agencies with the problem of keeping track of birth dates of children, the Department revised the final regulations to specify that under such circumstances the work registration requirement must be met at the next scheduled recertification, unless the person qualifies for another exemption.

Many commenters asked what constitutes appropriate verification of disability for employment. In response, the following clarification was included in these regulations. If a mental or physical disability is claimed and the disability is not evident, receipt of disability benefits will constitute adequate verification. A statement from a physician or licensed or certified psychologist will be considered verification if the individual does not receive disability benefits. The requirement for a statement from a physician or psychologist has been adopted from the Work Incentive Program (WIN) regulations.

The proposed and final regulations provide and exemption to one-parent households with a child under 12 and to one parent with a child under 18 in households where another parent is employed or is registered for work. Although many commenters complained that this policy penalizes the one-parent household, the Act requires that the exemption only apply up to age 12 for the one-parent household. In and example explaining the requirement regarding the two-parent household, the House Report referred to a child over age 12. The Act and the House Report contemplate a higher age requirement where, at least, one parent is employed or is in compliance with the work registration requirements. As in the proposal, "child" has been defined as a person under age 18.

The proposed regulations permitted an exemption for individuals in receipt of unemployment compensation but made no provision for applicants for such benefits. Many commenters noted that applicants for unemployment compensation in some States are required to register for work at the time of application. Consequently, to avoid duplication of work registration procedures, the final regulations exempt from food stamp work registration those individuals who registered for work as part of the unemployment compensation application process. However, those applicants for unemployment compensation who are not required to register for work until they begin receiving unemployment compensation benefits shall not receive an exemption from the food stamp work registration procedures until they actually are in receipt of unemployment compensation benefits.

Commenters from Alaska indicated that in some remote areas of the State there are no State employment service offices and no jobs. Households in those remote areas meet their basic needs by hunting and fishing instead of working at a salaried job. Consequently, the final regulations provide a self-employment exemption for persons who reside in certain designated areas of Alaska[39] and engage in subsistence hunting or fishing for a minimum of 30 hours per week.

Voluntary quit. This paragraph is reserved for subsequent rulemaking.

Job search. This paragraph is reserved for subsequent rulemaking.

Additional work requirements. The proposed regulations require work registrants to report to an employer when referred by the State employment service office. Several commenters pointed out that under the current program individuals have been referred to jobs to which they could not report because of the distance involved. Consequently, the final regulations specify that the registrant is obligated to report to an employer only if the potential employment meets the suitability requirements, outlined in § 273.7(i), which include provisions on commuting time.

Failure to comply. As the House Report recommended, the Department proposed that the 60-day disqualification (required by the Act) for primary wage earners who voluntarily quit their jobs also be applied to the failure to comply with the work registration requirements. Many commenters recommended that the 60 days be converted to 2 months and that the regulations specify when the 2-month disqualification period should begin. The Department agrees that because eligibility for program benefits is based on monthly periods, the 2-month period is more workable and has made this change. The Department also clarified that participating households must be given adverse notice and the opportunity for a hearing before the disqualification period begins. In addition, the final rules require the State agency to provide the State employment service

[37] As noted at 43 FR 39075, California became ineligible for cash-out status on Sept. 1, 1978.

[38] Moreover, even if authorized, stop-gap food stamp relief could duplicate SSI replacement procedures and complicate SSI and food stamp operations.

[39] Sec. 3(g) of the Act specifically recognizes the unique circumstances of certain eligible households in Alaska.

office sufficient advance notice to allow them to send a representative to attend the fair hearing, if such attendance is necessary.

Determining good cause. Although some commenters suggested many specific examples of what constitutes good cause for failure to comply with the work registration requirements, the examples were not incorporated into the regulations. The final rules are basically a continuation of current policy which has been successfully employed for several years. Determining if good cause exists must remain an area where the State agency considers all facts and circumstances, and makes an evaluation based on the facts in each individual case. It is not possible for the Department to enumerate each individual circumstance which should or should not be considered good cause.

Ending disqualification. The proposed regulations allow persons disqualified for refusal to report to an employer to reestablish their household's eligibility by reporting to that employer. Commenters pointed out that by the time the State agency learned of the refusal and terminated the household, the job would probably have been filled by someone else. Consequently, the final regulations specify that reporting to the same employer to whom the person had previously refused to report is an acceptable cure only if the work is still available. Without this rule, certain registrants could avoid the work requirements and yet remain eligible for food stamps by complying after it is too late to accept the job and begin work.

Suitable employment. Some commenters felt that work offered at a struck worksite should always be defined as unsuitable. Other commenters preferred the current regulatory approach which provided that work was unsuitable, at a struck site, only if the strike was not determined to be unlawful. Based on the detailed justification found in the proposal (43 FR at 18884), the proposed rules, regarding strikes enjoined under the Taft Hartley Act, are made final.

In addition, suitable employment has been expanded to include employment at a site or plant subject to a strike or dispute where an injunction has been issued to enforce §10 of the Railway Labor Act. This modification of suitable employment is consistent with the rationale, explained in the proposal, which defined suitable employment as including employment at a site subject to a strike enjoined under §203 of the Labor Management Relations Act. Section 208 requires a determination that a "threatened or actual strike affecting an entire industry or a substantial part thereof * * * (will) * * * imperil the national health or safety." Section 10 requires a determination that a dispute should "threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service." Under both sections, actions must be taken by the President of the United States based on the national interest in averting a strike or dispute. Both statutes provide for "cooling off" periods and under the final regulations, a court order would be necessary, under either Act, for a determination of suitable employment, and a denial of food stamp benefits to households containing a member refusing to comply with the court order.

The Department continues to believe that its regulations should not undermine the intent of Federal legislation designed to promote the settlement of labor disputes where national interests are at stake. The requirement that a judicial determination be made, before application of the regulatory provisions, will serve to protect the rights of the affected parties.

The proposed regulations state that employment would not be considered suitable if daily commuting time exceeds 25 percent of daily work time. It was pointed out that full-time students are only required to accept employment of 20 hours per week. Therefore, more than 30 minutes of commuting each way would be unsuitable under the proposal. However, a 30-minute commute is not that unusual or burdensome. Consequently, language similar to that of the WIN regulations has been adopted. Employment shall not be considered suitable if daily commuting time exceeds 2 hours per day, not including the transporting of a child to and from a child care facility.

Registration of PA and GA households. The proposed regulations provided project areas with no WIN program the opportunity to substitute State PA or GA work registration procedures for FNS procedures, if approved by FNS. Several commenters pointed out that State agencies should be allowed to use State registration procedures for AFDC recipients who are not registered for WIN even in project areas with a WIN program. Therefore, the final regulations allow such substitution of State work registration procedures if the procedures are equivalent to, or more restrictive than, FNS procedures and the registrants activities are monitored so that appropriate penalties for failure to comply are applied. Accordingly, WIN registrants are subject to WIN requirements and PA or GA registrants in a State work registration program are subject to the State requirements. However, if a State requirement exceeds the requirements of FNS regulations, a household shall not be denied food stamp benefits for failure to comply with the State requirement. Denial would only result for failure to comply with a State requirement which is equivalent to a food stamp work registration requirement.

Resources

Definition of resources. Except where dictated by statutory changes, the proposed regulations define resources very much as they are defined in the current regulations. Lump-sum payments, except those specifically excluded as a resource in these regulations, will continue to be counted as resources as of the month received. In the proposed regulations, it was explained that lump-sum payments would not be counted as income. Apparently, several commenters overlooked the policy that includes those lump-sum payments as resources, regardless of whether they were excluded as income. The Department, therefore, listed lump-sum payments as an example of countable resources in the final regulations.

The Department inadvertently neglected to propose that the current policy regarding unlicensed vehicles be continued. Consistent with current policy, the equity value of unlicensed vehicles is to be counted as a resource unless the vehicle is exempt as either producing income consistent with fair market value or as essential to the employment or self-employment of a household member. To clarify that unlicensed vehicles are countable as a resource, at their equity value unless excluded under the provisions discussed above, they are listed as an example of a resource.

Jointly owned resources. The proposed regulations require that jointly owned resources be considered available in their entirety to each household, unless the applicant household could demonstrate that the resource was inaccessible to the household. This treatment of jointly owned resources drew much criticism from State agencies, advocacy groups, and other commenters. They argued that the rule implied that the entire value of the resource would be counted unless the household could prove the resource was entirely inaccessible to the household. However, jointly owned property may be only partially accessible or only partially salable by any single coowner. It was argued that only the value of that portion of the resource which may be used or sold by the household should be counted. The Department agrees. The proposed rule could have overstated the value of the resources owned by any given household. The regulations have been revised to permit households to demonstrate what percentage of the resource

they have access to or that they may sell, and the value of that portion. State agencies will then count only the value of that portion in the resource computation. For resources which cannot practically be subdivided [40] and sold by the applicant household, no value will be ascribed to the partial ownership interest if the other owners refuse to allow the entire resource to be sold. Under those circumstances, the partial interest is considered inaccessible to the household.

Exclusions from resources.[41] The proposed regulations exclude one home and all surrounding property not separated by intervening property owned by others. This provision drew over 200 comments; the majority of commenters (125) strongly approved the definition. Most commenters felt the provision would benefit the rural poor.[42] Specific objections were varied; however, the major objection centered on the lack of a specific limit on the lot size surrounding the home. The Department, however, retains the definition to reduce administrative burdens and "establish a uniform national policy * * * (which) is easy to apply and will eliminate the need for State agencies to establish acreage limits or lot size limits." (43 FR 18885.) Furthermore, the Department is making efforts to establish eligibility standards that are more consistent with criteria used by other programs. In this instance the definition for home and surrounding lot conforms to that used by the SSI Program. Thus, elderly, blind, or disabled SSI recipients will not be denied food stamp benefits because their home lot exceeds a particular State acreage limit. As noted in the proposal, this area is targeted for review as part of the Department's study of assets required by the Act.

The proposed regulations also excluded the home during periods when the house is temporarily unoccupied for reasons of employment, illness, vacation, or inhabitability caused by casualty or natural disaster. The exclusion for homes temporarily unoccupied because the household is on vacation was deleted as unnecessary because vacationers are not eligible for benefits in other project areas. However, an exclusion was added for homes temporarily unoccupied because the household is pursuing training for future employment. Failure to provide this exclusion could impede job training which might enable the trainee to obtain increased income and end participation in the food stamp program. This exclusion is consistent with the exemption of a home temporarily unoccupied for reasons of employment.

Several commenters noted that migrant households often spend years purchasing land on which they intend to build a home. It was argued that the Department's home and lot exclusion favored households which could purchase both the home and lot at once and, therefore, disfavored the poorest of the poor households.[43] Accordingly, the Department added an exclusion for one lot per household if the household does not already own its home and if the household plans to build its home on that lot. In addition, if the household is in the process of building a home on the excludable lot, the value of the partially completed home will also be excluded. This policy promotes a fairer treatment of persons who wish to become homeowners and yet reduces the possibility of abuse by limiting the surrounding land exclusion to the value of one lot. The single lot rule should insure that only households owning property for the purpose of building a home would receive the exclusion.

The proposed regulations excluded the value of property which a household is making a good faith effort to sell. Several commenters requested that verification procedures be specified to enable State apencies to uniformly apply this rule. Therefore, a sentence has been added to explain that the State agency should accept such things as listings with real estate brokers and advertisements in local newspapers as evidence of good faith efforts.

Handling of excluded funds. The proposed regulations explained in detail how to determine if excluded funds, which had been commingled with nonexcluded funds, were exempt. Many commenters felt that the formula was needlessly complex and would lead to numerous administrative errors. Other commenters felt that no commingled resources should be excluded. The final regulations provide a 6-month exclusion for excluded funds commingled with other funds. After the 6-month period, all funds which had been commingled will be counted as resources. This rule will greatly reduce administrative burdens, avoid participant confusion, and simplify the handling of excludable resources. Nonetheless, the interests of recipients and the purposes of other legislation will be protected by the continuous exemption for noncommingled exempt funds and the 6-month exemption after commingling. Before the end of the 6-month period, withdrawals, shall be considered as withdrawals of nonexempt funds.

Fair market value of licensed vehicles. The proposed regulations require State agencies to assign the "blue book" value to licensed vehicles. Many commenters pointed out the need for more detailed instructions in this section. Accordingly, the Department added, the following clarifications. The "wholesale" value should be assigned to vehicles, or, if a particular blue book uses a term other than wholesale value, the assigned value should be comparable to the wholesale value. To avoid complications regarding value calculations, which in many cases would not affect eligibility, the State agency shall not add the value of low mileage or optional equipment to the basic blue book value of the vehicle. Thus, if a vehicle is especially equippped with apparatus for the handicapped, the value of the apparatus should not be added to the value of the vehicle.[44]

It was noted that vehicles 7 years old and older are not listed in most blue books. Therefore, the final rule provides that the household's estimate of the value of older vehicles should be accepted unless the State agency has reason to believe the estimate is incorrect. In that case, the household should acquire an appraisal or produce a tax assessment or newspaper advertisement of other evidence of the value of the vehicle.

Handling of licensed vehicles. The proposed regulations require that all licensed vehicles be counted as resources to the extent they are worth over $4,500, unless they are exempt as income-producing vehicles. Many commenters complained that the $4,500 limit is unreasonably low. That figure is required by the Act.

The Act provides that income-producing vehicles are totally exempt. Based on the comments, the list of exempt vehicles has been expanded to include vehicles necessary for long-distance travel (other than daily commuting) that is essential to the em-

[40] A resource cannot be practically subdivided if the financial value of the proportionate share would be significantly reduced by sale of only the subdivision.

[41] To avoid confusion and in response to comments, note that security deposits for utilities and rent are, as in the current regulations, treated as inaccessible resources. Although, discussed under the excess shelter cost deduction in the current Food Stamp Certification Handbook, security deposits are probably the commonest example, regarding food stamp households, of inaccessible resources. For that reason, a return of the household's deposit does not represent income but, instead, the conversion of an inaccessible asset to an accessible asset.

[42] The Watauga County (North Carolina) Department of Social Services noted, for example, that, "[h]ere in the mountains many isolated rural elderly who desperately need food stamps but do not wish to sell their relatively invaluable small mountain farms will finally be able to participate in the program."

[43] This concept is presented by, among others, the State of Texas and the Migrant Legal Action Program, Inc.

[44] In this way, the handicapped are not penalized for adding features which are necessary for their use of the vehicle and State agencies are not required to make additional computations.

ployment of a household member. This exemption should apply to traveling salespersons, who need reliable vehicles for long-distance travel to transport equipment used in their trade, and to migrants.[45] The recent USDA study, "Food Stamp Participation of Hired Farmworker Families" cited by commenters, noted that "[o]ver a third of the migrants in 1975 traveled over 1,000 miles to do farmwork, not including the distance to return home." Moreover, public transportation is unavailable in many of the rural areas where migrants must go to obtain work and carpooling may not be an available option since often entire families travel to worksites.

An exemption has also been added for vehicles necessary for subsistence hunting or fishing. Since "income-producing" vehicles are statutorily exempt, it is consistent to also exempt vehicles which produce the equivalent of monetary income, i.e., game and fish necessary for the livelihood of the household.[46]

Based on comments received, the exemptions for equity value have also been modified regarding vehicles used to attend training or pursue education which is preparatory to employment and vehicles used to seek employment.

Many commenters requested that the sections on licensed vehicles be rewritten for clarity. In an attempt to respond to those commenters, the regulations have been restructured and a summary is included.

Transfer of resources. Only 11 of nearly 200 commenters favored the provisions on transfers of resources. However, the Act requires that households be disqualified for knowingly transferring assets for the purpose of qualifying or attempting to qualify for food stamp benefits. Several commenters erroneously thought that a fraud hearing would be required to impose the disqualification. Others did not understand when the disqualification period would begin. Therefore, a paragraph is added to explain that the disqualification period for applicant households will begin in the month of application and that the disqualification period for participating households will begin with the first month after expiration of the advance adverse notice period. It should be noted that a transfer of assests to qualify for the program is not a fraudulent action under the Act and these regulations. The Act contemplates separate treatment and separate disqualification procedures for improperly transferring assests to obtain stamps and for fraud. Only if the household member fraudulently conceals or misrepresents the assets transfer will fraud be involved. The transfer does not constitute fraud, in and of itself.

Many commenters recommeded elimination of or revisions to the proposed chart for the periods of disqualification. However, the chart was retained in the final regulations. As noted in the proposal, without standard guidelines, there would be no uniformity in the application of disqualification periods which would result in disparate eligibility standards.

INCOME AND DEDUCTIONS

Income eligibility standards. The Act of 1977 and the proposed rules base the income standards of eligibility on the annual nonfarm income poverty guidelines prescribed by the Office of Management and Budget (OMB). The proposed rules set a standard for the contiguous 48 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam. A separate standard is set for Alaska and Hawaii.

Approximately 50 individuals and groups commented on this statutory provision. Comments on this section were rather evenly divided. The final rulemaking is based on the statute and contains no changes from the proposed rule.

Definition of income. The proposed regulatory definition of income followed the language of the statute. All moneys were to be considered as income, unless specifically excluded by the statute. The regulations distinguished between earned and unearned income to allow application of the statutory deduction for 20 percent of earned income. Included in earned income were training allowances and certain assistance payments which are provided in lieu of wages to individuals required to work as a condition of receiving the income. Two "payments" were not included as income because they did not fit within the broad statutory definition of income. They are recoupments of prior overpayments and the surrender of child support payments to the title IV-D agency (child support enforcement program). The definition of income also specified that the income of individuals disqualified from program participation, less that member's prorated share, would continue to be attributed to the household from which the member was disqualified.

Approximately 100 individuals and groups commented on this section. Positive statements supported the treatment of title IV-D child support payments received by AFDC participants since the household must assign all support payments to the State agency to maintain AFDC eligibility.[47] The most negative comments concerned the consideration of income of disqualified household members as available to the household. One commenter noted that counting the income of a disqualified member as available to the household is harmful to innocent household members who will be penalized for actions beyond their control. Many commenters offered suggestions on a variety of types of income that should not be considered as earned or unearned income.

The Department has not significantly changed the definition of income from the language contained in the proposed rules, since the overall framework is set by statute. The Department struck the reference to the Agriculture Stabilization and Conservation Service payments as unearned income. These payments contemplate the performance of work and are, therefore, more properly considered as earned income.[48] The comments that income of a disqualified household member should not be counted as income in determining eligibility and benefits for the remainder of the household were carefully considered. However, the Department still believes that Congress did not intend that a household benefit if one or more of its members were disqualified for fraud. As noted in the preamble to the proposal, disallowing the income and resources of a disqualified person would significantly hinder the Department's ability to deter fraud or noncompliance with the student work registration requirements. Since the head of the household and primary wage earner will, in many cases, be the individual disqualified, excluding that income would leave the remaining household members with increased benefits. As a result, the household and the disqualified individual could benefit by intentionally defrauding the program or intentionally failing to comply with the student work registration requirements. In the interest of equity, the final rules state that income from disqualified individuals, less the prorated share for the individual, will be counted as income.

Income exclusions. Approximately 400 individuals and groups commented on this provision. Most comments were negative regarding certain aspects of

[45] The State of Wyoming, the National Association of Farmworker Organizations, and the migrant legal action program discussed the basis for this exemption.

[46] The Alaska Legal Services Corporation noted that: "As Congress has recognized, subsistence activities are an important component of the livelihood of many people in rural Alaska. (Sec. 3(g) of the Act.) These activities are usually carried out in lieu of wage earning employment and take place in areas where opportunities for such employment are scarce. Though a subsistence hunter or fisherman may not be producing case income for his family, he is producing in-kind income * * *."

[47] For a thorough explanation of these title IV-D payments refer to the proposal at 43 FR 18887.

[48] The State of North Dakota comment discusses this point.

the rules. Approximately 70 comments out of 400 were positive.

Many comments supported the proposed proration of income of a household when the earnings of children cannot be differentiated from that of other household members. The Act requires the exclusion of income received by a child under 18 who is at least a halftime student. Implementation of that statutory exclusion is achieved by the proposed language which is hereby made final.

Many negative comments, most of which were from migrant interest groups, were in reference to wage advances. These commenters requested that wage advances be specifically excluded as loans, since migrants and seasonal farmworkers often receive wage advances as deferred payment loans. State and local agencies requested clarification on several provisions, including the loan definition which is discussed in the section on verification, vendor payment agreements, and treatment of title XX payments.

The Department carefully considered suggestions and comments regarding loans and reimbursements. The final rules still count wage advances as income when received and not, as recommended in the comments, at the point they are earned or deducted from wages. Counting wage advances is an extension of the general statutory rule to count all income from whatever source, except for specific exclusions.[49]

[49]Wage advances are clearly distinguishable from loans. Advance wage payments are made in exchange for services or labor to be performed. Loans are made in exchange for repayments of the principal amount, plus in most circumstances, interest. The Act requires the exclusion of all loans but does not contemplate that some wages be initially disregarded, until the work is completed, and then counted. Even if the statute authorized this temporary disregard of available income, that policy would create serious administrative problems. If completion of the work was used to determine when the income is received, decisions regarding work completion would have to be made by the State agency. Moreover, the longer it took to count those wages as income, the greater the likelihood of a disparity between actual household "available income" and income, as counted by the program. However, a travel advance made to cover travel expenses would be excludable as a reimbursement. Also, since incidental advance payments do not represent the types of recurring or periodic income which the Department intends to encompass by the expedited service rules, a wage advance of less than $25 is not considered as the first payment from an employer in terms of triggering the recurrent income rules. Consideration of these normally irregular or infrequent incidental payments would unnecessarily complicate the administration of the expedited service provisions. To avoid uneven application of this procedure, a uniform $25 national limit has been established.

Because of the comments requesting clarification of the vendor payments proposal, the final regulations have been revised.

There were some comments on the treatment of direct payments to a household from HUD for utility expenses. In furtherance of the rationale stated in the proposal regarding the HUD exception to the general vendor payment rule, the final rules are clarified to exclude from income only payments made to a household by HUD's experimental housing allowance program. Direct HUD payments to a household for utility expenses are not provided under the above experimental program, and are, therefore, not vendor payments.

In response to inquiries, note that the income exclusion for scholarships and deferred education loans for the tuition and mandatory fees of a school for the handicapped was clarified to indicate that the school can be at any level. This policy is consistent with section 5(d)(3) of the Act.

Based on an analysis of the Domestic Volunteer Service Act of 1973 and its legislative history, it is apparent that payments under title I (VISTA) are excluded only for individuals already receiving public assistance or food stamps when they joined VISTA. The House Report requires in determining these exclusions, that: "Each law would have to be reviewed in light of its specific terms and the associated intent of Congress to determine whether exclusion from food stamp income is appropriate." The VISTA income exclusion for food stamp purposes has been appropriately modified. The comments of Senator Dole, Congressional Record, July 21, 1978, at S. 11432-33, explain this issue in detail.

Standard deduction, earned income deduction, and dependent care deduction. Many individuals and groups commented on these provisions. Many commenters requested changes in regulatory provisions mandated by the Act. More than half of the public comments opposed the statutory elimination of the deduction for medical expenses.

Shelter deductions. Approximately 500 individuals and groups commented on this section. The proposal most frequently supported (60 comments) allowed households to switch from the utility standard to actual costs at any time. Many negative comments were received on the procedures for determining the amount of the utility standard and seasonal adjustments. Suggested alternatives included: (1) Prohibiting State agency use of PA or GA standards, unless such standards meet all the food stamp program criteria; (2) requiring State agencies to develop realistic standards; and (3) requiring a separate telephone standard. Which shelter expenses were deductible was a concern of approximately 300 writers. Thirty approved the section as written. The remainder recommended deducting such items as the cost of weatherization, repair and replacement costs, and security or utility deposits on apartments and utilities.

Several State agencies commented on determining the amount of the utility standard. Suggestions included developing standards for rent and telephone costs, developing a national standard and using the PA/GA utility standard. Two State agencies recommended deletion of deductions for an unoccupied home, since the agency felt that rarely could the shelter expenses of an unoccupied home be properly claimed. Two local agencies noted that often more than one food stamp household resides in a home. They requested clarification on which household may take the deduction; the household which gets the bill or the household which pays the bill? Or is the expense divided?[50]

The Department still believes that standardized utility allowances "can expedite the certification process and reduce errors and administrative costs."[51] However, in response to State agency requests, the Department will provide technical assistance to State agencies for developing a methodology to compute the standard allowances.

Several comments indicated that there was some confusion about the purpose of a utility standard. The standard should expedite the certification process and allow households to receive a deduction without being required to exactly project utility expenses over the course of a certification period. However, while a utility standard will simplify the certification process, the Department recognizes that households have widely varying utility expenses, based primarily on the types of utilities or fuels for which a household is billed. The proposed rules attempted to restrict the application of the utility standard, which should not be unreasonably low so that households would not use it, by not allowing it to be used for house-

[50]The Department does not believe that a special exception should be created in these situations. The general rule, which allows a deduction for the household that is billed for the expense, applies in these cases. If more than one household is billed, the deduction will apply according to the billing. If the bill is in both names, the amount should be prorated. Note that particular rules apply to boarders regarding the treatment of shelter expenses.

[51]Congressman Foley noted in the Congressional Record (H. 9534; Sept. 16, 1977) that "standard utility allowances could ease the paperwork burden on both recipient and administrators."

holds that pay for no other utilities besides a telephone. The final regulations enlarge this rule. Households which are only charged for water, garbage collection, sewerage, or telephone, or any combination of these expenses, are not entitled to take the standard utility deduction. However, if a household is charged for any other utility expense, such as electricity, gas, heating or cooking fuel, the household is entitled to use the utility standard. This allows State agencies to issue a standard at a reasonable level without significantly overstating the costs for households which are billed for only water, garbage, sewerage, and/or telephone.

State agencies have the option of developing separate standards that cover the various utility expenses, including those that do not trigger the standard. For example, a State agency can calculate the average home utility expenses for an area using water, garbage collection, sewerage, electricity, coal, gas, and oil costs and arrive at utility standards. The State agency may also calculate the average cost of each utility and apply the appropriate standard for each utility the household is billed for.

While the final rules afford State agencies great flexibility in developing utility standards, State agencies must still demonstrate to FNS that the general standard or individual utility standards accurately reflect actual costs to food stamp households before FNS approval will be given.

Under either option, the final rules allow State agencies to develop and use a standard telephone service fee (base phone rate plus tax) which can be applied to all households regardless of the actual charge. Basic telephone costs are not subject to significant dollar variation within each State. Moreover, to obtain FNS approval the phone allowance would have to at least equal the base phone rate (plus tax) of most participating households within the State. Many of the households whose actual phone rate exceeds the standard would not be adversely affected since the other shelter/dependent care costs could already exceed the $80 per month deduction. The dollar impact on the relatively few households which would be actually adversely affected by use of the phone allowance is reduced by the 50-percent excess shelter cost factor and the 30-percent benefit reduction rate. Thus, the low incidence and nominal significance of the adverse impact on any given household, compared to the administrative cost savings and the possible decrease in the time it takes to be certified, makes a mandatory standard phone rate cost efficient.[52]

[52] The State of Michigan noted that: Currently, the (quality control) error rate is exceedingly high for telephone budget errors. Because of the policy requiring budgeting the actual basic charge plus tax, workers may be required to use as many as 40 different rates within a single project area. The rates may differ only by a few cents between companies/cities/neighborhoods. In effect, we are spending dollars to save dimes.

The final rules allow States to restrict switching from the standard utility allowance to actual expenses, and vice versa, to once during the certification period. State agencies noted that a household's certification and basis of issuance must be completely reprocessed each time the household switches to the standard or the actual costs. Since the standard is intended to simplify the certification process,[53] and since State agencies are required to keep the standard up to date, the Department contends that the administrative expense does not justify the slight increase in benefits which some households might receive by timing when to switch. Moreover, households which wish to receive benefits computed exactly according to actual utility costs may request the actual cost deduction at each certification.

The proposed rules also required States to establish a shelter standard for rent. Commenters generally opposed this, arguing that rents vary considerably and do not lend themselves to a standard. The final rules delete provision:

Some comments criticized allowing the shelter cost of an unoccupied home. However, households entitled to the allowance are being charged for the costs of maintaining a home the same as households charged with shelter costs for the home in which they reside. Moreover, as noted in the proposal, this allowance only applies in limited circumstances. Commenters who recommended deleting this paragraph were concerned primarily that these expenses are difficult to document and verify. The Department has appropriately revised the verification requirements. The new requirements are explained in the verification section of application processing.

The final rules also allow a shelter allowance (up to the maximum $80 shelter/dependent care deduction) for current charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as fire or flood. Since, after a fire or flood, a household may have to make expensive repairs to the structure in order to continue residing in the home, these expenses reasonably fall within the concept of shelter costs. However, the rule will not allow a deduction if an insurance company or private or public relief agency has or intends to reimburse the household for the cost of repairs. To the extent of any reimbursement, the household does not incur net shelter costs. Moreover, this deduction is not intended to cover normal wear and tear, or incidental repairs to the house.

Adjustment of deductions. This section contains procedures for semiannual adjustments of standard deductions and annual adjustment of shelter deductions. Approximately 60 individuals and groups commented on this provision. Commenters suggested that adjustments be made as cases come due for recertification, rather than as mass changes. State agencies objected to the use of mass change procedures, stating that those procedures increased administrative costs. However, these adjustments are required by the Act which provides the dates on which each change must be made effective. No changes were made in this section.

The Act provides that the standard deduction of $60 is to be adjusted semiannually by the changes in the Consumer Price Index (CPI) for items other than food for the 6-month period ending March 31, 1978. The unrevised CPI increased by 2.7 percent between September 1977 and March 1978. This increase, when applied to the $60 standard deduction, yields a $61.62 standard deduction. Since the Act requires that the deduction be rounded to the nearest $5, the standard deduction will remain $60. A similar computation will be done for the 6-month period ending September 1978 to determine if an adjustment will take effect in January 1979. It appears likely that the standard deduction will be increased to $65 at that time. However, because the CPI data for September 1978 will not become available until late in October, a final determination cannot be made until then.

The Act also requires that the excess shelter deduction be adjusted annually by the change in the shelter, fuel, and utilities component of the housing costs portion of the CPI for each 12-month period ending March 31. For the last 12-month period, the shelter components of the CPI went up 8.91 percent. The fuel and utilities component of the CPI increased by 7.15 percent. Combining the shelter and fuel and utilities components results in an overall increase of 8.56 percent. The increase, when applied to the excess shelter deduction of $75, yields $81.42. Since the Act requires that the deduction be rounded to the nearest $5, the excess shelter deduction becomes $80. The $80 limit on the shelter deduction will remain in effect at least until July

[53] It bears repeating that references to State agency administrative convenience, or time and cost savings, may translate into the more expeditious handling of household applications, complaints, fair hearing requests, or any other time or resource demand made on the State agency for the benefit of the household.

1979 when the next annual adjustment is scheduled.

Deductions for the outlying areas. This regulation contains (in two appendixes) charts which provide the amounts of the standard deduction and the excess shelter/dependent care deductions for the outlying areas for the period beginning July 1, 1978.

Standard deduction. Subsection 5(e) of the Food Stamp Act of 1977 requires that the Secretary develop separate standard deductions for households in Alaska, Hawaii, Puerto Rico, Virgin Islands, and Guam. These separate deductions must be based on the relationship of actual or potential itemized deductions in these areas to such deductions in the 48 States and the District of Columbia. The Secretary is further directed to use the best available information in determining these deductions. Effective July 1, 1979, the standard deductions must be adjusted every January 1 and July 1 to the nearest $5 to reflect changes in the Consumer Price Index of the Bureau of Labor Statistics for items other than food for the preceding 6 months, ending the preceding September 30 and March 31, respectively.

The best available source of information is the food stamp quality control data for the period July-December 1977. The quality control sample is a random sample of participating households. Not only is sample size sufficiently large to provide reliable data for the purpose of these computations, but it is the largest sample of such data that is available. It is also the most recent data available. For each of the outlying areas, the full quality control sample has been used. Information on deductions for the 48 States and the District of Columbia has been derived from the quality control subsample. Because of the large number of households contained within the subsample, equally reliable information for the 48 States and the District of Columbia can be obtained without using the entire quality control sample.

In computing the standard deduction for Alaska, Hawaii, Guam, Puerto Rico, and the Virgin Islands, the average total deduction for households in these areas and households in the 48 States and the District of Columbia was developed. A ratio was then derived by comparing the average deduction in each area, i.e., average total deduction in Alaska and average total deduction in the 48 States and the District of Columbia. These ratios were then applied to the $60 standard deduction. The unrounded standard deduction for each of the outlying areas was then updated, as prescribed by law, to reflect changes in the CPI, and rounded to the nearest $5 increment. These computations are shown in appendix B. The standard deductions for the outlying areas as of July 1, 1978, are as follows: Alaska, $110; Hawaii, $90; Guam, $125; Puerto Rico, $40; Virgin Islands, $55.

Further semiannual adjustments to the standard deductions for the outlying areas shall be based on the previous period's unrounded amounts, updated by changes in the CPI, and the result rounded to the nearest $5.

Excess shelter/dependent care deduction. Subsection 5(e) also requires the Secretary to develop separate excess shelter/dependent care deductions for each of the outlying areas based on the 48 States and the District of Columbia. These deductions must be updated annually, beginning July 1, 1978, to the nearest $5 increment to reflect changes in the shelter, fuel, and utilities components of housing costs in the Consumer Price Index (published by the Bureau of Labor Statistics of the Department of Labor) for the 12-month period ending the preceding March 31.

Again because of its reliability, the quality control data for the period July-December 1977 were used to determine the average shelter expenses for all households claiming a shelter expense in each of the outlying areas and in the 48 States and the District of Columbia.

The average shelter expense for claiming households in each of the outlying areas was compared to average shelter expenses for claiming households in the 48 States and the District of Columbia, and a ratio was developed. This ratio was multiplied by the $75 excess shelter/dependent care deduction.

The excess shelter/dependent care deduction for each of the outlying areas was then updated, by changes in the shelter, fuel, and utility components of the CPI. These amounts were rounded to the nearest $5 to determine the excess shelter/dependent care deductions for the outlying areas as of July 1, 1978, as follows: Alaska, $140; Hawaii, $120; Guam, $100; Puerto Rico, $30; Virgin Islands, $60.

Future annual adjustments to the excess shelter/dependent care deduction for the outlying areas shall be based on the previous period's unrounded amount, updated by the changes in the shelter, fuel, and utilities components of the CPI, and the result rounded to the nearest $5.

It is the policy of the Department to publish rules, which may substantially affect low-income households in relation to the food stamp program, in proposed form for public comment. However, under these circumstances, publication of the methodology and computations regarding both the standard deduction and the excess shelter/dependent care deduction for normal notice and comment rulemaking is unnecessary, impractical, and contrary to the public interest.

The Department did not publish the deduction figures for the outlying areas at an earlier date because the quality control data from the July-December 1977 period just recently became available. The Department had no other data more recent or more statistically reliable for food stamp deductions on the outlying areas or the United States. Because of the critical importance of using the most reliable and the most recent data, the Department determined that it would be advisable to wait until the data from the quality control sample could be used. Use of less reliable data would not serve the public interest. It should also be noted that the methodology for computing the two deductions is clearly articulated in section 5(e) of the Act. Public input on the actual calculations would not affect that procedure.

In addition, it is not practicable for the Department to publish this data and methodology as proposed rulemaking now, because this could render timely implementation of these rules impossible in the outlying areas. However, the Department does recognize that the level of these deductions is of substantial concern to some members of the public. Therefore, the Department will accept comments on the data base and the methodology used to compute the deductions for the outlying areas for a period of 30 days after the publication of these regulations. These comments will be carefully considered in determining the need for changes in the published tables. Comments may be sent to Nancy Snyder, Deputy Administrator, Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. 20250. Comments will be available for public inspection and copying at Food and Nutrition Services Offices, Room 758, 500 12th Street SW., Washington, D.C., during regular business hours.

Determining Household Eligibility and Benefit Levels

Month of application. The proposed regulations defined the period of application, now referrred to as the month of application, as the calendar month in which the household applies. The household's initial eligibility would be determined based on income received, expenses billed, and other relevant circumstances during the month of application. The month of application was, in most circumstances, also the first month of the household's certification period. In rare instances, the household may have been ineligible for the month of application, but anticipate at the time of application changes which will

result in eligibility for subsequent months. In those instances, a household would be denied for the month of application but certified for a subsequent certification period based on a single application.

Approximately 100 groups and individuals commented on this provision. Most of these comments opposed some aspect of it. The provision that generated the most interest was the requirement to use the same application for denial for the month of application and determination of eligibility for subsequent months. About 70 opinions were received on this subject, and the majority were negative. Approximately 50 writers opposed using the same application for denial and approval and suggested requiring separate applications. Others suggested giving the household an application to mail in when the household considered itself eligible or advising the applicant of the right to reapply. Several States, local agencies, and caseworkers opposed this provision and suggested beginning eligibility the subsequent month if an application is received after the 15th or beginning certification on the day of approval.

The final rules are basically as proposed except that certification based on the original application, which can be for more than 1 month, must begin no later than the month after the month of application. The final rule is administratively efficient and avoids burdening the household with filling out a second application. In addition, the Department is considering combining the notices of eligibility and denial or pending status, partly in recognition of the State agency processing burden when a household is denied 1 month and is eligible in the following month based on the same application.

The Department also revised the definition of "period of application," now termed "month of application." The Department proposed that State agencies must be use calendar months since the "calendar month is a convenient, easily understood and explained measure of time." Certain State agencies commented that a fiscal month approach (e.g., 15th of one month to 15th of the next) would avoid costly changes to their automated data processing systems. The rule has been changed to accomodate State agencies which can demonstrate to FNS that a fiscal month system would be more efficient than a calendar month system. This fiscal month can be a standard period (e.g., 15th to the 15th) for all households or households in a certain category, or the fiscal month can begin from the date of each household's application (rolling month).[54]

Determining income. The proposed regulations continued the current policy of basing eligibility and benefits on anticipated income. However, the proposal made clear that if the amount or date of receipt of income is uncertain, the income should not be counted. Averaging income was permitted at client option, provided that the difference in highest and lowest monthly income did not exceed $50. For the self-employed and those under contract who derive annual incomes in periods less than a year, the Act and proposed rules require that income be averaged over a 12-month period. The rules also proposed that households receiving scholarships, deferred educational loans, or other educational grants shall have such income, after exclusions, averaged over the period for which the scholarship or loan was intended to cover.

Nearly 500 comments were received on this portion of the regulations. The most frequent public comment suggested that the income of seasonal farmworkers be disregarded, as their income is too erratic to anticipate. State and local agencies were frequently concerned with the use of the proposed multipliers for converting income received on a weekly (4.3) or biweekly (2.15) basis. Some recommended using 4.333 and 2.167 to conform to the AFDC factors for weekly and biweekly income conversions.

State and local agencies strongly supported the position that households should always have the option to average and that the $50 maximum variance on income, in order to average, should be removed. Other commenters suggested using a higher maximum monthly variance. The Social Security Administration commented that SSI and social security households could not income average since the variance in their income could be more than $50. For instance, if the first day of the month falls on a weekend or Monday that is a holiday, checks are mailed on the Friday before and are often received before the end of the month. Thus, a household could receive two SSI checks in 1 month and none the next. Other commenters suggested that PA households be excluded from averaging because of the indefinite certification periods often extended to these households.

In the final rules, the Department has eliminated the restriction that income cannot be averaged if monthly differences exceed $50. The household may either average income or have food stamp benefits determined by the exact amount of income anticipated for each month at the household's option. The Department has decided to allow the household to balance the convenience of income averaging "* * * against the importance of focusing on exact monthly income." 43 FR 18891. The rule will reduce the administrative burden on the State agency.[55] In addition, the final rules provide that destitute households and public assistance households subject to a monthly public assistance reporting requirement may not elect to have income averaged. Destitute households' applications are processed on an expedited basis with a special income calculation which may disregard certain anticipated income. The Department believes that entitlement to benefits based on a single month's income is more imperative for destitute households than for other households. This would be especially on point where the average amount would greatly overstate the first month's income for a destitute household. Moreover, computation of averaged benefits might delay the certification process for households in need of expedited service.

Public assistance households subject to a mandatory monthly PA reporting requirement also represent an exception to the rule of income averaging at household option. Information is available to State agencies with a monthly reporting requirement concerning recent changes in income. To fulfill food stamp reporting requirements, State agencies with a monthly reporting requirement must also require the household to report if the change will continue beyond the PA report month. In addition, State agencies adjust the PA household's monthly benefits based upon the most recent monthly report. Since the State agency assigns a lengthy PA redetermination period and then has the ability to adjust the level of benefits based upon anticipated income changes, the Department contends that a variable basis of issuance more accurately represents the true income picture than income averaging, and will not impose additional burdens on the household or the State agency.

The final rules permit State agencies to use the public assistance conversion factors for multiplying weekly or biweekly income to obtain monthly income. State agencies may also use the exact monthly figure if it can be

[54] For any particular new applicant, with recent or imminent changes in income, the definition of month of application could affect the benefit level for the month of application. Choice of the definition could increase or reduce benefits for that time period, compared to the level that would have been calculated for any given household using the calendar month approach. Nonetheless, all these methods are consistent with the Act and the final rule will provide the Department with additional flexibility to accomodate the demonstrated needs of the State agencies.

[55] Note, under sec. 5(f) of the Act and these regulations that the State agency may not average income which is not reasonably anticipated to be received during the certification period.

obtained for the entire certification period.

Determining deductions. The Department proposed to deduct allowable expenses on an as billed basis. This procedure was adopted from a rulemaking dated November 10, 1977 (42 FR 50916), which allowed utility expenses on an as billed basis. Expenses billed on other than a monthly basis shall be averaged forward over the period the billing is intended to cover or deducted at the household's option in the month billed. The regulations also proposed that households could elect to have expenses averaged over the certification period if the anticipated differences between the highest and lowest amounts were $25 or less.

Over 300 comments were received on this provision. Generally, advocate groups and members of the public approved the section. Over 20 approved the section as written and more than 200 approved using the "as billed" rather than the "as paid" methodology for determining the amount of the deduction. State agencies were primarily concerned with the averaging proposal. They were most interested in permitting averaging regardless of how much monthly variation there is in the bills since that approach could greatly reduce State agency computational burdens and might result in longer certification periods for participant households.

The final rules delete the restriction on averaging fluctuating expenses which exceed $25, and allow the houshold to decide whether to expense average. The Department has decided to allow the household to balance the convenience of expense averaging against the importance of using exact monthly billings. The remainder of the section was not changed. The Department is satisfied with the success of the "as billed" methodology. As noted in the proposal, that approach "is more convenient for program participants and administrators alike." Moreover, the Department continues to hold that "paying" and "billing" (for the kinds of expenses allowed) are virtually synonymous. Most comments expressed approval for the "as billed" approach.[56]

Determining eligibility and benefits. The proposed rules provided for rounding computations by dropping cents at various stages in the computation, with the exception of shelter costs. Exact shelter costs would have been computed and any cents in the total figure would be dropped prior to subtracting that shelter figure from 50 percent of income.

Fewer than 50 comments were received on this provision. Most comments on the computations criticized requirements found in the Act. State and local agencies expressed some concern with the rounding procedures, but there was no consensus of opinion. The rules, as explained in the preamble to the proposal, remain unchanged.

Destitute households anticipating income. The proposed regulations established special eligibility and benefit calculation procedures for households which had no current income but which anticipated income from a new source during the month. This provided destitute households with coupons for periods of the month when they were to be without income. For purposes of the proposed special income procedure, the month was divided into two distinct periods. In the proposal, the first period encompassed the time in which the household was to be without the new income (preincome period); the second period included that portion of the month in which the new income was anticipated (postincome period). To determine how much of the month would fall into the two respective periods, the month was divided into quarters and the allotment levels were distributed evenly over each quarter. Eligibility and the level of benefits were then calculated separately for the preincome and postincome periods. The exact details of this intricate system are fully explained on pages 18892-18893 of the proposal.

Over 1,700 comments were received with the majority disapproving of all or a part of the provisions. The two major concerns were: (1) When should a household be considered destitute; and (2) what income should be used in the income calculation. Generally speaking, there were 9 alternative definitions of what constituted a destitute household and 10 suggestions about what income should be counted. There was consensus on only one point—everyone disliked the quarter system. The majority of commenters recommended that a *Gutierrez*[57] type approach be implemented for all destitute households, desregarding nonrecurring[58] income that would not be received until later in the month. Most commenters preferred giving the household a full 1-month allotment if the monthly income minus deductions came to zero. State agencies strongly objected to the proposed quarterly system as extremely and unnecessarily complicated.

Based on comments, the Department has decided to replace the destitute income calculation procedure with a less complicated system. In the new procedure the goal is the same, i.e., to provide a special eligibility and benefit calculation for households who have no current income, but may anticipate income from a new source later in the month. However, the complicated quarter system of calculating benefits is eliminated. The final rules modify the *Gutierrez* income disregard rules to make them consistent with the statutory changes, to expand their scope to all households in need of immediate assistance rather than just to migrants, and to facilitate the certification of destitute households.

As noted in another section of this preamble, the final rules require State agencies to process applications on an expedited basis for all households with zero net income for the month of application. State agencies must also process households determined to be destitute under these special calculation procedures on an expedited basis. As a result State agencies shall first determine if a household anticipates zero net income for the month of application. If a household does not qualify for expedited service based on zero net income then the household has to meet two basic criteria to qualify for the special calculation and expedited processing procedures: (1) The household must not anticipate receipt of income of more than $25 from the new source by 10 calendar days of the date of application;[59] and (2) any income of more than $25 received between the first of the month of application and the date of application must be from a terminated source. The final rule continues the concept of income from terminated and new sources, although more detail has

[56] State agencies, consistent with current regulations (43 FR 1611; Jan. 11, 1978), are not permitted to average past utility bills to arrive at an anticiapted amount.

[57] *Gutierrez* v. *Butz*, 445 F. Supp. 827 (D.C. 1976), provided for a half-month certification for newly arrived destitute migrant farmworkers anticipating income prior to the 15th of the month and the disregard of that initial payment for the first period of eligibility. Those destitute migrant farmworkers which anticipated income after the 15th would be certified for 1 month. The initial payment from a new source of income would also be disregarded in calculating household income.

[58] Nonrecurring income referred to the first payment from a new employer. The Department opposed the *Gutierrez* income disregard in the initial proposal since the "total disregard of income from a new source, *particulary if the household anticipates receipt within a few days*, would significantly understate the household's financial circumstances * * *" 43 FR 18892.

[59] As noted earlier, travel advances shall not trigger the recurring income test. Moreover, nominal wage advances (less than $25), shall not be regarded as the first of a series of periodic payments and thus shall not trigger the recurrrent income rule. The administrative inconvenience of dealing with small irregular payments, in terms of expedited service, did not seem justified.

been added to the regulations to define when a source has been added or lost and what constitutes a source. Income is considered from a terminated source if no income is anticipated from that source in the balance of the month or in the following month. Income shall be considered from a new source if it was not received from that particular source in the preceding 30 days. Receipt of wage advances of less than $25 and travel advances shall not affect the determination of destitution. However, if income is normally received less often than monthly, the normal interval between payments shall be substituted for the following month or for the preceding 30 days. Thus, the next anticipated payment from a source which makes periodic payments to the household may not be disregarded even if the regular interval between payments is lengthy.[60]

The Department admits that for any particular household the 10-day rule may not be as appropriate as a 7 or 13, or whatever, day rule. To avoid unnecessary complications, that could delay processing for expedited service households as well as regular participants, the Department has adopted this universal 10-day rule. As noted in preamble to the proposal, the *Gutierrez* methodology (which disregarded all new payments up to 30 days after application) was developed to avoid "situations in which the anticipation of income resulted in a *coupon purchase requirements* which destitute migrants could not pay since the income was not currently available." [Emphasis added.] The purchase requirement is, however, eliminated by these rules obviating the basis for the *Gutierrez* rule for migrants. Moreover, the 10-day rule is hereby adopted to determine which households, in addition to those households already at zero net monthly income, are entitled to expedited service. In this way, the purpose behind the *Gutierrez* decision is carried out in a manner consistent with the new Act.

In addition to requiring State agencies to process applications of households determined to be destitute on an expedited basis, the final rules set a special income calculation. All income which is received in the month of application, but prior to the date of application, is considered in determining eligibility and the level of benefits. Income from a new source which is anticipated in the remainder of the month shall be disregarded,[61] because this income is not available to meet the household's immediate living expenses.

A household is entitled to the special destitute procedures at initial application and at recertification, but only for the first month of the certification period.

Certification periods. Under the proposed regulations, the minimum certification period was 1 month and the maximum was a year. The regulations further proposed that the households be assigned the longest certification period possible in light of household circumstances. At the time of certification, the State agency had authority to increase certification periods of 3 months or less by 1 month, if the certification process was completed after the 15th day of the month of application. The rules stated procedures for coordinating the reviews of public assistance (PA) and general assistance (GA) households with recertification interviews for food stamps. State agencies could have assigned definite or indefinite certification periods depending on the timeliness of PA/GA reviews. In order to enable State agencies to forward timely notices of expiration to PA/GA households, the proposed rules allowed the certification period to expire the month after the PA/GA review.

Just over 300 persons commented on this provision, with nearly 200 positive comments. Many agreed with allowing the longest possible certification periods since short certification periods create hardships both on participants and State agencies. The most common recommendation was to require a certification period of at least 1 year for older persons with stable incomes to end needless recertifications. A few commenters felt that certification periods should conform as much as possible to calendar months. Most individuals who specifically addressed PA certification periods felt that food stamp certification periods should conform to PA certification periods regardless of length. Some suggested that when a certification period of less than 3 months was assigned the eligibility worker should document the reasons for the short certification period and explain those reasons in writing to the household. Some advocacy groups wanted to delete the reference to "day laborers" and "migrant workers" to avoid causing unnecessary use of 1-month certification periods for those persons.

The Department has not made substantive changes on establishing certification periods in the final rules. However, several paragraphs have been revised to clarify some provisions, particularly with respect to PA/GA households.

In the final rules, State agencies are required to assign certification periods that will allow the closest possible coordination, of the PA/GA redetermination process and the food stamp recertification process. Households in which all members are contained in a single PA/GA unit shall be recertified at the same time they are redetermined for PA/GA benefits, or be assigned a 12-month certification period, whichever is shorter. The only exception is that State agencies which require monthly PA reporting with a 12-month redetermination period, shall assign a 14-month certification period. This procedure avoids needless paperwork and recalculations of food stamp benefits and achieves a closer coordination between the food stamp and PA programs.

For households which contain more than one PA/GA unit, State agencies shall assign certification periods based on one unit's redetermination. For households in which some but not all members are included in PA/GA units, the State agencies may assign a certification period that coincides with the PA/GA unit if the food stamp household's circumstances are stable. If the food stamp household's circumstances are unstable, a shorter certification period may be more appropriate.

The final rules continue to require State agencies to assign the longest certification periods based on the predictability of the household's circumstances. Criteria for assigning various periods from 1 to 12 months have been edited to emphasize that once a household's financial and nonfinancial circumstances have been assessed as stable or unstable, the guidelines for the appropriate certification period must be followed.

Identification (ID) cards. The proposed rules required that ID cards be serialized and handled as accountable documents. The rules also allowed State agencies to use photo ID's if the household consented, provided that unwillingness or inability to be photographed would not affect eligibility or benefit levels.

Over 400 responses were received on ID cards, almost all were critical. State and local agencies strongly objected to serially numbered ID's because of the administrative complexities and expenses which would result. In addition, a substantial number of advocates objected to photo ID's. They felt that eligibility workers might refuse to certify clients who would not consent to have their pictures taken.

In the final rules, the Department has made the use of serially numbered ID's optional for State agencies. The rules continue to permit State agencies to use photo ID's. However, State agencies may not deny benefits because any household member is unable

[60] This rule prevents the disregard, for example, of what could be substantial quarterly or semiannual payments which are intended to provide the household with income for the entire 3- or 6-month period.

[61] As soon as a household first receives a payment from a new source (except for an incidental wage advance or a travel advance) subsequent payments would be counted as recurring income.

or refuses to be photographed. Photo ID's are permitted under current departmental rules upon household contents, and so far as the Department is aware, those provisions have not been abused by State agencies.

ACTION ON HOUSEHOLDS WITH SPECIAL CIRCUMSTANCES

Self-employed households. The Act and proposed rules continued to exclude the cost of producing self-employment income. The Department added depreciation in the proposed rules as a cost of doing business and allowed self-employed individuals to claim the 20-percent earned income deduction. As under current rules, capital gains were included as income.

Over 100 comments were received on this provision, mostly from State and local agencies. The depreciation procedures were regarded as the major problem. State agencies were extremely critical of the proposal which required eligibility workers to: (1) calculate straight line depreciation; (2) take into account acquisitions and retirements of capital assets; (3) allow for noncapital repairs to capital assets; and (4) use the IRS Asset Depreciation Range Tables. Most States felt that the computations would be complicated, confusing, time consuming, and unreliable. Several States recommended that only amounts listed on last year's tax return be allowed as a business income exclusion. The Department agrees with the overwhelming criticism of State agencies and restricts the income exclusion in the final rules to that which is claimed in the household's most recent tax form or amended tax return.[62] The Department recognizes that this approach could increase or reduce the total yearly depreciation for any particular household, compared to that which would have been allowable under the proposed regulations (i.e., the projected depreciation for the current tax year).[63]

However, depreciation is not intended to accurately reflect net income, which should be a consideration for a food assistance program. Depreciation methods provide a means to offset the original purchase price of a capital asset [64] against future earnings, regardless of how or when the purchase price is actually paid.[65] However, regarding the types of self-employed persons who might be eligible for food stamps (usually owners of small businesses without large investments in assets), the final rule should represent a reasonable methodology to provide some allowance for depreciation.

Moreover, for long-term participants, the choice of the final regulatory depreciation procedure, as compared to the proposed procedure, would not affect the total depreciable amount for any given asset, but would only affect the rate at which the asset could be depreciated.[66]

The Department also revised the regulatory language to note that the certification period for a household receiving self-employment income is the period of time that the income is intended to support the household. The State agency, in consultation with the household, shall make this determination. For example, some self-employed households, such as farmers, clearly derive their support on an annual basis and thus will have their income annualized.

Boarders. The proposed rules contain a special income calculation for boarders and provide that boarders, and boardinghouse proprietors, may be eligible as food stamp households in their own right.

Most of the nearly 40 comments on this section showned confusion on how the income calculations would be handled. For instance, several commenters asked if boarders' food stamps can be accepted as room and board payments. Another concern was the procedure for handling eligible households which pay board to a food stamp household.

The final rules revise the procedure for calculating the cost of doing business for eligible households with boarders. A deduction from the boarders' payments shall be allowed for the cost of the thrifty food plan for a household size that is equal to the number of boarders, or the actual documented cost of providing room and board, if higher, provided that in no case will the deduction exceed the payments for lodging and meals made by the boarders. Thus, net self-employment business losses could not be substracted from other sources of household income. The Department does not believe that indirectly subsidizing failing businesses is appropriate under the Act.

Treatment of income and resources of disqualified members. This section proposed a procedure for handling the income, resources, deductible expenses, eligibility and benefit levels for households with members disqualified for fraud or disqualified for failure to meet student work registration requirements during the school year.

Nearly 250 comments were received with the majority recommending that only income actually contributed to the household by the disqualified member be counted in household income. The reason most often given was that it is unfair to assume that the prorated shares, counted under the proposal, would be made available to the remainder of the household.

As stated in this preamble, and the preamble accompanying the proposal, the legislative intent in disqualifying household members was clearly to reduce the household's benefits at least in proportion to the reduction in household size.[67] A household with a disqualified member can potentially receive increased benefits if the disqualified household member's income is not included on a pro rata basis. As a result, the final rules on treating income and resources of disqualified members have not been changed. Otherwise, as noted in the proposal the household and the disqualified individual could benefit by intentionally defrauding the program or intentionally failing to comply with the student work registration requirements.

Treatment of income and resources of other nonhousehold members. The proposed rules do not consider the income and resources of ineligible aliens or SSI recipients in cash-out States as available to the household. The proposal provided that the household was entitled to a deduction for expenses it actually paid and was entitled to a deduction on a pro rata basis for expenses which are shared (with ineligible aliens, SSI recipients in cash-out States or other persons not considered food stamp household members).

Of nearly 25 comments, most concerned ineligible aliens. The majority of commenters recommended that the income of an ineligible alien be prorated and counted as income to the remaining members of the household.

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[62] Self-employed persons which have not filed for a depreciation allowance the prior year, and thus are denied the food stamp depreciation exclusion, may file a regular or amended tax return to obtain a food stamp depreciation exclusion for future months.

[63] Even by using a consistent tax depreciation approach, purchases, retirements, or changes in the usage of capital assets would result in a difference between the yearly depreciation amounts. Of course, use of the prior year's return, instead of a projected approach, could comparatively lower annual food stamp benefits if last year's depreciation allowance was less than the current year's depreciation projection. Thus, owners of businesses which are rapidly expanding (acquiring capital assets) might be less favorably treated in terms of the program than owners of businesses curtailing operations (not purchasing as many capital assets as in the prior year).

[64] Capital assets are normally those business assets which produce income for longer than 1 year.

[65] The House Report noted that the current prohibition on providing an allowance for payments on the principal of the purchase price for capital assets should be continued under the new Act.

[66] The final approach could more accurately reflect available net business income than, for example, the current month's projected straight line, declining balance, or sum-of-the-years' digits depreciation.

[67] Senator Dole pointed out in the Congressional Record (Sept. 9, 1977, S. 14578), that it was not intended that a household benefit if one or more of its members was disqualfied for fraud.

One commenter recommended that a household be allowed deductions for the expenses of an ineligible alien if the alien is a minor child and the household has a legal obligation to pay these expenses.

The Department does not believe that most commenters were aware that cash payments from the non-household member (for example, and ineligible alien living with the household) to the household were to be considered as household income. The final rules restate that principle in § 273.11(d). Moreover, the Department continues to endorse the basis for the income and resources disregard policy for SSI recipients in cash-out States and for ineligible aliens. As stated in the proposal, since the "ineligibility of certain aliens and SSI recipeints in cash-out States is predetermined by the Act and is not intended to be a penalty, the Department believes no penalty should be suffered by the remaining eligible household members by having a pro rata share of the ineligible member's income counted."

Addicts and alcoholics. The Act authorizes as food stamp households narcotics addicts or alcoholics who live under the supervision of a private nonprofit institution for the purpose of regular participation in a drug or alcoholic treatment program. The May 2, 1978, regulations designated the treatment center as the addicts' and alcoholics' authorized representative. The center would apply on behalf of the addict or alcoholic and would be liable for any overissuances. The rules also proposed that a household receive one-half of its coupon allotment if the addict or alcoholic left prior to the 16th day of the allotment month. A penalty of disqualification as a retailer was proposed for treatment centers which were found to have misused coupons or committed fraud.

There were 27 comments on this section, 21 of which were from State and local agencies. The largest number of comments concerned disqualifying treatment centers, there was some confusion on whether FNS would retain responsibility for these disqualifications. Other comments discussed the return of the coupon allotment to the household, strengthening reporting requirements, and clarifying that residents of treatment centers should be certified as one person households.

The final rules clarify the procedures for certifying residents of addict or alcoholic treatment and rehabilitation programs. It is explicit that each eligible resident shall be certified as a one-person household. The State agency shall require a list of currently participating households, on either a monthly or a semimonthly basis. FNS, rather than the State agency, shall disqualify the treatment centers when necessary in accordance with § 278.6. If FNS disqualifies an organization or institution as an authorized treatment program, the State agency shall suspend the center's authorized representative status for the same period of time as the FNS disqualification.

Reporting Changes

Household responsibility to report. In the May 2 regulations, the Department proposed that households be required to report all changes in income. Two alternative proposals were also offered in the May 2 preamble: (1) The household would report all income changes, but the State agency need not act on monthly changes of $10 or less; (2) the household would only report monthly changes in income of $20 or more. The $20 was to apply separately to each income source and not be cumulative. The State would act on any changes reported. The Department further proposed that households be required to report changes in dependent care or shelter costs only at recertification.

The largest number of commenters preferred the second alternative, only reporting changes in income of $20 more. However, the second largest number of commenters preferred the current procedures for reporting changes with a $25 minimum.

Based upon comments citing the administrative difficulties of the three reporting procedures offered in the proposed rules and the surprising number of comments supporting the current procedure, the Department has chosen to continue the current policy of requiring households to report all changes in monthly income over $25 within 10 days after the change becomes known to the household. The State agency shall take action on all changes reported, even changes that are less than $25. The Department continues to exempt households from reporting changes in their public assistance grants since this information is available to the State agency. Households are also required to report changes in household composition, changes in residence, the acquisition of a licensed vehicle not fully excludable under resource rules, and the acquisition of cash on hand, stocks, bonds, and money in a bank account or savings institution when that acquisition reaches a total of $1,750 or more. The Department believes that the acquisition of that much cash on hand (or its equivalent) is indicative of the need to determine whether the household has exceeded the statutory resource limitation.[68]

Report form. The Act and proposed rules require that households report changes in income or household circumstances on a form designed or approved by the Secretary. Some commenters were concerned that information unique to each household, which the proposal required be printed on the form by the State agency, would create an unnecessary administrative burden on the State agency. Many States do not have the capability to itemize the gross income of each household member as required in the proposal. As a result, the State agency would be burdened with an additional processing requirement.[69] Other commenters discussed the relationship between the proposed reporting requirement and the method of anticipating income for determining eligibility and level of benefits. There was some concern that a reported change might cause an adjustment to the household's basis of issuance, although that change would not continue through the rest of the certification period. There were also 300 comments on the postage paid provision, 200 of which were favorable.

The final rules provide that the report form shall contain a space for the household to report whether the reported change shall continue beyond the report month. The Department has made optional the requirement that the form include the amount of gross income used to certify the household, itemized by household member, and the source and frequency of the income. While the Department encourages States to include this information in its report form, some States do not currently have the capacity to conform to the requirement. The rules will continue to require that a postage paid return envelope be enclosed with the report form. States complained that this requirement is an excessive expense. However, State agencies can obtain a business reply permit and be charged only for envelopes actually returned through the mail. (Each piece of mail is charged at the first-class rate plus an accounting fee.) The Department believes that having postage paid return envelopes may encourage more reporting. In addition, the Department is considering a study in a few project areas to determine if different delivery methods (e.g., mail versus giving the form to households during the interview) would have an effect on the number of changes that households report.

State agency action on changes. The proposed rules set standards for State action to change a household's eligibility or level of benefits. The standards

[68] The $1,750 eligibility resource limit, found in the Act, applies to the great majority of households. To avoid having to notify households as to whether the $1,750 or the $3,000 limit applied, the Department adopted this universal rule.

[69] The Michigan State agency indicated that this requirement would create serious data processing problems with its automated data system.

were divided into changes which increased benefits and changes which decreased benefits. The Department also provided rules for expediting actions when a household reported a change which reduces its gross income by $50 or more or reported an additional household member that is not a certified member of another household. State agency action on reported changes was required within 2 or 10 days or no later than the next allotment, depending on the nature of the change and the impact on benefit levels.

A number of State and local agencies were opposed to the timeliness standards, particularly expedited action on certain changes, as being overly time consuming and complicated to the extent that other program services to eligible households might be delayed.

The Department has revised the State requirements for acting on changes. First, the final rules provide that the date a change is reported is the date the State agency receives a report form or is advised of the change by phone or by personal visit. The postmark date plus 2 days rule appeared a needless complication.

The timeliness standards have changed to accommodate verification requirements and increase administrative efficiency. The rules for expedited action on certain changes have been replaced with rules for taking action on changes which are reported late in the month. As a result, the rules now state that all changes which result in an increase in benefits shall be effective no later that the first allotment issued 10 days after the date the change was reported to the State agency. Changes which increase the household's allotment because gross income decreases by $50 or more, or because a new household member is added who is not a member of another certified household, must be effective the month following the month the change was reported. If the change is reported after the 20th of the month the State agency must provide the household with an opportunity to receive the increased benefits by the 10th of the month following the month the change was reported, or by the household's normal issuance cycle in that month, whichever is later. The State agency can issue a supplemental ATP or use and alternative method to provide the increased benefits. In addition, households must provide the required verification prior to issuance of the second normal monthly allotment in order to continue to receive the increased benefits.

These revised rules are responsive to State agency concerns that sufficient time be allotted to process reported changes. The rules also allow State agencies to set the same processing standard for nearly all changes. Only certain changes that are reported late in the month, and are of a lesser nature are given a longer time frame. As a result, the new processing deadlines accommodate State agency concerns and the needs of households which report more drastic changes.

Failure to report. The Department proposed that State agencies file a claim against a household for benefits to which it is not entitled because of a failure to report a change. There were some comments that this section does not address a household's right to a notice of adverse action, or the changes for which a household is liable for not reporting. The final rules clarify that a household is entitled to a notice of adverse action if the discovery of a household's failure to report results in a reduction or termination in benefits during a household's certification period. Also, a household is only liable for overissuances caused by failure to report changes that are required by these regulations.

Mass changes. Procedures were proposed for changes initiated by the State or Federal Government which may affect the entire caseload or significant portions of the caseload. The special procedures are separated into four categories: (1) Federal adjustments to eligibility standards, allotments, and deductions, and State adjustments to utility standards; (2) mass changes in public assistance; (3) mass changes in Federal benefits; and (4) mass changes resulting from implementation of the Food Stamp Act of 1977. Comments supporting and opposing this provision were about evenly divided. Adverse comments centered on the problems of converting the State caseload in a mass change.

Final rules for mass change procedures are the same as proposed except that all States with the automated processing capability shall handle individual changes in Federal benefits as a mass change. For example, if social security records can be cross-checked with State food stamp records by an automated system, social security changes affecting any given household shall be handled by the State agency as a mass change.

Reporting changes for PA households. The change reporting proposals applicable to PA food stamp households were essentially the same as those currently in effect. Any differences reflect the deletion of the categorical eligibility of PA households by the new Act.

The Department received many comments pertaining to these provisions. Generally, they were critical of certain aspects of this section. The largest number of commenters were concerned that changes reported to PA eligibility workers would not be reflected in the household's food stamp file. Proposed solutions to this problem included requiring the PA food stamp households report changes to both PA and food stamp eligibility workers or, for example, establishing a system whereby the PA household would obtain a receipt for the reported change so that the worker would be accountable for acting on it. However, the Department believes that lines of communication normally exist between PA and food stamp units in each State agency. In addition, the Department believes that any requirement that households report the same change twice to the same agency would be an added burden to the household.

Commenters also opposed the prohibition on State agency termination of food stamp eligibility for households where insufficient information was reported to accurately judge what effect the reported change had on the household's food stamp eligibility. Some comments advocated that State agencies terminate the household's participation in both programs in these situations. Commenters argued that the provision in the proposed rulemaking added needless complexity to the handling of reported changes. In addition, many commenters contended that, very often, changes in household circumstances would have similar effects on the household's eligibility for both the PA and food stamp programs. If action were withheld on the food stamp case, as the provision required, then ineligible household could receive food stamp benefits.

However, the Department believes that any changes made in a household's food stamp case should be based on information clearly indicating that a change is necessary. To terminate food stamp eligibility, without complete information, would represent a denial of due process.

The Department did, however, make some changes in this section. Language was added to clarify how State agencies could merge their PA and food stamp change reporting systems. Specifically, the provisions explain how State agencies can adapt their PA monthly reporting system for use in the food stamp program. These final regulations allow State agencies to make such adaptations provided that any adaptation does not impose more stringent change reporting requirements for food stamp purposes than are otherwise required by these rules. Thus, State agencies can adapt their PA reporting systems for food stamp use but cannot require monthly reporting for household information that is needed only for the food stamp program; cannot reduce or eliminate a household's food stamp benefits

merely because the household fails to submit a monthly report; and, still must accept changes reported outside the reporting system. Further, if a State agency does adapt its PA reporting system the State agency must still act on changes within the time frames established by these regulations. However, households which use such a system do not have to report changes within 10 days; they can follow the PA schedule for monthly reporting.

NOTICE OF ADVERSE ACTION

The proposed regulations required that the adverse notice period include an additional 2 days for mailing time. State agencies complained that the mailing time provision created unnecessary differences between the food stamp advance notice period and the Department of HEW standard for the AFDC program. Moreover, State agencies complained that the allowance for mail lag and for weekends or holidays would create computer programing problems. To reduce the administrative complexities, State agencies are permitted to use the same adverse notice period for both their food stamp and public assistance caseloads. To protect households which request a hearing late in the notice period, State agencies must continue benefits, as if the request had been received on the prior working day, for requests received the day after a weekend or holiday.

State agencies also indicated that some computers that generate notices are not able to print the worker's name on the notice as required by the proposal. Consequently, the requirement that the worker's name be on each notice has been deleted. However, the Department recommends that, if possible, workers' names be printed on notices. This information could facilitate the handling of household questions.

Some commenters recommended that the adverse notice include the FNS regulatory citation upon which the action is based. This suggestion was not adopted because most eligibility workers do not have access to Federal regulations. The final regulations already require that the reasons for each denial or reduction of benefits be clearly written on each notice of adverse action. Also, households can have the eligibility worker show them the State manual citation, which should conform to the Federal regulations,[70] on which the adverse action is based. Furthermore, if the household questions the validity of a State manual provision, it may request a hearing on the action and the hearing authority will have to cite the FNS regulation supporting the hearing decision.

Exemptions from notice. The proposed regulations provided for a waiver of adverse action for households which wrote a statement acknowledging that the information provided would result in a reduction or termination of benefits and that the household waived the right to the advance notice. Many commenters disapproved of this waiver and expressed concern that it would create problems for both households and States. Advocacy groups feared that households might not be made fully aware of the consequences of the rights' waiver. State agencies were concerned that they might be accused of unduly pressuring households to sign waivers. That issue, itself, could result in even more fair hearings. To avoid these problems, the waiver is deleted.

Although comments criticizing the other waivers were also received, the remaining waivers remain intact as previously proposed for reasons discussed in the proposal. One additional waiver has, however, been added for those cases where a household entitled to expedited service has been assigned a certification period of more than 1 month pending receipt of the postponed verification. If the verification provided results in a change in the household's eligibility or level of benefits, or the household fails to provide verification within 30 days, the regulations specify that the State agency shall terminate benefits or act on the change without sending a notice of adverse action. The waivers reduce State administrative expenses and processing burdens and could directly benefit households by allowing for longer certification periods. If the waivers were eliminated, households would be required to return to the certification office more frequently and States would have more applications to process. To provide more adequate notice, a clarification has been added to indicate that strikers must be advised that signing a waiver is an optional method to enable them to be certified for a longer period.

RECERTIFICATION

Nearly 300 individuals and groups commented on this section; most opposed some aspect of the recertification rules. Many commenters suggested: (1) Developing a short recertification form; (2) extending certification periods when there are no changes in income or household composition; and (3) eliminating interview requirements for PA, SSI, or GA recipients.

The Department has no objection to State agencies using a short recertification form provided the short form is approved by FNS, contains enough information to determine household eligibility, and provided that all eligibility factors are later reviewed during the household interview.

Allowing State agencies to extend the certification period when there are no changes in household income or composition is contrary to the Act. In explaining the statutory definition of certification period the House Report states:

> The food stamp program is not a program of permanent or continuing eligibility subject to periodic review. It is a program of distinct and separate entitlements known as certification periods, which limit participation in the program. When each such period ends for a household so does its eligibility * * *. The end of a certification period is, thus, the definitive cutoff of the right to participate in the absence of recertification.

The Department did not eliminate the requirement for conducting a recertification interview for PA, SSI, or GA recipients since the interview is a critical factor in the application process, and is necessary to assure that households are correctly certified.[71]

At least one State agency objected to sending a notice of expiration since the client should already know when its certification period ends based on the notice of eligibility, the I.D. card and the ATP card. The Act, however, specifically requires that a notice of expiration be sent. Note that State agencies may send the notice of expiration with the household's last ATP card as long as the ATP card is mailed within the time limit for mailing the notice of expiration.

Several persons objected to the proposed time limit for sending the notice of expiration. At least one State agency suggested that the Department delete the prohibition against mailing the notice of expiration any earlier than 15 days prior to the household's last month of certification. Deleting this prohibition would allow State agencies to mail the notice of expiration with the ATP card sent in the month prior to the household's last month of certification. The Act, however, requires that the household receive the notice of expiration "* * * immediately prior to or at the start of the last month of its certification period * * *." The Department believes that receipt of the notice nearer the end of the certification period would be a more effective incentive to apply for recertification. Therefore, the proposed rule is continued.

Because of the short period of time the State agency has to conduct an in-

[70] The Department requires that each State Food Stamp Certification Manual be examined and approved by FNS.

[71] The House Report stressed the importance of the interview process and noted that public assistance recipients do not have a "perpetual entitlement" to food stamps, even if the public assistance might be perpetual, but instead are "subject to distinct entitlements marked off by certification periods * * *."

terview, obtain verification, and deliver benefits, one State agency suggested that they be allowed to schedule interviews during the 15-day period prior to the last month of the household's certification period. Under the *Basel* v. *Butz* court decision, State agencies cannot require that a household appear for an interview before the last month of its current certification period. However, there is nothing which prohibits households from voluntarily appearing for an interview prior to the last month. Therefore, language has been added which clarifies that State agencies may schedule interviews prior to the last month of the household's certification period or prior to the date the application is timely filed, as long as the household is not denied for failing or refusing to appear for that interview. The regulations further state that the State agency must schedule an interview on or after the date the application was timely filed if an interview has not been previously scheduled or the household fails or refuses to appear for an interview scheduled prior to the date the application was timely filed. Households that fail to appear for the interview scheduled after the application was timely filed shall lose the right to uninterrupted benefits, although the application shall not be denied at that point unless they have refused to cooperate.

One State agency objected to mailing out application forms with the notice of expiration. The regulations do not require that State agencies include an application with the notice of expiration but instead encourage State agencies to do so.

In § 273.14(c)(2), a phase which was included in the *Basel* regulations published on December 23, 1977 (42 FR 64357) was deleted by mistake. The phrase "even if the State agency must provide an opportunity to participate outside of the normal issuance system" has been added to the end of the second sentence of the paragraph.

Fair Hearings

Local level hearings. A total of 1,840 individuals and groups commented on the proposed fair hearing procedures. The major opposition concerned the two-tiered system of hearings which provided for local level hearings with State level reviews. Approximately 350 commenters, including 37 local agencies, were concerned that the two-tiered system will become inefficient since the local decision is subject to review at the State level. Many commenters, however, were apparently not aware that the two-tiered system has been in use for years for both food stamp and public assistance hearings. Many commenters suggested that if the two-tiered system is retained, only 30 days be allowed to complete the process for each tier instead of the proposed 45 days (or the current 60 days per tier). After careful consideration, the Department decided to allow 45 days to complete the process for each tier, as proposed. Some State agencies presently experience difficulty in meeting the current 60-day standard for each tier. Also, upon implementation of these new regulations, States will face the tremendous task of redetermining the eligibility or basis of issuance of every household and may temporarily encounter a substantial increase in fair hearing requests as a result of reductions or terminations of benefits. Consequently, at this time, the Department will not further reduce the time allowed for processing fair hearings.

Because of the negative criticisms about the two-tiered system, centering on local level hearings,[72] the Department will study these issues further to develop more information before introducing further changes. In response to criticisms concerning the potential for bias at local hearings, the Department added to the final regulations the requirement that the supervisor of the eligibility worker who took the contested action may not act as the hearing official in that case.

Timely action on hearings. Many commenters also addressed the proposed 60-day single tier standard in which State agencies have to conduct the State level hearing, arrive at a decision, and reflect that decision on the coupon allotment. Many State agencies complained that the standard was too short because the decision had to be reflected in the coupon allotment within the 60 days, which represents a shortening of current policy. Other commenters felt the standard was too long for households to wait for relief. The Department has revised the standard slightly to allow States the full 60 days for conducting the hearing, arriving at a decision and notifying the parties of the decision. An additional 10 days has been provided for the State agency to issue increased benefits resulting from the hearing decision. Although the Department would like to reduce the 60-day standard, during the transitional phase any reduction may be administratively infeasible for many States. However, as previously mentioned, the Department will further study State hearing procedures after the conversion period to gather more information on how to reduce the burdens on the State agencies and improve service to households.

Expedited hearings. The proposed regulations required expedited fair hearings for households appealing a denial under the expedited certification procedures. There were approximately 90 comments on this provision, most of which were critical. Two-thirds of the comments were from Federal, State, or local government agencies and were overwhelmingly negative and asserted that the procedures were inefficient, administratively infeasible, and unrealistic. Some commenters also noted that since an expedited hearing could take 3 weeks, households appealing a denial of expedited service might have been certified under normal processing rules anyway before the expedited hearing decision could be rendered. The requirement for expedited hearings is deleted. However, this issue will be further reviewed in the Department study previously discussed. The Department retains the requirement for expedited agency conferences for certain households to attempt a rapid resolution of household complaints.

Agency conferences. In response to commenters who recommended that agency conferences be available to all households, the final regulations require State agencies to develop a system for agency conferences for households appealing a denial of expedited service. The Department retained the 2-day requirement for agency conferences for households denied expedited certification procedures. The Department also added a requirement that State agencies expedite hearing requests from households, such as migrants, which plan to move from the project area before the hearing decision would normally be reached. This recommendation should improve service to transient households. These two requirements partially compensate for the deletion of the expedited hearings and provide timely service to certain needy households.

Consolidated hearings. The proposed regulations maintained current policy on consolidated hearings. Comments both for and against this provision were received. To insure that each household's privacy is not compromised, language was added to prevent consolidated hearings where individual issues of fact are disputed. Consolidated hearings are restricted to cases where related issues of State and/or Federal law, regulations, or policy are the only issues being raised.

Notification of right to request hearings. To insure that households are aware of their hearing rights, a sentence has been added to require States to remind households of their hearing

[72] This criticism concerns not only the increased time it takes to complete two tiers, instead of one, but also the alleged inadequacy and bias of some local hearing officials. The new comprehensive and periodic training provisions and the restrictions on who may serve as hearing officials may favorably impact on this alleged problem which the Department intends to study.

rights each time there is a disagreement with a State agency action.

Time period for requesting hearings. The proposed regulations permitted households to appeal a State agency action for a period of 1 year after the action was taken. Sixty-eight State or local agencies commented that the period was too long. The main objections were that staff turnover, impaired recollection, and loss of evidence could make it difficult to recreate a reliable picture of the situation.

Most commenters recommended a uniform time period, of between 30 and 90 days, to insure a single national standard. The Department adopted 90 days as the period within which fair hearings may be requested. This standard conforms to the maximum period allowed by HEW for AFDC appeals. In addition, the regulations allow a household to dispute its current level of benefits by requesting a fair hearing any time within the current certification period. This provides households an opportunity to challenge current benefit determinations.

State agency responsibilities on hearing requests. The proposed regulations required the State agency to "help a household with its hearing request and with preparation of its case," upon request. It was noted that this language implied that the State agency was responsible for actually working with the household to build a case against the State. In addition to conflict-of-interest problems, it may be difficult for the State agency to effectively challenge a position it believes is correct. Consequently, the above-mentioned phrase was deleted and instead, the final language clarifies that upon receiving an oral hearing request the State agency shall complete the procedures necessary to start the hearing process.

The final regulations require that State agencies use bilingual staff or interpreters to provide verbal explanations of hearing procedures to non-English-speaking individuals who express an interest in appealing an agency action.

Continuation of benefits. The proposed regulations stated that households would receive continued benefits, prior to the hearing decision, only if requested on the hearing request. Many commenters suggested that the continuation of benefits should be automatic. The Department retained the provision to require that the fair hearing form contain a space for the household to indicate whether continued benefits are desired during the pendency of the hearing. However, the Department added a requirement that, if the household fails to indicate its preference, benefits shall be continued. As in the proposed regulations if the household then loses its appeal, a claim shall be established for the overissuance.

Notification of time and place of hearing. Commenters also suggested that a precise standard be mandated for advance written notice of a forthcoming hearing. To insure a uniform and exact standard, the Department adopted a minimum 10-day advance notice period. This standard should provide the household with adequate preparation time since the household initiates the fair hearing process and should be already aware of the basis for the challenge.

Hearing authority. In the proposed regulations all references to the term hearing authority were deleted and only the term hearing official was used. Commenters expressed concern that the State option to have a hearing authority (an individual or a board), which reviews all recommendations from hearing officials, had been removed. The Department did not intend to require States to revise their basic processes for deciding or reviewing hearing decisions. Consequently, the term hearing authority has been reinstated in these regulations and, where necessary, the language has been revised to acknowledge the review process.[73]

Attendance at hearing. The proposed regulations allowed the public to attend hearings, upon household consent. Commenters expressed concern that members of the public may disrupt the hearing procedures or overcrowd the hearing facilities. A provision has been added which allows the hearing official to limit the number of persons in attendance if it is determined that space limitations exist.

Hearing decisions. The proposed regulations gave households wishing to appeal a local decision the choice of either a State level review of the decision or a completely new State level hearing. Commenters expressed concern that the household might fail to indicate a preference or might choose the review process when it would prefer a new hearing. Consequently, the regulations now state that a household wishing to appeal a local decision will receive a completely new hearing, unless it specifically requests a State level review of the decision.

Many commenters responded negatively to the proposal that local agencies could appeal local hearing decisions since it would impose additional burdens on the household even though the local official decided in the household's favor. The final rules do not provide for local agency appeal. However, this issue, and the possibility of Federal review of State decisions, will be carefully considered as part of the study of the hearing process. Further rulemaking on this issue will likely be forthcoming.

[73] This confusion arose even though the preamble to the proposed regulations stated that: The Department proposes using the term "Hearing official" to describe what the current regulations refer to as both the hearing authority and the hearing official.

Fraud Disqualification

General comments. Some State agencies expressed concern over the constitutionality of administrative fraud hearing procedures and cited State laws which require that fraud be determined only by courts. Notwithstanding State law, Congress has authority to provide an administrative procedure for disqualifying individuals from Federal benefit programs who have committed fraud so long as the constitutional requirements of due process are met.[74] The Department carefully considered those due process requirements in establishing the fraud hearing standards. In addition, the term "fraud" is strictly defined in the regulations to protect the individual and to assure that the administrative determination of fraud is applied consistently.

A few State agencies were concerned about the cost of conducting an administrative fraud hearing and suggested that the $35 limit, below which fraud hearings could not be conducted, be raised to $50 or that States be allowed to set their own limits subject to FNS approval. The final rules have remained unchanged to maintain consistency between the recipient claims waiver and the fraud hearing provisions. Each State agency must implement the administrative fraud disqualification procedures and must have a system established for conducting fraud hearings.

State agencies also asked whether fraud hearings would be reimbursed at the "not less than 75 percent" statutory funding rate. The Department believes that enhanced funding should be provided for fraud hearings. This provision will be included in the administrative cost regulations to be published at a later date.

Many State agencies felt that household repayment of fraudulent overissuance should be mandated. Under current procedures and the final regulations households are required to repay fraudulent overissuances. State agencies may file a civil court action to enforce repayment if the household does not voluntarily repay the fraudulent overissuance. However, since the Act provides that disqualification be imposed only after the administrative fraud hearing has determined that fraud occurred, it is not possible to use the threat of disqualification as a means of obtaining repayment.

[74] The supremacy clause of the U.S. Constitution provides that Federal law may override State law.

Definition of fraud. Many persons commented that the definition of fraud be revised. One part of the definition which caused considerable concern was (b)(7), which defined fraud as any action done to "commit, or conspire to commit, any other fraudulent act to get food stamp benefits * * *." Many persons felt this language was circular and vague. The Department agrees and has deleted the language of (b)(7) from the definition. Moreover, use of the term "conspire" could have led to various interpretations based on State conspiracy laws and policies.

Several comments suggested that the individual must obtain benefits the person knows he or she is not entitled to receive before the individual's action can be defined as fraud. However, the proposed and final rules clearly define fraud as an intentional act. Therefore, the Department believes that the additional knowledge test is not appropriate.[75]

Other comments suggested that before the act can be defined as fraud, a net overissuance must result after offsetting any amounts to be restored against the amount obtained. The Department believes that a household's entitlement to restoration of lost benefits is irrelevant as to whether a fraudulent act occurred.

Since the use of coupons to buy ineligible items is defined as fraud, several State agencies were concerned that the Department would no longer retain its responsibility to monitor retailers. The Department plans to continue to monitor the activities of retailers. However, since the Department does not have the authority to disqualify household members who have knowingly bought ineligible items, the Department must refer cases involving households to the State agency for appropriate action. Language has been added which clarifies that fraud hearings shall not be conducted if the value of the ineligible items purchased was less than $35. The Department believes that conducting fraud hearings for minor violations would not be cost effective, especially since purchases of inexpensive ineligible food items could be inadvertent in many cases.

Time period for administrative disqualification. Several persons objected to the 3-month time limit for disqualifying individuals found guilty of fraud through an administrative fraud hearing. Several suggested a 2-year penalty, others suggested a 5-year penalty, while still others suggested that the individual be permanently disqualified. A State agency suggested that the individual be disqualified for the length of time it takes to offset the amount fraudulently obtained. Several persons also suggested that the entire household and not just the individual be disqualified. All of these suggestions were, however, rejected since the Act requires a 3-month disqualification penalty and requires that the individual who committed fraud be disqualified rather than the entire household.

Fraud hearing procedures. Most advocate groups opposed a dual fair and fraud hearing system as being needlessly complicated, providing an opportunity for abuse of client rights, and involving service agencies in the prosecution of persons accused of fraud. They suggested that the same hearing system be used for both fraud and nonfraud hearings.

Many of the fraud hearing procedures are basically the same as the fair hearing procedures. For example, those portions of the fair hearing regulations which specify the rights of households, the powers and duties of hearing officials and hearing authorities, and the criteria for selecting these officials, have been incorporated by reference into the procedures for conducting administrative fraud hearings (see § 273.16(d)(2)(ii)). Individuals suspected of fraud are afforded the same rights during the fraud hearing as households requesting fair hearings. In addition, State agencies may use the same officials to conduct both fraud and fair hearings. The Department expects most State agencies will simply expand the duties of fair hearing officials to include fraud hearings.

Where there are differences between the procedures for conducting fraud and fair hearings, these differences have primarily been adopted to afford more protection for the rights of the individual suspected of fraud. The consequences of a fraud determination are usually regarded as very serious; thus additional protections are provided as a matter of policy. For example, in cases where the State agency has initiated a fraud hearing, the Department believes the individual suspected of fraud should be provided 30 days advance notice rather than the 10-day advance notice required in fair hearings.

The requirement that certain fraud notices be mailed by certified mail-return receipt requested also affords an additional protection to the individual suspected of fraud in that the individual is relieved of the burden of proving to the State agency that the notice was not received, or if received, that it was not timely received. Also, in fraud hearings, a "de novo" hearing is automatically provided when the household appeals a lower hearing decision. In fair hearings, the household must request a "de novo" hearing.

Time limit for conducting fraud hearings. Several State agency comments stated that 60 days was not enough time for a State agency to reach a decision, since 30 days of that time must be used as an advance notice period. The Department agrees and has added 30 days to the time limit to compensate for the advance notice period. Since the 30-day advance notice period is not needed when the individual appeals the local fraud hearing decision to a State level hearing, the 60-day time limit has been retained for these cases. Only 10 of the 60 days are used as an advance notice period in those situations.

Comments were also received which asked that a time limit be established between the time the fraudulent act occurred and the time the State agency would be allowed to initiate a fraud hearing. One commenter suggested that a 12-month time limit be imposed. The Department has not imposed a time limit because of the importance of deterring and punishing fraud and because of the length of time it may take a State agency to uncover suspected fraud and conduct a thorough investigation. Moreover, the Department does not wish to encourage a State to file fraud actions to meet deadlines, if the State has not conducted a thorough investigation.

Fraud notices. Several State agencies objected to mailing certain fraud notices by certified mail-return receipt requested because of the expense of certified mail. However, delivery through certified mail offers protection for both the State agency and the individual suspected of fraud. The State agency will know whether or not the notice was received and, if received, the exact date the notice was received. Certified mail also increases the likelihood that the individual will receive actual notice of the fraud changes.

Several commenters suggested that the individual suspected of fraud be given *Miranda* [76] type warnings prior to the administrative fraud hearings, since statements or evidence presented by that individual could be used in subsequent court actions. While the *Miranda* decision does not cover those situations, the Department believes, as a matter of policy, that persons should be accorded the right to remain silent. The final rules provide that the hearing official will orally advise the person of that right. This warning should be carefully worded to minimize the possible chilling effect on the

[75] Moreover, that suggested language could be interpreted to mean the individual would have to know exactly how much excess food stamps it was fraudulently obtaining. Since the individual might not know the exact amount, even though the fraudulent act was intentional, the individual might raise that issue as a defense.

[76] *Miranda* v. *Arizona*, 384 U.S. 436 (1966); requires police officers to advise persons in custody of certain rights prior to police interrogation.

person's willingness to openly and thoroughly testify, which could operate to the disadvantage of the person.

Several persons suggested that the Department provide specific criteria to guide the courts on the length of the disqualification penalty. Since the Department does not have the authority to mandate that the courts follow such guidelines, these guidelines would, in most cases, be meaningless. Moreover, the Department believes that most courts will determine the length of the disqualification period on a case-by-case basis, taking into account a multitude of factors, such as the severity of the acts and prior related convictions.

At least one person suggested that court imposed disqualification be reduced by the number of months the individual was disqualified as a result of an administrative fraud hearing. Although many courts may choose to do this, the Act allows courts to impose the maximum disqualification penalty even if the individual has already been disqualified for 3 months by an administrative fraud hearing.

Restoration of Lost Benefits

The Department proposed that lost benefits be restored whenever the loss was not caused by an intentional act or omission on the part of the household. The rules also stated that benefits shall not be restored if they were lost more than 12 months prior to the date the State agency is made aware (receives information or a notice) that coupons may have been underissued to a household. Only disputed benefits would have to be resolved through the fair hearing process. To aid in calculating the exact amount of lost benefits, the Department proposed a formula whereby the loss was considered to have extended until the first month the error was corrected, the first month the household was found ineligible or the first month the household reapplied. The burden of proof for verifying that there was a loss in each month was on the household. Finally, the proposal stated that households would receive not more than 100 percent of the maximum allotment, in addition to the allotment the household was normally eligible to receive, or as many months as necessary to compensate for the loss.

Approximately 1,600 individuals and groups commented on this provision. The large majority were critical of some part of the provision. Only 16 writers totally approved this section. These commenters generally approved of the new procedures, citing administrative ease, and supported restoration in cases of State agency error and lost benefits for those currently ineligible. Most of the negative comments objected to denying restoration of lost benefits in cases of underissuance which were the fault of the participating household on the grounds that participants may have difficulty understanding the regulations and might be unaware of the underissuances. The majority of other groups advised that State agencies should be required to assist the households in demonstrating eligibility during each month in question.

State and local agencies commented on a variety of aspects of this section. However, the most significant concern related to the method of restoring lost benefits. Forty-two State and local agencies recommended that for administrative convenience lost benefits be restored in a lump sum.

The Department has revised this section. Entitlement to restoration of benefits will be established when a loss of benefits was caused by an error on the part of the State agency or where this rulemaking specifically states that the household is entitled to restoration of lost benefits. Also, benefits will be restored in cases of erroneous fraud disqualification. This language emphasizes that benefits will be restored in all cases where State action caused the loss or where the rules require that credits for lost benefits be provided. However, benefits will not be restored if the household is otherwise at fault. Examples of errors for which benefits will not be restored are: A household does not report a change which will increase benefits, or the household fails to provide verification without good cause, or the household provides incorrect information which results in a loss of benefits. The Department contends that responsibility for these losses rightfully rests with households, which are regarded as having explicitly or implicitly consented to benefit determinations based on information which they supplied. State agencies should be entitled to rely on household assertions (or household failure to report changes) in determining benefit levels and not have to bear the additional administrative costs of processing household requests for lost benefits. Without this rule, State agencies might impose more strenuous verification, reporting, and proof burdens on households. Moreover, the rule acts as an additional incentive for households to comply with program requirements, and to accurately report information. State agencies are encouraged, however, to make every effort to help households understand verification requirements and to encourage accurate reporting of changes.

The final rules retain the 12-month time limit for establishing entitlement to lost benefits.[77] The rules also require that only disputed benefits be resolved through the fair hearing process. The rules for computing the amount to be restored were modified. Losses are calculated until the first month the error is corrected or the first month the household is found ineligible.

The paragraph dealing with documenting a loss was revised to emphasize that the household and State agency should cooperate in documenting a loss. Because of comments on restoring benefits to households in which the membership has changed, the final rules call for benefits going first to the household containing a majority of individuals who were household members at the time the loss occurred. In this manner, benefits which the entire household lost are provided to the greatest number of former members. A pro rata provision was considered overly complicated and time consuming and might involve attempts to locate several different former household members. If the State agency cannot locate this household, restored benefits will go to the person who was head of the household at the time the loss occurred.

The Department favored the installment method of restoration to avoid abuse by households which receive more benefits than they can reasonably use. However, State agencies argued that installment restoration of benefits is costly and inefficient. The final rules allow benefits to be restored in a lump sum. The rule allows households to request restoration in monthly installments if they choose to avoid situations where the household has more coupons than it can use in a reasonable time. The final rules also authorize restoration of benefits to currently ineligible households, which is consistent with the Act.

Claims Against Households

The proposal delegated claim settlement and compromise authority for claims against households to State agencies. In turn, the Department would monitor each State's overall activities in handling claims. State claim processing procedures were divided into fraud and nonfraud. States would not collect nonfraud claims that were caused by certain procedural errors. However, the Department did propose that households be liable for nonprocedural agency errors even if the households was not at fault. A 12-month time limit for establishing nonfraud claims was also proposed. The rules also contained procedures for processing fraud claims that were not limited to a 12-month time period, as well as criteria for suspending collection action for both fraud and non-

[77] As of Nov. 1, 1979, this 12-month limit also applies to all potential credits which arose under the current regulations (the Act of 1964).

fraud claims. States were required to submit monthly consolidated checks to FNS equaling the claim repayments from households during that month.

Nonfraud claims. Over 500 comments were received regarding the handling of nonfraud claims. The greatest number of comments supported the proposed voluntary payment of nonfraud claims. One advocate commenter, however, felt that the proposed procedure of offsetting nonfraud claims against loss benefits negated the voluntary repayment concept and could even induce States to purposely underissue so that they can then offset. Also, several States and local offices were opposed to the $35 limit for establishing claims and wanted the minimum dollar amount to be set at a higher value.

The Department has revised the demand letter concerning collection of nonfraud claims by deleting the statement that repayment is voluntary, and inserting instead a statement that if the household falls behind in payments or is unable to pay the claim, this will not affect the household's eligibility or benefits. As commenters noted, the fact that eligibility will not be affected does not mean that repayment is voluntary. States may file civil actions to seek repayment. The final rules also continue to authorize offsetting of nonfraud claims against lost benefits. In offsetting against lost benefits, a household's current benefits are not reduced, only the past entitlement is affected. However, the Department will monitor State agencies to insure that States do not underissue benefits so that a claim can be offset. Also, to ease the administrative burden of processing and collecting small claims, the Department will investigate increasing the minimum dollar amount of claims for which State agencies must attempt collection. For the present, however, the current $35 limit will remain.

Fraud claims. The proposed procedures for handling fraud claims prompted over 1,200 comments. The possibility that State agency "fraud investigators" might determine if a claim should be classified as a fraud claim, generated severe criticism. Public and advocate commenters strongly opposed the proposal and urged that fraud determinations be established only by means of an administrative fraud hearing or court action. In addition, a number of State and local offices, as well as concerned citizens, expressed opposition to the continued participation of households who refuse to repay fraud claims. Some State and local agency commenters requested that States be given the authority to disqualify households for failure to repay fraud claims.

To insure due process, the Department has redefined a fraud claim to eliminate the reference to State agency fraud investigators. As a result, a fraud claim can be lodged only if a finding of fraud is made at a hearing or by a court of appropriate jurisdiction.

Collecting claims. Nearly 1,900 comments were received opposing the provision regarding the collection of claims. No commenters approved the provisions exactly as written. A majority of the commenters, primarily participants and interest groups, opposed the initiation of claims against households because of overissuance due to State agency error. Two solutions were offered. A number of commenters requested the provision concerning State agency responsibilities be deleted from the final regulations as a basis for establishing a claim. A greater proportion of the commenters agreed that better training of office staff would be the answer to the problem. The State and local agencies were most concerned with the collection of claims from households whose composition has changed. Since the head of the household will normally be the main, or only, wage earner, and since that household head enjoyed the benefits of the overissuance, the Department adopted the proposal that the household head be billed. This straightforward policy will avoid the additional costs and paperwork involved in locating, billing, and keeping records of contributions from each former household member.

The Department reviewed the issue of collecting claims caused by overissuances due to agency error. Despite the number of adverse comments, this policy remains in the final rules. While it is true that the household did not cause the overissuance, the benefit of such an error clearly accrues to the household. Since no entitlement for these benefits exists, a claim against the household must be filed. The Department's policy avoids the unjust enrichment of households, at public expense. Additionally, billing for these amounts may, in the future, encourage households to report when they are aware that they are being overissued benefits.

In response to comments about sending demand letters, the Department has revised regulatory language to allow State agencies to send demand letters at less than 30-day intervals. The Department has also deleted reference to pursuing collection action if: (1) A court's decision addresses restitution; (2) the amount of restitution ordered is less than the amount of the loss; (3) prosecution results in imprisonment; or (4) the State's statute of limitations has expired. Since the State agency may have more experience and expertise in these areas, the State agency is allowed to use its own discretion in taking collection action in these cases.

The final rules also clarify the difference between holding a claim in suspense and terminating collection action. Collection action can only be terminated after a claim is held in suspense for 3 years. The final rules cite four criteria for holding a claim in suspense: (1) The household is financially unable to pay the claim, (2) there is little likelihood that the State agency can collect or enforce collection of any significant sum from the household, (3) the household cannot be located, and (4) the cost of further collection action is likely to exceed the amount that can be recovered. Once collection action has been terminated, the normal FNS record retention rule applies and the State agency may still offset the claim against a household's entitlement to restoration of benefits.

Because of comments that State agencies have insufficient time to forward a consolidated claim warrant and a report on claims activities by the 15th of each calendar month, the Department has extended that submission deadline. The final rules state that a consolidated check and a report must be submitted no later than 30 days after each calendar month and a State agency cannot hold a claim payment more than 60 days. This new deadline takes into account processing delays which may result if claim payments and reports are first consolidated at the project area or local level.

60-Day Continuation of Certification

The Act of 1977 provides that certified households moving between project areas will remain certified for participation in the new project area for 60 days after the move. The proposed rules retained the current requirements governing the transfer of eligibility, except that they also require that when the household submits a transfer form in the new project area, it must report any changes in circumstances. The State agency is required to process these changes as described in § 273.19.

Less than 20 comments were received on this section, mostly negative. Recommendations included deleting use of form FNS-286, since expedited service will handle the need for continued benefits and informing the household of the availability of transfer rights at every certification.

While expedited service may take precedence over the continuation of certification procedures, the Act requires a 60-day continuation of certification procedure. Households leaving a project area have the opportunity, however, to be processed under either

procedure depending upon their financial circumstances. In addition, the Department has clarified the rule on households moving within a State. State agencies can use form FNS-286 or another procedure to continue service to certified households that move between project areas within a State. If another procedure is used, it must offer the same continuation rights that are contained in this section for households entitled to a form FNS-286 and must be approved by FNS.

ISSUANCE

Part 274, Issuance and Use of Food Coupons contains regulations governing the issuance of food coupons to households. Included in the rules are the basic responsibilities of State agencies to issue coupons to eligible households, the types of issuance systems that can be used, the responsibilities of coupon issuers, and the accountability requirements over coupon issuance and reconciliation. Many commenters briefly mentioned the issuance provisions, nearly all opposing some aspect of the proposed rules.

A number of comments were received relating to the proposed handling of ATP's issued after the 25th of the month. Some State and local agencies expressed concern that the reconciliation procedures would be expensive and would increase the difficulty of filing timely and accurate reports. For instance, commenters felt the regulations did not clearly indicate how to reconcile these cards. To clarify this point, the Department has changed the regulations to specify that ATP's are to be reconciled against the month of redemption of the ATP, not the month of issuance of the ATP.

State agencies noted that under the proposed regulations as many as three valid ATP cards could be transacted in a given month (the ATP card issued after the 25th of the prior month, the current ATP card and a supplemental ATP card). It was argued that proper reconciliation would require more elaborate computer systems or costly manual reconciliation processes. The final regulations allow States more flexibility in situations where certifications are completed late in the month. Rather than requiring that supplemental ATP's be issued after the 25th of the month, the rules allow States the option of issuing an ATP which will expire at the end of that month, provided the household is informed that if it is unable to negotiate the ATP prior to the expiration date, a valid replacement will be issued. As a further option, the State may issue an ATP after the 25th that is valid for only 20 days into the subsequent month, should this system be more compatible with the State's ATP processing system. Other sections of the regulations, by substantially modifying requirements proposed for the timeliness of State actions will further reduce the number of supplemental ATP's.

In addition, the regulations were modified to reserve submission of the reconciliation report. Since this report will establish State liabilities, the Department believes comment should be invited again on the reconciliation report when the proposed rules on State liabilities are published. These regulations do establish necessary system requirments so that States will be able to identify irregular ATP's.

Another comment of particular significance was offered by the Postal Service. The USPS pointed out that, under Postal Service rules, coupons cannot be sent by certified mail. The Postal Service suggested that first-class mail be used, and that States and local postal officials should work together to solve problems of nondelivery of allotments.

The Department has adopted the USPS suggestion, but is concerned about the cost of replacing all coupons lost in the mail. Several commenters stated that there is no definition of an "unacceptable" mail loss rate to trigger FNS's notification to a State that further mailings will be at the State's own risk. In fact, the Department's proposal did stipulate the level of mail losses which FNS would accept—certified mail was required whenever the replacement cost of coupons lost through the mail exceeded the cost of using certified mail. However, this standard can no longer be used since certified mail cannot be used to mail coupon allotments.

Numerous advocacy groups were concerned about mail issuance. They recommended that where coupons are lost in the mail, the household be contacted for advice on the best method for future deliveries. Others recommended that States offer all participants the option of mail issuance.

The regulations were amended to require States to follow up on each case of reported nondelivery to attempt to determine the cause and to effect appropriate corrective action. The Department did not amend the regulations to require mail issuance as an option to all participants because mail issuance is not a practical issuance method in many urban settings.

Other concerns voiced by many commenters related to State agency issuance responsibilities. They requested that the regulations specifically include tribal and urban Indian organizations in describing the types of entities that may be used to issue food stamps. Also, the Department was requested to define "adequate security" so that community-based groups could be delegated issuance responsibilities.

The final rules require that all issuance agents meet minimum security requirements in order to qualify. These rules, however, are not intended to eliminate community-based locations as issuing agents. The criteria for contracting are specified in part 277 (currently 275). Therefore, the Department deleted the phrase, "adequate security" in 274.1 as unnecessary.

Another amendment to the regulations was suggested by the Postal Service. In the proposed rulemaking, the Department's agreement with the Postal Service for coupon issuance was discussed. The Postal Service regarded the proposed rules' reference to the "model contract" as part of the agreement as misleading. The "model contract" is not actually a contract but functions as a Postal Service management guideline furnished to its regional offices. The Postal Service is entitled to modify the model itself without Department consent.

Likewise, State agencies are not bound by the terms of the "model contract" language. The Department wishes to stress that States are free to negotiate with the Postal Service regarding additional operating hours, weekend issuance and transaction fees or any other area not specifically prohibited by FNS regulations.

As noted earlier, ID cards are not required to have serial numbers, but must be treated as limited access forms. Likewise, ATP suspension for households which do not participate for 2 consecutive months has been dropped because of criticism that benefits should not be discontinued simply because ATP cards are not transacted. In those circumstances the household is still eligible and could have decided to not use or neglected to use the ATP card for a variety of reasons.

Some commenters misunderstood the requirements for emergency authorized representatives. Occasionally, neither the household nor the authorized representative named on the household's ID is able to pick up the coupons. The proposed and final regulations require State agencies to devise a means for households to designate, in writing, an emergency authorized representative to obtain coupons. In an HIR card system, the regulations require a written statement from a household member, also signed by the emergency authorized representative, to authorize the issuance of the allotment. In ATP systems, there must be signature spaces on the ID and/or ATP for the household to designate an emergency authorized representative. States may also use a separate written form as long as the household is not required to travel to the office in order to designate an emergency authorized

representative. To obtain the allotment, the emergency representative must present the designation, the household's ID, and sign the ATP or HIR card. The State agency will compare the signature of the emergency representative on the issuance document with that on the designation and the household member's signature on the designation with that on the ID to assure no improper issuance takes place. Finally, many minor technical revisions were made to clarify the regulations.

REORGANIZATION OF THE REGULATIONS

The food stamp regulations have been extensively revised and restructured. When reviewing the reorganized material, please note that several new provisions are reserved since these provisions will be proposed at a later date. In addition, several provisions in the current regulations are expected to change when the second package of proposed rulemaking is published final. To show that these current provisions have not been deleted but will remain in force and effect until the second package is published as final rulemaking, these provisions in the current regulations are retained by reference but are not restated.

Certain sections of the Food Stamp Act are effective without publication of regulations. These sections include: 4(c) (notice and comment rulemaking requirements, advance copies of rules to the committees); 7(c) (coupon design); and 11(g) (injunctive relief against State agencies).

To help in relating the current regulations to the proposed regulation, the following table of redesignations has been compiled:

TABLE OF REDESIGNATIONS

Old	New
270.1(a)	270 [Reserved].
270.1(b)	271.1(a); 271.1(b).
270.2(a)	Deleted.
270.2(b)	Do.
270.2(c)	271.2.
270.2(d)	Deleted.
270.2(e)	271.2.
270.2(f)-(l)	Deleted.
270.2 (m) and (n)	271.2
270.2(o)	Deleted.
270.2(p)-(s)	271.2.
270.2(t)	Deleted.
270.2 (u) and (v)	271.2.
270.2 (w) and (x)	Deleted.
270.2(y)	271.2.
270.2 (z) and (aa)	Deleted.
270.2(bb)	271.2.
270.2 (cc) and (dd)	Deleted.
270.2(ee)	271.2.
270.2(ff)-(ll)	Deleted.
270.2 (mm), (oo), and (pp).	271.2.
270.2 (qq) and (rr)	Deleted.
270.2(ss)	271.2.
270.2(tt)	Deleted.
270.2 (uu) and (vv)	271.2.
270.2(ww)-(yy)	Deleted.
270.2(zz)	271.2.

TABLE OF REDESIGNATIONS—Continued

Old	New
270.3(a)	271.3(a).
270.3(b)	271.4(a).
270.3(c)	272.4(a)(2).
270.4(a)	271.5(a).
270.4(b)	271.5(b).
270.4(c)	271.5(c).
270.4(d)	273.16 (a) and (b); 271.5(b).
270.5(a)	271.3(b).
270.5(b)	271.6(b).
270.5(c)	Deleted.
271.1(a)*	281.1 [Reserved].
271.1(b)	272.1(a).
271.1(c)	272.1(b).
271.1(d)	272.7(a).
271.1(e)	273.2(f)(1)(iv) and 273.3.
271.1(f)	272.1(c).
271.1(g)	272.4(a)(1).
271.1(h)*	277 [Reserved].
271.1(i)*	272.2 [Reserved].
271.1(j)	271.4(a).
271.1(k)*	272.6(a)-(c) [Reserved].
271.1(l)	272.1(e).
271.1(m)	272.1(f) and 274.7.
271.1(n)(1)	273.13(a) (1) and (2).
271.1(n)(2)	273.13(b).
271.1(n)(3)	273.12(e) (1)(ii); (2)(ii).
271.1(n)(4)	273.15(k).
271.1(o)	273.15.
271.1(p)	273.17(l).
271.1(q)	273.17.
271.1(r)	272.1(d).
271.1(s)	272.1(g).
271.1(t)*	276 [Reserved].
271.2*	277 [Reserved].
271.3(a)(1)	273.1 (a) and (b).
271.3(a)(1) (i) and (ii)	273.2(d).
271.3(a)(1)(iii)	273.12.
271.3(a)(2)	274.10(b).
271.3(a)(3)	274.10(c).
271.3(a)(4)	274.10(d); 273.11(e); 273.1(f)(iv).
271.3(a)(5)	274.10(e).
271.3(b)	Deleted.
271.3(c)—Introductory paragraph.	273.8(a) and 273.9(a).
271.3(c)(1)(i)	273.9(b).
271.3(c)(1)(i)(a)	273.9(b)(1)(i).
271.3(c)(1)(i)(b)	273.9(b)(1)(ii); 273.9(c)(9); 273.11(a).
271.3(c)(1)(i)(c)	273.9(b)(1)(ii); 273.9(c)(9); 273.11(a).
271.3(c)(1)(i)(d)	273.9(b)(1)(ii); 273.9(c)(9); 273.11(b).
271.3(c)(1)(i)(e)	273.9(b)(2)(ii).
271.3(c)(1)(i)(f)	273.9(b)(2)(i).
271.3(c)(1)(i)(g)	273.9(b)(2)(v).
271.3(c)(1)(i)(h)	273.9(c)(1)(ii).
271.3(c)(1)(i)(i)	273.9(b)(2)(iv).
271.3(c)(1)(i)(j)	273.9(b)(2)(iv).
271.3(c)(1)(i)(k)	273.9(b)(2)(iii).
271.3(c)(1)(i)(l)	Deleted.
271.3(c)(1)(i)(m)	Do.
271.3(c)(1)(ii)(a)	273.9(c)(7).
271.3(c)(1)(ii)(b)	273.9(c)(10)(i).
271.3(c)(1)(ii)(c)	273.9(c)(1)(i).
271.3(c)(1)(ii)(d)	273.9(c)(2).
271.3(c)(1)(ii)(e)	273.9(c)(8).
271.3(c)(1)(ii)(f)	273.9(c)(4).
271.3(c)(1)(ii)(g)	273.9(c)(10)(iii).
271.3(c)(1)(ii)(h)	273.9(c)(10)(iv).
271.3(c)(1)(iii)(a)	273.9(d)(2).
271.3(c)(1)(iii)(b)	Deleted.
271.2(c)(1)(iii)(c)	Do.
271.3(c)(1)(iii)(d)	273.9(d)(3).
271.3(c)(1)(iii)(e)	Deleted.
271.3(c)(1)(iii)(f)	273.9(c)(3).
271.3(c)(1)(iii)(g)	Deleted.
271.3(c)(1)(iii)(h)	273.9(d)(4).
271.3(c)(2)(i)-(iv)	273.10(c).
271.3(c)(3)	273.9(a).
271.3(c)(4)(i)	273.8(b).
271.3(c)(4)(ii)	273.8(c).
271.3(c)(4)(iii)	273.8(e).
271.3(c)(4)(iv)	273.8(g).
271.3(d)	273.7.
271.3(e)	273.3.
271.3(f)	Deleted.
271.4(a)(1)	273.2(k).

TABLE OF REDESIGNATIONS—Continued

Old	New
271.4(a)(2)(i)	273.2 (a) and (b).
271.4(a)(2)(ii)	273.2(e).
271.4(a)(2)(iii)	273.2(f); 273.2(i)(4)(i).
271.4(a)(3)(i)	273.2(g); 273.10(g)(1); 273.2(h)(2).
271.4(a)(3)(ii)—Introductory paragraph.	273.14(a).
271.4(a)(3)(ii)(a)	273.14(b).
271.4(a)(3)(ii)(b)	273.14(c).
271.4(a)(3)(ii)(c)	273.14(c).
271.4(a)(3)(ii)(d)	273.14(d).
271.4(a)(3)(ii)(e)	273.14(f).
271.4(a)(4)	273.10(f).
271.4(a)(5)	273.19.
271.4(a)(6)	273.10(g)(3).
271.4(a)(7)*	272.3 [Reserved].
271.5	273.10(e).
271.6(a)	274.4(e).
271.6(b)	274.4(c).
271.6(c)	274.4 (a) and (b).
271.6(d)—Introductory paragraph.	274.1.
271.6(d)(1)	274.3.
271.6(d)(2)	Deleted.
271.6(d)(3)	Do.
271.6(d)(4)	Do.
271.6(d)(5)	274.2(d)(3).
271.6(e)	Deleted.
271.6(f)	274.6.
271.6(g)*	272.3 [Reserved].
271.6(h)	274.1(d).
271.6(i)	274.11(e).
271.7(a)-(d)*	276 [Reserved].
271.7(e)	273.16 and 273.18.
271.7(f)	273.18.
271.8*	272.2 [Reserved].
271.9(a)	274.10(a).
271.9(b)	274.10(f).
271.9(c)	274.10(g).
271.9(d)	274.10(h).
271.9(e)	273.16.
271.9(f)-(j)	274.11.
271.9(k)	Deleted.
271.10	273.6.
272	278.
273	279.
274*	280 [Reserved].
275*	277 [Reserved].

*The language in these paragraphs of the old regulations will remain in full force and effect.

SUBCHAPTER C—FOOD STAMP PROGRAM

Part
270 [Reserved]
271 General information and definitions.
272 Requirements for participating State agencies.
273 Certification of eligible households.
274 Issuance and use of food coupons.
275 Program monitoring systems [reserved].
276 State agency liabilities and Federal sanctions [reserved].
277 Payment of certain administrative costs of State agencies [reserved].
278 Participation of retail food stores, wholesale food concerns and banks.
279 Administrative and judicial review—food retailers and food wholesalers.
280 Emergency food assistance for victims of disasters [reserved].
281 Designation of Indian tribes as State agencies [reserved].
282 Demonstration, research, and evaluation projects.

PART 270 [RESERVED]

1. Part 270 is revised and redesignated as part 271. The new part 270 is re-

served. The new part 271 reads as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

Sec.
271.1 General purpose and scope.
271.2 Definitions.
271.3 Delegations to FNS for administration.
271.4 Delegations to States for administration.
271.5 Coupons as obligations of the United States, crimes, and offenses.
271.6 Complaint procedures.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027).

§ 271.1 General purpose and scope.

(a) *Purpose of the food stamp program.* The food stamp program is designed to promote the general welfare and to safeguard the health and well being of the Nation's population by raising the levels of nutrition among low-income households. Section 2 of the Food Stamp Act of 1977 states, in part:

> Congress hereby finds that the limited food purchasing power of low-income households contributes to hunger and malnutrition among members of such households. Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of the Nation's agricultural abundance and will strengthen the Nation's agricultural economy, as well as result in more orderly marketing and distribution of foods. To alleviate such hunger and malnutrition, a food stamp program is herein authorized which will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for all eligible households who apply for participation.

(b) *Scope of the regulations.* Part 271 contains general information, definitions, and other material applicable to all parts of this subchapter. Part 272 sets forth policies and procedures governing State agencies which participate in the program. Part 273 describes the eligibility criteria to be applied by State agencies and related processing requirements and standards. Part 274 provides requirements for the issuance of coupons to eligible households and establishes related issuance responsibilities. Part 275 sets forth guidelines for monitoring the food stamp program, analyzing the results and formulating corrective action. Part 276 establishes State agency liability and certain Federal sanctions. Part 277 outlines procedures for payment of administrative costs of State agencies. Part 278 delineates the terms and conditions for the participation of retail food stores, wholesale food concerns, meal services, and banks. Part 279 establishes the procedures for administrative and judicial reviews requested by food retailers, food wholesalers, and meal services. Part 280 explains procedures for issuing emergency coupon allotments to certain victims of disasters unable to purchase adequate amounts of food. Part 281 sets forth guidelines for designating Indian tribes as State agencies. Part 282 provides guidelines for initiation, selection, and operation of demonstration, research, and evaluation projects.

§ 271.2 Definitions.

"Allotment" means the total value of coupons a household is authorized to receive during each month or other time period.

"Application form" means: (1) The application form designed or approved by FNS, which is completed by a household member or authorized representative; or

(2) For households consisting solely of public assistance or general assistance recipients, it may also mean the application form used to apply for public assistance or general assistance, including attachments approved by FNS, which is completed by a household member or authorized representative.

"Authorization to participate card (ATP)" means a document which is issued by the State agency to a certified household to show the allotment the household is authorized to receive on presentation of such document.

"Bulk storage point" means an office of the State agency or any person, partnership, corporation, organization, political subdivision, or other entity with which a State agency has contracted for, or to which it has assigned responsibility for, the security and storage of food coupons.

"Coupon issuer" means any office of the State agency or any person, partnership, corporation, organization, political subdivision, or other entity with which a State agency has contracted for, or to which it has assigned responsibility for, the issuance of coupons to households.

"Department" means the U.S. Department of Agriculture.

"Elderly person" means a person 60 years of age or older.

"Federal fiscal year" means a period of 12 calendar months beginning with each October 1 and ending with Septmber 30 of the following calendar year. "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.

"Food Stamp Act" means the Food Stamp Act of 1977 (Pub. L. 95-113), including any subsequent amendments thereto.

"General assistance (GA)" means cash assistance which is financed by State or local funds.

"Identification (ID) card" means a card which identifies the bearer as eligible to receive and use food coupons.

"Immigration and Naturalization Service (INS)" means the Immigration and Naturalization Service, U.S. Department of Justice.

"Institution of higher education" means any institution providing post-high school education, including but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

"Low-income household" means a household whose annual income does not exceed 125 percent of the Office of Management and Budget poverty guidelines.

"Medicaid" means medical assistance under title XIX of the Social Security Act, as amended.

"Overissuance" means the amount by which coupons issued to a household exceeds the amount it was eligible to receive.

"Program" means the food stamp program conducted under the Food Stamp Act and regulations.

"Project area" means the county or similar political subdivision designated by a State as the administrative unit for program operations. Upon prior FNS approval, a city, Indian reservation, welfare district, or any other entity with clearly defined geographic boundaries, or any combination of such entities, may be designated as a project area, or a State as a whole may be designated as a single project area.

"Public assistance (PA)" means any of the following programs authorized by the Social Security Act of 1935, as amended: Old-age assistance, aid to families with dependent children (AFDC), including AFDC for children of unemployed fathers, aid to the blind, aid to the permanently and totally disabled and aid to aged, blind, or disabled.

"Regulations" means the provisions of this subchapter. Regulatory citations refer to provisions of this subchapter unless otherwise specified.

"Secretary" means the Secretary of the U.S. Department of Agriculture.

"Spouse" refers to either of two individuals:

(1) Who would be defined as married to each other under applicable State law; or

(2) Who are living together and are holding themselves out to the community as husband and wife by representing themselves as such to relatives, friends, neighbors, or tradespeople.

"State" means any one of the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

"State agency" means the agency of the State government, including the local offices thereof, which has the responsibility for the administration of

the federally aided public assistance programs within the State and in those States where such assistance programs are operated on a decentralized basis, it includes the counterpart local agencies which administer such assistance programs for the State agency.

"Supplemental security income (SSI)" means monthly cash payments made under the authority of title XVI of the Social Security Act, as amended, to the aged, blind, and disabled.

"Thrifty food plan" means the diet required to feed a family of four persons consisting of a man and a woman 20 through 54, a child 6 through 8, and a child 9 through 11 years of age, determined in accordance with the Secretary's calculations. The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition, except that the Secretary shall make household-size adjustments in the thrifty food plan taking into account economies of scale.

§ 271.3 Delegations to FNS for administration.

(a) *Delegation.* Within the Department, FNS acts on behalf of the Department in the administration of the Food Stamp Program with the exception of those functions, which may be delegated to other agencies within the Department. The right is reserved at any time to withdraw, modify, or amend any delegation of authority. When authority is delegated to FNS, the responsibilities may be carried out by the Administrator or by another official of FNS, or by State agencies with respect to claims against households, as designated.

(b) *Claims settlement.* FNS shall have the power to determine the amount of and to settle and adjust any claim arising under the provisions of the Act or this subchapter, and to compromise or deny all or part of any claim.

(c) *Demonstration authority.* FNS is authorized to undertake demonstration projects which test new methods designed to improve program administration and benefit delivery. FNS is authorized to initiate program research and evaluation efforts for the purposes of improving and assessing program administration and effectiveness. The procedure for initiating and conducting these projects is established in part 282.

§ 271.4 Delegations to State agencies for administration.

(a) *General delegation.* The State agency shall be responsible for the administration of the program within the State, including, but not limited to:

(1) Certification of applicant households;

(2) Issuance, control, and accountability of coupons;

(3) Outreach activities;

(4) Developing and maintaining complaint procedures;

(5) Developing, conducting, and evaluating training;

(6) Conducting performance reporting reviews;

(7) Keeping records necessary to determine whether the program is being conducted in compliance with these regulations; and

(8) Submitting accurate and timely financial and program reports.

(b) *Claims delegation.* FNS delegates to the State agency, subject to the standards in § 273.18, the authority to determine the amount of, and settle, adjust, compromise or deny all or part of any claim which results from fraudulent or nonfraudulent overissuances to participating households.

§ 271.5 Coupons as obligations of the United States, crimes and offenses.

(a) *Coupons as obligations.* Pursuant to section 15(d) of the Food Stamp Act, coupons are an obligation of the United States within the meaning of 18 United States Code (U.S.C.) 8. The provisions of title 18 of the United States Code, "Crimes and Criminal Procedure," relative to counterfeiting, misuse and alteration of obligations of the United States are applicable to coupons.

(b) *Penalties.* Any unauthorized issuance, use, transfer, acquisition, alteration, possession, or presentation of coupons or ATP's may subject any individual, partnership, corporation, or other legal entity to prosecution under sections 15 (b) and (c) of the Food Stamp Act or under any other applicable Federal, State or local law, regulation or ordinance. Sections 15 (b) and (c) of the Food Stamp Act read as follows:

(b) Whoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized by this Act or the regulations issued pursuant to this Act shall, if such coupons or authorization cards are of the value of $100 or more, be guilty of a felony and shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, or if such coupons or authorization cards are of a value of less than $100, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both.

(c) Whoever presents, or causes to be presented, coupons for payments or redemption of the value of $100 or more, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Act or the regulations issued pursuant to this Act shall be guilty of a felony and shall, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, or, if such coupons one of a value of less than $100, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both.

(c) *Security for coupons and ATP's.* All individuals, partnerships, corporations, or other legal entities including State agencies and their delegatees (referred to in this paragraph as "persons") having custody, care and control of coupons and ATP's shall, at all times, take all precautions necessary to avoid acceptance, transfer, negotiation, or use of spurious, altered, or counterfeit coupons and ATP's and to avoid any unauthorized use transfer, acquisition, alteration or possession of coupons and ATP's. These persons shall safeguard coupons and ATP's from theft, embezzlement, loss, damage, or destruction.

(d) *Coupon issuers.* (1) Any coupon issuer or any officer, employee or agent, thereof convicted of failing to provide the monthly reports required in § 274.5 or convicted of violating part 274 shall be subject to a fine of not more than $1,000, or imprisoned for not more than 1 year, or both.

(2) Any coupon issuer or any officer, employee or agent, thereof convicted of knowingly providing false information in the reports required under § 274.5 shall be subject to a fine of not more than $10,000, or imprisoned not more than 5 years, or both.

§ 271.6 Complaint procedure.

(a) *State agency responsibility.* [Reserved]

(b) *Regional office responsibility.* (1) Persons or agencies desiring program information or wishing to file a complaint may contact the appropriate FNS Regional Office.

(i) For Delaware, the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, the Virgin Islands of the United States, and West Virginia: Mid-Atlantic Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 1 Vahlsing Center, Route 526, Robbinsville, N.J. 08691.

(ii) For Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 1100 Spring Street NW., Room 200, Atlanta, Ga. 30309.

(iii) For Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 536 South Clark Street, Chicago, Ill. 60605.

(iv) For Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, U.S. Department of Agriculture, Food and Nutrition

Service, 1100 Commerce Street, Suite 5-C-30, Dallas, Tex. 75242.

(v) For Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon and Washington: Western Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 550 Kearny Street, Room 400, San Francisco, Calif. 94108.

(vi) For Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont: New England Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 33 North Avenue, Burlington, Mass. 01803.

(vii) For Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, U.S. Department of Agriculture, Food and Nutrition Service, 2420 West 26th Avenue, Suite 430-D, Denver, Colo. 80211.

(2) Complainants shall be advised of the appropriate State complaint handling and fair hearing procedures. Upon household request, other complaints shall be pursued by the Department rather than the State agency, unless the complaint is one upon which the complainant wishes to request a fair hearing.

2. Part 271 is extensively revised and the contents redesignated among the new parts 272 through 281. The following paragraphs of the former part 271 remain in force and effect but are redesignated: § 271.1(a) as § 281.1; § 271.1(h) as § 277.16; § 271.1(i) as § 272.2(a); § 271.1(k) as § 272.6(b); § 271.1(t) as § 276.1; § 271.2 as § 277.7; § 271.4(a)(7) as § 272.3(a); § 271.6(g) as § 272.3(b); § 271.7 (a)-(d) as §§ 276.2-276.5, respectively; and § 271.8 (a)-(f) as § 272.2 (b)-(g), respectively.

The new part 272 reads as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

Sec.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027).

§ 272.1 General terms and conditions.

(a) *Coupons as income.* The coupon allotment provided any eligible household shall not be considered income or resources for any purpose under any Federal, State, or local laws including, but not limited to, laws on taxation, welfare, and public assistance programs.

(b) *No aid reduction.* No participating State or political subdivision shall decrease any assistance otherwise provided an individual or individuals because of the receipt of a coupon allotment.

(c) *Disclosure.* (1) Use or disclosure of information obtained from applicant households, exclusively for the program, shall be restricted to persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, or with other Federal or federally aided, means-tested assistance programs such as Title IV-A (AFDC), XIX (Medicaid), or XVI (SSI), or with general assistance programs that are subject to the joint processing requirements specified in § 273.2(j)(2).

(2) If there is a written request by a responsible member of the household, its currently authorized representative, or a person acting in its behalf to review materials contained in its case file, the material and information contained in the case file shall be made available for inspection during normal business hours. However, the State agency may withhold confidential information, such as the names of individuals who have disclosed information about the household without the household's knowledge, or the nature or status of pending criminal prosecutions.

(d) *Information available to the public.* (1) Regulations, plans of operation, State manuals, and Federal procedures which affect the public shall be maintained in the State and local offices of the State agency as well as in FNS national and Regional Offices for examination by members of the public on regular workdays during regular office hours.

(2) Copies of regulations, plans of operation, State manuals, and Federal procedures may be obtained from FNS in accordance with part 295 of this chapter.

(e) *Records and reports.* Each State agency shall keep such records and submit such reports and other information as required by FNS.

(f) *Retention of records.* Each State agency shall retain all program records in an orderly fashion, for audit and review purposes, for a period of 3 years from the month of origin of each record. The State agency shall retain fiscal records and accountable documents for 3 years from the date of fiscal or administrative closure. Fiscal closure means that obligations for or against the Federal Government have been liquidated. Administrative closures means that the State agency has determined and documented that no further action to liquidate the obligation is appropriate. Fiscal records and accountable documents include, but are not limited to claims, documentation of lost benefits, and Form FNS-286, "Certification of Transfer of Household Benefits." Retention methods for ATP cards are provided in part 274.

(g) *Implementation.* The implementation schedule for any amendment to the regulations shall be specified in the amendment.

(1) *Amendment 132.* Program changes required by amendment 132 to the food stamp regulations shall be implemented as follows:

(i) State agencies shall eliminate the purchase requirement for all households on or before January 1, 1979. The State agency shall designate the month the purchase requirement is to be eliminated. If the month designated is other than January 1979, the State agency shall obtain prior approval of FNS. FNS shall approve the designation of months prior to January 1979, if the State agency demonstrates that an accounting procedure for the new issuance system will be in place. The submission dates for the forms FNS-250 and FNS-256, stipulated in § 274.8(a), shall be effective with the reports for the first month of issuance without a purchase requirement. For example, if EPR is implemented in January, the FNS-250 and FNS-256 for January would be due by March 17, 1979. The FNS-259 shall be submitted in accordance with § 274.8(a)(3) starting with the quarter beginning January 1979.

(ii) State agencies may implement all eligibility rules contained in part 273 and all issuance rules contained in part 274 at the same time the purchase requirement is eliminated, but in no case shall eligibility and issuance rules be implemented prior to elimination of the purchase requirement. State agencies may also implement portions of part 273 and part 274 separately after the purchase requirement is eliminated, provided that the eligibility rules setting the income standards, the income deductions and the household allotment calculation are implemented at the same time, and all rules are implemented no later than 3 months after the purchase requirement is eliminated. However, if a State agency implements EPR after December 1, 1978, it shall implement the certification and other issuance regulations for all new applications and recertifications no later than March 1, 1979.

(iii) State agencies shall have up to 4 months following the first day that applications are taken under the new rules, to convert the current caseload to the new program. Households coming due for recertification during this time will be converted to the new program at recertification. Remaining households shall be converted by a desk review during that 4-month

period. The new income definition, deductions, and allotment calculation shall be completed for all households which are converted through a desk review. To the extent that the case file and other information available to the State agency permit, other eligibility criteria, such as work registration, resources, tax dependency, and alien status, shall be considered during the desk review. Otherwise, nonincome eligibility factors shall be deferred until the household's scheduled recertification. In no event shall a household's certification period be extended as a result of the desk review. Until recertified or converted by a desk review, a household shall continue to receive the bonus portion of the allotment, calculated in accordance with the income, deduction, and basis of issuance provisons of the Food Stamp Act of 1964. During the case file conversion period, some households may be participating on the basis of the old program rules and some on the new rules. Claims against households and restoration of benefits shall not be assessed provided that whichever program rules are in use for a particular case are correctly applied during the conversion period. However, errors caused by miscalculations based on the old or new program rules which result in an entitlement to restoration of lost benefits or an overissuance shall be assessed in accordance with §§ 273.17 and 273.18 of these regulations. The procedures for calculating lost benefits or overissuances as specified in §§ 273.17 and 273.18 shall be applied to any case found to be in error after the implementation of these procedures, even though the action which caused the error may have occurred prior to the date of implementation.

(iv) State agencies shall implement § 273.17 on the restoration of lost benefits on or before March 1, 1979. State agencies are encouraged to implement restoration of lost benefits concurrent with the elimination of the purchase requirement, especially as they relate to households which are entitled to lost benefits but which have been unable to receive them because the households are currently ineligible. State agencies shall notify currently ineligible households of the availability of their lost benefits by using one of the following procedures:

(A) State agencies which can readily identify the ineligible households which are entitled to lost benefits shall notify these households and restore the lost benefits within 4 months of the date restoration of lost benefits is implemented.

(B) Other State agencies shall issue a one-time-only press release notifying ineligible households that benefits can be restored. The press release should advise households to contact the local food stamp office for more information.

(v) State agencies shall assume the authority to settle or adjust recipient claims delegated under § 271.4(b) on or before July 1, 1979.

(vi) State agencies without a currently approved utility standard required in § 273.9(d)(5) shall develop and implement an FNS approved utility standard on or before October 1, 1979. The State agency shall notify households certified at the time the utility standard is implemented of the availability of the standard and the conditions for its use in lieu of actual expenses. Households qualified to use the standard and which elect to do so shall have the standard applied as any other change in circumstances. Otherwise, actual utility expenses shall continue to be used for households qualified for the standard until their next recertification.

(vii) State agencies shall advise FNS of their determination of the need for bilingual serv- ices as required by § 272.4(c) on or before December 1, 1978. If the State agency cannot determine, based on available information sources, whether or not bilingual services are required in particular project areas, it shall so advise FNS on or before December 1, 1978. The State agency shall then develop procedures to record the number of non-English-speaking low-income households which make contact with its offices in these project areas as required by § 272.4(c)(6). These procedures shall be implemented on or before March 1, 1979, and shall continue for 6 months. The State agency shall submit to FNS its determination(s) of the need for bilingual services not later than 60 days following the end of the 6-month period. Bilingual outreach materials shall be available for distribution within 90 days of the State agency's determination that such materials are required. When the State agency determines that bilingual staff and certification materials are required, it shall also make a determination of whether volunteers or paid staff will be used. When volunteers are to be used, the State agency shall provide the materials and arrange for volunteers within 90 days. Paid staff and materials shall be provided within 180 days.

(viii) Prior to the certification of households under these regulations, State agencies shall implement staff training for the transition as required in § 272.4(e)(3), and training for outreach workers, receptionists, and others, as required in § 272.4(e)(1) (v) and (vi). Beginning with these training sessions for the transition, State agencies shall implement the requirements for public participation at training sessions, as specified in § 272.4(e)(1)(iv). State agencies shall designate a training coordinator and develop and implement the ongoing training program required by § 272.4(e) on or before July 1, 1979.

(ix) State agencies shall implement the transitional outreach requirements as specified in § 272.6(f). Most of these requirements shall begin 1 week prior to the elimination of the purchase requirement and shall continue for 6 months or until all households are converted to the new program, whichever is later. The outreach plan for the period of January through September 1979 shall be submitted for FNS approval on or before December 1, 1978.

(x) Elimination of the purchase requirement and the implementation of the basic financial and nonfinancial eligibility criteria and other coupon issuance criteria shall not be extended for any reason. FNS may grant extensions for other provisions contained in these rules, provided that the State agency presents compelling justification for a delay and establishes an acceptable alternative schedule in advance of the implementation deadline. In no event will FNS grant an extension in excess of 120 days from the specified implementation date. In those cases where extensions are granted, the relevant Department regulations under the Food Stamp Act of 1964 shall remain in effect until superseded by implementation of the new rules.

§ 272.2 State plan of operations. [Reserved]

§ 272.3 Operating guidelines. [Reserved]

§ 272.4 Program administration and personnel requirements.

(a) *Merit personnel.* (1) State agency personnel used in the certification process shall be employed in accordance with the current standards for a merit system of personnel administration or any standards later prescribed by the U.S. Civil Service Commission under section 208 of the Intergovernmental Personnel Act of 1970.

(2) State agency employees meeting the standards outlined in paragraph (a)(1) of this section shall perform the interviews required in § 273.2(e). Volunteers and other non-State agency employees shall not conduct certification interviews or certify food stamp applicants. Exceptions to the use of State merit system personnel in the interview and certification process are specified in § 273.2(k) for SSI households and part 280 for disaster victims. State agencies are encouraged to use volunteers in activities such as outreach, prescreening, assisting applicants in the application and certification process, and in securing needed verification. Individuals and organizations who are parties to a strike or

lockout, and their facilities, may not be used in the certification process except as a source of verification for information supplied by the applicant. Only authorized employees of the State agency, coupon issuers, coupon bulk storage points, and Federal employees involved in administration of the program shall be permitted access to food coupons, ATP's, or other issuance documents.

(b) *Staffing standards.* The State agency shall employ sufficient staff to certify and issue benefits accurately to eligible households, and process fair hearing requests, within the timeliness standards set forth in these regulations. Outreach activities and other program functions shall be performed as specified in these regulations.

(c) *Bilingual requirements.* (1) Based on the estimated total number of low-income households in a project area which speak the same non-English language (a single-language minority), the State agency shall provide bilingual outreach and certification materials, and staff or interpreters as specified in paragraphs (c) (2) and (3) of this section. Single-language minority refers to households which speak the same non-English language and which do not contain adult(s) fluent in English as a second language.

(2) The State agency shall provide outreach materials in the appropriate language(s) as follows:

(i) In project areas with less than 2,000 low-income households, if approximately 100 or more of those households are of a single-language minority;

(ii) In project areas with 2,000 or more low-income households, if approximately 5 percent or more of those households are of a single-language minority; and

(iii) In project areas with a certification office that provides bilingual service as required in paragraph (c)(3) of this section.

(3) The State agency shall provide both certification materials in the appropriate language(s) and bilingual staff or interpreters as follows:

(i) In each individual certification office that provides service to approximately 100 single-language minority low-income households; and

(ii) In each project area with a total of less than 100 low-income households if a majority of those households are of a single-language minority.

(A) Certification materials shall include the food stamp application form, change report form and notices to households.

(B) If notices are required in only one language other than English, notices may be printed in English on one side and in the other language on the reverse side. If the certification office is required to use several languages, the notice may be printed in English and may contain statements in other languages summarizing the purpose of the notice and the telephone number to call for more information. For example, a notice of eligibility could in the appropriate language(s) state: "Your application for food stamps has been approved in the amount stated above. If you need more information telephone ————."

(4) In project areas with a seasonal influx of non-English-speaking households, the State agency shall provide bilingual materials and staff or interpreters, if during the seasonal influx the number of single-language minority low-income households which move into the area meets or exceeds the requirements in paragraphs (c) (2) and (3) of this section.

(5) The State agency shall insure that certification offices subject to the requirements of paragraph (c) (3) or (4) of this section provide sufficient bilingual staff or interpreters for the timely processing of non-english-speaking applicants.

(6) The State agency shall develop estimates of the number of low-income single-language minority households, both participating and not participating in the program, for each project area and certification office by using census data (including the Census Bureau's Current Population Report: Population Estimates and Projections, Series P-25, No. 627) and knowledge of project areas and areas serviced by certification offices. Local Bureau of Census offices, Community Services Administration offices, community action agencies, planning agencies, migrant service organizations, and school officials may be important sources of information in determining the need for bilingual service. If these information sources do not provide sufficient information for the State agency to determine if there is a need for bilingual staff or interpreters, each certification office shall, for a 6-month period, record the total number of single-language minority households that visit the office to make inquiries about the program, file a new application for benefits, or be recertified. Those certification offices that are contacted by a total of over 100 single-language minority households in the 6-month period shall be required to provide bilingual staff or interpreters. State agencies shall also combine the figures collected in each certification office to determine the need for bilingual outreach materials in each project area.

(d) *Internal Controls.* (1) *Requirements.* In order to safeguard certification and issuance records from unauthorized creation or tampering, the State agency shall establish an organizational structure which divides the responsibility for eligibility determinations and coupon issuance among certification, data management, and issuance units. The certification unit shall be responsible for the determination of household eligibility and the creation of records and documents to authorize the issuance of coupons to eligible households. The data management unit, in response to input from the certification unit, shall create and maintain the household issuance record (HIR) master file on cards, computer discs, tapes, or similar memory devices. The issuance unit shall provide certified households with the authorized allotments. In cases where personnel are periodically, or on a part-time basis, shifted from one unit to another, supervisory controls should be sufficient to assure that the unauthorized creation or modification of case records is not possible.

(2) *Exceptions.* With prior written FNS approval, a project area may combine unit responsibilities if the controls specified in paragraph (d)(1) of this section have been found to be administratively infeasible.

(i) To receive approval of combined operations, the State agency shall establish special review requirements which at a minimum include:

(A) Biweekly reconciliation and verification of transactions; and

(B) Semiannual comparison of HIR cards and case records as required by § 274.6(d) and, at least once every other month, second-party review of certification actions.

(ii) The State agency shall annually determine whether each combined operation continues to be justified and shall so advise FNS in writing.

(e) *Training.* The State agency shall institute a continuing training program for food stamp eligibility workers, hearing officials, peformance reporting system reviewers, and for outreach staff, including hotline operators and individuals involved in prescreening activities.

(1) *Minimum requirements.* (i) The State agency shall designate a full-time State food stamp training coordinator responsible for the conduct and evaluation of the food stamp training program, including the development of training materials, supervising the conduct of training sessions, insuring that appropriate personnel receive training and assuring compliance with the public participation standards specified in paragraph (e)(1)(iv) of this section. In addition, the State agency shall designate additional staff at either the State or local level to provide training to the appropriate personnel. FNS may provide a waiver from the requirement for a full-time position if the State agency can demonstrate that because of a lim-

ited caseload the full-time services of a training coordinator are not necessary or that the State agency otherwise has the capability of fulfilling the requirements of this section.

(ii) State agency training programs shall cover eligibility criteria, certification procedures, household rights and responsibilities including nondiscrimination rights, and other job-related responsibilities concerning the certification of households, for example, interviewing skills. The content of training programs shall be reviewed on a semiannual basis in light of program deficiencies identified through the State agency's performance reporting system and modifications shall be made where warranted. Changes in policy or procedures stemming from court actions or revisions to legislation and regulations shall be promptly reflected in State training programs.

(iii) Employees assigned responsibility for the certification of households shall be provided with sufficient training prior to initially assuming their duties. As needed, formal training shall be provided periodically to all certification staff. The need shall be established by policy changes and program deficiencies identified by the performance reporting system. Inadequate performance by individual employees may also indicate the need for training.

(iv) The State agency shall allow public attendance at formal certification training sessions that are conducted on a statewide, citywide, or regional (multiproject area) basis. Public attendance at these training sessions shall be allowed for 5 percent of the total attendance at the session, or five training slots, whichever number is smaller except that public attendance need not be provided at sessions conducted for fewer than 20 persons. The State agency shall invite individuals from the State who represent recipients or organizations working on behalf of recipients, who are knowledgeable about program eligibility rules and certification requirements, and who are actively engaged in work or volunteer activity related to food stamp certification rules. The State agency shall not exclude arbitrarily individuals (who otherwise meet these criteria) due to disagreements between these individuals and the State agency concerning aspects of State agency operations. The State agency may limit the role of public participants to observation only.

(v) Training shall also be provided to State agency outreach workers, including hotline operators, and to receptionists and others who prescreen or provide other information services to applications or the public. Although this training need not be as comprehensive as that for certification personnel, it shall be in sufficient detail and frequency to insure that low-income households have access to accurate program information and that prescreening, when conducted, is accurate.

(vi) Training shall also be provided to volunteers and to the staff of other organizations and agencies that the State agency uses for outreach, prescreening, and providing program information. The training shall be in sufficient detail and frequency to insure that information provided to low-income households is accurate.

(vii) State agency hearing officials and performance reporting system reviewers, including quality control reviewers, shall be provided with sufficient training prior to initially assuming their duties. This training shall include a detailed and comprehensive study of the regulations and State agency hearing or performance reporting procedures, as appropriate. As needed, formal training also shall be provided periodically to hearing officials and reviewers. The need shall be established by policy changes, and program deficiencies indicated by the performance reporting system. Inadequate performance by an individual employee may also indicate the need for training.

(2) *FNS review.* (i) FNS will review and approve State agency procedures for training.

(ii) FNS will review the effectiveness of State agency training based on information obtained from the performance reporting system and other sources.

(3) *Training for the transition.* The State agency shall provide training on all the eligibility criteria and certification procedures, including the processing standards, to eligibility workers and supervisors before they begin to certify households under these regulations. The requirements for public participation in training sessions, as set forth in paragraph (e)(1)(iv) of this section, shall be implemented with these training sessions. The State agency shall also provide training to hearing officials and quality control reviewers prior to their assuming duties under these regulations. The State agency shall, during conversion to the new rules provide training promptly where program reviews indicate that training is needed to ensure the accurate implementation of these regulations.

§ 272.5 Locations and hours of certification and issuance service. [Reserved]

§ 272.6 Outreach.

(a) *General purpose.* [Reserved]

(b) *Minimum requirements.* [Reserved]

(c) *Staff.* [Reserved]

(d) *Monitoring.* [Reserved]

(e) *Outreach plan.* The State agency shall submit the FNS for approval an outreach plan for the period January through September 1979. At a minimum, the plan shall describe outreach efforts required by paragraph (f) of this section and efforts required by existing outreach regulations and FNS(FS) Instruction 732-6, Revision 1. In approving this plan, FNS may waive certain requirements of FNS(FS) Instruction 732-6, Revision 1, where they duplicate the transition requirements of paragraph (f) of this section.

(f) *Minimum requirements for the transition.* State agencies shall conduct the following special transition activities to inform low-income households about the program changes required by these regulations.

(1) *Printed information.* (i) *Notices.* Notices explaining the program changes shall be available at all food stamp certification offices and shall also be provided to each certified household on at least a one-time basis. State agencies may use two separate notices to describe elimination of the purchase requirement (EPR) and the financial eligibility requirements or the notices may be combined into one. However the notice or notices must clearly describe EPR and the new financial eligibility requirements and the timing of each. The notices may be mailed separately or with the ATP or may be otherwise given to each household. In addition, similar notices shall be provided to all recipients of public assistance. These notices shall be provided according to the same schedule as the notices to food stamp households and shall also be available at all public assistance offices. State agencies that currently provide program materials in languages other than English shall provide these notices in that language(s). Notices shall be mailed or made otherwise available at least 1 week prior to elimination of the purchase requirement or the implementation of the new eligibility requirements depending on whether combined or separate notices are used and shall continue to be available at least until the other printed materials required by paragraph (f)(1)(ii) of this section are distributed.

(ii) *Other printed materials.* State agencies shall also provide clearly written information, such as brochures or pamphlets, that describe basic financial and nonfinancial eligibility criteria, EPR, the application process and participant rights and responsibilities. This written information shall be distributed at food stamp certification offices, public assistance and general assistance offices and shall be made available to local social security offices, State employment ser-

vices offices, and local offices that administer unemployment compensation programs. State agencies shall contact those offices to enlist their cooperation in distributing the written information.

These other printed materials shall be available at least 1 week prior to the implementation of the new eligibility criteria as described in part 273.

(2) *Other publicity efforts. Beginning at least 1 week prior to the elimination of the purchase requirement, State agencies shall publicize program changes through use of press releases issued in each project area and radio spots. State agencies are also encouraged to use TV spots to alert low-income households to these changes.*

(3) *Hotlines.* State agencies shall operate toll-free hotlines at the State level to provide information on program changes. Project areas may also operate hotlines. These hotlines shall be in operation at least 1 week prior to the elimination of the purchase requirement. Hotlines shall be staffed by employees or volunteers who are generally knowledgeable about food stamp requirements and procedures so that accurate information is provided and complaints are referred to the appropriate officials for resolution. Hotline operators shall provide interested callers with the telephone numbers and addresses of local food stamp offices and with information about the information and verification that should be presented at the certification interview. Hotline operators shall not make absolute statements about the caller's eligibility or ineligibility for benefits. Upon request, food stamp application forms shall be mailed to callers. State agencies shall operate an adequate number of telephone lines during normal business hours to ensure that callers have reasonable access to program information. At a minimum, State agencies shall operate one telephone line for caseloads of less than 100,000 participants, two lines for caseloads of between 100,000 and 500,000 participants, three lines for caseloads of between 500,000 and 1 million participants, and four lines for caseloads of over 1 million participants. State agencies may reduce the number of State level lines by substituting project area lines provided that the project area lines meet the minimum requirements contained in this subsection and there is at least one toll-free hotline at the State level. The hotlines may also be used to provide information about other programs administered by the State agency. The hotline number shall be posted in certification offices and included in the printed materials required in paragraph (f)(1)(ii) of this section. In addition, State agencies may publicize the hotline number through radio and TV. After 3 months of operation under these standards, State agencies which can demonstrate that the minimum number of lines required exceeds the need may request FNS approval to reduce the number of lines.

(4) *Volunteers.* State agencies shall notify groups and organizations identified in outreach plans, as well as other groups and organizations that can assist in contacting low-income households, of the availability of training and of printed materials on the new program requirements. For example, State agencies which expect an influx of migrant farmworkers during the transition period shall contact local farmworkers organizations. State agencies shall provide training and printed materials described in paragraph (f)(1) of this section to interested groups and organizations upon request. Efforts to enlist the assistance of these groups and organizations shall begin at least 1 week prior to the elimination of the purchase requirement. Training and the providing of printed materials shall be completed by 6 months thereafter.

§ 272.7 Nondiscrimination compliance.

(a) *Requirement.* State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act, the Age Discrimination Act of 1975 (Pub. L. 94-135), the Rehabilitation Act of 1973 (Pub. L. 93-112, sec. 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR Part 15.

(b) *Right to file a complaint.* Individuals who believe that they have been subject to discrimination as specified in paragraph (a) of this section may file a written complaint with the Secretary or the Administrator, FNS, Washington, D.C. 20250, and/or with the State agency, if the State agency has a system for processing discrimination complaints. The State agency shall explain both the FNS and, if applicable, the State agency complaint system to each individual who expresses an interest in filing a discrimination complaint and shall advise the individual of the right to file a complaint in either or both systems.

(c) *FNS complaint requirements.* (1) Complaints shall contain the following information to facilitate investigations:

(i) The name, address, and telephone number or other means of contacting the person alleging discrimination.

(ii) The location and name of the organization or office which is accused of discriminatory practices.

(iii) The nature of the incident or action or the aspect of program administration that led the person to allege discrimination.

(iv) The reason for the alleged discrimination (age, race, color, sex, handicap, religious creed, national origin, or political belief).

(v) The names, titles (if appropriate), and addresses of persons who may have knowledge of the alleged discriminatory acts.

(vi) The date or dates on which the alleged discriminatory actions occurred.

(2) If a complainant makes allegations verbally and is unable or is reluctant to put the allegations in writing, the FNS employee to whom the allegations are made shall document the complaint in writing. Every effort shall be made by the individual accepting the complaint to have the complainant provide the information specified in paragraph (c)(1) of this section.

(3) Complaints will be accepted by the Secretary or the Administrator, FNS, even if the information specified in paragraph (c)(1) of this section is not complete. However, investigations will be conducted only if information concerning paragraph (c)(1) (ii), (iii), (iv) of this section is provided.

(4) A complaint must be filed no later than 180 days from the date of the alleged discrimination. However, the time for filing may be extended by the Secretary.

(d) *State agency complaint requirements.* (1) The State agency may develop and use a State agency complaint system.

(2) The State agency shall submit to FNS a report on each discrimination complaint processed at the State level. The report shall contain as much information in paragraph (c)(1) of this section as is available to the State agency, the findings of the investigation, and, if appropriate, the corrective action planned or taken.

(e) *Reviews.* [Reserved]

(f) *Public notification.* The State agency shall: (1) Publicize the procedures described in paragraphs (b) and (c) of this section, and, if applicable, the State agency's complaint procedures; (2) insure that all offices involved in administering the program and that also serve the public display the nondiscrimination poster provided by FNS; and (3) insure that participants and other low-income households have access to information re-

garding nondiscrimination statutes and policies, complaint procedures, and the rights of participants, within 10 days of the date of a request.

(g) *Data collection.* The State agency shall obtain data on households by racial/ethnic category. The racial/ethnic categories are: American Indian or Alaskan Native, Asian or Pacific Islander, black (not of Hispanic origin), Hispanic, and white (not of Hispanic origin). The State agency may request applicants to identify voluntarily their race or ethnicity on the application form. The application form in these States shall clearly indicate that the information is voluntary, that it will not affect eligibility or the level of benefits, and that the reason for the information is to assure that program benefits are distributed without regard to race, color, or national origin. The State agency shall develop alternative means of providing the racial and ethnic data on households, such as by observation during the interview, when the information is not voluntarily provided by the household on the application form.

(h) *Reports.* As required by FNS, the State agency shall report the racial/ethnic data on participating households on forms provided by FNS.

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3. Parts 272 and 273 are revised and redesignated as parts 278 and 279, respectively. The new part 273 reads as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

Sec.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027).

§ 273.1 Household concept.

(a) *Household definition.* A household may be composed of any of the following individuals or groups of individuals, provided that such individuals or groups are not residents of an institution, except as otherwise specified in § 273.1(e), or residents of a commercial boarding house, and provided that separate household status shall not be granted to a spouse, as defined in § 271.2, of a member of the household, or to children under 18 years of age under the parental control of a member of the household:

(1) An individual living alone;

(2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from the others;

(3) An individual who is a boarder, living with others and paying reasonable compensation to the others for meals for home consumption;

(4) A group of individuals living together for whom food is customarily purchased in common and for whom meals are prepared together for home consumption; or

(5) A group of individuals who are boarders, living with others and paying reasonable compensation to the others for meals for home consumption.

(b) *Nonhousehold members.* The following individuals residing with a household shall not be considered household members in determining the household's eligibility or allotment. Nonhousehold members who are otherwise eligible may participate in the Program as separate households.

(1) *Roomers.* Individuals to whom a household furnishes lodging, but not meals, for compensation.

(2) *Boarders.* Individuals to whom a household furnishes lodging and meals with the following restrictions:

(i) Boarder status shall not be granted to a spouse, as defined in § 271.2, of a member of the household, or to children under 18 years of age under the parental control of a member of the household.

(ii) Boarder status shall not be extended to persons paying less than a reasonable monthly payment for meals. An individual furnished both meals and lodging by the household, but paying compensation of less than a reasonable amount, will be considered a member of the household which provides the meals and lodging. When the boarder's payments for room are distinguishable from the payments for meals, only the amount paid for meals will be evaluated to determine if reasonable compensation is being paid for meals. The reasonable monthly payment for meals shall be paid in cash. In no event shall food stamps be paid for meals and be credited toward the monthly payment. A reasonable monthly payment shall be either of the following:

(A) Boarders whose board arrangement is for more than two meals per day shall pay an amount which equals or exceeds the thrifty food plan for the appropriate size of the boarder household, as specified in the appendix to § 273.10; or

(B) Boarders whose board arrangement is for two meals or less per day shall pay an amount which equals or exceeds two-thirds of the thrifty food plan for the appropriate size of the boarder household.

(3) *Live-in-attendants.* Individuals who reside with a household to provide medical, housekeeping, child care or other similar personal services.

(4) *Ineligible aliens.* Individuals who do not meet the citizenship or eligible alien status in § 273.4(a).

(5) *SSI recipients in "cash-out" States.* Recipients of SSI benefits who reside in a State designated by the Secretary of Health, Education, and Welfare to have specifically included the value of the coupon allotments in its State supplemental payments.

(6) *Student tax dependents.* Students who are or could be properly claimed as tax dependents for Federal income tax purposes by a member of a household which is not eligible to participate in the food stamp program, in accordance with § 273.5.

(7) *Disqualified individuals.* Individuals disqualified for fraud, as set forth in § 273.16, or college students disqualified for failure to meet the school year work registration requirements as set forth in § 273.7(b)(9)(i).

(8) *Others.* Other individuals who share living quarters with the household but who do not customarily purchase food and prepare meals with the household. For example, if the applicant household shares living quarters with another family to save on rent, but does not purchase and prepare food together with that family, the members of the other family are not members of the applicant household.

(c) *Boarding house.* Residents of commercial boarding houses are not eligible for program benefits. For program purposes, a boarding house shall be defined as an establishment which is licensed as a commercial enterprise which offers meals and lodging for compensation. In project areas without licensing requirements, a boarding house shall be defined as a commercial establishment which offers meals and lodging for compensation with the intention of making a profit. The number of boarders residing in a boarding house shall not be used to determine if a boarding house is a commercial enterprise. The household of the proprietor of a boarding house may participate in the Program separate and apart from the residents of the boarding house, if that household meets all of the eligibility requirements for program participation.

(d) *Head of household.* State agencies may designate the head of house-

hold or permit the household to do so. State agencies shall not use the head of household classification to impose special requirements on the household, such as requiring that the head of household, rather than another responsible member of the household, appear at the certification office to make application for benefits.

(e) *Residents of institutions.* Individuals shall be considered residents of an institution when the institution provides them with the majority of their meals as part of the institution's normal services and the institution has not been authorized to accept coupons. Residents of institutions are not eligible for participation in the program, with the following two exceptions:

(1) Residents of federally subsidized housing for the elderly, built under either section 202 of the Housing Act of 1959 or section 236 of the National Housing Act.

(2) Narcotic addicts or alcoholics who, for the purpose of regular participation in a drug or alcohol treatment and rehabilitation program, reside at a facility or treatment center.

(f) *Authorized representatives.* (1) The head of the household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in one or all of the following capacities:

(i) *Making application for the program.* When the head of the household or the spouse cannot make application, another household member may apply or an adult nonhousehold member may be designated as the authorized representative for that purpose. The head of the household or the spouse should prepare or review the application whenever possible, even though another household member or the authorized representative will actually be interviewed. The State agency shall inform the household that the household will be held liable for any overissuance which results from erroneous information given by the authorized representative, except as provided in § 273.11(e)(6). Adults who are nonhousehold members may be designated as authorized representatives for certification purposes only under the following conditions:

(A) The authorized representative has been designated in writing by the head of the household, or the spouse, or another responsible member of the household; and

(B) The authorized representative is an adult who is sufficiently aware of relevant household circumstances.

(ii) *Obtaining the coupons.* An authorized representative may be designated to obtain coupons. These designations shall be made at the time the application is completed and any authorized representative shall be named on the ID card. The authorized representative for coupon issuance may be the same individual designated to make application for the household or may be another individual. Even if a household member is able to make application and obtain coupons, the household should be encouraged to name an authorized representative for obtaining coupons in case of illness or other circumstances which might result in an inability to obtain coupons. The household may also designate an emergency authorized representative at a later date. An emergency authorized representative is someone who obtains coupons when neither a household member nor the authorized representative is able to obtain them because of unforeseen circumstances. State agencies shall provide for a system, which meets the requirements of § 274.2(e), to permit the designation, in writing, of an emergency authorized representative to obtain coupons with a particular ATP.

(iii) *Using the coupons.* The authorized representative may use coupons to purchase food for the household's consumption, with the full knowledge and consent of the household, provided the authorized representative has the household's ID card.

(2) *Drug addict/alcoholic treatment centers as authorized representatives.* Narcotics addicts or alcoholics who regularly participate in a drug or alcoholic treatment program on a resident basis may elect to participate in the food stamp program. The residents shall apply and be certified for program participation through the use of an authorized representative who shall be an employee of and designated by the private nonprofit organization or institution that is administering the treatment and rehabilitation program. The organization or institution shall apply on behalf of each addict or alcoholic and shall receive and spend the coupon allotment for food prepared by and/or served to the addict or alcoholic. The organization or institution shall also be responsible for complying with the requirements set forth in § 273.11(e).

(3) In the event the only adult living with a household is classified as a nonhousehold member as defined in paragraph (b) of this section, that individual may be the authorized representative for the minor household members.

(4) The following restrictions apply to authorized representatives:

(i) State agency employees who are involved in the certification and/or issuance processes and retailers that are authorized to accept food coupons may not act as authorized representatives without the specific written approval of the designated State agency official and only if that official determines that no one else is available to serve as an authorized representative.

(ii) Individuals disqualified for fraud shall not act as authorized representatives during the period of disqualification, unless the individual disqualified is the only adult member of the household able to act on its behalf and the State agency has determined that no one else is available to serve as an authorized representative. The State agency shall separately determine whether these individuals are needed to apply on behalf of the household, to obtain coupons, and to use the coupons for food for the household. For example, the household may have an authorized representative to obtain its coupons each month, but not be able to find anyone to purchase food regularly with the coupons. If the State agency also is unable to find anyone to serve as an authorized representative to purchase food regularly with the coupons, the disqualified member shall be allowed to do so.

(iii) The State agency shall insure that authorized representatives are properly designated. The name of the authorized representative shall be contained in the household's case file. Limits shall not be placed on the number of households an authorized representative may represent. In the event employers, such as those that employ migrant or seasonal farmworkers, are designated as authorized representatives or that a single authorized representative has access to a large number of ATP's or coupons, the State agency should exercise caution to assure that: The household has freely requested the assistance of the authorized representative; the household's circumstances are correctly represented and the household is receiving the correct amount of benefits; and that the authorized representative is properly using the coupons. State agencies which suspect authorized representatives of not properly using coupons should report the circumstances to FNS.

§ 273.2 Application processing.

(a) *General purpose.* The application process includes filing and completing an application form, being interviewed, and having certain information verified. The State agency shall act promptly on all applications and provide food stamp benefits retroactive to the month of application to those households that have completed the application process and have been determined eligible. Expedited service shall be available to households in immediate need. Specific responsibilities of households and State agencies in the application process are detailed below.

(b) *Food stamp application form.* All State agencies shall use an application form designed by FNS. FNS may approve a deviation from that form to accommodate the use of a combined PA/food stamp application form, the requirements of a computer system, or other exigencies for which the State agency can submit adequate justification, provided the form is under- standable to applicants and easy to complete. Each application form shall contain a description in understandable terms in prominent and boldface lettering of the civil and criminal provisions and penalties for violations of the Food Stamp Act.

(c) *Filing an application.* (1) *Household's right to file.* Households must file food stamp applications by submitting the forms to the food stamp office either in person, through an authorized representative or by mail. The length of time a State agency has to deliver benefits is calculated from the date the application is filed in the food stamp office designated by the State agency to accept the household's application. Each household has the right to file an application form on the same day it contacts the food stamp office during office hours. The household shall be advised that it does not have to be interviewed before filing the application and may file an incomplete application form as long as the form contains the applicant's name and address, and is signed by a responsible member of the household or the household's authorized representative. State agencies shall document the date the application was filed by recording on the application the date it was received by the food stamp office.

(2) *Contacting the food stamp office.* (i) State agencies shall encourage households to file an application form the same day the household or its representative contacts the food stamp office in person or by telephone and expresses interest in obtaining food stamp assistance. If a household contacting the food stamp office by telephone does not wish to come to the appropriate office to file the application that same day and instead prefers receiving an application through the mail, the State agency shall mail an application form to the household on the same day the telephone request is received. An application shall also be mailed on the same day a written request for food assistance is received.

(ii) If a household contacts the wrong certification office within a project area, either in person or by telephone, the certification office shall, in addition to meeting the requirements in paragraph (c)(2)(i) of this section, give the household the address and telephone number of the appropriate office. If the household has mailed its application to the wrong office within a project area, the certification office shall mail the application to the appropriate office on the same day.

(3) *Availability of the application form.* The State agency shall make application forms readily accessible to potentially eligible households and those groups and organizations involved in outreach efforts. The State agency shall also provide an application form to anyone who requests the form.

(4) *Notice of right to file.* The State agency shall post signs in the certification office which explain the application processing standards and the right to file an application on the day of initial contact. The State agency shall include similar information about same day filing in outreach materials and on the application form.

(5) *Withdrawing application.* The household may voluntarily withdraw its application at any time prior to the determination of eligibility. The State agency shall document in the case file the reason for withdrawal, if any was stated by the household, and that contact was made with the household to confirm the withdrawal. The household shall be advised of its right to reapply at any time subsequent to a withdrawal.

(d) *Household cooperation.* To determine eligibility, the application form must be completed and signed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate with the State agency in completing this process, the application shall be denied at the time of refusal. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process. For example, to be denied for refusal to cooperate, a household must refuse to be interviewed not merely failing to appear for the interview. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household shall not be denied. The household shall also be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility, including reviews generated by reported changes, recertifications, or as part of a quality control review. Once denied or terminated for refusal to cooperate, the household may reapply but shall not be determined eligible until it cooperates.

(e) *Interviews.* (1) All applicant households, including those submitting applications by mail, shall have face-to-face interviews in a food stamp office or other certification site with a qualified eligibility worker prior to initial certification and all recertifications. The individual interviewed may be the head of household, spouse, any other responsible member of the household, or an authorized representative. The interviewer shall not simply review the information that appears on the application, but shall explore and resolve with the household unclear and incomplete information. Households shall be advised of their rights and responsibilities during the interview, including the appropriate application processing standard and the households' responsibility to report changes. The interview shall be conducted as an official and confidential discussion of household circumstances. The applicant's right to privacy shall be protected during the interview. Facilities shall be adequate to preserve the privacy and confidentiality of the interview.

(2) The office interview shall be waived if requested by any household which is unable to appoint an authorized representative and which has no household members able to come to the food stamp office because they are 65 years of age or older, or are mentally or physically handicapped. The office interview shall also be waived if requested by any household which is unable to appoint an authorized representative and lives in a location which is not served by a certification office as provided in § 272.5. The State agency shall waive the office interview on a case-by-case basis for any household which is unable to appoint an authorized representative and which has no household members able to come to the food stamp office because of transportation difficulties or similar hardships which the State agency determines warrants a waiver of the office interview. These hardship conditions include, but are not limited to: Illness, care of a household member, prolonged severe weather, or work hours which preclude in-office interview. The State agency shall determine if the transportation difficulty or hardship reported by a household warrants a waiver of the office interview and shall document in the case file why a request for a waiver was granted or denied.

(i) The State agency has the option of conducting a telephone interview or a home visit for those households for whom the office interview is waived. Home visits shall be used only if the time of the visit is scheduled in advance with the household.

(ii) Waiver of the face-to-face interview does not exempt the household from the verification requirements, although special procedures may be used to permit the household to provide verification and thus obtain its

benefits in a timely manner, such as substituting a collateral contact in cases where documentary verification would normally be provided.

(iii) Waiver of the face-to-face interview shall not affect the length of the household's certification period.

(3) The State agency shall schedule all interviews as promptly as possible to insure eligible households receive an opportunity to participate within 30 days after the application is filed. If a household fails to appear for the first interview, the State agency shall attempt to schedule another interview. The interview shall be rescheduled by the State agency without requiring the household to provide good cause for failing to appear. However, if the household does not appear for the rescheduled interview, the State agency need not initiate action to schedule any further interviews unless the household requests that another interview be scheduled.

(f) *Verification.* Verification is the use of third-party information or documentation to establish the accuracy of statements on the application.

(1) *Mandatory verification.* State agencies shall verify the following information prior to certification for households initially applying:

(i) *Gross nonexempt income.* Gross nonexempt income shall be verified for all households prior to certification. However, where all attempts to verify the income have been unsuccessful because the person or organization providing the income has failed to cooperate with the household and the State agency, and all other sources of verification are unavailable, the eligibility worker shall determine an amount to be used for certification purposes based on the best available information.

(ii) *Alien status.* (A) Based on the application, the State agency shall determine if members identified as aliens are eligible aliens, as defined in § 273.4(a) (2) through (6), by requiring that the household present verification for each alien member.

(B) Aliens in the categories specified in § 273.4(a) (2) and (3) shall present an Immigration and Naturalization Service (INS) form I-151 or I-551—"Alien Registration Receipt Card"; or the "Re-entry Permit," a passport booklet for lawful permanent residents aliens.

(C) Aliens in the categories specified in § 273.4(a) (4) through (6) shall present an INS form I-94—"Arrival-Departure Record." The State agency shall accept the INS form I-94 as verification of eligible alien status only if the form is annotated with section 203(a)(7), section 212(d)(5), or section 243(h) of the Immigration and Nationality Act; or if the form is annotated with one of the following terms or a combination of the following terms: Refugee, parolee, paroled, conditional entry or entrant, or asylum. An INS form I-94 annotated with the letters (A) through (L) shall be considered verification of ineligible alien status unless the alien can provide other documentation from INS which indicates that the alien is eligible. If the INS form I-94 does not bear any of the above annotations and the alien has no other verification of alien classification in his or her possession, the State agency shall advise the alien: That classification under section 203(a)(7), 212(d)(5), or 243(h) of the Immigration and Nationality Act shall result in eligible status; that the alien may be eligible if acceptable verification is obtained; and that the alien may contact INS or otherwise obtain the necessary verification, or if the alien wishes and signs a written consent, that the State agency will contact INS to obtain clarification of the alien's status.

(D) If an alien is unable to provide any INS document at all (not even an INS form I-94), then the State agency has no responsibility to offer to contact INS on the alien's behalf. The State agency's responsibility exists only when the alien has an INS document that does not clearly indicate eligible or ineligible alien status. In any event, the State agency shall not contact INS to obtain information about the alien's correct status without the alien's written consent.

(E) If the proper INS documentation is not available, the alien may state the reason and submit other conclusive verification. The State agency shall accept other forms of documentation or corroboration from INS that the alien is classified pursuant to section 101(a)(15), 101(a)(20), 203(a)(7), 212(d)(5), 243, or 249 of the Immigration and Nationality Act, or other conclusive evidence such as a court order stating that deportation has been withheld pursuant to section 243(h) of the Immigration and Nationality Act.

(F) While awaiting acceptable verification, the alien whose status is questionable shall be ineligible, but the eligibility of the remaining members (if any) shall be determined in accordance with the procedures in § 273.11(d). If the alien does not wish to contact INS or give permission for the State agency to contact INS, the household shall be given the option of withdrawing its application or participating without that member.

(iii) *Utility expenses.* The State agency shall verify a household's utility expenses if the household wishes to claim expenses in excess of the State agency's utility standard and the expense would actually result in a deduction. If the household's actual utility expenses cannot be verified before the 30 days allowed to process the application expire, the State agency shall use the standard utility allowance, provided the household is entitled to use the standard as specified in § 273.9(d). If the household wishes to claim expenses for an unoccupied home, the State agency shall verify the household's actual utility expenses for the unoccupied home in every case and shall not use the standard utility allowance.

(2) *Verification of questionable information.* With the exception of liquid resources and loans, State agencies shall verify all other factors of eligibility prior to certification only if they are questionable and affect a household's eligibility or benefit level. Procedures for verifying loans and liquid resources are described in paragraph (3) of this section. To be considered questionable, the information on the application must be inconsistent with statements made by the applicant, inconsistent with other information on the application or previous applications, or inconsistent with information received by the State agency. When determining if information is questionable, the State agency shall base the decision on each household's individual circumstances. A household's report of expenses which exceed its income may be grounds for a determination that further verification is required. However, this circumstance shall not, in and of itself, be grounds for a denial. The State agency shall instead explore with the household how it is managing its finances, whether the household receives excluded income or has resources, and how long the household has managed under these circumstances. Procedures described below shall apply when information concerning one of the following eligibility requirements is questionable:

(i) *Household composition.* If questionable, State agencies shall verify any factors affecting the composition of a household such as household size and boarder status. However, due to the difficulty in verifying whether or not a group of individuals customarily purchases and prepares meals together and, therefore, constitutes a household, State agencies shall generally accept the household's statement regarding food preparation and purchasing.

(ii) *Citizenship.* (A) When a household's statement that one or more of its members are U.S. citizens is questionable, the household shall be asked to provide acceptable verification. Acceptable forms of verification include birth certificates, religious records, voter registration cards, certificates of citizenship or naturalization provided by INS, such as identification cards for use of resident citizens in the

United States (INS form I-179 or INS Form I-197) or U.S. passports. Participation in the AFDC program shall also be considered acceptable verification if verification of citizenship was obtained for that household. If the above forms of verification cannot be obtained and the household can provide a reasonable explanation as to why verification is not available, the State agency shall accept a signed statement from someone who is a U.S. citizen which declares, under penalty of perjury, that the member in question is a U.S. citizen. The signed statement shall contain a warning of the penalties for helping someone commit fraud, such as: If you intentionally give false information to help this person get food stamps, you may be fined, imprisoned, or both.

(B) The member whose citizenship is in question shall be allowed to participate for 2 months pending verification of citizenship if the household is otherwise eligible and efforts are being made to obtain the necessary verification. If verification has not been obtained within 2 months, the member whose citizenship is in question shall be ineligible and that member's income and resources shall not be considered available to any remaining household members.

(iii) *Tax dependency.* The State agency shall verify the tax dependency status of students who are subject to the tax dependency rules described in § 273.5 and who do not know their tax-dependency status or who provide questionable information. For example, the State agency may consider a student's statement concerning tax dependency questionable if the student claims not to be a tax dependent but receives enough financial support from the parents or guardians (such as the payment of tuition or rent) to indicate that the parents or guardians may be providing more than one-half of the student's support. The State agency shall verify the student's tax dependency status by mailing a simple form designed by FNS to the student's parent. The verification form will require the taxpayer to state whether the student is claimed or could be claimed as a tax dependent. If the student is or could be claimed as a tax dependent, the parent will be requested to indicate whether the parent's household is currently certified for food stamps. If the parent's household is not certified, the parent must provide household size and gross income figures so an eligibility determination can be made based on the FNS gross income tables, discussed in § 273.5(b). FNS may approve deviations from the tax dependency form under the same conditions deviations are granted for the application form, as specified in § 273.2(b). The parent's failure to supply requested information, or a parental response which indicates student ineligiblity, shall result in the student being declared ineligible. Students shall have an opportunity to demonstrate that they should not be declared ineligible either through an informal appeal to the eligibility worker or through a fair hearing as provided in § 273.15.

(iv) *Deductible expenses.* Deductible expenses, except for utility costs which exceed the standard and utility costs for unoccupied homes, shall be verified only if questionable and if allowing the expense would actually result in a deduction. For example, rent, even if questionable, would not be verified if the household's child care expenses exceeded the limit on the combined dependent care/shelter deduction since the amount of the rent cannot alter the amount of the deduction.

(A) Household that wish to claim shelter costs for a home that is unoccupied because of employment or training away from the home, illness, or abandonment caused by a natural disaster or casualty loss must provide verification of actual utility costs if the costs would result in a deduction. These households are also responsible for providing verification of any other shelter costs of the unoccupied home if the cost is questionable and it would result in a deduction. The State agency is not required to assist households in obtaining verification of this expense if the verification would have to be obtained from a source outside of the project area.

(B) If a deductible expense must be verified and obtaining the verification may delay the household's certification, the State agency shall advise the household that the household's eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense. Shelter costs would be computed without including the questionable and unverified components. The standard utility allowance shall be used if the household is entitled to claim it and has not verified higher actual costs. If the expense cannot be verified within 30 days of the date of application, the State agency shall determine the household's eligibility and benefit level without providing a deduction for the unverified expense. If the household subsequently provides the missing verification, the State agency shall redetermine the household's benefits, and provide increased benefits, if any, in accordance with the timeliness standards in § 273.12 on reported changes. The household shall be entitled to the restoration of any benefits as a result of the disallowance of the expense only if the expense could not be verified within the 30-day processing standard because the State agency failed to allow the household sufficient time, as defined in paragraph (h)(1) of this section, to verify the expense. If the household would be ineligible unless the expense is allowed, the household's application shall be handled as provided in paragraph (h) of this section.

(3) *Liquid resources and loans.* The State agency may determine when to verify liquid resources and if moneys received by households are loans, provided that, at a minimum, these items shall be verified if questionable as specified in paragraph (2) of this section. When verifying that income is exempt as a loan, a legally binding agreement is not required. A simple statement signed by both parties which indicates that the payment is a loan and must be repaid shall be sufficient verification. However, if the household receives payments on a recurrent or regular basis from the same source but claims the payments are loans, the State agency may also require that the provider of the loan sign an affidavit which states that repayments are being made or that payments will be made in accordance with an established repayment schedule.

(4) *Sources of verification.* (i) *Documentary evidence.* State agencies shall use documentary evidence as the primary source of verification. Documentary evidence consists of a written confirmation of a household's circumstances. Examples of documentary evidence include wage stubs, rent receipts, and utility bills. Although documentary evidence shall be the primary source of verification, acceptable verification shall not be limited to any single type of document and may be obtained through the household or other source. Whenever documentary evidence cannot be obtained, State agencies shall use alternate sources of verification such as collateral contacts and home visits.

(ii) *Collateral contacts.* A collateral contact is a verbal confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the telephone. The acceptability of a collateral contact shall not be restricted to a particular individual but may be anyone that can be expected to provide an accurate third-party verification of the household's statements. Examples of acceptable collateral contacts are employers, landlords, social service agencies, migrant service agencies, and neighbors of the household.

(iii) *Home visits.* Home visits shall be used as verification only if documentary evidence cannot be obtained, and the visit is scheduled in advance with the household.

(iv) *Discrepancies.* Where information from another source contradicts statements made by the household, the household shall be afforded a reasonable opportunity to resolve the discrepancy prior to an eligibility determination.

(5) *Responsibility for obtaining verification.* (i) The household has primary responsibility for providing documentary evidence to support its income statements and to resolve any questionable information. Households may supply documentary evidence in person, through the mail, or through an authorized representative. The State agency shall accept any reasonable documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application. If it would be difficult or impossible for the household to obtain the documentary evidence in a timely manner, the State agency shall offer assistance to the household in obtaining the documentary evidence, except as otherwise stated in this section.

(ii) Whenever documentary evidence cannot be obtained, the State agency shall substitute a collateral contact or a home visit. The State agency shall rely on the household to provide the name of any collateral contact. The household may request assistance in designating a collateral contact. The State agency is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide an accurate third-party verification. When the collateral contact designated by the household is unacceptable, the State agency shall ask the household to designate another collateral contact. The State agency is responsible for obtaining verification from acceptable collateral contacts.

(6) *Documentation.* Case files must be documented to support eligibility, ineligibility, and benefit level determinations. Documentation shall be in sufficient detail to permit a reviewer to determine the reasonableness and accuracy of the determination. Where verification was required to resolve questionable information, the State agency shall document why the information was considered questionable and what documentation was used to resolve the questionable information. The State agency shall also document the reason why an alternate source of verification, such as a collateral contact or home visit, was needed, and the reason a collateral contact was rejected and an alternate requested.

(7) *BENDEX.* If documentary evidence of social security benefits is not readily available from the applicant, the State agency may verify the income through the Beneficiary Data Exchange (BENDEX). The amount of social security benefits reported on the application shall be used to compute the household's eligibility and benefit level pending receipt of verification from BENDEX. Any household member whose social security benefits will be verified through BENDEX must sign an information release statement which is valid during the certification period, prior to the State agency's submission of the request for verification.

(8) *State Data Exchange (SDX).* [*Reserved*]

(9) *Verification subsequent to initial certification.* (i) *Recertification.* At recertification, the State agency shall verify a change in income or a change in actual utility expenses claimed by a household if the source has changed or the amount has changed by more than $25 since the last time they were verified. State agencies may verify income or actual utility expenses claimed by households which are unchanged or have changed by $25 or less, provided verification is, at a minimum, required when information is questionable as defined in paragraph (f)(2) of this section. All other changes reported at the time of recertification shall be subject to the same verification procedures as apply at initial certification. Unchanged information, other than income and utility expenses, shall not be verified at recertification unless the information is questionable as defined in paragraph (f)(2) of this section.

(ii) *Changes.* Changes reported during the certification period shall be subject to the same verification procedures as apply at initial certification, except that the State agency is not required to verify income or actual utility expenses if the source has not changed and the amount has changed by $25 or less since the last time they were verified.

(g) *Normal processing standard.* (1) *Thirty-day processing.* The State agency shall provide eligible households that complete the initial application process an opportunity to participate as soon as possible, but not later than 30 calendar days after the application was filed. An application is filed the day the appropriate food stamp office receives an application containing the applicant's name and address, which is signed by either a responsible member of the household or the household's authorized representative. Households entitled to expedited processing are specified in paragraph (i) of this section.

(2) *Opportunity to participate.* An opportunity to participate consists of providing households with an ATP or other authorization and having an issuance facility open and available for the household to obtain its allotment. If the ATP or coupons are mailed, 2 days shall be allowed for delivery before determining if the household has been provided an opportunity to participate. A household has not been provided an opportunity to participate within the 30-day standard if the ATP or allotment is mailed on the 29th or 30th day. Neither has an opportunity to participate been provided if the ATP is mailed on the 28th day but no issuance facility is open on the 30th day. The State agency must mail the ATP at least 2 days in advance of the 30th day and assure that the ATP can be transacted after it is received but before the 30-day standard expires.

(3) *Denying the application.* Households that are found to be ineligible shall be sent a notice of denial as soon as possible but not later than 30 days following the date the application was filed. If the household has failed to appear for two scheduled interviews and has made no subsequent contact with the State agency to express interest in pursuing the application, the State agency shall send the household a notice of denial on the 30th day following the date of application. The household must file a new application if it wishes to participate in the program. In cases where the State agency was able to conduct an interview and request all of the necessary verification on the same day the application was filed, and no subsequent requests for verification have been made, the State agency may also deny the application on the 30th day if the State agency provided assistance to the household in obtaining verification when required, as specified in paragraph (f)(5) of this section, but the household failed to provide the requested verification.

(h) *Delays in processing.* If the State agency does not determine a household's eligibility and provide an opportunity to participate within 30 days of the date the application was filed, the State agency shall take the following action:

(1) *Determining cause.* The State agency shall first determine the cause of the delay using the following criteria: (i) A delay shall be considered the fault of the household if the household has failed to complete the application process even though the State agency has taken all the action it is required to take to assist the household. The State agency must have taken the following actions before a delay can be considered the fault of the household:

(A) For households that have failed to complete the application form, the State agency must have offered, or attempted to offer, assistance in its completion.

(B) If one or more members of the household have failed to register for work, as required in § 273.7, the State

agency must have informed the household of the need to register for work and given the household at least 10 days from the date of notification to register these members.

(C) In cases where verification is incomplete, the State agency must have provided assistance when required, as specified in paragraph (f)(5) of this section, and allowed the household sufficient time to provide the missing verification. Sufficient time shall be at least 10 days from the date of the State agency's initial request for the particular verification that was missing.

(D) For households that have failed to appear for an interview, the State agency must have attempted to reschedule the initial interview within 30 days of the date the application was filed. However, if the household has failed to appear for the first interview and a subsequent interview is postponed at the household's request or cannot otherwise be rescheduled until after the 20th day but before the 30th day following the date the application was filed, the household must appear for the interview, bring verification, and register members for work by the 30th day; otherwise, the delay shall be the fault of the household. If the household has failed to appear for the first interview and a subsequent interview is postponed at the household's request until after the 30th day following the date the application was filed, the delay shall be the fault of the household. If the household has missed both scheduled interviews and requests another interview, any delay shall be the fault of the household.

(ii) Delays that are the fault of the State agency include, but are not limited to, those cases where the State agency failed to take the actions described in paragraphs (h)(1)(i) (A) through (D) of this section.

(2) *Delays caused by the household.* (i) If by the 30th day the State agency cannot take any further action on the application due to the fault of the household, the household shall lose its entitlement to benefits for the month of application. However, the State agency shall give the household an additional 30 days to take the required action, except that, if verification is lacking, the State agency has the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing.

(A) The State agency has the option of sending the household either a notice of denial or a notice of pending status on the 30th day. The option chosen may vary from one project area to another, provided the same procedures apply to all households within a project area. However, if a notice of denial is sent and the household takes the required action within 60 days of the date the application was filed, the State agency shall reopen the case without requiring a new application. No further action by the State agency is required after the notice of denial or pending status is sent if the household fails to take the required action within 60 days of the date the application was filed, or the State agency chooses the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing and the household fails to provide the necessary verification by this 30th day.

(B) State agencies may include in the notice a request that the household report all changes in circumstances since it filed its application. The information that must be contained on the notice of denial or pending status is explained in § 273.10(g)(1)(ii) and (iii).

(ii) If the household was at fault for the delay in the first 30-day period, but is found to be eligible during the second 30-day period, the State agency shall provide benefits only from the month following the month of application. The household is not entitled to benefits for the month of application when the delay was the fault of the household.

(3) *Delays caused by the State agency.* (i) Whenever a delay in the initial 30-day period is the fault of the State agency, the State agency shall take immediate corrective action. The State agency shall not deny the application if it caused the delay, but shall instead notify the household by the 30th day after the application was filed that its application is being held pending. The State agency shall also notify the household of any action it must take to complete the application process. If verification is lacking the State agency has the option of holding the application pending for only 30 days following the date of the initial request for the particular verification that was missing.

(ii) If the household is found to be eligible during the second 30-day period, the household shall be entitled to benefits retroactive to the month of application. If, however, the household is found to be ineligible, the State agency shall deny the application.

(4) *Delays beyond 60 days.* (i) If the State agency is at fault for not completing the application process by the end of the second 30-day period, and the case file is otherwise complete, the State agency shall continue to process the original application until an eligibility determination is reached. If the household is determined eligible, and the State agency was at fault for the delay in the initial 30 days, the household shall receive benefits retroactive to the month of application. However, if the initial delay was the household's fault, the household shall receive benefits retroactive only to the month following the month of application. The State agency may use the original application to determine the household's eligibility in the months following the 60-day period, or it may require the household to file a new application.

(ii) If the State agency is at fault for not completing the application process by the end of the second 30-day period, but the case file is not complete enough to reach an eligibility determination, the State agency may continue to process the original application, or deny the case and notify the household to file a new application. If the case is denied, the household shall also be advised of its possible entitlement to benefits lost as a result of State agency caused delays in accordance with § 273.17. If the State agency was also at fault for the delay in the initial 30 days, the amount of benefits lost would be calculated from the month of application. If, however, the household was at fault for the initial delay, the amount of benefits lost would be calculated from the month following the month of application.

(iii) If the household is at fault for not completing the application process by the end of the second 30-day period, the State agency shall deny the application and require the household to file a new application if it wishes to participate. If however, the State agency has chosen the option of holding the application pending only until 30 days following the date of the initial request for the particular verification that was missing, and verification is not received by that 30th day, the State agency may immediately close the application. A notice of denial need not be sent if the notice of pending status informed the household that it would have to file a new application if verification was not received within 30 days of the initial request. The household shall not be entitled to any lost benefits, even if the delay in the initial 30 days was the fault of the State agency.

(i) *Expedited service.* (1) *Entitlement to expedited service.* If otherwise eligible, the following households are entitled to expedited service:

(i) Households with zero net monthly income, as computed in § 273.10.

(ii) Households who are destitute as defined in § 273.10(e)(3).

(2) *Identifying households needing expedited service.* The State agency's application procedures shall be designed to identify households eligible for expedited service at the time the household requests assistance. For example, a receptionist, volunteer, or

other employee shall be responsible for screening applications as they are filed or as individuals come in to apply.

(3) *Processing standards.* (i) *Zero net income and destitute households.* For households entitled to expedited service, except as specified in paragraphs (3)(ii) through (iii) of this section, the State agency shall mail the household's ATP or coupons no later than the close of business of the second working day following the date the application was filed.

The State agency may offer the household the option of having the ATP or coupons mailed by the second working day or of having the ATP or coupons available for the household or its authorized representative to pick up no later than the start of business of the third working day following the date the application was filed. In States that use an HIR issuance system described in § 274.2(f) and that do not provide any mail issuance, the State agency shall have the coupons available for the household or its representative to pick up no later than the start of business of the third working day following the date the application was filed.

(ii) *Drug addicts and alcoholics.* For residents of drug addiction or alcoholic treatment and rehabilitation centers who are entitled to expedited service, the State agency shall mail an ATP or coupons, or have the ATP or coupons available to be picked up no later than seven working days following the date the application was filed.

(iii) *Out-of-office interviews.* If a household is entitled to expedited service and is also entitled to a waiver of the office interview, the State agency shall conduct the interview (unless the household cannot be reached) by the first working day following the date the application was filed. If the application is not complete, and a telephone interview is conducted, the State agency shall, at a minimum, be required to complete the application for the household during the interview and mail the completed application the same day to the household for signature. The State agency shall act on the application for these households within the standards specified in paragraphs (i)(3)(i) and (ii) of this section, except that the processing standards shall be calculated from the date a completed and signed application is received rather than the date the application was filed.

(iv) *Late determinations.* If the prescreening required in paragraph (i)(2) of this section fails to identify a household as being entitled to expedited service and the State agency subsequently discovers that the household is entitled to expedited service, the State agency shall provide expedited service to households within the processing standards described in paragraph (i)(3)(i) and (ii) of this section, except that the processing standard shall be calculated from the date the State agency discovers the household is entitled to expedited service.

(4) *Special procedures for expediting service.* The State agency shall use the following procedures when expediting certification and issuance:

(i) To expedite the certification process, the State agency shall postpone the verification required by § 273.2(f). However, the household's identity and residency shall be verified through a collateral contact or readily available documentary evidence. Examples of acceptable documentary evidence which the household may provide include, but are not limited to, a driver's license, work or school I.D., voter registration card, or birth certificate. The household's income statements shall be verified through a collateral contact or readily available documentary evidence whenever it can be done in sufficient time to meet the expedited processing standards. However, benefits shall not be delayed beyond the delivery standard described in paragraph (i)(3) of this section solely because income has not been verified.

(ii) Once the household has supplied the name of a collateral contact or has asked the State agency for assistance in locating a collateral contact, the State agency shall promptly contact the collateral contact or otherwise assist the household in obtaining the necessary verification.

(iii) Households that are certified on an expedited basis and have provided all necessary verification required in paragraph (f) of this section prior to certification shall be assigned a normal certification period. If verification was postponed, the State agency may certify these households for the month of application only or, at the State agency's option, may assign a normal certification period to those households whose circumstances would otherwise warrant a longer certification period. However, in either case, benefits will not be continued past the month of application if verification continues to be postponed.

(A) If certified only for the month of application, the household must reapply and complete the verification requirements which were postponed.

(B) If a certification period longer than one month is assigned, the State agency shall notify the household in writing that no further benefits be issued until the postponed verification is completed and that if the postponed verification is not completed within 30 days of the date of application, the household's application will be denied. The notice shall also advise the household that if verification results in changes in the household's eligibility or level of benefits, the State agency shall act on those changes without an advance notice of adverse action.

(iv) There is no limit to the number of times a household can be certified under expedited procedures, as long as prior to each expedited certification, the household either completes the verification requirements that were postponed at the last expedited certification or was certified under normal processing standards since the last expedited certification.

(v) Households requesting, but not entitled to, expedited service shall have their applications processed according to normal standards.

(j) *PA and GA households.* Households in which all members are applying for public assistance (PA) shall be allowed to apply for food stamp benefits at the same time they apply for PA benefits. These households' food stamp eligibility and benefit levels shall be based solely on food stamp eligibility criteria, and the households shall be certified in accordance with the notice, procedural and timeliness requirements of the food stamp regulations. Households in which all members are applying for State agency administered general assistance (GA) shall, at a minimum, be provided with applications for food stamp benefits and be referred to the appropriate food stamp office for an eligibility determination. Under certain circumstances, these households may be able to apply jointly for their GA and food stamp benefits.

(1) *PA households.* (i) The application for AFDC or other public assistance shall contain all the information necessary to determine a household's food stamp eligibility and level of benefits. Information relevant only to food stamp eligibility shall be contained in the PA form or shall be an attachment to it. The PA application shall have a place for the household to indicate if it does not wish to apply for food stamps. The application shall clearly indicate that the household is providing information for both programs, is subject to the criminal penalties of either program for false statements, and waives the notice of adverse action as specified in paragraph (j)(1)(v) of this section. The joint PA/food stamp application may also be used for all food stamp applicants, provided the application form is approved for all households by FNS.

(ii) PA applications, except those on which the household has indicated it does not want food stamps, shall be processed as food stamp applications in accordance with all timeliness standards and procedures specified in this section. If the household's intention to apply for food stamps is un-

clear, the State agency shall determine at the interview, or in other contact with the household, whether or not the household wants the PA application processed for food stamp purposes.

(iii) The State agency shall conduct a single interview at initial application for both public assistance and food stamp purposes. PA households shall not be required to see a different eligibility worker or otherwise be subjected to two interview requirements to obtain the benefits of both programs. Following the single interview, the application may be processed by separate workers to determine eligibility and benefit levels for food stamps and public assistance. A household's eligibility for food stamp out-of-office interview provisions in § 273.2(e)(2) does not relieve the household of any responsibility for a face-to-face interview to be certified for PA.

(iv) For households applying for both public assistance and food stamps, the verification procedures described in paragraphs (f)(1) through (f)(8) of this section shall be followed for those factors of eligibility which are needed solely for purposes of determining the household's eligibility for food stamps. For those factors of eligibility which are needed to determine both PA eligibility and food stamp eligibility, the State agency may use the PA verification rules. However, the State agency shall not delay the household's food stamp benefits if, at the end of 30 days following the date the application was filed, the State agency has sufficient verification to meet the verification requirements of paragraphs (f)(1) through (f)(8) of this section but does not have sufficient verification to meet the PA verification rules.

(v) As a result of differences in PA and food stamp application processing procedures and timeliness standards, the State agency may have to determine food stamp eligibility prior to determining the household's eligibility for PA payments. Action on the food stamp portion of the application shall not be delayed nor the application denied on the grounds that the PA determination has not been made. If the State agency can anticipate the amount and the date of receipt of the initial PA payment, but the payment will not be received until a subsequent month, the State agency shall vary the household's food stamp benefit level according to the anticipated receipt of the payment and notify the household. Portions of initial PA payments intended to retroactively cover a previous month shall be disregarded as lump sum payments under § 273.9(c)(8). If the amount or date of receipt of the initial PA payment cannot be reasonably anticipated at the time of the food stamp eligibility determination, the PA payments shall be handled as a change in circumstances. However, the State agency is not required to send a notice of adverse action if the receipt of the PA grant reduces or terminates the household's food stamp benefits, provided the household is notified in advance that its benefits may be reduced or terminated when the grant is received. Households whose PA applications are denied shall not be required to file new food stamp applications but shall have their food stamp eligibility determined or continued on the basis of the original applications filed jointly for PA and food stamp purposes and any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits.

(2) *GA households.* (i) State agencies shall use the joint application processing procedures in paragraph (j)(1) of this section for GA households when the following criteria are met:

(A) The State agency administers a GA program which uses formalized application procedures and eligibility criteria that test levels of income and resources; and,

(B) Administration of the GA program is integrated with the administration of the PA or food stamp programs, in that the same eligibility workers process applications for GA benefits and PA or food stamp benefits.

(ii) State agencies that have not integrated the administration of their GA program, but otherwise meet the criteria in paragraph (2)(i) of this section may, with FNS approval, jointly process GA and food stamp applications. If approved, State agencies shall adhere to the joint application processing procedures in paragraph (j)(1) of this section.

(iii) State agencies that have not integrated the administration of their GA program, and that do not elect or are not approved to use the joint application processing procedures, shall, at a minimum, advise all GA applicant households of their potential eligibility for food stamp benefits and provide these households with food stamp applications. In addition, State agencies shall allow households in which all members are applying for GA benefits to leave a signed food stamp application which contains, at a minimum, the household's name and address, at the GA office. The GA office shall forward these applications that same day to the appropriate food stamp office for processing. The procedural and timeliness requirements that apply to the application process shall begin when the food stamp office receives the application. Since there may be delay involved in the transferring of applications from GA offices to food stamp offices, households shall be advised that they may receive faster service if they take the application directly to the food stamp office.

(iv) In areas where GA programs are administered by local agencies or agencies such as the Department of the Interior's Bureau of Indian Affairs, the State agency shall endeavor to gain their cooperation in referring GA applicants to the food stamp program. Where possible, this referral should consist of informing the GA applicants of their potential eligibility for food stamp benefits, providing them with food stamp applications and directing them to the local food stamp office.

(3) *Households with some PA or GA recipients.* State agencies that use the joint application processing procedures in paragraphs (j)(1) and (j)(2) of this section may apply these procedures to a food stamp applicant household in which some, but not all, members are in the PA/GA filing unit. If the State agency decides not to use the joint application procedures for these households, the households shall file separate applications for PA/GA and food stamp benefits. This decision shall not be made on a case-by-case basis, but shall be applied uniformly to all households of this type in a project area.

(k) *SSI households.* [Reserved]

§ 273.3 Residency.

A household must be living in the project area in which it files an application for participation. No individual may participate as a member of more than one household, or in more than one project area, in any month. The State agency shall not impose any durational residency requirements. A fixed residence is not required; for example, migrant campsites satisfy the residency requirement. Nor shall residency require an intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes shall not be considered residents.

§ 273.4 Citizenship and alien status.

(a) *Citizens and eligible aliens.* State agencies shall prohibit participation in the program by any person who is not a resident of the United States and one of the following:

(1) A United States citizen.

(2) An alien lawfully admitted for permanent residence as an immigrant as defined in sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act.

(3) An alien who entered the United States prior to June 30, 1948, or some later date as required by law, and has

continuously maintained residency in the United States since then, and is not ineligible for citizenship, but is considered to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the Immigration and Nationality Act.

(4) An alien who qualified for conditional entry because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by a catastrophic natural calamity pursuant to section 203(a)(7) of the Immigration and Nationality Act.

(5) An alien lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act. A majority of the Vietnamese and Cuban refugees were admitted under this statutory provision.

(6) An alien living within the United States to whom the Attorney General has withheld deportation pursuant to section 243 of the Immigration and Nationality Act because of the judgment of the Attorney General that the alien would othewise be subject to persecution on account of race, religion, or political opinion.

(b) *Ineligible aliens.* No aliens other than those described above shall be eligible to participate in the program as a member of any household. Among those excluded are alien visitors, tourists, diplomats and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country.

(c) *Income and resources.* The income and resources of an ineligible alien living with a household shall not be considered in determining eligibility or level of benefits of the household, as specified in § 273.11(d).

(d) *Awaiting verification.* If verification of eligible alien status as required by § 273.2(f) is not provided on a timely basis, the eligibility of the remaining household members shall be determined. The alien(s) whose status is unverified shall be considered a nonhousehold member(s), and the eligibility of the remaining household members determined in accordance with procedures in § 273.11(d). If verification of eligible alien status is subsequently received, the State agency shall act on the information as a reported change in household membership in accordance with timeliness standards in § 273.12.

§ 273.5 Tax dependency.

(a) *Tax dependent.* No individual who is a member of a household otherwise eligible to participate in the program shall be eligible to participate as a member of that or any other household if the individual:

(1) Has reached age 18;

(2) Is enrolled at least half time in an institution of higher education; and

(3) Is properly claimed or could be properly claimed for the current tax year as a dependent child for Federal income tax purposes by a taxpayer who is not a member of an eligible household. "Child" and tax "dependent" are defined in § 151 and § 152 of the Internal Revenue Code (I.R.C.) of 1954, as amended.

(b) *Eligibility of taxpayer's household.* (1) Prior to determining the eligibility of students who are or could be properly claimed tax dependents, the eligibility of the taxpayer's household shall be determined. A proper claim of tax dependency exists when the taxpayer provides or will provide over half of the student's support for the current tax year. A proper claim also exists when the taxpayer is or will be treated as having provided over half of the student's support under Internal Revenue Service (IRS) rules for "children of divorced or separated parents" (§ 152(e) I.R.C.) or dependents supported by two or more taxpayers (§ 152(c) I.R.C.). "Support" is defined in § 151–152 of the I.R.C. FNS shall provide the IRS rules upon which food stamp eligibility determinations are made.

(2) The eligibility of the taxpayer's household shall be based on information provided by the student or the taxpayer. If the taxpayer's household is not currently certified for food stamps, its eligibility shall be determined by the household's size and monthly gross income. The allowable gross income limits shall be calculated by increasing the current net income eligibility limits in § 273.9(a) by the standard deduction in § 273.9(d), the maximum shelter deduction in § 273.9(d), and the 20 percent earned income deduction in § 273.9(d). Self-employed households shall have their gross income determined on an annual, rather than a monthly basis, minus the cost of doing business, but prior to deducting taxes. FNS shall provide gross income eligibility tables by household size.

(c) *Income and resources.* The income and resources of an ineligible tax dependent living with a household shall not be considered in determining the eligibility or level of benefits of the household, as specified in § 273.11(d).

(d) *Awaiting verification.* If verification of a student's tax dependent status or the eligibility of the taxpayer household has been requested under criteria in § 273.2(f) and the verification is not provided on a timely basis, the eligibility of the remaining household members shall be determined. The student whose tax dependency status is questioned and unverified shall be considered a nonhousehold member, and the eligibility of the remaining household members determined in accordance with procedures in § 273.11(d). If verification is subsequently received and establishes that the student is eligible because the student cannot be a properly claimed tax dependent, or because the taxpayer's household is eligible, the State agency shall act on the information as a reported change in household membership in accordance with the timeliness standards in § 273.12.

273.6 SSI cash-out States.

(a) *Ineligibility.* No individual who receives supplemental security income benefits and/or State supplementary payments as a resident of the States of Massachusetts or Wisconsin is eligible to receive food stamp benefits. The Secretary of Health, Education, and Welfare has determined that the SSI payments in these States have been specifically increased so as to include the value of the food stamp allotment.

(b) *Receipt of SSI benefits.* In Massachusetts and Wisconsin, an individual must actually receive, not merely have applied for, SSI benefits to be determined ineligible for the food stamp program. If the State agency provides payments at least equal to the level of SSI benefits to individuals who have applied for but are awaiting an SSI eligibility determination, receipt of these substitute payments will terminate the individual's eligibility for food stamp benefits. Once SSI benefits are received, the individual will remain ineligible for food stamp benefits, even during months in which receipt of the SSI benefits is interrupted, or suspended, until the individual is terminated from the SSI program.

(c) *Income and resources.* In Massachusetts and Wisconsin, the income and resources of the SSI recipient living in a household shall not be considered in determining eligibility or level of benefits of the household, as specified in § 273.11(d).

273.7 Work registration requirements.

(a) *Persons required to register.* The State agency shall determine which household members are required to register for employment. Each household member who is not exempt by paragraph (b) of this section shall register for employment at the time of application and once every 6 months after initial registration. Upon reaching a determination that a member is required to register, the State agency shall explain to the applicant both the work registration requirement and the consequences of failure to comply. The State agency shall provide work registration forms to the applicant for

each household member who is required to register for employment. Household members are registered when a completed work registration form is submitted to the State agency. The State agency shall forward work registration forms to the State employment service office having jurisdiction over the area where the registrant resides.

(b) *Exemptions from work registration.* The following persons are exempt from the work registration requirement:

(1) A person younger than 18 years of age or a person 60 years of age or older. If a child has its 18th birthday within a certification period, the child shall fulfill the work registration requirement as part of the next scheduled recertification process, unless the child qualifies for another exemption.

(2) A person physically or mentally unfit for employment. If a mental or physical disability is claimed and the disability is not evident to the State agency, verification may be required. Appropriate verification may consist of receipt of temporary or permanent disability benefits issued by governmental or private sources, or of a statement from a physician or licensed or certified psychologist.

(3) A household member subject to and participating in the work incentive program (WIN) under title IV of the Social Security Act.

(4) A parent or other household member who is responsible for the care of a dependent child under 12 or an incapacitated person. If the child has its 12th birthday within a certification period, the individual responsible for the care of the child shall fulfill the work registration requirement as part of the next scheduled recertification process, unless the individual qualifies for another exemption.

(5) A parent or other caretaker of a child under 18 in a household where another able-bodied parent is registered for work, or is exempt as a result of employment. If the child has its 18th birthday within a certification period, the parent or caretaker must fulfill the work registration requirement as part of the next scheduled recertification process, unless the parent or caretaker qualifies for another exemption.

(6) A person who is in receipt of unemployment compensation. A person who has applied for, but has not yet begun to receive, unemployment compensation shall also be exempt if that person was required to register for work with the State employment service as part of the unemployment compensation application process.

(7) A regular participant in a drug addiction or alcoholic treatment and rehabilitation program.

(8) A person who is employed or self-employed and working a minimum of 30 hours weekly or receiving weekly earnings at least equal to the Federal minimum wage multiplied by 30 hours. For work registration purposes, a person residing in certain designated areas of Alaska, as specified in § 274.10(e), who subsistence hunts and/or fishes a minimum of 30 hours weekly shall be considered exempt as self-employed.

(9) A student enrolled at least half time in any recognized school, training program, or institution of higher education except that:

(i) During the regular school year, students enrolled at least half time in an institution of higher education must register for 20 hours of work per week by completing the work registration form provided by the State agency unless they are: (A) Employed for a minimum of 20 hours per week or participating in a federally financed work study program; (B) employed less than 20 hours per week but earning an amount at least equal to the Federal minimum wage multiplied by 20 hours; (C) the head of a household containing one or more other persons to whom the student supplies more than one-half of their total support; or (D) otherwise exempt from the work registration requirement, as specified in paragraphs (b) (1) through (8) of this section.

(ii) When any school, training program, high school, or institution of higher education recess or vacation will exceed 30 days, individuals otherwise exempt solely because of their student status shall register for full-time work by completing the work registration form provided by the State agency, and must comply with the requirements of paragraphs (d) and (e) of this section. When assigning certification periods, State agencies shall take into consideration that students are required to register for full-time work during the summer months unless they attend summer school at least half time.

(c) *Voluntary quit.* [Reserved]

(d) *Job search.* [Reserved]

(e) *Additional work requirements.* Work registrants shall also:

(1) Report for an interview upon the reasonable request of the appropriate state employment service office;

(2) Respond to a request from the State employment service office for supplemental information regarding employment status or availability for work;

(3) Report to an employer to whom referred by the State employment service office, if the potential employment meets the suitability requirements described in paragraph (i) of this section.

(4) Accept a bona fide offer of suitable employment, as defined in paragraph (i) of this section, to which referred by the State employment service office; and

(5) Continue suitable employment to which referred by the State employment service office. Household members shall continue such employment until it is no longer considered suitable in accordance with paragraph (i) of this section, until they are terminated from employment due to circumstances beyond their control, or until they become exempt from the work registration requirement as provided in paragraph (b) of this section.

(f) *Failure to comply.* (1) If the State agency determines that a household member, except any student as defined in paragraph (b)(9)(i) of this section, has refused or failed without good cause to comply with the requirements of this section, the household shall be ineligible to participate until the member complies with the requirements in paragraph (h) of this section, the member becomes exempt, or for 2 months, whichever is earlier. Within 10 days after the State employment service office provides notification of the failure to comply, the State agency shall determine if the household had good cause for failure to comply and if it did not, the State agency shall provide the household with a notice of adverse action, as specified in § 273.13, and shall begin the disqualification period with the first month following the expiration of the adverse notice period, unless a fair hearing is requested. Each household has a right to a fair hearing to contest a determination of nonexempt status or a denial, reduction, or termination of benefits due to failure to comply with the work registration requirements. If a fair hearing is scheduled, the State agency shall provide the State employment service sufficient advance notice to permit the attendance of an employment service office representative, if such attendance is necessary.

(2) Any student who the State agency determines has failed or refused without good cause to comply with the requirements of paragraphs (b)(9)(i) or (e) of this section to register for and accept 20 hours work per week during the regular school year shall be ineligible to participate as a member of any household. The disqualification shall apply to the individual student alone and not to the entire household. The disqualified student shall be ineligible until the student complies with the requirements in paragraph (h) of this section, the student becomes exempt, or 2 months, whichever is earlier.

(g) *Determining good cause.* In determining if good cause existed for

failure to comply with any registration requirement, the State agency shall consider the facts and circumstances, including information submitted by the State employment service office, the household member involved and the employer. Good cause shall include circumstances beyond the member's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency or unavailability of transportation.

(h) *Ending disqualification.* Following the end of the 2-month disqualification period, a household or student may apply again to establish eligibility. Eligibility may be established or reestablished within a disqualification period if the household or student is otherwise eligible and the member or student becomes exempt from the work requirement or the member or student complies as follows:

(1) Refusal to register—registration by the household member or student.

(2) Refusal to report for an interview with the State employment service office—reporting for the required interview.

(3) Refusal to respond to a request from the State employment service office requiring supplemental information regarding employment status or availability for work—compliance with the State employment service office request.

(4) Refusal to report to an employer to whom referred by the State employment service office—reporting to this employer if work is still available or to another employer to whom referred.

(5) Refusal to accept a bona fide offer of suitable employment to which referred by the State employment service office—acceptance of this employment, of any other employment which yields earnings per week equivalent to the refused job, of any other employment of at least 30 hours per week, or of any employment of less than 30 hours per week with weekly earnings equal to the Federal minimum wage multiplied by 30 hours.

(6) Refusal to continue suitable employment to which referred by the State employment service office—returning to this employment, or acceptance of any other employment which yields earnings per week equivalent to the refused job, or of any other employment of at least 30 hours per week or of less than 30 hours per week but with weekly earnings equal to the Federal minimum wage multiplied by 30 hours.

(i) *Suitable employment.* (1) Any employment shall be considered unsuitable if:

(i) The wage offered is less than the highest of: (A) The applicable Federal minimum wage; (B) the applicable State minimum wage; or (C) eighty percent (80%) of the Federal minimum wage if neither the Federal nor State minimum wage is applicable.

(ii) The employment offered is on a piece-rate basis and the average hourly yield the employee can reasonably be expected to earn is less than the applicable hourly wages specified under paragraph (i)(1)(i) of this section.

(iii) The household member, as a condition of employment or continuing employment, is required to join, resign from, or refrain from joining any legitimate labor organization.

(iv) the work offered is at a site subject to a strike or lockout at the time of the offer unless the strike has been enjoined under § 208 of the Labor-Management Relations Act (29 U.S.C. 78) (commonly known as the Taft-Hartley Act), or unless an injunction has been issued under section 10 of the Railway Labor Act (45 U.S.C. 160).

(2) In addition, employment shall be considered suitable unless the household member involved can demonstrate or the State agency otherwise becomes aware that:

(i) The degree of risk to health and safety is unreasonable.

(ii) The member is physically or mentally unfit to perform the employment, as documented by medical evidence or by reliable information from other sources.

(iii) The employment offered within the first 30 days of registration is not in the member's major field of experience.

(iv) The distance from the member's home to the place of employment is unreasonable considering the expected wage and the time and cost of commuting. Employment shall not be considered suitable if daily commuting time exceeds 2 hours per day, not including the transporting of a child to and from a child care facility. Nor shall employment be considered suitable if the distance to the place of employment prohibits walking and neither public nor private transportation is available to transport the member to the jobsite.

(v) The working hours or nature of the employment interferes with the member's religious observances, convictions, or beliefs. For example, a Sabbatarian could refuse to work on the Sabbath.

(vi) For students, the employment is offered during the student's class hours or is more than 20 hours per week.

(j) *Participation of strikers.* Strikers shall be subject to the work registration requirement, unless exempted under paragraph (b) of this section. A household shall not be denied participation solely on the grounds that a member of the household is not working because of a strike or a lockout at his or her place of employment unless the strike has been enjoined under § 208 of the Labor-Management Relations Act (29 U.S.C. 178) (commonly known as the Taft-Hartley Act), or unless an injunction has been issued under section 10 of the Railway Labor Act (45 U.S.C. 160). A striker so enjoined who still refuses to return to work shall be deemed out of compliance with paragraph (e)(4) of this section, which requires the acceptance of suitable employment, unless the striker is exempted under paragraph (b) of this section.

(k) *Registration of PA and GA households.* (1) State agencies may request approval from FNS to substitute State procedures for work registration for PA households not subject to the WIN registration requirements, and for GA households. To receive approval, State agencies must demonstrate that:

(i) The PA or GA work registration procedures are at least equivalent to food stamp work registration requirements.

(ii) Registrants' activities are monitored so that appropriate sanctions as required by these regulations will be applied. However, State agencies which require additional work registration requirements of PA or GA household members shall not deny a household's food stamp benefits for the failure of a household member to comply with a State requirement that exceeds the requirements of these regulations. For example, if a State rule requires individuals to register for work through age 65, any individual 60 years of age or older who fails to comply shall not be denied food stamp benefits as a result of that failure.

(iii) All PA or GA household members which are not exempt under the regulations are either registered for work under the PA or GA work requirement procedures or are registered for work as provided in paragraph (a) of this section.

(2) Household members who are required to register for work under WIN or unemployment compensation and fail to comply with the work registration requirements of those programs shall not be denied food stamp benefits solely for this failure. These members lose their exemption under paragraph (b) of this section and must register for work if required to do so in paragraph (a) of this section.

§ 273.8 Resource eligibility standards.

(a) *Uniform standards.* The State agency shall apply the uniform national resource standards of eligibility to all applicant households, including those households in which members are recipients of federally aided public

assistance, general assistance, or supplemental security income.

(b) *Maximum allowable resources.* The maximum allowable resources, including both liquid and nonliquid assets, of all members of the household shall not exceed $1,750 for the household, except that, for households of two or more members including a member or members age 60 or over, such resources shall not exceed $3,000.

(c) *Definition of resources.* In determining the resources of a household, the following shall be included and documented by the State agency in sufficient detail to permit verification:

(1) Liquid resources, such as cash on hand, money in checking or savings accounts, savings certificates, stocks or bonds, lump sum payments as specified in § 273.9(c)(8); and

(2) Nonliquid resources, personal property, licensed and unlicensed vehicles, buildings, land, recreational properties, and any other property, provided that these resources are not specifically excluded under paragraph (e) of this section. The value of nonexempt resources, except for licensed vehicles as specified in paragraph (h) of this section, shall be its equity value. The equity value is the fair market value less encumbrances.

(d) *Jointly owned resources.* Resources owned jointly by separate households shall be considered available in their entirety to each household, unless it can be demonstrated by the applicant household that such resources are inaccessible to that household. If the household can demonstrate that it has access to only a portion of the resource, the value of that portion of the resource shall be counted toward the household's resource level. The resource shall be considered totally inaccessible to the household if the resource cannot practically be subdivided and the household's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply.

(e) *Exclusions from resources.* In determining the resources of a household, only the following shall be excluded:

(1) The home and surrounding property which is not separated from the home by intervening property owned by others. Public rights of way, such as roads which run through the surrounding property and separate it from the home, will not affect the exemption of the property. The home and surrounding property shall remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, or inhabitability caused by casualty or natural disaster, if the household intends to return. Households that currently do not own a home, but own or are purchasing a lot on which they intend to build or are building a permanent home, shall receive an exclusion for the value of the lot and, if it is partially completed, for the home.

(2) Household goods, personal effects, including one burial plot per household member, and the cash value of life insurance policies and pension funds, including funds in pension plans with interest penalties for early withdrawals, such as a Keogh plan or an individual retirement account (IRA), as long as the funds remain in the pension plans.

(3) Licensed vehicles shall be excluded as specified in paragraph (h) of this section.

(4) Property which annually produces income consistent with its fair market value, even if only used on a seasonal basis.

(5) Property, such as farm land and rental homes, or work related equipment, such as the tools of a tradesman or the machinery of a farmer, which is essential to the employment or self-employment of a household member, except that rental homes which are used by households for vacation purposes at some time during the year shall be counted as resources unless excluded by paragraph (4) of this section.

(6) Installment contracts for the sale of land or buildings if the contract or agreement is producing income consistent with its fair market value. The exclusion shall also apply to the value of the property sold under the installment contract, or held as security in exchange for a purchase price consistent with the fair market value of that property.

(7) Any governmental payments which are designated for the restoration of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended; for example, payments made by the Department of Housing and Urban Development through the individual and family grant program or disaster loans or grants made by the Small Business Administration.

(8) Resources whose cash value is not accessible to the household, such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. The State agency may verify that the property is for sale and that the household has not declined a reasonable offer. Verification may be obtained through a collateral contact or documentation, such as an advertisement for public sale in a newspaper of general circulation or a listing with a real estate broker. Any funds in a trust or transferred to a trust, and the income produced by that trust, shall be considered inaccessible to the household if:

(i) The trust is under the control and management of an institution, corporation or organization (the trustee) which is not under the direction or ownership of any household member;

(ii) That trustee uses the funds solely to make investments on behalf of the trust or to pay the educational expenses of any person named by the household creating the trust;

(iii) The trust investments do not directly involve or assist any business or corporation under the control, direction or influence of a household member;

(iv) The trust arrangement will not likely cease during the certification period; and

(v) No household member has the power to revoke the trust arrangement or change the name of the student beneficiary during the certification period.

(9) Resources, such as those of students or self-employed persons, which have been prorated as income. The treatment of student income is explained in § 273.10(c) and the treatment of self-employment income is explained in § 273.11(a).

(10) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Department of the Interior's Bureau of Indian Affairs; and

(11) Resources which are excluded for food stamp purposes by express provision of Federal statute. The following is the current listing of resources excluded by Federal statute:

(i) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92-203, section 21(a)) or the Sac and Fox Indian claims agreement (Pub. L. 94-189);

(ii) Payments received by certain Indian tribal members under Pub. L. 94-114, section 6, regarding submarginal land held in trust by the United States;

(iii) Benefits received from the special supplemental food program for women, infants and children (WIC) (Pub. L. 92-443, section 9);

(iv) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91-646, section 216);

(v) Earned income tax credits received as a result of the Tax Reform Act of 1976 (Pub. L. 94-455, section 402), the Revenue Readjustment Act of 1975 (Pub. L. 94-164, section 2(d)) and payments received under section 102 of the Tax Reduction Act of 1975 (Pub. L. 94-12);

(vi) Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects, and

the youth employment and training programs under the Youth Employment and Demonstration Project Act of 1977 (Pub. L. 95-93), but not payments from the young adults conservation corps under that Act nor any payments under the Comprehensive Employment and Training Act (CETA) (Pub. L. 93-203).

(f) *Handling of excluded funds.* Excluded moneys that are kept in a separate account, and that are not commingled in an account with nonexcluded funds, shall retain their resource exclusion for an unlimited period of time. Those excluded moneys which are commingled in an account with nonexcluded funds shall retain their exemption for 6 months from the date they are commingled. After 6 months from the date of commingling, all funds in the commingled account shall be counted as a resource.

(g) *Fair market value of licensed vehicles.* The fair market value of licensed automobiles, trucks, and vans will be determined by the value of those vehicles as listed in publications written for the purpose of providing guidance to automobile dealers and loan companies. Publications listing the value of vehicles are usually referred to as "blue books." The State agency shall insure that the blue book used to determine the value of licensed vehicles has been updated within the last 6 months. The National Automobile Dealers Association's (NADA) Used Car Guide Book is a commonly available and frequently updated publication. The State agency shall assign the wholesale value to vehicles. If the term "wholesale value" is not used in a particular blue book, the State agency shall assign the listed value which is comparable to the wholesale value. The State agency shall not increase the basic value of a vehicle by adding the value of low mileage or other factors such as optional equipment. A household may indicate that for some reason, such as body damage or inoperability, a vehicle is in less than average condition. Any household which claims that the blue book value does not apply to its vehicle shall be given the opportunity to acquire verification of the true value from a reliable source. Also, households shall be asked to acquire verification of the value of licensed antique, custom made, or classic vehicles, if the State agency is unable to make an accurate appraisal. If a vehicle is especially equipped with apparatus for the handicapped, the apparatus shall not increase the value of the vehicle. The blue book value shall be assigned as if the vehicle were not so equipped. If a vehicle is no longer listed in the blue book, the household's estimate of the value of the vehicle shall be accepted, unless the State agency has reason to believe the estimate is incorrect. In that case, and if it appears that the vehicle's value will affect eligibility, the household shall obtain an appraisal or produce other evidence of its value, such as a tax assessment or a newspaper advertisement which indicates the amount for which like vehicles are being sold.

(h) *Handling of licensed vehicles.* The value of licensed vehicles shall be excluded or counted as a resource as follows:

(1) The entire value of any licensed vehicle shall be excluded if the vehicle is: (i) Used primarily (over 50 percent of the time the vehicle is used) for income producing purposes such as, but not limited to, a taxi, truck, or fishing boat; (ii) annually producing income consistent with its fair market value, even if used only on a seasonal basis; (iii) necessary for long distance travel, other than daily commuting, that is essential to the employment of a household member, for example, the vehicle of a traveling sales person or of a migrant farmworker following the work stream; (iv) necessary for subsistence hunting or fishing, or (v) used as the household's home and, therefore, excluded under paragraph (e)(1) of this section. This exclusion will apply when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

(2) All licensed vehicles not excluded under paragraph (1) of this section shall individually be evaluated for fair market value and that portion of the value which exceeds $4,500 shall be attributed in full toward the household's resource level, regardless of any encumbrances on the vehicles. For example, a household owning an automobile with a fair market value of $5,500 shall have $1,000 applied toward its resource level. Any value in excess of $4,500 shall be attributed to the household's resource level, regardless of the amount of the household's investment in the vehicle, and regardless of whether or not the vehicle is used to transport household members to and from employment. Each vehicle shall be appraised individually. The fair market values of two or more vehicles shall not be added together to reach a total fair market value in excess of $4,500.

(3) Licensed vehicles shall also be evaluated for their equity value, except for: (i) Vehicles excluded in paragraph (1) of this section; (ii) one licensed vehicle per household, regardless of the use of the vehicle; and (iii) any other licensed vehicles used to transport household members to and from employment or to and from training or education which is preparatory to employment, or to seek employment in compliance with the job search criteria. A vehicle customarily used to commute to and from employment shall be covered by this equity exclusion during temporary periods of unemployment. The equity value of licensed vehicles not covered by this exclusion, and of unlicensed vehicles not excluded by paragraphs (e) (4) and (5) of this section, shall be attributed toward the household's resource level.

(4) In the event a licensed vehicle is assigned both a fair market value in excess of $4,500 and an equity value, only the greater of the two amounts shall be counted as a resource. For example, a second car which is not used by a household member to go to work will be evaluated for both fair market value and for equity value. If the fair market value is $5,000 and the equity value is $1,000 the household shall be credited with only the $1,000 equity value, and the $500 excess fair market value will not be counted.

(5) In summary, each licensed vehicle shall be handled as follows: First it will be evaluated to determine if it is exempt as an income producer or as a home. If not exempt, it will be evaluated to determine if its fair market value exceeds $4,500. If worth more than $4,500, the portion in excess of $4,500 for each vehicle will be counted as a resource. The vehicle will also be evaluated to see if it is equity exempt as the household's only vehicle or necessary for employment reasons. If not equity exempt, the equity value will be counted as a resource. If the vehicle has a countable market value of more than $4,500 and also has a countable equity value, only the greater of the two amounts shall be counted as a resource.

(i) *Transfer of resources.* (1) At the time of application, households shall be asked to provide information regarding any resources which any household member has transferred within the 3-month period immediately preceding the date of application. Households which have transferred resources knowingly for the purpose of qualifying or attempting to qualify for food stamp benefits shall be disqualified from participation in the program for up to 1 year from the date of the discovery of the transfer. This disqualification period shall be applied if the resources are transferred knowingly in the 3-month period prior to application or if they are transferred knowingly after the household is determined eligible for benefits. An example of the latter would be assets which the household acquires after being certified and which are then transferred to prevent the household from exceeding the maximum resource limit.

(2) Eligibility for the program will not be affected by the following transfers: (i) Resources which would not otherwise affect eligibility, for example, resources consisting of excluded personnel property such as furniture or of money that, when added to other nonexempt household resources, totaled less at the time of the transfer than the allowable resource limits; (ii) resources which are sold or traded at, or near, fair market value; (iii) resources which are transferred between members of the same household; and (iv) resources which are transferred for reasons other than qualifying or attempting to qualify for food stamp benefits, for example, a parent placing funds into an educational trust fund described in paragraph (e)(9) of this section.

(3) In the event the State agency establishes that an applicant household knowingly transferred resources for the purpose of qualifying or attempting to qualify for food stamp benefits, the household shall be sent a notice of denial explaining the reason for and length of the disqualification. The period of disqualification shall begin in the month of application. If the household is participating at the time of the discovery of the transfer, a notice of adverse action explaining the reason for and length of the disqualification shall be sent. The period of disqualification shall be made effective with the first allotment to be issued after the notice of adverse action period has expired, unless the household has requested a fair hearing and continued benefits.

(4) The length of the disqualification period shall be based on the amount by which nonexempt transferred resources, when added to other countable resources, exceeds the allowable resource limits. For example, if a one-person household with $1,500 in a bank transferred ownership of a car worth $5,000, $250 of that transfer would be considered because the first $4,500 of the car's value was exempt and an additional $250 of the transferred asset would have been applied toward the $1,750 resource limit. The following chart will be used to determine the period of disqualification.

Amount in excess of the resource limit	Period of disqualification
$0 to 249.99	1 mo.
250 to 999.99	3 mo.
1,000 to 2999.99	6 mo.
3,000 to 4,999.99	9 mo.
5,000 or more	12 mo.

(j) *Resources of nonhousehold members.* The resources of nonhousehold members, as provided in § 273.1(b), shall not be counted as available to the household, unless the member:

(1) Is disqualified from the program, in accordance with § 273.16 for fraud; or

(2) Is a student and is disqualified from the program, in accordance with § 273.7(e)(2), for failing to comply with the work registration requirement during the school year.

§ 273.9 Income and deductions.

(a) *Income eligibility standards.* Participation in the program shall be limited to those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet.

(1) The income eligibility standards for the food stamp program shall be uniform for the contiguous 48 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam. The income eligibility standards are derived from the Office of Management and Budget (OMB) nonfarm income poverty guidelines for the 48 States and the District of Columbia. The income eligibility standards for Alaska and Hawaii are derived by applying scaling factors to the income eligibility standards for the 48 States and the District of Columbia, in accordance with OMB procedures.

(2) The OMB nonfarm income poverty guidelines are adjusted annually each July 1 by the change between the average Consumer Price Index (CPI) for the 50 States and the District of Columbia for the preceding calendar year and the CPI for March of the current year. The annual income poverty guidelines shall be divided by 12 to determine the monthly net income eligibility standards, rounding the results upward as necessary. For households greater than eight persons, the annual increase for each household size is divided by 12, and the results rounded upward if necessary.

(3) The income eligibility standards for the 48 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam; for Alaska; and for Hawaii are published as an appendix to this section.

(b) *Definition of income.* Household income shall mean all income from whatever source excluding only items specified in paragraph (c) of this section.

(1) Earned income shall include:

(i) All wages and salaries of an employee. Assistance payments from programs which require, as a condition of eligibility, the actual performance of work without compensation other than the assistance payments themselves, shall be considered earned income to the extent that the payments actually substitute for wages or salaries. Special payments for work-related expenses in addition to the basic assistance payment shall be considered part of the assistance payment and not as additional compensation.

(ii) The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the costs of doing business as provided in paragraph (c) of this section. Ownership of rental property shall be considered a self-employment enterprise; however, income derived from the rental property shall be considered earned income only if a member of the household is actively engaged in the management of the property at least an average of 20 hours a week. Payments from a roomer or boarder shall also be considered self-employment income.

(iii) Training allowances from vocational and rehabilitative programs recognized by Federal, State, or local governments, such as the work incentive program and programs authorized by the Comprehensive Employment and Training Act, to the extent they are not a reimbursement.

(2) Unearned income shall include, but not be limited to:

(i) Assistance payments from Federal or federally aided public assistance programs, such as supplemental security income (SSI) or aid to families with dependent children (AFDC); general assistance (GA) programs, or other assistance programs based on need except as provided in paragraph (b)(1)(i) of this section.

(ii) Annuities; pensions; retirement, veteran's, or disability benefits; worker's or unemployment compensation; old-age, survivors, or social security benefits; strike benefits; foster care payments for children or adults; gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least 20 hours a week.

(iii) Support or alimony payments made directly to the household from nonhousehold members.

(iv) Scholarships, educational grants, fellowships, deferred payment loans for education, veteran's educational benefits and the like in excess of amounts excluded under § 273.9(c).

(v) Payments from Government-sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.

(3) The earned or unearned income of an individual disqualified from the household for fraud in accordance with § 273.16 or for failing to comply with the student work registration requirements in § 273.7(b)(9)(i) shall continue to be counted as income, less the pro rata share for the individual. Pro-

cedures for calculating this pro rata share are described in § 273.11.

(4) Income shall not include the following:

(i) Moneys withheld from an assistance payment, earned income, or other income source, or moneys received from any income source which are voluntarily or involuntarily returned, to repay a prior overpayment received from that income source, provided that the overpayment was not excludable under paragraph (c) of this section.

(ii) Child support payments received by AFDC recipients which must be transferred to the agency administering title IV-D of the Social Security Act, as amended, to maintain AFDC eligibility.

(c) *Income exclusions.* Only the following items shall be excluded from household income and no other income shall be excluded:

(1) Any gain or benefit which is not in the form of money payable directly to the household, including nonmonetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden, and vendor payments. Money payments that are not payable directly to a household, but are paid to a third party for a household expense, are vendor payments and are excludable as follows:

(i) A payment made in money on behalf of a household shall be considered a vendor payment whenever a person or organization outside of the household uses its own funds to make a direct payment to either the household's creditors or a person or organization providing a service to the household. For example, if a relative or friend, who is not a household member, pays the household's rent directly to the landlord, the payment is considered a vendor payment and is not counted as income to the household. Similarly, rent or mortgage payments made to landlords or mortgagees by the Department of Housing and Urban Development (HUD), or by State or local housing authorities, are other examples of vendor payments, and are also excluded. Payments by a government agency to a child care institution to provide day care for a household member are also excluded as vendor payments.

(ii) Payments in money that are not made to a third party, but are made directly to the household, are counted as income and are not excluded as a vendor payment, except that rent or housing subsidies paid to a landlord by HUD or its agents under the experimental housing allowance program in Green Bay, Wis., or South Bend, Ind., shall considered a vendor payment regardless of whether the payment is made directly to the landlord or paid to the landlord through the household.

(iii) Moneys that are legally obligated and otherwise payable to the household, but which are diverted by the provider of the payment to a third party for a household expense, shall be counted as income and not exluded as a vendor payment. The distinction is whether the person or organization making the payment on behalf of a household is using funds that otherwise would have to be paid to the household. Such funds include wages earned by a household member and therefore owed to the household, a public assistance grant to which a household is legally entitled, and support or alimony payments in amounts which legally must be paid to a household member. If an employer, agency, or former spouse who owes these funds to a household diverts them instead to a third party to pay for a household expense, these payments shall still be counted as income to the household. However, if an employer, agency, former spouse, or other person makes payments for household expenses to a third party from funds that are not owed to the household, these payments shall be excluded as vendor payments. The distinction is illustrated by the following examples:

(A) Wages earned by a household member that are garnisheed or diverted by an employer, and paid to a third party for a household's expenses, such as rent, shall be considered as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, this rent payment shall be excluded as a vendor payment. In addition, if the employer provides housing to an employee, the value of the housing shall not be counted as income.

(B) All or part of a public assistance grant which would normally be provided in a money payment to the household, but which is diverted to third parties or to a protective payee for purposes such as managing a household's expenses, shall be considered income to the household. However, payments by the State agency that would not normally be provided in a money payment to the household, and that are over and above normal public assistance grants, shall be excluded as a vendor payment if they are made directly to a third party for a household expense. This rule applies even if the household has the option of receiving a direct cash payment.

(C) Money deducted or diverted from a court-ordered support or alimony payment (or other binding written support or alimony agreement) to a third party for a household expense shall be considered as income. However, payments specified by the court order or other legally binding agreement to go directly to the third party rather than to the household, and support payments not required by a court order or other legally binding agreement (including payments in excess of amount specified in a court order or written agreement) which are paid to a third party rather than the household shall be excluded as a vendor payment, even if the household agrees to the arrangement.

(2) Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 in a quarter.

(3) Educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like to the extent that they are used for tuition and mandatory school fees at an institution of higher education, including correspondence schools at that level, or a school at any level for the physically or mentally handicapped. Mandatory fees are those charged to all students or those charged to all students within a certain curriculum. For example, uniforms, lab fees, or equipment charged to all students to enroll in a chemistry course would be excluded. However, transportation, supplies, and textbook expenses are not uniformly charged to all students and, therefore, would not be excluded as mandatory fees.

(4) All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred.

(5) Reimbursements for past or future expenses, to the extent they do not exceed actual expenses, and do not represent a gain or benefit to the household. Reimbursements for normal household living expenses such as rent or mortgage, personal clothing, of food eaten at home are a gain or benefit and, therefore, are not excluded. To be excluded, these payments must be provided specifically for an identified expense, other than normal living expenses, and used for the purpose intended. When a reimbursement, including a flat allowance, covers muitiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount by which a reimbursement exceeds the actual incurred expense shall be counted as income. However, reimbursements shall not be considered to exceed actual expenses, unless the provider or the household indicates the amount is excessive. Examples of excludable reimbursements which are not considered to be a gain or benefit to the household are:

(i) Reimbursements or flat allowances for job- or training-related expenses such as travel, per diem, uniforms, and transportation to and from the job or training site. Reimbursements which are provided over and above the basic wages for these expenses are excluded; however, these expenses, if not reimbursed, are not otherwise deductible. Reimbursements for the travel expenses incurred by migrant workers are also excluded.

(ii) Reimbursements for out-of-pocket expenses of volunteers incurred in the course of their work.

(iii) Medical or dependent care reimbursements.

(iv) Reimbursements or allowances to students for specific education expenses, such as travel or books, but not allowances for normal living expenses, such as food, rent, or clothing. Portions of a general grant or scholarship must be specifically earmarked by the grantor for education expenses rather than for living expenses to be excludable as a reimbursement.

(v) Reimbursements received by households to pay for services provided by title XX of the Social Security Act.

(6) Moneys received and used for the care and maintenance of a third-party beneficiary who is not a household member. If the intended beneficiaries of a single payment are both household and nonhousehold members, any identifiable portion of the payment intended and used for the care and maintenance of the nonhousehold member shall be excluded. If the nonhousehold member's portion cannot be readily identified, the payment shall be evenly prorated among intended beneficiaries and the exclusion applied to the nonhousehold member's pro rata share or the amount actually used for the nonhousehold member's care and maintenance, whichever is less.

(7) The earned income (as defined in paragraph (b)(1) of this section) of children who are members of the household, who are students at least halftime, and who have not attained their 18th birthday. The exclusion shall continue to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings or amount of work performed cannot be differentiated from that of other household members, the total earnings shall be prorated equally among the working members and the child's pro rata share excluded. Individuals are considered children for purposes of this provision if they are under the parental control of another household member.

(8) Money received in the form of a nonrecurring lump-sum payment, including, but not limited to, income tax refunds, rebates, or credits; retroactive lump-sum social security, SSI, public assistance, railroad retirement benefits, or other payments; lump-sum insurance settlements; or refunds of security deposits on rental property or utilities. These payments shall be counted as resources in the month received, in accordance with § 273.8(c) unless specifically excluded from consideration as a resource by other Federal laws.

(9) The cost of producing self-employment income. The procedures for computing the cost of producing self-employment income are described in § 273.11.

(10) Any income that is specifically excluded by any other Federal statute from consideration as income for the purpose of determining eligibility for the food stamp program. The following laws provide such an exclusion:

(i) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Pub. L. 91-646, section 216).

(ii) Payments received under the Alaska Native Claims Settlement Act (Pub. L. 92-203, section 21(a));

(iii) Any payment to volunteers under title II (RSVP, foster grandparents, and others) and title III (SCORE and ACE) of the Domestic Volunteer Services Act of 1973 (Pub. L. 93-113), as amended. Payments under title I (VISTA) to volunteers shall be excluded for those individuals receiving food stamps or public assistance at the time they joined VISTA. Temporary interruptions in food stamp participation shall not alter the exclusion once an initial determination has been made.

(iv) Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Pub. L. 94-114, section 6).

(v) Payments from the crisis intervention program (CIP) administered by the Community Services Administration (CSA).

(vi) Payments received from the youth incentive entitlement pilot projects, the youth community conservation and improvement projects, and the youth employment and training programs under the Youth Employment and Demonstration Project Act of 1977 (Pub. L. 95-93), but not payments from the Adults Conservation Corps under that Act nor any other payments under the Comprehensive Employment and Training Act.

(d) *Income deductions.* Deductions shall be allowed only for the following household expenses:

(1) *Standard deduction.* A standard deduction of $60 per household per month for the 48 contiguous States and the District of Columbia. The standard deductions applicable in Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands are published as an appendix to this section.

(2) *Earned income deduction.* Twenty percent of gross earned income as defined in paragraph (b)(1) of this section. Earnings excluded in paragraph (c) of this section shall not be included in gross earned income for purposes of computing the earned income deduction.

(3) *Dependent care.* Payments for the actual costs for the care of a child or other dependent when necessary for a household member to accept or continue employment, seek employment in compliance with the job search criteria (or an equivalent effort by those not subject to job search), or attend training or pursue education which is preparatory to employment. This deduction shall not exceed $80 in the 48 contiguous States and the District of Columbia, or an amount that is specified in the appendix to this section for Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands.

(4) *Shelter costs.* Monthly shelter costs in excess of 50 percent of the household's income after all other deductions in paragraphs (d) (1), (2), and (3) of this section have been allowed. The shelter deduction alone, or in combination with the dependent care deduction in paragraph (d)(3) of this section, shall not exceed $80 in the 48 contiguous States and the District of Columbia, or an amount that is specified in the appendix to this section for Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands. Shelter costs shall include only the following:

(i) Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments.

(ii) Property taxes, State and local assessments, and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings.

(iii) The cost of heating and cooking fuel; cooling and electricity; water and sewerage; garbage and trash collection fees; the basic service fee for one telephone, including tax on the basic fee; and fees charged by the utility provider for initial installation of the utility. One-time deposits shall not be included as shelter costs.

(iv) The shelter costs for the home if temporarily not occupied by the household because of employment or training away from home, illness, or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household to be included in the household's shelter costs, the household must intend to

return to the home; the current occupants of the home, if any, must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

(v) Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs shall not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source.

(5) *Standard utility allowances.* (i) The State agency shall develop a method, subject to FNS approval, for establishing a standard utility allowance for use in calculating shelter costs of those households which incur certain utility costs separate and apart from their rent or mortgage payments. Households which do not incur any separate utility charges or which are billed separately for only telephone costs, water, sewerage, and garbage collection fees shall not be entitled to claim the standard utility allowance. The standard utility allowance may have a separate standard for each utility identified in paragraph (d)(4)(iii) of this section or it may be a single standard. If it is a single standard, the State shall include the cost of telephone service, water, sewerage, and garbage collection fees in the overall allowance, even though these utilities do not, by themselves, entitle the household to use the standard utility allowance. If a household is not entitled to the standard utility allowance, it may claim actual utility expenses for any utility which it does pay separately.

(ii) The State agency may develop a method, subject to FNS approval, for calculating a mandatory telephone allowance for use in conjunction with a single utility allowance or as the standard allowance for the telephone if the State has separate standards by utility. In States with a single utility allowance, the telephone allowance would apply to households which are not entitled to claim the overall standard, but which, nonetheless, incur separate telephone expenses. The State agency may mandate use of the telephone allowance even if actual costs are higher.

(iii) Except as provided in paragraph (d)(5)(ii) of this section, the household shall be advised that actual utility costs which exceed the standard shall be deducted if the household can verify these costs. Households shall be allowed to switch between the actual utility costs and the utility standard at least once during a certification period. The State agency may permit households to switch more than once during the certification period.

(iv) The State agency shall review the standard utility allowance and the telephone allowance, if any, at least annually and adjust these allowances as necessary to reflect changes in the cost of the utilities. State agencies may use data gathered through quality control sampling, surveys of utility company rates, or another method for establishing and updating the standards developed by the State and approved by FNS. The amount of the standard utility allowance shall vary seasonally unless the State agency can demonstrate that such variations are not warranted. In addition, the State agency may have other variations in its standard utility allowance or telephone allowance to reflect other differences, such as geographical variations.

(6) *Semiannual adjustment of standard deductions.* Effective July 1, 1978, the standard deductions shall be adjusted each January 1 and July 1 to the nearest $5. The adjustment shall reflect changes in the Consumer Price Index (CPI) for items other than food for the 6 months ending the preceding September 30 and March 31, respectively. The semiannual adjustment shall be based on the previous half year's unrounded number, and the result of the adjustment rounded to the nearest $5.

(7) *Annual adjustment of shelter deductions.* Effective July 1, 1978, the maximum limit on shelter and dependent care deductions shall be adjusted each July 1 to the nearest $5. The adjustment shall reflect changes in the shelter, fuel, and utilities components of the CPI for the 12-month period ending the preceding March 31. The annual adjustment shall be based on the previous year's unrounded numbers, and the result rounded to the nearest $5.

APPENDIX A.—*Net Monthly Income Eligibility Standards*

Household size	48 States, District of Columbia, Guam, Puerto Rico, and Virgin Islands	Alaska	Hawaii
1	$277	$348	$321
2	365	458	422
3	454	568	523
4	542	678	624
5	630	788	725
6	719	898	825
7	807	1,008	928
8	895	1,118	1,027
Each additional member	+89	+110	+101

APPENDIX B.—*Standard Deductions for the Outlying Areas*

Outlying area	Average total deductions	Ratio [1]	Ratio X, U.S. standard deduction ($60)	CPI adjustment [2]	Rounded standard deduction
Alaska	$136.42	1.77	$106.20	$109.08	$110
Hawaii	113.92	1.48	88.80	91.21	90
Guam	158.89	2.06	123.60	126.95	125
Puerto Rico	48.03	.62	37.20	38.21	40
Virgin Islands	67.91	.88	52.80	54.23	55

[1] Average total deductions of outlying area ÷ $77.13, the average total deductions for the 48 States and the District of Columbia.
[2] CPI adjustment for the period of September 1977 to March 1978 is 1.0271 pct.

APPENDIX C.—*Maximum Excess Shelter/Dependent Care Deductions for the Outlying Areas*

Outlying areas	Average shelter expense	Ratio [1]	Ratio X, U.S. shelter deduction ($75)	CPI adjustments [2]	Rounded shelter deduction
Alaska	$226.53	1.74	$130.50	$141.68	$140
Hawaii	188.87	1.45	108.75	118.07	120
Guam	158.90	1.22	91.50	99.34	100
Puerto Rico	46.83	.36	27.00	29.31	30
Virgin Islands	95.80	.74	55.50	60.26	60

[1] Average shelter expense of outlying area ÷ $130.13, the average shelter expense for the 48 States and the District of Columbia.
[2] CPI adjustment for the shelter, fuel, and utilities for the period of March 1977 to March 1978 is 1.0857 pct.

§273.10 Determining household eligibility and benefit levels.

(a) *Month of application.* (1) The eligibility and level of benefits for most households submitting an initial application shall be based on circumstances for the entire calendar month in which the household filed its application. However, State agencies may, with the prior approval of FNS, use a fiscal month if the State determines that it is more efficient and satisfies FNS that the accounting procedures fully comply with certification and issuance requirements contained in these regulations. A State agency may elect to use either a standard fiscal month for all households such as from the 15th of the calendar month to the 15th of the next calendar month, or a fiscal month that will vary for each household depending on the date an individual files an application for the program; for example, the period of application for a household applying on the 3d of a month shall be the 3d of that month to the 2d of the following month. A household's eligibility and benefit level shall be determined for the month of application by considering the household's circumstances for the entire month, calendar or fiscal, as defined by the State agency.

(2) Eligibility and the level of benefits for recertifications shall be determined based on circumstances anticipated for the certification period starting the month following the expiration of the current certification period. If an application for recertification is not received until after the current certification period has expired, the month of application shall be the month in which the application was filed, as for any initial application.

(3) Because of anticipated changes, a household may be eligible for the month of application, but ineligible in the subsequent month. The household shall be entitled to benefits for the month of aplication even if the processing of its application results in the benefits being issued in the subsequent month. Similarly, a household may be ineligible for the month of application, but eligible in the subsequent month due to anticipated changes in circumstances. Even though denied for the month of application, the household does not have to reapply in subsequent month. The same application shall be used for the denial for the month of application and the determination of eligibility for subsequent months, within the timeliness standards in § 273.2

(4) As a result of anticipating changes, the household's allotment for the month of application may differ from its allotment in subsequent months. The State agency shall establish a certification period for the longest possible period over which changes in the household's circumstances can be reasonably anticipated. The household's allotment shall vary month to month within the certification period to reflect changes anticipated at the time of certification, unless the household elects the averaging techniques in paragraphs (c)(3) and (d)(3) of this section.

(b) *Determining resources.* The household's resources at the time the application is filed shall be used to determine the household's eligibility.

(c) *Determining income.* (1) *Anticipating income.* (i) For the purpose of determing the household's eligibility and level of benefits, the State agency shall take into account the income already received by the household during the certification period and any anticipated income the household and the State agency are reasonably certain will be received during the remainder of the certification period. If the amount of income that will be received, or when it will be received, is uncertain, that portion of the household's income that is uncertain shall not be counted by the State agency. For example, a household anticipating income from a new source, such as a new job or recently applied for public assistance benefits, may be uncertain as to the timing and amount of the initial payment. These moneys shall not be anticipated by the State agency unless there is reasonable certainty concerning the month in which the payment will be received and in what amount. If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty shall be considered as income. In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, the household may elect to income average. Households shall be advised to report all changes in gross monthly income as required by § 273.12.

(ii) Income received during the past 30 days shall be used as an indicator of the income that is and will be available to the household during the certification period. However, the State agency shall not use past income as an indicator of income anticipated for the certification period if changes in income have occurred or can be anticipated. If income fluctuates to the extent that a 30-day period alone cannot provide an accurate indication of anticipated income, the State agency and the household may use a longer period of past time if it will provide a more accurate indication of anticipated fluctuations in future income. Similarly, if the household's income fluctuates seasonally, it may be appropriate to use the most recent season comparable to the certification period, rather than the last 30 days, as one indicator of anticipated income. The State agency shall exercise particular caution in using income from a past season as an indicator of income for the certification period. In many cases of seasonally fluctuating income, the income also fluctuates from one season in one year to the same season in the next year. However, in no event shall the State agency automatically attribute to the household the amounts of any past income. The State agency shall not use past income as an indicator of anticipated income when changes in income have occurred or can be anticipated during the certification period.

(2) *Income only in month received.* (i) Income anticipated during the certification period shall be counted as income only in the month it is expected to be received, unless the income is averaged. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the State agency shall convert the income to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15, use the State Agency's PA conversion standard, or use the exact monthly figure if it can be anticipated for each month of the certification period. Nonrecurring lumpsum payments shall be counted as a resource starting in the month received and shall not be counted as income.

(ii) Wages held at the request of the employee shall be considered income to the household in the month the wages would otherwise have been paid by the employer. However, wages held by the employer as a general practice, even if in violation of law, shall not be counted as income to the household, unless the household anticipates that it will ask for and receive an advance, or that it will receive income from wages that were previously held by the employer as a general practice and that were, therefore, not previously counted as income by the State agency. Advances on wages shall count as income in the month received only if reasonably anticipated as defined in paragraph (c)(1) of this section.

(iii) Households receiving State or Federal assistance payments, such as PA or GA benefits, SSI benefits or social security payments, on a recurring, monthly basis, shall not have their monthly income from these sources varied merely because mailing cycles may cause two payments to be

received in one month and none in the next month.

(3) *Income averaging.* (i) Households, except destitute households, and PA households subject to a monthly reporting requirement, may elect to have income averaged. Income shall not be averaged for a destitute household since averaging would result in assigning to the month of application income from future periods which is not available to the destitute household for its current food needs. To average income, the State agency shall use the household's anticipation of income fluctuations over the certification period. The number of months used to arrive at the average income need not be the same as the number of months in the certification period. For example, if fluctuating income for the past 30 days and the month of application are known and, with reasonable certainty, are representative of the income fluctuations anticipated for the coming months, the income from the 2 known months may be averaged and projected over a certification period of longer than 2 months.

(ii) Households which, by contract or self-employment, derive their annual income in a perod of time shorter than 1 year shall have that income averaged over a 12-month period, provided the income from the contract is not received on an hourly or piecework basis. These households may include school employees, share croppers, farmers, and other self-employed households. However, these provisions do not apply to migrant or seasonal farmworkers. The procedures for averaging self-employed income are described in § 273.11.

(iii) Households receiving scholarships, deferred educational loans, or other educational grants shall have such income, after exclusions, averaged over the period for which it was provided.

(d) *Determining deductions.* Deductible expenses include only certain costs of dependent care and shelter as described in § 273.9.

(1) *Disallowed expenses.* (i) An expense covered by an excluded reimbursement or vendor payment shall not be deductible. For example, the portion of rent covered by excluded vendor payments shall not be calculated as part of the household's shelter cost.

(ii) Expenses shall only be deductible if the service is provided by someone outside of the household and the household makes a money payment for the service. For example, a dependent care deduction shall not be allowed if another household member provides the care, or compensation for the care is provided in the form of an inkind benefit, such as food.

(2) *Billed expenses.* Except as provided in paragraph (d)(3) of this section a deduction shall be allowed only in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense. For example, rent which is due each month shall be included in the household's shelter costs, even if the household has not yet paid the expense. Amounts carried forward from past billing periods are not deductible, even if included with the most recent billing and actually paid by the household. In any event, a particular expense may only be deducted once.

(3) *Averaging expenses.* Households may elect to have fluctuating expenses averaged. Households may also elect to have expenses which are billed less often than monthly averaged forward over the interval between scheduled billings, or, if there is no scheduled interval, averaged forward over the period the expense is intended to cover. For example, if a household receives a single bill in February which covers a 3-month supply of fuel oil, the bill may be averaged over February, March, and April. The household may elect to have one-time only expenses averaged over the entire certification period in which they are billed.

(4) *Anticipating expenses.* The State agency shall calculate a household's expenses based on the expenses the household expects to be billed for during the certification period. Anticipation of the expense shall be based on the most recent month's bills, unless the household is reasonably certain a change will occur. When the household is not claiming the utility standard, the State agency may anticipate changes during the certification period based on last year's bills from the same period updated by overall price increases; or, if only the most recent bill is available, utility cost increases or decreases over the months of the certificaton period may be based on utility company estimates for the type of dwelling and utilities used by the household. The State agency shall not average past expenses, such as utility bills for the last several months, as a method of anticipating utility costs for the certification period.

(e) *Calculating net income and benefit levels.*—(1) *Net monthly income.* (i) To determine a household's net monthly income, the State agency shall:

(A) Add the gross monthly income earned by all household members minus earned income exclusions, to determine the household's total gross earned income.

(B) Multiply the total gross earned income by 20 percent and subtract that amount to determine the net monthly earned income (or multiply the total gross earned income by 80 percent).

(C) Add to net monthly earned income the total monthly unearned income of all household members, minus income exclusions.

(D) Subtract the standard deduction.

(E) Subtract monthly dependent care expenses, if any, up to the maximum amount allowed for the area (see appendix to § 273.9). If dependent care costs equal or exceed the maximum amount allowed, the household's net monthly income has been determined. If not, the household's excess shelter expenses shall be computed, in accordance with subparagraph (F) of this section.

(F) Total the allowable shelter expenses to determine shelter costs. Subtract from total shelter costs 50 percent of the household's monthly income after all the above deductions have been subtracted. The remaining amount, if any, is the excess shelter cost. If there is no excess shelter cost, the net monthly income has been determined. If there is excess shelter cost, compute the shelter deduction according to subparagraph (G) of this section.

(G) Subtract the excess shelter cost (up to the maximum amount allowed for the area) from the household's monthly income after all other deductions. The maximum amount allowed for shelter is the maximum used in subparagraph (E) of this section, minus the amount of dependent care expenses, if any. The household's net monthly income has been determined.

(ii) In calculating net monthly income, the amounts shall be rounded down to whole dollar amounts by dropping all cents. Such rounding shall occur before and after each calculation, except for the computation of shelter costs. For example, any cents in gross weekly earnings shall be dropped prior to the application of the weekly conversion factor. Any cents resulting from that multiplication shall then be dropped prior to the computation of the 20-percent earned income deduction. The cents shall be dropped from this deduction prior to being subtracted from earned income. However, because these procedures could result in a significant decrease in the shelter expenses the household may be entitled to use in determining excess shelter cost, the individual costs used in paragraph (e)(1)(i)(F) of this section shall be computed using exact dollars and cents. The cents will be dropped from the total shelter costs prior to determining the shelter deduction for the household's net monthly income.

(2) *Eligibility and benefits.* (i) Except for households considered destitute in paragraph (e)(3) of this section, the household's net monthly

income as calculated in paragraph (e)(1) of this section shall be compared to the monthly income eligibility standards for the appropriate household size to determine eligibility for the month.

(ii) The household's monthly allotment shall be equal to the thrifty food plan for the household's size reduced by 30 percent of the household's net monthly income as calculated in paragraph (e)(1) of this section. After multiplying the net income by 30 percent, the result shall be rounded by dropping all cents prior to subtracting that amount from the thrifty food plan. All eligible one- and two-person households shall receive a minimum monthly allotment of $10.

(3) *Destitute households.* Certain households may have little or no income at the time of application and may be in need of immediate food assistance, even though they receive income at some other time during the month of application. The following procedures shall be used to determine when households in these circumstances may be considered destitute and, therefore, entitled to expedited service and special income calculation procedures:

(i) Households whose only income for the month of application was received prior to the date of application, and was from a terminated source, shall be considered destitute households and shall be provided expedited service. These households may have lost their sole source of income because of layoffs, a termination of general assistance or unemployment compensation benefits, or other comparable circumstances. These households also include migrant households which have received their last wages from a grower. These households shall be provided expedited service because they may be without income for some time, and may not be able to wait as long as 30 days for food assistance.

(A) If income is received on a monthly or more frequent basis, it shall be considered as coming from a terminated source if it will not be received again from the same source during the balance of the month of application or during the following month.

(B) If income is normally received less often than monthly, the nonreceipt of income from the same source in the balance of the month of application or in the following month is inappropriate to determine whether or not the income is terminated. For example, if income is received on a quarterly basis (e.g., on January 1, April 1, July 1, and October 1), and the household applies in mid-January, the income should not be considered as coming from a terminated source merely because no further payments will be received in the balance of January or in February. The test for whether or not this household's income is terminated is whether the income is anticipated to be received in April. Therefore, for households that normally receive income less often than monthly, the income shall be considered as coming from a terminated source if it will not be received in the month in which the next payment would normally be received.

(ii) Households whose only income for the month of application is from a new source shall be considered destitute and shall be provided expedited service if income of more than $25 from the new source will not be received by the 10th calendar day after the date of application. These households may expect to start receiving income from a new job or may have applied for, but have not yet begun to receive benefits from, public assistance, unemployment compensation, SSI, social security, or a similar program. These households may be totally without income for a number of weeks before the new income begins and, therefore, be unable to meet their current food needs.

(A) Income which is normally received on a monthly or more frequent basis shall be considered to be from a new source if income of more than $25 has not been received from that source within 30 days prior to the date the application was filed.

(B) If income is normally received less often than monthly, it shall be considered to be from a new source if income of more than $25 was not received within the last normal interval between payments. For example, if a household applies in early January and is expecting to be paid every 3 months, starting in late January, the income shall be considered to be from a new source if no income of more than $25 was received from the source during October or since that time.

(iii) Households may receive both income from a terminated source prior to the date of application, and income from a new source after the date of application, and still be considered destitute if they receive no other income in the month of application and income of more than $25 from the new source will not be received by the 10th day after the date of application.

(iv) Destitute households shall have their eligibility and level of benefits calculated for the month of application by considering only income which is received between the first of the month and the date of application. Any income from a new source that is anticipated after the day of application shall be disregarded.

(v) Some employers provide travel advances to cover the travel costs of new employees who must journey to the location of their new employment. To the extent that these payments are excluded as reimbursements, receipt of travel advances will not affect the determination of when a household is destitute. However, if the travel advance is really an advance on wages that will be subtracted from wages later earned by the employee, rather than a reimbursement, the wage advance shall count as income. Nevertheless, the receipt of a wage advance for the travel costs of a new employee shall not affect the determination of whether subsequent payments from the employer are from a new source of income, nor whether a household shall be considered destitute. For example, if a household applies on May 10, has received a $50 wage advance for travel from its new employer on May 1, but will not start receiving any other wages from the employer until May 30, the household shall be considered destitute. The May 30 payment shall be disregarded, but the wage advance received prior to the date of application shall be counted as income.

(vi) Households whose income must be averaged on an annual basis, or averaged over the period the income is intended to cover, as required by paragraphs (c)(3) (ii) and (iii) of this section, shall have the income averaged and assigned to the appropriate months of the certification period before determining whether a household is destitute. If the averaged income does not come from a new or terminated source and is assigned to the month of application, the household shall not be considered destitute. For example, a self-employed household whose total annual income is received in a few months in the year shall not be considered destitute simply because it does not receive payments in those other months. However, if the income which must be averaged is itself from a new or terminated source, the receipt of the income in the month of application may result in a destitute termination. For example, a student with no other income for the month of application anticipates receipt of a deferred educational loan at the end of the month. After appropriate exclusions, the balance of the loan is averaged over the period it is intended to cover, including the month of application. The student may be destitute and the portion of the loan for the month of application disregarded if it is from a new source and will not be received by the 10th day after the date of application.

(vii) A household member who changes jobs but continues to work for the same employer shall be considered as still receiving income from the same source. Similarly, a self-employed household member who secures contracts or other work from different customers shall still be considered as

receiving income from the same source. A migrant farmworker's source of income shall be considered to be the grower for whom the migrant is working at a particular point in time, and not the crew chief. A migrant who travels with the same crew chief but moves from one grower to another shall be considered to have moved from a terminated income source to a new source.

(viii) The above procedures shall apply at initial application and at recertification, but only for the first month of each certification period. At recertification, income from a new source shall be disregarded in the first month of the new certification period if income of more than $25 will not be received from this new source by the 10th calendar day after the date of the household's normal issuance cycle.

(4) *Thrifty food plan.*—(i) *Level of the thrifty food plan.* The thrifty food plan shall be uniform by household size throughout the 48 contiguous States and the District of Columbia. The thrifty food plans for Alaska and Hawaii shall be the thrifty food plan for the 48 States adjusted by the price of food in Alaska and Hawaii. The thrifty food plans for Guam, Puerto Rico, and Virgin Islands shall be adjusted by the cost of food in those areas provided that the costs of these plans shall not exceed the cost of the thrifty food plan for the 50 States. The thrifty food plans in each area are provided in the appendix of this section.

(ii) *Semiannual adjustment.* The thrifty food plan shall be adjusted semiannually to reflect changes in the price of food. The semiannual adjustments shall be rounded to the nearest whole dollar (amounts of 50 cents shall be rounded upward to the next highest whole dollar). The semiannual adjustments shall occur each July 1 based on the change in the price of the thrifty food plan over a 6-month period ending the preceding March 31; and each January 1 based on the change in a 6-month period ending the preceding September 30.

(f) *Certification periods.* The State agency shall establish a definite period of time within which a household shall be eligible to receive benefits. At the expiration of each certification period, entitlement to food stamp benefits ends. Further eligibility shall be established only upon a recertification based upon a newly completed application, an interview, and verification as required by § 273.2(f). Under no circumstances shall benefits be continued beyond the end of a certification period without a new determination of eligibility.

(1) Certification periods shall conform to calendar months, except where FNS has approved the use of fiscal months. At initial application, the first month in the certification period shall generally be the month of application, even if the household's eligibility is not determined until a subsequent month. For example, if a household files an application in January and the application is not processed until February, a 6-month certification period would include January through June. Upon recertification, the certification period will begin with the month following the last month of the previous certification period.

(2) Households in which all members are contained in a single PA grant, or in a single GA grant where GA and food stamp applications are processed jointly in accordance with § 273.2(j), shall have their food stamp recertifications, to the extent possible, at the same time they are redetermined for PA/GA.

(i) Except as specified in paragraph (2)(ii) of this section, State agencies shall assign these households food stamp certification periods which expire the month following the households' PA/GA redetermination, provided the food stamp certification periods do not exceed 1 year. If a PA/GA household has not had its PA/GA redetermination by the end of the 11th month following its initial certification or last redetermination, the State agency shall send the household a notice of the expiration of its food stamp certification period and recertify the household in accordance with the provisions of § 273.14.

(ii) State agencies which have a mandatory monthly reporting system and, therefore, allow more than 1 year to elapse before redetermining their PA/GA cases, but which can predict with certainty in which month the PA/GA redetermination will take place, shall assign definite food stamp certification periods to PA/GA food stamp households that expire at the end of the month following the month in which the PA/GA redetermination is scheduled. If for any reason the PA/GA redetermination is not made by the end of the month for which it was scheduled, the State agency shall send the household a notice of the expiration of its food stamp certification period in accordance with § 273.14, and proceed to recertify the household for food stamps.

(3) Other households shall be assigned the longest certification periods possible based on the predictability of the household's circumstances. Households shall be certified for at least 3 months, except as follows:

(i) Households eligible for a certification period of 3 months or less shall, at the time of certification, have their certification periods increased by 1 month, if the certification process is completed after the 15th day of the month of application and the household's circumstances warrant the longer certification period. For example, if a household which is eligible for a 3-month certification period makes application in June and is not certified until late June or early July, the certification period would include June through September.

(ii) Households containing one or more persons subject to a lockout or on strike from their place of employment shall not be certified for periods of more than 1 month, if the household is certified before the 15th day of the month of application; otherwise, the maximum certification period shall be for 2 months. However, the State agency may inform the household that a longer certification period may be assigned if the household signs a waiver of notice of adverse action. The State agency must explain to the household what the waiver does and provide a choice between signing the separate waiver document specified in § 273.13(b)(8) and being assigned a 1- or 2-month certification period. The State agency shall maintain a system for identifying households containing strikers which have signed the waiver of notice of adverse action to reduce or terminate benefits when the household has begun receiving income from employment again after the lockout or strike has been settled.

(iii) Households shall be certified for 1 or 2 months, as appropriate, when the household cannot reasonably predict what its circumstances will be in the near future, or when there is a substantial likelihood of frequent and significant changes in income or household status; for example, day laborers and migrant workers if income is uncertain and subject to large fluctuations during the work season due to the uncertainty of continuous employment or due to bad weather and other circumstances.

(4) Households shall be certified for up to 6 months if there is little likelihood of changes in income and household status; for example, households with a stable income record and for which major changes in income, deductions, or composition are not anticipated.

(5) Households consisting entirely of unemployable or elderly persons with very stable income shall be certified for up to 12 months provided other household circumstances are expected to remain stable; for example, social security recipients, SSI recipients and persons who receive pensions or disability payments.

(6) Households whose primary source of income is from self-employment (including self-employed farmers) or from regular farm employment with the same employer shall be certified for up to 12 months, provided

income can be readily predicted and household circumstances are not likely to change. Annual certification periods may be assigned to farmworkers who are provided their annual salaries on a scheduled monthly basis which does not change as the amount of work changes.

(g) *Certification notices to households.* (1) *Initial applications.* State agencies shall provide applicants with one of the following written notices as soon as a determination is made, but no later than 30 days after the date of the initial application:

(i) *Notice of eligibility.* (A) If an application is approved, the State agency shall provide the household with written notice of the amount of the allotment and the beginning and ending dates of the certification period. The household shall also be advised of variations in the benefit level based on changes anticipated at the time of certification. If the initial allotment contains benefits for both the month of application and the current month's benefits, the notice shall explain that the initial allotment includes more than 1 month's benefits, and shall indicate the monthly allotment amount for the remainder of the certification period. The notice shall also advise the household of its right to a fair hearing, the telephone number of the food stamp office, and, if possible, the name of the person to contact for additional information. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the services. The State agency may also include in the notice a reminder of the household's obligation to report changes in circumstance and of the need to reapply for continued participation at the end of the certification period. Other information which would be useful to the household may also be included.

(B) State agencies that do not assign definite certification periods to PA or GA households, as provided in paragraph (f)(2) of this section, will not be required to provide those households with an exact expiration date for the certification period. Instead, the notice shall state that the certification period will expire the month after the next review for the assistance grant or in 1 year.

(C) In cases where a household's application is approved on an expedited basis without verification, as provided in § 273.2(i), the notice shall explain that the household must provide the verification which was waived. If the State agency has elected to assign a longer certification period to some households certified on an expedited basis, the notice shall also explain the special conditions of the longer certification period, as specified in § 273.2(i), and the consequences of failure to provide the postponed verification.

(D) For households provided a notice of expiration at the time of certification, as required in § 273.14(b), the notice of eligibility may be combined with the notice of expiration or separate notices may be sent.

(ii) *Notice of denial.* If the application is denied, the State agency shall provide the household with written notice explaining the basis for the denial, the household's right to request a fair hearing, the telephone number of the food stamp office, and, if possible, the name of the person to contact for additional information. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service. In cases where the State agency has elected to use a notice of denial when a delay was caused by the household's failure to take action to complete the application process, as provided in § 273.2(h)(2), the notice of denial shall also explain: The action that the household must take to reactivate the application; that the case will be reopened without a new application if action is taken within 30 days of the date the notice of denial was mailed; and that the household must submit a new application if, at the end of the 30-day period, the household has not taken the needed action and wishes to participate in the program. If the State agency chooses the option specified in § 273.2(h)(2) of reopening the application in cases where verification is lacking only if household provides verification within 30 days of the date of the initial request for verification, the State agency shall include on the notice of denial the date by which the household must provide the missing verification.

(iii) *Notice of pending status.* If the application is to be held pending because some action by the State is necessary to complete the application process, as specified in § 273.(h)(2), or the State agency has elected to pend all cases regardless of the reason for delay, the State agency shall provide the household with a written notice which informs the household that its application has not been completed and is being processed. If some action by the household is also needed to complete the application process, the notice shall also explain what action the household must take and that its application will be denied if the household fails to take the required action within 60 days of the date the application was filed. If the State agency chooses the option specified in § 273.2(h) (2) and (3) of holding the application pending in cases where verification is lacking only until 30 days following the date verification was initially requested, the State agency shall include on the notice of pending status the date by which the household must provide the missing verification.

(2) *Applications for recertification.* The State agency shall provide households that have filed an application by the 15th of the last month of their certification period with either a notice of eligibility or a notice of denial by the end of the current certification period. The State agency shall provide households that have received a notice of expiration at the time of certification, and have timely reapplied, with either a notice of eligibility or a notice of denial not later than 30 days after the date of the household's initial opportunity to obtain its last allotment.

(3) *FNS-designed forms.* Each State agency shall use the notice of eligibility, denial, or pending status form designed by FNS. FNS may approve a deviation under the same conditions for granting deviations from the application form in § 273.2(b).

(4) *Identification (ID) cards.* (i) The State agency shall issue an ID card to each certified household as proof of program eligibility. The ID card may be serially numbered at the State agency's option. The ID card shall be issued in the name of the household member to whom the ATP is issued. That household member and any authorized representatives shall sign the ID card prior to using it.

(A) The State agency shall limit issuance of ID cards to the time of initial certification, with replacements made only in instances of loss, mutilation, destruction, or changes in persons authorized to obtain or use coupons.

(B) The State agency shall place an expiration date only on those ID's issued to households that have been certified for delivered meals for a temporary period.

(ii) ID cards delivered to households by mail shall not be mailed in the same envelope with an ATP or coupons.

(iii) If the household does not name an authorized representative, the State agency shall indicate on the ID card that no designation was made.

(iv) Specially marked ID cards shall be issued as follows:

(A) Any household eligible for and interested in using delivered meal services shall receive an ID card marked with the letter "M."

(B) Any household eligible for and interested in using communal dining facilities shall receive an ID card marked with the letters "CD" in those States or project areas where restaurants are authorized to accept food stamps. In areas where restaurants are

not authorized to accept food stamps, the State or project area has the option of marking the ID with the letters "CD."

(C) Any household residing in a remote section of Alaska which has been determined by FNS to be an area in which food coupons may be used to purchase hunting and fishing equipment shall receive an ID card marked with the letters "HF."

(v) Upon household consent, the State agency may use photo ID's to facilitate identification of program participants, except that the State agency shall not deny or delay benefits because household members are unable or refuse to be photographed.

§ 273.11 Action on households with special circumstances.

(a) *Self-employment income.* The procedures for handling income received from boarders by a household that does not own and operate a commercial boardinghouse are described in paragraph (b) of this section. For all other households receiving self-employment income, including those households that own and operate a commercial boardinghouse, the State agency shall calculate the self-employment income as follows:

(1) *Annualizing self-employment income.* (i) Self-employment income which represents a household's annual income shall be annualized over a 12-month period even if the income is received within only a short period of time during that 12 months. For example, self-employment income received by farmers shall be averaged over a 12-month period, if the income is intended to support the farmer on an annual basis. This self-employment income shall be annualized even if the household receives income from other sources in addition to self-employment.

(ii) Self-employment income which is received on a monthly basis but which represents a household's annual support shall normally be averaged over a 12-month period. If, however, the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business, the State agency shall calculate the self-employment income based on anticipated earnings.

(iii) Self-employment income which is intended to meet the household's needs for only part of the year shall be averaged over the period of time the income is intended to cover. For example, self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year shall have their self-employment income averaged over the summer months rather than a 12-month period.

(iv) If a household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise shall be averaged over the period of time the business has been in operation, and the monthly amount projected for the coming year. However, if the business has been in operation for such a short time that there is insufficient information to make a reasonable projection, the household may be certified for less than a year until the business has been in operation long enough to base a longer projection.

(2) *Determining monthly income from self-employment.* (i) For the period of time over which self-employment income is determined, the State agency shall add all gross self-employment income (including capital gains), exclude the cost of producing the self-employment income, and divide the self-employment income by the number of months over which the income will be averaged.

(ii) For those households whose self-employment income is not averaged but is instead calculated on an anticipated basis, the State agency shall add any capital gains the household anticipates it will receive in the next 12 months, starting with the date the application is filed, and divide this amount by 12. This amount shall be used in successive certification periods during the next 12 months, except that a new average monthly amount shall be calculated over this 12-month period if the anticipated amount of capital gains changes. The State agency shall then add the anticipated monthly amount of capital gains to the anticipated monthly self-employment income, and subtract the cost of producing the self-employment income. Except for depreciation, the cost of producing the self-employment income shall be calculated by anticipating the monthly allowable costs of producing the self-employment income.

(iii) The monthly net self-employment income shall be added to any other earned income received by the household. The total monthly earned income, less the 20-percent earned income deduction, shall then be added to all monthly unearned income received by the household. The standard deduction, dependent care, and shelter costs shall be computed as for any other household and subtracted to determine the monthly net income of the household.

(3) *Capital gains.* The proceeds from the sale of capital goods or equipment shall be calculated in the same manner as a capital gain for Federal income tax purposes. Even if only 50 percent of the proceeds from the sale of capital goods or equipment is taxed for Federal income tax purposes, the State agency shall count the full amount of the capital gain as income for food stamp purposes.

(4) *Allowable costs of producing self-employment income.* (i) Allowable costs of producing self-employment income include, but are not limited to, the identifiable costs of labor, stock, raw material, seed and fertilizer, interest paid to purchase income-producing property, insurance premiums, and taxes paid on income-producing property.

(ii) Depreciation shall be allowed as a cost of producing self-employment income for equipment, machinery, or other capital investments necessary to the self-employment enterprise. The Federal or State income tax form for the most recent tax year shall be used for calculating depreciation on an annual basis. No depreciation shall be allowed on a capital asset unless it is documented by the appropriate State or Federal income tax form. Households which did not file a tax return or did not claim depreciation may still receive consideration for depreciation by filing a regular or amended tax form for that year and presenting a copy of that amended return to the State agency.

(iii) In determining net self-employment income, the following items shall not be allowable as a cost of doing business.

(A) Payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods;

(B) Net losses from previous periods; and

(C) Federal, State, and local income taxes, money set aside for retirement purposes, and other work-related personal expenses (such as transportation to and from work), as these expenses are accounted for by the 20-percent earned income deduction specified in § 273.9(d)(2).

(5) *Assigning certification periods.* (i) Households that receive their annual support from self-employment and have no other source of income may be certified for up to 12 months. For those households that receive other sources of income or whose self-employment income is intended to cover a period of time that is less than a year, the State agency shall assign a certification period appropriate for the household's circumstances.

(ii) For those self-employed households that receive their annual income in a short period of time, the initial certification period shall be assigned to bring the household into the annual cycle. For example, the State agency may provide for recertification at the time the household normally

receives all or a majority of its annual income or the State agency may prefer to have the annual cycle coincide with the filing of the household's income tax.

(b) *Boarders.*—(1) *Household with boarders.* Persons paying a reasonable amount for room and board as specified in § 273.1(b) shall be excluded from the household when determining the household's eligibility and benefit level. The income of households owning and operating a commercial boardinghouse shall be handled as described in paragraph (a) of this section. For all other households, payments from the boarder shall be treated as self-employment income and the household's eligibility determined as follows:

(i) *Income from the boarder.* The income from boarders shall include all direct payments to the household for room and meals, including contributions to the household's shelter expenses. Shelter expenses paid directly by boarders to someone outside of the household shall not be counted as income to the household.

(ii) *Cost of doing business.* After determining the income received from the boarders, the State agency shall exclude that portion of the boarder payment which is a cost of doing business. The cost of doing business shall be equal to either of the following procedures provided that the amount allowed as a cost of doing business shall not exceed the payment the household receives from the boarder for lodging and meals:

(A) The cost of the thrifty food plan for a household size that is equal to the number of boarders; or

(B) The actual documented cost of providing room and meals, if the actual cost exceeds the appropriate thrifty food plan. If actual costs are used, only separate and identifiable costs of providing room and meals to boarders shall be excluded.

(iii) *Deductible expenses.* The net income from self-employment shall be added to other earned income and the 20-percent earned income deduction shall be applied to the total. Shelter costs the household actually incurs, even if the boarder contributes to the household for part of the household's shelter expenses, shall be computed to determine if the household will receive a shelter deduction. However, the shelter costs shall not include any shelter expenses paid directly by the boarder to a third party, such as to the landlord or utility company.

(2) *Boarders as households.* Boarders may be eligible as a food stamp household in their own right, as long as they are not residents of a commercial boardinghouse. When determining the eligibility and benefit level of a boarder, the State agency shall determine the boarder's shelter expenses by including any indentifiable shelter expenses paid by the boarder. If a single payment is made for both room and board, the amount of the payment which exceeds the thrifty food plan for the number of persons in the boarder's household shall be considered a shelter expense. The boarder receives no exclusion or deduction for the amount paid for board itself.

(c) *Treatment of income and resources of disqualified members.* Individual household members may be disqualified for fraud or for failure to meet the student work registration requirements during the school year. During the period of time a household member is disqualified, the eligibility and benefit level of any remaining household members shall be determined as follows:

(1) *Resources.* The resources of the disqualified member shall continue to count in their entirety to the remaining households members;

(2) *Income.* A pro rata share of the income of the disqualified member shall be counted as income to the remaining members. This pro rata share is calculated by first subtracting the allowable exclusions from the disqualified member's income and dividing the income evenly among the household members, including the disqualified member. All but the disqualified member's share is counted as income to the remaining household members.

(3) *Deductible expenses.* The 20-percent earned income deduction shall apply to the prorated income earned by the disqualified member which is attributed to the household. That portion of the household's allowable shelter and dependent care expenses which are either paid by or billed to the disqualified member shall be divided evenly among the household members, including the disqualified member. All but the disqualified member's share is counted as a deductible shelter expense for the remaining household members.

(4) *Eligibility and benefit level.* The disqualified member shall not be included when determining the household's size for purposes of assigning a benefit level to the household or for purposes of comparing the household's net monthly income with the income eligibility standards.

(5) *Reduction or termination of benefits within the certification period.* Whenever an individual is disqualified within the household's certification period, the State agency shall determine the eligibility or ineligibility of the remaining household members based, as much as possible, on information in the case file and shall take the following action:

(i) *Student disqualification.* If a household's benefits are reduced or terminated within the certification period because one of its members is being disqualified for failure to meet the student work registration requirement, the State agency shall issue a notice of adverse action which informs the household that one of its members is being disqualified, the reason for the disqualification, and the eligibility and benefit level of the remaining members.

(ii) *Fraud disqualification.* If a household's benefits are reduced or terminated within the certification period because one of its members has been disqualified for fraud, the State agency shall notify the remaining members of their eligibility and benefit level at the same time the disqualified member is notified of its disqualification. The household is not entitled to a notice of adverse action but may request a fair hearing to contest the reduction or termination of benefits.

(d) *Treatment of income and resources of other nonhousehold members.* For those nonhousehold members that have not been disqualified, such as ineligible aliens or SSI recipients in cash-out States, the income and resources of the nonhousehold member shall not be considered available to the household. Cash payments from the nonhousehold member to the household will be considered income under the normal income standards set in § 273.9(b). Vendor payments, as defined in § 273.9(c)(1), shall be excluded as income. If the household shares deductible expenses with the nonhousehold member, only the amount actually paid or contributed by the household shall be deducted as a household expense. If the payments or contributions cannot be differentiated, the expenses shall be prorated evenly among persons actually paying or contributing to the expense and only to the household's pro rata share deducted.

(e) *Residents of drug/alcoholic treatment and rehabilitation programs.* (1) Narcotics addicts or alcoholics who regularly participate in FNS-authorized drug or alcoholic treatment and rehabilitation programs on a resident basis may voluntarily apply for the food stamp program. Resident addicts and alcoholics shall have their eligibility determined as a one-person household. The State agency shall certify residents of addict/alcoholic treatment centers by using the same provisions that apply to all other applicant households except that certification must be accomplished through an authorized representative as described in § 273.1(f)(2). The guidelines for issuing FNS authorizations to these treatment centers are set forth in § 278.1(e).

(2) Each treatment and rehabilitation center shall provide the State agency with a certified list of current-

ly participating residents. The State agency shall require the list on either a monthly or semimonthly basis. In addition, the State agency shall conduct periodic random onsite visits to the center to assure the accuracy of the listings and that the State agency's records are consistent and up to date.

(3) The following provisions apply to residents of treatment centers:

(i) When expedited processing standards as described in § 273.2(i) are necessary, eligibility for the initial application shall be processed on an expedited basis, and the State agency shall complete verification and docmumentation requirements prior to issuance of a second coupon allotment;

(ii) When normal processing standards apply, the State agency shall complete the verification and documentation requirements prior to making an eligibility determination for the initial application;

(iii) The State agency shall process changes in household circumstances and recertifications by using the same standards that apply to all other food stamp households; and

(iv) Resident households shall be afforded the same rights to notices of adverse action, to fair hearings, and to entitlement to lost benefits as are all other food stamp households.

(4) The treatment center shall notify the State agency, as provided in § 273.12(a), of changes in the household's income or other household circumstances and of when the addict or alcoholic leaves the treatment center. The treatment center shall return a household's ATP or coupons received after the household has left the center.

(5) The treatment center shall provide resident addicts or alcoholics with their ID card and one-half of their monthly coupon allotment when the household leaves the treatment and rehabilitation program prior to the 16th day of the month. Once the household leaves the treatment center, the center is no longer allowed to act as that household's authorized representative. The center shall, if possible, provide the household with a change report form to report to the State agency the individual's new address and other circumstances after leaving the center, and shall advise the household to return the form to the appropriate office of the State agency within 10 days.

(6) The organization or institution shall be responsible for any misrepresentation or fraud which it knowingly commits in the certification of center residents. As an authorized representative, the organization or institution must be knowledgeable about household circumstances and should carefully review those circumstances with residents prior to applying on their behalf. The organization or institution shall be strictly liable for all losses or misuse of food coupons held on behalf of resident households and for all overissuances which occur while the households are residents of the treatment center.

(7) The organization or institution may be penalized or disqualified, as described in § 278.6, if it is determined administratively or judicially that coupons were misappropriated or used for purchases that did not contribute to a certified household's meals. The State agency shall promptly notify FNS when it has reason to believe that an organization or institution is misusing coupons in its possession. However, the State agency shall take no action prior to FNS action against the organization or institution. The State agency shall establish a claim for overissuances of food coupons held on behalf or resident clients as stipulated in paragraph (6) of this section if any overissuances are discovered during an investigation or hearing procedure for redemption violations. If FNS disqualifies an organization or institution as an authorized retail food store, the State agency shall suspend its authorized representative status for the same period.

(f) *Households requesting replacement allotments.*—(1) *Stolen or destroyed coupons.* A household may request a replacement for that portion of its allotment which it had received but was subsequently destroyed in a household disaster such as fire or flood, or was subsequently stolen. To qualify for a replacement, the household must sign a statement at the food stamp office attesting to the theft or destruction. If the coupons were stolen, the household must also report the theft to the local police and provide to the State agency a copy of the police report or sufficient information to permit the State agency to verify that the theft was reported to the police. State agencies shall provide households qualifying for a replacement with an opportunity to obtain the replacement allotment within 5 working days of the date the theft or destruction was reported to the State agency. The State agency shall not issue a replacement allotment to a household which reports that coupons were misplaced.

(2) *Improperly manufactured or mutilated coupons.* State agencies shall provide a replacement for coupons that were received by a household but were subsequently mutilated or subsequently found to be improperly manufactured. The amount to be replaced shall be equal to the value of the improperly manufactured or mutilated coupons. If the State agency cannot determine the value of a mutilated coupon after exhausting all available means of determining the value within the State, the State agency shall send the mutilated coupon to FNS for a determination. State agencies shall not replace coupons which are mutilated to such a degree that less than three-fifths of the coupon is presented by the household.

§ 273.12 Reporting changes.

(a) *Household responsibility to report.* (1) Certified households are required to report the following changes in circumstances:

(i) Changes in the sources of income or in the amount of gross monthly income of more than $25, except changes in the public assistance grant, or the general assistance grant in project areas where GA and food stamp cases are jointly processed in accord with § 273.2(j)(2). Since the State agency has prior knowledge of all changes in the public assistance grant and these general assistance grants, action shall be taken on the State agency information;

(ii) All changes in household composition, such as the addition or loss of a household member;

(iii) Changes in residence and the resulting change in shelter costs;

(iv) The acquisition of a licensed vehicle not fully excludable under § 273.8(e); and

(v) When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of $1,750.

(2) Households shall report changes within 10 days of the date the change becomes known to the household. Optional procedures for reporting changes are contained in § 273.12(f) for households in States with FNS-approved forms for jointly reporting food stamp and public assistance changes and food stamp and general assistance changes.

(3) State agencies shall not impose any food stamp reporting requirements on households except as provided in paragraph (a)(1) of this section.

(b) *Report form.* (1) The State agency shall provide households with a form for reporting the changes required in paragraph (a) of this section and shall pay the postage for the household to mail in the report. All State agencies shall use the reporting form designed by FNS, unless FNS approves a deviation or approves a joint food stamp/public assistance reporting form or food stamp/general assistance reporting form. Deviations shall be granted under the same conditions deviations are granted for the application form, as specified in § 273.2(b). The reporting form shall, at a minimum, include the following:

(i) A space for the household to report whether the change shall continue beyond the report month;

(ii) The civil and criminal penalties for violations of the Act in understand<able terms and in prominent and boldface lettering; and

(iii) A reminder to the household of its right to claim actual utility costs if its costs exceed the standard.

(2) The reporting form may also include the amount of gross income, itemized by household member, used to certify the household, and the source and frequency of the income.

(3) Changes reported over the telephone or in person by the household shall be acted on in the same manner as those reported on the change report form.

(4) A change report form shall be provided to newly certified households at the time of certification, at recertification if the household needs a new form; and a new form shall be sent to the household whenever a change report form is returned by the household. A change report may be provided to households more often at the State agency's option.

(c) *State agency action on changes.* The State agency shall take prompt action on all changes to determine if the change affects the household's eligibility or allotment. Even if there is no change in the allotment, the State agency shall document the reported change in the case file, provide another change report form to the household, and notify the household of the effect of the change, if any, on its benefits. The State agency shall also document the date a change is reported, which shall be the date the State agency receives a report form or is advised of the change over the telephone or by a personal visit. Restoration of lost benefits shall be provided to any household if the State agency fails to take action on a change which increases benefits within the time limits specified in paragraph (c)(1) of this section.

(1) *Increase in benefits.* (i) For changes which result in an increase in a household's benefits, other than changes described in (ii) below, the State agency shall make the change effective not later than the first allotment issued 10 days after the date the change was reported to the State agency. For example, a $30 decrease in income reported on the 15th of May would increase the household's June allotment. If the same decrease were reported on May 28, and the household's normal issuance cycle was on June 1, the household's allotment would have to be increased by July.

(ii) For changes which result in an increase in a household's benefits due to the addition of a new household member who is not a member of another certified household, or due to a decrease of $50 or more in the household's gross monthly income, the State agency shall make the change effective not later than the first allotment issued 10 days after the date the change was reported. However, in no event shall these changes take effect any later than the month following the month in which the change is reported. Therefore, if the change is reported after the 20th of a month and it is too late for the State agency to adjust the following month's allotment, the State agency shall issue a supplementary ATP or otherwise provide an opportunity for the household to obtain the increase in benefits by the 10th day of the following month, or the household's normal issuance cycle in that month, whichever is later. For example, a household reporting a $100 decrease in income at any time during May would have its June allotment increased. If the household reported the change after the 20th of May and it was too late for the State agency to adjust the ATP normally issued on June 1, the State agency would issue a supplementary ATP for the amount of the increase by June 10.

(iii) Verification which is required by § 273.2(f) must be obtained prior to the issuance of the second normal monthly allotment after the change is reported. If the household does not provide verification, the household's benefits will revert to the original benefit level. In cases where the State agency has determined that a household has refused to cooperate as defined in § 273.2(d), the State agency shall terminate the household's eligibility.

(2) *Decreases in benefits.* If the household's benefit level decreases or the household becomes ineligible as a result of the change, the State agency shall issue a notice of adverse action within 10 days of the date the change was reported. The decrease in the benefit level shall be made effective not later than the allotment for the month following the month in which the notice of adverse action period has expired, provided a fair hearing and continuation of benefits have not been requested. Verification which is required by § 273.2(f) must be obtained prior to recertification.

(d) *Failure to report.* If the State agency discovers that the household failed to report a change as required by paragraph (a) of this section and, as a result, received benefits to which it was not entitled, the State agency shall file a claim against the household in accordance with § 273.18. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if the household's benefits are reduced. A household shall not be held liable for a claim because of a change in household circumstances which it is not required to report in accordance with § 273.12(a)(1). Individuals shall not be disqualified for failing to report a change, unless the individual is disqualified in accordance with the fraud disqualification procedures specified in § 273.16.

(e) *Mass changes.* Certain changes are initiated by the State or Federal government which may affect the entire caseload or significant portions of the caseload. These changes include annual adjustments to the net income eligibility standards and the shelter/dependent care deduction; semiannual adjustments to the thrifty food plan and standard deduction; annual and seasonal adjustments to the State's utility standard; periodic cost of living adjustments to social security, SSI, and other Federal benefits; periodic adjustments to AFDC or GA payments; and other changes in the eligibility criteria based on legislative or regulatory actions.

(1) *Federal adjustments to eligibility standards, allotments, and deductions, State adjustments to utility standards.* (i) These adjustments shall go into effect for all households at a specific point in time. Semiannual adjustments to the thrifty food plan and the standard deduction shall be effective for all issuances in January and July. Annual adjustments to the shelter/dependent care deduction and the eligibility standards shall be effective for all July issuances. State agencies may wish to consider timing the annual adjustments of their utility standards to coincide with the Federal shelter deduction adjustment.

(ii) Although a notice of adverse action is not required, State agencies may send an individual notice to households of these changes. State agencies shall publicize these mass changes through the news media; posters in certification offices, issuance locations, or other sites frequented by certified households; or general notices mailed to households. Households whose certification periods overlap a seasonal variation in the utility standard shall be advised at the time of initial certification of when the adjustment will occur and what the variation in the benefit level will be, if known.

(2) *Mass changes in public assistance.* (i) When the State agency makes an overall adjustment to public assistance payments, corresponding adjustments in households' food stamp benefits shall be handled as a mass change. When the State agency has at least 30 days' advance knowledge of the amount of the public assistance adjustment, the State agency shall recompute food stamp benefits

to be effective in the same month as the public assistance change. If the State agency does not have sufficient notice, the food stamp change shall be effective not later than the month following the month in which the public assistance change was made.

(ii) A notice of adverse action is not required when a household's food stamp benefits are reduced or terminated as a result of a mass change in the public assistance grant. However, State agencies shall send individual notices to households to inform them of the change. If a household requests a fair hearing, benefits shall be continued at the former level only if the issue being appealed is that food stamp eligibility or benefits were improperly computed.

(iii) State agencies which also administer a general assistance program shall handle mass adjustments to GA payments in the same manner as public assistance adjustments. However, where State agencies do not administer both programs, mass changes in GA payments will be handled according to procedures in paragraph (3) of this section.

(3) *Mass changes in Federal benefits.* State agencies which have the capability shall treat cost-of-living increases and other mass changes in Federal benefits, such as social security and SSI payments, as a mass change in accordance with the procedures in paragraph (2) of this section. A State agency is capable of treating these changes as a mass change if the State agency's computer system can identify by social security number individual household members receiving social security or SSI payments and the amount of these payments; and the computer system can extract the new income data from BENDEX and SDX for each recipient of social security or SSI payments. In States which do not have the capability, households are responsible for reporting changes in Federal benefits if required to do so by paragraph (a) of this section. If mass change procedures are not used, individual advance notices of adverse action shall be required according to § 273.13.

(4) *Mass changes resulting from implementation of the Food Stamp Act of 1977.* State agencies shall send an individual notice of adverse action to each household that receives a reduction or termination in benefits during its certification period due to these regulations. The notice of adverse action shall explain to the household that the change is the result of changes in Federal law and that although the household has the right to request a fair hearing, benefits will be continued pending the fair hearing only if the household believes its eligibility or benefit level was computed incorrectly under the new law, or that the new law is being misapplied or misinterpreted.

(f) *PA and GA households.* (1) Except as provided in paragraph (2) of this section, PA households have the same reporting requirements as any other food stamp household, and shall use the food stamp change report form, unless a similar form used in the PA program is approved by FNS for this purpose. PA households which report a change in circumstances to the PA worker shall be considered to have reported the change for food stamp purposes. All of the requirements pertaining to reporting changes for PA households shall be applied to GA households in project areas where GA and food stamp cases are processed jointly in accordance with the provisions of § 273.2(j)(2).

(2) (i) With FNS approval State agencies may use a joint change reporting form that can be used by households to report changes for both PA and food stamp purposes. The State may use the joint form for all food stamp households or limit its use to food stamp households receiving PA benefits. However, use of the joint forms designed for PA reporting systems described in paragraph (2)(ii) of this section shall be limited to food stamp households in which some or all members are receiving PA benefits. Whenever a joint change reporting form is used, the State agency shall insure that adjustments are made in a household's eligibility status or allotment only for those months in which the reported change is anticipated to remain in effect.

(ii) State agencies may, with prior FNS approval, combine the use of a joint PA/food stamp change reporting form with a PA reporting system that demands the regular submission of reports, such as a monthly reporting system. The State agency shall insure that the following requirements are met:

(A) Households shall not have their eligibility or allotment changed merely because they fail to submit one or more of the system's regular reports. If a household's PA benefits are terminated due to the household's failure to submit a report, the State agency shall follow the procedures in paragraph (5) of this section.

(B) Households shall be considered to have timely reported changes if they are complying with the reporting standards of the State agency's reporting system.

(C) State agencies shall not restrict households to reporting changes only through the reporting system. Households shall be allowed to report changes through the system, in person, or by telephone.

(D) State agencies shall act on all changes reported through the reporting system in accordance with the processing standards in paragraph (c) of this section. The State agency shall insure that adjustments are made in a household's eligibility or allotment only for those months in which the reported change is anticipated to remain in effect.

(3) Households shall be notified whenever their benefits are altered as a result of changes in the PA benefits or whenever the food stamp certification period is shortened to reflect changes in the household's circumstances. If the certification period is shortened, the household's certification period shall not end any earlier than the month following the month in which the State agency determines that the certification period should be shortened, allowing adequate time for the State agency to send a notice of expiration and for the household to timely reapply. If the PA benefits are terminated but the household is still eligible for food stamp benefits, members of the household shall be advised of food stamp work registration requirements, if applicable, as their WIN registration exemption no longer applies.

(4) Whenever a change results in the reduction or termination of a household's PA benefits within its food stamp certification period, and the State agency has sufficient information to determine how the change affects the household's food stamp eligibility and benefit level, the State agency shall take the following actions:

(i) If a change in household circumstances requires both a reduction or termination in the PA payment and a reduction or termination in food stamp benefits, the State agency shall issue a single notice of adverse action for both the PA and food stamp actions. If the household requests a fair hearing within the period provided by the notice of adverse action, the household's food stamp benefits shall be continued on the basis authorized immediately prior to sending the notice. If the fair hearing is requested for both programs' benefits, the hearing shall be conducted according to PA procedures and timeliness standards. However, the household must reapply for food stamp benefits if the food stamp certification period expires before the fair hearing process is completed. If the household does not appeal, the change shall be made effective in accordance with the procedures specified in paragraph (c) of this section.

(ii) If the household's food stamp benefits will be increased as a result of the reduction or termination of PA benefits, the State agency shall issue

the PA notice of adverse action, but shall not take any action to increase the household's food stamp benefits until the household decides whether it will appeal the adverse action. If the household decides to appeal and its PA benefits are continued, the household's food stamp benefits shall continue at the previous basis. If the household does not appeal, the State agency shall make the change effective in accordance with the procedures specified in paragraph (c) of this section, except that the time limits for the State agency to act on changes which increase a household's benefits shall be calculated from the date the PA notice of adverse action period expires.

(5) Whenever a change results in the termination of a household's PA benefits within its food stamp certification period, and the State agency does not have sufficient information to determine how the change affects the household's food stamp eligibility and benefit level (such as when an absent parent returns to a household, rendering the household categorically ineligible for public assistance, and the State agency does not have any information on the income of the new household member), the State agency shall not terminate the household's food stamp benefits but shall instead take the following action:

(i) Where a PA notice of adverse action has been sent, the State agency shall wait until the household's notice of adverse action period expires or until the household requests a fair hearing, whichever occurs first. If the household requests a fair hearing and its PA benefits are continued pending the appeal, the household's food stamp benefits shall be continued at the same basis.

(ii) If a PA notice of adverse action is not required, or the household decides not to request a fair hearing and continuation of its PA benefits, the State agency shall send the household a notice of expiration which informs the household that its certification period will expire at the end of the month following the month the notice of expiration is sent and that it must reapply if it wishes to continue to participate. The notice of expiration shall also explain to the household that its certification period is expiring because of changes in its circumstances which may affect its food stamp eligibility and benefit level.

§ 273.13 Notice of adverse action.

(a) *Use of notice.* Prior to any action to reduce or terminate a household's benefits within the certification period, the State agency shall, except as provided in paragraph (b) of this section, provide the household timely and adequate advance notice before the adverse action is taken.

(1) The notice of adverse action shall be considered timely if the advance notice period conforms to that period of time defined by the State agency as an adequate notice period for its public assistance caseload, provided that the period includes at least 10 days from the date the notice is mailed to the date upon which the action becomes effective. Also, if the adverse notice period ends on a weekend or holiday, and a request for a fair hearing and continuation of benefits is received the day after the weekend or holiday, the State agency shall consider the request timely received.

(2) All State agencies shall use a notice of adverse action form designed by FNS. FNS may approve deviations from that form under the same conditions deviations are granted for the application form, as specified in § 273.2(b). The notice of adverse action shall be considered adequate if it explains in easily understandable language: The proposed action; the reason for the proposed action; the household's right to request a fair hearing; the telephone number and, if possible, the name of the person to contact for additional information; the availability of continued benefits; and the liability of the household for any overissuances received while awaiting a fair hearing if the hearing official's decision is adverse to the household. If there is an individual or organization available that provides free legal representation, the notice shall also advise the household of the availability of the service.

(b) *Exemptions from notice.* Individual notices of adverse action are not required when:

(1) The State initiates a mass change as described in § 273.12(e).

(2) The State agency determines, based on reliable information, that all members of a household have died.

(3) The State agency determines, based on reliable information, that the household has moved from the project area.

(4) The household has been receiving an increased allotment to restore lost benefits, the restoration is complete, and the household was previously notified in writing of when the increased allotment would terminate.

(5) The household's allotment varies from month to month within the certification period to take into account changes which were anticipated at the time of certification, and the household was so notified at the time of certification.

(6) The household jointly applied for PA/GA and food stamp benefits and has been receiving food stamp benefits pending the approval of the PA/GA grant and was notified at the time of certification that food stamp benefits would be reduced upon approval of the PA/GA grant.

(7) A household member is disqualified for fraud, in accordance with § 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member. The notice requirements for individuals or households affected by fraud disqualifications are explained in § 273.16.

(8) The household contains a member subject to a lockout or strike and signs a waiver of its right to notice of adverse action for purposes of receiving a longer certification period than is otherwise allowed for such households.

(9) The State agency has elected to assign a longer certification period to a household certified on an expedited basis and for whom verification was postponed, provided the household has received written notice that the receipt of benefits beyond the month of application is contingent on its providing the verification which was initially postponed and that the State agency may act on the verified information without further notice as provided in § 273.2(i)(4).

§ 273.14 Recertification.

(a) *Action on applications for recertification.* The State agency shall complete the application process and approve or deny timely applications for recertification prior to the end of the household's current certification period and shall provide eligible households with an opportunity to participate by the household's normal issuance cycle in the month following receipt of a timely application. The State agency shall not continue benefits to the household beyond the end of the certification period unless the household has been recertified. The joint processing requirements in § 273.2(j) for PA and GA households shall continue to apply to applications for recertification.

(b) *Notice of expiration.* (1) The State agency shall provide each household with a notice of the expiration of its certification just prior to or at the start of the last month of the household's certification period with the exception of PA and GA households whose applications were jointly processed for food stamps and PA or GA benefits in accordance with § 273.2(j). These PA and GA households need not receive notices of expiration if they are recertified for food stamps at the same time as their PA or GA redetermination, provided the redetermination occurs prior to the last month of their food stamp certification period as assigned in § 273.10(f)(2).

(2) Households that must receive a notice of expiration shall receive it not

earlier than 15 days prior to, nor later than the first day of, the household's last month of certification. If it is impossible for the State agency to provide the notice of expiration by the first day of the last month of the household's certification period because the household is certified for 1 month or because the household was initially certified for 2 months during the month following the month of application, the notice of expiration shall be provided at the time of certification.

(3) The notice of expiration shall contain the date the current certification period ends: The date by which the household must file an application to receive uninterrupted benefits; the household's right to request an application and have the State agency accept an application as long as it is signed and contains a legible name and address; the address of the office where the application must be filed; the consequences of failure to comply with the notice of expiration; the household's right to file the application by mail or through an authorized representative; and the household's right to a fair hearing if the State agency refuses to accept as good cause the household's reasons for failure to comply with the notice of expiration. Each State agency shall use the notice of expiration designed by FNS unless FNS approves a deviation. Deviations shall be granted under the same conditions deviations from the application form are granted in § 273.2(b). The State agency is encouraged to include an application form with the notice of expiration and/or an appointment for an interview. Regardless of when the interview date is assigned, the household has timely applied if the application is received by the 15th day of the last month of certification.

(4) Households provided a notice of expiration at the time of certification, in accordance with paragraph (b)(2) of this section, shall have 15 days from the date the notice is received to file a timely application for recertification. All other households which submit identifiable applications by the 15th day of the last month of the certification period shall be considered to have made a timely application for recertification. To aid the State agency in determining if adequate time has been permitted, the State agency shall use the postmark on the notice of expiration, plus 2 days for mailing time. In cases of dispute, the household may demonstrate that the notice of expiration was not, in fact, received in a timely manner.

(c) *State action on timely reapplications.* The State agency shall act on timely reapplications to provide uninterrupted benefits to households determined eligible. The State agency shall not require households receiving notices of expiration to appear for an interview before the last month of their current certification periods. However, the State agency may schedule an interview prior to the last month of the certification period or prior to the date the application is timely filed, provided the household is not denied for failing or refusing to appear for the interview. The State agency shall schedule an interview on or after the date the application was timely filed if an interview has not been previously scheduled or the household has failed or refused to appear for any interviews scheduled prior to the date the application was timely filed. A household which fails without good cause to appear for an interview scheduled after the application is timely filed shall lose its right to uninterrupted benefits, but shall not be denied at that point unless it has refused to cooperate. State agencies shall take action on timely reapplications within the following time standards, even if, to meet these standards, the State agency must provide an opportunity to participate outside of the normal issuance system:

(1) Households that were provided a notice of expiration at the time of certification and have timely reapplied shall be notified of their eligibility or ineligibility and provided an opportunity to participate, if eligible, not later than 30 days after the date the household had an opportunity to obtain its last allotment.

(2) For those households that have filed an application by the 15th of the last month of their certification period, the State agency shall approve or deny the application and notify the household of its determination by the end of the current certification period. In addition, for households determined eligible, the State agency shall provide an opportunity to participate by the household's normal issuance cycle in the month following receipt of the timely reapplication even if the State agency must provide an opportunity to participate outside of the normal issuance system. Households which have timely reapplied, but due to State agency error are not determined eligible in sufficient time to provide for issuance in the household's normal issuance cycle for the following month, shall receive an immediate opportunity to participate upon being determined eligible, even if the State agency must provide an opportunity to participate outside of the normal issuance system.

(d) *State agency failure to act.* State agency failure to provide eligible households which filed a timely application for recertification with an opportunity to participate in accordance with the above provisions shall be considered an administrative error. These households shall be entitled to restoration of lost benefits if, as a result of such error, the household was unable to participate for the month following the expiration of the certification period.

(e) *Failure to submit a timely reapplication.* A household which fails without good cause to submit a timely application for recertification, or to appear for an interview scheduled after the household timely filed its application for recertification, shall lose its right to uninterrupted benefits. Households which refuse to cooperate in providing required information shall be denied. Any application not submitted in a timely manner shall be treated as an application for initial certification, except that for applications received within 30 days after the certification period expires, previously verified income or actual utility expenses need not be verified if the source has not changed and the amount has changed by $25 or less.

(f) *Good cause for failure to timely reapply.* If the State agency determines that the household's failure to make timely application, or to otherwise complete the certification process in a timely manner, was for good cause, the household shall be entitled to restoration of lost benefits, if as a result of its failure, the household was unable to participate in the month following the expiration of its certification period. The determination of good cause shall be made on a case by case basis, and shall include, but not be limited to, failure to receive timely notice of expiration or personal illness.

§ 273.15 Fair hearings.

(a) *Availability of hearings.* Each State agency shall provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the household in the Program.

(b) *Hearing system.* Each State agency shall provide for either a fair hearing at the State level or for a hearing at the local level which permits the household to further appeal a local decision to a State level fair hearing. State agencies may adopt local level hearings in some project areas and maintain only State level hearings in other project areas.

(c) *Timely action on hearings.*—(1) *State level hearings.* Within 60 days of receipt of a request for a fair hearing, the State agency shall assure that the hearing is conducted, a decision is reached, and the household and local agency are notified of the decision. Decisions which result in an increase in household benefits shall be reflected in the coupon allotment within 10 days of the receipt of the hearing decision even if the State agency must

provide a supplementary ATP or otherwise provide the household with an opportunity to obtain the allotment outside of the normal issuance cycle. However, the State agency may take longer than 10 days if it elects to make the decision effective in the household's normal issuance cycle, provided that the issuance will occur within 60 days from the household's request for the hearing. Decisions which result in a decrease in household benefits shall be reflected in the next scheduled issuance following receipt of the hearing decision.

(2) *Local level hearings.* Within 45 days of receipt of a request for a fair hearing, the State agency shall assure that the hearing is conducted, and that a decision is reached and reflected in the coupon allotment.

(3) *Appeals of local level decisions.* Within 45 days of receipt of any request for a State level review of a decision or for a new State level hearing, the State agency shall assure that the review or the new hearing is conducted, and that a decision is reached and reflected in the coupon allotment.

(4) *Household requests for postponement.* The household may request and is entitled to receive a postponement of the scheduled hearing. The postponement shall not exceed 30 days and the time limit for action on the decision may be extended for as many days as the hearing is postponed. For example, if a State level hearing is postponed by the household for 10 days, notification of the hearing decision will be required within 70 days from the date of the request for a hearing.

(d) *Agency conferences.* (1) The State agency shall offer agency conferences to households which wish to contest a denial of expedited service under the procedures in § 273.2(i). The State agency may also offer agency conferences to households adversely affected by an agency action. The State agency shall advise households that use of an agency conference is optional and that it shall in no way delay or replace the fair hearing process. The agency conferences may be attended by the eligibility worker responsible for the agency action, and shall be attended by an eligibility supervisor and/or the agency director, and by the household and/or its representative. An agency conference may lead to an informal resolution of the dispute. However, a fair hearing must still be held unless the household makes a written withdrawal of its request for a hearing.

(2) An agency conference for households contesting a denial of expedited service shall be scheduled within 2 working days, unless the household requests that it be scheduled later or states that it does not wish to have an agency conference.

(e) *Consolidated hearings.* State agencies may respond to a series of individual requests for hearings by conduction a single group hearing. State agencies may consolidate only cases where individual issues of fact are not disputed and where related issues of State and/or Federal law, regulation or policy are the sole issues being raised. In all group hearings, the regulations governing individual hearings must be followed. Each individual household shall be permitted to present its own case or have its case presented by a representative.

(f) *Notification of right to request hearing.* At the time of application, each household shall be informed in writing of its right to a hearing, of the method by which a hearing may be requested, and that its case may be presented by a household member or a representative, such as a legal counsel, a relative, a friend or other spokesperson. In addition, at any time the household expresses to the State agency that it disagrees with a State agency action, it shall be reminded of the right to request a fair hearing. If there is an individual or organization available that provides free legal representation, the household shall also be informed of the availability of that service.

(g) *Time period for requesting hearing.* A household shall be allowed to request a hearing on any action by the State agency or loss of benefits which occurred in the prior 90 days. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits.

(h) *Request for hearing.* A request for a hearing is defined as a clear expression, oral or written, by the household or its representative to the effect that it wishes to appeal a decision or that an opportunity to present its case to a higher authority is desired. If it is unclear from the household's request what action it wishes to appeal, the State agency may request the household to clarify its grievance. The freedom to make a request for a hearing shall not be limited or interfered with in any way.

(i) *State agency responsibilities on hearing requests.* (1) Upon request, the State agency shall make available without charge the specific materials necessary for a household or its representative to determine whether a hearing should be requested or to prepare for a hearing. If the individual making the request speaks a language other than English and the State agency is required by § 272.4(c)(3) to provide bilingual staff or interpreters who speak the appropriate language, the State agency shall insure that the hearing procedures are verbally explained in that language. Upon request, the State agency shall also help a household with its hearing request. If a household makes an oral request for a hearing, the State agency shall complete the procedures necessary to start the hearing process. Households shall be advised of any legal services available that can provide representation at the hearing.

(2) The State agency shall expedite hearing requests from households, such as migrant farmworkers, that plan to move from the jurisdiction of the hearing official before the hearing decision would normally be reached. Hearing requests from these households shall be processed faster than others if necessary to enable them to receive a decision before they leave the area.

(3) The State agency shall publish clearly written uniform rules of procedure that conform to these regulations and shall make the rules available to any interested party. At a minimum, the uniform rules of procedure shall include the time limits for hearing requests as specified in paragraph (g) of this section, advance notification requirements as specified in paragraph (1) of this section, hearing timeliness standards as specified in paragraph (c) of this secton, and the rights and responsibilities of persons requesting a hearing as specified in paragraph (p) of this section.

(j) *Denial or dismissal of request for hearing.* The State agency shall not deny or dismiss a request for a hearing unless:

(1) The request is not received within the time period specified in paragraph (g) of this section;

(2) The request is withdrawn in writing by the household or its representative; or

(3) The household or its representative fails, without good cause, to appear at the scheduled hearing.

(k) *Continuation of benefits.* (1) If a household requests a fair hearing within the period provided by the notice of adverse action, as set forth in § 273.13, and its certification period has not expired, the household's participation in the program shall be continued on the basis authorized immediately prior to the notice of adverse action, unless the household specifically waives continuation of benefits. The form for requesting a fair hearing shall contain space for the household to indicate whether or not continued benefits are requested. If the form does not positively indicate that the household has waived continuation of benefits, the State agency shall assume that continuation of benefits is desired and the benefits shall be issued accordingly. If the State agency action is upheld by the hearing decision, a claim against the household shall be established for all overis-

suances. If a hearing request is not made within the period provided by the notice of adverse action, benefits shall be reduced or terminated as provided in the notice. However, if the household establishes that its failure to make the request within the advance notice period was for good cause, the State agency shall reinstate the benefits to the prior basis. When benefits are reduced or terminated due to a mass change, participation on the prior basis shall be reinstated only if the issue being contested is that food stamp eligibility or benefits were improperly computed or that Federal law or regulation is being misapplied or misinterpreted by the State agency.

(2) Once continued or reinstated, benefits shall not be reduced or terminated prior to the receipt of the official hearing decision unless:

(i) The certification period expires. The household may reapply and may be determined eligible for a new certification period with a benefit amount as determined by the State agency;

(ii) The hearing official makes a preliminary determination, in writing and at the hearing, that the sole issue is one of Federal law or regulation and that the household's claim that the State agency improperly computed the benefits or misinterpreted or misapplied such law or regulation is invalid;

(iii) A change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending and the household fails to request a hearing after the subsequent notice of adverse action; or

(iv) A mass change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending.

(3) The State agency shall promptly inform the household in writing if benefits are reduced or terminated pending the hearing decision.

(l) *Notification of time and place of hearing.* The time, date, and place of the hearing shall be arranged so that the hearing is accessible to the household. At least 10 days prior to the hearing, advance written notice shall be provided to all parties involved to permit adequate preparation of the case. However, the household may request less advance notice to expedite the scheduling of the hearing. The notice shall:

(1) Advise the household or its representative of the name, address, and phone number of the person to notify in the event it is not possible for the household to attend the scheduled hearing.

(2) Specify that the State agency will dismiss the hearing request if the household or its representative fails to appear for the hearing without good cause.

(3) Include the State agency hearing procedures and any other information that would provide the household with an understanding of the proceedings and that would contribute to the effective presentation of the household's case.

(4) Explain that the household or representative may examine the case file prior to the hearing.

(m) *Hearing official.* Hearings shall be conducted by an impartial official(s) who: Does not have any personal stake or involvement in the case; was not directly involved in the initial determination of the action which is being contested; and was not the immediate supervisor of the eligibility worker who took the action. State level hearings shall be conducted by State level personnel and shall not be conducted by local level personnel.

(1) *Designation of hearing official.* The hearing official shall be:

(i) An employee of the State agency;

(ii) An individual under contract with the State agency;

(iii) An employee of another public agency designated by the State agency to conduct hearings;

(iv) A member or official of a statutory board or other legal entity designated by the State agency to conduct hearings; or

(v) An executive officer of the State agency, a panel of officials of the State agency or a person or persons expressly appointed to conduct State level hearings or to review State and/or local level hearing decisions.

(2) *Power and duties.* The hearing official shall:

(i) Administer oaths or affirmations if required by the State;

(ii) Insure that all relevant issues are considered;

(iii) Request, receive and make part of the record all evidence determined necessary to decide the issues being raised;

(iv) Regulate the conduct and course of the hearing consistent with due process to insure an orderly hearing;

(v) Order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the State agency;

(vi) Provide a hearing record and recommendation for final decision by the hearing authority; or, if the hearing official is the hearing authority, render a hearing decision in the name of the State agency, in accordance with paragraph (q) of this section, which will resolve the dispute.

(n) *Hearing authority.* The hearing authority shall be the person designated to render the final administrative decision in a hearing. The same person may act as both the hearing official and the hearing authority. The hearing authority shall be subject to the requirements specified in paragraph (m) of this section.

(o) *Attendance at hearing.* The hearing shall be attended by a representative of the State agency and by the household and/or its representative. The hearing may also be attended by friends or relatives of the household if the household so chooses. The hearing official shall have the authority to limit the number of persons in attendance at the hearing if space limitations exist.

(p) *Household rights during hearing.* The household may not be familiar with the rules of order and it may be necessary to make particular efforts to arrive at the facts of the case in a way that makes the household feel most at ease. The household or its representative must be given adequate opportunity to:

(1) Examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing. The contents of the case file including the application form and documents of verification used by the State agency to establish the household's ineligibility or eligibility and allotment shall be made available, provided that confidential information, such as the names of individuals who have disclosed information about the household without its knowledge or the nature or status of pending criminal prosecutions, is protected from release. If requested by the household or its representative, the State agency shall provide a free copy of the portions of the case file that are relevant to the hearing. Confidential information that is protected from release and other documents or records which the household will not otherwise have an opportunity to contest or challenge shall not be introduced at the hearing or affect the hearing official's decision.

(2) Present the case or have it presented by a legal counsel or other person.

(3) Bring witnesses.

(4) Advance arguments without undue interference.

(5) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.

(6) Submit evidence to establish all pertinent facts and circumstances in the case.

(q) *Hearing decisions.* (1) Decisions of the hearing authority shall comply with Federal law and regulations and shall be based on the hearing record. The verbatim transcript or recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding, shall consti-

tute the exclusive record for a final decision by the hearing authority. This record shall be retained in accordance with § 272.1(f). This record shall also be available to the household or its representative at any reasonable time for copying and inspection.

(2) A decision by the hearing authority shall be binding on the State agency and shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and the pertinent Federal regulations. The decision shall become a part of the record.

(3) The household and the local agency shall each be notified in writing of: The decision; the reasons for the decision in accordance with paragraph (q)(2) of this section; the available appeal rights; and that the household's benefits will be issued or terminated as decided by the hearing authority. The notice shall also state that an appeal may result in a reversal of the decision. The following are additional notice requirements and the available appeal rights:

(i) After a State level hearing decision which upholds the State agency action, the household shall be notified of the right to pursue judicial review of the decision. In addition, in States which provide for rehearings of State level decisions, the household shall be notified of the right to pursue a rehearing.

(ii) After a local level hearing decision which upholds the State agency action, the household shall be notified of the right to request a completely new State agency level hearing, and that a reversal of the decision may result in the restoration of lost benefits to the household. In addition, the household shall be advised that if a new hearing would pose an inconvenience to the household, a State level review of the decision based on the hearing record may be requested instead of a new hearing. A clear description of the two appeal procedures must be included to enable the household to make an informed choice, if it wishes to appeal. If the household indicates that it wishes to appeal, but does not select the method, the State agency shall proceed with a new State level hearing.

(4) If the household wishes to appeal a local level hearing decision, the appeal request must be filed within 15 days of the mailing date of the hearing decision notice. Within 45 days of receipt of any request for a State level review of the decision or for a new State level hearing, the State agency shall assure that the review or the hearing is conducted, and that a decision is reached and reflected in the coupon allotment. If a new hearing will not be held, the State level hearing official will review the local level hearing record to determine if the local decision was supported by substantial evidence. State level review procedures shall provide for notifying the local agency and the household that each may file a summary of arguments which shall become a part of the record if timely received. Both parties shall be advised that failure to file a summary will not be considered in deciding the case and that the summary must be postmarked within 10 days of receipt of the notice.

(5) All State agency hearing records and decisions shall be available for public inspection and copying, subject to the disclosure safeguards provided in § 272.1(c), and provided identifying names and addresses of household members and other members of the public are kept confidential.

(r) *Implementation of local level hearing decision.* (1) In the event the local hearing decision upholds the State agency action, any benefits to the household which were continued pending the hearing shall be discontinued beginning with the next scheduled issuance, regardless of whether or not an appeal is filed. Collection action for any claims against the household for overissuances shall be postponed until the 15-day appeal request period has elapsed, or if an appeal is requested, until the State agency upholds the decision of the local hearing authority.

(2) In the event the local hearing authority decides in favor of the household, benefits to the household shall begin or be reinstated, as required by the decision, within the 45 day time limit allowed for local hearing procedures.

Any lost benefits due to the household shall be issued as soon as administratively feasible.

(s) *Implementation of final State agency decisions.* The State agency is responsible for insuring that all final hearing decisions are reflected in the household's coupon allotment within the time limits specified in paragraph (c) of this section.

(1) When the hearing authority determines that a household has been improperly denied program benefits or has been issued a lesser allotment than was due, lost benefits shall be provided to the household in accordance with § 273.17.

(2) When the hearing authority upholds the State agency's action, a claim against the household for any overissuances shall be prepared in accordance with § 273.18.

(t) *Review of appeals of local level decisions.* State agencies which adopt a local level hearing system shall establish a procedure for monitoring local level hearing decisions. The number of local level decisions overturned upon appeal to a State level hearing shall be examined. If the number of reversed decisions is excessive, the State agency shall take corrective action.

(u) *Departmental review of decisions contrary to Federal law and regulations.* [Reserved]

§ 273.16 Fraud disqualification.

(a) *Fraud disqualification penalties.* Individuals found to have committed fraud through an administrative fraud hearing shall be ineligible to participate in the program for 3 months. Individuals found guilty of criminal or civil fraud by a court of appropriate jurisdiction shall be ineligible for not less than 6 months and not more than 24 months as determined by the court. State agencies shall disqualify only the individual and not the entire household.

(b) *Definition of fraud.* For purposes of determining at an administrative fraud hearing whether or not fraud was committed, fraud shall consist of any action by an individual to knowingly, willfully and with deceitful intent:

(1) Make a false statement to the State agency, either orally or in writing, to obtain benefits to which the household is not entitled;

(2) Conceal information to obtain benefits to which the household is not entitled;

(3) Alter ATP's to obtain benefits to which the household is not entitled;

(4) Use coupons to buy expensive or conspicuous nonfood items such as alcohol or cartons of cigarettes;

(5) Use or possess improperly obtained coupons or ATPs; or

(6) Trade or sell coupons or ATP's.

(c) *Notification to applicant households.* The State agency shall inform the household in writing of the disqualification penalties for committing fraud each time it applies for program benefits. The penalties shall be written in clear, prominent, and boldface lettering on the application form.

(d) *Administrative disqualification.* Each State agency shall establish procedures for conducting fraud hearings which must conform with the procedures outlined in this section. An administrative fraud hearing shall be initiated by the State agency whenever the State agency has documented evidence to substantiate that a currently certified household member has committed one or more acts of fraud as defined in paragraph (b) of this section and the State agency believes the household member should be disqualified. Fraud hearings shall not be conducted if the amount the State agency suspects has been fraudulently obtained is less than $35 or if the value of the ineligible items that have been purchased with food stamps is under $35. The burden of proving fraud is on

the State agency. If the household member is not certified when the suspected fraud is discovered, the State agency shall initiate the hearing when the household member becomes certified. The administrative fraud hearing may still be conducted regardless of whether other legal action is planned against the household member.

(1) *Consolidation of administrative fraud hearing with fair hearing.* The State agency may combine a fair hearing and an administrative fraud hearing into a single hearing if the factual issues arise out of the same, or related, circumstances and the household receives prior notice that the hearings will be combined. If the fraud hearing and fair hearing are combined, the State agency shall follow the time liness standards for conducting fraud hearings.

(2) *Fraud hearing procedures.* (i) The State agency may provide administrative fraud hearings only at the State level or it may provide a local hearing in some or all of its project areas with a right to appeal to a State level hearing. The one- or two-tiered approach adopted for fraud hearings may be the same as that adopted for fair hearings, although State agencies are not required to use the same approach. State agencies have the option of using the same hearing officials for fraud hearings and fair hearings or designating hearing officials to conduct only fraud hearings.

(ii) The provisions of § 273.15 (m), (n), (o), (p), and (q)(1) are also applicable for fraud hearings.

(iii) At the fraud hearing, the hearing official shall advise the household member or representative that they may refuse to answer questions during the hearing.

(iv) Within 90 days of the date the household member is notified in writing that a State or local hearing initiated by the State agency has been scheduled, the State agency shall conduct the hearing, arrive at a decision and initiate administrative action which will make the decision effective. If the fraud hearing is conducted at the local level and the household decides to appeal its case to a State level hearing, the State agency shall conduct the State level hearing, arrive at a decision and initiate administrative action which will make the decision effective within 60 days of the date the household member appealed its case. The household member or representative is entitled to a postponement of up to 30 days. If the hearing is postponed, the above time limits shall be extended for as many days as the hearing is postponed.

(v) The State agency shall publish clearly written rules of procedure for fraud hearings, and shall make these procedures available to any interested party.

(3) *Advance notice of hearing.* (i) The State agency shall provide written notice to the household member suspected of fraud at least 30 days in advance of the date a fraud hearing initiated by the State agency has been scheduled. The notice shall be mailed certified Mail—Return Receipt Requested, and shall contain, at a minimum:

(A) The date, time, and place of the hearing;

(B) The charge(s) against the household member;

(C) A summary of the evidence, and how and where the evidence can be examined;

(D) A warning that the decision will be based solely on information provided by the food stamp office if the household member fails to appear at the hearing;

(E) A warning that a determination of fraud will result in a 3-month disqualification;

(F) A listing of the household member's rights as contained in § 273.15(p);

(G) A statement that the hearing does not preclude the State or Federal Government from prosecuting the household member for fraud in a civil or criminal court action, or from collecting the overissuance;

(H) A statement that the individual can call the food stamp office to get the name and phone number (if available) of someone who can give free legal advice. If free legal advice is not available, the food stamp office shall provide, when called, the phone number of a lawyer referral service of the local bar association.

(ii) If the household member suspected of fraud is appealing a local level hearing to a State level hearing, the State agency shall provide a written notice to that household member at least 10 days in advance of the scheduled hearing. The 10-day advance notice must contain, at a minimum:

(A) The date, time, and place of the hearing;

(B) A statement that the State agency will dismiss the hearing request and the household member will be disqualified in accordance with the local hearing decision if the household or its representative fails to appear for the hearing without good cause;

(C) A statement that the hearing does not preclude civil or criminal prosecution, or from collecting the overissuance;

(D) A listing of the household member's rights as contained in § 273.15(p); and

(E) A statement that the individual can call the food stamp office to get the name and phone number (if available) of someone who can give free legal advice. If free legal advice is not available, the food stamp office shall provide, when called, the phone number of a lawyer referral service of the local bar association.

(iii) A copy of the State agency's published hearing procedures shall be attached to the 30-day and 10-day advance notices;

(iv) Each State agency shall use the advance notice designed by FNS unless FNS approves a deviation. Deviations shall be granted under the same conditions that deviations from the application form are granted in § 273.2(b).

(4) *Scheduling of hearing.* The time and place of the hearing shall be arranged so that the hearing is accessible to the household member suspected of fraud.

(i) If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member represented. Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if fraud was committed based on clear and convincing evidence. If the house hold member is found to have committed fraud but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct the new hearing. The household member has 10 days from receipt of the notice of the fraud decision to present reasons indicating a good casue for failure to appear. A hearing official must enter the good cause decision into the record.

(ii) If a local fraud hearing decision is appealed to a higher hearing level but the household member or its representative fails to appear for the hearing, the State agency shall dismiss the hearing request and notify the household member that it will be disqualified for 3 months in accordance with the local hearing decision unless the household member or its representative provides good cause for not appearing at the hearing within 10 days of receipt of the notice. If the hearing official determines that the household member or representative had good cause for not appearing, the State agency shall reschedule the hearing.

(5) *Participation while awaiting a hearing.* A pending fraud hearing shall not affect the individual's or the household's right to be certified and participate in the program. Since the State agency cannot disqualify a household member for fraud until the

hearing official finds that the individual has committed fraud, the State agency shall determine the eligibility and benefit level of the household in the same manner it would be determined for any other household. For example, if the action for which the household member is suspected of fraud does not affect the household's current circumstances, the household would continue to receive its allotment based on the latest certification action or be recertified based on a new application and its current circumstances. However, the household's benefits shall be terminated if the certification period has expired and the household, after receiving its notice of expiration, fails to reapply. The State agency shall also reduce or terminate the household's benefits if the State agency has documentation which substantiates that the household is ineligible or eligible for fewer benefits (even if these facts led to the suspicion of fraud and the resulting fraud hearing) and the household fails to request a fair hearing and continuation of benefits pending the hearing. For example, the State agency may have facts which substantiate that a household failed to report a change in its circumstances even though the State agency has not yet demonstrated that the failure to report involved a fraudulent act.

(6) *Criteria for determining fraud.* The hearing authority shall base the determination of fraud on clear and convincing evidence which demonstrates that the household member knowingly, willfully and with deceitful intent committed fraud, as defined in paragraph (b) of this section.

(7) *Decision format.* The hearing authority's decision shall specify the reasons for the decision, identify the supporting evidence, identify the pertinent FNS regulation, and respond to reasoned arguments made by the household member or representative.

(8) *Appeal rights of the household member.* If the hearing authority rules that the household member has committed fraud, the household member may appeal the decision, as follows:

(i) *Appeal after local hearing.* (A) A household member found to have committed fraud by a local hearing authority has 15 days after the member receives the local hearing decision notice to appeal the decision to a State level hearing. State agencies shall mail the notice by Certified Mail—Return Receipt Requested. If a State level hearing is not requested within the 15-day period, the household member shall be disqualified for 3 months beginning with the first month after the 15-day period has expired. The 3-month period shall apply in all cases without regard to the amount of food stamps fraudulently obtained or the number of fraudulent acts the hearing authority finds the individual has committed. If, however, the household member requests a State level hearing within the 15-day period, the household member shall not be disqualified unless the State level hearing also finds the household member has committed fraud.

(B) If a State level hearing is requested, a new hearing shall be conducted in every case and a decision rendered within 60 days of the request. In a new hearing the prior decision shall not be taken into consideration.

(ii) *Appeal after State level hearing.* After a household member has been found to have committed fraud by a State level hearing official, the household member shall be disqualified for 3 months beginning with the first month was follows the date the household member has received the State level hearing notice. The disqualification period shall be 3 months, without regard to the amount of food stamps fraudulently obtained or the number of fraudulent acts the hearing finds the individual has committed. No further administrative appeal procedure exists after an adverse State level hearing. The determination of fraud made by a fraud hearing official cannot be reversed by a subsequent fair hearing decision. The household member, however, is entitled to seek relief in a court having appropriate jurisdiction. The period of disqualification may be subject to stay or other injunctive remedy.

(9) *Notification of hearing decision.* (i) If the hearing finds that the household member did not commit fraud, the State agency shall provide a written notice which informs the household member of the decision.

(ii) If the administrative fraud hearing finds that the household member committed fraud, the State agency shall mail a written notice to the household member prior to disqualification. The notice shall inform the household member of the decision and the reason for the decision. The notice shall also advise the remaining household members, if any, of either the allotment they will receive during the period of disqualification or that they must reapply because the certification period has expired. The procedures for handling the income and resources of the disqualified member are described in § 273.11. For State level decisions, the notice shall inform the household member of the date disqualification will take effect. For local level decisions, the notice shall inform the household member of the deadline for requesting a State level hearing, the date disqualification will take effect unless a State level hearing is requested and that benefits will be continued pending a State level hearing if the household is otherwise eligible. A list of the household member's rights as contained in § 273.15(p) and the State level hearing procedures shall be enclosed with the local fraud hearing decision notice.

(iii) Each State agency shall use the forms designed by FNS for notifying individuals that they have been found to have committed fraud at an administrative fraud hearing unless FNS approves a deviation. Deviations shall be granted under the same conditions deviations from the application form are granted in § 273.2(b).

(e) *Court imposed disqualifications.* (1) A court of appropriate jurisdiction, with either the State, a political subdivision of the State, or the United States as prosecutor or plaintiff, may order an individual disqualified from participation in the program for not less than 6 months and not more than 24 months if the court finds that individual guilty of civil or criminal fraud. Court ordered disqualifications may be imposed separate and apart from any action taken by the State agency to disqualify the individual through an administrative fraud hearing.

(2) State agencies are encouraged to refer for prosecution under State or local fraud statutes those individuals suspected of committing fraud, particularly if large amounts of food stamps are suspected of being fraudulently obtained or the individual is suspected of committing more than one fraudulent act. The State agency shall confer with its legal representative to determine the types of cases which will be accepted for possible prosecution. State agencies shall also encourge State and local prosecutors to recommend to the courts that a disqualification penalty as provided in section 6(b) of the Food Stamp Act be imposed in addition to any other civil or criminal fraud penalties.

(3) State agencies shall disqualify an individual found guilty of fraud by the courts only if the court orders disqualification and only for the length of time specified by the court. If disqualification is ordered but a date for initiating the disqualification period is not specified, the State agency shall initiate the disqualification period with the first month following the date the disqualification was ordered. A court ordered disqualification may run concurrently with the 3-month period of disqualification imposed as a result of an administrative fraud hearing. The State agency shall not initiate or continue a court imposed or administratively imposed fraud disqualification period contrary to a court order.

(f) *Reversed fraud disqualifications.* In cases where the determination of fraud is reversed by a court of appro-

priate jurisdiction, the State agency shall reinstate the individual in the program if the household is eligible. The State agency shall restore any benefits that were lost as a result of the disqualification in accordance with the procedures specified in § 273.17(e).

§ 273.17 Restoration of lost benefits.

(a) *Entitlement.* (1) The State agency shall restore to the household benefits which were lost whenever the loss was caused by an error by the State agency, the regulations specifically state that the household is entitled to restoration of lost benefits, or a fraud disqualification was subsequently reversed as specified in paragraph (e) of this section. With the exception of benefits which are restored as a result of a reversal of a fraud disqualification penalty, benefits shall not be restored if lost more than 12 months prior to the most recent of the following:

(i) The month the State agency was notified by the household or by another person or agency in writing or orally of the possible loss to that specific household;

(ii) The month the State agency discovers in the normal course of business that a loss to a specific household has occurred; or

(iii) The date the household requested a fair hearing to contest the adverse action which resulted in the loss.

(2) Benefits shall be restored even if the household is currently ineligible.

(b) *Errors discovered by the State agency.* If the State agency determines that a loss of benefits has occurred, and the household is entitled to restoration of those benefits, the State agency shall automatically take action to restore any benefits that were lost. No action by the household is necessary. However, benefits shall not be restored if the benefits were lost more than 12 months prior to the month the loss was discovered by the State agency in the normal course of business, or were lost more than 12 months prior to the month the State agency was notified in writing or orally of a possible loss to a specific household. The State agency shall notify the household of its entitlement, the amount of benefits to be restored, any offsetting that was done, the method of restoration, and the right to appeal through the fair hearing process if the household disagrees with any aspect of the proposed lost benefit restoration.

(c) *Disputed benefits.* (1) If the State agency determines that a household is entitled to restoration of lost benefits, but the household does not agree with the amount to be restored as calculated by the State agency or any other action taken by the State agency to restore lost benefits, the household may request a fair hearing within 90 days of the date the household is notified of its entitlement to restoration of lost benefits. If a fair hearing is requested prior to or during the time lost benefits are being restored, the household shall receive the lost benefits as determined by the State agency pending the results of the fair hearing. If the fair hearing decision is favorable to the household, the State agency shall restore the lost benefits in accordance with that decision.

(2) If a household believes it is entitled to restoration of lost benefits but the State agency, after reviewing the case file, does not agree, the household has 90 days from the date of the State agency determination to request a fair hearing. The State agency shall restore lost benefits to the household only if the fair hearing decision is favorable to the household. Benefits lost more than 12 months prior to the date the State agency was initially informed of the household's possible entitlement to lost benefits shall not be restored.

(d) *Computing the amount to be restored.* After correcting the loss for future months and excluding those months for which benefits may have been lost prior to the 12-month time limits described in paragraphs (b) and (c) of this section, the State agency shall calculate the amount to be restored as follows:

(1) If the household was eligible but received an incorrect allotment, the loss of benefits shall be calculated only for those months the household participated. If the loss was caused by an incorrect delay, denial, or termination of benefits, the months affected by the loss shall be calculated as follows:

(i) If an eligible household's application was erroneously denied, the month the loss initially occurred shall be the month of application, or for an eligible household filing a timely reapplication, the month following the expiration of its certification period.

(ii) If an eligible household's application was delayed, the months for which benefits may be lost shall be calculated in accordance with procedures in § 273.2(h).

(iii) If a household's benefits were erroneously terminated, the month the loss initially occurred shall be the first month benefits were not received as a result of the erroneous action.

(iv) After computing the date the loss initially occurred, the loss shall be calculated for each month subsequent to that date until either the first month the error is corrected or the first month the household is found ineligible.

(2) For each month affected by the loss, the State agency shall determine if the household was actually eligible. In cases where there is no information in the household's case file to document that the household was actually eligible, the State agency shall advise the household of what information must be provided to determine eligibility for these months. For each month the household cannot provide the necessary information to demonstrate its eligibility, the household shall be considered ineligible.

(3) For the months the household was eligible, the State agency shall calculate the allotment the household should have received. If the household received a smaller allotment than it was eligible to receive, the difference between the actual and correct allotments equals the amount to be restored.

(4) If a claim against a household is unpaid or held in suspense as provided in § 273.18, the amount to be restored shall be offset against the amount due on the claim before the balance, if any, is restored to the household. At the point in time when the household is certified and receives an initial allotment, the initial allotment shall not be reduced to offset claims, even if the initial allotment is paid retroactively.

(e) *Lost benefits to individuals disqualified for fraud.* Individuals disqualified for fraud are entitled to restoration of any benefits lost during the months they were disqualified only if the decision which resulted in disqualification is subsequently reversed. For example, an individual would not be entitled to restoration of lost benefits for the 3-month period it was disqualified based solely on the fact that a criminal conviction could not be obtained, unless the individual successfully challenged the 3-month disqualification in a separate court action. For each month the individual was disqualified, the amount to be restored, if any, shall be determined by comparing the allotment the household received with the allotment the household would have received had the disqualified member been allowed to participate. If the household received a smaller allotment than it should have received, the difference equals the amount to be restored. Benefits shall be restored regardless of the length of time that has elapsed since the household member was disqualified.

(f) *Method of restoration.* Regardless of whether a household is currently eligible or ineligible, the State agency shall restore lost benefits to a household by issuing an allotment equal to the amount of benefits that were lost. The amount restored shall be issued in addition to the allotment currently eligible households are entitled to receive. The State agency shall honor reasonable requests by households to restore lost benefits in monthly in-

stallments if, for example, the household fears the excess coupons may be stolen, or that the amount to be restored is more than it can use in a reasonable period of time.

(g) *Changes in household composition.* Whenever lost benefits are due a household and the household's membership has changed, the State agency shall restore the lost benefits to the household containing a majority of the individuals who were household members at the time the loss occurred. If the State agency cannot locate or determine the household which contains a majority of household members the State agency shall restore the lost benefits to the household containing the head of the household at the time the loss occurred.

(h) *Accounting procedures.* Each State agency shall be responsible for maintaining an accounting system for documenting a household's entitlement to restoration of lost benefits and for recording the balance of lost benefits that must be restored to the household. Each State agency shall at a minimum, document how the amount to be restored was calculated and the reason lost benefits must be restored. The accounting system shall be designed to readily identify those situations where a claim against a household can be used to offset the amount to be restored.

(i) *Losses of benefits that occurred prior to elimination of the purchase requirement.* Households assigned a purchase requirement that was too high or assigned an incorrect household size shall be entitled to restoration of lost benefits if the household received fewer bonus stamps as a result. The amount to be restored is equal to the difference between the bonus stamps the household received and the correct amount the household should have received. State agencies shall restore the lost benefits in accordance with the procedures outlined in this section.

§ 273.18 Claims against households.

(a) *Establishing claims against households.* Each State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive. Instances which may result in a claim include, but are not limited to, the following:

(1) The household failed to provide the State agency with correct or complete information.

(2) The household failed to report to the State agency changes in its household circumstances.

(3) The household altered its ATP.

(4) The household transacted both the original and its replacement ATP.

(5) The State agency failed to take prompt action on a change reported by the household.

(6) The State agency incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment.

(7) The State agency incorrectly issued duplicate ATP's to a household which were subsequently transacted.

(8) The household was found to be ineligible or eligible for fewer benefits than it received pending a fair hearing decision.

(b) *Nonfraud claims.* Nonfraud claims are those claims established against households for overissuances which were not caused by fraud, such as, but not limited to, overissuances caused by administrative error on the part of the State agency or a misunderstanding or inadvertent error on the part of the household.

(1) *Criteria for establishing a nonfraud claim.* If less than 12 months has elapsed between the month a nonfraud overissuance occurred and the month the State agency discovered a specific case involving an overissuance, the State agency shall take action to establish a claim against the household that received the overissuance. A nonfraud claim shall not be established if an overissuance occurred as a direct result of the following errors:

(i) A State agency failed to insure that a household fulfilled the following procedural requirements:

(A) Signed the application form;

(B) Completed a current work registration form;

(C) Was certified in the correct project area;

(ii) A household continued to receive food stamp allotments after its certification period has expired without benefit of a reapplication determination, regardless of a subsequent determination of eligibility or ineligibility.

(iii) A household transacted an expired ATP, unless the household altered its ATP; or

(iv) A household did not receive food stamp benefits at a reduced level because its public assistance grant changed and the State agency failed to act.

(2) *Calculating the amount of the nonfraud claim.* (i) After excluding those months that are more than 12 months prior to the date the overissuance was discovered, the State agency shall determine the correct amount of food stamp benefits the household should have received for those months the household participated while the overissuance was in effect. In cases involving reported changes, the State agency shall determine the month the overissuance initially occurred as follows:

(A) If, due to a misunderstanding or inadvertent error on the part of the household, the household failed to report a change in its household circumstances within 10 days of the date the change became known to the household, the first month affected by the household's failure to report shall be the month after the month in which the change occurred.

(B) If the household timely reported a change, but the State agency did not timely act on the change, the first month affected by the State's failure to act shall be the first month the State agency should have made the change effective. Therefore, if a notice of adverse action was required but was not sent, the State agency shall assume that the maximum advance notice period as provided in § 273.13(a)(1) would have expired without the household requesting a fair hearing.

(ii) If the household received a larger allotment than it was entitled to receive, the State agency shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received.

(iii) After calculating the amount of the nonfraud claim, the State agency shall offset the amount of the claim against any amounts which have not yet been restored to the household in accordance with § 273.17. The State agency shall then initiate collection action for the remaining balance, if any.

(3) *Collecting nonfraud claims.* (i) State agencies shall initiate collection action on all nonfraud claims unless the claim is collected through offset or one of the following conditions apply:

(A) The total amount of the nonfraud claim is less than $35.

(B) The State agency has documentation which shows that the household cannot be located.

(ii) State agencies shall initiate collection action by sending the household a written demand letter, designed by FNS, which informs the household of the amount owed, the reason for the claim, the period of time the claim covers, any offsetting that was done to reduce the claim, how the household may pay the claim, and the household's right to a fair hearing if the household disagrees with the State agency's determination. In addition, the demand letter for nonfraud claims must include a statement which specifies that, if a household falls behind in making payments or is unable to pay the claim, the household's eligibility or level of benefits will not be affected. FNS may grant deviations from the designed letter under conditions specified in § 273.2(b). If the household pays the claim, payments shall be accepted and submitted to FNS in accordance with the procedures outlined

in paragraphs (e) and (f) of this section. If the household does not respond to the first demand letter, additional demand letters shall be sent at reasonable intervals such as 30 days, until the household has responded by paying or agreeing to pay the claim, or until the criteria for suspending collection action, as specified in paragraphs (b)(4) of this section, have been met.

(4) *Criteria for suspending collection of a nonfraud claim.* A claim shall be suspended if no collection action was initiated because of conditions specified in paragraph (3)(i) of this section. If collection action was initiated, and at least one demand letter has been sent, further collection action shall be suspended when:

(i) The household is financially unable to pay the claim;

(ii) There is little likelihood that the household will pay the claim;

(iii) The household cannot be located; or

(iv) The cost of further collection action is likely to exceed the amount that can be recovered.

(5) *Terminating collection action of a nonfraud claim.* A claim shall be determined uncollectible after it is held in suspense for 3 years. A State agency may use an uncollectible claim to offset benefits in accordance with § 273.17.

(c) *Fraud claim.* A claim shall be handled as a fraud claim only if an administrative fraud hearing or a court of appropriate jurisdiction has found a household member committed fraud as defined in § 273.16(b). Prior to the determination of fraud, the claim against the household shall be handled as a nonfraud claim.

(1) *Establishing a fraud claim.* For each month that a household member fraudulently participated, the State agency shall determine the correct amount of food stamp benefits, if any, the household was entitled to receive. The amount of the fraud claim shall be calculated back to the month the fraudulent act occurred, regardless of the length of time that elapsed until the determination of fraud was made. If the household member is determined to have committed fraud by knowingly, willfully and with deceitful intent failing to report a change in its households circumstances, the first month benefits were overissued shall be the month after the month in which the change occurred. Once the amount of the fraud claim is established, the State agency shall offset the claim against any amount of lost benefits that have not yet been restored to the household in accordance with § 273.17.

(2) *Collecting fraud claims.* (i) If a household member is found to have committed fraud at either an administrative fraud hearing or a court of appropriate jurisdiction, the State agency shall initiate collection action unless the household has repaid the overissuance as a result of nonfraud demand letters, the State agency has documentation which shows the household cannot be located or the legal representatives prosecuting a member of the household for fraud advise in writing that collection action will prejudice the case. In cases where a household member was found guility of fraud by a court, the State agency shall request the matter of restitution be brought before the court.

(ii) Collection action shall be taken by sending the household a written demand letter, designed by FNS, which informs the household of the amount owed, the reason for the claim, the period of time the claim covers, any offsetting that was done to reduce the claim, how the household may pay the claim, and the household's right to a fair hearing if the household disagrees with the State agency's determination of the amount of the claim. FNS may grant deviations from the designed demand letter under conditions specified in § 273.2(b). A written demand letter for a fraud claim shall be sent even if the household has previously received a nonfraud demand letter, because the time period covered by the claim is different for fraud and nonfraud claims. In addition to the written demand letter, a personal contact shall be made, if possible.

(iii) If the household agrees to pay the claim after the first demand letter, the State agency shall follow the procedures for collecting and submitting payments as prescribed in paragraphs (e) and (f) of this section. If the household does not respond to the first demand letter, additional demand letters shall be sent at reasonable intervals, such as 30 days, until the household agrees to pay the claim, or the criteria for suspending or terminating collection action as specified in paragraph (c)(3) of this section have been met.

(3) *Criteria for suspending collection action.* The State agency shall suspend collection action at any time it has documentation that the household cannot be located. If the State agency has sent at least one demand letter for claims under $100, at least two demand letters for fraud claims between $100 and $400, and at least three demand letters for fraud claims of more than $400, further collection shall be suspended when:

(i) The household is financially unable to pay the claim;

(ii) There is little likelihood that the State agency can collect or enforce collection of any significant sum from the household; or

(iii) The cost of further collection action is likely to exceed the amount that can be recovered.

(4) *Criteria for terminating collection action.* A claim shall be determined uncollectible after it is held in suspense for 3 years. A State agency may use an uncollectible claim to offset benefits in accordance with § 273.17.

(d) *Changes in household composition.* If a household's membership has changed since the overissuance occurred, the State agency shall initiate collection action against the head of the household. If the head of the household is no longer living or cannot be located, the State agency shall initiate collection action against the household containing a majority of the individuals who were household members at the time the error occurred.

(e) *Methods of collecting payments.* (1) State agencies shall collect nonfraud and fraud claims in one of the following ways:

(i) *Lump sum.* State agencies shall collect payments from households in one lump sum if the household is financially able to pay the claim in one lump sum.

(ii) *Installments.* If the household has insufficient liquid resources or is otherwise financially unable to pay the claim in one lump sum, payments shall be accepted by the State agency in regular installments. If the full amount of the claim cannot be liquidated in 3 years without creating a financial hardship on the household, the State agency shall compromise the claim by reducing it to an amount that will allow the household to pay the claim in 3 years. A State agency may use the full amount of the claim to offset benefits in accordance with § 273.17.

(2) State agencies may initiate civil court action to obtain payment of the claim. However, the State agency shall not deny, terminate or reduce a household's benefits for failure to repay a claim, to agree to a repayment schedule, or to make the agreed upon payments. Nor shall the State agency threaten the household with a denial, termination or reduction in benefits or otherwise infer that it has the power to do so.

(f) *Submission of payments.* (1) No later than 30 days after the end of each calendar month, each State agency shall submit to FNS a single check, draft or warrant which consolidates on a statewide basis all of the payments collected at the State and local level during the previous calendar month. State agencies shall not allow more than 60 days to elapse between the date a household makes a payment on a claim and the date the payment is submitted to FNS. Each

State agency shall also submit a monthly report to FNS which details the State's activities relating to claims against households. This report is also due no later than 30 days after the end of each calendar month and shall be submitted even if the State agency has not collected any payments.

(2) In cases where FNS has billed a State agency for negligence, any amounts collected from households in payment of overissuances which were caused by the State's negligence will be credited by FNS. When submitting these payments, the State agency shall include a note in the remarks section of the monthly reporting form specified in paragraph (f)(1) of this section which shows the amount that should be credited against the State's bill.

(g) *Claims discharged through bankruptcy.* State agencies shall act on behalf of, and as, FNS in any bankruptcy proceeding against bankrupt households owing food stamp claims. State agencies shall possess any rights, priorities, interests, liens or privileges, and shall participate in any distributions of assets, to the same extent as FNS. Acting as FNS, State agencies shall have the power and authority to file objections to discharge, proofs of claims, exceptions to discharge, petitions for revocation of discharge, and any other documents, motions or objections which FNS might have filed. Any amounts collected under this authority shall be transmitted to FNS as provided in paragraph (f) of this section.

(h) *Accounting procedures.* Each State agency shall be responsible for maintaining an accounting system for monitoring claims against households. At a minimum, the accounting system shall be designed to readily accomplish the following:

(1) Document the circumstances which resulted in a claim, the procedures used to calculate the claim, the methods used to collect the claim and, if applicable, the circumstances which resulted in suspension or termination of collection action.

(2) Identify those situations in which an amount not yet restored to a household can be used to offset a claim owed by the household.

(3) Identify those households that have failed to make installment payment on their claims.

(4) Document how much money was collected in payment of a claim and how much was submitted to FNS.

§ 273.19 Sixty-day continuation of certification.

(a) *Eligibility criteria.* The State agency shall provide for continuation of the certification of any household for 2 months after the month the household moves from one project area to another within the State or between States if the household:

(1) Membership does not change;

(2) Continues to meet the definition of a household as provided in § 273.1(a);

(3) Was not certified under disaster eligibility standards as provided in part 280 or was not certified under expedited procedures in § 273.2(i) unless the verification that was initially postponed was subsequently completed; and

(4) Does not contain an SSI member when moving into the cash-out States of Massachusetts or Wisconsin.

(b) *Former project area.* The project area from which the household is moving shall prepare the form FNS-286, certification of transfer of household benefits. If the household has received its coupon allotment for the month in which the move takes place, the project area shall authorize the extension of certification for the 2 months subsequent to the move. The form FNS-286 is given to the household for delivery to the new project area office.

(c) *New project area.* (1) The project area to which the household moves shall accept the form FNS-286 and issue the allotment authorized by the form to households which report compliance with the criteria in paragraph (a) (1), (2), and (4) of this section. At the time the household provides the form to the new project area, the household shall report any changes in circumstances. The new project area will act on changes according to § 273.12, except in no event would the changes reported affect the initial issuance under the form FNS-286. However, the second issuance in the new project area, if any, shall reflect changes reported.

(2) If the household has participated in the former project area in the month of the move, and presents the form FNS-286 to the new project area that same month, it shall be accepted and acted on in time for the next month's issuance. The first issuance shall be based on the income reflected on the form FNS-286.

(3) If the household has not participated in the former project area in the month of the move and presents the transfer form to the new project area that same month, the household will be provided an opportunity to participate in that month. The first issuance shall be based on the income reflected on the transfer form.

(4) If the household anticipates zero net monthly income upon its arrival in the new project area, an exception shall be made to the use of the transfer form and recorded income figures. The household may reapply and receive expedited service.

(d) *Subsequent actions.* (1) Households participating on the basis of a form FNS-286 shall be entitled to all procedural rights of any other food stamp household, including notice of adverse action on reported changes, and notice of expiration prior to the expiration of the second month of issuance authorized by the form FNS-286.

(2) Households may elect to be certified in the new project area at any time during their participation under the form FNS-286.

(3) Households which move from the new project area during the 2 months covered by the form FNS-286 shall be issued:

(i) A form FNS-286 for the balance of the period covered by original form, and which reflects the changes reported at the time the form was accepted in the new project area;

(ii) A new form FNS-286 for an additional 2 months if the household was recertified in the new project area and otherwise qualifies for a transfer of certification as outlined in paragraph (a) of this section.

(e) *Continuing the certification of households moving within a State.* State agencies shall provide for the continuous service to certified households that meet the criteria in paragraph (a) of this section and that move from one political subdivision to another in States where the State has been designated a single project area. The State agency may use the form FNS-286 or may develop its own system for transferring records. The State agency may, with prior approval of FNS, substitute its own system of transferring records for households moving from one project area to another within the State. If a form FNS-286, is not used, households moving from one political subdivision to another within a project area or moving from one project area to another within the State shall have the same continuation rights as households entitled to a form FNS-286, as defined by this section.

(f) *Control of forms.* The State agency shall provide for the secure storage of form FNS-286, and shall maintain controls to prevent or detect unauthorized issuance, acquisition, acceptance, use, transfer, or alteration of this form.

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4. Parts 274 and 275 remain in force and effect but are redesignated as parts 280 and 277, respectively. The new part 274 reads as follows:

PART 274—ISSUANCE AND USE OF FOOD COUPONS

Sec.

Sec.

AUTHORITY: 91 Stat. 958 (7 U.S.C. 2011-2027).

§ 274.1 State agency issuance responsibilities.

(a) *Basic issuance requirements.* Each State agency is responsible for the timely and accurate issuance of coupons to eligible households in accordance with these regulations. The State level agency shall establish an issuance and accountability system which will insure that (1) only certified households receive benefits; (2) coupons are accepted, stored, and protected after delivery to receiving points within the State; (3) program benefits are timely distributed in the correct amounts; and (4) coupon issuance and reconciliation activities are properly conducted and accurately reported to FNS.

(b) *Contracting or delegating issuance responsibilities.* The State agency may assign to other parties such as banks, savings and loan associations, the Postal Service, community action agencies, and migrant service agencies the responsibility for issuance and storage of coupons.

(1) Any assignment of issuance functions shall clearly delineate the responsibilities of both parties. The State agency remains responsible, regardless of any agreements to the contrary, for insuring that assigned duties are carried out in accordance with these regulations. In addition, the State agency is strictly liable to FNS for all losses of coupons, even if those losses are the result of the performance of issuance, security, or accountability duties by another party.

(2) All issuance contracts shall follow procurement standards set forth in part 277. The State agency shall contract only with responsible contractors who possess the ability to perform successfully under the terms and conditions of the proposed procurement. In making its selection, the State agency shall consider contractor integrity, the record of past performance, financial, and technical resources, and the availability of other necessary resources. State agencies may permit subcontracting of assigned issuance responsibilities. However, the primary contractor shall remain responsible and liable to the State agency for insuring that the terms of the contract are carried out.

(3) The State agency shall not assign the issuance of coupons to any retail grocery store authorized to redeem coupons from participant households. This restriction may be waived if the State agency can demonstrate, to the satisfaction of FNS, that such an arrangement would be in the best interests of the program.

(4) FNS does not encourage assignment of issuance activities to any entity in the same interrelated corporate structure with an authorized retail food store. However, such entities may be coupon issuers if they are fiscally autonomous, physically separate and employ a different trade name from the retail food store. FNS does not encourage the assignment of issuance activities to firms located within the confines of retail food stores. However, the State agency may contract with a bank or credit union located in such facilities provided that it is financially independent of the retail grocer and is chartered under Federal or State law.

(5) The State agency may contract with the U.S. Postal Service for the issuance of food coupons. The Department and the Postal Service have signed an agreement which governs coupon issuance by the Postal Service. A State agency's contract with the Postal Service cannot exempt the State agency from the requirements that it comply with these regulations. However, State agencies may negotiate contracts for issuance with the Postal Service on all terms and conditions as long as such provisions do not conflict with these regulations.

(c) *State monitoring of coupon issuers.* (1) The State agency's accountability system shall include procedures for monitoring coupon issuers to assure that the day-to-day operations of all coupon issuers comply with these regulations, to identify and correct deficiencies and to report violations of the Act or regulations to FNS.

(2) The State agency shall conduct an onsite review of each coupon issuer and bulk storage point at least once every 3 years. All offices or units of a coupon issuer are subject to this review requirement. This review requirement may be fulfilled in part or in total by the performance reporting review system, part 275. The State agency shall base each review on the specific activities performed by each coupon issuer or bulk storage point. A physical inventory of coupons shall be taken at each location and that count compared with perpetual inventory records and the monthly reports of the coupon issuer or bulk storage point. This review may be conducted at the offices of subissuers or at each issuance office when a coupon issuer or bulk storage point operates more than one office. The State agency may delegate this review responsibility to another unit of the State government or contract with an outside firm with expertise in auditing and accounting. State agencies may use the results of reviews of coupon issuers by independent audit or accounting firms so long as the food coupon issuance operations of the coupon issuer are included in the review. Except in unusual circumstances, the Postal Inspection Service will conduct onsite reviews of post office issuance operations.

§ 274.2 Issuance systems.

The State agency shall arrange for the issuance of coupons to eligible households.

(a) *System classifications.* State agencies may issue food coupons through: (1) A household issuance record (HIR) card system in which the authorizing document is maintained at the issuance office, (2) an authorization to participate (ATP) system in which an authorizing document is distributed on a monthly basis to the household and surrendered to the coupon issuer when coupons are obtained, or (3) a direct coupon mailout system. In addition, the State agency may develop an automated issuance system, such as one using online issuance terminals, which cannot be readily categorized as either an HIR card or ATP system. Such alternative or modified systems shall meet the accountability requirements established in these regulations.

(b) *Advance planning documentation.* State agencies must comply with the procurement requirements of part 277 for the acquisition, design, development, or installation of automated data processing (ADP) equipment. With certain exceptions detailed in part 277, State agencies must receive prior approval for the design and acquisition of ADP systems through submission of advance planning documents (APD's).

(c) *Certification documentation.* The State agency shall use either a notice of change or an HIR card to document and transmit information on household eligibility or participation from the certification unit to the data management unit of the State agency.

(d) *HIR master file.* (1) The State agency shall establish an HIR master file which is a composite of the issuance records of all certified food stamp households. The State agency shall establish the HIR master file in a manner compatible with the system used for maintaining case records and divide the HIR master file into active and inactive HIR's. The HIR master file shall contain all the information

needed to identify certified households, issue ATP's, record the participation activity for each household and supply all information necessary to fulfill the reporting requirements of FNS.

(2) The HIR master file shall be kept current and accurate. HIR's will be updated, or terminated based upon notices of change and controls for expired certification periods.

(3) Before establishing an HIR for a participant household, the State agency shall check the HIR master file to insure that the household is not currently participating or disqualified. If the ATP is issued under the expedited service requirements of § 273.2(i), the State agency shall complete as much of the HIR master file check as possible prior to issuance of the ATP. Any uncompleted checks shall be completed after issuance of the ATP and appropriate corrective action shall be taken.

(e) *ATP issuance.* (1) ATP's issued by the State agency shall contain at a minimum: (i) Serial number; (ii) case name, address, and food stamp case number;

(iii) coupon allotment household; (iv) expiration date; (v) project area for which that ATP is issued; and (vi) space for the signature of the household member or the authorized representative.

(2) The State agency may stagger the issuance of ATP's to certified households through the 15th day of the month provided that each household's cycle shall be established so that it receives its ATP at the same time every month and it has an opportunity to obtain its coupons prior to the end of the month.

(3) The State agency shall clearly mark each ATP with an expiration date. The ATP shall be valid for the entire month of issuance unless an ATP has been issued after the 25th day of the month. For ATP's issued after the 25th of the month, the State agency must either:

(i) Issue an ATP which shall not expire for a period of not less than 20 calendar days or until the end of the following month; or

(ii) Issue an ATP valid only until the end of the month, but inform the household that a valid replacement ATP will be provided if the household is unable to transact the ATP before its expiration date.

(4) The State agency shall void all ATP's mutilated or otherwise rejected during the preparation process. The voided ATP's shall either be filed for audit purposes or destroyed, provided destruction is witnessed by at least two persons and the State agency maintains a list of all destroyed ATP's.

(5) The State agency shall mail the ATP to the household in a first class, nonforwarding envelope, except when the ATP is hand delivered under expedited service as specified in paragraph (g) of this section. The State agency may also use certified mail for ATP delivery, and may use alternative means for ATP delivery for households which report two consecutive losses of ATP's through the mail.

(6) The State agency shall exercise the following security and controls for ATP's returned as undeliverable by the Postal Service:

(i) Record the ATP serial number, household name, and case number in a control log.

(ii) Keep the returned ATP's in secure storage with access limited to authorized personnel while attempts are made to locate the household. State agencies may void ATP's returned as undeliverable so long as households which report nondelivery can be provided immediate replacement ATP's.

(7) The State agency shall develop a method by which a household may designate an emergency authorized representative to obtain the household's allotment with a particular ATP. At a minimum, the method developed by the State agency shall require a space for the signature of the emergency authorized representative, and a space for a household member already named on the ID card to sign designating and attesting to the signature of the emergency authorized representative. Spaces for the designation of an emergency authorized representative may be on the ATP or the ID card (front or back) or on a separate form; however, the household shall not be required to travel to a food stamp office to execute the designation. Control comparable to that of a normal issuance transaction is achieved by the comparison of the signature of the household member named on the ID card with that designating the emergency authorized representative, and the signature on the ATP at the issuance point with the emergency authorized representative's signature attested to by the household member. A separate written designation is needed each time an emergency authorized representative is used.

(8) Prior to coupon issuance, the cashier shall ask the person requesting food stamps for identification as the certified participant, authorized representative or emergency representative. This person shall present to the cashier both the food stamp ID card and ATP. The cashier shall examine the ATP for authenticity, alteration, and date of expiration. If the ATP is valid the person requesting food stamps shall sign the ATP in the presence of the cashier. The cashier shall compare the signature on the ATP with the signature on the ID card. In cases where an emergency representative obtains the coupons, the signature, and identification check shall be governed by local agency policy as provided in paragraph (e)(7) of this section. If the person requesting coupons has already signed the ATP, the person shall be required to sign a separate piece of paper for signature comparison. If the signatures agree, coupons shall be issued in accordance with paragraph (h) of this section.

(9) The State agency shall clearly differentiate between initial, supplemental, and replacement ATP issuances in its accountability system.

(10) The coupon issuer shall reconcile its issuance on a daily basis.

(11) The State agency shall provide for the issuance of coupon replacements due to improper manufacture or mutilation.

(i) The State agency shall examine the improperly manufactured or mutilated coupons to determine the validity of the claim and the amount of coupons to be replaced.

(ii) If the State agency can determine the value of the improperly manufactured or mutilated coupons, the State agency shall replace the unusable coupons on a dollar-for-dollar exchange. After exchange, the State agency shall destroy the coupons in accordance with the procedures contained in § 274.8(b).

(iii) If the State agency cannot determine the value of the improperly manufactured or mutilated coupons, the State agency shall cancel the coupons by writing or stamping "canceled" across the face of the coupons and forwarding the coupons to FNS for a determination of the value by the U.S. Bureau of Engraving and Printing.

(f) *HIR card issuance system.* In an HIR card issuance system, the State agency shall divide the issuance responsibilities among a receptionist, cashier, and supervisor.

(1) The receptionist shall maintain a separate daily tally sheet in duplicate for each cashier in the issuance unit to record the individual daily issuance transactions.

(2) The issuance supervisor shall initiate and distribute daily, or as appropriate, a cashier's daily report for each cashier to account for coupons issued.

(3) The receptionist shall check the ID card of the person wishing to obtain coupons against the HIR card from the HIR master file. An emergency representative may be needed when none of the persons named on the ID is available to obtain the household's coupons. The household shall not be required to travel to the food stamp office to execute the designation but an emergency representative must present a signed written statement from the head of the house-

hold or spouse authorizing the issuance of food stamps for the certified household. The emergency representative must also sign the written statement from the household ID card to obtain the allotment. Control comparable to that of a normal issuance transaction is achieved by the comparison of the signature of the household member named on the ID card with that designating the emergency authorized representative, and the signature on the HIR at the issuance point with the emergency authorized representative's signature attested to by the household member. If satisfied with the identification, the receptionist shall select the daily tally sheet of the cashier from whom the household will receive the allotment, enter information about the transaction, and initial the HIR card before it goes to the cashier.

(4) Upon receipt of the HIR card from the receptionist, the cashier shall enter the amount of coupons issued and initial the HIR card. The cashier shall also obtain the participant's signature on the HIR card and compare the signature with that on the ID card. If the signatures agree, the cashier shall issue coupons in accordance with paragraph (h) of this section.

(5) The coupon issuer shall reconcile daily its issuances using the daily tally sheet and the cashier's daily report.

(6) The State agency may stagger the issuance of coupons to certified households through the 15th of the month.

(7) The State agency shall provide a household certified for program participation after the 25th of the month the opportunity to obtain its allotment for at least 20 calendar days or until the end of the following month.

(8) The State agency shall provide for the issuance of coupon replacements due to improper manufacture, or mutilation.

(i) The State agency shall examine the improperly manufactured or mutilated coupons to determine the validity of the claim and the amount of coupons to be replaced.

(ii) If the State agency can determine the value of the improperly manufactured or mutiliated coupons, the State agency shall replace the unusable coupons on a dollar-for-dollar exchange. After the exchange, the State agency shall destroy the coupons in accordance with the procedures contained in § 274.8(b).

(iii) If the State agency cannot determine the value of the improperly manufactured or mutilated coupons, the State agency shall cancel the coupons by writing or stamping "canceled" across the face of the coupons and forward the coupons to FNS for a determination of the value by the U.S. Bureau of Engraving and Printing.

(g) *Expedited service.* (1) The State agency shall manually prepare and issue ATP's at the local level if necessary to provide an opportunity to participate to households certified on an expedited basis in accordance with § 273.2(i), to comply with the processing standards for initial and recertifications and for action on reported changes, and to replace lost or stolen ATP's or allotments. To minimize the possibility of misuse of manually prepared ATP's, the State agency shall:

(i) Divide responsibility for the issuance of the ATP between at least two persons to prevent a single individual from having complete control over both the documents which authorize the issuance of ATP's and the ATP's themselves.

(ii) Record, immediately, on the HIR master file, the serial number and other issuance information from the ATP.

(2) For initial certifications, the State agency shall prevent duplicate or unauthorized participation by checking its records prior to issuing the manual ATP to assure the household is not currently certified for that month or is not disqualified from participation.

(3) The State agency shall issue an emergency replacement ATP only if the original ATP is reported lost or stolen in the period for which it was intended.

(i) Prior to authorizing the issuance of a replacement ATP, the State agency shall determine if:

(A) The household is currently certified;

(B) Sufficient time has elapsed for delivery to have been completed. Sufficient time shall not exceed 5 days from the mailing date.

(C) The lost or stolen ATP was valid for the current month, including any ATP's issued after the 25th of the previous month.

(ii) The participant must sign an affidavit stating that the original ATP will be returned to the State agency if recovered by the household. The affidavit shall be filed in the case file.

(iii) After two consecutive reported mail losses by a household, the State agency shall consider other means to deliver ATP's to the household.

(iv) On at least a monthly basis, the State agency shall provide a list of all ATP's reported as lost or stolen from the mail to the appropriate Postal Inspection Service. The State agency should assist the Postal Inspection Service during the investigation and shall, upon request, supply the Service with a facsimile of the original and replacement ATP's and a copy of the nonreceipt affidavit. The State agency shall advise the Service if the original ATP is transacted.

(4) In an HIR card system, the State agency shall provide an opportunity to participate to households certified on an expedited basis in accordance with § 273.2(i), to comply with processing standards for initial and recertifications and for action on reported changes.

(h) *Issuance of coupons to households.* The State agency shall issue coupon books in accordance with a table for coupon book issuance provided by FNS. The table provides participants with an efficient and economical distribution of the available coupons and coupon book types and assists FNS in maintaining proper inventory levels. The State agency may deviate from the table if the specified coupon books are unavailable. Exceptions from the table are authorized for blind and visually handicapped participants who request that all coupons be of one denomination. The State agency shall issue the coupon books in consecutive serial number order whenever possible, starting with the lowest serial number in each coupon book denomination. The household member whose name appears on the ID card shall sign the coupon books.

§ 274.3 Issuance of coupons through the mail.

(a) *Types of mail issuance systems.* The State agency may issue some or all of the coupon allotments through the mail. State agencies shall determine whether to use a regular mail issuance system or a direct coupon mailing system. A regular mail issuance system is one which uses an authorization document as an intermediate step in mail issuance. A direct coupon mailing system is one which does not use an authorization document. The system, controls and forms designed by the State agency to operate a regular or direct coupon mail issuance system must be approved by FNS.

(b) *Mail issuance controls and records.* (1) The State agency shall establish and maintain a mail issuance log to record requests for mail issuance and the date and amount of coupons issued.

(2) All operations involving the maintenance of coupon inventory records, assembly of coupon allotments, envelope stuffing, and preparation of envelopes for mailing shall, if at all possible, be performed by at least two persons. If these functions are performed by one person, a second party review shall be made to verify coupon inventory, the reconciliation of the mail issuance log, and the number of mailings prepared. Offices using prestuffing methods must provide for dual accountability during the stuffing and addressing operations and maintain a

perpetual coupon inventory control and mail issuance logs.

(3) The State agency shall establish controls which prevent a participant from obtaining coupons through both the mail and over-the-counter issuance systems.

(4) The State agency shall consult with appropriate postal officials concerning the schedule for mailing coupons, the approximate volume and value of the mailings, the type of envelopes to be used, and maintain liaison with postal officials to facilitate prompt, efficient, and safe delivery of coupon mailings to households.

(5) At least first-class mail shall be used in mailing coupon allotments. The coupons shall be mailed in sturdy nonforwarding envelopes or other nonforwarding mailing packages.

(6) To minimize mail theft exposure, direct mail issuances shall be staggered through the 10th day of the month, and may be staggered through the 15th day provided that each household will likely receive its coupons on the same date every month. The State agency shall insure that coupons are not mailed to concentrations of households with the same ZIP code on the same day. FNS may provide waivers to State agencies that present adequate documentation to indicate that thefts from the mail will not represent a significant problem.

(7) State agencies which rely exclusively on mail issuance shall insure that participants receive allotments on a timely basis and can receive expedited issuance in accordance with § 273.2(i) and § 274.2(g). State agencies must also provide timely replacement issuances either from the mailing center or local facilities. If the State agency cannot provide for expedited issuance through the mail issuance system, the State agency shall insure that it has an alternative issuance system to provide expedited service in accordance with § 273.2(i) and § 274.2(g).

(c) *Coupons lost in the mail.* (1) When a household reports the nondelivery of coupons issued through the mail, the State agency shall:

(i) Determine if the coupons were actually mailed;

(ii) Determine that sufficient time has elapsed for the coupons to have been received by the participant, but not more than 5 days;

(iii) Review the mail issuance log for the return of undelivered coupons;

(iv) Report all losses to the postal authorities. State agencies shall, in cooperation with the Postal Service, attempt to determine the cause of each nondelivery and effect appropriate corrective action. States shall also report to the postal authorities all patterns of losses in particular project areas or neighborhoods;

(v) Prepare and have the participant sign an affidavit;

(vi) Issue replacement coupons to the household within 5 days after the report of nondelivery has been received;

(vii) Record the report of nondelivery and the date of replacement on the mail issuance log; and

(viii) Take other action warranted by the reported nondelivery.

(2) After two consecutive reports of nondelivery concerning the same household, the State agency shall employ other issuance methods. These include:

(i) Using registered mail;

(ii) Arranging for the household to pick up its coupon allotment at a specified location; or

(iii) Moving the household from the mail issuance system to a regular over-the-counter system.

(3) If there is an increase in the loss of coupons issued through the mail, either in a particular area or throughout the mail issuance caseload, the State agency shall take corrective action to reduce the financial loss rate and improve service to participants. The State agency shall consult with appropriate postal officials to develop plans for corrective action to reduce mail losses or develop alternate means of delivery.

(4) Coupons are "in the mail" when deposited with the Postal Service. FNS will assume financial liability for all coupons lost in the mail if the coupons were issued in accordance with FNS policies and procedures.

(d) *Mail issuance reporting on the food coupon accountability report.* (1) All mail issuance activity, including the value of coupon mail issuance replacements, shall be reported on the form FNS-250, food coupon accountability report.

(2) Original allotments subsequently recovered by the issuance office during the current month shall be returned to inventory and noted on the mail issuance log. The replacement issuance for allotments received during the current month shall not be reported on the form FNS-250. The coupon issuer shall notify the post office of the return of coupon allotments previously reported as lost in the mail.

§ 274.4 Distribution of coupons.

(a) *Coupon inventory management.* The State agency shall establish a coupon inventory management system which insures that coupons are requisitioned and inventories are maintained in accordance with the requirements of these regulations.

(1) The State agency shall monitor the coupon inventories of the coupon issuers and bulk storage points to insure inventories are at proper levels and are not in excess of the reasonable needs of coupon issuers. The State agency shall consider, among other things, in determining the reasonable inventory needs, the ease and feasibility of resupplying such inventories from storage supplies within the State as well as from the manufacturer. The inventory levels at coupon issuers and bulk storage points should not exceed a 6-month supply, taking into account coupons on hand and on order.

(2) The State agency shall establish an accounting system for monitoring the inventory activities of coupon issuers. The State agency shall review the form FNS-250, from coupon issuers, and bulk storage points, to determine the propriety and reasonableness of the inventories. Forms FNS-261, advices of shipment, form FNS-300, advices of transfer, or an approved State agency form, and reports of returned mail issued coupons, reports of replacements of mail issued coupons, reports of improperly manufactured or mutilated coupons, reports of shortage or overage of food coupon books and physical inventory controls shall be used by the State agency to assure the accuracy of monthly reports and their compliance with required inventory levels and the accuracy and reasonableness of coupon orders.

(b) *Coupon controls.* The State agency shall establish control and security procedures to safeguard coupons, similar to those used to protect currency. The State agency and all persons or organizations acting on its behalf, shall take the necessary precautions to: (1) Safeguard coupons from theft, embezzlement, loss, damage, or destruction; (2) avoid unauthorized transfer, negotiation, or use of coupons; (3) avoid issuance and transfer of altered or counterfeit coupons; and (4) promptly report in writing to FNS any loss, theft, or embezzlement of coupons. The exact nature of security arrangements will depend on State agency evaluation of local coupon issuance and storage facilities. These arrangements must permit the timely issuance of coupons while affording a reasonable degree of coupon security.

(c) *State coupon requisitioning.* The State agency shall arrange for the ordering of coupons and the prompt verification and written acceptance of the contents of each coupon shipment. The State agency shall furnish FNS with appropriate delivery hours and the names of the persons authorized to sign delivery acknowledgments.

(d) *FNS review of requisitions.* FNS will assess the reasonableness and propriety of food stamp requisitions submitted by State agencies based on prior inventory changes and will notify the State agency of any adjustments made to requisitions.

(e) *FNS shipment of coupons.* FNS will ship coupons, printed in such denominations as it may determine necessary, directly to State agency designated receiving points. FNS will promptly advise the State agency in writing when coupons are shipped to receiving points using form FNS-261. Coupons shall be considered delivered to the State agency when FNS or its carrier has a signed receipt.

(f) *Shipment of coupons by the State agency.* (1) Once coupons have been accepted by receiving points within the State, any further movement of the coupons between coupon issuers and bulk storage points within the State is at the risk of the State agency. To minimize the risk of loss, coupons are usually shipped by armored car, armored vehicle, armored tractor/trailer, air, or the Postal Service. Movement of coupons by any of these methods of transportation is normally appropriate because stringent security is applied and the risk of loss is usually borne by the carrier.

(2) In every instance when coupons are transported the person(s) transporting coupons shall:

(i) Acknowledge their receipt, in writing;

(ii) Accord the coupons much protection as is reasonable;

(iii) Advise issuance supervisors of the routes to be taken, the shipment departure time and the estimated arrival time.

(g) *Specimen coupons.* FNS will provide nonnegotiable specimen coupons to State agencies and firms upon written request for the purpose of educating and training employees on program operations.

(1) The State agency or firm shall store specimen coupons in secure storage with access limited to authorized personnel. The State agency or firm shall keep a perpetual record of specimen coupon inventory.

(2) Specimen coupons that are mutilated, improperly manufactured, or otherwise unusable, shall be destroyed by the State agency or firm. Such destruction shall be witnessed by two persons and noted on the perpetual inventory record maintained for specimen coupons.

§ 274.5 Responsibilities of coupon issuers and bulk storage points.

(a) *Receipt of coupons.* Coupon issuers and bulk storage points shall promptly verify and acknowledge, in writing, the contents of each coupon shipment or coupon transfer delivered to them and shall be responsible for the custody, care, control, and storage of coupons.

(b) *Inventory levels.* Coupon issuers and bulk storage points shall maintain a proper level of coupon inventory not in excess of reasonable needs, taking into consideration the ease and feasibility of resupplying such coupon inventories. Such inventory levels should not exceed the 6-month supply provided for in § 274.4(a).

(c) *Monthly reporting.* Coupon issuers and bulk storage points shall report monthly to FNS, through the State agency, using form FNS-250. The State agency shall prescribe a report due date, taking into consideration the time needed to perform the functions required in § 274.8. These reports shall be signed by the coupon issuer or appropriate corporate official, certifying that the information is true and correct to the best of that person's knowledge and belief. Reports shall be submitted to FNS by the State agency by the 45th day following the end of the report month.

(d) *Supporting documentation.* Coupon issuers and bulk storage points shall submit to the State agency supporting documentation which will allow verification of the monthly report. At a minimum, such documentation shall include documents supporting coupon shipments, transfers, and issuances. in those States using an ATP issuance system, coupon issuers shall submit transacted ATP's batched according to each day's activity, in accordance with the schedule prescribed by the State agency but, in any case, not less often than monthly.

(e) *Improperly manufactured or mutilated coupons.* Coupon issuers and bulk storage points shall cancel improperly manufactured or mutilated coupons or coupon books by writing or stamping "canceled" across the face of the coupon(s) and coupon book(s). Depending upon State agency policy, the coupon issuer or bulk storage point shall forward the coupons with the appropriate documentation to the State agency, or hold the coupons in secure storage pending examination and destruction by the State agency at the coupon issuer or bulk storage point location.

§ 274.6 Reconciliation.

(a) *Verification of ATP issuance.* (1) In ATP issuance systems, the State agency shall verify the number of transacted ATP's received from the coupon issuers and the total value of authorized coupon issuances.

(2) ATP batches not reconciled shall be maintained intact by the State agency until the discrepancy is resolved with the coupon issuer.

(3) Following receipt and verification of the final batch of ATP's for the month, the State agency shall determine the total value of authorized issuances for each coupon issuer. Any expired or out-of-State ATP's shall be handled as coupon issuer errors and shall not be reported as authorized issuances on the reconciliation report required in § 274.8(a).

(b) *Reconciliation of ATP's with the HIR master file.* The State agency shall post and reconcile all transacted ATP's against the HIR master file. The reconciliation of ATP's shall be accomplished at the level in the State agency where the HIR was created from the notices of change. This posting and reconciliation shall, at a minimum, include for each ATP a comparison of the total coupon allotment. The State agency shall merge the records of the manually prepared initial, supplemental, and replacement ATP issuances with the HIR master file prior to posting and reconciling the transacted ATP's. Because ATP's issued after the 25th of the month may be redeemed in the following month and because supplemental ATP's may be issued during the month, the State agency shall establish a mechanism for the redemption and reconciliation of more than one valid ATP in 1 month. However, ATP's issued to replace ATP's reported lost or stolen shall be separately identifiable, as the transaction of both the original and replacement ATP represents a duplicate issuance which must be reported on a reconciliation report required in § 274.8(a).

(c) *Identification of unreconciled ATP's.* The State agency shall identify all transacted ATP's that are not reconciled with the HIR master file as expired, duplicate, altered, stolen, counterfeit, or out-of-State. Unreconciled ATP's shall be reported to FNS or a reconciliation report as required in § 274.8(a)(5). This identification shall be used to establish the liabilities of the State agency under part 276 and for determination of corrective or claims action.

(d) *HIR reconciliation to the case files.* In an HIR issuance system, the State agency shall conduct a semiannual comparison of the active and inactive HIR cards against the case files. At a minimum, 20 percent of both open and closed HIR cards shall be selected at random for the comparison. The State agency may limit selection of cases for review to those which were active during the previous 6 months. If the State agency discovers an HIR card during the review for which a case file cannot be located, the State agency shall conduct a total review of the active case files. The State agency shall immediately document and report any discrepancies discovered during the semiannual review to FNS.

§ 274.7 Issuance record retention and security.

(a) *Availability of issuance records.* The State agency shall maintain issuance records for a period of 3 years

from the month of origin. This period may be extended at the written request of FNS.

(1) Issuance records shall include, at a minimum: Notices of change, HIR cards, inventory records, transacted ATP's or similiar authorizing documents, forms FNS-250, and substantiating documents, cashier's daily reports, receptionist's daily tally sheets, and the HIR master file.

(2) In lieu of the records themselves, microfilm, microfiche, or computer tapes may be maintained, as long as they are easily retrievable for audit review purposes.

(b) *Control of issuance documents.* The State agency shall control all issuance documents which establish household eligibility while the documents are transferred and processed within the State agency. The State agency shall use numbers, batching, inventory control logs, or similiar controls from the point of initial receipt through the issuance and reconciliation process. The State agency shall also insure the security and control of ATP's in transit from the manufacturer to the State agency.

(c) *Accountable documents.* HIR cards, ATP's, and forms FNS-286 shall be considered accountable documents. The State agency shall provide the following minimum security and control procedures for these documents:

(1) Preprinted serial numbers;

(2) Secure storage;

(3) Access limited to authorized personnel;

(4) Bulk inventory control records;

(5) Subsequent control records maintained through the point of issuance or use; and

(6) Periodic review and validation of inventory controls and records by parties not otherwise involved in maintaining control records.

(d) *Notice of change and ID card security.* For notices of change which initiate, update, or terminate the HIR and blank ID cards, the State agency shall at a minimum, provide secure storage and limit access to authorized personnel.

§ 274.8 State agency reporting and destruction of unusable coupons.

(a) *State agency reporting.* (1) The State agency shall report to FNS when a project area, reconciliation point, or coupon shipment receiving point is created, changed, or terminated at least 30 days prior to the effective date of the action. A reconciliation point is that point in the State agency where transacted ATP's are reconciled with the HIR master file. Although initial notification may be made by telephone, the State agency shall confirm the information in writing as soon as possible.

(2) The State agency shall review form FNS-250 received monthly from coupon issuers and bulk storage points for accuracy, completeness, and reasonableness. The State agency shall attest to the accuracy of these reports and submit them to FNS so that they will be received in FNS by the 45th day following the end of the report month.

(3) The State agency shall submit to FNS a Form FNS-259, Food Stamp Mail Issuance Report, for each project area using a mail issuance system. the State agency shall verify the issuance by a comparison with the issuance on the appropriate coupon issuer's form FNS-250. This report shall be submitted to FNS so that it will be received in FNS by the 45th day following the end of each quarter.

(4) FNS shall review each form FNS-250 submitted through the State agency for completeness, accuracy, and reasonableness and shall reconcile inventory with shipping records. FNS will review State agency verification of coupon issuer and bulk storage point monthly reports. FNS may supplement this review by unannounced spot checks of inventory levels and coupon security arrangements at selected coupon issuers and bulk storage points.

(5) [Reserved]

(6) The State agency shall submit to FNS Form FNS-256, Monthly Report of Participation and Coupon Issuance, for each project area. The State agency shall compile figures after the end of the issuance month based on HIR card data or transacted ATP's. These figures shall be detailed by project area and include all issuances supported by issuance documents including expired, altered, stolen, counterfeit, and duplicate issuances which occurred during the report month. This report shall be submitted to FNS so that it will be received in FNS by the 45th day following the report month.

(b) *Destruction of unusable coupons.* (1) The State agency shall either require coupon issuers and bulk storage points to send unusable coupons to the State agency for destruction or hold the unusable coupons in secure storage pending examination and destruction by the State agency at the coupon issuer or bulk storage point location. After verification of the reports from the coupon issuers and bulk storage points, the State agency shall destroy improperly manufactured or mutilated coupons or coupon books received from or stored at the location of the coupon issuers and bulk storage points, and unusable coupons or coupon books returned by households, provided that:

(i) It has been determined that the value of coupons does not exceed $200 per coupon issuer or bulk storage point for any month; and

(ii) The State agency has determined that the coupons were in fact improperly manufactured or mutilated.

(2) The State agency shall destroy the coupons and coupon books by burning, shredding, tearing, or cutting so they are not negotiable. Two State agency officials shall witness and certify the destruction and forward the Form FNS-136, Certificate of Destruction of Food Coupons, with the form FNS-250.

(3) If the value of the coupons to be destroyed exceeds $200 per coupon issuer, the State agency shall request FNS approval prior to any destruction of the coupons.

(4) If either the coupon issuer, the bulk storage point or the State agency cannot determine whether coupons or coupon books were in fact improperly manufactured or establish the value of the coupons involved, the State agency shall promptly forward a written statement of findings and the canceled coupon(s) or coupon book(s) to FNS for a determination.

§ 274.9 Closeout of a coupon issuer.

(a) *Definition of responsibilities.* Whenever the services of a coupon issuer or bulk storage point are terminated, the State agency shall perform the responsibilities described below. If a coupon issuer or bulk storage point has more than one functioning unit and one of these facilities is terminated, the coupon issuer or bulk storage point shall fulfill the responsibilities described in paragraphs (b) and (c) of this section. The coupon issuer or bulk storage point shall notify the State agency of the pending termination of any of its services prior to the actual termination. The State agency shall promptly notify FNS.

(b) *Closeout accountability.* The State agency shall perform a closeout audit of a coupon issuer or bulk storage point within 30 days of termination of the issuance or storage point. The State agency shall report the findings of the audit to FNS immediately upon its completion. If the audit determines that the final FNS-250 is incorrect, the State agency shall promptly provide a corrected report to FNS.

(c) *Transfer of coupon inventory.* (1) Prior to the transfer of coupon inventory to another coupon issuer or bulk storage point, the State agency shall perform an actual physical count of coupons on hand.

(2) The State agency shall transfer the inventory to another coupon issuer or bulk storage point preferably within the same project area. The transfer of coupons shall be properly reported and documented by both the

point being terminated and the point receiving the inventory.

(d) *Maintenance of participant service.* (1) At least 30 days before actual termination of a coupon issuer, the State agency shall notify project area participants of the impending closure. Notification shall include identification of alternative issuance locations and available public transportation. The State agency shall post notices at the offices of the coupon issuer of the impending closure and may use mass media or ATP stuffers to advise participants about the expected closure of the issuance office.

(2) If closure of the issuer will affect a substantial portion of the caseload or a specific geographic area, the State agency shall take whatever action is necessary to maintain participant service without interruption.

(3) If a coupon issuer or bulk storage point is to be closed for noncompliance with contractual requirements and alternative issuance facilities or systems are not readily available, the State agency may continue to use the coupon issuer or bulk storage point for a limited time. In these situations, the State agency shall perform weekly onsite reconciliations of coupon issuance. The State agency shall continue to actively seek other issuance or storage alternatives.

§ 274.10 Use or redemption of coupons by eligible households.

(a) *Eligible food.* A household member should sign each coupon book issued to the household. The coupons may be used only by the household, or other persons the household selects, to purchase eligible food for the household, which includes, for certain households residing in certain designated areas of Alaska, the purchase of hunting and fishing equipment with coupons. Uncanceled and unendorsed coupons of $1 denomination, returned as change by authorized retail food stores, may be presented as payment for eligible food. All other detached coupons may be accepted only if accompanied by the coupon book which bears the same serial number as the detached coupons. It is the right of the household or the authorized representative to detach the coupons from the book.

(b) *Meals-on-wheels.* Eligible household members 60 years of age or over or members who are housebound, physically handicapped, or otherwise disabled to the extent that they are unable to adequately prepare all their meals, and their spouses, may use coupons to purchase meals prepared for and delivered to them by a nonprofit meal delivery service authorized by FNS.

(c) *Communal dining.* Eligible household members 60 years of age or over and their spouses, or those receiving SSI and their spouses, may use coupons issued to them to purchase meals prepared especially for them at communal dining facilities authorized by FNS for that purpose.

(d) *Addict/alcoholics.* Members of eligible households who are narcotics addicts or alcoholics and who regularly participate in a drug or alcoholic treatment and rehabilitation program may use coupons to purchase food prepared for them during the course of such program by a private nonprofit organization or institution authorized by FNS.

(e) *Alaskan hunting/fishing equipment.* Eligible households residing in areas of Alaska determined by FNS as areas where access to retail food stores is difficult and who rely substantially on hunting and fishing for subsistence may use all or any part of the coupons issued to them to purchase hunting and fishing equipment such as nets, hooks, rods, harpoons, and knives, but excluding firearms, ammunition, and other explosives.

(f) *Use of ID cards.* Upon request, the household or the authorized representative shall present the household's ID card to the retail food store or meal service when exchanging food coupons for eligible food.

(g) *Prior payment prohibition.* Coupons shall not be used to pay for any eligible food purchased prior to the time at which the coupons are presented to authorized retail food stores or meal services. Neither shall coupons be used to pay for any eligible food in advance of the receipt of food, except when prior payment is for food purchased from a nonprofit cooperative food purchasing venture.

(h) *Cash change.* When change in an amount less than $1 is required in a coupon transaction, the household shall receive the change in cash not to exceed 99 cents.

§ 274.11 Return of coupons.

(a) *Refund of purchase requirement.* In the event of voluntary termination of participation in the program by a household or death of the head of the household, properly issued coupons may be returned to FNS for a refund on the same ratio of cash to coupons as was applied by the State agency in the issuance of the coupons to the household.

(b) *Filing refund request.* A request for a refund shall be submitted to the State agency. The request for such a refund shall be made in accordance with the following requirements:

(1) It shall be in ink or typed.

(2) It shall contain the claimant's address.

(3) It shall be dated and signed.

(4) The unused coupons shall be attached. The State agency shall provide a copy of the refund request to the household as a receipt for the coupons.

(c) *FNS payments.* State agencies shall forward claims to FNS for payment. The claimant's request for a refund, a completed Form FNS-287, Request for Reimbursement or Notification of Return of Unused Food Coupons for Refund, and the unused coupons shall be forwarded to FNS by the State agency.

(d) *Limit on refunds.* Six months after elimination of the purchase requirement, no refunds shall be paid for coupons returned to FNS. Coupons will be accepted by FNS for accounting and disposition only. Households should be reminded that even if they are not currently eligible, properly issued coupons may be redeemed by them at any time in authorized retail stores.

(e) *Old series coupon exchange.* Households which still have old series coupons shall be entitled to a dollar for dollar exchange of old series coupons for new series coupons. When only a 50-cent coupon is offered for exchange or the coupons offered include an odd number of 50-cent coupons, a new series $1 coupon will be given for the odd 50-cent coupon. Households in possession of old series coupons shall submit the coupons and a request for exchange to the State agency. State agencies may make direct exchange to claimants or request FNS to make the exchange.

PART 277 REDESIGNATED FROM PART 275.

PART 278 REDESIGNATED FROM PART 272.

PART 279 REDESIGNATED FROM PART 273.

PART 280 REDESIGNATED FROM PART 274.

NOTE.—The Food and Nutrition Service has determined that this document contains a major proposal requiring preparation of an economic impact statement under Executive Order 11821 and OMB Circular A-107 and certifies that an economic impact statement has been prepared.

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps.)

Dated: October 11, 1978.

CAROL TUCKER FOREMAN,
Acting Secretary.

[FR Doc. 78-29122 Filed 10-16-78; 8:45 am]

federal register

TUESDAY, OCTOBER 17, 1978
PART III

DEPARTMENT OF LABOR

■

YOUTH COMMUNITY CONSERVATION AND IMPROVEMENT PROJECTS AND YOUTH EMPLOYMENT AND TRAINING PROGRAMS FOR INDIANS AND NATIVE AMERICANS

Final Implementation Rules

[4510-30-M]

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR

PART 94—GENERAL PROVISIONS FOR PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

PART 97—SPECIAL FEDERAL PROGRAMS AND RESPONSIBILITIES UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Indian and Native American Youth Programs Under the Comprehensive Employment and Training Act

AGENCY: Department of Labor.

ACTION: Final rules.

SUMMARY: These rules are for the purpose of implementing the youth community conservation and improvement projects and youth employment and training programs for Indians and native Americans under the Youth Employment and Demonstration Projects Act of 1977 (YEDPA). The purpose of these new programs is to employ and increase the future employability of young Indians and native Americans; to help coordinate and improve existing career development, employment, and training programs; and to test different approaches in solving the employment problems of Indian and native American youth.

DATE: Effective date: November 16, 1978.

ADDRESS: Send comments to Alexander S. MacNabb, Director, Division of Indian and Native American Programs, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213.

FOR FURTHER INFORMATION CONTACT:

Alexander S. MacNabb at the above address or phone 202-376-6102.

SUPPLEMENTARY INFORMATION: The Department is publishing these regulations in final form because the programs are already underway and guidance is needed in their day-to-day administration. All eligible applicants have been given the opportunity to comment. Comments received were incorporated where appropriate. This finding constitutes a waiver of the Department's regulation 29 CFR 2.7. Nevertheless, comments may be submitted during the 30-day period following this publication date. The Youth Employment and Demonstration Projects Act (YEDPA) of 1977, Pub. L. 95-93, became effective on August 5, 1977. It amended the Comprehensive Employment and Training Act (CETA) of 1973 by adding several new programs for youth, including Indian and native American youth. The purpose of these new programs is to employ and increase the future employability of young persons, to help coordinate and improve existing career development, employment, and training programs, and to test different approaches to solving the employment problems of youth. YEDPA contains four distinct programs: (1) The Young Adult Conservation Corps (YACC) which emphasizes the participation of youth in needed conservation work on our Nation's public lands; (2) youth incentive entitlement pilot projects (YIEPP) designed to test the effect of a year-round structured work experience to encourage school completion; (3) youth community conservation and improvement projects (YCCIP) designed to provide jobs, employment experience, and work skills and habits for youth in community betterment projects; and (4) youth employment and training programs (YETP) structured to make available to youth a broad range of employment and training services designed to enable youth to make an orderly transition from school to career employment.

Section 702(a) of the Comprehensive Employment and Training Act (CETA) states that the Secretary may prescribe rules and regulations as he deems necessary to carry out the purposes of CETA. Pursuant to this authority, the Department of Labor is setting forth in this document the Federal regulations governing two of the new youth programs, YETP and YCCIP, for Indian and native American youth.

Both programs are to be operated by Indian and native American prime sponsors under section 302(c)(1) of CETA and administered at the national level by the Employment and Training Administration, Office of National Programs, Division of Indian and Native American Programs.

Requirements for YCCIP

Eligibility for participation

Section 332 of CETA requires that any unemployed youth age 16 to 19, inclusive, is eligible for YCCIP. Section 354 of CETA further requires that appropriate efforts be made to insure that participating youths shall be those who are experiencing severe difficulties in obtaining employment, including those who have demonstrated special needs, as determined by the Secretary.

Supervision at worksites

Section 335 of CETA requires that project applicants assure that there are adequate numbers of supervisory personnel on the project. Because well-supervised activities are essential both for enhancing work habits and the development of skills, there must be at least the equivalent of one full-time supervisor for every 12 youths. It is recommended that prime sponsors hire as supervisors appropriate participants in their other CETA programs.

Limitations on use of funds

Under YCCIP no less than 75 percent of the funds may be used for participants' wages and fringe benefits. The remaining 25 percent may be divided at the prime sponsor's discretion between administration, supervision, services, training and the cost of materials, equipment, and supplies, except that in no case may more than 20 percent be spent on administrative costs. Materials, supplies, etc., acquired under any other CETA program may be used in this program.

Prohibition of public service employment (PSE)

PSE components are prohibited in both YCCIP and YETP.

Requirements for YETP

Eligibility for participation

Section 345(a) of CETA emphasized participation in YETP by individuals who are in families whose income does not exceed 85 percent of the lower living standard income level determined by the Bureau of Labor Statistics. However, the legislation and regulations permit the provision of employment-related services to youth from families above that income level.

Section 345(a) of CETA also allows that 10 percent of the funds available for YETP may be used for programs which include youth of all economic backgrounds in order to adequately test whether the disadvantaged benefit from participation in nontargeted programs.

Limitation on use of funds

Under YETP no more than 20 percent of the funds may be used for administration.

In-school component

The regulations require that prime sponsors have an in-school component of their YETP, with written agreements with local education agencies (LEA's). However, no specific amount of funds must be allocated for this component. The local educational agencies (LEA's) that will participate in the YETP program can be State, county, Bureau of Indian Affairs

(BIA), tribal-run agencies, or any other nonprofit agency selected by the prime sponsor.

This document has been prepared under the direction and control of Alexander S. MacNabb, Director, Division of Indian and Native American Programs.

Accordingly, title 29 of the Code of Federal Regulations is amended as follows:

PART 94—GENERAL PROVISIONS FOR PROGRAMS UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

§ 94.3 [Amended]

1. In § 94.3, Consolidated table of contents for Parts 94-99, the table of contents for Part 97, Subparts L and M, are added to read as follows:

Subpart L—Youth Community Conservation and Improvement Projects for Indian and Native American Youth

General

Sec.
97.1101 Scope and purpose.
97.1102 Definitions.
97.1103 Eligibility for and allocation of funds.
97.1104 Reallocation of funds.

Grant Planning, Application, and Modification Procedures

97.1105 Prime sponsor planning procedures and submission of applications.
97.1106 Project application content.
97.1107 Project application approval.
97.1108 Modifications.

Program Operations

97.1109 Eligibility for participation.
97.1110 Acceptable project activities.
97.1111 Participant benefits.
97.1112 Academic credit.
97.1113 Supervisory personnel.
97.1114 Materials, equipment, and supplies.
97.1115 Earnings disregard.
97.1116 Limitation on use of funds.
97.1117 Work limitation.

Subpart M—Youth Employment and Training Program for Indian and Native American Youth

General

97.1201 Scope and purpose.
97.1202 Definitions.
97.1203 Eligibility for and allocation of funds.
97.1204 Reallocation of funds.

Grant Planning Application, and Modification Procedures

97.1205 Prime sponsor planning process and submission of applications.
97.1206 Allowable costs.
97.1207 Project application content.
97.1208 Modification.

Program Operations

97.1209 Eligibility for participation.
97.1210 Allowable activities and services.
97.1211 In-school programs.
97.1212 Payments to participants.
97.1213 Maintenance of effort (section 353(b)).

PART 97—SPECIAL FEDERAL PROGRAMS AND RESPONSIBILITIES UNDER THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

2. Part 97 is amended by adding to its table of contents for Subparts L and M:

Subpart L—Youth Community Conservation and Improvement Projects for Indian and Native American Youth

GENERAL

Sec.
97.1101 Scope and purpose.
97.1102 Definitions.
97.1103 Eligibility for and allocation of funds.
97.1104 Reallocation of funds.

GRANT PLANNING, APPLICATION, AND MODIFICATION PROCEDURES

97.1105 Prime sponsor planning procedures and submission of applications.
97.1106 Project application content.
97.1107 Project application approval.
97.1108 Modifications.

PROGRAM OPERATIONS

97.1109 Eligibility for participation.
97.1110 Acceptable project activities.
97.1111 Participant benefits.
97.1112 Academic credit.
97.1113 Supervisory personnel.
97.1114 Materials, equipment, and supplies.
97.1115 Earnings disregard.
97.1116 Limitation on use of funds.
97.1117 Work limitation.

Subpart M—Youth Employment and Training Program for Indian and Native American Youth

GENERAL

97.1201 Scope and purpose.
97.1202 Definitions.
97.1203 Eligibility for and allocation of funds.
97.1204 Reallocation of funds.

GRANT PLANNING, APPLICATION, AND MODIFICATION PROCEDURES

97.1205 Prime sponsor planning process and submission of applications.
97.1206 Allowable costs.
97.1207 Project application content.
97.1208 Modification.

PROGRAM OPERATIONS

97.1209 Eligibility for participation.
97.1210 Allowable activities and services.
97.1211 In-school programs.
97.1212 Payments to participants.
97.1213 Maintenance of effort (section 353(b)).

3. Part 97 is amended by adding the text of subparts L and M to read as follows:

Subpart L—Youth Community Conservation and Improvement Projects for Indian and Native American Youth

AUTHORITY: Sec. 702(a) of the Comprehensive Employment and Training Act, as amended, 29 U.S.C. 801 et seq., unless otherwise noted.

GENERAL

§ 97.1101 Scope and purpose.

(a) This subpart contains the Department of Labor's regulations governing the establishment and operation of Indian and native American youth community conservation and improvement projects (YCCIP) under title III, part C, subpart 2, of the Act. The regulations in subpart B of this part also apply to Indian and native American YCCIP programs except to the extent noted in this subpart.

(b) To the extent the regulations set forth in this subpart conflict with other regulations promulgated under the Act in 29 CFR Parts 94 through 99, the requirements contained in this subpart shall apply.

(c) This program seeks to provide youth experiencing severe difficulties in obtaining employment with well-supervised work in projects that produce tangible benefits to the community. It is extremely important to appoint competent supervisors who can instill good work habits in the youth. The program emphasizes the development and provision of jobs. Any training must be directly related to the development of specific skills needed for a job. The program must be flexible enough to accommodate in-school youth, and they should be encouraged to stay in school and graduate. Participants who have not graduated from high school should be encouraged to finish their education.

§ 97.1102 Definitions.

Definitions for abbreviations and major terms used in this subpart are contained in § 94.4 of this title and § 97.103. The following definitions are specific to this subpart:

(a) "Low-income housing" shall mean dwellings of individuals whose income is at or below 125 percent of the poverty level which are privately owned and owner occupied, privately owned by a nonprofit organization, or units of public housing. For weatherization or winterization projects funded and approved by the Federal Energy Administration or the Community Services Administration, "low-income housing" shall include privately owned rental housing.

(b) "YCCIP" shall mean the youth community conservation and improvements projects.

(c) "Project" shall mean a prime sponsor's overall YCCIP program.

§ 97.1103 Eligibility for and allocation of funds.

(a) Only section 302(c)(1) prime sponsors who are funded under § 97.104 are eligible for YCCIP funds.

(b) *Allocation of funds.* (1) Two percent of the funds available for YCCIP projects shall be made available for eligible Indian and native American youth.

(2) Allocations shall be provided to section 302(c)(1) grantees selected for fiscal year 1978 based on the proportion of 16- to 19-year-old youth in the prime sponsor's population. In subsequent fiscal years funds shall be allocated on the basis of the relative number of unemployed persons within each prime sponsor's area as compared to all areas eligible for funds in this program.

§ 97.1104 Reallocation of funds.

The Director, DINAP, may reallocate any amount of any allocation made to a section 302(c)(1) grantee under subpart 2 of part C of title III of the Act in accordance with § 97.160.

GRANT PLANNING, APPLICATION, AND MODIFICATION PROCEDURES

§ 97.1105 Prime sponsor planning procedures and submission of applications.

(a) *Planning.* When planning their YCCIP program, prime sponsors must utilize the planning process described in § 97.1205 (a) and (b).

(b) *Submission of application.* Six copies of an application for a YCCIP program shall be submitted annually by a prime sponsor to the Director, DINAP who will inform them of the due date. Such dates may vary from year to year depending on when YCCIP funds are made available to the Department of Labor.

§ 97.1106 Project application content.

(a) Each application will have the following forms: Grant signature sheet; YCCIP narrative; YCCIP program planning summary; YCCIP budget information summary.

(b) Content of YCCIP narrative:

(1) The types of jobs;

(2) The need for the types of work to be performed;

(3) The full-time supervisor to youth ratio;

(4) Qualifications of supervisors;

(5) Benefits participants are expected to derive;

(6) Principal job titles, brief job descriptions, and hourly wages;

(7) Target groups to be served;

(8) Recruiting methods;

(9) Supportive services to be provided;

(10) The following costs:

(i) Participant wages and benefits;

(ii) Worksite supervisors wages and benefits;

(iii) Job-related training;

(iv) Materials, supplies, and equipment used by participants on the job;

(v) Supportive services for participants; and

(11) Assurances of compliance with the Act and the regulations of 29 CFR 97.1101-97.1117 and compliance with the hazardous occupations orders issued pursuant to the Fair Labor Standards Act and set forth at 29 CFR 570.50 et seq. with respect to the employment of youth under 18 years of age.

§ 97.1107 Project application approval.

(a) To be approved a proposed project must:

(1) Provide benefits to the community;

(2) Provide benefits to participants in terms of work habits, skills, and attainment of academic credit where applicable;

(3) Assure an adequate level of supervision, taking into account the complexity of the jobs to be created; and

(4) Describe qualifications of supervisors in terms of skills and experience.

(b) Prime sponsors must assure that the project will result in an increase in employment opportunities over those which would otherwise be available, and that:

(1) It will not result in the displacement of currently employed workers;

(2) It will not substitute jobs assisted under this subpart for existing federally assisted jobs;

(3) It will not employ any youth when any other person is on layoff by the employer from the same or any substantially equivalent job in the same area;

(4) It will not employ any person to fill a job opening created by laying off or terminating the employment of any regular employee, or otherwise reducing the the regular work force, in anticipation of filling vacancies by hiring youth to be supported under YCCIP;

(5) It will not infringe upon the promotional opportunities which would otherwise be available to persons currently employed in public service not subsidized under the Act;

(6) It will not permit a job to be filled in other than an entry-level position in each promotional line until applicable personnel procedures and collective bargaining agreements have been complied with; and

(7) Job restructuring will not occur and new classifications will not be developed solely to negate established personnel procedures or to displace currently employed workers.

§ 97.1108 Modifications.

An approved program may be modified after consultation with and the approval of the Director, DINAP, notwithstanding the provisions of § 97.121.

PROGRAM OPERATIONS

§ 97.1109 Eligibility for participation.

(a) In order to participate, an individual must:

(1) Be an Indian or native American youth 16 through 19 years of age, inclusive, at the time of enrollment; and

(2) Be unemployed.

(b) If at the time of enrollment into any other program under the Act, a youth who is currently 16 through 19 years of age, was unemployed, that individual may be transferred into this program.

(c) Appropriate efforts shall be made to serve those youth who have severe difficulties in obtaining employment (section 354(a)).

(d) The citizenship and veterans provisions of §§ 95.32 (d) and (e)(1) of this title shall apply to YCCIP programs (section 332(c)).

§ 97.1110 Acceptable project activities.

(a) Projects shall insure that participants do constructive work in terms of individual and community benefits. Such employment may include, but is not limited to, the rehabilitation, construction, or improvement of public facilities (including accessing them for the handicapped by removing architectural barriers); neighborhood improvements; weatherization and basic repairs to low-income housing as defined in § 97.1102; energy conservation including solar energy projects; and conservation maintenance, or restoration of natural resources of publicly held lands.

(b) Training provided must be directly related to a participant's job.

(c) Where in-school youth are served, they must be in a combination work and education program.

(d) Public service employment (PSE) projects are not permitted.

(e) Projects of such little value as picking up trash, debris, or weeds, etc. are prohibited.

§ 97.1111 Participant benefits.

(a) Participants shall be paid wages and allowances as described in § 97.1212(c) (section 352).

(b) Each participant shall be provided the benefits and working conditions as provided in § 97.136.

§ 97.1112 Academic credit.

Prime sponsors shall make appropriate efforts to encourage educational agencies to award academic credit for the competencies participants gain from their employment.

§ 97.1113 Supervisory personnel.

(a) Each project must have an adequate number of skilled supervisors. There must be at least the equivalent of one full-time supervisor to every 12 youth. Supervisors must have the skills needed to carry out the project and must be able to instruct participants in those skills.

(b) The hiring of supervisory personnel for projects shall not impede the promotional rights of existing employees.

§ 97.1114 Materials, equipment, and supplies.

Eligible applicants are encouraged to make use of resources from CETA, BIA, Community Services Administration and Federal Energy Administration to provide or supplement materials, equipment, supplies, etc.

§ 97.1115 Earnings disregard.

Earnings received by any youth under this subpart shall be disregarded in determining the eligibility of the youth's family for, and the amount of, any benefits based on need under any Federal or federally assisted program.

§ 97.1116 Limitation on use of funds.

No less than 75 percent of the funds awarded to each prime sponsor may be used for participants' wages and fringe benefits. The remaining 25 percent may be divided at the prime sponsor's discretion between administration, supervision, services, training, and the cost of materials, equipment, and supplies, except that in no case may more than 20 percent be spent on administrative costs.

§ 97.1117 Work limitation.

No youth shall be employed for more than 12 months in work financed under this subpart, except as allowed in writing by the Director, DINAP (sec. 338).

Subpart M—Youth Employment and Training Programs for Indian and Native American Youth

AUTHORITY: Sec. 702 of the Comprehensive Employment and Training Act of 1973, as amended, 29 U.S.C. 801 et seq., unless otherwise noted.

§ 97.1201 Scope and purpose.

(a) This subpart contains the regulations for the Indian and Native American employment and training program (YETP) which is authorized by title III, part C, subpart 3 of the Act. These regulations also implement, with respect to YETP, the administrative provisions found in sections 341 through 347 of the Act. The regulations in subpart B of this part also apply to YETP programs except as indicated in this subpart. To the extent the regulations set forth in this subpart conflict with other regulations issued under the Act in 29 CFR parts 94 through 99, the regulations contained in this subpart shall prevail (sec. 357).

(b) The purpose of this program is to enhance the job prospects and career opportunities of Indian and Native American youth to enable them to secure unsubsidized employment in the private and public sectors of the economy. It is not the purpose of this program to provide make-work activities, but rather to provide youth with the opportunities to learn and earn, which will lead to meaningful employment opportunities after they have completed the program.

(c) In order to achieve the highest quality of program services, coordination with existing services for youth is essential. These services include: Activities funded under other parts of CETA; employment and educational services provided by local educational agencies; services offered by State Employment security agencies; programs funded through other sources such as community based organizations; and employment and educational activities of business, labor, and nonprofit institutions in the community.

§ 97.1202 Definitions.

Definitions for abbreviations and major terms used in this subpart are contained in §§ 94.4 of this title and 97.103. Special definitions applicable to terms found in this subpart are as follows:

(a) "Career employment experience" shall mean a program activity for in-school youth which is a combination of well supervised employment (either work experience or on-the-job training) supported under YETP and certain transition services including at a minimum career information, counseling, and guidance.

(b) "In-school program" shall mean a program which provides either or both career employment experience and transition services to in-school youth.

(c) "In-school youth" shall mean a youth who:

(1) Is currently enrolled full-time in and attending a secondary, trade, technical, vocational school, or community college; or is scheduled to attend full-time the next regularly scheduled quarter or semester of any of these schools; or

(2) Has not completed high school and is scheduled to attend a school program leading to a secondary school diploma or its equivalent (343(d)).

(d) "Local Educational Agency (LEA)" shall mean State, county, Bureau of Indian Affairs, tribal or reservation run agencies, or any other nonprofit agency selected by the prime sponsor.

(e) "Of this Title" shall mean "of Title 29 of the Code of Federal Regulations."

(f) "Transition services" shall mean services and activities which are designed to assist youth to make the transition from school to unsubsidized jobs. These services are set forth in § 97.1211(a)(1).

(g) "YETP" shall mean the youth employment and training program.

(h) "Project" shall mean a prime sponsor's overall YETP program.

§ 97.1203 Eligibility for and allocation of funds.

Eligibility for and allocation of funds shall be as described in § 97.1103.

§ 97.1204 Reallocation of funds.

Funds may be reallocated as described in § 97.1104.

GRANT PLANNING, APPLICATION, AND MODIFICATION PROCEDURES

§ 97.1205 Prime sponsor planning process and submission of applications.

(a) Prime sponsors must plan their youth programs taking into account their plans for youth in all of their CETA programs and in consultation with their regular CETA planning councils and the youth councils described in paragraph (b) of this section.

(b) *Youth council.* Each prime sponsor whose combined YCCIP and YETP allocations exceed $100,000 shall establish a youth council (sec. 346), as provided in paragraph (b)(2) of this section.

(1) In consultation with the planning council, the prime sponsor shall make appointments to a youth council which include individuals who are representative of the local educational agencies, the local vocational advisory council, postsecondary education institutions, business, unions, the State employment security agency, local governments and nongovernment agencies which are involved in serving youth, the local community, and the prime sponsor. In addition, youth council members shall include youth who are participants in, or eligible for YETP.

(2) The youth council may be either an entirely separate council or a subcommittee or subcouncil to the planning council, or prime sponsors may use existing youth councils created with respect to other programs under this Act if these councils meet the requirements set forth in this section. In all cases, the youth council must report to the planning council.

(3) The youth council shall at a minimum make recommendations to

the planning council with respect to the planning and review of all program activities under title III, part C, of the act, and shall review the proposed agreements with local educational agencies under YETP.

(4) No member of the youth council shall cast a vote on any matter under deliberation by the youth council which has direct bearing on services to be provided by that member or any organization with which that member is associated.

(c) *Submission of application.* Six copies of an application for a YETP program shall be submitted annually by prime sponsors to the Director, DINAP, who will inform them of the due date. Such dates may vary from year to year depending on when YETP funds are made available to the Department of Labor.

§ 97.1206 Allowable costs.

Allowable costs are the same as those under § 97.161. Costs for administration are limited to 20 percent. The costs of instructional, construction, or other work material, equipment, and supplies must be paid for with administrative funds.

§ 97.1207 Project application content.

(a) Each application will have the following forms: YETP narrative, program planning summary, and budget information summary.

(b) The narrative section of the YETP proposal shall cover the following:

(1) Objectives of the program;

(2) Local priorities;

(3) Implementation planning;

(4) Program activities and services;

(5) Management and administration;

(6) Results and benefits expected from the program;

(7) How the program will:

(i) Develop long-term and coordinated solutions to the employment problems of youth, especially the economically disadvantaged;

(ii) Enhance job prospects and career opportunities for youth; and

(iii) Enable participants to secure appropriate unsubsidized employment (sec. 341).

(8) That identified performance goals are reasonable and can be achieved;

(9) That a youth council has been established (if required) and has participated in the planning and review process for the youth plan;

(10) The in-school program to be operated pursuant to § 97.1211;

(11) Assurance of compliance with the Act and the regulations in this subpart; and compliance with the hazardous occupations orders issued pursuant to the Fair Labor Standards Act and set forth at 29 CFR 570.50 et seq. with respect to the employment of youths under 18 years of age and the Child Labor Standards of 29 CFR 570.31 et seq. with respect to the employment of youths aged 14 to 15.

§ 97.1208 Modifications.

An approved project may be modified after consultation with and the approval of the Director, DINAP, notwithstanding the provisions of § 97.121.

PROGRAM OPERATIONS

§ 97.1209 Eligibility for participation.

(a) A prime sponsor shall assure that every individual participating in the program meets the following criteria at the time of application and enrollment.

(1) Is an Indian or Native American, and

(2) Is unemployed or underemployed as defined in § 94.4(fff) of this title or is an in-school youth as defined in § 97.1202; and

(3) Is 14 through 21 years of age; and

(4) Is a member of a family with total family income at or below 85 percent of the lower living standard income level, as defined in § 94.4 (nnn) of this title. Exclusions from total family income shall include those items listed as exclusions in § 94.4(xxx) of this title, income from tribal work experience and Indian general assistance, lease income derived from trust land, and per capita payments.

(b) For the purpose of participating in in-school career employment experience, the youth must need such participation in order to continue his or her education (sec. 346(c)).

(c) If, at the time of enrollment into any other program under the Act, an individual met the eligibility requirements of paragraph (a) of this section, that individual is eligible to transfer from that other program into YETP, and into YETP career employment experience if the individual also meets the requirements of paragraph (b) of this section.

(d) The citizenship and veterans provisions of §§ 95.32 (d) and (e)(1) of this title also apply to YETP.

(e) Youth need not meet the income criteria described in § 97.1209(a)(4) if they participate in a special component as described in § 97.1210(e) (sec. 345(a)(2)).

(f) Youth, who do not meet the income criteria defined in § 97.1209(a)(4), and who are not in special component described in § 97.1210(e) may be offered any employment related services but may not be offered on-the-job training, work experience, or training opportunities funded under YETP.

§ 97.1210 Allowable activities and services.

(a) Programs may include any type of employment and training activity authorized under title III, section 302 of the Act except public service employment.

(b) Each participant in on-the-job training, work experience, or career employment experience shall be assured of the general benefits and working conditions for program participants provided in § 97.136 of this title.

(c) No youth may enroll in full-time employment opportunity if the prime sponsor determines that there is evidence he or she dropped out of high school in order to participate (sec. 353(f)(2)). A written job description shall be developed and maintained for all work experience and OJT positions funded under this subpart to provide a basis for determining its comparability to existing jobs of other individuals similarly employed.

(d) The child labor standards specified in 29 CFR Part 570.31 et seq. shall apply to the employment of 14 or 15 year olds under YETP. The hazardous occupations orders issued pursuant to the Fair Labor Standards Act and set forth at 29 CFR Part 570.50 et seq. shall apply to the employment of 16 to 17 year olds under YETP.

(e) A prime sponsor may design a special component using up to 10 percent of its YETP funds to serve a mixture of youth from families above and below the income level specified in § 97.1209(a)(4) in order to test the desirability of serving such a mix of youth.

§ 97.1211 In-school programs.

(a) *Activities and services.* An in-school program is required and shall be designed to provide either or both of the following two classifications of services (sec. 342):

(1) Transition services—(i) These services shall be designed to assist youth to move from school to unsubsidized jobs.

(ii) These services may include, but are not limited to:

(A) Outreach, assessment, and orientation;

(B) Counseling, including occupational information and career counseling;

(C) Activities promoting education to work transition;

(D) Provision of labor market information;

(E) Services to youth to help them obtain and retain employment;

(F) Literacy and bilingual training;

(G) Attainment of certificates of high school equivalency;

(H) Job sampling, including vocational exploration in the public and private sector;

(I) Institutional training, including development of basic and job skills;

(J) Transportation assistance;

(K) Child care and other necessary supportive services;

(L) Job restructuring to make jobs more responsible to the objectives of this subpart, including assistance to employers in developing job ladders of new job opportunities for youths, in order to improve work relationships between employers and youths;

(M) Provision of information regarding employment and training related opportunities;

(N) Job development, direct placement, and placement assistance to secure unsubsidized employment for youth to the maximum extent feasible and referral to employability development programs;

(O) Assistance in overcoming sex stereotyping in job development and counseling; and

(P) Outreach and other services to increase the labor force participation rate among minorities and women.

(2) *Career employment experience.* This activity is a combination of well-supervised employment (work experience or on-the-job training) and certain transition services including, at a minimum, career information, counseling, and guidance. Any work experience or on-the-job training must include these minimum services. Where work experience or on-the-job training is provided for in-school youth under agreements with local educational agencies, placement services must also be included.

(b) *Agreement with local educational agencies.* (1) Prime sponsors shall serve in-school youth in programs designed to enhance their career opportunities and job prospects (sec. 343(d)(1) pursuant to written agreements between them and local educational agencies (LEA's).

(2) Agreements may be between the prime sponsor and one or more local educational agencies or a combination of LEA's represented by one LEA.

(3) Each agreement may be either financial or nonfinancial, whichever is determined most appropriate by the prime sponsor and the LEA(s), and shall:

(i) Provide a description of the activities and services to be provided to participants;

(ii) Detail the responsibility of each party to the agreement for providing the activities and services; and

(iii) Contain provisions to assure that service and/or funds received pursuant to the agreement will not supplant State, local, or Federal funds expended for the same purpose.

(4) Additional provisions are required in those agreements which provide for career employment experience opportunities. These include:

(i) Assurances that youth will be provided constructive work experience, which will improve their ability to make career decisions and provide them with basic work skills needed for regular employment;

(ii) Assurances that such agreements have been reviewed by the youth council;

(iii) Assurances that job information, counseling guidance, and placement services will be made available;

(iv) Assurances that jobs provided under this program will be certified by the participating educational agency or institution as relevant to the educational and career goals of the youths;

(v) Assurances that the prime sponsor will advise youth of the availability of other employment and training resources available in the local community; and

(vi) An assurance that career employment experience opportunities provided will be certified by a school-based counselor as being relevant to the career and educational program of the youth(s) (secs. 343(d)(2), 346(c)).

§ 97.1212 Payments to participants.

(a) Participants in training activities which are a combination of employment and training shall be paid in accordance with § 97.135.

(b) *Allowances.* Participants will be paid allowances in accordance with the criteria and process in § 97.134.

(c) *Wages.* Participants receiving wages shall be paid no less than the highest of:

(1) The minimum wage under section 6(a)(1) of the Fair Labor Standards Act of 1938, but in the case of an individual who is 14 or 15 years old, the wage provided in accordance with the provisions of subsection (b) of section 14 of the Fair Labor Standards Act of 1938;

(2) The State or local minimum wage for the most nearly comparable employment, but in the case of an individual who is 14 or 15 years old the wage provided in accordance with the applicable provision of the applicable State or local minimum wage law; or

(3) The prevailing rates of pay, if any, for occupations and job classifications of individuals employed by the same employer, except that:

(A) Whenever the prime sponsor has entered into an agreement with the employer and the labor organization representing employees engaged in similar work in the same area to pay less than the rates provided in this paragraph, youth may be paid the rates specified in such agreement;

(B) Whenever an existing job is reclassified or restructured, youths employed in such jobs shall be paid at rates not less than are provided under paragraph (c) (1) or (2) of this section, but if a labor organization represents employees engaged in similar work in the same area, such youths shall be paid at rates specified in an agreement entered into by the appropriate prime sponsor, the employer, and the labor organization with respect to such reclassified or restructured jobs, and if no agreement is reached within 30 days after the initiation of the agreement procedure referred to in this subparagraph, the labor organization, prime sponsor, or employer may petition the Secretary of Labor who shall establish appropriate wages for the reclassified or restructured positions, taking into account wages paid by the same employer to persons engaged in similar work;

(C) Whenever a new or different job classification or occupation is established and there is no dispute with respect to such new or different job classification or occupation, youths to be employed in such jobs shall be paid at rates not less than are provided in paragraph (c) (1) or (2) of this section, but if there is a dispute with respect to such new or different job classification or occupation, the Secretary of Labor shall, within 30 days after receipt of the notice of protest by the labor organization representing employees engaged in similar work in the same area, make a determination whether such job is a new or different job classification or occupation; and

(D) In the case of projects to which the provisions of the Davis-Bacon Act (or any Federal law containing labor standards in accordance with the Davis-Bacon Act) otherwise apply, the Secretary is authorized, for projects financed under subparts (2) and (3) of this part under $5,000, to prescribe rates of pay for youth participants which are not less than the applicable minimum wage but not more than the wage rate of the entering apprentice in the most nearly comparable apprenticable trade, and to prescribe the appropriate ratio of journeymen to such participating youths (sec. 352).

(d) Allowances and wages received by any youth under YETP shall be disregarded in determining the eligibility of the youth's family for, and the amount of, any benefits based on need under any Federal or federally assisted program (sec. 356).

§ 97.1213 Maintenance of effort (sec. 353(b)).

(a) The provisions of § 97.334 proscribing substitution of Federal funds for activities previously funded through other resources apply to all activities funded under this program (sec. 353 (b), (c), and (d)).

(b) The following provisions also apply to activities funded under this program:

(1) They will not result in the displacement of currently employed workers;

(2) They will not substitute jobs assisted under this part for existing federally assisted jobs;

(3) They will not employ any youth when any other person is on layoff by the employer from the same or any substantially equivalent job in the same area;

(4) They will not be used to employ any person to fill a job opening created by laying off or terminating the employment of any regular employee, or otherwise reducing the regular work force, in anticipation of filling vacancies by hiring youth to be supported under YETP;

(5) They will not infringe upon the promotional opportunities which would otherwise be available to persons currently employed in public service not subsidized under the Act;

(6) They will not permit a job to be filled in other than an entry level position in each promotional line until applicable personnel procedures and collective bargaining agreements have been complied with; and

(7) Job restructuring will not occur and new classifications will not be developed solely to negate established personnel procedures or to displace currently employed workers.

Signed this 10th day of October 1978.

RAY MARSHALL,
Secretary of Labor.

[FR Doc. 78-29170 Filed 10-16-78; 8:45 am]

federal register

TUESDAY, OCTOBER 17, 1978
PART IV

ENVIRONMENTAL PROTECTION AGENCY

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FINANCIAL ASSISTANCE FOR RESOURCE RECOVERY PROJECT DEVELOPMENT UNDER THE PRESIDENT'S URBAN POLICY

Program Announcement and Request for Proposals

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 989-1]

FINANCIAL ASSISTANCE FOR RESOURCE RECOVERY PROJECT DEVELOPMENT UNDER THE PRESIDENT'S URBAN POLICY

Preamble

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Program announcement and request for proposals.

SUMMARY: The President's Urban Policy issued on March 27, 1978, directs the U.S. Environmental Protection Agency (EPA) to carry out a program of financial assistance to urban areas for solid waste resource recovery project planning and feasibility analysis.

This program is authorized under section 4008(a)(2) of the Resource Conservation and Recovery Act of 1976, referred to herein as "RCRA." A $15 million fiscal year 1979 appropriation to fund this program has been approved by Congress.

The purpose of this notice is to describe the program, the procedures by which interested parties may apply for funding, and to solicit proposals under these procedures.

Proposals shall be submitted as preapplications. Preapplications will be reviewed and evaluated against defined program requirements and criteria. The preapplication will be the primary basis for selection of applicants that will ultimately receive awards.

Following this selection, EPA will work closely with each selected applicant to assist them in developing their detailed scope of work and implementation schedule, the consultant services required, project review and reporting procedures, and their final budget. These items will form the basis of a formal application for funding. Following EPA approval and processing of the formal application, the award will be made.

DATES: Preapplications are due on December 15, 1978.

ADDRESSES: Those interested in submitting preapplications (proposals) should request a preapplication kit by writing or calling the following address: U.S. Environmental Protection Agency, Office of Solid Waste, Resource Recovery Division (WH-563), Washington, D.C. 20460, 202-755-9140. Attn.: Urban Policy Program.

FOR FURTHER INFORMATION CONTACT:

Mr. Stephen A. Lingle, Chief, Technology and Markets Branch, Office of Solid Waste, Resource Recovery Division (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460, 202-755-9140.

SUMMARY OF COMMENTS: EPA published a draft of this notice in the July 31, 1978 FEDERAL REGISTER in order to solicit public comment. A public meeting was conducted in Washington, D.C., on August 18, 1978, for the same purpose. This solicitation announcement reflects the comments received by mail and at the public meeting, to the extent EPA believes practicable and consistent with the intent of the program.

Approximately 200 people attended the public meeting, submitted written comments, or both. Many comments were received and all were considered in developing this final announcement. However, those representing the views of only one individual or group have generally not been summarized here.

(1) *Eligibility of planning agencies.* Commentors suggested that the planning process mandated by Section 4006 RCRA may not have been completed in certain States by the time applications for this program are required, and that EPA should not require applicants to certify designation under 4006 for this reason. Other commentors suggested that we broaden eligibility to include planning agencies as well as implementation agencies, and some suggested that the 4006 process be waived for purposes of this program, if only for a specificed length of time.

The program announcement as published here has, therefore, included planning agencies as eligible applicants, but only where the application is supported by the appropriate implementation agency. This is consistent with the intent of RCRA and of this program, since EPA financial support will be directed toward sponsors who have the jurisdictional authority and resources available to bring planned facilities and programs to fruition.

EPA remains committed to coordinated State and local solid waste planning, as mandated under Subtitle D of RCRA. The Agency, therefore, has retained the requirement that applicants be designated under 4006.

The concern expressed by commentors over the pace of 4006 designations requires a response. We have, therefore, stated that applicants under this program may submit evidence of interim designation where the State process has not been completed. This will enable the State to insure that such projects or programs as may be proposed to EPA are consistent with sound statewide planning, even where that planning is incomplete.

(2) *Definition of "urban".* Some commentors suggested that EPA define "urban" areas in terms of their population density, in addition to (or instead of) their total population. Others sought a change or clarification of the definition used in the July 31, 1978, FEDERAL REGISTER draft of this notice.

The definition of "urban" is intended to be a general guide, and not a strict parameter, of eligibility. Interested applicants with fewer than 50,000 people are not prohibited, and will be considered on their merit. Any EPA attempt to alter or supplant accepted Census Bureau definitions for purposes of this program would be, at best, confusing to the public. We have, therfore, left the July 31, 1978, definition unchanged.

(3) *Conflict of interest.* Considerable comment was submitted on the EPA position regarding follow-on work by consultants who have recommended that such work be done in the first place. The Office of Solid Waste has previously stated its concern over the potential for or appearance of, impropriety in such situations. With respect to work performed by EPA solid waste technical assistance contractors, EPA prohibits those contractors from participating in such follow-on work as may result from their recommendations.

EPA will provide guidance to successful applicants regarding handling of conflict of interest issues.

(4) *Schedule.* Several commentors suggested that the time between solicitation and award was excessive and should be compressed in order to make the funds available more quickly. Some commentors thought that the suggested 75 days for preparation of proposals was too short, while others felt that it was too long. Other commentors considered EPA's 60-90-day review and selection period to be excessive.

This announcement requires submittal of preapplication by December 15, 1978, which represents a response time of approximately 60 calendar days based on the estimated date of publication of this announcement. In addition, EPA will attempt to complete review and selection within 60 days. Considerable time has been spent to simplify the format and shorten the time for submission, selection, and award. However, it is important that the quality of the selection process not be compromised. The combined review by States, EPA Regional Offices, and EPA Headquarters does lengthen the process somewhat, but, in our opinion, is necessary and desirable.

(5) *Cost sharing.* Some commentors requested a clarification on whether expenditures prior to EPA award were eligible for reimbursement. EPA grant regulations do not allow reimbursement of such expenses. This program is governed by those regulations, and

only those expenses incurred after award may be eligible for reimbursement or matching.

Some commentors felt that the strict requirement that two-thirds of an applicant's matching share be other than "in-kind" contribution was overly restrictive, particularly during the first year of the program when municipal budget cycles might not be consistent with timing of this program announcement. EPA feels strongly that a cash contribution by an applicant is an important indicator of applicant commitment and that in most instances, provisions can be made within the budgetary process to provide such a commitment. This program announcement changes this cash matching *requirement* to a *recommendation*, but states that special consideration will be given to those applicants which provide such a cash match. Correspondingly, the "extent of an applicant's cash contribution to the project" is now included in the selection criteria.

(6) *Weighting of selection criteria.* Several commentors suggested slightly different criteria weighting, though overall the criteria and their weights were supported. The weights most frequently mentioned were those related to prior progress and urban economic distress. There was also comment that land disposal issues should be less heavily rated and prior progress weighting increased. The weights have, therefore, been altered slightly to decrease weighting of land disposal factors by 5 percentage points, and increasing prior progress by the same amount.

(7) *Nature of funding commitment by phase.* During the public meeting, it was suggested that EPA commit fiscal year 1979 funding to only one phase of a project and that later phases be funded from subsequent years' appropriations. EPA pointed out that subsequent funding was not guaranteed, and further that such an approach could result in loss of continuity due to timing of any subsequent funding. Nevertheless, pending review of all responses, EPA reserves the option of committing fiscal year 1979 funding to only one phase or to all phases of a project as circumstances dictate.

(8) *Management of the program.* Several commentors requested that the role of the States, EPA regional offices, and EPA headquarters be clarified, and that the relationship to the DOE program be clarified. Clarifications on these points have been included in this announcement under sections C and E.

(9) *Public participation.* Several commentors recommended a more strongly defined public participation requirement and suggested that such activities should be eligible for funding. These changes are consistent with EPA's draft Public Participation Guidelines and have been incorporated in section D.

FINANCIAL ASSISTANCE FOR RESOURCE RECOVERY PROJECT DEVELOPMENT UNDER THE PRESIDENT'S URBAN POLICY

Program Announcement

A. BACKGROUND AND PROGRAM RATIONALE

Solid waste disposal is a serious and growing problem for urban areas, commonly ranking as one of their most pressing concerns. At the same time, solid waste is also a growing resource of significant potential.

Existing landfills are reaching capacity in many cities, and new environmentally acceptable landfills are often difficult to site. Thus, many cities are eager to move to resource recovery to reduce their land disposal needs, and at the same time, provide a supplemental source of energy and materials to help satisfy municipal, industrial, or commercial needs. The move to resource recovery also serves to reduce the demand upon the Nation's energy and materials resources and the imports of these resources.

Furthermore, these new commercial activities can assist in reducing unemployed by providing jobs and new industrial opportunities. Source separation programs offer the added benefit of involving large numbers of citizens directly in a tangible effort to improve their environment.

Progress in implementing resource recovery across the Nation is being made, but at a pace so slow that it does not match the growth in waste generation. A major barrier to more rapid implementation is the fact that the procedures involved in implementing resource recovery are unique and complex. These procedures involve a series of technical, marketing, financial, legal, and organizational factors which must be brought together in a comprehensive, well-structured project planning and development process. Problems in many of these areas are often referred to as "institutional" constraints. Thus, despite the pressures of the solid waste problem, cities often fail to accomplish the preparatory steps for the implementation of resource recovery.

Examples of key tasks which, when not properly addressed, have delayed or prevented implementation of resource recovery facilities include: obtaining a long-term commitment for supply of waste to a plant; considering source separation as a part of the system in early planning; obtaining support of all interested parties, including the public; modifying laws or ordinances to permit signing of long-term contracts for waste supply or sale of products; insuring that negotiated procurements are permitted under State and local laws; obtaining the most economically advantageous financing; developing a well-structured request for proposals which will stimulate attractive, comparable bids, and; negotiating appropriate risk sharing arrangements for facility construction and operation. Similarly, implementation of source separation programs is impeded by lack of staff and expertise to develop markets, obtain public support, and design a cost effective system.

B. PROGRAM OBJECTIVE

The financial assistance program described in this document directly addresses these institutional factors. It is designed to help cities move effectively through the project planning and development process by providing financial assistance to address tasks such as those above. Funds under this program may be used to hire capable in-house project managers as well as a broad range of consulting services.

The Urban Policy financial assistance program is based on the premise that effective project planning and development will result in timely and successful implementation of facilities and/or source separation approaches without Federal funding of design, land, equipment or construction. Though the capital costs of larger resource recovery plants are substantial, experience has shown that debt financing is available through normal private financial channels for well-conceived projects.

These are projects having long-term waste supply and market commitments and utilizing technologies proven in commercial operation or backed by performance guarantees. For such projects, debt payment can be secured by the project revenues (tipping fees and product sales) without impacting the credit or borrowing power of the community. Private equity can also be a part of plant financing.

C. PROGRAM MANAGEMENT AND ADMINISTRATION

This program will be funded under Federal Catalog No. 66.451, Solid and Hazardous Waste Management Program Support Grants. However, the program as described in this announcement recognizes the need for close interaction and cooperation between EPA and the successful applicants. Based on the provisions of Public Law 95-224, the "Federal Grant and Cooperative Agreement Act of 1977," such financial assistance shall take the form of a "cooperative agreements." Most aspects of administration of cooperative agreements are the same as administration of grants. Co-

operative agreements differ from grants in that under cooperative agreements substantial involvement is anticipated between the recipient and EPA.

Management of the cooperative agreements will be carried out by EPA Regional Office staff, with assistance provided by EPA Headquarters staff as necessary. In addition, States will be invited to lend technical or financial support to those receiving assistance under this program.

The Resource Conservation and Recovery Panels provided under section 2003 of RCRA may be used selectively at the discretion of EPA to assist successful applicants with such activities as developing detailed workscopes or consultant task descriptions. However, any such assistance will not reduce the amount of assistance available for jurisdictions not receiving awards under this program. EPA will further support the program by providing guidance and information to successful applicants.

The procedure for review of proposals and selection of those to be funded will involve the States, EPA Regional Offices, and EPA Headquarters. States will approve proposals based on consistency with State plans. Any proposals which the State indicates as not consistent with such a plan will not be considered for funding by EPA. States will also be asked to provide comments on the proposals to the EPA Regional Offices and score them based on the established selection criteria.

EPA Regional Offices will review and rank the proposals for their respective regions, taking into consideration the State comments. EPA Headquarters staff will review all of the proposals on a national basis and will make final selections based on merit. Headquarters and regional reviews will be made independently, but any differences in ranking within a region will be reconciled with the Regional Office reviewers prior to final national selections. All reviewers will use the criteria established in this announcement as the basis for their selections.

No numerical or monetary project allocations by region or State will be made. However, it is anticipated that a wide geographic representation will result from the selections.

D. PUBLIC PARTICIPATION

The recipients of financial assistance under this program will be expected to meet the requirements of the "Regulations for Public Participation Under the Safe Drinking Water Act, The Resource Conservation and Recovery Act, and the Clean Water Act" (40 CFR Part 25), after such regulations are published in final form. Currently, promulgation is scheduled for December 1978, after which time copies will be available from EPA. The objectives of the public participation requirements are:

(1) To insure that the public understands official programs and proposed actions, and that government understands public concerns.

(2) To insure that no significant government decision on any activity covered under this part is made without consultation with interested and affected segments of the public.

(3) To insure that government action is responsive to public concerns to the maximum extent feasible, and to demonstrate that public concerns are evaluated and considered.

(4) To promote public support of environmental laws.

(5) To keep the public informed of significant issues and proposed project or program changes as they arise.

(6) To foster a spirit of openness and mutual cooperation among EPA, States, substate agencies and the public.

(7) To continuously strive to make public participation happen, by using all feasible means to furnish opportunities for participation and by stimulating and supporting participation.

The public participation tasks which should be included in a project workscope are described in the preapplication kit available to all those interested in requesting funding.

E. RELATIONSHIP WITH OTHER FEDERAL PROGRAMS

This assistance program will be coordinated with U.S. Department of Energy (DOE) programs in resource recovery from solid waste. DOE is authorized under Pub. L. 95-238 to support through loan guarantees, grants, contracts, cooperative agreements and price supports, the construction, start-up, operation, and related expenses of demonstration facilities for recovery of energy from wastes. It is DOE's intent to support construction only be accepting risk through loan guarantees, cooperative agreements and price supports. However, funds have not been appropriated to provide loan guarantees.

Those whose planning under this EPA program may result in consideration of new and innovative technologies should be aware that demonstration assistance may be available in the future from DOE. Further, DOE intends to seek suitable communities for the demonstration of innovative technologies from those which apply under this program.

Technologies which DOE is potentially interested in demonstrating include thermal gasification or liquification of solid waste, new reactors for combustion systems, biological conversion systems, and innovative equipment or process designs for mechanical separation, including densification of solid fuels.

The purpose of referencing the above DOE program is to apprise potential applicants of its existence. It is not intended to encourage or give preference to implementation of new and innovative technologies under EPA's program. But neither is it EPA's objective to discourage such efforts.

F. PROGRAM DEFINITION AND PROJECT OBJECTIVES

On the basis of competitive solicitation, funding will be made available to selected urban areas for activities to determine the feasibility of resource recovery approaches, and for the follow-on project development steps necessary to implement such approaches. Conceptual design and preliminary engineering design is eligible for funding. Funding for final engineering design, construction, or acquisition of land and equipment is not eligible.

There are three primary objectives of his program: to accelerate national progress in resource recovery implementation; to provide environmentally sound alternatives to solid waste disposal, and to assist economically distressed urban areas pursuant to the President's Urban Policy.

In view of these objectives, a prime consideration in selection of cities for funding will be to choose those judged to have a high probability for successful implementation given sufficient project development funding. Cities which appear to have high potential for resource recovery but which do not find resource recovery implementation to be their best course of action will be able to make this determination early in the planning process, thereby avoiding additional and unnecessary cost.

It is the implementation (rather than the planning) of facilities which may be expected to impact the problems of economically troubled urban areas. Thus, communities must first score highly under the criterial for potential success before they may be considered for the financial assistance described in this announcement. Within this constraint, however, comparatively distressed areas will be given priority over candidates with less severe economic problems.

G. PROJECTED FUNDNG LEVELS

The President has indicated that he will consider an additional $15 million for the program in each of the fiscal years 1980 and 1981.

H. COST SHARING

Consistent with regulations already promulgated for grant programs under RCRA, the Federal share of project costs under this program will not

exceed 75 percent of total project costs.

In support of the objectives of this program to identify projects with high potential for implementation, a key element in the selection process will be the measure of an applicant's commitment to the project. For this reason, special consideration will be given to those applicants that can demonstrate that at least two-thirds of their matching share represents new cash commitments other than in-kind contributions. EPA's general grant regulations (40 CFR 30.135-15) define in-kind contribution as the value of a non-cash contribution provided by (a) the grantee, (b) other public agencies and institutions, and (c) private organizations and individuals. An in-kind contribution may consist of charges for real property and equipment, and the value of goods and services directly benefiting and specifically indentifiable to the grant program.

I. ELIGIBLE ORGANIZATIONS

As defined in section 4008(a)(2) of RCRA, the following governmental units are eligible to apply for assistance under this program: States, counties, municipalities, and intermunicipal agencies, and State and local public solid waste management authorities. Interstate agencies are also eligible for funding. However, eligibility will be further limited by the requirements of section 4006 of RCRA.

Section 4006(b) of RCRA establishes the requirements that ". . . the State, together with appropriated elected officials of general purpose units of local government, shall jointly (a) identify an agency to develop the State plan and identify one or more agencies to implement such plan, and (b) identify which solid waste functions will, under such State plan, be planned for and carried out by regional or local and State authorities."

Consistent with the requirements of the Act, EPA will make awards to those applicants jointly identified by the State and appropriate locally elected officials for plan implementation responsibilities in resource recovery.

The only other eligible applicants are:

(1) Where a State has not completed the implementation agency identification process, an agency receiving an interim designation for plan implementation by the governor (with the EPA Regional Administrator's concurrence), and

(2) An applicant (such as an agency designated under the 4006 process as having planning responsibility) that (a) receives written concurrence from a designated (or interim designated) implementation agency indicating that the proposed project has the full support and involvement of the implementing agency, (b) defines the role of the designated implementation agency in the proposed project, and (c) explains why an agency other than the implementing agency is requesting funding.

Accordingly, local and regional jurisdictions competing for an award in an area shall submit with their application a written agreement, understanding, or other evidence which certifies that resource recovery implementation responsibility has been jointly assigned to such jurisdictions in conformance with the guidelines established under section 4002(a) of the Act (40 CFR Part 655, "Identification of Regions and Agencies for Solid Waste Management").

It should be understood that implementing agencies applying under this program may, through appropriate agreements, transfer a portion of the funds to designated planning agencies for portions of the project. In general, close interaction between planning and implementing agencies is encouraged.

Within these definitions, EPA intends to consider as eligible for funding urban communities and jurisdictions of all sizes. The criteria described in a later section will be used to establish priorities for funding. It is anticipated that application of the criteria will result in the major portion of the funding being allocated to areas of at least 50,000 population. Furthermore, urban areas with severe economic problems and which also show high implementation potential will receive first consideration.

Section 4008(a)(2)(B) establishes additional requirements for grantees under this authority:

An applicant for financial assistance under this paragraph must agree to comply with respect to the project or program assisted with the applicable requirments of section 4005 and Subtitle C of this Act and apply applicable solid waste management practices, methods, and levels of control consistent with any guidelines published pursuant to section 1008 of this Act. Assistance under this paragraph shall be available only for programs certified by the State to be consistent with any applicable State or areawide solid waste management plan or program.

J. PROGRAMS AND ACTIVITIES ELIGIBLE FOR SUPPORT

Planning and project development of energy and materials recovery plants and source separation programs are eligible for funding under this program. Eligibility is limited to projects which involve solid waste primarily from residential and commercial sources. Also, development of projects which involve codisposal of municipal solid waste and sewage sludge in evergy and materials recovery plants will be eligible. However, if Clean Water Act (Pub. L. 92-500) funding is desired or anticipated (for design or construction), a facility plan for the proposed codisposal project must be prepared and approved by the State and EPA in accordance with EPA construction grant regulations (40 CFR Part 35 Subpart E).

Projects directed primarily toward development of land disposal or hazardous waste management facilities, or waste collection or transfer operations are not eligible.

Where Federal funding through other assistance programs is desired or anticipated for final engineering design or construction, the proposed project must conform to EPA policy and procedure (40 FR 16814) regarding compliance with the National Environmental Policy Act of 1969 (NEPA). Such projects may include codisposal projects where Clean Water Act (Pub. L. 92-500) funding is desired or anticipated. In such instances, environmental assessments must be prepared and submitted to EPA so that EPA can conduct an environmental review to determine whether an environmental impact statement or a negative declaration should be issued. Since Federal assistance for design or construction is not expected for most of these projects, it is likely that most projects funded under this program will not be required to meet NEPA requirements.

EPA envisions the planning and development of resource recovery projects as an evolutionary and phased effort. Thus, eligible activities have been defined in phases. Any or all phases may be approved initially, depending on the progress of the individual community. Thus, EPA funding may begin with the second or third phase if the applicant has already successully completed those tasks defined in earlier phases. The selection criteria give preference to applicants who have made prior progress.

EPA may commit funds to an applicant for more than one phase, in essence reserving funds from the initial appropriation for use in later project phases, contingent on recipient progress. In such cases, follow-on awards will not be guaranteed but will be contingent on successful completion of earlier work and evidence that the project continues to have a high probability of success.

Alternatively, EPA may commit funding to only one project phase initially, with the intent of funding later phases (contingent on successful progress) from subsequent years' appropriations, if such appropriations are available. If a project is funded in this way, the recipient would not have to apply under later competitive solicitations but rather would be given priority consideration.

Applicants will be required to define their proposed project in terms of the elements of the phases described

below. The elements listed should not be considered exhaustive, and additional elements may be eligible.

An applicant's proposed project phasing will not have to match those described below. For example, an applicant may define a project phase which incorporates most of the Phase I defined below as well as selected items from Phase II. However, the phases below are intended to serve as a guide, and requested phasing should be generally consistent with these definitions. Also, proposed phasing will be subject to EPA approval during the development of the final workscope.

Specific outputs of each project phase are defined below. These are the types of outputs on which progress will be judged. It is EPA's intent to provide more detailed guidance and examples to the selected applicants for some or all of the outputs during development of the detailed project workscope.

Activities are listed below in two parts. The first part deals with implementation of resource recovery plants; the second part deals with implementation of source separation programs.

ELIGIBLE ACTIVITIES AND OUTPUTS FOR RESOURCE RECOVERY PLANT IMPLEMENTATION

a. Phase I—Feasibility Analysis. This phase includes evaluation of the feasibility of resource conservation and recovery and the preliminary definition of one or more feasible alternatives. The purpose of this phase is to arrive at a basis for a go/no go decision on implementation and to begin preliminary development of a strategy for implementation.

PHASE I ACTIVITIES

Survey the waste stream (quantity and composition).
Review alternative technologies.
Survey markets and develop preliminary commitments.
Review compatibility with any existing or potential waste reduction programs.
Analyze source separation as a part of the overall recovery approach.
Identify alternative plant sites.
Develop general conceptual design of alternative system/market combinations.
Evaluate environmental issues and identify approach to assure compliance with environmental regulations.
Estimate project costs and benefits.
Assign a full-time project manager.
Formulate an advisory committee.
Begin public participation and education (in accordance with EPA Public Participation Guidelines as discussed in Part D of this announcement).
Ensure State agency support and involvement.

PHASE I OUTPUTS

Estimates of waste generation and composition based on weight measurements.
Analysis of waste collection responsibilities and controls.
Identification of specific markets available, including estimated price and quantity ranges and specifications.
Explanation of technologies considered and tentatively selected as alternatives to satisfy these markets.
Description of potential site(s).
Economic analysis of source separation techniques as a complement to a largescale system.
Economic analysis of proposed alternative(s): capital and operating costs, net tipping fees, etc.
Comparison of costs with land disposal alternatives.
Statement of preliminary go/no go decision by top elected officials with rationale for decision.
Clear statement of project objectives if decision is go.

b. Phase II—Procurement Planning. This phase would take the Phase I outputs and develop all essential elements (except final engineering design) leading to solicitation for system proposals or construction bids.

PHASE II ACTIVITIES

Establish a project management team.
Review qualifications of system vendors or designers.
Analyze procurement options (A&E, turnkey, full-service), and risk posture.
Determine system performance requirements.
Develop an environmental assessment when Federal funding is anticipated for final engineering design or construction (as with codisposal projects).
Review and select a financing alternative.
Select a site taking into account environmental impacts.
Carry out steps to secure waste supply.
Obtain market commitments (letters of intent).
Review procurement and contracting laws and other legal matters impacting the project.
Define permit and regulatory requirements.
Carry out advisory committee activities.
Continue public participation and education.
Ensure continued State agency support and involvement, including required legislation.

PHASE II OUTPUTS

Description of procurement approach.
Description of financing plan.
Description of how waste supply will be assured.
Firm letters of intent for purchase of products.
Description of legal authorities and actions to remove constraints.
Description of permit and regulatory requirements, and means of obtaining required permits.
Advisory committee project analysis. Summary of public participation activities and of public comments in response to the project.

c. Phase III—Procurement. This phase involves those steps required to solicit for system proposals or bids, review and select a successful bidder, and negotiate and sign final contracts.

PHASE III ACTIVITIES

Prepare appropriate RFP's or select A&E for design (depending on procurement strategy).
Evaluate bids or proposals.
Determine negotiation strategy.
Negotiate with preferred bidder (depending on procurement strategy).
Secure required permits.
Finalize contracts for systems, markets, and waste supply.
Secure financing.
Continue public participation and education.
Continue advisory committee activities.
Ensure continued State agency support and involvement.

PHASE III OUTPUTS

Well-conceived RFP.
Selected bidder.
Contracts for system procurement, product sales, or waste supply.
Secured-approved permits.
Marketable financing package.
If appropriate, a summary of continued advisory committee work.

ELIGIBLE ACTIVITIES AND OUTPUTS FOR DEVELOPMENT OF SOURCE SEPARATION PROGRAMS

a. Phase I—(Feasibility). This phase includes determination of the feasibility of resource conservation and recovery through source separation techniques. Eligible activities will result in a basis for a go/no go decision on implementation. Activities would include:
Survey markets.
Survey waste stream.
Analyze costs.
Assign a full-time project manager.
Formulate an advisory committee.
Conduct public participation activities (in accordance with EPA Public Participation Guidelines).
Identify alternative source separation strategies.
Determine need for amended or new ordinances or legislation necessary to operate the program.

Determine the need for and feasibility of interlocal agreements.

Insure State agency support and involvement.

PHASE I OUTPUTS

Feasibility analysis including: Market survey results; cost analyses; analyses of alternative source separation strategies; and public education requirements.

Recommendations for procurement of services and/or equipment.

Recommendations for interlocal agreements.

Recommendations for marketing arrangements and contracts.

Summary of public participation activities and discussion of public comments in response to the project.

b. Phase II (Implementation). This phase would be fundable after the decision to implement a source separation program was reached. Implementation activities would include:

Establish structure of collection, processing and storage system.

Develop and issue bid specifications for procurement of collection, processing and storage equipment and/or services.

Develop and issue bid specifications for sale of materials.

Evaluate bids for sale of materials and procurement of services and equipment.

Draft and enact appropriate ordinances and legislation.

Develop a public education program.

Conduct advisory committee activities.

Ensure continued State agency support and involvement.

PHASE II OUTPUTS

Contracts for supply of services and equipment.

Market contracts for recovered products.

Enacted ordinances and/or legislation.

A comprehensive campaign to educate and train the public to carry out their role in the source separation program.

Implementation of the collection, processing and storage system.

Summary of public participation activities and discussion of public comments in response to the project.

K. SOLICITATION PROCEDURE

Applicants will be selected for award under this program through a national competition described below.

Applicants will have until December 15, 1978, to develop and submit proposals according to the preapplication kit instructions. Kits are available by writing or calling:

Mr. Stephen A. Lingle,
Office of Solid Waste,
Resource Recovery Division (WH-563),
U.S. Environmental Protection Agency,
Washington, D.C. 20460; Telephone 202-755-9140.

Proposals will be reviewed and judged against criteria presented below. The criteria are qualitative factors by which the superior proposals will be selected.

Review and selection will involve State officials and EPA Regional Office and Headquarters staff. States will review proposals to certify consistency with State plans and score them based on the criteria. EPA Regional Offices will review and rank the proposals for their respective regions. EPA Headquarters, with assistance from Department of Energy staff, will review the proposals and make final selections with Regional Office concurrence. EPA anticipates that final selections will be made roughly 60 days after receipt of the proposals.

Following this selection, EPA will work closely with each selected applicant to assist them to develop a detailed scope of work and implementation schedule, to identify the appropriate types of consultant services required, to determine review and reporting procedures, and to develop a final budget. These items will form the basis of a formal application for funding. Following EPA approval and processing of the formal application, the award will be made. EPA anticipates that workscope development and formal application processing and award will require approximately 60 days.

One solicitation is planned each fiscal year. If responses to the annual solicitation do not provide sufficient numbers of proposals which are selected for award, then one or more additional solicitations will be made during that year.

L. CRITERIA FOR AWARD

The criteria below will be used to select the first year's recipients, and may be revised in fiscal year 1980 and 1981 announcements as experience dictates. These criteria have been designed to reflect the potential of an applicant for successful resource recovery implementation, given financial and technical assistance in project planning and development, as well as the extent of the applicant's urban economic problems. The selection criteria are as follows:

1. Potential and need for resource recovery to reduce land disposal requirements. (35 percent of total points.)

Availability of future land disposal sites.

Projected waste generation versus land availability.

Immediacy of need for land disposal alternatives.

Current and projected costs of land disposal, including transportation costs.

2. Project success factors. (35 percent of total points.)

Applicant's commitment

Extent of applicant's cash contribution to the project.

Approval and support of local elected officials.

Institutional factors

Mechanism for securing waste supply.

Existence of a strong implementing authority recognized by all project participants.

Approval and support of (1) local elected officials, (2) public and industry, and (3) States.

Local/regional cooperation, including consistency with any local and/or regional plans.

Firm market commitment and technical feasibility (when already selected).

Recovery and conservation impacts

Extent of energy and materials recovery.

Integration of mechanical recovery/conversion systems and source separation and resource conservation programs.

3. Potential for supporting the Urban Policy objectives. (15 percent of total points.)

A major objective of this initiative is to induce private investment and enhance job opportunities in economically "distressed" urban areas. The applicants should describe factors which they believe reflect the level of economic distress in the area to be served by the project. Factors which could be considered include:

Current levels and trends in employment.

Current level and trends in per capita income.

Urban population shifts and other changes in the tax base.

4. Amount of prior progress toward resource recovery. (15 percent of total points.)

Examples of eligible progress include, but are not limited to:

Completed feasibility study.

Appointed resource recovery project director.

Strong market or waste supply commitment.

Any of the project elements listed in the description of eligible activities can be credited under this criterion.

Dated: October 11, 1978.

THOMAS C. JORLING,
Assistant Administrator for Water and Waste Management.

[FR Doc. 78-29221 Filed 10-16-78; 8:45 am]

federal register

TUESDAY, OCTOBER 17, 1978
PART V

CONSUMER PRODUCT SAFETY COMMISSION

■

REASONABLE AND REPRESENTATIVE TESTS AND GUARANTIES UNDER THE FLAMMABLE FABRICS ACT

Proposed Revision and Amendment of Flammable Fabrics Act Regulations

[6355-01-M]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Parts 1608, 1610, 1611]

REASONABLE AND REPRESENTATIVE TESTS AND GUARANTIES UNDER THE FLAMMABLE FABRICS ACT

Proposed Revision and Amendment of Flammable Fabrics Act Regulations

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rules.

SUMMARY: The Consumer Product Safety Commission proposes to revise and amend the Flammable Fabrics Act regulations concerning (1) guaranties issued by the sellers of products subject to the Act that the products conform to the applicable standard, (2) "reasonable and representative" tests to show the basis for guaranties of fabrics covered by the Standard for the Flammability of Clothing Textiles (16 CFR Part 1610) and the Standard for the Flammability of Vinyl Plastic Film (16 CFR Part 1611), and (3) general regulations applicable to all products subject to a standard issued under the Flammable Fabrics Act (16 CFR Part 1608). The purpose of the amendments is to update the regulations and to simplify and clarify them so they can be more easily understood, and so that compliance will be easier.

DATES: Written comments should be submitted on or before December 18, 1978.

ADDRESSES: Written comments, preferably in five copies, should be submitted to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT:

Phyllis Buxbaum, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207, 301-492-6626.

SUPPLEMENTAL INFORMATION:

Background

The Flammable Fabrics Act (FAA), which was originally enacted in 1953, amended in 1954, and revised and amended in 1967, authorizes the issuance of flammability standards and other regulations for clothing, interior furnishings, fabric, and related material to protect the public against the unreasonable risk of fire leading to injury, death, and property damage.

On May 14, 1973, all of the functions under the Flammable Fabrics Act (15 U.S.C. 1191-1204) were transferred to the Consumer Product Safety Commission by section 30 of the Consumer Product Safety Act (15 U.S.C. 2079). Previously, the Department of Commerce, the Federal Trade Commission, and the Department of Health, Education, and Welfare had responsibilities under the Flammable Fabrics Act.

Under section 30(e) of the Consumer Product Safety Act, all determinations, rules, and regulations in effect at the time of the transfer of functions to the Consumer Product Safety Commission continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed by the Commission, by a court, or by operation of law. All rules and regulations now in effect under the Flammable Fabrics Act are published in Title 16 of the Code of Federal Regulations, Chapter II, Subchapter D.

On the basis of its experience in administering the Act, the Commission believes that the public and affected industries would benefit substantially if certain rules and regulations issued under the Act were revised, clarified and simplified.

One of the major reasons the changes are needed is that the regulations currently in effect are out of date. Many of the regulations were issued before the Flammable Fabrics Act was revised and amended in 1967. Prior to the 1967 amendments, only two flammability standards were in effect—the Standard for the Flammability of Clothing Textiles and the Standard for the Flammability of Vinly Plastic Film (Parts 1610 and 1611). By the 1967 amendments to the FFA, the Department of commerce (and later the Consumer Product Safety Commission) was given authority to issue flammability standards for interior furnishings as well as new or revised standards for wearing apparel. Since the 1967 amendments, five standards have been issued under the FFA.

In this revision, the Commission proposes to place in 16 CFR Part 1608 all FFA regulations presently codified in 16 CFR Parts 1608, 1610, and 1611 that are intended to apply to all flammability standards issued under the FFA. All regulations and interpretations relating to the Standard for the Flammability of Clothing Textiles will be codified in Part 1610 and all regulations and interpretations relating to the Standard for the Flammability of Vinyl Plastic Film will be codified in Part 1611. Accordingly, the Commission is proposing to amend the following Flammable Fabrics Act regulations, which now appear in Title 16 of the Code of Federal Regulations:

(a) General Rules and Regulations under the FFA (16 CFR Part 1608).

(b) The Standard for the Flammability of Clothing Textiles (16 CFR Part 1610, Subpart B).

(c) The Standard for the Flammability of Vinyl Plastic Film (16 CFR Part 1611, Subpart B).

While some of the current regulations have been revised to reflect the 1967 amendments to the FFA, others do not reflect the changes resulting from the amendments. Since these regulations should apply to standards issued subsequent to 1967 (covering children's sleepwear, carpets, and mattresses) as well as to the original standards for general wearing apparel and vinyl plastic film, the regulations are being revised to reflect their applicability to the additional standards. Many of the proposed changes are purely editorial and intended to clarify but not alter the provisions of the regulations. Others, such as changing the test requirements for the purpose of issuing guaranties, are substantive.

The proposed regulations which apply only to general wearing apparel and vinyl plastic film (Parts 1610 and 1611) are being amended to clarify, simplify, and update the requirements relating to the testing of products for guaranty purposes under those two standards.

In general, the Commission believes that in certain respects the current regulations are unnecessarily complex and that some of the language is unclear. Therefore, the Commission is proposing to clarify and simplify the regulations. All of the revisions are explained below. Any reference to "current" or "present" rules in this preamble refers to the rules as presently codified.

Changes to General Rules and Regulations Under the Act

The Commission proposes to amend Part 1608, General Rules and Regulations under the Flammable Fabrics Act, as follows:

Proposed § 1608.1, corresponds to the present § 1608.0, with minor editorial changes.

Proposed § 1608.2 is a definition section which corresponds to the present § 1608.1. There are minor revisions for clarification purposes.

Proposed § 1608.3 corresponds to the present § 1608.5, with editorial revisions, and makes it clear that the exclusion of section 11(a) of the Act for common carriers, contract carriers, and freight forwarders does not apply when they sell or distribute products subject to the Act.

Proposed § 1608.4, which corresponds to the present § 1610.39 and exempts from coverage products shipped for processing to make them comply with applicable flammability standards, has been clarified and made applicable to all products subject to flammability standards rather than limited to products subject to the wearing apparel standards.

Proposed § 1608.12 describes the background and scope of the general requirements for all guaranties under section 8 of the Act that products conform to applicable flammability standards. It is a new section which has been inserted for clarification purposes and includes a statement which points out that guaranties are not mandatory, but that if they are furnished, they must be based on reasonable and representative tests performed by or for the guarantor or upon guaranties received and relied upon in good faith by the guarantor.

It also states that while a guaranty received in good faith may be used as a defense to criminal prosecution under section 7 of the Act, it is not a defense to other actions brought by the Commission such as an administrative proceeding under section 5 of the Act or an injunction or condemnation proceeding under section 6 of the Act. Also, there is a new position which states that a person who adversely affects the flammability of an item may not rely on a guaranty received as a defense to prosecution.

Proposed § 1608.12(b)(2) describes the types of guaranties authorized by the Act.

Proposed § 1608.13 sets out the general requirements which the Commission believes should apply to both separate and continuing guaranties and that are currently set out in §§ 1608.2 and 1608.3 (relating respectively to separate and continuing guaranties). In the current rules, many of these requirements are set out only in the section relating to separate guaranties or in the section relating to continuing guaranties. In proposed § 1608.13, all of the general requirements that apply to both separate and continuing guaranties under all of the standards issued under the Act have been consolidated.

Proposed § 1608.13(b) restates the requirement of the Act that guaranties must be based upon guaranties received and relied upon in good faith or upon reasonable and representative tests performed by or for the guarantor.

Proposed § 1608.13(c) requires that guaranties include the name, address, and signature of the guarantor.

Proposed § 1608.13(d) provides that unless the guaranty is furnished by a resident of the United States it is not a bar to prosecution. This should, however, be read with proposed § 1608.13(e) which is a proposed new rule and expressly provides that an importer can furnish a guaranty based on tests performed outside the United States if the importer maintains the required records that form the basis for the guaranty in the United States.

Proposed § 1608.13(f) provides that any person furnishing a guaranty who fails or refuses to keep the records of tests used as the basis of a guaranty, or the guaranties received and used as the basis of a guaranty, has furnished a false guaranty under section 8(b) of the Act. This section expands the present §§ 1610.38(e) and 1611.38(e) to make them applicable to all guaranties and not merely to those given under the Standard for the Flammability of Clothing Textiles (16 CFR Part 1610) or the Standard for the Flammability of Vinyl Plastic Film (16 CFR Part 1611).

Proposed § 1608.13(g) is a new section which provides that if a seller represents that a product complies with a flammability standard under the Act, such a representation will constitute a guaranty and must be based on reasonable and representative tests or guaranties received and relied upon in good faith.

Proposed § 1608.13(h) provides that the government shall not be represented as guarantying in any manner that a product conforms to a flammability standard. This section corresponds to the present § 1608.6.

Proposed § 1608.14 sets out the requirements for separate guaranties, covering a specific transaction between a seller and buyer.

Proposed § 1608.14(a) regarding separate guaranties is comparable to the present § 1608.2. It provides that a separate guaranty may be furnished as part of an invoice or similar document. This provision is currently in § 1608.2. The proposed section also contained an additional requirement that the address of the location of the records upon which the guaranty is based shall be given in the guaranty.

The single suggested form for separate guaranties set forth in proposed § 1608.14(b) has been simplified and clarified and is based on the two forms in the current § 1608.2.

The references in the current § 1608.2 to "class tests" for products subject to the Standard for the Flammability of Clothing Textiles (Part 1610), have been deleted because there are no specific criteria as to what constitutes a class in the current rules. The proposed rules regarding reasonable and representative tests, however, provide that each test is applicable to all products of the same composition (including fiber content), construction, finish, and weight because these are the features that most affect flammability.

Proposed § 1608.15 contains requirements which apply to continuing guaranties. Proposed § 1608.15(b) relates to continuing guaranties filed with the Commission and proposed § 1608.15(c) relates to continuing guaranties from a seller to a buyer. Generally, these sections correspond to present § 1608.3 with the following exceptions:

(1) For the reason given above, the references to class tests in present § 1608.3 have been deleted.

(2) Proposed § 1608.15(b)(3) contains a new requirement that where the person filing a continuing guaranty with the Commission is a business entity consisting of more than one operating unit, the guaranty must identify any operating unit that may issue a guaranty based on the guaranty filed by the prinicpal.

(3) Proposed § 1608.15(b)(4) also contains a new requirement that if a division, subsidiary, or other operating unit files a continuing guaranty with the Commission, the guaranty must disclose the identity of the principal.

Without these last two provisions, the Commission's records are inadequate, in that it may not be able to ascertain the identity of the firm that filed that guaranty and is responsible for maintaining the required records.

Proposed § 1608.15(b)(5) contains a new requirement that the address of the location of the records upon which the guaranty is based shall be given in the guaranty.

Proposed § 1608.15(b)(6) relates to the expiration of guaranties and contains a new provision for withdrawing continuing guaranties.

Proposed § 1608.15(b)(7) provides that a guarantor shall furnish written notice to the Commission when there is a change in the guarantor's legal status or principal place of business.

Proposed § 1608.15(b)(8) revises the statement on the invoice or similar document by which a guarantor gives notice that he or she has a continuing guaranty on file with the Commission by limiting the scope of the statement to the products described in the invoice or other document. This is intended to replace the statement provided in the current § 1608.3(c).

The prescribed forms for continuing guaranties are set forth in proposed subsections 1608.15(b)(10) and 1608.15(c)(6) and contain editorial changes from the currently required forms. The forms are no longer required to be notarized.

Proposed § 1608.15(c), which relates to a continuing guaranty from seller to buyer, contains provisions comparable to those in current § 1608.2, except that those subsections which relate to filing a continuing guaranty with the Commission are eliminated.

Proposed Changes to Rules and Policies for the Standard for the Flammability of Clothing Textiles

Subpart B of Part 1610 contains the rules and regulations which concern the Standard for the Flammability of Clothing Textiles (Part 1610, Subpart A). The Commission is proposing to make various revisions to these regulations. The current rules as presently

codified in Part 1610 contain provisions applicable to products tested under the Standard for the Flammability of Vinyl Plastic Film (Part 1611, Subpart A) as well as the Standard for the Flammability of Clothing Textiles (Part 1610, Subpart A). Under the proposed revision of the rules, all rules and interpretations relating to the Standard for the Flammability of Clothing Textiles will be placed in Part 1610 and all rules and regulations relating to the Standard for the Flammability of Vinyl Plastic Film will be placed in Part 1611.

Several definitions in the proposed § 1610.31 have been amended so that they are applicable only to the clothing textile standard.

The definition of the term "Act" as used in proposed Subpart B of Part 1610 explains "Act" as used in Part 1610 refers to the Flammable Fabrics Act as it existed before it was amended and revised in 1967. (The text of this version of the Flammable Fabrics Act is set forth in 16 CFR Part 1609.) This is necessary because a "savings clause" in the 1967 revised Act continues the flammability standards previously in effect for the fabrics and articles of wearing apparel to which they are applicable, until they are superseded or modified. "Act as amended and revised" (§ 1608.31(b)) is defined as the Flammable Fabrics Act subsequent to the 1967 revision. The two definitions, referring to different versions of the Flammable Fabrics Act, are necessary because the original Act applies to certain situations under the Standard for the Flammability of Clothing Textiles, which is one of the standards issued under the original Act and continued in effect by the "savings clause."

Proposed § 1610.31(e) is revised to clearly explain that the term "rules and regulations" includes the rules established by the Federal Trade Commission when it administered the Act that continue in effect as well as subsequent rules or amendments issued by the Consumer Product Safety Commission.

The definition of "textile fabric" in the proposed § 1610.31(g) has been revised to clearly show that film and fabric with a nitrocellulose fiber, finish, or coating are not subject to Part 1610 but are covered by Part 1611.

In proposed § 1610.31(j), the definition of "raised surface textile fabric" has been revised to specifically indicate that this term includes fabrics having an appliqued, overstitched, tufted, or embroidered design or a loop, pile, or nap construction (such as chenille fabric) as well as a base fabric with multiple rows of lace, ruffles, or similar designs.

Proposed § 1610.31(l) contains a definition of "coated fabric." This definition does not appear in the current rules and regulations. "Coated fabric" as defined in this section does not include fabric with a nitrocellulose fiber, finish, or coating because such fabric is not covered by Part 1610. However, the definition of "coated fabric" which is in Part 1611 does include fabric with a nitrocellulose fiber, finish, or coating because such fabric is covered by the Standard for the Flammability of Vinyl Plastic Film in Part 1611.

Proposed § 1610.32 has minor editorial changes.

Proposed § 1610.33 has been revised so that it clearly describes the standard under which the various types of textile fabrics are required to be tested.

Proposed § 1610.34 describes the surface of wearing apparel that is required to be tested. It is intended to replace current § 1610.34, 1610.35(c), and 1610.36(e).

Proposed § 1610.35(a) relating to testing fabric which would not normally be dry cleaned or washed, and § 1610.35(b), regarding narrow fabric, are comparable to provisions in current § 1610.35(a) and (d) with minor editorial changes to make the regulations more easily understood.

Proposed § 1610.36 is based on current § 1610.36 and relates to particular types of products that are not required to be tested under the standard. Proposed § 1610.36(a) relates to fabric intended or sold for use as interlinings or other covered or unexposed parts of wearing apparel, and proposed § 1610.36(b) relates to fabrics intended for use in hats, gloves, or shoes. The current and proposed regulations concerning these products both specify that the products are not subject to the standard, provided the invoice or other document associated with the marketing of such products specifies their intended end use. However, the current provision requiring persons marketing such fabrics to keep detailed records regarding acquisition and disposition of such fabrics has been eliminated in the proposed regulations since such records do not seem to be necessary for the efficient enforcement of the Act.

Proposed § 1610.36(c) combines and clarifies the several rules and notes relating to handkerchiefs which are currently in § 1610.36(c) and the note following the current § 1610.36(e).

Proposed § 1610.36(d), which relates to ornamental veils and veilings, revises and redesignates as a rule the current "Note" at the beginning of Subpart B of Part 1610. The substance of the proposed rule was issued by the Federal Trade Commission as an interpretation of the phrase "covering for the neck, face, or shoulders" which appears in section 2(d) of the Act in connection with the exclusion of hats from the Act. As revised, the proposed rule provides that ornamental veiling is covered by the Act and subject to the standard if, when attached to a hat or comprising a hat, it extends more than 9 inches from the crown of the hat.

Proposed § 1610.37 sets forth what are "reasonable and representative tests" for the purpose of issuing guaranties under section 8 of the Act for products subject to the Standard for the Flammability of Clothing Textiles (Part 1610). Although the references to class tests, which are inadequately defined in the current rules, are eliminated, the proposed rules provide that the tests performed for guaranty purposes shall apply to all fabrics of the same composition (including fiber content), construction, finish, and weight.

Proposed § 1610.37(a) is intended to clarify the present requirement that tests necessary for guaranty purposes must be conducted on the fabric after final processing when the fabric is in the form or condition for use in wearing apparel.

Proposed § 1610.37(a)(4) is a new section which states that a test for guaranty purposes may not be relied upon for more than 3 years from the date the test is conducted. This change is made because of the possibility that over a period of years there may be gradual undetected changes in the processing of the fabric that could affect its flammability.

Proposed § 1610.37(b) defines the types of required tests for guaranty purposes which include (1) an "initial test" (currently § 1610.31(k)) with the new requirement that the initial test shall be performed upon the beginning of production, importation, or other receipt of the goods to which the guarantly applies, and (2) additional tests which are required at specified intervals for fabric of the same composition, construction, finish and weight. The frequency of the additional tests depends upon the type of fabric involved and the results of the initial test.

Proposed § 1610.37(c) describes the tests required for guaranty purposes on plain surface textile fabrics. This section uses the results of the initial test as a basis for determining how frequently fabric of the same composition must be tested. The provisions proposed in this section are changed substantially from the current rules in that (1) class tests as described in the current rules have been eliminated, (2) the proposed rules do not distinguish between fabrics weighing 2 ounces or less per square yard and those weighing more because the Commission believes that all fabric that ignites during the initial test should be tested at least once a year.

Under the proposed rules, the frequency of reasonable and representative tests for plain surface fabrics will depend upon the results of the initial test which is required for all fabrics of the some composition (including fiber content), construction, finish, and weight.

Specifically, proposed § 1610.37(c)(2) regarding plain surface fabrics provides that: (1) If on the initial test the flame spread time is 3.5 seconds or more, the fabric must be tested every 3 months. If 4 consecutive tests subsequent to the initial test show the average flame spread time to be 7 seconds or more, no additional testing is required for 3 years; (2) if any specimen ignites but the flame is extinguished before it reaches the stop cord, the fabric must be tested once each year; and (3) if none of the specimens ignite, the initial test performed every 3 years will be the only testing required.

The proposed rules regarding reasonable and representative tests for raised fiber surface fabrics are also based on the results of the initial test. Specifically, proposed § 1610.37(d) provides that: (1) If on the initial test the flame spread time is from 4 to 7 seconds inclusive, the fabric must be tested once a month; (2) if on the initial test the flame spread time is in excess of 7 seconds, the fabric must be tested once every 6 months; (3) if on the initial test there is a surface flash on any specimen but the base fabric does not ignite, the fabric must be tested at least once every 6 months; and (4) if none of the specimens exhibit a surface flash or base burn, an initial test every 3 years will be the only testing required.

Under the revised regulations, the testing for guaranty purposes is based exclusively on testing at specified time intervals, rather than a combination of time intervals and production intervals, since the Commission believes this is less cumbersome to the producer and affords comparable protection to the consumer.

Proposed § 1610.37(e), which is intended to replace current § 1610.37(f), simplifies the reasonable and representative tests for fabric and wearing apparel containing fabric not tested during production by making the testing requirements the same as that required for fabric during production.

Proposed § 1610.37(f) is a new section which provides that if a fabric fails the applicable flammability test, any guaranty of that fabric sold after the failing test, but before the defect is corrected, is a false guaranty under section 8(b) of the Act.

Proposed § 1610.37(g) concerns variations in test results and would replace present § 1610.37(h). It provides that if any test after the initial test shows the fabric to be more flammable than indicated by the initial test, the later test shall be used as the basis for determining the frequency of future testing.

Proposed § 1610.38 concerns the records required to be kept by guarantors. There are minor editorial changes throughout the section to make it applicable only to products tested in accordance with part 1610.

Proposed § 1610.38(a) contains a new provision requiring that the test records show the date and place where the test was performed and the signature of the person responsible for performing the test, as well as any additional information necessary to relate the tests to the product(s) guarantied.

Proposed § 1610.38(b), relating to the records required to be maintained by sellers who furnish guaranties based on guaranties received, amends the current provision in § 1610.38(c)(1) to require records sufficient to identify the source of the guarantied products, the basis for the guaranty, and the products guarantied. The current provision specifies only that the records show the identity of the guarantied products.

Proposed § 1610.38(c) provides that the records required to be maintained for guaranty purposes shall be maintained for so long as they are relied upon and for 3 years thereafter. The current requirement as set out in § 1610.38(d) requires only that the records be maintained for 3 years. Although under the proposed revised rules no test may be relied upon for more than 3 years, there are times when marketing practices will result in products being on the market more than 3 years after the initial guaranty test is performed.

The Commission does not currently propose to revise or amend the statements of interpretation and policy relating to the Standard for the Flammability of Clothing Textiles (16 CFR 1610, subpart A) which appear in subpart C of part 1610.

PROPOSED CHANGES TO RULES AND POLICIES FOR THE STANDARD FOR THE FLAMMABILITY OF VINYL PLASTIC FILM

Part 1611 concerns the Standard for the Flammability of Vinyl Plastic Film. Subpart A is the standard itself, which remains unchanged.

Subpart B of part 1611 consists of the rules relating to subpart A. The proposed changes in the rules are similar to the proposed changes of subpart B of part 1610 except that where appropriate, the rule in this part refers to the provisions in the Standard for the Flammability of Vinyl Plastic Film rather than the Standard for the Flammability of Clothing Textiles. Also, those provisions that are presently applicable only to the rules relating to the clothing textile standard are omitted from this part.

PART 1608—GENERAL RULES AND POLICIES UNDER THE FLAMMABLE FABRICS ACT

Subpart A—General Rules

Sec.
1608.1 Scope.
1608.2 Definitions.
1608.3 Exclusion for common carriers, contract carriers, and freight forwarders (section 11(a) of the Act).
1608.4 Shipments under section 11(c) of the Act.

Subpart A—General Rules Regarding Guaranties

1608.12 Scope and background.
1608.13 General requirements for guaranties.
1608.14 Separate guaranties.
1608.15 Continuing guaranties.

AUTHORITY: Sec. 5, 8, 67 Stat. 112, 114, as amended (15 U.S.C. 1194, 1197).

Subpart A—General Rules

§ 1608.1 Scope.

This part 1608 contains rules and regulations issued under the Flammable Fabrics Act that apply to all flammability standards that are in effect under the Act.

§ 1608.2 Definitions.

For the purposes of this part:

(a) "Act" means the Flammable Fabrics Act, as amended (15 U.S.C. 1191-1204).

(b) "Marketing or handling" means the transactions referred to in section 3 of the Flammable Fabrics Act, as amended.

(c) "United States" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and Possessions of the United States.

(d) "Rules" and "regulations" means (1) the rules and regulations issued by the Federal Trade Commission under section 5(c) of the Act before May 14, 1973 which are still in effect and (2) the rules and regulations issued under section 5(c) of the Act after May 13, 1973, by the Consumer Product Safety Commission.

(e) The definitions of terms in section 2 of the Act also apply to this Part.

§ 1608.3 Exclusion for common carriers, contract carriers, and freight forwarders (section 11(a) of the Act).

Section 11(a) of the Act provides that the Act shall not apply to "any common carrier, contract carrier, or freight forwarder in transporting a product, fabric, or related material shipped or delivered for shipment into commerce in the ordinary course of its business." The Commission interprets the terms "ordinary course of its busi-

ness" to exclude salvaging and lien-realizing operations. Accordingly, the exclusion in section 11(a) of the Act does not apply to carriers, contract carriers, or freight forwarders who distribute products that they have obtained by salvaging or lien-realizing operations.

§ 1608.4 Shipments under section 11(c) of the Act.

(a) *Purpose and applicability.* Section 11(c) of the Act provides that the Act does not apply to "any product, fabric, or related material shipped or delivered for shipment into commerce for the purpose of finishing or processing such product, fabric, or related material so that it conforms with applicable flammability standards." The purpose of section 11(c) is to permit items to be shipped in commerce so that they can be made to conform with the flammability standards in effect under the Act. Section 11(c) does not otherwise limit the force and effect of sections 3, 5, 6, 7, and 9 of the Act. In particular, section 11(c) does not authorize the sale of any item which does not meet an applicable flammability standard at the time of sale or offering for sale, even though the buyer intends or agrees to ship the product, fabric, or related material for treatment or processing to make it conform with the flammability standard.

(b) *Invoice statement required.* An invoice or other document relating to a shipment or delivery for shipment under section 11(c) of the Act shall state the purpose of the shipment.

(c) *Shipment must be to processor or finisher.* Section 11(c) of the Act applies only to items shipped or delivered for shipment directly to a person engaged in the business of processing or finishing products, fabrics, or related materials to improve their flammability resistance.

(d) *Records of 11(c) shipments.* Any person shipping or delivering products, fabric, or related material under section 11(c) of the Act must maintain records of:

(1) The name and address of the person to whom the product, fabric, or related material was shipped for flammability treatment.

(2) The date the flammability treatment was completed.

(3) The disposition of the treated product, fabric, or related materials.

(e) *Importation of products to be treated with a flame retardant.* The importation of products, fabric, or related materials may be considered to be a part of shipment or delivery for shipment into commerce for the purpose of bringing them into conformance with the applicable standard if:

(1) the importer maintains the records required by paragraph (d) of this section.

(2) The importer, at the time of importation, executes and furnishes to the U.S. Customs Service an affidavit stating:

> These products, fabrics, or related materials do not meet the applicable flammability standards issued under the Flammable Fabrics Act. They will not be sold or used in their present condition but will first be processed or finished to make them conform with the applicable standard.
>
> The undersigned also agrees to maintain the records required by 16 CFR 1608.7(d) showing where the items were shipped for treatment, when they were treated, and the disposition of the treated items.

(3) The importer, if requested to do so by the U.S. Customs Service, furnishes an adequate performance bond conditioned upon the complete discharge of the obligations set forth in subparagraphs (1) and (2) of this paragraph (e).

Subpart B—General Rules Regarding Guaranties

§ 1608.12 Scope and background.

(a) *Scope.* This subpart B of part 1608 applies to all guaranties issued under section 8 of the Flammable Fabrics Fabrics Act (15 U.S.C. 1197). Additional requirements for guaranties that products conform to particular flammability standards are found in the standards themselves and in the rules and regulations issued under each standard. These additional requirements concerning guaranties include the following:

(1) Standard for the Flammability of Clothing Textiles, 16 CFR 1610.37 and 1610.38.

(2) Standard for the Flammability of Vinyl Plastic Film, 16 CFR 1611.36 and 1611.37.

(3) Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X, 16 CFR 1615.4(g)(4)(iv), and 1615.31(f).

(4) Standard for the Flammability of Children's Sleepwear: Sizes 7 though 14, 16 CFR 1616.5(c)(4)(iv), 1616.31(e).

(5) Standard for the Surface Flammability of Carpets and Rugs, 16 CFR 1630.31.

(6) Standard for the Surface Flammability of Small Carpets and Rugs, 16 CFR 1631.31.

(7) Standard for the Flammability of Mattress (and Mattress Pads), 16 CFR 1632.31(f).

(b) *Background.* (1) Section 8(a) of the Act provides that no person is subject to prosecution under section 7 of the Act (15 U.S.C. 1196) for marketing or handling goods that fail to conform to flammability standards if that person relied in good faith upon a guaranty from the manufacturer or other person from whom the goods were obtained. Section 8(b) provides that it is unlawful to issue a false guaranty, and section 7 provides criminal penalties for willfully furnishing a false guaranty. While a guaranty received in good faith may be used as a defense against criminal prosecution under 7 of the Act, the guaranty is not a defense to other actions of the Consumer Product Safety Commission, such as administrative proceedings under section 5 of the Act or injuction and condemnation proceedings under section 6 of the Act. A guaranty received by a person is also not a defense when the person has adversely affected the flammability of the item by further processing. The Act does not require that manufacturers or sellers issue guaranties to their buyers, but anyone who chooses to issue a guaranty must base it on "reasonable and representative" tests, as prescribed by the Commission's regulations, or upon an applicable guaranty received and relied upon in good faith by the guarantor. Guarantors must comply with both this part and the regulations applicable to a particular standard.

(2) A guaranty issued under the Act must be in one of the following forms:

(i) A separate guaranty specifically designating the product, fabric, or related material covered by the guaranty.

(ii) A continuing guaranty given by the seller to the buyer and applicable to any product, fabric, or related material sold, or to be sold, to that buyer by the seller.

(iii) A continuing guaranty filed with the Commission's Directorate for Compliance and Enforcement and applicable to any product, fabric, or related material handled by the guarantor.

§ 1608.13 General requirements for guaranties.

(a) *General.* This section contains requirements for the basis and form of all guaranties issued under section 8 of the Flammable Fabrics Act and provides other general requirements for guaranties.

(b) *Guaranties must be based on reasonable and representative tests or upon guaranties received.* Guaranties must be based (1) upon a guaranty received and relied upon in good faith by the guarantor or (2) upon reasonable and representative tests performed by or for the guarantor.

(c) *Guarantor's name and address.* A guaranty under section 8 must be signed by, and contain the name and address of, the guarantor.

(d) *Guaranty must be furnished by United States resident.* Only a resident of the United States may furnish a guaranty under section 8 of the Act. A guaranty by a person who is not a resident of the United States is not a bar to prosecution under section 7 of the Act.

(e) *Tests of imported products.* A guaranty may be based upon tests performed outside the United States, *provided* all required records are maintained by the guarantor at his or her principal place of business in the United States.

(f) *Failure to maintain records of tests or guaranties received.* Any guarantor who fails or refuses to keep the required records used as a basis for the guaranty has furnished a false guaranty under section 8(b) of the Act.

(g) *Representation that product complies with standard.* Any person who represents on a label, invoice, or other document that a product, fabric, or related material complies with a flammability standard issued under the Act, but who fails to maintain records which establish that such representation is based on reasonable and representative tests as specified by the regulations or upon guaranties received shall have furnished a false guaranty under section 8(b) of the Act.

(h) *Government shall not be represented as guarantor.* No representation nor suggestion shall be made in advertising or otherwise that the Government, or any branch thereof, guarantees or represents that any item subject to the Act conforms to a flammability standard.

§ 1608.14 Separate guaranties.

(a) *General.* (1) This section provides requirements for the form of a separate guaranty. A separate guaranty is a guaranty from a seller to buyer that specifically designates the product, fabric, or related material guarantied. A separate guaranty must be in writing and may be either on the invoice or similar document relating to such item or in a separate document.

(2) The document containing a separate guaranty must also contain the date that the separate guaranty is issued, and the name and address of the guarantor, and the location of the records of the basis of the guaranty.

(b) *Form for separate guaranty.* The Commission suggests the following form for separate guaranties. This form is not required, but any separate guaranty must contain all the information prescribed in this section.

SEPARATE GUARANTY

Based upon a guaranty that I have received, or upon reasonable and representative tests performed by or for me in accordance with the applicable regulations and flammability standards in effect under the Flammable Fabrics Act, I guaranty that the items described in this document or the attached document(s) conform to the applicable flammability standards. Records of these tests or the guaranties used as a basis for this guaranty are on file at (address)———.

Date:———.

———
Name of Guarantor

———
Address

§ 1608.15 Continuing guaranties.

(a) *General.* This section provides for the form of a continuing guaranty. A continuing guaranty may be either:

(1) A guaranty given from seller to buyer applicable to any item sold or to be sold to the buyer by the seller.

(2) A guaranty filed with the Consumer Product Safety Commission applicable to any item handled by a guarantor.

(b) *Continuing guaranties filed with the Commission.* (1) Continuing guaranties filed with the Commission must be sent to Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207.

(2) A continuing guaranty filed with the Commission must be signed and must include the name and address of the guarantor.

(3) Where the person filing a continuing guaranty with the Commission is a business entity consisting of more than one operating unit, the guaranty must contain the name and address of each operating unit that will market products subject to the guaranty.

(4) Where the person filing a separate guaranty is a separate division, subsidiary, or other operating unit of a business organization, the guaranty shall disclose the name and address of both the principal business organization and the unit filing the guaranty.

(5) Any continuing guaranty filed with the Commission must specify the location of the records that are the basis of the guaranty.

(6) (i) Continuing guaranties expire at the earlier of the following:

(A) Three years from the date they are received by the Commission.

(B) When there is any change in the legal business status of the guarantor.

(C) When the guarantor notifies the Commission that the guaranty is withdrawn.

(ii) Any person whose continuing guaranty expires and who desires to renew it must file a new continuing guaranty with the Commission.

(7) Any person who has filed a continuing guarahty with the Commission shall promptly advise the Directorate for Compliance and Enforcement of the Commission in writing of any change in the legal status of the guarantor or any change in the address of the guarantor's principal place of business.

(8) Any person who has a continuing guaranty on file with the Commission may give notice of such fact by placing the following statement on the invoice or other document relating to the product, fabric, or related material guarantied:

A guaranty that the products described in this document comply with all applicable flammability standards issued under the Flammable Fabrics Act is on file with the Consumer Product Safety Commission.

(9) Any person who falsely represents that he or she has a continuing guaranty on file with the Commission, or who falsely represents that a continuing guaranty on file with the Commission covers any product, fabric, or related material, has furnished a false guaranty under section 8(b) of the Act.

(10) The following form must be used to file a continuing guaranty with the Commission. The Directorate for Compliance and Enforcement of the Commission will supply printed forms, upon request.

CONTINUING GUARANTY UNDER THE FLAMMABLE FABRICS ACT FOR FILING WITH THE CONSUMER PRODUCT SAFETY COMMISSION

The undersigned guarantor, a (corporation, partnership, individual, etc.) having (his, her, its) principal place of business in the United States at (street address——— City——— State——— zip———) hereby guarantees that with regard to all of the products, fabrics, or related materials hereafter marketed or handled by (guarantor) for which flammability standards are in effect under the Flammable Fabrics Act, as amended [except———], reasonable and representative tests as prescribed under the Flammable Fabrics Act have been performed and show that the products, fabrics, or related materials conform to the applicable flammability standards.

Records of the tests performed or guaranties received and relied upon as the basis for this guaranty are on file at (address———). Date:———

———
(Signature of authorized representative of guarantor)

———
(Title)

———
(Name under which business of guarantor is conducted)

If corporation, place corporate seal here.

If partnership, list partners below.

———

Name and address of principal if guarantor is division, subsidiary, or other operating unit of business organization:

———

☐ Check here if other operating units market products covered by this guaranty, and attach supplemental sheet with name and address of each operating unit.

(c) *Continuing guaranties from seller to buyer.* (1) A continuing guaranty from seller to buyer must be dated and must contain the name and address of the guarantor.

(2) Where the person issuing the continuing guaranty to the buyer is a business entity consisting of more than one operating unit, the guaranty must contain the name and address of each operating unit that will market products subject to the guaranty to the buyer.

(3) Where the person making the continuing guaranty to the buyer is a separate division, subsidiary, or other operating unit of a business organization, the guaranty shall contain the name and address of both the principal business organization and the unit making the guaranty.

(4) Any continuing guaranty from seller to buyer must specify the location of the records that are the basis of the guaranty.

(5) Continuing guaranties from seller to buyer expire at the earlier of the following:

(i) Three years from the date of the guaranty.

(ii) When there is any change in the legal business status of the guarantor.

(iii) When the guarantor withdraws the guaranty.

(6) The following form must be used for a continuing guaranty from seller to buyer.

CONTINUING GUARANTY FROM SELLER TO BUYER UNDER THE FLAMMABLE FABRICS ACT

The undersigned guarantor (seller), a (corporation, partnership, individual) having (his, her, its) principal place of business in the United States at (street address——— City——— State——— zip———) state that (guarantor), being engaged in marketing or handling products, fabrics, or related materials subject to the Flammable Fabrics Act, hereby guarantees to the buyer,

_____
(name of buyer)

_____
(address of buyer)

that with regard to all of the products, fabrics, or related materials sold by the seller for which flammability standards under the Flammable Fabrics Act are in effect [except———], reasonable and representative tests as prescribed in the rules and regulations under the Flammable Fabrics Act have been performed and show that the products, fabrics, or related materials conform to all applicable flammability standards.

Records of the tests performed or guaranties received and relied upon as the basis for this guaranty are on file at

_____
(Address)

Date: ———.

_____
(Signature of authorized representative of guarantor)

_____
(Title)

_____
(Name under which business of guarantor is conducted)

If corporation, place corporate seal here.

If partnership, list partners below.

Name and address of principal if guarantor is division, subsidiary, or other operating unit of business organization:

☐ Check here if other operating units market products covered by this guaranty, and attach supplemental sheet with name and address of each operating unit.

* * * * *

2. Subpart B of Part 1610 is revised to read as follows:

PART 1610—STANDARD FOR THE FLAMMABILITY OF CLOTHING TEXTILES

Subpart B—Rules and Regulations

Sec.

AUTHORITY: Secs. 5, 8, 67 Stat. 112, 114 as amended (15 U.S.C. 1194, 1197).

Subpart B—Rules and Regulations

§ 1610.31 Definitions.

For the purposes of this Part:

(a) "Act" means the Flammable Fabrics Act, as amended in 1954 (67 Stat. 111; 68 Stat. 770) but without any later amendments. Since the Flammable Fabrics Act as printed in the United States Code includes later amendments, the text of the Act as defined in this Part appears as Part 1609 of this Chapter. This definition is necessary because of a savings clause in the amended and revised Act (sec. 11, Pub. L. 90-189) which continues in effect the standards incorporated in the Act prior to its revision. The Act prior to its revision contains procedures, definitions, and other requirements which affect those standards.

(b) "Act as amended and revised" means the Flammable Fabrics Act amended and revised December 14, 1967 (81 Stat. 568, 15 U.S.C. 1191, et seq.).

(c) "Standard" means the Standard for the Flammability of Clothing Textiles (16 CFR 1610, Subpart A, originally CS 191-53).

(d) "Marketing or handling" means the transactions referred to in section 3 of the Flammable Fabrics Act as amended and revised in 1967.

(e) "Rules" and "regulations" mean (1) the rules and regulations issued by the Federal Trade Commission under section 5(c) of the Act, and the Act as amended and revised, before May 14, 1973, which are still in effect and (2) the rules and regulations issued after May 14, 1973 by the Consumer Product Safety Commission under section 5(c) of the Act as amended and revised.

(f) "Uncovered or exposed part" of an article of wearing apparel, as used in section 4(a) of the Act and these rules, means the part of an article of wearing apparel that might, during normal wear, be open to flame or other means of ignition. The outer surface of an undergarment is considered to be an uncovered or exposed part of an article of wearing apparel.

(g) "Textile fabric" means any coated or uncoated material subject to the Act, except fabrics having a nitrocellulose fiber, finish, or coating and film, which is two inches or more in width and in a form or condition ready for use in wearing apparel. Fabric (including coated fabric) having a nitrocellulose fiber, finish, or coating and film is subject to the requirements of Part 1611.

(h) "Film" means any non-rigid, unsupported plastic, rubber, or other synthetic or natural film or sheeting of any thickness (including film or sheeting exceeding 10 mils in thickness) or any combination thereof, which is in a form or condition ready for use in wearing apparel. It includes transparent, translucent, and opaque materials and may be plain, embossed, molded, or otherwise surface treated.

(i) "Plain surface textile fabric" means any textile fabric which does not have an intentionally raised fiber or yarn surface such as a pile, nap, or tuft. The term includes those fabrics with fancy woven, knitted, or flock printed surfaces.

(j) "Raised surface textile fabric" means any textile fabric which has an intentionally raised fiber or yarn surface such as a pile, nap, or tuft. Textile fabrics having an appliqued, overstitched, tufted, or embroidered design or a loop, pile, or nap construction (such as chenille fabric), and base fabrics with multiple rows of lace, ruffles, or similar design, are considered raised surface textile fabrics for the purposes of this Part.

(k) "Finish" means a particular finish, but does not include such variables as changes in color, pattern, print, or design or minor variations in the amount or type of ingredients in the finish formulation. Examples of finish

types are starch finishes, resin finishes, or parchmentized finishes.

(l) "Coated fabric" means any textile fabric which is coated, filled, impregnated, or laminated with a continuous film-forming polymeric composition (except fabric having a nitrocellulose fiber, finish, or coating). [Note: This definition differs from that of "coated fabric" in Part 1611, which includes fabric having a nitrocellulose fiber, finish, or coating.]

(m) the definitions in section 2 of the Act and section 2 of the Act as amended and revised, where appropriate, also apply to this Part.

§ 1610.32 General requirements.

No fabric or article of wearing apparel subject to the Standard shall be marketed or handled if, when tested according to the Standard, it exhibits rapid and intense burning as described in § 1610.3(a)(3).

§ 1610.33 Test requirements for testile fabrics, fabrics with a nitro-cellulose fiber, finish or coating, and film.

(a) *Uncoated textile fabrics.* All uncoated textile fabrics intended or sold for use in wearing apparel must meet the requirements of Part 1610 and section 4 of the Act as set forth in 16 CFR 1609.

(b) *Coated textile fabrics.* All coated textile fabrics (as defined in § 1610.31(1) of this Part) intended or sold for use in wearing apparel or contained in articles of wearing apparel must meet the requirements of either this Part 1610 or the requirements of Part 1611.

(c) *Film and fabrics with a nitro-cellulose fiber, finish, or coating.* All film, and all fabrics with a nitrocellulose fiber, finish, or coating, intended or sold for use in wearing apparel must meet the requirements of Part 1611.

§ 1610.34 Surface of textile fabric or garment required to be tested.

(a) *Uncovered or exposed surface.* In determining whether an article of wearing apparel meets the Standard, only the uncovered or exposed part of the wearing apparel, as defined in § 1610.31(f) is required to be tested.

(b) *Fabric with raised fiber surface.* A textile fabric with a raised fiber surface is only required to be tested on the surface intended to be exposed provided that when marketed or handled, the fabric is accompanied by an invoice or other document which clearly indicates that the untested portion of the fabric is to be used only in the covered or unexposed parts of articles of wearing apparel.

(c) *Sweatshirt-type garments.* The raised-fiber surface of an article of wearing apparel which is not intended to be exposed but which, because of the design or construction of the garment, may be worn exposed shall be considered to be an uncovered or exposed part of the article of wearing apparel and must comply with the standard. Examples of the types of products referred to in this paragraph are athletic shirts or so-called "sweatshirts" with a raised fiber inner side.

§ 1610.35 Procedures for testing special types of textile fabrics under the standard.

(a) *Fabric not customarily washed or dry cleaned.* Any textile fabric intended for use, or used, in an article of wearing apparel which, in its normal and customary use as wearing apparel, would not be dry cleaned or washed need not be dry cleaned or washed as prescribed in the Standard at § 1610.4 (d) and (e) when tested under the Standard. However, such fabric must be marked or labeled in a clear and legible manner with the statement "Fabric will be dangerously flammable if dry cleaned or washed" unless the fabric will meet the requirements of the Standard after dry cleaning or washing. An example of the type of fabric referred to in this paragraph is bridal illusion.

(b) *Fabric less than 6 inches wide.* A textile fabric which is less than 6 inches wide need only be tested under the Standard in a lengthwise direction.

§ 1610.36 Application of the standard to particular types of products.

(a) *Interlinings and other fabrics not intended to be exposed.* Fabrics intended and sold for use as interlinings, as defined in section 2(f) of the Act, or as other covered or unexposed parts of articles of wearing apparel are not subject to the Standard. Such fabric must, however, be accompanied by an invoice or other document, when marketed or handled, which clearly and specifically indicates that the fabric is intended to be used only as interlining or in covered or unexposed parts of articles of wearing apparel.

(b) *Fabric intended for use in hats, gloves, and footwear.* Fabric intended and sold for use in those hats, gloves, and footwear that are excluded from the definition of "articles of wearing apparel" in section 2(d) of the Act are not subject to the Standard. Such fabric must, however, be accompanied by an invoice or other document when marketed or handled, which clearly and specifically indicates the fabric is intended to be used only in hats, gloves, or footwear.

(c) *Handkerchiefs.* (1) Except as otherwise provided in this section, handkerchiefs that do not exceed a finished size of 24 inches on any side or which do not have an area of over 576 square inches are not "articles of wearing apparel" subject to the Act. However, if handkerchiefs are affixed to, incorporated in, or used or sold for use as trim or decoration or for any other use in articles of wearing apparel, the handkerchiefs constitute a "textile fabric" as that term is defined in § 1610.31(g) and thus are subject to the Standard.

(2) If, because of construction, design, color, type of fabric, or any other factor, a piece of cloth of a finished type is intended for use or likely to be used as a covering for any part of the head, neck, face, or shoulders, or as any other article of clothing, or incorporated in an article of wearing apparel, such product constitutes an article of wearing apparel as defined in the Act and is subject to the Standard, regardless of its size or of its designation as a handkerchief.

(d) *Ornamental millinery veils or veilings.* All ornamental millinery veils or veilings, when used as part of, in conjunction with, or as a hat, are considered a "covering for the neck, face, or shoulders" under section 2(d) of the Act and subject to the standard if such ornamental millinery veils or veilings extend more than nine (9) inches from the tip of the crown of the hat to which they are attached, or extend more than two (2) inches beyond the edge of the brim of the hat. Hats composed entirely of ornamental millinery veils or veilings are subject to the standard if the veils or veilings are nine (9) inches or more in width and extend more than nine (9) inches from the tip of the crown of the completed hat.

§ 1610.37 Reasonable and representative tests for guaranties.

(a) *General requirements.* (1) The tests specified in this section constitute reasonable and representative tests, as that term is used in section 8 of the Act, for textile fabrics subject to the Standard. Anyone who furnishes a guaranty that an item meets the Standard for the Flammability of Clothing Textiles and bases the guaranty on reasonable and representative tests must, at a minimum, follow the procedures in this section. Additional requirements for guaranties, and prescribed guaranty forms, are set out in Part 1608.

(2) All tests of textile fabric under this section must be conducted on finished fabric after final processing when the fabric is in the form or condition ready for use in wearing apparel. If the product, fabric, or related material covered by a guaranty is subject to further processing after testing, such as finishing, dyeing, or other treatment which may affect its flammability, the guaranty is invalid.

(3) Tests of yarns before they are made into a textile fabric are not "reasonable and representative tests" of

textile fabrics manufactured from such yarns.

(4) A test for guaranty purposes may not be relied upon for more than three (3) years from the date of the test.

(5) Any person furnishing a guaranty based on tests that do not at least meet the requirements of this section shall have furnished a false guaranty under the provisions of section 8(b) of the Act as amended and revised.

(6) The remainder of this section contains requirements for reasonable and representative tests for plain surface textile fabrics, raised fiber surface textile fabrics, and wearing apparel.

(b) *Types of tests.* (1) *Initial test.* The test procedures for each type of fabric and for wearing apparel all begin with an initial test. An initial test consists of two complete tests performed in accordance with the Standard on specimens taken from two separate pieces of textile fabric having the same composition (including fiber content), construction, finish, and weight. The initial test must be performed upon the beginning of production, importation, or other receipt of the products covered by the guaranty.

(2) *Additional tests.* After the initial test. additional tests may be required at stated intervals on fabric of the same composition (including fiber content), construction, finish, and weight during the period the fabric continues to be produced, imported, or otherwise received by the guarantor.

(c) *Reasonable and representative tests for plain surface textile fabrics.* Reasonable and representative tests for plain surface textile fabrics subject to the Standard shall be:

(1) An initial test

(2) Additional tests as follows:

(i) When the initial test of a plain surface fabric shows the fabric to have an average flame spread time of 3.5 seconds or more, an additional test must be performed at least once every 3 months thereafter. If four consecutive tests at intervals of at least 2 months (exclusive of the initial test) show the average flame spread time for such fabric to have been 7 seconds or more, no additional tests are required for 3 years from the last test. After 3 years, an initial test must again be performed.

(ii) When any specimen ignites during the initial test of a plain surface fabric, but the flame extinguishes before the stop cord is burned, an additional test must be performed at least once a year thereafter.

(iii) When none of the specimens ignite during the initial test of a plain surface fabric, the initial test may suffice for a period of 3 years. Every 3 years, another initial test must be performed.

(d) *Reasonable and representative tests for raised fiber surface fabrics.* Reasonable and representative tests for raised fiber surface textile fabrics subject to the Standard shall be:

(1) An initial test.

(2) Additional tests as follows:

(i) When the initial test of a raised fiber surface fabric shows an average flame spread time of 4 to 7 seconds inclusive (Class 2 as provided in § 1610.3(a)(2)(i)), additional tests must be performed at least once every month thereafter.

(ii) When the initial test of a raised fiber surface fabric shows an average flame spread time to be in excess of 7 seconds (Class 1 as provided in § 1610.3(a)(1)(i)), additional tests must be performed at least once every 6 months thereafter.

(iii) When there is a surface flash during the initial test of a raised fiber surface fabric, but the base fabric does not ignite or fuse on any of the specimens, additional tests must be performed at least once every 6 months thereafter.

(iv) When none of the specimens exhibit a surface flash or base burn or fusion during the initial test of a raised fiber surface fabric, the initial test shall suffice for a period of 3 years. Every 3 years, another initial test must be performed.

(e) *Reasonable and representative tests of fabric and wearing apparel containing fabric not tested during production.* For fabric not tested during production and for wearing apparel made of or containing fabric not tested during production in accordance with paragraphs (c) and (d) above, reasonable and representative tests shall be as follows:

(1) An initial test on the fabric or wearing apparel not previously tested.

(2) Additional tests at the frequency provided in paragraphs (c)(2) and (d)(2) of this section, as applicable.

(f) *Failing test results.* Any failing test of a textile fabric will be considered as a reasonable and representative test for that fabric, and any guaranty covering fabric that is marketed or handled by the guarantor after the failing test but before the failure is corrected is a false guaranty under section 8(b) of the Act.

(g) *Variation in test results.* If any test made after the initial test of a textile fabric indicates that the fabric has a more rapid burning time than indicated in the initial test, the fabric shall be tested thereafter as if the more rapid burning time had occurred during the initial test.

§ 1610.38 Recordkeeping by guarantors.

(a) *Guaranties based upon reasonable and representative tests.* Any person furnishing a guaranty on the basis of tests prescribed in § 1610.37 shall keep records of such tests which shall include the following information:

(1) A statement of the results of all tests, showing the style or range number, composition (including fiber content), construction, finish, and weight of the tested fabric.

(2) The date and place of each test performed and the name and signature of the individual conducting the test.

(3) The style, range number, or other identification and the composition (including fiber content), construction, finish and weight of each textile fabric covered by a guaranty or contained in articles of wearing apparel covered by a guaranty.

(4) Such additional information as is adequate to establish that the tests relied upon related to the product(s) guarantied.

(5) A sample swatch of the test fabric.

(b) *Guaranties based on guaranties received.* Any person furnishing a guaranty based on a guaranty received shall maintain a record of the guaranty relied upon and of the source(s) of the guarantied product. Such records must be adequate to relate the guarantied product to the guaranties received and shall include the following:

(1) A copy of the guaranties received and used as a basis for the guaranty or documentation that a valid applicable guaranty on file with the Commission was used as a basic for the guaranty.

(2) An identification of fabric contained in articles of wearing apparel, where fabric guaranties are used as the basis for a guarantee of wearing apparel manufactured from such fabric.

(3) The name and address of any guarantor whose guaranty is used as a basis for furnishing the guaranty.

(4) Any limitations in the coverage of the guaranty relied upon (i.e., type of fabric, garment, or product, etc.).

(5) Any additional information necessary to establish that the tests relied upon relate to the product(s) guarantied.

(c) *Record retention.* The records referred to in this section shall be maintained for so long as such tests or guaranties are relied upon for guaranty purposes and for 3 years thereafter.

3. Subpart B of Part 1611 is revised to read as follows:

PART 1611—STANDARD FOR FLAMMABILITY OF VINYL PLASTIC FILM

Subpart B—Rules and Regulations

Sec.

AUTHORITY: Sec. 5, 8, 67 Stat. 112, 114, as amended (15 U.S.C. 1194, 1197).

* * * * *

Subpart B—Rules and Regulations

§ 1611.31 Definitions.

For the purposes of this Part:

(a) "Act" means the Flammable Fabrics Act, as amended in 1954 (67 Stat. 111; 68 Stat. 770) but without any later amendments. Since the Flammable Fabrics Act as printed in the United States Code includes later amendments, the text of the Act as defined in this Part appears as Part 1609 of this Chapter. This definition is necessary because of a savings clause in the amended and revised Act (section 11 of Pub. L. 90-189) which continues in affect the standards incorporated in the Act prior to its revision. The Act prior to its revision contains procedures, definitions, and other requirements which effect those standards.

(b) "Act as amended and revised" means the Flammable Fabrics Act as amended and revised December 14, 1967 (81 Stat. 568, 15 U.S.C. 1191, et seq.)

(c) "Standard" means the Standard for the Flammability of Vinyl Plastic Film (16 CFR 1611, Subpart A, originally CS 192-53).

(d) "Marketing or handling" means the transactions referred to in section 3 of the Flammable Fabrics Act as amended and revised in 1967.

(e) "Rules" and "regulations" means (1) the rules and regulations issued by the Federal Trade Commission under section 5(c) of the Act and the Act as amended and revised before May 14, 1973, which are still in effect, and (2) the rules and regulations issued after May 14, 1973, by the Consumer Product Safety Commission under section 5(c) of the Act as amended and revised.

(f) "Uncovered or exposed part" of an article of wearing apparel, as used in section 4(a) of the Act and these rules, means the part of an article of wearing apparel that might, during normal wear, be open to flame or other means of ignition. The outer surface of an undergarment is considered to be an uncovered or exposed part of an article of wearing apparel.

(g) "Film" means any nonrigid, unsupported plastic, rubber, or other synthetic or natural film or sheeting of any thickness (including film or sheeting exceeding 10 mils in thickness) or any combination thereof which is in a form or condition ready for use in wearing apparel. It includes transparent, translucent, and opaque material and may be plain, embossed, molded, or otherwise surface treated.

(h) "Coated fabric" means any material (1) which is coated, filled, impregnated, or laminated with a continuous film-forming polymeric composition (including material having a nitrocellulose fiber, finish, or coating), (2) which is 2 inches or more in width, and (3) which is in a form or condition ready for use in wearing apparel.

NOTE.—This definition differs from the definition of "coated textile fabric" in Part 1610, which excludes fabric with a nitrocellulose fiber, finish, or coating.

(i) The definitions in section 2 of the Act and section 2 of the Act as amended and revised, where appropriate, also apply to this Part.

§ 1611.32 General requirement.

No fabric or article of wearing apparel subject to the Standard shall be marketed or handled if, when tested according to the Standard, it does not meet the requirements of § 1611.3.

§ 1611.33 Test requirements for coated fabrics, film, and fabrics with nitrocellulose fiber, finish, or coating.

(a) *Coated fabrics.* All coated fabrics (except film and fabric with a nitrocellulose fiber, finish, or coating) must meet the requirements of either this Part 1611 or the requirements of Part 1610.

(b) *Film and fabrics with a nitrocellulose fiber, finish, or coating.* All film, and all fabric with a nitrocellulose fiber, finish, or coating, that is intended to be sold for use in wearing apparel or contained in articles of wearing apparel must meet the requirements of this Part 1611.

§ 1611.34 Uncovered or exposed surface required to be tested.

In determining whether an article of wearing apparel meets the Standard, only the uncovered or exposed part of the wearing apparel, as defined in § 1611.31(f) is required to be tested.

§ 1611.35 Application of the standard to particular types of products.

(a) *Interlinings and other fabrics not intended to be exposed.* Fabrics and film intended and sold for use as interlinings, as defined in section 2(f) of the Act, or as other covered or unexposed parts of articles of wearing apparel are not subject to the Standard. Such fabric or film must, however, be accompanied by an invoice or other document when marketed or handled which clearly and specifically indicates that the fabric or film is intended to be used only as interlining or in covered or unexposed parts of articles of wearing apparel.

(11) *Fabric intended for use in hats, gloves, and footwear.* Fabric and film intended and sold for use in those hats, gloves, and footwear that are excluded under the definition of "articles of wearing apparel" in section 2(d) of the Act are not subject to the Standard. Such fabric and film must, however, be accompained by an invoice or other document when marketed or handled which clearly and specifically indicates they are intended to be used only in hats, gloves, or footwear.

§ 1611.36 Reasonable and representative tests for guaranties.

(a) *General requirements.* (1) The tests specified in this section constitute reasonable and representative tests, as that term is used in section 8 of the Act, for film and coated fabric subject to the Standard. Anyone who guarantees that an item meets the Standard for the Flammability of Vinyl Plastic Film and bases the guaranty on reasonable and representative tests, must, at a minimum, follow the procedures in this section. Additional requirements for separate and continuing guaranties, and prescribed guaranty forms, are in Part 1608.

(2) All tests of film and coated fabric under this section must be conducted on finished film or fabric after final processing when the film or fabric is in the form or condition ready for use in wearing apparel. If the film or coated fabric covered by a guaranty is subject to further processing after testing, such as a finishing, dyeing, or other treatment which may affect its flammability, the guaranty is invalid.

(3) A test for guaranty purposes may not be relied upon for more then three (3) years from the date of the test.

(4) Any person furnishing a guaranty based on tests that do not, at a minimum, meet the requirements of this section has furnished a false guaranty under the provisions of section 8(b) of the Act as amended and revised.

(5) The remainder of this section contains requirements for reasonable and representative tests for film, fabrics, and wearing apparel subject to the Standard.

(b) *Types of tests.*—(1) *Initial test.* The test procedure for these types of fabrics and wearing apparel begins with an initial test. An initial test consists of two complete tests performed in accordance with the Standard on specimens taken from two separate runs of film or coated fabric having the same formula, finish, color, and thickness. The initial test must be performed upon the begining of production, importation, or other receipt of products covered by the guaranty.

(2) *Additional tests.* After the initial test, additional tests are required at

stated intervals on film or coated fabric having the same formula, finish, color, and thinkness during the period the film or coated fabric continues to be produced, imported, or otherwise received by the guarantor.

(c) *Reasonable and representative tests for film and coated fabric.* Reasonable and representative tests for film or coated fabric subject to the Standard shall be:

(1) An initial test.

(2) Additional tests as follows:

(i) If none of the specimens in the initial test burn in excess of 1.2 inches per second, additional tests shall be performed at least once each year thereafter.

(ii) If one or more of the specimens in the initial test burns at the rate of 1.2 inches per second or more, but the average rate of burning does not exceed 1.2 inches per second, an additional test shall be performed at least once every 3 months thereafter.

(d) *Reasonable and representative tests of film or coated fabric and wearing apparel made of or containing film or coated fabric not tested during production.* For film or coated fabric not tested during production and for wearing apparel made of or containing film or coated fabric not tested during production in accordance with paragraph (c), reasonable and representative tests shall be as follows:

(1) An initial test.

(2) Additional tests at the frequency provided in paragraph (c)(2) of this section.

(e) *Failing test results.* Any failing test of a film or coated fabric under this section will be considered as a reasonable and representative test for that film or fabric, and any guaranty covering a film or coated fabric of the same formula that is marketed or handled by the guarantor after the failing test but before the failure is corrected is a false guaranty under section 8(b) of the Act.

(f) *Variation in test results.* If any test of a film or coated fabric made after the initial test indicates that the film or coated fabric has a more rapid burning rate than indicated in the initial test, the film or coated fabric shall be tested thereafter as if the subsequent test results for such film or fabric had occured during the initial test.

§ 1611.37 Recordkeeping by guarantors.

(a) *Guaranties based on reasonable and representative tests.* Any person furnishing a guaranty on the basis of test prescribed in § 1611.36 shall keep records of such tests which shall include the following information:

(1) A statement of the results of all tests, showing the style or range number, formula, finish, color, and thickness of the tested film or coated fabric.

(2) The date and place of each test performed and the name and signature of the individual conducting the tests.

(3) The style, range number, or other identification and the formula, finish, color, and thickness of the film or coated fabric covered by a guaranty or contained in articles of wearing apparel covered by a guaranty.

(4) Such additional information as is adequate to establish that the tests relied upon relate to the product(s) guarantied.

(5) A sample swatch of the tested film or coated fabric.

(b) *Guaranties based on guaranties received.* Any person furnishing a guaranty based on a guaranty received shall maintain a record of the guaranty relied upon and of the source(s) of the guarantied product. Such records must be adequate to relate the guarantied product to the guaranties received and shall include the following:

(1) A copy of the guaranties received and used as a basis for the guaranty, or documentation that a valid applicable guaranty on file with the Commission was used as a basis for the guaranty.

(2) An indentificiation of the film or coated fabrics contained in articles of wearing apparel where guaranties of the film or coated fabric are used as the basis for the guaranty of wearing apparel manufactured from such film or coated fabric.

(3) The name and address of any guarantor whose guaranty is used as a basis for furnishing the guaranty.

(4) Any limitations in the coverage of the guaranty relied upon (i.e., type of film, coated fabric, garment, or product, etc.).

(5) Such additional information as is necessary to establish that the tests relied upon relate to the product(s) guarantied.

(c) *Record retention.* The records referred to in this section shall be maintained for so long as such tests or guaranties are relied upon for guaranty purposes and for three years thereafter.

Effective date: The Commission proposes that these amendments shall become effective 60 days after the final regulation is published in the FEDERAL REGISTER.

Interested persons are invited to submit data, views, or arguments regarding any aspect of the proposal on or before December 18, 1978. Comments submitted after that date will be considered to the extent practicable.

Written submissions and any accompanying data or materials should be submitted preferably in five copies, to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments may be supported by a memorandum or brief.

Any comments that are received and all other material which the Commission has that is relevant to this proposal may be seen in, or copies obtained from, the Office of the Secretary, Third Floor, 1111 18th Street NW., Washington, D.C. 20207.

Dated: October 12, 1978.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc. 78-29269 Filed 10-16-78; 8:45 am]

Federal Register

TUESDAY, OCTOBER 17, 1978
PART VI

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

■

ANIMAL WELFARE

Proposed Revision of Transportation Standards Governing Certain Live Warmblooded Animals

[3410-34-M]

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[9 CFR Part 3]

ANIMAL WELFARE

Proposed Revision of Standards for the Transportation and the Handling, Care, and Treatment in Connection Therewith of Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, Nonhuman Primates, and Certain Other Warmblooded Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes revisions of the transportation standards governing certain live warmblooded animals under the Animal Welfare Act published in the FEDERAL REGISTER on June 21, 1977 (42 FR 31556-31571) and on May 16, 1978 (43 FR 21160-21167). The proposed revisions provide for (1) a change of the allowable minimum air temperature from 7.2° C (45° F) to 1.7° C (35° F) for dogs, cats, hamsters, rabbits, and certain other warmblooded animals when transported in commerce, (2) a change of the allowable maximum air temperature from 35° C (95° F) to 29.5° C (85° F) for all warmblooded animals under the Animal Welfare Act when transported in commerce, and (3) a new procedure for measuring the air temperature surrounding live animals being transported in commerce, which would replace the "ambient temperature" provisions of the present transportation standards. The new proposed ranges of allowable air temperatures for animals being transported in commerce take into consideration the differences between the air temperatures occurring inside animal shipping containers and the air temperatures surrounding such containers and the various factors affecting such differences. These proposed revisions of the transportation standards are the result of various petitions for reconsideration which were received by the Department and which made new facts and evidence available that appear to warrant such action.

DATE: Comments on or before: November 13, 1978.

ADDRESSES: Comments to Deputy Administrator, USDA, APHIS, VS, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782. Comments available for inspection at the above address during regular hours of business (8 a.m. to 4:30 p.m. Monday through Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Dr. Dale F. Schwindaman, Senior Staff Veterinarian, Animal Care Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782, 301-436-8271.

SUPPLEMENTARY INFORMATION: The Department's present transportation standards provide for a range of ambient air temperatures and temperatures surrounding animals which are allowed when live warmblooded animals are transported in commerce. Such temperatures are not to fall below 7.2° C (45° F) unless a certificate executed by a licensed veterinarian is furnished to carriers or intermediate handlers by USDA licensees or registrants and U.S. Government agencies or instrumentalities indicating that an animal presented for treansportation (with the exception of guinea pigs) is acclimated to air temperatures lower than 7.2° C (45° F). The Department received complaints from many individuals who experienced hardships during cold weather in trying to get shipments of animals transported by air carriers. Some airlines would not accept live animal shipments when the outside atmospheric temperature fell below 45° F. These individuals felt that their dogs and cats were not adversely affected by air temperatures down to 35° F and if acclimated by living outdoors could tolerate temperatures lower than 35° F. The Department is of the opinion that empirical information as well as a certain amount of scientific data, which has come to light, is sufficient to justify the provisions in this proposal setting a lower minimum air temperature which dogs, cats, hamsters, rabbits, and certain other warmblooded animals can tolerate without suffering inhumane treatment during commercial transportation. The Department therefore, proposes to amend §§ 3.11(c)(3), 3.16, 3.17(a)(3), 3.35(c)(3), 3.40, 3.41(a)(3), 3.60(c)(3), 3.65, 3.66(a)(3), 3.111(c)(3), 3.116, and 3.117(a)(3) to provide for a minimum allowable air temperature of 1.7° C (35° F) surrounding dogs, cats, hamsters, rabbits, and certain other warmblooded animals, with the exception of guinea pigs and nonhuman primates, when transported in commerce. Guinea pigs are excepted because they are not tolerant of low temperatures. Nonhuman primates are excepted because they are not generally tolerant of air temperatures lower than 45° F. This is particularly true in the case of the small New World nonhuman primates.

Present regulations require the measurement of "ambient temperature." This term is defined in § 1.1(jj) to mean the temperature surrounding the animal. Sections 3.18, 3.42, 3.67, 3.92, and 3.118 of the standards cite a minimum and maximum range of ambient temperatures within primary enclosures used to transport certain warmblooded animals. Representatives of the air transport industry have been highly critical of these particular standards because it is their feeling that they are required to insert a thermometer into the shipping container in order to measure the ambient temperature and it is their fear that possible injury to the contained animal may result.

The Department acknowledges the possibility of injury to animals when dry bulb type thermometers, especially those made of glass, are indiscriminately thrust into a shipping container and therefore, proposes to delete the sections cited above which are relative to "ambient temperature" and to establish a method whereby only the temperature surrounding the primary enclosure containing the animal must be measured. To ascertain compliance with requirements for the air temperature around certain live warmblooded animals when transported in commerce, it is proposed that the air temperature be measured and read outside the primary enclosure (shipping container) which contains the live animal, at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure or shipping container.

At the same time that the Department proposes to make the method of measuring the air temperature around warmblooded animals confined in a shipping container more practical, it also recognizes that there is a difference between the air temperature which immediately surrounds the animal within the confines of the shipping container and the temperature of the air surrounding the outside of such container. This conclusion is based on physiological data which shows that the temperature of warmblooded animals is largely independent of that of the environment. Through an elaborately developed heat-regulating system, warmblooded animals maintain a relatively constant body temperature regardless of the surrounding temperature. Because heat is being produced constantly in the body as a result of physiological oxidations, warmblooded animals make provision for insuring a constant loss of heat through the body surfaces and vaporization of water from the skin and respiratory passages. However, as the surrounding air approaches the animal body temperature, the animal will experience discomfort and, after a period

of time, death. On the other hand, as the environmental temperature falls, the first compensation against the cooling of the body is effected through a reduction of heat loss. If the surrounding temperature continues to fall, increased metabolism brought about by shivering and rapid muscle contraction results in increased heat production. It therefore becomes critical that the temperature which immediately surrounds and affects the confined animal is being measured or, if that is impractical, appropriate adjustment be made in the standards for allowable maximum and minimum temperatures surrounding the shipping container which would take into consideration temperature differences occurring inside and outside a shipping container.

Scientific data available to the Department indicates that as the temperature outside an animal shipping container rises, the differential between the temperature inside the shipping container and the temperature of the outside environment increases. On the other hand, as the temperature of the air outside a shipping container decreases, the difference between the outside surrounding temperature and the temperature inside the container narrows until there is only a negligible temperature difference, if any, as the temperature nears 1.7° C. (35° F.). It is recognized, however, that factors, such as quantity and distribution of ventilation openings, structural material and design of the animal enclosure, air flow and relative humidity, exposure to direct sunlight, rain, snow, or other environmental conditions, and the ratio of the volume of the animal contained to the volume of space provided by a shipping container, effect variances and the surrounding environment. Added to this are the anatomical and physiological differences of the many species of warmblooded animals and the varied individual response of each such species to temperature extremes. The effect of all of these interrelated factors has yet to be sufficiently evaluated relative to a warmblooded animal's physiological response to ambient air temperatures below 35° F. and above 95° F. Information which the Department has available indicates that when the air temperature, which surrounds an animal shipping container within 0.91 meters (3 feet) of such container, reaches 1.7° C. (35° F.), there is apparently a negligible difference in the air temperature surrounding the animal inside a shipping container which conforms to the Department's present standards for shipping containers (primary enclosures) used to transport certain warmblooded animals in commerce. However, when the air temperature, which surrounds the animal shipping container within 3 feet of such container, reaches 29.5° C. (85° F.), the air temperature surrounding the animal inside the shipping container will reach approximately 35° C. (95° F.). Based on this information, the Department proposes to delete §§ 3.18, 3.42, 3.67, 3.92, and 3.118 of the standards dealing with ambient temperature ranges within primary enclosures, and to propose that in animal holding areas of terminal facilities, carriers and intermediate handlers shall not allow the air temperature which is measured and read outside the animal primary enclosure and within 0.91 meters (3 feet) of the external walls of such enclosure, to fall below a minimum of 1.7° C. (35° F.) for dogs, cats, rabbits, hamsters, and certain other warmblooded animals, (with the exception of guinea pigs and nonhuman primates). Further, the Department proposes herein that carriers and intermediate handlers not allow the air temperatures, which shall be measured outside the animal shipping container in the manner already described, in animal holding areas of terminal facilities to exceed 29.5° C. (85° F.) for all warmblooded animals covered by the Act. This change also necessitates a proposed change in the standards for holding areas which require that auxiliary ventilation must be used when the temperature reaches 29.5° C. (85° F.). It is proposed herein that this temperature be changed to 23.9° C. (75° F.).

The sections which the Department proposes to delete also indicate that the allowable ambient temperatures cannot exceed the parameters of the allowable temperature range for a period of more than 45 minutes. The purpose of these standards was to assure that animals would be moved from terminal buildings to the primary conveyance and from the primary conveyance to the terminal buildings in an expeditious manner to minimize exposure to inclement weather, temperature extremes and other environmental hazards. With the proposed deletion of sections of the standards relative to ambient temperatures, it is apparent that certain requirements for expeditious handling of animals from terminal buildings to the primary conveyance and from the primary conveyance to the terminal buildings would be desirable to fill the void left by the deletion of the 45 minute requirements. Therefore, the Department proposes to amend those sections of the standards relative to "handling," i.e., §§ 3.17, 3.41, 3.66, 3.91, and 3.117, to provide for a mximum time of 45 minutes during which dogs, cats, guinea pigs, hamsters, rabbits, nonhuman primates, and certain other warmblooded animals may remain outside the terminal buildings or primary conveyance when air temperatures around such animals fall above or below the temperature ranges allowed for terminal facilities. An exception is provided for those animals accompanied by a certificate of acclimation to air temperatures lower than the minimum allowable temperature provided by the standards.

Accordingly, the standards (9 CFR 3.1 et seq.) would be amended in the following respects:

1. The Table of Contents cited in Part 3—Standards would be amended by deleting §§ 3.18, 3.42, 3.67, 3.92, and 3.118.

Sec.

* * * * *

§ 3.18 [Deleted]

* * * * *

§ 3.42 [Deleted]

* * * * *

§ 3.67 [Deleted]

* * * * *

§ 3.92 [Deleted]

* * * * *

§ 3.118 [Deleted]

§ 3.11 [Amended]

2. Section 3.11(c) of the standards (9 CFR 3.11(c)) would be amended by deleting the section number 3.18 in the phrase, "* * * prescribed in §§ 3.16 and 3.18." and inserting the section number "3.17" in its place.

3. Section 3.11(c)(3) of the standards (9 CFR 3.11(c)(3)) would be amended by deleting the Celsius and equivalent Fahrenheit temperature reading, "7.2° C. (45° F.)." in the phrase, "* * * acclimated to air temperatures lower than 7.2° C. (45° F.).); * * *" and inserting the Celsius and equivalent Fahrenheit temperature reading, "1.7° C. (35° F.)." in its place.

4. Section 3.16 of the standards (9 CFR 3.16) would be amended to read as follows:

§ 3.16 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.7 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and

mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live dogs or cats shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containng live dogs and cats when the air temperature within such animal holding area is 23.9° C. (75° F.) or higher. The air temperature around any live dog or cat in any animal holding area shall not be allowed to fall below 1.7° C. (35° F.) nor be allowed to exceed 29.5° C. (85° F.) at any time:*Provided, however,*That no live dog or cat shall be subjected to air temperatures around any such dog or cat in excess of 23.9° C. (75° F.) for more than 4 hours at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live dog or cat shall be measured and read outside the primary enclosure which contains the live dog or cat at a distance not to exceed 0.91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

§ 3.17 [Amended]

5. Section 3.17(a)(1) of the standards (9 CFR 3.17(a)(1)) would be amended to read as follows:

* * * * *

(a) "* * * (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live dogs and cats from the direct rays of the sun and the air temperature around any such live dog or cat, which shall be measured and read in the manner prescribed in § 3.16, shall not exceed 29.5° C. (85° F.) for a period of more than 45 minutes."

6. Section 3.17(a)(3) of the standards (9 CFR 3.17(a)(3)) would be amended to read as follows:

* * * * *

(a) "* * * (3) *Shelter from cold weather.* Transporting devices shall be covered to provide prtoection for live dogs and cats when the outdoor air temperature falls below 10° C. (50° F.) and the air temperature around any such live dog or cat, which shall be measured and read in the manner prescribed in § 3.16, shall not fall below 1.7° C. (35° F.) for a period of more than 45 minutes unless such dog or cat is accompanied by a certificate of acclimation to lower temperatures as prescribed in § 3.11(c).

§ 3.18 [Deleted]

7. Section 3.18 of the standards (9 CFR 3.18) would be deleted.

§ 3.35 [Amended]

8. Section 3.35(c) of the standards (9 CFR 3.35(c)) would be amended by deleting the section number "3.42" in the phrase, "* * * prescribed in §§ 3.40 and 3.42." and inserting the section number "3.41." in its place.

9. Section 3.35(c)(3) of the standards (9 CFR 3.35(c)(3)) would be amended by deleting the Celsius and equivalent Fahrenheit temperature reading, "7.2° C. (45° F.)" in the phrase, "* * * acclimated to air temeratures lower than 7.2° C. (45° F.).); * * *" and inserting the Celsius and equivalent Fahrenheit temperature reading, "1.7° C. (35° F.)." in its place.

10. Section 3.40 of the standards (9 CFR 3.40) would be amended to read as follows:

§ 3.40 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.31 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live guinea pigs or hamsters shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live guinea pigs and hamsters when the air temperature within such animal holding area is 23.9° C. (75° F.) or higher. The air temperature around any live guinea pig in any animal holding area shall not be allowed to fall below 7.2° C. (45° F.) nor be allowed to exceed 29.5° C. (85° F.) at any time. The air temperature around any live hamster in any animal holding area shall not be allowed to fall below 1.7° C. (35° F.) nor be allowed to exceed 29.5° C. (85° F.) at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live guinea pig or hamster shall be measured and read outside the primary enclosure which contains the live guinea pig or hamster at a distance not to exceed 0.91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

§ 3.41 [Amended]

11. Section 3.41(a)(1) of the standards (9 CFR 3.41(a)(1)) would be amended to read as follows:

* * * * *

(a) "* * * (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live guinea pigs and hamsters from the direct rays of the sun and the air temperature around any such live guinea pigs or hamsters which shall be measured and read in the manner prescribed in § 3.40, shall not exceed 29.5° C. (85° F.) for a period of more than 45 minutes."

12. Section 3.41(a)(3) of the standards (9 CFR 3.41(a)(3)) would be amended to read as follows:

* * * * *

(a) "* * * (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live guinea pigs and hamsters when the outdoor air temperature falls below 10° C. (50° F.). The air temperature around any such live guinea pig, which shall be measured and read in the manner prescribed in § 3.40 of this part, shall not fall below 7.2° C. (45° F.) for a period of more than 45 minutes. The air temperature around any such live hamster, which shall be measured and read in the manner prescribed in § 3.40 of the part, shall not fall below 1.7° C. (35° F.) for a period of more than 45 minutes unless such hamster is accompanied by a certificate of acclimation to lower temperatures as prescribed in § 3.35(c).

§ 3.42 [Deleted]

13. Section 3.42 of the standards (9 CFR 3.42) would be deleted.

§ 3.60 [Amended]

14. Section 3.60(c) of the standards (9 CFR 3.60(c)) would be amended by deleting the section number "3.67" in the phrase, "* * * prescribed in §§ 3.65 and 3.67" and inserting the section number "3.66." in its place.

15. Section 3.60(c)(3) of the standards (9 CFR 3.60(c)(3)) would be

amended by deleting the Celsius and equivalent Fahrenheit temperature reading, "7.2° C. (45° F.)." in the phrase, "* * * acclimated to air temperatures lower then "7.2° C. (45° F.)."); * * *" and inserting the Celsius and equivalent Fahrenheit temperature reading, "1.7° C. (35° F.)." in its place.

16. Section 3.65 of the standards (9 CFR 3.65) would be amended to read as follows:

§ 3.65 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.56 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live rabbits shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live rabbits when the air temperature within such animal holding area is 23.9° C. (75° F.) or higher. The air temperature around any live rabbit in any animal holding area shall not be allowed to fall below 1.7° C. (35° F.) nor be allowed to exceed 29.5° C. (85° F.) at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live rabbit shall be measured and read outside the primary enclosure which contains the live rabbit at a distance not to exceed 0.91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

§ 3.66 [Amended]

17. Section 3.66(a)(1) of the standards (9 CFR 3.66(a)(1)) would be amended to read as follows:

* * * * *

(a) "* * * (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live rabbits from the direct rays of the sun and the air temperature around any such live rabbits, which shall be measured and read in the manner prescribed in § 3.65, shall not exceed 29.5° C. (85° F.) for a period of more than 45 minutes."

18. Section 3.66(a)(3) of the standards (9 CFR 3.66(a)(3)) would be amended to read as follows;

* * * * *

(a) "* * * (3) Shelter from cold weather. Transporting devices shall be covered to provide protection for live rabbits when the outdoor air temperature falls below 10° C. (15° F.) and the air temperature around any such live rabbit, which shall be measured and read in the manner prescribed in § 3.65, shall not fall below 1.7° C. (35° F.) for a period of more than 45 minutes unless such rabbit is accompanied by a certificate of acclimation to lower temperatures as prescribed in § 3.60(c).

§ 3.67 [Deleted]

19. Section 3.67 of the standards (9 CFR 3.67) would be deleted.

§ 3.85 [Amended]

20. Section 3.85(c) of the standards (9 CFR 3.85(c)) would be amended by deleting the section number "3.92" in the phrase, "* * * prescribed in §§ 3.90 and 3.92." and inserting the section number "3.91." in its place.

21. Section 3.90 of the standards (9 CFR 3.90) would be amended to read as follows:

§ 3.90 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.81 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live nonhuman primates shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live nonhuman primates when the air temperature within such animal holding area is 23.9° C. (75.° F.) or higher. The air temperature around any live nonhuman primate in any animal holding area shall not be allowed to fall below 7.2° C. (45° F.) nor be allowed to exceed 29.5° C. (85° F.) at any time: *Provided, however,* that no live nonhuman primate shall be subjected to surrounding air temperatures which exceed 23.9° C. (75° F.) for more than 4 hours at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live nonhuman primate shall be measured and read outside the primary enclosure which contains the live nonhuman primate at a distance not to exceed 0.91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

§ 3.91 [Amended]

22. Section 3.91(a)(1) of the standards (9 CFR 3.91(a)(1)) would be amended to read as follows:

* * * * *

(a) "* * * (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live nonhuman primates from the direct rays of the sun and the air temperature around any such live nonhuman primates which shall be measured and read in the manner prescribed in § 3.90, shall not exceed 29.5° C. (85° F.) for a period of more than 45 minutes."

23. Section 3.91(a)(3) of the standards (9 CFR 3.91(a)(3)) would be amended to read as follows:

* * * * *

(a) "* * * (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live nonhuman primates when the outdoor air temperature falls below 10° C. (50° F.) and the air temperature around any such live nonhuman primate, which shall be measured and read in the manner prescribed in § 3.90, shall not fall below 7.2° C. (45° F.) for a period of more than 45 minutes unless such nonhuman primate is accompanied by a certificate of acclimation to lower temperatures as prescribed in § 3.85(c).

§ 3.92 [Deleted]

24. Section 3.92 of the standards (9 CFR 3.92) would be deleted.

§ 3.11 [Amended]

25. Section 3.111(c) of the standards (9 CFR 3.111(c)) would be amended by deleting the section number "3.118" in

the phrase, "* * * prescribed in §§ 3.116 and 3.118." and inserting the section number "3.117." in its place.

26. Section 3.111(c)(3) of the standards (9 CFR 3.111(c)(3)) would be amended by deleting the Celsius and equivalent Fahrenheit temperature reading, "7.2° C. (45° F.)." in the phrase, "* * * acclimated to air temperatures lower than 7.2° C. (45° F.)."); * * *" and inserting the Celsius and equivalent Fahrenheit temperature reading, "1.7° C. (35° F.)." in its place.

27. Section 3.116 of the standards (9 CFR 3.116) would be amended to read as follows:

§ 3.116 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.116 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live animals shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers on an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers of air conditioning shall be used for any animal holding area containing live animals when the air temperature within such animal holding area is 23.9° C. (75 °F.) or higher. The air temperature around any live animal in any animal holding area shall not be allowed to fall below 1.7° C. (35° F.) nor be allowed to exceed 29.5° C. (85° F.) at any time: *Provided, however,* That no live animal shall be subjected to surrounding air temperatures which exceed 23.9° C. (75° F.) for more than 4 hours at any time. To ascertain compliance with the provisions of this paragraph, the air temperature around any live animal shall be measured and read outside the primary enclosure which contains the live animal at a distance not to exceed .91 meters (3 feet) from any one of the external walls of the primary enclosure and on a level parallel to the bottom of such primary enclosure at a point which approximates half the distance between the top and bottom of such primary enclosure.

§ 3.117 [Amended]

28. Section 3.117(a)(1) of the standards (9 CFR 3.117(a)(1)) would be amended to read as follows:

* * * * *

(a) "* * * (1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live animals from the direct rays of the sun and the air temperature around any such live animal, which shall be measured and read in the manner prescribed in § 3.116, shall not exceed 29.5° C. (85° F.) for a period of more than 45 minutes."

29. Section 3.117(a)(3) of the standards (9 CFR 3.117(a)(3)) would be amended to read as follows:

* * * * *

(a) "* * * (3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live animals when the outdoor air temperature falls below 10° C. (50° F.) and the air temperature around any such live animal, which shall be measured and read in the manner prescribed in § 3.116 shall not fall below 1.7° C. (35° F.) for a period of more than 45 minutes unless such animal is accompanied by a certificate of acclimation to lower temperatures as prescribed in § 3.111(c).

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 703, Hyattsville, Md. during regular hours of business (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the FEDERAL REGISTER.

In order for these proposed amendments to be of maximum benefit, it is necessary that these proposals become effective as final rulemaking before the onset of the winter season. Therefore, it is hereby found that the customary comment period of 60 days be waived and that all comments must be received within 25 days of the date of publication of this proposal.

Done at Washington, D.C., this 13th day of October 1978.

NOTE.—The Department has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

However, an economic impact statement has been drafted and a copy of said draft statement may be obtained by writing to the Deputy Administrator, USDA, APHIS, VS, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782.

NORVAN L. MEYER,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc. 78-29296 Filed 10-16-78; 8:45 am]