Due date:	Schedule No.
May 20	P-12, P-12(a).
May 30	B-1, P-1(a), T-1, T-7.
June 20	P-12, P-12(a).
June 30	B-1, P-1(a), T-1, T-7.
July 20	P-12, P-12(a).
July 30	B-1, P-1(a), T-1, T-2, T-3, T-7.
August 10	A, A-1, B-2, B-3, B-4, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, B-14, P-1.1, P-1.2, P-2, P-2(a), P-3, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8, P-9.1, P-9.2, P-10, P-11(a), P-11(b), T-6.
August 20	P-12, P-12(a).
August 30	B-1, P-1(a), T-1, T-7.
September 20	P-12, P-12(a).
September 30	B-1, P-1(a), T-1, T-2, T-3, T-7.
October 20	P-12, P-12(a).
October 30	B-1, P-1(a), T-1, T-7, T-41.
November 10	A, B-2, B-3, B-4, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, B-14, P-1.1, P-1.2, P-2, P-2(a), P-3, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8, P-9.1, P-9.2, P-10, P-11(a), P-11(b), T-6.
November 20	P-12, P-12(a).
November 30	B-1, P-1(a), T-1, T-7.
December 20	P-12, P-12(a).
December 30	B-1, P-1(a), T-1, T-7.

* * * * *

Section 23—[Amended]

2. Amend Section 23—Certification and Balance Sheet Elements—as follows:

A. By deleting the caption "Schedule B-9—Inventory of Flight Equipment Spare Parts and Assemblies" which follows paragraph (h) of schedule B-8(a), as well as the entire text of paragraphs (a) through (i), inclusive, set forth under said caption.

B. By deleting the caption "Schedule B-42—Accounts 1410 Short-Term Prepayments, 1550 Special Funds-Other, 1820 Long-Term Prepayments, 1880 Other Intangibles, 1890 Other Deferred Charges, 2390 Other Deferred Credits" which follows paragraph (h) of schedule B-41, as well as the entire text of paragraphs (a) and (b) set forth under said caption.

Section 24—[Amended]

3. Amend Section 24—Profit and Loss Elements—by deleting the caption "Schedule P-41—Taxes" which follows paragraph (g) of schedule P-12(a), as well as the entire text of paragraphs (a) through (d), inclusive, set forth under said caption.

(Sections 204(a) and 407 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766; 49 U.S.C. 1324, 1377.)

By the Civil Aeronautics Board.

Effective: April 8, 1975.

Adopted: April 8, 1975.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.75-9511 Filed 4-11-75;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket C-2608]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

American Credit Bureau, Inc. et al.

Correction

In FR Doc. 75-7901 appearing in the issue of Thursday, March 27, 1975, the footnote referred to in column one, line two should read:

[1] New.

[Docket C-2626]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Fuqua Industries, Inc., et al.

Correction

In FR Doc. 75-8438, appearing at page 14741, in the issue for Wednesday, April 2, 1975, make the following corrections:

1. On page 14744, in the fifth line of paragraph (c)(1), insert the words "of business" between the words "place(s)" and "of".

2. On page 14745, in the third line of paragraph (g) change the word "of" to "or".

SUBCHAPTER C—REGULATIONS UNDER SPECIFIC ACTS OF CONGRESS

PART 302—RULES AND REGULATIONS UNDER FLAMMABLE FABRICS ACT

Children's Sleepwear, Sizes 0–6X; Labeling, Display, and Recordkeeping Requirements

In this document, the Consumer Product Safety Commission amends 16 CFR 302.19, a regulation which prescribes requirements for advertising and labeling of children's sleepwear items which are subject to the Standard for the Flammability of Children's Sleepwear (DOC FF 3-71; as amended) by adding requirements for labeling of items subject to the Standard to indicate the production units in which they were manufactured; requirements for display of items subject to the Standard which are offered for sale to consumers in retail establishments; requirements for maintenance of records relating to the manufacture and sale of items subject to the standard; and requirements for testing for guaranty purposes under the standard.

The standard is applicable to children's sleepwear garments in sizes 0 through 6X, and to any fabric or related material intended or promoted for use in children's sleepwear in those sizes. The Standard, the regulation appearing at 16 CFR 302.19, and the amendments to that regulation appearing below have been issued under provisions of the Flammable Fabrics Act (15 U.S.C. 1191–1204), which provides for civil and criminal penalties for the violation of any standard or regulation issued under that act.

The principal provisions of the amendments to 16 CFR 302.19 set forth below are:

1. A requirement that each garment and each piece of fabric subject to the Standard be labeled to identify the production unit in which the item was manufactured. The production unit identification must appear on a permanent label attached to the garment or must be stamped permanently on the fabric of the garment. The production unit identification of any fabric subject to the Standard must appear on every label relating to that fabric which is required by the Textile Fiber Products Identification Act or by the Wool Products Labeling Act of 1939, or on any invoice used in lieu of labeling under those acts.

2. Requirements that retail dealers who offer noncomplying items of children's sleepwear in sizes 0 through 6X for sale to consumers display those noncomplying items so that they are not intermingled with complying items; separate displays of noncomplying items from displays of complying items by a distance of at least 36 inches; and identify displays of noncomplying items and complying items by signs with letters at least one inch high.

3. Requirements for the maintenance of records by manufacturers, importers and other persons who initially introduce items subject to the Standard into interstate commerce to establish a line of continuity through the process of manufacture of each production unit of items to the sale and delivery of finished items, and from the specific finished items back to the manufacturing records. The records required for every production unit

must relate that unit to a production unit identification number, letter, or date which is required to appear on each item subject to the Standard.

Background. The Standard for the Flammability of Children's Sleepwear (DOC FF 3-71; as amended) was issued on July 29, 1971 (36 FR 14062) by the Secretary of Commerce exercising authority then vested in the Secretary by the Flammable Fabrics Act, and was amended by the Secretary on July 21, 1972 (37 FR 14624) to incorporate requirements for a production sampling plan. The Standard, as amended, became effective on July 29, 1972, with a provision that noncomplying items of children's sleepwear in sizes 0 through 6X could be manufactured until July 29, 1973, if those items were permanently and conspicuously labeled to indicate that they do not comply with the Standard.

In the FEDERAL REGISTER of August 9, 1972 (37 FR 16003), the Federal Trade Commission proposed a regulation to prescribe labeling, advertising, and recordkeeping requirements for items subject to the Standard by the authority then exercised by the Federal Trade Commission under the Flammable Fabrics Act.

On May 14, 1973, the functions of the Secretary of Commerce and the Federal Trade Commission under the Flammable Fabrics Act were transferred to the Consumer Product Safety Commission by section 30(b) of the Consumer Product Safety Act (86 Stat. 1231; 15 U.S.C. 2079(b)).

In the FEDERAL REGISTER of February 7, 1974 (39 FR 4852), the Consumer Product Safety Commission issued 16 CFR 302.19, a regulation to prescribe requirements for labeling and advertising of items subject to the Standard, based on the proposal published by the Federal Trade Commission.

CODIFICATION NOTE: The regulations being amended herein (Part 302), although appearing in the CFR under Title 16, Chapter I—Federal Trade Commission, are now the responsibility of the Consumer Product Safety Commission due to the transfer of statutory authority explained above. Until the CPSC revises and transfers these regulations to Title 16, Chapter II—Consumer Product Safety Commission, it shall amend them in Chapter I.

In the same issue of the FEDERAL REGISTER (39 FR 4855), the Commission proposed amendments to 16 CFR 302.19 which would add requirements for labeling of items to indicate the production units in which they were manufactured; display of items subject to the standard in retail establishments; and maintenance of records by persons who manufacture or sell items subject to the Standard; and requirements for testing for guarantee purposes under the Standard. Interested parties were afforded a period of thirty days to comment on the proposed amendments.

Response to proposal and CPSC decisions thereon. In response to the proposed amendments, comments were received from eight manufacturers of items subject to the Standard, three associations of retailers, one association of importers, and two consumer organizations. The principal issues raised by these comments and the Commission's decisions thereon are as follows:

A. *Labeling provisions*. 1. The proposed amendments included a paragraph, 302.-19(b)(8), requiring that every item of children's sleepwear subject to the Standard be labeled to identify the production unit in which the item was manufactured. Proposed § 302.19(b)(8)(i) contained requirements that each garment subject to the Standard contain a label with minimum dimensions of one-half inch by three-fourths inch, bearing the appropriate garment production unit identification number, letter, or date in black letters at least one-sixth of an inch high against a solid white background.[1] This paragraph also required that the label bearing the production unit identification be affixed to the garment in such a manner as to remain attached throughout the expected period of use of the garment, and be visible to prospective purchasers.

Two manufacturers and one association of manufacturers request modification of the language of proposed § 302.19(b)(8)(i) to allow the garment production unit identification to be stamped onto the fabric of the garment as an alternative to the requirement that the production unit identification appear on a label which is sewn into the garment. (One of these comments also requests that manufacturers be given the additional alternative of putting the production unit identification on a label which contains other information such as instructions for laundering or dry cleaning.) One comment states that some manufacturers currently stamp the production unit identification onto the fabric of garments. Other comments requesting the modification of the labeling requirement to allow the garment production unit identification to be stamped onto the garment state that the requested change would reduce the manufacturers' cost of compliance; would allow greater accuracy because the production unit identification could be applied at the time the fabric is cut; and would prevent removal of the production unit identification by consumers.

After consideration of these comments, the Commission has modified the provisions of section 302.19(b)(8)(i) to allow the garment production unit identification to be stamped permanently onto the garment as an alternative to the use of a permanent label sewn into the garment. This change has been made because the Commission concludes that a garment production unit identification which is stamped permanently onto the garment will serve the same purpose as a garment production unit identification placed on a separate label. However, to insure that the garment production unit identification will be readily visible, the Commission has also included a provision in the amendment issued below to require that when the garment production unit identification is stamped onto the garment, the mark indicating the garment production unit identification must be at least one inch in every direction from any other information on the garment. For the same reason, language has also been added to require that when a label is used to indicate the garment production unit identification, that label must not touch any other label on the garment, except that a label containing the garment production unit identification may be sewn on top of any label which is not required by regulations issued by the Commission for Children's Sleepwear in sizes 0 through 6X (16 CFR 302.19) if the label containing the garment production unit identification completely covers the label beneath it.

The Commission has not modified the amendment issued below to allow the garment production unit identification to appear on labels which contain other information, such as laundering or dry cleaning information, because such a change would reduce the visibility of the garment production unit identification, and would make it more difficult to locate.

2. Proposed § 302.19(b)(8)(i) specified minimum dimensions for the label and required the garment production unit identification to appear in black letters at least one-sixth of an inch high against a solid white background. Comments from one manufacturer, one association of manufacturers, two retailers and two associations of retailers object to specific requirements for the size and color of the label and lettering for the garment production unit identification. These comments recommend that greater discretion should be allowed in the design of the label, and that proposed § 302.19(b)(8)(i) should be changed to require only that the production unit identification appear permanently and legibly on the garment.

While the Commission understands the desire of manufacturers for relaxation of restrictions on the design of the label, the Commission has concluded that the term "legible" is not sufficiently specific for the purposes of this labeling requirement, and that minimum dimensions for the label and the lettering must be specified to provide objective and enforceable criteria for achieving the desired degree of prominence for the garment production unit identification. However, the requirement for black lettering against a white background has been modified to require that the letters must be in a color which contrasts with the background of the label.

[1] Throughout the preamble of this document, dimensions are given in the English system of measurement, that is in inches. In the text of the final amendment published below, dimensions are stated in metric terminology, that is, in centimeters and millimeters, followed by the English-system equivalents enclosed in parentheses. For purposes of enforcement of the Standard the Commission will rely on dimensions as expressed in metric terminology.

As stated earlier, section 302.19(b)(8)(i) has been modified to allow the manufacturer to stamp the garment production unit identification onto the fabric of the garment as an alternative to the use of a label. When the production unit identification is stamped onto the garment, the marking must be permanent, in letters at least one-sixth of an inch high, in a color which contrasts with the background, and at least one inch from any other information on the garment.

3. Proposed § 302.19(b)(8)(i) also required that the label containing the garment production unit identification be "readily visible" to prospective purchasers. Comments from four manufacturers, one association of manufacturers, two retailers, and one association of retailers object to this requirement. Several of these comments state that the prospective purchaser does not consider the production unit identification when making a purchasing decision, and a requirement that the production unit identification be "readily visible" will add to production costs, which will ultimately be passed on to the consumer. Some of these comments state that the apparent purpose of the requirement is to facilitate recall of a particular production unit if that unit does not comply with the Standard, and that as long as the location of the production unit identification is "accessible," the manufacturer of a noncomplying production unit can inform all parties in the chain of distribution and the Commission of the location of the production unit identification if the necessity to recall a production unit should arise. One manufacturer comments that if the label is positioned on the garment so that it is readily visible to prospective purchasers when the garment is packaged, it would be located on the garment in such a position that the consumer would probably remove the label before putting the garment on a child.

The Commission's purpose in proposing that the garment production unit identification must be readily visible to the prospective purchaser was to facilitate identification of items from a given production unit by persons in the chain of distribution and by Commission personnel, not only in the event of a recall of a production unit, but also to obtain samples from any given production unit for testing in a compliance market sampling program. To conduct such a sampling program expeditiously, Commission investigators must be able to identify the garment production unit of a given item quickly, without opening the package or looking for a label which may be located inside the garment. For that reason, the language of § 302.19(b)(8) has not been changed to require that the label bearing the fabric or garment production unit identification be "accessible" rather than "readily visible", as requested in these comments. However, language has been added to provide that if the label or marking which states the garment production unit identification is not readily visible to the prospective purchaser, the package must be permanently, conspicuously, and legibly labeled with the garment production unit identification.

4. Comments from one manufacturer and one association of manufacturers object to the limitation of the size of a garment production unit to 500 dozen items. This limitation is imposed by section .1(k) of the Standard. The requirements of a Standard can be altered only by amending the Standard, and cannot be changed by the provisions of enforcement regulations issued to implement the standard. Therefore, the change requested in these comments has not been made. One of these comments also requested that the first production unit of a given style of garments subject to the Standard be exempted from the requirement for a label bearing the garment production unit identification. This comment states that garments in the first production unit would be identifiable by the absence of a label with a garment production unit identification. While such an exemption might result in a slight reduction in cost to the manufacturer, the Commission concludes that such an exemption would complicate enforcement of the labeling requirements, and would not be compatible with the purpose of the labeling requirements of § 302.19(b)(8)(i), which is to facilitate identification of the production unit in which any given children's sleepwear garment was manufactured.

5. Proposed § 302.19(b)(8) requires that a production unit identification appearing on the label required by that paragraph be "designated in such a way as to indicate that it is a production unit identification under the Standard". A comment from one manufacturer recommends a uniform prefix to designate a production unit identification. The Commission has added language to § 302.19(b)(8) to state that the letters "GPU" and "FPU" may be used to designate a garment production unit and a fabric production unit, respectively, at the option of the labeler.

6. Proposed § 302.19(b)(8)(ii) contained language requiring that the fabric production unit identification appear in black letters at least one-sixth of an inch high against a solid white background on each label relating to that fabric which is required by the Textile Fiber Products Identification Act (15 U.S.C. 70–70k) or by the Wool Products Labeling Act of 1939 (15 U.S.C. 68–68j) or on any invoice used in lieu of such labeling. A comment from one association of retailers states that neither the Textile Fiber Products Identification Act nor the Wool Products Labeling Act requires that information to appear in black letters against a white background. This comment and comments from two retailers request modification of the language of this paragraph to require only that the fabric production unit identification appear "legibly" on any label required by the Textile Fiber Products Identification Act or the Wool Products Labeling Act of 1939. After consideration of these comments, the Commission concludes that the objection to the requirement for black lettering on a white background is valid, and has removed that requirement. Section 302.19(b)(8)(ii) issued below requires that the lettering be in a color which contrasts with the background of the label. However, the requirement that the lettering be at least one-sixth of an inch high has been retained to provide objective and enforceable criteria for achieving the desired degree of prominence for the fabric production unit identification.

7. One association of garment manufacturers requests modification of proposed § 302.19(b)(8)(ii) to require that the fabric production unit identification appear on the invoice relating to the fabric in all cases, and to eliminate that language which would allow the fabric production unit identification to appear on each label required by the Textile Fiber Products Identification Act or the Wool Products Labeling Act, because such labels may become detached from the fabric. This comment states that if the fabric production unit identification is required to appear on the invoice, the garment manufacturer will be able to maintain the records required by § 302.19(e) of the proposed amendments. The Commission has not made the change requested in this comment because the requirements for labeling to indicate the fabric production unit identification are applicable to fabrics subject to the Standard which are offered for sale to consumers as well as to fabrics which are sold to garment manufacturers. If a garment manufacturer needs fabric production identification or invoices for recordkeeping purposes, or if such concern believes that detachment may be a problem, the regulations would not preclude a garment manufacturer from requiring the fabric production unit identification to appear on all invoices as a condition of sale.

8. A comment from a manufacturer of fabrics and garments asks whether the Commission intended to require a fabric manufacturer whose entire production of fabric is used by the same manufacturer to produce sleepwear garments in sizes 0 through 6X to comply with the labeling requirements of proposed § 302.19(b)(8)(ii). The provisions of § 302.19(b)(8)(ii), issued below, are applicable to such a manufacturer. The purpose of the labeling requirement of that paragraph is to facilitate identification not only of the source but also the fabric production units of the fabric used in any given production unit of garments which are subject to the Standard.

9. A comment from an association of retailers asks whether provisions of proposed section 302.19(b)(8) require that a garment be labeled to identify the fabric production units used in the manufacture of that garment. A comment from a retailer asks if the Commission intended to require garment manufacturers to identify the fabric production units used in the manufacture of garments to retailers when it proposed § 302.19(b)(8). The Commission did not intend to impose either of these requirements when it proposed § 302.19(b)(8),

and does not intend to impose either requirement in the final regulation issued below.

10. A comment from a retailer asks whether the Commission intended to require a fabric manufacturer to furnish the fabric production unit identification to retailers as well as to garment manufacturers when it proposed § 302.19 (b) (8) (ii). The purpose of § 302.19 (b) (8) (ii), as proposed and as issued below is to require fabric manufacturers to identify the production unit of fabrics sold for use in children's sleepwear to the purchaser of the fabric, whether that purchaser is a garment manufacturer, a fabric wholesaler or a retailer.

B. *Display of items subject to the Standard.* 1. Proposed § 302.19(d) required in part that persons who sell items of children's sleepwear subject to the Standard, in retail stores or other establishments open to the general public, display items which comply with the Standard so that no other merchandise is intermingled with those items; display all complying items at a separate location at least 36 inches away from any noncomplying items; and identify displays of complying and noncomplying items with signs. One organization of consumers favors the provisions of proposed § 302.19(d). This comment states that although few, if any, noncomplying items of children's sleepwear in sizes 0 through 6X are offered for sale to consumers in retail stores, the provisions of proposed § 302.19(d) would prohibit the intermingling of complying items in sizes 0 through 6X with the items in other sizes which do not have flame-resistant characteristics. Comments from one retailer and an association of retailers urge the Commission to withdraw proposed section 302.19(d). The association of retailers states that the requirements of proposed § 302.19(d) are unnecessary because almost all items of children's sleepwear in sizes 0 through 6X which are offered for sale to consumers in retail stores comply with the Standard. The retailer states that proposed § 302.19(d) is unnecessary because provisions of § 302.19(b) require all noncomplying items of children's sleepwear manufactured since July 29, 1972, to be labeled to indicate that they do not meet the Standard. A comment from a second association of retailers requests modification of proposed § 302.19(d) by the addition of language which would make that paragraph applicable only to retailers who sell both complying and noncomplying items which are subject to the Standard. A third association of retailers objects to the requirement for signs to identify displays of complying items because no provision of the Standard requires that complying items must be identified as such.

After careful consideration of these comments, the Commission has concluded that the requirements of proposed § 302.19(d) should be applicable only to those retailers who sell noncomplying items of children's sleepwear in sizes 0 through 6X. Language to that effect has been included in § 302.19(d) issued below. Retailers who handle noncomplying items are required to identify displays of noncomplying items by signs and if they also offer items which comply with the Standard for sale to consumers, they are required to keep all noncomplying items physically separated from complying items and to identify displays of complying items with signs. Retailers who handle only complying items subject to the Standard are not subject to the requirements of § 302.19(d) issued below.

2. Proposed § 302.19(d) (1) (i) required that all complying items "for which the seller has documentary evidence of compliance" be displayed so that no other merchandise is intermingled with those items. An association of retailers requests the addition of language to that paragraph to provide that a continuing guaranty from a manufacturer that its products meet the Standard shall constitute documentary evidence of compliance. Any guaranty issued under section 8 of the Flammable Fabrics Act (15 U.S.C. 1197), whether it is a separate guaranty applicable to specific items, a continuing guaranty from a seller to an individual buyer, or a continuing guaranty on file with the Commission, is a written statement to the effect that reasonable and representative tests of a given item subject to a flammability standard establish that the item complies with the applicable standard. The legal significance of such a guaranty is that it prohibits criminal prosecution under the act; however, it is not a bar to any administrative or civil proceeding authorized by the act. The Commission concludes that such a guaranty could be "documentary evidence" for purposes of § 302.19(d) issued below, but that addition of language to that effect to § 302.19(d) is not necessary. Accordingly, the change requested in this comment has not been made.

3. Proposed § 302.19(d) (1) (ii) contained language to require that complying goods offered for sale by retailers be identified with a sign which states: "Fire Retardant. Complies with Standard for the Flammability of Children's Sleepwear (DOC FF 3-71)." At the present time, the terms "fire retardant," "fire resistant," "flame retardant," and "flame resistant" are all used in the textile and garment industries to describe material which does not readily ignite or propagate a flame. The Commission has learned that the Committee on Textiles of the American Society for Testing and Materials (ASTM) has been considering a set of uniform flammability definitions for textiles which specifies use of the term "flame resistant" to describe material which does not readily ignite or propagate a flame. The term "flame retardant" would describe a substance that is applied to fabric to make it "flame resistant." The Commission has learned that the proposed definitions have received a majority affirmative vote of that Committee, and are expected to be adopted.

Additionally, an amendment to the Standard for the Flammability of Children's Sleepwear in sizes 7 through 14 (FF 5-74), (39 FR 15210, May 1, 1974, as amended March 21, 1975 (40 FR 12811 and corrected March 27, 1975 (40 FR 13547)), require items which are subject to and comply with that Standard to be affirmatively labeled with a statement which describes them as "flame resistant."

Although none of the comments object to the use of the term "fire retardant" to describe items which comply with FF 3-71, the Commission desires that the text of the sign used to identify complying items be consistent with the affirmative labeling amendment to FF 5-74. This will help to eliminate confusion among consumers by adopting the generally accepted terminology regarding the flammability of textiles.

Although the Commission has not conducted surveys regarding consumer understanding of the meanings of the terms "flame resistant" and "flame retardant," the Commission believes that the public can be informed of the purpose of flammability standards for children's sleepwear. The use of consistent flammability labeling should further this effort. Accordingly, the Commission has changed § 302.19(d) (1) so that the required text for the sign shall be "Flame Resistant. Complies with Standard for the Flammability of Children's Sleepwear (DOC FF 3-71)."

4. Proposed § 302.19(d) (2) contained language to require that displays of noncomplying items be identified by signs which contain the following text in black letters at least one inch high against a white background: "Flammable. Does Not Meet Standard for the Flammability of Children's Sleepwear (DOC FF 3-71)." An organization of consumers urges that the text of the sign should state: "FLAMMABLE SLEEPWEAR. This sleepwear does not meet government standards and is hazardous to children." The Committee observes that the text for the sign proposed by this comment could be misleading because it might suggest that the items which it identifies fail to meet standards other than the Standard for the Flammability of Children's Sleepwear (DOC FF 3-71; as amended), and that such items present a hazard which is not related to their flammability characteristics. For these reasons, the text for the sign to identify displays of noncomplying items subject to the Standard has not been changed.

5. Two retailers and one association of retailers object to the provisions of proposed § 302.19(d) which require that the signs used to identify displays of complying and noncomplying items have black letters at least one inch high against a white background. These comments suggest that the language of that paragraph should be changed to a more general requirement that the signs "clearly and conspicuously" identify displays of complying and noncomplying merchandise. These commenters also object to proposed § 302.19(d) (3) which requires that displays of complying items in sizes 0 through 6X be at least 36 inches from any other items of children's sleepwear which do not comply with the Standard.

They state that these requirements are an unnecessary interference with retailers' business judgment. A comment from an organization of consumers urges that proposed § 302.19(d) (3) be changed to require that noncomplying items cannot be displayed on any shelf or table used to display complying items.

After consideration of these comments, the Commission concludes that for enforcement purposes, objective criteria are necessary for the size and color of the lettering and for the color of the background of signs to identify displays of complying and noncomplying items, as well as for a minimum distance to achieve physical separation of displays of complying and noncomplying items. While the requirements of proposed § 302.19(d) may restrict retailers' business judgment, the Commission concludes that these restrictions are not unreasonable. At the same time, the Commission concludes that the requirement that noncomplying items not be placed on any shelf or table used to display complying items would impose an unreasonable burden on retailers. For these reasons, none of the changes suggested in the comments under consideration has been made to § 302.19(d) issued below.

6. A comment from a retailer asks if the requirements of § 302.19(d) are applicable to fabric sold at retail, and if so, would that paragraph require physical separation of fabric which meets the Standard from fabric which is not intended for use in children's sleepwear. Provisions of § 302.19(d), issued below, are applicable to fabric intended or promoted for use in children's sleepwear in sizes 0 through 6X, when that fabric is offered for sale to consumers in retail stores. If a retailer handles fabric which is subject to the Standard but does not comply with the Standard, that retailer must identify that fabric with the required signs, and keep that fabric at least 36 inches from any fabric which is subject to the Standard and complies with the Standard. Section 302.19(d) does not require complying fabric which is subject to the Standard to be physically separated from fabrics which are not intended or promoted for use in children's sleepwear in sizes 0 to 6X. The provisions of § 302.19(d) are not applicable to a retailer who handles fabrics which are subject to and comply with the Standard if he does not handle any noncomplying fabrics which are subject to the Standard.

C. *Recordkeeping requirements.* 1. Proposed § 302.19(e) set forth recordkeeping requirements applicable to manufacturers, importers, converters, and other persons who introduce items subject to the Standard into interstate commerce. Proposed § 302.19(f) contained recordkeeping requirements applicable to wholesalers, distributors, retailers, and other persons who market or handle items subject to the Standard but who are not subject to the recordkeeping requirements of § 302.19(e). One organization of consumers states that it favors promulgation of these recordkeeping requirements as they were proposed by the Commission, and observes that without the provisions of proposed § 302.19 (e) and (f), the Commission would encounter serious difficulty if it attempted to trace the distribution of any items which fail to meet the Standard. None of the comments received objects in principle to requirements for the maintenance of records by persons who manufacture, market, or handle items subject to the Standard, although comments from one association of manufacturers, one retailer, and one association of retailers state that the requirements of proposed § 302.19 (e) and (f) will add to manufacturers' and retailers' costs and will ultimately result in higher prices to consumers. The Commission is aware that the recordkeeping provisions in the amendments issued below may require some firms to keep records applicable to children's sleepwear items in sizes 0 through 6X beyond those which they presently maintain, and that some increase in the cost of production and handling of those items may result. However, the Commission has determined that protection of young children who wear items subject to the Standard requires the maintenance of records to trace each production unit of items subject to the Standard from the manufacturing process through channels of distribution up to and including sale to retail dealers. Accordingly, the substance of § 302.19 (e) and (f) is unchanged.

2. Provisions of proposed § 302.19(e) required that persons who initially introduce items subject to the Standard into interstate commerce maintain records to establish a line of continuity through the process of manufacture of each production unit of items subject to the Standard to the sale and delivery of the finished items, and from the specific finished items to the manufacturing records. The records required to be maintained by proposed § 302.19(e) include data sufficient to demonstrate compliance with all sampling plans used in accordance with the Standard; the production unit identification assigned to each production unit of items manufactured; results and details of all tests performed and details of all sampling procedures used; fiber content and manufacturing specifications of the items in each production unit; composition and details of application of any fire-retardant treatments used; and the date and quantity of each sale or delivery of items subject to the Standard and the name and address of each purchaser or recipient relating the sale to the production unit or other unit identification. A comment from an association of importers states that the requirements of proposed § 302.19(e) discriminate against importers because they require testing to be performed by laboratories within the United States. This comment urges modification of the requirements of that paragraph to allow testing to be performed by laboratories in the countries where imported goods are manufactured. No provision of the Standard or of proposed § 302.19(e) requires that testing in accordance with the Standard must be performed in the United States. Provisions of proposed § 302.19(e) require that the importer must maintain records relating to the manufacture and sale of items subject to the Standard. The information, data, and physical specimens required by that paragraph can be supplied by the foreign manufacturer, although responsibility for the adequacy and accuracy of the records rests on the importer. For this reason, the change requested in this comment has not been made.

3. An association of retailers requests addition of language to proposed § 302.19 (e) to state that a retail company which distributes merchandise to retail establishments is not subject to the provisions of that paragraph. If a retailer purchases items subject to the Standard from a wholesaler, distributor, or domestic manufacturer, that retailer is not subject to the provisions of § 302.19(e) because he is not a person who initially introduces items subject to the Standard into interstate commerce. If the retailer of items subject to the Standard is also the importer of those items, provisions of § 302.19(e) are applicable. As explained above, the importer is required to maintain the records specified in § 302.19(e) and bears the responsibility for their adequacy and accuracy; however, the importer may obtain the information, data, and physical specimens required for those records from the foreign manufacturer of the items.

4. A manufacturer of fabric and sleepwear garments objects to language in proposed § 302.19(e) (1) which requires that the records maintained by a manufacturer "must establish a line of continuity through the process of manufacture of each production unit of articles of children's sleepwear * * * to the sale and delivery of the finished items and from the specific finished item to the manufacturing records." This commenter states that its manufacturing operations take place in several plants which are located in three states, and that the requirement to "establish a line of continuity" of the process by which any given production unit was manufactured could be done only at a high cost and considerable loss of productivity. This comment requests deletion of the language of proposed § 302.19(e) (1) quoted above.

This commenter appears to have misinterpreted the requirements of proposed § 302.19(e) (1) by placing undue emphasis on the words "line of continuity through the process of manufacture." The Commission does not intend to require records which would trace each production unit through the sequence of manufacturing operations, but rather to require records consisting of certain information, data, and physical specimens relating to the manufacture and sale of each production unit of items in such a manner that the records for any given production unit are applicable to each item in that production unit are applicable to each item in that production unit, and each item in that production unit can be related to the records for the production unit in which it was manufactured. For this reason, the change requested in this comment has not been made to § 302.19(e) (1) issued below.

5. Proposed § 302.19(e) (1) (vii) required maintenance of records of "data and test results relied on as a basis for reduced laundering of fabric or garments during test procedures under .4(d) (4) of the Standard * * *." One manufacturer and one retailer recommend deletion of the words "or garments" from the language quoted above because section .4(b) (1) of the Standard provides that if the fabric has been shown to meet the laundering requirement of section .4(d) (4) of the Standard, garments produced from that fabric are not required to be laundered.

Most fabric manufacturers do test fabrics which are subject to the Standard as required by section .4(b) of the Standard after laundering in accordance with section .4(d) (4) of the Standard and certify that the fabric complies with the Standard. However, some children's sleepwear garments in sizes 0 through 6X may be manufactured from fabrics not intended or promoted for use in children's sleepwear and therefore not tested under the Standard, or from fabrics which are subject to the Standard but which have not been certified by the fabric manufacturer to have met the laundering requirements of section .4(d) (4) of the Standard. In either case, the garment manufacturer would be required to launder samples of the garments to be tested in accordance with provisions of section .4(d) (4) of the Standard. For that reason, the change requested in these comments has not been made.

6. Proposed § 302.19(e) (1) (ix) required maintenance of records of the date and quantity of each sale or delivery of items subject to the Standard, as well as, the name and address of the purchaser or recipient relating the sale to the production unit or other unit identification. Comments from three garment manufacturers object to the requirement that sales records must show the production unit identification of the items involved in each sale. These comments indicate that each individual order consists of garments from several different production units, and that listing the production units involved on the invoice of each sale would be time-consuming and costly. Two of these comments recommend that manufacturers should be given the option of recalling all items from all production units of a given style if the necessity for recall of a specific production unit should arise, as an alternative to maintaining the records required by proposed § 302.19(e) (1) (ix). The principal purpose of the requirements of the proposed amendments to § 302.19 is to facilitate the identification and recall of items from any given production unit which does not comply with the Standard. The requirement for the identification of all purchasers of the items from each production unit is essential to accomplish this result. Previous experience with enforcement of the Flammable Fabrics Act demonstrates that some manufacturers have experienced considerable difficulty in attempts to recall all of the items of a given style from channels of distribution after items from that style were found not to comply with the applicable flammability standard. For these reasons, the requirement for records to show the production units involved in each sale of items subject to the Standard has been retained in § 302.19(e) (1) (ix), issued below, and the changes requested in these comments have not been made.

7. A comment from an association of manufacturers requests clarification of the term "physical records," as it is used throughout proposed § 302.19(e). That paragraph requires persons subject to its provisions to maintain "written and physical records" relating to the production and sale of items subject to the Standard. The term "physical records" as used in § 302.19(e) refers to the finished fabric samples which are required by § 302.19(e) (2), and to the untested prototype specimens, complete sample garments, and the remains of all specimens after testing which are required by § 302.19(e) (3).

8. Proposed § 302.19(e) (3) (ii) required manufacturers to retain physical samples of the various components used in prototype testing in sufficient quantities to repeat all tests required by section .4(b) of the Standard, and upon written request, to furnish to the Commission "specimens identical to those specimens that were actually tested." A comment from one garment manufacturer requests modification of this paragraph by the addition of language to state that the specimens to be furnished to the Commission shall be "identical within normal raw material and manufacturing variations" to those specimens actually tested. This comment states that without the requested modification, the word "identical" is too restrictive and fails to allow for small differences in materials and construction of prototype specimens. When the Commission proposed § 302.19 (e) (3) (ii), it intended to require manufacturers to assemble and retain a sufficient number of additional specimens prior to prototype testing to allow repetition of the prototype testing required by section .4(b) (3) of the Standard. By the use of the term "identical," the Commission intends that the specimens to be retained must be constructed from the same materials and in the same manner as the specimens actually tested. The Commission concludes that the additional language requested in this comment would not clarify the intent of the Commission, and could complicate any enforcement action which might arise from § 302.19(e) (3) (ii). For this reason, the Commission has not made the change requested in this comment.

9. One manufacturer objects to the requirement in proposed § 302.19(e) (3) (ii) for retention of a sufficient number of prototype specimens to repeat the prototype testing required by the Standard, because proposed § 302.19(e) (3) (iv) requires retention of the remains of all prototype specimens tested in accordance with the Standard. This comment states that requiring manufacturers to retain both untested prototype specimens and the remains of prototype specimens after testing is burdensome to manufacturers. An association of garment manufacturers requests modification of proposed section 302.19(e) (3) (iv) to allow use of photographs of the remains of prototype specimens after testing as an alternative to retaining the physical remains of the specimens. The Commission observes that the effect of section .4(b) (3) of the Standard, and proposed § 302.19(e) (ii) and (iv) is to require a manufacturer to retain 30 untested seam specimens at least 10 inches long, and 30 untested trim specimens, and the physical remains of no more than 30 seam specimens and 30 trim specimens. The Commission concludes that the requirement for retention of these specimens is necessary for purposes of enforcing the Standard and will not impose an unreasonable burden on garment manufacturers, and for that reason has not made either of the changes requested in these comments.

10. Proposed § 302.19(e) (4) (i) required garment manufacturers to maintain records to show the source and production unit identification of all fabrics subject to the Standard which are used in garment production unit. Comments from two garment manufacturers and one association of manufacturers request deletion of this requirement. The garment manufacturers state that several fabric production units may be used in a single garment production unit. One manufacturer states that the requirement of proposed § 302.19(e) (4) (i) is unnecessary because all fabrics subject to the Standard must be tested prior to sale to the garment manufacturer. This comment assumes that no fabric production unit which fails to meet the Standard would ever leave a fabric manufacturer's plant. The other manufacturer recommends modification of this paragraph to allow garment manufacturers to identify the fabric used in each garment production unit by means other than the fabric production unit identification, such as the case number or the lot number. The Commission observes that a case or lot of fabrics could consist of items from more than one fabric production unit. The association of manufacturers states that some children's sleepwear garments subject to the Standard are manufactured from fabrics which are not intended or promoted for use in children's sleepwear, and are not subject to the Standard. These fabrics are not identifiable by production unit. Proposed § 302.19(e) (4) (i) required identification of the production units of "all fabrics subject to testing." If a fabric is not intended or promoted for use in children's sleepwear, it is not subject to testing under the Standard. Accordingly, the Commission has not made the changes requested in these comments.

11. Proposed § 302.19(e) (4) (iv) required the maintenance of records to show that samples tested were selected

from the production unit "at random." A comment from one manufacturer asks for a definition of the term "selected at random." As used in § 302.19(e)(4)(iv), the words "selected at random" refer to a selection procedure which assures that any article drawn from the production unit for testing has the same chance of being drawn as any other article in that production unit. This comment also asks how a manufacturer can establish that the items tested were selected at random. One method, although not the only means, to demonstrate that items were selected for testing at random is to use a random number table. Random numbers tables can be found in standard reference volumes on the subject of statistics. An alternative to the use of a random number table would be to number individual cards (such as playing cards) with the numbers one through 500. These cards would then be shuffled and one card would be dealt. The number on the card which is dealt is a random number between one and 500.

12. Proposed § 302.19(e)(4)(v) required persons introducing items which are subject to the Standard to retain written data that will enable the Commission to obtain garments for testing under any applicable compliance market sampling plan. Comments from one manufacturer and an association of manufacturers request modification of this paragraph by the addition of language to require retention of this information only as long as the garments are still in channels of distribution. Proposed § 302.19(e)(5) requires retention of such records for a period of three years. Although all of the items of a particular garment production unit may be sold by wholesalers and retailers before three years elapse, a manufacturer would probably not be able to ascertain the specific date on which the last item of a particular garment production unit leaves the chain of distribution. For that reason, the change requested in these comments has not been made.

13. Proposed § 302.19(f) set forth recordkeeping requirements for persons who market or handle items subject to the Standard but who do not initially introduce those items into interstate commerce. The Commission has not yet completed its consideration of whether retailers and others not initially introducing into commerce items subject to the Standard should be subject to the recordkeeping requirements proposed as § 302.19. Therefore, the Commission has not issued that section in final form and has directed its staff to provide further information on this matter. If the Commission decides to issue the requirement at a later time, adequate time will be allowed for those subject to the requirements to comply. However, it is not anticipated that the regulation will be proposed again before it is issued in final form.

14. The Commission observes that proposed § 302.19(f) contains language to the effect that persons who handle items subject to the Standard but who do not initially introduce them into interstate commerce are exempt from any requirement to maintain records of sales to retail purchasers; however, no such exemption appears in proposed § 302.19(e)(1)(ix). The latter paragraph is applicable to manufacturers, importers, and other persons who initially introduce items subject to the standard into commerce.

The Commission has added language to § 302.19(e)(1)(ix) in the regulation issued below to exempt importers and other persons who initially introduce items into interstate commerce from any requirement to record names of ultimate consumers and dates of sales to ultimate consumers. The Commission believes this change is appropriate because it does not appear to be necessary to maintain the names and dates of sales to ultimate consumers.

D. *Tests for guaranty purposes.* Section 8 of the Flammable Fabrics Act (15 U.S.C. 1197) provides that no person shall be subject to criminal prosecution for violation of the Act if he has received in good faith a guaranty from the person from whom he received an item subject to a flammability standard which states that reasonable and representative tests made in accordance with the applicable standard establish compliance with that standard. (Such a guaranty is not a bar to any administrative action or civil proceeding authorized by the Act.)

Proposed § 302.19(g) set forth requirements for tests upon which guaranties can be issued for items subject to the Standard. A comment from an association of importers requests the addition of language to allow guaranties to be issued on the basis of tests performed outside of the United States.

Provisions of 16 CFR 302.11 state that any guaranty furnished by a person who is not a resident of the United States shall not be a bar to prosecution under the criminal provisions of the act. However, no provision of the Standard, proposed § 302.19(g) or 16 CFR 302.11 requires the testing upon which the guaranty is based to be conducted within the United States. As long as the person who issues the guaranty resides in the United States and the records of the testing upon which the guaranty is based are maintained within the United States, a guaranty may be issued on the basis of tests conducted outside of the United States. For that reason, the change requested in this comment has not been made. Proposed § 302.19(g) has been issued as § 302.19(f) below.

E. *Other changes.* 1. The regulation appearing at 16 CFR 302.19 was issued on February 7, 1974, with the heading "Children's sleepwear, sizes 0-6X; labeling and advertising requirements under Standard DOC FF 3-71." Because the amendments issued below add requirements for recordkeeping, retail display, and guaranties, the heading of 16 CFR 302.19 has been changed to "Children's sleepwear, sizes 0-6X; labeling, advertising, recordkeeping, retail display, and guaranties under Standard DOC FF 3-71."

2. As issued on February 16, 1974, § 302.19(d) carried the heading "Compliance with this section," and contained provisions to prohibit any person subject to the Flammable Fabrics Act from manufacturing, importing, distributing, or otherwise marketing or handling any item subject to the Standard which is not in compliance with the provisions of 16 CFR 302.19. In the amendments issued below, § 302.19(d) carries the heading "Segregation of complying and noncomplying items by retailer," and establishes requirements for retail display of items subject to the Standard. The paragraph formerly designated § 302.19(d), Compliance with this section, has been redesignated § 302.19(g).

Conclusion and promulgation. Having considered the comments received and other pertinent information and material, the Consumer Product Safety Commission concludes that the proposed amendmnts to 16 CFR 302.19, with the changes discussed above, should be adopted as set forth below.

Accordingly, pursuant to provisions of the Flammable Fabrics Act (sec. 5, 67 Stat. 112-13, as amended 81 Stat. 571; 15 U.S.C. 1194) under authority vested in the Consumer Product Safety Commission by the Consumer Product Safety Act (Public Law 92-573, sec. 30(b), 86 Stat. 1213; 15 U.S.C. 2079(b)), the heading of 16 CFR 302.19 is revised and 16 CFR 302.19 is amended by adding a new section (8) to section (b), by redesignating section (d) as (g), and by adding sections (d), (e), and (f).

§ 302.19 is amended as set forth below:

§ 302.19 Children's sleepwear sizes 0-6X; labeling, advertising, recordkeeping, retail display, and guaranties under Standard DOC FF 3-71.

* * * * *

(b) *Labeling.* * * *

(8) Every manufacturer, importer, or other person (such as a converter) initially introducing items subject to the Standard into commerce shall assign to each item a unit identification (number, letter, or date, or combination thereof) sufficient to identify and relate to the fabric production unit or garment production unit of which the item is a part. Such unit identification shall be designated in such a way as to indicate that it is a production unit identification under the Standard. The letters "GPU" and "FPU" may be used to designate a garment production unit identification and fabric production unit identification, respectively, at the option of the labeler. Where items required to be labeled or stamped in accordance with this section 302.19(b)(8) are marketed at retail in packages, and the required label or stamp is not readily visible to the prospective purchaser, the packages must also be prominently, conspicuously, and legibly labeled with the information required by this section 302.19(b)(8).

(i) Each garment subject to the Standard shall bear a label with minimum dimensions of 1.3 centimeters (0.5

inch) by 1.9 centimeters (0.75 inch) containing the appropriate garment production unit identification for that garment in letters at least 0.4 centimeters (one-sixth of an inch) in height and in a color which contrasts with the background of the label, or shall have such information clearly, conspicuously, and legibly stamped on the garment itself in letters at least 0.4 centimeters (one-sixth of an inch) in height, in a color which contrasts with the background, and at least 2.54 centimeters (1 inch) in every direction from any other information. When a label is used to indicate the garment production unit identification, that label may not be in contact with any other label used on the garment, except that a label containing the garment production unit identification may be sewn on top of any label which is not required by this section 302.19 if the label containing the garment production unit identification completely covers the label beneath it. The stamp or label containing the garment production unit identification must be of such construction, and affixed to the garment in such a manner as to remain on or attached to the garment and legible and visible throughout its intended period of use.

(ii) The fabric production unit identification shall appear in letters at least 0.4 centimeters (one-sixth of an inch) in height against a contrasting background on each label that relates to such fabric and is required by the Textile Fiber Products Identification Act (15 U.S.C. 70–70k) and the regulations thereunder (16 CFR 303.1 through 303.45), or by the Wool Products Labeling Act of 1939 (15 U.S.C. 68–68j) and the regulations thereunder (16 CFR 300.1 through 300.35). When the information required by the Textile Fiber Product Identification Act or by the Wool Products Labeling Act of 1939 appears on an invoice used in lieu of labeling, the fabric production unit identification required by this section may be placed clearly, conspicuously, and legibly on the same invoice in lieu of labeling.

* * * * *

(d) *Segregation of complying and noncomplying items by retailer.* Every person who sells noncomplying items (as defined in section .1(c) of the Standard and section (3) of section 302.19 at retail stores or other establishments open to the general public where goods are offered for sale shall:

(1) Display the items which comply with the Standard, and for which the seller has documentary evidence of such compliance, so that no other merchandise is intermingled with those items; and identify such complying items with at least one sign, with black letters at least 2.5 centimeters (one inch) in height against a solid white background, bearing the statement: Flame Resistant. Complies With Standard for the Flammability of Children's Sleepwear (DOC FF 3–71)."

(2) Display all other items of children's sleepwear, sizes 0 through 6X, at a separate location within the store and identify these items with at least one sign, with black letters at least 2.5 centimeters (1 inch) in height against a solid white background, bearing the statement "Flammable. Does Not Meet Standard for the Flammability of Children's Sleepwear (DOC FF 3–71)."

(3) Segregate those items of children's sleepwear, sizes 0 through 6X, which comply with the Standard, and for which the seller has documentary evidence of such compliance, so that they shall not be located within 91 centimeters (36 inches) of any other items of children's sleepwear, sizes 0 through 6X, when displayed for sale to consumers.

(e) Records—manufacturers, importers, or other persons initially introducing items into commerce—(1) *General.* Every manufacturer, importer, or other person (such as a converter) initially introducing into commerce items subject to the Standard, irrespective of whether guaranties are issued under paragraph (g) of this section, shall maintain written and physical records as hereinafter specified. The records required must establish a line of continuity through the process of manufacture of each production unit of articles of children's sleepwear, or fabrics or related materials intended or promoted for use in children's sleepwear, to the sale and delivery of the finished items and from the specific finished item to the manufacturing records. Such records shall show with respect to such items:

(i) Details, description, and identification of any and all sampling plans engaged in pursuant to the requirements of the Standard. Such records must be sufficient to demonstrate compliance with such sampling plan(s) and must relate the sampling plan(s) to the actual items produced, marketed, or handled. This requirement is not limited by other provisions of section (e) of this section.

(ii) Garment production units or fabric production units of all garments or fabrics marketed or handled. The records must relate to an appropriate production unit identification on or affixed to the item itself in accordance with section (b) (8) of this section, and the production unit identification must relate to the garment production unit or fabric production unit.

(iii) Test results and details of all tests performed, both prototype and production, including char lengths and residual flame time of each specimen tested, average char length of the samples required to be tested, details of the sampling procedure employed, name and signature of person conducting tests, date of tests, and all other records necessary to demonstrate compliance with the test procedures and sampling plan specified by the Standard or authorized alternate sampling plan.

(iv) Disposition of all failing or rejected items. Such records must demonstrate that the items were retested or reworked and retested in accordance with the Standard prior to sale or distribution and that such retested or reworked and retested items comply with the Standard, or otherwise show the disposition of such items.

(v) Fiber content and manufacturing specifications relating the same to prototype and production testing and to the production units to which applicable.

(vi) Data and test results relied on as a basis for inclusion of different colors or different print patterns of the same fabric as a single fabric or garment production unit under .4(b) (1) of the Standard.

(vii) Data and test results relied on as a basis for reduced laundering of fabric or garments during test procedures under .4(d) (4) of the Standard and any guaranties issued or received relating to laundering as well as details of the laundering procedure utilized.

(viii) Identification, composition, and details of application of any flame retardant treatments employed. All prototype and production records shall relate to such information.

(ix) Date and quantity of each sale or delivery of items subject to the Standard (except the date of sale to an ultimate consumer) and the name and address of the purchaser or recipient (except an ultimate consumer), relating such sale to the production unit or other unit identification.

(2) *Fabrics.* In addition to the information specified in section (e) (1) of this section the written and physical records maintained with respect to each fabric production unit shall include (i) finished fabric samples sufficient to repeat the fabric sampling procedure required by .4(b) of the Standard for each production unit marketed or handled; and (ii) records to relate the samples to the actual fabric production unit. Upon written request of any duly authorized employee or agent of the Commission, samples sufficient for the sampling and testing of any production unit in accordance with .4(b) of the Standard shall be furnished from these records within the time specified in that written request.

(3) *Garments—prototype testing.* In addition to the records specified in section (e) (1) of this section, the following written and physical records shall be maintained with respect to the garment prototype testing required by the Standard:

(i) Specification, fiber content, and details of construction on all seams, fabrics, threads, stitches, and trims used in each garment style or type upon which prototype testing was performed, relating the same to such garment style or type and to all production units to which such prototype testing is applicable.

(ii) Samples sufficient to repeat the prototype tests required by .4(b) of the Standard for all fabrics, seams, threads, stitches, and trims used in such prototype testing, relating such samples to the records required by paragraph (e) of section including the information required by paragraph (e) (3) (i) of this section. Upon written request of any duly authorized employee or agent of the Commission, samples sufficient for the testing of any prototype specimens identical to those specimens that were actually tested pursuant to the Standard shall be furnished from these records within the time specified in that written request.

(iii) A complete untested garment from each style or type of garment marketed or handled.

(iv) Remains of all physical specimens tested in accordance with the prototype testing required by .4(b) of the Standard, relating such samples to the records required by paragraph (e) of section including information required by paragraph (e)(3)(i) of this section.

(4) *Garments—production testing.* In addition to the records required by paragraph (e)(1) of this section, written and physical records shall be maintained and shall show with respect to each garment production unit:

(i) Source and fabric production unit identification of all fabrics subject to testing used in each garment production unit.

(ii) Identification and appropriate reference to all prototype records and prototype tests applicable to each production unit.

(iii) Any guaranty relied upon to demonstrate that the fabric utilized in such garments meets the laundering requirements of the Standard.

(iv) Data sufficient to show that tested samples were selected from the production unit at random from regular production.

(v) Written data that will enable the Commission to obtain and test garments under any applicable compliance market sampling plan.

(5) *Record retention requirements.* The records required by paragraph (e) of section shall be maintained for 3 years, except that records relating to prototype testing shall be maintained for as long as they are relied upon as demonstrating compliance with the prototype testing requirements of the Standard and shall be retained for 3 years thereafter.

(f) *Tests for guaranty purposes.* Reasonable and representative tests for the purpose of issuing a guaranty under section 8 of the Flammable Fabrics Act (15 U.S.C. 1197) for items subject to the Standard shall be those tests performed pursuant to any sampling plan or authorized alternative sampling plan engaged in pursuant to the requirements of the Standard.

(g) *Compliance with this section.* No person subject to the Flammable Fabrics Act shall manufacture, import, distribute, or otherwise market or handle any item subject to the Standard, including samples, swatches, or specimens used to promote or effect the sale thereof, which is not in compliance with this section.

Effective Date. The regulation promulgated herein shall become effective on May 14, 1975.

(Sec. 5, 67 Stat. 112–13, as amended 81 Stat. 571; 15 U.S.C. 1194)

Dated: April 9, 1975.

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

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Title 21—Food and Drugs

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

PART 6—ENVIRONMENTAL IMPACT CONSIDERATIONS

Legal Effect of NEPA on Agency Action

This regulation establishes the legal interpretation of the Commissioner of Food and Drugs that a determination of an adverse environmental impact pursuant to the National Environmental Policy Act of 1969 (NEPA) permits the Commissioner to take or refrain from taking regulatory action only if the adverse environmental impact involved relates to a danger to the public health, or adulteration or misbranding of products subject to the agency's jurisdiction, or some other impact prohibited by the Federal Food, Drug, and Cosmetic Act or one of the other laws administered by the Commissioner. Although adverse environmental impacts relating to destruction of scenic beauty, depletion of energy resources, increase in litter and trash, and similar matters are not condoned by the Commissioner, he has no legal authority to prevent them.

The Commissioner issued final regulations in 21 CFR Part 6, published in the FEDERAL REGISTER of March 15, 1973 (38 FR 7001), establishing procedures for preparation of environmental impact statements by the Food and Drug Administration for major agency actions significantly affecting the quality of the human environment.

Under the Federal Food, Drug, and Cosmetic Act and the other laws administered by the Commissioner pursuant to the delegations of authority in § 2.120 (21 CFR 2.120), the Commissioner is required to approve petitions and applications and otherwise to take regulatory action on the basis of specific criteria established by statute. For example, a new drug must be approved if it is determined to be safe and effective, and a food additive or color additive must be approved if it is determined to be safe, pursuant to the criteria contained in the statute.

The National Environmental Policy Act requires the Food and Drug Administration to prepare environmental impact statements on all major agency actions significantly affecting the quality of the human environment. In some instances, the environmental impact of agency action will improve the quality of the human environment, or have no significant effect upon it. In other instances such action will have a significant adverse effect upon the quality of the human environment.

The Commissioner has concluded that NEPA requires only that the Food and Drug Administration issue an adverse environmental impact statement, but it does not contain independent substantive legal authority permitting or requiring the Commissioner to take or refrain from taking any particular action on the basis of a determination of an adverse environmental impact. The Supreme Court has ruled that Congress did not intend NEPA to repeal by implication any other Federal statute. [United States v. SCRAP, 412 U.S. 669, 694 (1973).] No court has held that NEPA amends other Federal statutes to permit an agency to take action not authorized by its governing laws.

Accordingly, where an environmental impact statement prepared by the Food and Drug Administration determines that proposed agency action will have an adverse environmental impact, the Commissioner will first determine whether the adverse environmental impact involved is prohibited by the Federal Food, Drug, and Cosmetic Act or any of the other laws he administers. If the adverse environmental impact falls within a prohibition contained in those laws, the Commissioner may take or refrain from taking action on the basis of that adverse impact. If the adverse environmental impact does not fall within any such statutory prohibition, however, the Commissioner is legally precluded from taking or refraining from taking any action based upon that adverse impact, and instead is limited to the statutory grounds for such action established by the specific laws which he administers. For example, the Commissioner may refuse to approve or withdraw approval of a food additive or a new animal drug if it is unsafe, but he is legally precluded from taking such action if the product would only contribute to litter or deplete the nation's energy resources or detract from scenic beauty.

The Commissioner concludes that, because this amendment to § 6.1 is intended solely to notify the public of a legal interpretation of the agency's statutory authority which will be uniformly applied to all agency environmental impact statements and involves no issues of fact or policy, notice and public procedure and a delayed effective date are unnecessary. The Commissioner further advises that this amendment to the regulations constitutes final agency action on this matter. It is the Commissioner's opinion that, since the activities of the Food and Drug Administration directly affect every person in this country, any such person has standing to obtain judicial review of this regulation in accordance with the provisions of 5 U.S.C. 701 et seq.

Therefore, pursuant to the National Environmental Policy Act of 1969 (sec. 102(2), 83 Stat. 853 (42 U.S.C. 4332)), the Federal Food, Drug, and Cosmetic Act (secs. 201 et seq., 52 Stat. 1040 et seq. (21 U.S.C. 321 et seq.)), the Fair Packaging and Labeling Act (secs. 2 et seq.; 80 Stat. 1296 et seq. (15 U.S.C. 1451 et seq.)), the Public Health Service Act (secs. 351, 352, 354–360F, 58 Stat. 702, 82 Stat. 1173 et seq. (42 U.S.C. 262, 263, 263b–263n)), and under authority delegated to the Commissioner (21 CFR 2.120), Part 6 is amended in § 6.1 by adding a new paragraph (a)(3) to read as follows:

Section 6.1 is amended by adding paragraph (a)(3) as follows:

§ 6.1 Applicability.

(a) * * *

(3) A determination of adverse environmental impact has no legal or other regulatory effect and does not authorize the Commissioner to take or refrain from taking any action under the laws he administers. The Commissioner may take or refrain from taking action on the basis of a determination of an adverse environmental impact only to the extent that such action is independently authorized by the laws he administers. For example, an adverse environmental impact which directly or indirectly results in a danger to the public health may be the subject of action by the Commissioner, but an adverse environmental impact which results in increased litter and trash or depletion of energy resources or detraction from scenic beauty but which has no adverse health consequences or other effects related to adulteration or misbranding may not be the subject of action by the Commissioner.

* * * * *

Effective date. This order shall be effective on April 14, 1975.

(Sec. 102(2), Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 201 et seq., Pub. L. 717, 52 Stat. 1040 et seq. (21 U.S.C. 321 et seq.); secs. 2 et seq., Pub. L. 89-755, 80 Stat. 1296 et seq. (15 U.S.C. 1451 et seq.); secs. 351, 352, 354-360F, Pub. L. 410, 58 Stat. 702, 82 Stat. 1173 et seq. (42 U.S.C. 262, 263, 263b-263n.))

Dated: April 2, 1975.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.75-9590 Filed 4-11-75;8:45 am]

SUBCHAPTER J—RADIOLOGICAL HEALTH

PART 1030—PERFORMANCE STANDARDS FOR MICROWAVE AND RADIO FREQUENCY EMITTING PRODUCTS

Microwave Ovens

Correction

In FR Doc. 75-8334, appearing at page 14750 in the issue for Wednesday, April 2, 1975, in the effective date statement at the end of the document, the date now reading "September 29, 1975" should be changed to read "October 3, 1975".

Title 24—Housing and Urban Development

CHAPTER V—OFFICE OF ASSISTANT SECRETARY OF COMMUNITY PLANNING AND DEVELOPMENT

[Docket No. R-75-292]

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Submission of Applications

On April 4, 1975, in 40 FR 15089, the Department amended § 570.300(a) of Title 24 of the Code of Federal Regulations which governs the deadlines for submission of applications for community development block grants under Title I of the Housing and Community Development Act of 1974, Pub. L. 93-383. The Part 570 regulation was published November 13, 1974 (39 FR 40136). The purpose of that amendment was to extend the deadline for application submissions by urban counties. The regulations currently require applicants to notify HUD by March 1, 1975, of their inability to submit an application within the prescribed time limit. We are changing the March 1, 1975, deadline to April 15, 1975, on the basis that experience has shown that it was not possible for all applicants to foresee the need for a time extension prior to March 1, 1975. Therefore, § 570.300(a) is hereby revised to extend the deadline for applicants notifying HUD of their inability to apply for assistance under this Part to April 15, 1975. It is necessary that this amendment take effect at the earliest posisble date so that those applicant unable to meet the previously established deadlines can plan the completion of their work within the time remaining under the extended dates. Accordingly, the Assistant Secretary for Community Planning and Development finds good cause for foregoing usual public comment and notice procedure, and he finds further good cause that this amendment to the regulations should take effect on the date of publication. In connection with the environmental review of this technical change to the final Regulations, a Finding of Inapplicability has been made under HUD Handbook 1390.1, 38 FR 19182.

The section is amended as follows: In Subpart D of Part 570, § 570.300(a) is revised to read:

§ 570.300 Pre-submissions.

(a) *Timing of submission of applications.* The Secretary will establish from time to time the earliest and latest dates for submission of an application for each fiscal year. Applications, or draft materials relating to applications, received before the earliest date will be returned to the applicant without review. For fiscal year 1975, the earliest date for submission of an application shall be December 1, 1975; the latest date shall be April 15, 1975: *Provided, however,* That the Secretary may extend the April 15, 1975, deadline for submission of an application in particular cases in which, in his judgment, procedures mandated by state statute or regulation render submission of the application by April 15, 1975, impracticable, but in no event will submission of an application be accepted after May 30, 1975. Applicants wishing to request an extension of the April 15, 1975, deadline pursuant to this paragraph shall inform the appropriate HUD Area Office by April 15, 1975, giving the basis for the applicant's inability to file an application byApril 15, 1975. No extension will be granted if the request for extension and the reasons therefor have not been received by HUD by April 15, 1975. *Provided, further,* That all counties which have been advised by HUD of either final qualification or preliminary recognition for qualification as urban counties under § 570.105 may have their deadline for submission of their applications extended to May 15, 1975; provided, however, that the request for such an extension has been received by the HUD Area Office by April 15, 1975. Cooperation agreements, where required for urban counties, shall be submitted not later than fifteen days after the date an application from an urban county has been received for processing in HUD. Prior to the earliest date for submission of an application for each fiscal year, HUD will provide all applicants with forms and instructions, including the actual or estimated entitlement amount. Entitlement applicants wishing to apply for discretionary grants shall follow the procedures described in Subpart E, Applications and Criteria for Discretionary Grants.

* * * * *

Effective date. This amendment shall be effective on April 14, 1975.

DAVID O. MEEKER, Jr.,
FAIA, AIP, Assistant Secretary, for Community Planning and Development.

[FR Doc.75-9814 Filed 4-11-75;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7352]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Sick Pay Exclusion

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under sections 72, 101, and 105 of the Internal Revenue Code of 1954, pertaining to the application of the sick pay exclusion to pensions received by individuals retired from work because of personal injuries or sickness, and to the application of section 72 (treatment of annuities) to accident and health plans.

Proposed regulations on this topic were published in the FEDERAL REGISTER on December 27, 1974 (39 FR 44759), and consideration was given to all such relevant matter as was presented by interested persons.

Amendments to the regulations. In view of the foregoing, the Income Tax Regulations (26 CFR Part 1) under sections 72, 101, and 105 of the Internal Revenue Code of 1954 are revised as follows:

Paragraph 1. Paragraph (b)(2) of § 1.72-4 is amended to read as follows:

§ 1.72-4 Exclusion ratio.

* * * * *

(b) *Annuity starting date.* * * *

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the annuity starting date shall be determined in accordance with whichever of the following provisions is appropriate:

(i) In the case of a joint and survivor annuity contract described in section 72(i) and paragraph (b)(3) of § 1.72-5, the annuity starting date is January 1, 1954, or the first day of the first period for which an amount is received as an annuity by the surviving annuitant, whichever is the later;

(ii) In the case of the transfer of an annuity contract for a valuable consideration, as described in section 72(g) and paragraph (a) of § 1.72-10, the annuity starting date shall be January 1, 1954, or the first day of the first period for which the transferee received an amount as an annuity, whichever is the later;

(iii) If the provisions of paragraph (e) of §1.72-11 apply to an exchange of one contract for another, or to a transaction deemed to be such an exchange, the annuity starting date of the contract received (or deemed received) in exchange shall be January 1, 1954, or the first day of the first period for which an amount is received as an annuity under such contract, whichever is the later; and

(iv) In the case of an employee who has retired from work because of personal injuries or sickness, and who is receiving amounts under a plan that is a wage continuation plan under section 105(d) and § 1.105-4, the annuity starting date shall be the date the employee reaches mandatory retirement age, as defined in § 1.105-4(a)(3)(i)(B). (See, also §§ 1.72-15 and 1.105-6 for transitional and other special rules.)

Par. 2. Section 1.72-15 is amended by revising paragraphs (a) and (d), example (1) of paragraph (f), and by adding a new paragraph (i) to read as follows:

§ 1.72-15 Applicability of section 72 to accident or health plans.

(a) *Applicability of section.* This section provides the rules for determining the taxation of amounts received from an employer-established plan which provides for distributions that are taxable under section 72 (or for distributions that are taxable under section 402(a)(2) or (e), or section 403(a)(2), in the case of lump sum distributions) and which also provides for distributions that may be excludable from gross income under section 104 or 105 as accident or health benefits. For example, this section will apply to a pension plan described in section 401 and exempt under section 501 which provides for the payment of pensions at retirement and the payment of an earlier pension in the event of permanent disability. This section will also apply to a profit-sharing plan described in section 401 and exempt under section 501 which provides for periodic distribution of the amount standing to the account of a participant during any period that the participant is absent from work due to a personal injury or sickness and for the distribution of any balance standing to the account of the participant upon his separation from service. For purposes of this section, the term "contributions of the employee" includes contributions by the employer which were includible in the employee's gross income. For special rules for taxable years ending before January 27, 1975, relating to certain accident or health benefits which were treated as distributions to which section 72 applied, see paragraph (i) of this section.

* * * * *

(d) *Accident or health benefits attributable to employer contributions.* Any amounts received as accident or health benefits and not attributable to contributions of the employee are includible in gross income except to the extent that such amounts are excludable from gross income under section 105 (b), (c), or (d) and the regulations thereunder. Thus, such amounts may be excludable under section 105(d) as payments under a wage continuation plan. However, if such payments, when added to other such payments attributable to employer contributions, exceed the limitations of section 105(d), then the excess is includible in gross income under section 105(a). Such excess is not excludable under section 72. See, however, paragraph (i) of this section, for special rules for taxable years ending before January 27, 1975, relating to certain accident or health benefits which were treated as distributions to which section 72 applied.

* * * * *

(f) *Examples.* * * *

Example (1). A, an employee, is a participant in a contributory pension plan described in section 401(a) and exempt under section 501(a). Such plan provides for the payment of a pension to each participant when he retires at age 65 or when he retires earlier if the retirement is due to permanent and total disability. In 1964, A, who was age 52, became totally and permanently disabled because of an injury, was hospitalized, and commenced to receive a pension of $74 a week under this plan. The weekly amounts received by A do not exceed 75 percent of his "regular weekly rate of wages" under section 105(d). A had contributed $11,500 to the plan. The plan does not expressly provide that any portion of the disability pension is purchased with employee contributions. Accordingly, it is presumed that no portion of the disability pension is purchased with A's contributions. The disability pension which A receives qualifies as payments under a wage continuation plan for purposes of section 105(d) and § 1.105-4, and if such payments are the only accident or health benefits which are attributable to the contributions of his employer, such payments are entirely excludable under section 105(d) unit A reaches age 65, his mandatory retirement age under the plan. The payments which A receives after he becomes age 65 are taxable under section 72. The payments which A receives do constitute an annuity as defined in paragraph (b) of § 1.72-2, but since the amounts which he will receive during the first three years after attaining age 65 exceed his contributions, he shall exclude under § 1.72-13 the entire amount of all payments that he receives as an annuity after attaining age 65 until such amounts equal his contributions to the plan, or $11,500. Thereafter, the payments that he receives under the plan are includible in gross income.

* * * * *

(i) *Special rules*—(1) Special rule for taxable years ending before January 27, 1975. A taxpayer who has reached retirement age, as defined in § 1.79-2(b)(3) (hereinafter referred to as "initial retirement age"), before January 27, 1975, and who has received payments under a plan described in paragraph (a) of this section, which are wage continuation benefits to which section 105(d) and this section apply, or which are treated as such by reason of the employee having so agreed under § 1.105-6, shall be entitled to an exclusion, in taxable years ending before January 27, 1975, with respect to payments received after initial retirement age but before mandatory retirement age, as defined in § 1.105-4(a)(3)(i)(B), which is the greater of:

(i) the amount actually excluded on an original return under section 72 (b) or (d) with respect to payments received after initial retirement age, to the extent such amount does not exceed an amount properly excludable under section 72 (b) or (d) if this paragraph and paragraph (b) of this section did not apply; or

(ii) the amount that would have been properly excludable under section 105(d) during the same period.

(2) *Investment in the annuity contract.* A taxpayer described in paragraph (i)(1) of this section, shall redetermine his investment in, consideration for, or basis of his annuity contract (hereinafter referred to in this paragraph as the "investment in the contract") in accordance with the applicable rules of section 72 and the regulations thereunder, and the rules of this paragraph. In making such redetermination the taxpayer's investment in his contract shall be decreased, by the excess (if any) of the amount which the taxpayer is entitled to exclude under paragraph (i)(1) of this section over the amount which could have been excluded under section 105(d) (subject to the limitations contained in such provision). Such investment in the contract shall be decreased only by the excess of the amount excluded under section 72 in taxable years ending before January 27, 1975, over the amount which could have been excluded under section 105(d) during the same period. For example, the investment in the contract shall not be decreased in the case of an individual who was retired from work on account of injury or sickness for a full taxable year, if the amount excluded under section 72 was less than $5,200, since the entire amount could have been excluded under section 105(d). On the other hand, if the amount excluded under section 72 was equal to or greater than $5,200 for a full taxable year, for example, $6,000 for the full taxable year, then $5,200 shall be treated as excluded under section 105(d) and the investment in the contract shall be reduced by $800 ($6,000-$5,200).

(3) *Surviving annuitants and beneficiaries.* (i) The rights of a surviving annuitant or beneficiary, with respect to the application of the rules of section 72, shall be based on the employee's investment in his annuity contract, as adjusted in accordance with the provisions of this paragraph. Thus, where an employee dies after having recomputed his investment as provided in paragraph (i)(2) of this section, and his contract provided a survivorship element, the survivor would assume the employee's recomputed investment for purposes of determining excludability of amounts under section 72.

(ii) Where a beneficiary failed to increase the amount treated as an employee's contribution toward his annuity contract to reflect the employee death benefit under section 101(b) and § 1.72-8(b), because the employee had treated his initial retirement age as his annuity starting date, such beneficiary may apply section 101(b) as if the appropriate addition to basis had been made in the year of the employee's death, but only if the employee had not reached his mandatory retirement age (as defined in section 105-4(a)(3)(i)(B)). For purposes of this paragraph, the amount treated as the section 101(b) death benefit would be valued as of the date of the employee's death.

(4) *Records.* (i) For purposes of section 72(b) and (d), and this section, the taxpayer shall maintain such records as are necessary to substantiate the amount treated as his investment in his annuity contract.

(ii) The Commissioner may prescribe a form and instructions with respect to the taxpayer's past and current treatment of amounts received under section 72 or 105, and the taxpayer's computation, or recomputation, of his investment in his annuity contract. Such form may be required to be filed with the taxpayer's returns for years in which amounts are excluded under section 72 or 105.

(5) *Cross references.* (i) See section 72(b)(4) and § 1.72-4(b) with respect to annuity starting dates.

(ii) See §§ 1.72-8(b) and 1.101-2(a)(2) with respect to treating certain amounts received by an estate or beneficiary as employee death benefits.

(iii) See § 1.105-4(a)(3)(i)(B) for the definition of "mandatory retirement age."

(iv) See § 1.105-6 with respect to the application of section 105(d) to certain amounts received as retirement annuities before January 27, 1975, where the employee would otherwise have been eligible for benefits to which section 105(d) applies.

(6) *Examples.* The provisions of this paragraph may be illustrated by the following examples. In such examples assume that the plan does not expressly provide that any portion of the disability pension is purchased with employee contributions. Accordingly, it is presumed that no portion of the disability pension is purchased with employee contributions. Also, assume that in each case the taxpayer retired only after he had been absent from work for at least 30 days on account of personal injuries or sickness:

Example (1). A, a calendar year taxpayer, retired because of disability on January 1, 1968, his 58th birthday, receiving $80 per week ($4,160 per year) under a plan which qualifies as a wage continuation plan under section 105(d) and § 1.105-4. Under the plan, A's initial retirement age is age 60 (January 1, 1970), and his mandatory retirement age is 65 (January 1, 1975). A's consideration for the contract was $10,000. For payments received in 1968 and 1969 A excluded the entire amount under section 105(d). Payments received with respect to periods after A's initial retirement age (January 1, 1970) were excluded under section 72(d) until his entire $10,000 consideration for his contract had been excluded. Thus, A applied section 72(d) to exclude $4,160 each year for taxable years 1970 and 1971, and $1,680 ($10,000−($4,160+$4,160)) for 1972. In late 1974 A realized that he was entitled to treat the full amount received under his annuity as excludable under section 105(d) rather than section 72 for the taxable years 1970 through 1974. Consequently, A filed amended returns for 1972 and 1973 excluding an additional $2,480 ($4,160−$1,680) and $4,160, respectively, claiming refunds based upon such additional exclusions. Moreover, A's annuity starting date is January 1, 1975 (A's mandatory retirement age), and he excludes under section 72(d) for 1975, 1976, and 1977, $4,160, $4,160 and $1,680 ($10,000−($4,160+$4,160)), respectively.

Example (2). B, a calendar year taxpayer retired because of disability, July 1, 1970, on his 58th birthday, receiving $1,000 per month under a plan which qualifies as a wage continuation plan for purposes of section 105(d) and § 1.105-4. Under the plan, B's initial retirement age is age 60 (July 1, 1972), and his mandatory retirement age is 65 (July 1, 1977). B's consideration for the contract was $25,000. For payments received in 1970 and 1971 B excluded under section 105(d) $2,600 and $5,200, respectively, of the $6,000 (6 × $1,000) and $12,000 (12 × $1,000) received under the plan. For the period January 1, 1972, through June 30, 1972, B excluded an additional $2,600 under section 105(d). For the period July 1, 1972 through December 31, 1972, B excluded under section 72(d)(1) the entire $6,000 in payments received under the plan. Similarly, under section 72(d)(1), B excluded the entire $12,000 in payments received under the plan in 1973, and in 1974 B excluded the remaining $7,000 of his annuity basis. In 1975, B realized that he will be entitled to take full advantage of the exclusion under section 105(d) for periods through June 30, 1977, when he would reach age 65. B need not file amended returns for 1972, 1973, and 1974, even though the amounts he excluded under section 72(d) (exceeded the amount he was entitled to exclude under section 105(d). He must, however, recompute the amount that will be treated as his investment in his annuity contract. Thus, on July 1, 1977, B's annuity starting date, his investment in his annuity contract would be $13,000, recomputed as follows:

B's original investment	$25,000
Less amounts excluded under section 72 to the extent they exceed amounts that would have been excludable during the same period under section 105(d):	
1972 ($6,000−2,600)	3,400
1973 ($12,000−5,200)	6,800
1974 ($7,000−5,200)	1,800
Total	$12,000
B's recomputed investment in his annuity contract	13,000

Example (3). Assume the same facts as in example (2) except that B's investment in his annuity contract is $37,000, and he excluded under section 72(b) 16.9 percent, or $2,028, of the $12,000 received per year. Thus, for the period July 1, 1972 through December 31, 1972, B excluded under section 72(b) $1,014 (16.9 percent of $6,000), and $2,028 in both 1973 and 1974. B files amended returns for 1972, 1973 and 1974 claiming the exclusion under section 105(d). Thus, B restored to income $1,014 for 1972, and $2,028 for both 1973 and 1974, claiming $2,600 ($5,200−$2,600) exclusion under section 105(d) for 1972 and a $5,200 exclusion in both 1973 and 1974. Thus, for 1972 B is entitled to an additional exclusion of $1,586 ($2,600−$1,014), and, for both 1973 and 1974, an additional exclusion of $3,172 ($5,200−$2,028). On July 1, 1977, B's investment in the contract is $37,000.

Example (4). C, a calendar year taxpayer, retired because of disability on January 1, 1965, his 58th birthday, receiving payments of $500 per month under a plan which qualifies as a wage continuation plan for purposes of section 105(d) and § 1.105-4. C had contributed $18,000 toward the cost of his annuity contract. Under the plan, C's initial retirement age is age 60 (January 1, 1967) and C's mandatory retirement age is age 70 (January 1, 1977). For taxable years 1965 and 1966 C excluded from gross income under section 105(d) $5,200 of the $6,000 (12×$500) he received from his employer as wage continuation benefits. On January 1, 1967, C began excluding all of the benefits C received in accordance with the rules of section 72(d). Thus, for 1967, 1968 and 1969, C excluded 100 percent of the annuity payments. For his taxable years 1970 through 1973, C included in his gross income all annuity payments. In 1974, C realized that he will be entitled to use the exclusion under section 105(d) through December 31, 1976 (until he reaches age 70). In 1974, C filed a timely claim for refund for his taxable years 1971, 1972 and 1973 (refunds for taxable year 1970 and prior years were barred by the statute of limitations), and continues to claim the exclusion under section 105(d) for 1974, 1975 and 1976. For 1977, C treats January 1, 1977, as the annuity starting date, and treats $15,600 as the investment in the contract. The $15,600 represents the $18,000 original investment in the contract reduced by the excess, $2,400, of the amount excluded under section 72 for 1967, 1968 and 1969 ($18,000) over the amount excludable under section 105(d) ($5,200×3) for such years.

Example (5). (i) D, a calendar year taxpayer, retired because of disability on June 30, 1965, receiving $100 per month under a plan which qualifies as a wage continuation plan for purposes of section 105(d) and § 1.105-4. Under the plan, the initial retirement age of D, whose birthday is January 1, is age 60 (January 1, 1967), and D's mandatory retirement age is age 70 (January 1, 1977). D had contributed $6,000 toward the cost of the annuity contract under such plan. For 1965 and 1966, D excluded under section 105(d) the entire amount received under the plan ($600 and $1,200 respectively). For 1967 through 1973, D excluded $330 per year under section 72(b), or 27.5 percent of the $1,200 payment received under the plan per year.

(ii) In 1974, D realized that he will be entitled to use the exclusion provided in section 105(d) up until January 1, 1977, when he reaches his mandatory retirement age, and that he improperly applied section 72 to payments received in the years 1967 through 1973. In 1974, D filed a timely claim for refund with respect to the section 105(d) wage continuation benefits, for 1971, 1972 and 1973 (refunds for taxable year 1970 and prior years were barred by the statute of limitations), and continues to claim the section 105(d) exclusion for 1974, 1975 and 1976. D is entitled to an additional exclusion of $870 ($1,200−$330) for each of the years 1971, 1972 and 1973.

(iii) Upon reaching mandatory retirement age on January 1, 1977, D treats such date as the annuity starting date, and treats $6,000 as the investment in the contract. The investment in the contract is not reduced, because the amount excluded under section 72(b) for 1967 through 1970 ($330 per year) does not exceed the amount excludable under section 105(d) ($1,200 per year), and the $330 per year excluded for 1971, 1972, and 1973 were restored to the investment in the contract. Therefore, assuming that D would be entitled to exclude 41.3 percent of the payments under the plan if the annuity starting date is January 1, 1977, D would be entitled to exclude $495.60 (41.3 percent of $1,200) per annum.

Example (6). Assume the facts stated in example (5) except that D's investment in his annuity contract is $100,000 and he received payments equaling $10,000 per year. Assume also, that D had excluded under section 72(b) 54.9 percent of the payments received under the plan through 1974. Consequently, he excluded $5,490 (54.9 percent of $10,000) from his gross income for the years 1967 through 1974. D need not file amended returns for 1971, 1972, 1973, and 1974, even though the amount he excluded under section 72(b) exceeded the amounts he was entitled to exclude under section 105(d). He must, however, recompute the amount that will be treated as his investment in his annuity contract. Thus, on January 1, 1977, D's annuity starting date, his investment in his annuity contract would be $97,680. This figure represents the original investment ($100,000) reduced by the amount excluded under section 72(b) for the years 1967-1974 (8×$5,490=$43,920) over the amount properly excludable during those years under section 105(d) ($5,200×8=$41,600).

Example (7). Assume the same facts as in example (6) except that D's mandatory retirement age is 63 (January 1, 1970). D would redetermine his exclusion ratio for purposes of section 72(b) as of January 1, 1970, since D's mandatory retirement age is D's annuity starting date. D would treat $99,130 as his investment in his annuity contract as of such date for purposes of section 72(b). Assuming refunds for 1970 and prior taxable years were barred by the statute of limitations, the $99,130 represents the original investment of $100,000 reduced by the excess of the amount excluded under section 72(b) for 1967, 1968, and 1969 ($5,490×3=$16,470) over the amount otherwise excludable during those years under section 105(d) ($5,200×3=$15,600). Therefore, assuming that D would be entitled to exclude 61.2 of the payments received under the plan if the annuity starting date is January 1, 1970, D would be entitled to exclude $6,120 (61.2 percent of the $10,000 received under the plans) per annum for 1971 and subsequent years. However, D is not entitled to exclude the additional $630 ($6,120−$5,490) for 1970, because credit or refund for 1970 and prior years is barred by the statute of limitations.

Par. 3. Paragraph (a) (2) of § 1.101-2 is amended to read as follows:

§ 1.101-2 Employees' death benefits.

(a) *In general.* * * *

(2) The exclusion does not apply to amounts constituting income payable to the employee during his life as compensation for his services, such as bonuses or payments for unused leave or uncollected salary, nor to certain other amounts with respect to which the deceased employee possessed, immediately before his death, a nonforfeitable right to receive the amounts while living (see section 101(b)(2)(B) and paragraph (d) of this section). Further, the exclusion does not apply to amounts received as an annuity under a joint and survivor annuity obligation where the employee was the primary annuitant and the annuity starting date occurred before the death of the employee (see section 101 (b)(2)(C) and paragraph (e)(1)(ii) of this section). In the case of amounts received by a beneficiary as an annuity (but not as a survivor under a joint and survivor annuity with respect to which the employee was the primary annuitant), the exclusion is applied indirectly by means of the provisions of section 72 and the regulations thereunder (see section 101(b)(2)(D) and paragraph (e) (1) (iii) and (iv) of this section). Thus, for example, the exclusion applies to amounts which are received by a survivor of an employee retired on disability under the provisions of the Civil Service retirement law (5 U.S.C. 8301 or any former corresponding provisions of law) or the Retired Serviceman's Family Protection Plan or Survivor Benefit Plan (10 U.S.C. 1431 et seq.), provided such employee dies before attaining mandatory retirement age (as defined in § 1.105-4 (a)(3)(i)(B)).

* * * * *

Par. 4. Paragraph (a) (2)(i) and (3) (i) of § 1.105-4 is amended to read as follows:

§ 1.105-4 Wage continuation plans.

(a) *In general.* * * *

(2)(i) Section 105(d) is applicable only if the wages or payments in lieu of wages are paid pursuant to a wage continuation plan. (See § 1.105-6 for special rules for employees retired before January 27, 1975). The term "wage continuation plan" means an accident or health plan, as defined in § 1.105-5, under which wages, or payments in lieu of wages, are paid to an employee for a period during which he is absent from work on account of a personal injury or sickness. Such term includes plans under which payments are continued as long as the employee is absent from work on account of personal injury or sickness. It includes plans under which there is a limitation on the period for which benefits will be paid, such as 13 or 26 weeks, and also plans under which benefits are continued until the employee is either able to return to work or reaches mandatory retirement age. Such term also includes a plan under which wages or payments in lieu of wages are paid to an employee who is absent from work on account of personal injury or sickness, even though the plan also provides that wages or payments in lieu of wages may be paid to an employee who is absent from work for reasons other than a personal injury or sickness.

* * * * *

(3)(i)(A) Section 105(d) applies only to amounts attributable to periods during which the employee would be at work were it not for a personal injury or sickness. Thus, an employee is not absent from work if he is not expected to work because, for example, he has reached mandatory retirement age. If a plan provides that an employee, who is absent from work on account of a personal injury or sickness, will receive a disability pension or annuity as long as he is disabled, section 105(d) is applicable to any payments that he receives under this plan before reaching mandatory retirement age, as defined in paragraph (a) (3)(i)(B) of this section. Thus, section 105(d) would not apply to the payments that an employee receives after reaching mandatory retirement age. The disability retired pay received by a member on the retired list pursuant to section 402 of the Career Compensation Act of 1949 (63 Stat. 802) or chapter 61 of title 10, United States Code (10 U.S.C. 1201 et seq.) which is in excess of the amounts excludable under section 104(a)(4) and paragraph (e) of § 1.104-1 shall be excluded from gross income subject to the limitations of section 105(d) and this section, if such pay is received before the member reaches mandatory retirement age. See § 1.72-15 for additional rules relating to the tax treatment of disability pensions. For the rules relating to certain reduced uniformed services retirement pay, see paragraph (c)(2) of § 1.122-1. For rules relating to a waiver by a member or former member of the uniformed services of a portion of disability retired pay in favor of a pension or compensation receivable under the laws administered by the Veterans Administration (38 U.S.C. 3105), see § 1.122-1(c)(3).

(B) The term "mandatory retirement age" as used in paragraph (a)(3)(i)(A) of this section means the age set by an employer for the mandatory retirement of employees in the class to which the taxpayer last belonged, unless such age has been set at an age higher than that at which it has been the practice of the employer to terminate, due to age, the services of such employees, or for purposes of tax avoidance. Where no age is set for mandatory retirement, such term means age 65, or, if higher, the age at which it has been the practice of the employer to terminate, due to age, the services of the class of employees to which the taxpayer last belonged.

Par. 5. The following section is added immediately after § 1.105-5 to read as follows:

§ 1.105-6 Special rules for employees retired before January 27, 1975.

(a) *Application of section 105(d) to amounts received as retirement annuities.* An employee who retired from work before January 27, 1975, receiving payments under his employer-established plan (to which § 1.72-15(a) applies) which payments were not treated as amounts received under a wage continuation plan for purposes of section 105 (d), may, as of the date the employee retired, treat such plan as such a wage continuation plan to the extent such payments are received prior to mandatory retirement age (as described in § 1.105-4 (a)(3)(i)(B)), if—

(1) His employer had in operation at the time of his retirement a program providing accident and health benefits under a wage continuation plan to which section 105(d) would apply;

(2) The employer certifies, under procedures approved in advance under paragraph (c) of this section, that the employee would have been eligible for wage continuation benefits, under the terms

and conditions of his employer's plan, because of personal injuries or sickness;

(3) At the time of the employee's retirement there was no substantive difference between the benefits being actually received and the benefits he would have received had he retired under his employer's wage continuation plan; and

(4) The employee agrees to the adjustments and conditions required by the Commissioner with respect to amounts excluded under section 72 (b) or (d) in taxable years ending before January 27, 1975.

(b) *Filing requirements.* (1) The certification required in paragraph (a) (2) and the agreement required in paragraph (a) (4) of this section shall be filed on or before April 15, 1977, with the return, or timely amended return or claim, made for the taxable year in which the employee reached retirement age as described in § 1.79–2(b) (3), or, for the first taxable year for which the taxpayer files an income tax return claiming an exclusion under section 105(d), as provided in paragraph (a) of this section.

(2) The Commissioner may prescribe a form and instructions with respect to the agreement provided for in paragraph (a) (4) of this section.

(c) *Employer certification*—(1) *Advance approval of procedures.* Any reasonable and consistently applied procedures, approved in advance by the Internal Revenue Service, which require the employee to provide the employer or the insurer with medical documentation sufficient to show that an illness or disability existed as of the date of the employee's retirement, which would have entitled him to retire on account of personal injuries or sickness alone, are sufficient for purposes of this paragraph.

(2) *Place of submission.* Request for advance approval of procedures for certification shall be submitted to the district director.

(d) *Cross reference.* For special rules pertaining to taxpayers retired on disability before January 27, 1975, see § 1.72–15(i).

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

[SEAL] DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: April 9, 1975.

ERNEST S. CHRISTIAN, Jr.
Deputy Assistant Secretary of the Treasury.

[FR Doc.75-9689 Filed 4-9-75;4:42 pm]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL–335–3]

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

Subpart H—Emission Regulations for New Gasoline-Fueled Heavy Duty Engines

Correction

In FR Doc. 75–4746 appearing in the issue of Thursday, February 27, 1975, on page 8490, column one, the reference in § 85.774–11 (a) (3) should read "(a) (2)".

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5495; CA–2643]

CALIFORNIA

Correction of Typographical Errors in Presidential Proclamation No. 4319

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952 (17 FR 4831), it is ordered as follows:

Presidential Proclamation No. 4319 which appeared in the October 1, 1974, issue of the FEDERAL REGISTER, is hereby corrected as shown below:

1. On page 35319, the fifth line beginning, "thence South 10°54′05″ East 317.40 feet," should read, "thence South 10°54′05″ East 117.40 feet."

2. On page 35319, the seventh line beginning, "15°11′11″ East 117.03 feet to an intersection * * *," should read, "15°11′11″ East 177.03 feet to an intersection * * *."

3. On page 35321, the fifth line below the heading, Parcel "C", delete the word "said" preceding Miscellaneous Map No.

4. On page 35321, the sixth line below the heading, Parcel "C", between "129" and the word "the", add the following: "filed in the Office of the County Recorder of San Diego County, California, April 16, 1934."

5. On page 35321, the last two lines, the hyphenated word "EXCEPTING" commencing on the second line from the bottom, should be deleted, and the word "RESERVING" should be substituted in its place.

JACK O. HORTON,
Assistant Secretary of the Interior.

APRIL 4, 1975.

[FR Doc.75-9364 Filed 4-11-75;8:45 am]

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 237—FISCAL ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

Maintenance of State Effort

Part 237, Chapter II, Title 45 of the Code of Federal Regulations is amended by revoking the content of § 237.60, because the requirements contained therein are no longer in effect. Section 1117 of the Social Security Act was repealed, effective July 1, 1968, and any audit questions pertinent to Federal claims for the fiscal years ending June 30, 1967 and June 30, 1968 have been resolved.

§ 237.60 [Reserved]

Section 237.60 is vacated and reserved.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302)).

Effective date. The regulation shall be effective on April 14, 1975.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; 13.761, Public Assistance—Maintenance Assistance (State Aid).)

Dated: April 2, 1975.

JOHN A. SVAHN,
Acting Administrator, Social and Rehabilitation Service.

Approved: April 9, 1975.

CASPAR W. WEINBERGER,
Secretary.

[FR Doc.75-9655 Filed 4-11-75;8:45 am]

Title 47—Telecommunication

[Docket No. 20222; RM–2206, RM–2270; FCC 75–394]

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Stations, Table of Assignments

1. The Commission has under consideration its notice of proposed rule making adopted November 5, 1974, 39 FR 40170, inviting comments on separate proposals to assign a third and fourth Class C FM channel to Boise, Idaho. This proceeding was instituted on the basis of (1) a petition filed on May 31, 1973, by Gem State Broadcasting Corporation (Gem State), licensee of unlimited-time AM Station KGEM, Boise, requesting the assignment of Channel 286 (RM–2206), and (2) a petition filed on October 25, 1973, by KYME Broadcasters, Inc. (KYME), licensee of daytime-only AM Station KYME, Boise, requesting the assignment of Channel 282 (RM–2270). There were no oppositions to the proposals. Supporting comments were filed by the respective petitioners.

2. Boise has a population of 74,990 and is the seat of Ada County (population 112,230) [1] as well as the capital and largest city in the State of Idaho. Aural service is presently provided to Boise by 6 AM stations (3 unlimited-time) and two FM stations (KBBK–FM, Channel 232 and KBIO–FM, Channel 250).

3. Petitioners point out that Boise's population more than doubled between the Census years 1960 and 1970 and that the Ada County Council of Government indicates that by 1980 Boise's population will be 117,000. They state that Boise is the major industrial, commercial, and financial center of the State of Idaho and the marketing center for commodity distributors and wholesalers serving an area comprised of a population of over 290,000. Petitioners contend that addition of both proposed channels is justified because of the growing needs and diverse interests of a growing population. Petitioners, in supporting comments, reiterate their intent to prepare and file applications for construction permits for either of the proposed channels in the event they are assigned.

4. A preclusion study indicates that large areas are precluded on both adjacent and co-channels. However, the areas are essentially rural, and there are a number of unused channels available for

[1] Population figures cited are from the 1970 U.S. Census.