	Price Each	
	RC (Resin coated Base) Color Paper	Color Film Positive Transparency
Size:		
10 X 10 In Contact Print	$5.00	$12.00
12 X 12 In Enlargement	15.00	
20 X 20 In Enlargement	20.00	
24 X 24 In Enlargement	25.00	
36 X 36 In Enlargement	40.00	

* * * * * * *

	Price Each	
	White Opaque Base Color Print Film	Color Film Positive Transparency
Size:		
10 X 10 In	$7.00	$12.00
12 X 12 In	15.00	20.00
20 X 20 In	28.00	33.00
24 X 24 In	30.00	35.00
36 X 36 In	45.00	50.00

2. Delete Sec. 16, c 8.

3. Sec. 16, c 9 is redesignated Sec. 16, c 8.

(5 USC 301; 5 USC 552; 31 USC 483a; and 7 CFR 2.75 (a)(3)(ii).)

Note.—This Regulation has been determined not to be significant under the USDA criteria implementing Executive Order 12044.

Done at Washington, D.C., this 30th day of March, 1979.

Dean K. Crowther,

Director, Office of Operations and Finance.

[FR Doc. 79-10885 Filed 4-9-79; 8:45 am]

BILLING CODE 3410-98-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Child Care Food Program; Initial Apportionment of Fiscal Year 1979 Child Care Food Service Equipment Assistance Funds Pursuant to the National School Lunch Act

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final Rule.

SUMMARY: This rule apportions child care food service equipment assistance funds among States in compliance with Section 17(n)(1) of the National School Lunch Act, as amended by Pub. L. 95-627.

EFFECTIVE DATE: April 3, 1979.

FOR FURTHER INFORMATION CONTACT: Jordan Benderly, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8211.

The appendix appearing at Part 226 is deleted and the following is added:

Appendix—Initial Apportionment of Fiscal Year 1979 Child Care Food Service Equipment Assistance Funds pursuant to the National School Lunch Act.

Pursuant to Section 17(n)(1) of the National School Lunch Act, as amended by Pub. L. 95-627, Child Care Food Service Equipment Assistance funds available for the fiscal year ending September 30, 1979, are apportioned among the States as follows:

State	Total Apportionment
Connecticut	$58,454
Maine	33,694
Massachusetts	137,408
New Hampshire	19,140
Rhode Island	22,416
Vermont	14,248
Subtotal	$285,360
Delaware	$14,858
District of Columbia	18,722
Maryland	96,912
New Jersey	174,196
New York	406,332
Pennsylvania	295,036
Virginia	131,810
Virgin Islands	4,620
West Virginia	58,912
Subtotal	$1,201,398
Alabama	$137,872
Florida	246,258
Georgia	181,402
Kentucky	108,884
Mississippi	110,366
North Carolina	162,498
South Carolina	104,372
Tennessee	136,954
Subtotal	$1,188,606
Illinois	$291,590
Indiana	127,176
Michigan	201,444
Minnesota	84,854
Ohio	309,594
Wisconsin	101,118
Subtotal	$1,115,776
Arkansas	$85,928
Louisiana	140,716
New Mexico	50,078
Oklahoma	88,172
Texas	525,236
Subtotal	$890,130
Colorado	$69,196
Iowa	58,546
Kansas	57,690
Missouri	129,932
Montana	24,336
Nebraska	42,830
North Dakota	20,636
South Dakota	23,170
Utah	51,864
Wyoming	11,018
Subtotal	$489,218
Alaska	$13,702
Arizona	92,832
California	493,892
Hawaii	38,362
Idaho	29,850
Nevada	17,032
Oregon	51,252
Trust Territory	2,184
Washington	90,406
Subtotal	$829,512
Total	$6,000,000

(Sec. 2, P.L. 95-627, 92 Stat. 3610).

The Food and Nutrition Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: April 3, 1979.

Robert Greenstein,

Acting Administrator.

[FR Doc. 79-11243 Filed 4-9-79; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 108, 236

Asylum: Filing of Applications in Exclusion and Deportation Proceedings

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rulemaking order amends the regulations of the Immigration and Naturalization Service pertaining to the filing of asylum applications. These amendments are necessary to enable aliens to file applications for asylum in exclusion and deportation proceedings. The revised rules are intended to provide alien asylum applicants the opportunity for a full evidentiary hearing on an asylum application, in exclusion or in deportation hearings, to eliminate duplication in the processing of these applications now existing under current Service procedures, and to provide a more efficient and effective procedure for the determination of the rights and status of aliens who file asylum claims.

EFFECTIVE DATE: May 10, 1979.

FOR FURTHER INFORMATION CONTACT: James G. Hoofnagle, Jr., Instructions Officer, Immigration and Naturalization Service. Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: This final rulemaking order amends the regulations of the Immigration and Naturalization Service pertaining to the filing of applications for asylum in exclusion proceedings and the filing of applications for asylum after deportation proceedings have either been commenced or concluded.

The proposals were set forth in two separate **Federal Register** documents. We will discuss each separately. The final rules adopted as the result of both will be set forth in this document.

Discussion of the Proposed Rules Relating to the Filing of Applications for Asylum in Exclusion Proceedings

On September 13, 1978 at 43 FR 40801, the Service published amendments to 8 CFR 108.1, 8 CFR 108.2, 8 CFR 236.3, 8 CFR 236.6, and 8 CFR 236.7 which provided for the filing of applications for asylum in exclusion proceedings before the immigration judge. These amendments were published to become effective upon publication. The notice and comment period and delayed effective date provision specified in 5 U.S.C. 553 were waived on the ground that these amendments dealt with Service procedure and provided a benefit (a full evidentiary hearing on an asylum claim in exclusion proceedings) to the aliens affected. Representatives of certain groups of aliens who would have been directly affected by the regulation filed suit to enjoin implementation of the regulations contending that the regulations were void because they did not comply with the letter of 5 U.S.C 553 as to the notice and comment and delayed effective date requirements for proposed new regulations. The Service was enjoined from placing these regulations into effect in *Sannon* v. *United States*, 460 F. Supp. 458 (1978).

The Service published an order in the **Federal Register** on October 19, 1978 at 43 FR 48620, staying the effective date and inviting public comment on these rules until December 18, 1978.

Outline of Amendments Published September 13, 1978

The amendments published September 13, 1978 at 43 FR 40801 amended 8 CFR 108.1 to provide that applications for asylum by aliens applying for admission to the United States at airports or seaports of entry should be submitted to the docket clerk for the immigration judge, for consideration in connection with an exclusion hearing, under the provisions of 8 CFR 236.3. Applications for asylum filed by crewmen, stowaways, aliens temporarily excluded under section 235(c) of the Act and aliens lawfully in the United States would be submitted to the district director.

8 CFR 236.3 was amended to provide that the asylum application could be filed by the alien for consideration in exclusion proceedings, if the applicant believed that he would be subject to persecution in the country to which he would be returned under an order of exclusion and deportation because of race, religion, nationality, membership in a particular social group or political opinion. The application was to be filed prior to the exclusion hearing; but the hearing would be adjourned for not more than 10 days to permit filing of an asylum application. 8 CFR 236.3 also provided that the alien or the Government could file a motion for summary judgment within 10 days of the filing of Form I–589. If such application was denied, or not filed, the docket clerk was to send copies of the asylum application to the Office of Refugee and Migration Affairs of the Bureau of Human Rights and Humanitarian Affairs of the Department of State, and calendar the case for a hearing to be deferred for not to exceed 30 days, pending receipt of the views of the Department of State. The reply is to be given the alien and trial attorney unless disclosure is prohibited under E.O. 11652. At the hearing the alien would have the right to present evidence on his behalf and would have the burden of showing he would be subject to persecution as claimed. This regulation also provided that excludable aliens whose asylum claims had not been presented to an immigration judge could do so by a date which was specified in the regulations.

Summary of Public Comments on 8 CFR 108.1 and 8 CFR 236.3

In response to this invitation for comment of October 19, 1978, the Service received comments from 11 legal aid societies, nonprofit organizations, and other organizations which represent the interests of aliens both in the United States and in the position of applying for admission to the United States, as well as practicing attorneys and concerned individuals with respect to these rules.

A number of comments received in connection with the proposed regulation dealt with objections to the elimination of the district director's role in determining certain asylum applications. Although some commentators clearly expressed the view that the current regulations were preferable to the proposed costly formal proceedings before an immigration judge, it is apparent from others that a two-step procedure, which could combine the district director's present role with the proposed new role of the immigration judge, is preferred. Implicit in the observations on this point is the idea that two opportunities to present the claim are better than one with respect to the determination of applications for asylum.

Closely related to objections to removal of the district director's role are several other comments expressing concern that the proposed procedure would guarantee even futher delays in the disposition of applications for political asylum. Chief among the reasons put forth for these anticipated delays are representations that immigration court calendars are already too crowded to handle the ordinary course of business expeditiously without the additional responsibility of hearing political asylum applications; experienced support personnel are not available to the immigration court compared to that available to the district director in the determination of asylum applications; the possibility of error would be increased and lengthy delays caused while the judges

themselves read the voluminous material submitted in connection with applications for political asylum; and the formalization of hearings would increase the cost of the asylum request to both the applicant and the government. The commentators suggested that the increased opportunity for error would ultimately result in a greater number of appeals to the Board of Immigration Appeals and the courts, thus prolonging litigation.

The object in revising the regulations was to provide applicants for political asylum with an evidentiary hearing. The Service is not bound to a two-step process, and the reasons set forth at 43 FR 40879 in connection with the publication of the proposed rule on asylum claims in connection with deportation proceedings with reference to avoiding duplication and providing the fullest possible opportunity to present claims still prevail. Commentators' arguments concerning the ability of the immigration judges to handle the asylum claim hearings and the increased possibility of erroneous decisions are not substantiated. There is nothing to suggest asylum applications will be treated with any less consideration or propriety by the immigration judges under the revised procedures. We regard the availability of an evidentiary hearing by an immigration judge on an asylum claim to be a step forward in the administration of the asylum regulations and in the provision of due process to aliens applying for asylum.

Another frequently voiced criticism consisted of objections to the summary judgment procedure as contained in proposed 8 CFR 236.3(a)(2). Although the proposed subsection makes the summary judgment procedure equally available to both the asylum applicant and the Service, those who criticize the provision charge that the proposed time limitation effectively deny the asylum applicant a reasonble opportunity to be heard. Critics cite as hardships the circumstances of many newly arrived applicants for asylum who face a language barrier and suffer from lack of education and limited financial resources. It is suggested that the summary judgment procedure is not only void for vagueness but that it offends basic due process.

The objections to the summary judgment provisions have merit. Upon reconsideration, this type of motion appears to be rather sophisticated given the nature of the proceedings and situation of the individuals making asylum applications in exclusion proceedings. Also, the Service notes that motions for summary judgment will lie only when there is no question of material fact. Since applications for asylum most frequently involve disputed facts a motion for summary judgment would rarely lie. Finally, deletion of the provision would not preclude an expedited decision by an immigration judge in cases which were clearly meritorious or clearly lacking in merit. Therefore, in the final rule, the proposed summary judgment provision will be deleted.

Vociferous criticism of the proposed rule was directed to the aspect of newly proposed 8 CFR 236.3(a)(2) which provides that if an applicant has not filed for asylum prior to an exclusion hearing the hearing would be adjourned for no more than 10 days to allow the alien to file an asylum application. Critics of this provision represent that it is unrealistic to assume that the difficult process of gathering the necessary information and evidence which would support an asylum claim could be completed within this brief period.

In response to this criticism, the Service points out that the commentators may well have misunderstood the provision in question. Proposed 8 CFR 236.3(a) clearly provides in its last sentence as follows:

> "If application has not been made prior to commencement of the hearing, the hearing may be adjourned for not more than ten days *to allow an application to be filed.*" (Emphasis added.)

Nowhere is it required that exhaustive and final evidence be furnished within that 10-day period; rather it would seem more reasonable to conclude that the 10-day period is for the purpose of filing an application for asylum on the Form I–589 as suggested in the opening sentence in proposed § 236.3(a)(1). However, in order to obviate any misunderstanding on this point the 10-day limitation will be deleted. In lieu thereof, the rule will be amended to provide that where the application for asylum has not been filed prior to commencement of the exclusion hearing, the immigration judge may adjourn the hearing for a period of time not to exceed 30 days, to permit the alien to submit his application.

Some commentators expressed criticism because the proposed rules do not provide a role for the United Nations High Commissioner for Refugees (UNHCR) in the evaluation of claims for asylum in exclusion proceedings.

The existing regulations concerning asylum make no provisions for referral of matters to the UNHCR. Therefore, the absence of a role for that body in these determinations does not deprive anyone of an existing right or practice. We note that it is customary in selective instances for the Department of State to consult with the UNHCR and presumably this practice will continue. Finally, the Service is opposed to delegation of its responsibilities to an agency outside the Government of the United States. Such delegation is contrary to our responsibilities set forth under the provisions of the Immigration and Nationality Act.

Other representations which were submitted for consideration objected to the 30-day time limit in § 236.3(a)(2) for deferral of hearings on asylum claims pending receipt of the views of the Department of State. It was generally suggested that the 30-day time limit allowed no leeway for the varying complexities of each case, thus denying meaningful State Department participation in the evaluation of each claim.

Although this comment suggests that this practice is a dramatic departure from current procedure, the fact is that the Department of State now operates within this time frame as to claims submitted by district directors. This is a sufficient amount of time to enable the State Department to give proper consideration to the claims referred by this service.

A number of representations expressed the criticism that the proposed regulations contain no provisions for bail or work authorization by the immigration judges in connection with asylum claims in exclusion hearings. Existing regulations provide for bond redetermination by the immigration judge. See 8 CFR 242.2(b). The district director is authorized to grant permission to accept employment under certain circumstances. See 8 CFR 242. 5(a)(3), OI 243.5 and OI 244.3. We see no need to repeat these authorities in this regulation, nor do we desire to vest the immigration judge with authority to authorize employment.

Several commentators noted the unequal treatment of applicants at land borders as opposed to those arriving at seaports or airports. Generally, these critics agreed that geographical happenstance should not be determinative of the type of hearing granted in connection with asylum claims. One commentator noted that the Commissioner's statement to the Congressional committee made no such distinction but stated simply that the fairest manner of dealing with claims of asylum would be to permit evidentiary hearings before immigration judges. It was also noted by the commentators that no hearing is provided in the

proposed regulations for crewmen, stowaways, and those excludable under sections 212(a)(27), (28), and (29) of the Act. One commentator suggested that land border applicants be permitted to file their applications for asylum with the nearest district director instead of with the nearest American Consul who may, in some instances, be several thousand miles away.

With regard to the requirement that an applicant for asylum at a land border port be referred to the nearest American Consul, we first wish to point out that this does not change existing procedure. In addition, it would be stretching the point to construe the application for asylum, standing alone, as an application for admission into the United States. Until an application for admission is made, Service officers have no jurisdiction over the case and have no alternative but to direct the individual to the consul.

With regard to the objection that crewmen cannot apply to the immigration judge for asylum, again we wish to point out that this provision does not change the existing procedure. In addition, section 235(b) of the Act specifically excepts alien crewmen from eligibility for exclusion hearings before the immigration judge should they be found inadmissible by the inspecting officer.

Stowaways are required to be kept on board the vessel under section 273(d) of the Act. Thus, they may not even attempt to enter the country unless specifically permitted to do so by the Service. However, existing procedures (OI 108.1(e) and OI 273.2) provide that should a stowaway request asylum, the facts in the case shall be communicated to the Associate Commissioner, Examinations, and consultation will be had with the Department of State, to determine the manner in which the case should be handled. The proposed rules do not change this procedure.

Section 235(c) of the Act provides that cases involving aliens who appear excludable under sections 212(a)(27), (28), or (29) of the Act shall be temporarily excluded and no further action taken in their case until after the matter is reported to the Attorney General. Under this statute, an immigration judge would be precluded from entertaining an asylum application in exclusion proceedings involving an alien who appeared excludable under the above-cited provisions of law. For that reason, these cases will continue to be heard by the district director, which is not a departure from the existing practice.

Several other commentators suggested that the asylum proceeding should be conducted separate and apart from an exclusion or deportation proceeding and be available regardless of the present immigration status of the alien. The primary reason advanced for the desirability of a separate procedure is that it would enable an alien to submit an asylum claim without having to admit excludability or deportability. At first blush, this appears to a sensible idea. However, even institution of a separate procedure would not avoid the ultimate consequences of the filing of an asylum claim. For example, if a nonimmigrant who was in status submitted an application for asylum, he would be declaring his intention not to return to the country of his foreign residence and for that reason would no longer be entitled to nonimmigrant status. We do not see how an alien is disadvantaged by filing an asylum application in exclusion or deportation proceedings. If he does not possess the proper documents necessary to enter this country, the law makes him excludable. If he has violated his immigration status or his period of admission has expired, the law makes him deportable. In either instance, the application for asylum is a form of administrative relief which would have the effect, if granted, of permitting the individual to remain in the United States. We do not find this procedure offensive. Political asylum is a special remedy which does not appear in the statutory provisions relating to excludability or deportability. While the impact of the application may be a declaration of excludability or deportability under the law, the position being urged by the applicant is that his eligibility for political asylum bars the enforcement of exclusion or deportation against him. It is our belief at this time that presentation of the asylum claim within the context of an exclusion or deportation hearing, as appropriate, is the fairest and most expeditious way to resolve the issues and grant the relief sought where applicable.

A small number of the individuals submitting comments complained that the provisions of 8 CFR 103.2(b) (2) which provide for the inspection of evidence, the opportunity to review and rebut derogatory information and which set forth the treatment of classified information have been eliminated from this rule and thus are not available to asylum applicants. Along these same lines, other commentators object to the use of nonrecord classified information by the immigration judge in deciding applications for asylum.

With regard to the first objection, it is inaccurate to state that the provisions of 8 CFR 103.2(b)(2) are not available to applicants for asylum. The provisions of 8 CFR 103.2 are available to all aliens who file any application with the Service, including an asylum application.

The second part of this objection deals with the disclosure of classified information. The Attorney General has the authority in cases such as these to base his determination on any information he has. See *United States* v. *Shaughnessy*, 206 F.2d 392 (1953) and *Namkung* v. *Boyd*, 226 F.2d 385 (1955). Some of this information is classified and it is not to be disclosed because it would be contrary to the national interest to do so. However, the regulation as to the use of nonrecord classified information does have the following safeguards for the applicant: (a) The information used must, as a matter of record, be stated to be material to the decision and (b) whenever the immigration judge can, without compromising the information and its source, he should state more specifically the general nature of the information so that the applicant may present evidence in opposition.

One of the commentators suggested that the regulations in their final form should provide that the filing of an asylum application has no influence on the applicant's general immigration status. This commentator noted that the proposed regulations contain no protection for a lawful temporary visitor, for example, because an asylum application is inconsistent with the intent required to remain in lawful status temporarily. The same problem exists with regard to a simple overstay with regard to whom no order to show cause has been issued.

In our opinion, no change is warranted in the regulations based on this reasoning. As we indicated above, a lawful temporary visitor who submits an asylum claim would, by this action, be indicating that he does not intend to return to his foreign residence. This is contrary to his nonimmigrant status. An overstay who has not been served with an order to show cause should not be immunized from proceedings by the Service. These individuals may, however, file asylum applications in deportation proceedings under the rule we will adopt in this order.

A few of the commentators have pointed out that there exists in the regulations no definition of "persecution". The courts have found the case by case method of defining persecution to be fair. Furthermore, this

approach gives the Service needed flexibility in determining whether asylum or withholding of deportation should be granted on ground of fear of persecution which works to the alien's advantage.

A few of the individuals submitting comments on the proposed regulations suggested that the regulations be delayed indefinitely while the entire issue is restudied with congressional consultation. We decline to defer publication of these regulations for that reason. These regulations are intended to modify Service procedure in accordance with the present statutory framework. Existing statutes must be implemented fairly and expeditiously, even though the Congress has the entire matter under consideration in the legislative branch. Delay of the regulations is not justified because Service operations regarding asylum claims are virtually at a standstill and further delay would be unfair to the parties involved and to the government.

One commentator pointed out that the notice to applicants who filed asylum claims prior to November, 1977 to come forward by December 31, 1978, was inadequate. This point is moot since the deadline has now passed. The date will be readjusted in the final rule. However, it should be pointed out that the cut-off date pertains only to applications which may be filed *without fee.* Of course, other applicants may come forward following that date if the proper fee is paid.

One commentator pointed out that the proposed regulations contained no requirement that persons be advised of their right to apply for asylum. There is no obligation on the part of the Service to suggest various types of relief absent specific requests by the aliens.

Proposed Rules Regarding the Filing of Asylum Requests After Commencement or Completion of Deportation Proceedings

These proposed rules were published on September 13, 1978 at 43 FR 40879. The proposal would further amend 8 CFR 108.1 and would add a new 8 CFR 108.3.

We have already discussed the proposed amendment to 8 CFR 108.1 in our discussion relating to asylum applications filed in exclusion proceedings in the preceding material. Therefore, in this part of our discussion we shall cover only the comments on the further amendment to 8 CFR 108.1 dealing with the procedure for filing asylum claims by aliens lawfully in the United States or whose presence is authorized, and others, and the comments on proposed new 8 CFR 108.3 dealing with the filing of asylum claims following commencement or completion of deportation proceedings.

Outline of the Proposed Amendments

The notice of proposed rulemaking published at 43 FR 40879 amended 8 CFR 108.1 as published at 43 FR 40801 by providing that an application for asylum by an alien maintaining lawful status in the United States, or whose presence in the United States had been authorized by the Service may be submitted to the district director. Proposed § 108.1 further provided that the sole method under which other aliens within the United States could apply for asylum would be by application for withholding of deportation under section 243(h) of the Act submitted in accordance with 8 CFR 108.3 (proposed) and 8 CFR 242.17(c).

In this notice, it was also proposed to add a new 8 CFR 108.3(a) and (b). New 8 CFR 108.3(a) provided in substance that a request for asylum filed after deportation proceedings had commenced shall be considered as a request for the withholding of deportation under section 243(h) of the Act and for the benefits of Articles 32 and 33 of the Convention Relating to the Status of Refugees. New proposed 8 CFR 108.3(b) provided in substance that a request for asylum by an alien or his representative following completion of a deportation hearing shall be considered as a motion to reopen the hearing pursuant to 8 CFR 103.5 or 242.22 for the purpose of submitting a request of withholding of deportation under section 243(h) of the Act and for the benefits of Articles 32 and 33 of the Convention. Both subparagraphs cited the provisions of 8 CFR 242.17(c) as the regulation under which these requests were to be processed.

Discussion of Response to Proposed Rules Published September 13, 1978, at 43 FR 40879

In response to this notice of proposed rulemaking, the Service received comments from 15 legal aid societies, nonprofit organizations, and other organizations which represent the interest of aliens in the United States as well as practicing attorneys and other concerned individuals. The representations on proposed 8 CFR 108.1 will be discussed first, then we will discuss the representations submitted on proposed 8 CFR 108.3.

Representations were submitted regarding the proposed amendment to 8 CFR 108.1 asserting that the provision that an application for asylum by an alien within the United States maintaining lawful status was ambiguous because the term "lawful status" was not defined. In order to clarify this ambiguity, we will amend the final rule to specify that after the issuance of an order to show cause, the asylum application must be filed with the immigration court. Thus, an alien may file his asylum application for asylum with the district director unless orders to show cause have been issued. Thereafter, the application must be filed with the immigration court.

It was also alleged that the provision under which the application for asylum could be filed with the district director by an alien "whose presence in the United States was authorized by the Service" would lead to abuse. The reasons given by the writer were that "INS front line agents" and not district directors made decisions as to whether or not "voluntary departure" or "docket control" status should be accorded the alien authorizing his presence here. Thus the question of whether an asylum applicant can submit a petition to a district director is left to the unguided discretion of lower level Service officers. This same writer further suggested that astute lawyers would secure temporary benefits for their clients under 8 CFR 242.5 which would authorize their presence in the United States. It was asserted that denial of such requests is immediately reviewable in the U.S. District Court, and litigation and delay of the resolution of asylum claims would ensue.

We do not agree with this writer's characterization of the performance of Service officers. It is completely unsubstantiated. Additionally, any decision respecting voluntary departure or docket control status made respecting an alien by a so-called "lower echelon Service officer" is by delegated authority of the district director. Thus, under the principles of administrative law and procedure, it is the decision of the district director. The identity of the Service officer is immaterial.

Also, provision in the final regulation that the issuance of the order to show cause determines whether the asylum application is filed with the district director or immigration judge, renders nugatory the argument that temporary benefits will be sought under 8 CFR 242.5, thus prolonging litigation and the ultimate decision. the provisions of 8 CFR 242.5 apply to the granting of voluntary departure prior to the commencement of hearing. However, under our final regulation, application for benefits under 8 CFR 242.5 will not enable the asylum claim to be filed with

the district director if orders to show cause have been issued against the applicant.

Commentators objected to the provision of proposed 8 CFR 108.1 which provided that for other aliens within the United States (those who are not in lawful status or whose presence in the United States was not authorized) the sole method for applying for asylum was through application for withholding of deportation under section 243(h) of the Act. The Service will revise this provision in the final rule and provide instead that after the issuance of an order to show cause the alien must submit his application for asylum and relief under section 243(h) of the Act to the immigration court. The application for asylum, if filed on Form I–589, will be considered in accordance with 8 CFR 108.3(a) as amended in this document. The request for relief under section 243(h) of the Act will be considered under 8 CFR 242.17c).

Commentators objected generally to the provisions of proposed 8 CFR 108.3 dealing with the submission of asylum requests after the commencement or completion of deportation proceedings. Commentators object generally to the removal of the district director from this process. The effect of this new regulation will be to require an application for asylum asserted following commencement or completion of deportation proceedings to be filed in the immigration court and decided by the immigration judge. The reason the district director is being removed from the process is that once orders to show cause have been issued the matter is under the jurisdiction of the immigration judge. It is the position of the Service that it is undersirable from the point of view of administrative procedure and Service efficiency to continue the existing procedure which ousts the immigration judge of jurisdiction, allows dual jurisdiction over resolution of these claims, even after deportation proceedings have been commenced, and which permits relitigation of the claim on the same facts before the immigration judge, in the event the claim is denied by the district director. Therefore, the final regulation will provide expanded instructions for the filing of asylum claims in deportation proceedings before the immigration judge.

Commentators also objected to the elimination of the role of the Department of State in providing views regarding the likelihood of persecution of individual asylum applicants whose applications are submitted in deportation proceedings. We will amend proposed 8 CFR 108.3(a) to provide for the same Department of State consultation in deportation proceedings as is provided in connection with exclusion proceedings.

Commentators also object to the application of section 243(h) of the Act and 8 CFR 242.17(c) to the determination of requests for asylum and withholding of deportation submitted in connection with deportation hearings. it is asserted that continued application of our statute and regulations is contrary to the Convention which has the force of law and which specifies different eligibility grounds for seeking asylum and different standards for meeting the burden of proof.

With respect to the objection relating to the differences in grounds for eligibility specified in the statute versus the Convention, we point out that in this regulation the grounds for eligibility for asylum have been expanded and will be identical to those specified in the convention.

With respect to the comments objecting to the apparently differing standards of proof employed by the Service, on the one hand, and specified in the convention, on the other, it is our opinion that the objection is one of semantics. The objection concerns Service language requiring the alien to show that he would be " subject to persecution," while the Convention language refers to a "well founded fear of persecution."

As indicated in *Matter of Dunar*, 14 I&N Dec. 310 (BIA 1973), the purpose of the Service regulatory language is to require the applicant, who has the burden of proof, to substantiate that the fear of persecution is well-founded. this requirement rules out an apprehension which is purely subjective. A fear which is illusury, neurotic or paranoid, however sincere, does not meet the requirement that the fear of persecution be well-founded. Furthermore, the Ad Hoc committee of the United Nations which framed the provision stated that the expression "well-founded fear of being the victim of persecution" means that a person has either been actually a victim of persecution or can show good reason why he fears persecution. Therefore, our regulatory language requiring the applicant to adduce evidence supporting the likelihood of persecution is not in conflict with the Convention.

Finally, in this connection we wish to point out that the United States Senate in hearings and proceedings leading to ratification of the convention indicated explicitly that they did not intend adoption of the convention to modify existing immigration law in any respect.

Finally, commentators objceted to the provision set forth in 8 CFR 108.3(b) under which the asylum request filed following completion of deportation hearings will be considered a motion to reopen pursuant to 8 CFR 103.5 and 242.22. The basis for this objection is that the cited regulations require that for a motion to reopen or reconsider even to be considered, it must present new evidence not available at the time of the original hearing. it is suggested that due to the difficulty in obtaining new evidence few of these motions could or would be granted and as a result few if any hearings would be reopened for the immigration judge to consider the applications for asylum and withholding of deportation after completion of the hearing. the Service is sensitive to this difficulty and will amend 8 CFR 108.3(b) to provide that the motion for opening or reconsideration submitted after the completion of a deportation hearing will not be considered under 8 CFR 103.5 and 242.22 but may be accepted for filing provided it reasonably explains the failure to assert the asylum claim prior to completion of the deportation hearing. Asylum claims asserted on motion to reopen which are accepted by the immigration judge shall be considered in accordance with § 108.3(a) and claims for relief under section 243(h) of the Act accepted by the immigration judge on motion to reopen will be considered under 8 CFR 242.17(c).

Outline of Amendments to Proposed Rules

In light of the foregoing, the proposed rules will be amended as described and set forth below, in this final rulemaking order.

1. In the final rule, proposed 8 CFR 108.1 will be amended by adding a clause to the fifth sentence to provide that an alien paroled into the United States under section 212(d)(5) of the Act may only apply for asylum in the exclusion proceedings before the immigration judge under 8 CFR 236.3. The reason for this is that an alien who is a parolee may be excludable. The question of an alien's excludability must be decided by an immigration judge in exclusion proceedings.

Proposed 8 CFR 108.1 will also be amended by deleting the sentence which states that the sole method for applying asylum for other aliens in the United States shall be by application for withholding of deportation under section 243(h) of the Act. We will substitute for that sentence, a sentence which provides that after orders to show cause

have been issued, the asylum application and request for relief under section 243(h) of the Act must be submitted to the immigration court. This amendment is being made to clarify any ambiguity as to when an asylum application may be filed with the district directors, on the one hand, and with the immigration court, on the other.

2. Proposed 8 CFR 108.3(a) will be completely revised to set forth detailed instructions for the processing of asylum claims filed before the immigration judge in deportation proceedings. This amended provision will be identical in all material respects with the provisions pertaining to the handling of asylum claims in exclusion proceedings, as set forth in 8 CFR 236.3. Provision will be made for referral of claims to the Department of State, the use of classified and nonrecord classified information, the burden of proof which must be met by the applicant, and the grounds which may be asserted in claiming eligibility for asylum, which are identical to those indicated in the Convention Relating to the Status of Refugees.

3. Proposed 8 CFR 108.3(b) will be revised to delete the requirement that a request for asylum filed after completion of deportation proceedings which is considered a motion to reopen, must comply with 8 CFR 103.5 and 242.22. Instead, the rule will provide that the motion may be accepted if accompanied by a reasonable explanation of the failure to assert the asylum claim prior to completion of the hearing.

4. Proposed 8 CFR 236.3(a)(1) will be revised by deleting the requirement that the exclusion hearing may be adjourned for not more than 10 days to allow an application for asylum to be filed. Instead, the provision will be amended to provide that the hearing may be adjourned by the immigration judge for a period of time not to exceed 30 days, to permit the application to be filed. This amendment will afford applicants ample time to prepare and present a more complete application.

5. Proposed 8 CFR 236.3(a)(2) will be amended by deleting the portion of the proposed rule relating to the summary judgment procedure. Subparagraph (2) will be deleted as an individual subparagraph and the material remaining therein will be combined and made part of 8 CFR 236.3(a)(1).

6. Proposed 8 CFR 236.3(a)(3) will be adopted without change, but redesignated as 8 CFR 236.3(a)(2).

7. 8 CFR 236.3(b) will be revised by changing the date set forth in the proposal from December 31, 1978 to August 10, 1979.

Final Rules Adopted

The following amendments are hereby prescribed in Chapter I of Title 8 of the Code of Federal Regulations:

PART 108—ASYLUM

1. In Part 108, § 108.1 is hereby revised to read as follows:

§ 108.1 Application.

An applicant who is seeking admission to the United States at a land border port or preclearance station who wishes to apply for asylum shall be referred to the nearest American consul. In all other cases, application for asylum shall be submitted on Form I–589, "Request for Asylum in the United States." Except as otherwise provided in this paragraph, an application for asylum by an alien who is applying for admission to the United States at an airport or seaport of entry shall be submitted to the docket clerk for the immigration judge who shall consider that application in connection with an exclusion hearing as provided in § 236.3 of this chapter. A crewman or stowaway or alien temporarily excluded pursuant to section 235(c) of the Act who is at a seaport or airport shall submit his application for asylum to the district director. An application for asylum by an alien who is within the United States and who is maintaining a lawful status or whose presence in the United States is authorized by the Service may be submitted to the district director having jurisdiction over his place of residence in the United States, except that an alien who has been paroled into the United States under section 212(d)(5) of the Act may only apply for asylum as provided in § 236.3 of this chapter. After an order to show cause has been issued, the application for asylum and relief under section 243(h) of the Act must be submitted to the immigration court. The application for asylum if filed on Form I–589 will considered in accordance with § 108.3(a). The request for relief under section 243(h) of the Act will be considered under § 242.17(c) of this chapter. The applicant's spouse and unmarried children under the age of 18 years may be included in the application.

2. The title of § 108.2 is revised to read as follows:

§ 108.2 Decisions by the district director.

* * * * *

3. New § 108.3 is added to read as follows:

§ 108.3 Asylum requests after commencement or completion of deportation proceedings.

(a) *Asylum requests after proceedings have been commenced.* A request for asylum introduced by an alien or his representative after commencement of deportation proceedings shall be considered as a request for withholding of deportation under section 243(h) of the Act and for the benefits of Articles 32 and 33 of the Convention Relating to the Status of Refugees. The request for withholding of deportation under section 243(h) shall be considered under the procedures described in § 242.17(c) of this chapter. A request for asylum under the Convention shall be filed on Form I–589 in quadruplicate with the docket clerk for the immigration court. Upon receipt, the docket clerk shall send two copies of Form I–589 with supporting evidence to the Office of Refugee and Migration Affairs of the Bureau of Human Rights and Humanitarian Affairs of the Department of State. If an application for asylum is filed on Form I–589, the hearing shall be adjourned for a period not to exceed 30 days pending receipt of the Department of State's views. The reply, if any, from the Department of State, unless classified under Executive Order No. 11652 (37 FR 5209, March 19, 1972), as requiring protection from unauthorized disclosure in the interest of national security shall be given by the docket clerk to the alien and to the trial attorney. When the hearing resumes, the alien shall be examined under oath on his asylum application, and may present evidence on his behalf. The applicant for asylum has the burden of satisfying the immigration judge that he would be subject to persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, as claimed. The trial attorney may also present evidence for the record, and may submit information not of record to be considered by the immigration judge provided that such information is classified under Executive Order No. 11652 and that the immigration judge or the Board has determined that such information is relevant. When the immigration judge receives such nonrecord information he shall inform the applicant thereof and shall also inform him whether it concerns conditions generally in a specified country or the applicant himself. Whenever he believes he can do so consistently with safeguarding both the information and its source, the immigration judge should state more specifically the general nature of the information in order that the applicant

may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that such information is material to the decision.

(b) *Asylum requests after completion of deportation hearing.* A request for asylum introduced by an alien or his representative following completion of a deportation hearing shall be considered as a motion to reopen the hearing for the purpose of submitting a request for withholding of deportation under section 243(h) of the Act and for the benefits of Articles 32 and 33 of the Convention Relating to the Status of Refugees. Notwithstanding the provisions of §§ 103.5 and 242.22 of this chapter, a request for asylum may be considered as a motion to reopen under this paragraph and accepted for filing provided it reasonably explains the failure to assert the asylum claim prior to completion of the deportation hearing. If the motion does not reasonably explain such failure, the claim for asylum will be considered to be spurious and dilatory, absent evidence to the contrary. The asylum claim shall be considered in accordance with § 108.3 (a). A chaim for relief under section 243 (c) of the Act shall be considered in accordance with § 242.17(c) of this chapter.

PART 236—EXCLUSION OF ALIENS

4. A new § 236.3 is added to read as follows:

§ 236.3 Application for asylum.

(a) *Applications on and after November 1, 1977.* (1) An alien subject to exclusion proceedings under this part who believes that he would be subject to persecution in the country to which he would be returned under an order of exclusion and deportation because of race, religion, nationality, membership in a particular social group, or political opinion may apply for asylum on Form I–589 Four copies of such application shall be submitted to the docket clerk for the immigration court before an exclusion hearing is commenced. If application has not been made prior to commencement of the hearing, the hearing may be adjourned by the immigration judge for a period of time not to exceed 30 days to permit the application to be filed. Upon receipt of the Form I–589, the docket clerk shall send two copies of Form I–589 with supporting evidence to the Office of Refugee and Migration Affairs of the Bureau of Human Rights and Humanitarian Affairs of the Department of State, and shall calendar the case for hearing, which shall be deferred for a period not to exceed 30 days pending receipt of the Department of State's views. The reply, if any, from the Department of State, unless classified under Executive Order No. 11652 (37 FR 5209, March 19, 1972), as requiring protection from unauthorized disclosure in the interest of national security shall be given by the docket clerk to the alien and to the trial attorney.

(2) During the exclusion hearing, the applicant shall be examined under oath on his application and may present evidence on his behalf. The applicant has the burden of satisfying the Immigration Judge that he would be subject to persecution on account of race, religion, nationality, membership in a particular social group, or political opinion as claimed. The Trial Attorney may also present evidence for the record, and may submit information not of record to be considered by the Immigration Judge provided that such information is classified under Executive Order No. 11652 and that the Immigration Judge or the Board has determined that such information is relevant. When the Immigration Judge receives such nonrecord information he shall inform the applicant thereof and shall also inform him whether it concerns conditions generally in a specified country or the applicant himself. Whenever he believes he can do so consistently with safeguarding both the information and its source, the Immigration Judge should state more specifically the general nature of the information in order that the applicant may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that such information is material to the decision. An alien seeking admission to the United States at a land border port will be processed in accordance with the provisions of § 108.1 of this chapter.

(b) *Applications prior to November 1, 1977.* Any person under a pending order of exclusion and deportation who prior to November 1, 1977, has submitted an application for asylum which was denied by a district director but was not considered by an Immigration Judge may, prior to August 10, 1979, submit a motion to reopen the exclusion proceedings, without fee, to have such application decided by an Immigration Judge in accordance with paragraph (a) of this section.

5. The third sentence of § 236.6 is amended to read as follows:

§ 236.6 Finality of order.

* * * When the order of the Immigration Judge is to admit the applicant, or to grant asylum by parole under section 212(d)(5) of the Immigration and Nationality Act, or to grant the application for adjustment under the conditions specified in § 245.2(a) of this chapter, the Immigration Judge shall place the applicant on notice that the decision is subject to appeal by the district director as provided in § 236.7(c).

6. The first sentence of § 236.7(c) is amended as set forth below:

§ 236.7 Appeals.

* * * * *

(c) *By district director.* The district director may, within five days from date of decision, appeal from an order of the Immigration Judge to admit the applicant, or to grant asylum, or to grant the application for adjustment.* * *

* * * * *

(Sec. 103; 8 U.S.C. 1103; Interpret or apply sec. 212(d)(5) and sec. 236 [8 U.S.C. 1182(d)(5) and 1226])

Effective date: The amendments contained in this order become effective on May 10, 1979.

Dated: April 4, 1979.

Leonel J. Castillo,
Commissioner of Immigration and Naturalization.

[FR Doc. 79–10968 Filed 4–9–79; 8:45 am]
BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Area Released From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to release a portion of Orange County in California from the areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the area quarantined.

EFFECTIVE DATE: April 5, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. M. A. Mixson, USDA, APHIS, VS, Federal Building, Room 748, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: This amendment releases a portion of Orange County in California from the areas

quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will no longer apply to the released area.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect:

§ 82.3 [Amended]

In § 82.3(a)(1), relating to the State of California, paragraph (v) relating to Orange County is deleted.

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

The amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease. It should be made effective immediately in order to permit affected persons to move poultry, mynah, psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles, interstate from such area without unnecessary restrictions. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest, and good cause is found for making it effective less than 30 days after publication in the Federal Register.

Done at Washington, D.C., this 5th day of April 1979.

Note.—This final rulemaking is being published under emergency procedures as authorized by E.O. 12044 and Secretary's Memorandum 1955. It has been determined by J. K. Atwell, Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of the release of this quarantine, as indicated above, warrants the publication of this document without waiting for public comment. This amendment, as well as the complete regulation, will be scheduled for review under provisions of E. O. 12044 and Secretary's Memorandum 1955. The review will include preparation of an Impact Analysis Statement which will be available from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, 301–436–8695.

E. A. Schilf,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-10969 Filed 4-9-79; 8:45]

BILLING CODE 3410-34-M

TREASURY DEPARTMENT

Customs Service

19 CFR Part 159

Cheese From Austria—Revocation of Countervailing Duty Determination

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Revocation of Countervailing Duty Determination.

SUMMARY: This notice is to advise the public that the countervailing duty determination on cheese from Austria is being revoked because the subsidies paid to exporters and for producers of this merchandise have been eliminated and there is no likelihood of resumption.

EFFECTIVE DATE: April 10, 1979.

FOR FURTHER INFORMATION CONTACT: Charles F. Goldsmith, Economist, Office of Tariff Affairs, U.S. Department of the Treasury, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20220, telephone (202) 566–2323.

SUPPLEMENTARY INFORMATION: A notice entitled "Countervailing Duties—Cheese from Austria," T.D. 76–10, was published in the Federal Register of January 7, 1976 (41 FR 1274). The notice stated that it had been determined that producers and/or exporters of cheese from Austria received benefits which constituted the payment or bestowal of bounties or grants, within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303) by virtue of two programs of the Government of Austria, namely a price support system for soft cheese and direct export subsidies for hard cheese. Accordingly, imports of cheese from Austria were subject to countervailing duties.

Concurrent with the above determination, a notice entitled "Waiver of Countervailing Duties", T.D. 76–11, concerning the subject merchandise was published in the Federal Register (41 FR 1275).

In accordance with the terms of the waiver, the Government of Austria has eliminated the subsidies given to producers and/or exporters of hard cheese. Furthermore, Treasury has been informed that the Government of Austria has ceased all support payments to dairy products that would be exported to the United States. While the Government of Austria maintains milk support payments, these payments are made only for home market sales. Accordingly, it is determined that a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303), is no longer being paid or bestowed upon the manufacture, production or exportation of cheese from Austria, and there is no likelihood of resumption of the payment or bestowal of a bounty or grant on such merchandise.

T.D. 76–10 is hereby revoked with respect to all entries of dutiable cheese from Austria which have not been liquidated, or the liquidation of which has not become final, on or after April 10, 1979. Customs officers will be instructed to proceed with liquidation of all such entries without regard to countervailing duties.

The table in section 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by deleting from the column headed "Country" the name "Austria"; from the column headed "Commodity" the word "Cheese"; from the column headed "Treasury Decision", the numbers "76–10" and "76–11"; and from the column headed "Action", the words "Bounty declared-rate" and "Imposition of countervailing duties waived." (R.S. 251, sections 303, as amended, 624, 46 Stat. 687, 759, 88 Stat. 2049, 19 U.S.C. 66, 1303, as amended, 1624).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190, Revision 15, March 16, 1978, the provision of Treasury Department Order No. 165, Revised, November 2, 1954, and section 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a revocation order by the Commissioner of Customs, are hereby waived.

Robert H. Mundheim,
General Counsel of the Treasury.

April 3, 1979.

[T.D. 79-110]

[FR Doc. 79-11071 Filed 4-9-79; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 520

New Animal Drugs; Febantel Paste

Correction

In FR Doc. 78–35909 appearing at page 60882 in the issue for Friday, December

29, 1978, the effective date given both in the preamble and at the end of the document now reading "December 29, 1979" should have read "December 29, 1978."

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

Delegating Increased Settlement Authority to Assistant Attorneys General; CFR Correction

In Title 28, revised as of July 1, 1978, on page 54, the introductory text of § 0.160 is corrected to read as follows:

§ 0.160 Offers which may be accepted by Assistant Attorneys General.

Each Assistant Attorney General is authorized with respect to matters assigned to his division, to accept offers in compromise of claims in behalf of the United States in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $250,000 or 10 percent of the original claim, whichever is greater, and of claims against the United States in all cases, or in administrative actions to settle, in which the amount of the proposed settlement does not exceed $500,000 except:

* * * * *

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

Air Quality Control Regions, Criteria, and Control Techniques; Attainment Status Designations

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This rulemaking responds to comments and makes necessary amendments to the designations of attainment status relative to the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide (SO_2) and total suspended particulates (TSP) that were promulgated for Arizona on March 3, 1978 (43 FR 8962). In addition to this rulemaking, a notice of proposed rulemaking is being prepared for the TSP designation in Morenci, Arizona that EPA is proposing to change to nonattainment.

DATES: Effective immediately.

ADDRESS: Comments on this rulemaking should be directed to: Arnold Den, Chief, Air Technical Branch, EPA Region IX, 215 Fremont Street (A–4), San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Charlotte Hopper, Acting Chief, Technical Analysis Section, EPA Region IX, Phone: (415) 556–2002.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1977 (the 1977 Amendments), Pub. L. 95–95, added Section 107(d) to the Clean Air Act (the Act) which directed each State to submit to the Administrator a list of the NAAQS attainment status of all areas within the State. The Administrator was required under Section 107(d)(2) to promulgate the State lists, with any necessary modifications. For each NAAQS, areas are classified as either not attaining the standard or, for certain pollutants, projected not to maintain the standard (nonattainment areas), meeting the standard (attainment areas), or lacking sufficient data or information to be classified (unclassified areas). The Environmental Protection Agency (EPA or the Agency) published these lists in the **Federal Register** on March 3, 1978 (43 FR 8962).

Attainment status designations for Arizona were prepared and promulgated by EPA because the State of Arizona did not submit its designations to EPA by the deadline required for publication by March 3, 1978 nor by the date established in the Act. During this period, the State held public meetings to obtain local and regional input to the designation process. The State subsequently submitted attainment status designations to EPA on August 15, 1978. This rulemaking addresses only the SO_2 and TSP designations submitted by the State. The designations for carbon monoxide, photochemical oxidants, and nitrogen dioxide in Arizona, as well as the designations for all five criteria pollutants in the other states in Region IX were addresed in a recent final rulemaking and a notice of proposed rulemaking.

The SO_2 and TSP designations prepared and promulgated for Arizona by EPA on March 3 were made on a countywide basis, in keeping with Agency policy. If NAAQS violations were recorded anywhere in the county, EPA designated the entire county nonattainment, and the fugitive dust policy was not considered in the original TSP designations. In the State of Arizona's submittal of August 1978, designations were made on the basis of subcounty areas which is acceptable under section 107(d). In this rulemaking, EPA has approved the State's boundary designations, with the result that many nonattainment areas have been reduced from entire counties to subcounties which encompass the population and source-oriented areas. Those areas designated nonattainment on March 3, 1978 and reaffirmed as nonattainment in this rulemaking remain under the requirements of Part D of the Act. A state implementation plan revision (nonattainment plan) must be adopted by the State of Arizona and approved by EPA by July 1, 1979.

Sulfur Dioxide (SO_2)

The State of Arizona has designated the following six areas of the State as nonattainment (primary) for SO_2: Ajo, Douglas, Hayden, Miami, Morenci, and San Manuel. These six areas contain all of the major point sources which contribute to monitored SO_2 violations. Additional areas near each of these nonattainment areas have been designated unclassified by the State because of insufficient air quality data. The remainder of the State has be designated attainment based on air quality data. The State identified the boundaries of the nonattainment and unclassified areas on the basis of one or more townships, or portions thereof. Townships are nominally squares measuring six miles on a side. The description of each area and its designation is listed in the table following this notice. EPA has reviewed the State of Arizona's nonattainment and unclassified SO_2 designations and concurs with them based on a review of the air quality data.

The State of Arizona designated Coconino County attainment for SO_2. On March 3, 1978, EPA designated the County unclassified pending the promulgation of the stack height regulations implementing section 123 of the Clean Air Act. The SO_2 designation of the Page area within Coconino County, including the Navajo power plant, may be affected by these forthcoming regulations. In the interim, the SO_2 designation of the Page area which encompasses township T41N, R9E, will remain unclassified. The State's attainment designation for the remainder of Coconino County and the remainder of the State is acceptable since no violations of SO_2 standards have been recorded in these areas. The State's SO_2 designations, except for Page, replace those promulgated by EPA on March 3, 1978.

Total Suspended Particulates (TSP)

The State of Arizona designated 19 areas unclassified for TSP and the

remainder of Arizona attainment. The EPA's review indicates that the State did not provide adequate documentation to support their TSP designations and that some of the designations were not made in accordance with the requirements of Section 107(d) of the Clean Air Act. Specifically, areas with air quality data recording TSP violations that should have been designated nonattainment were, in fact, designated unclassified or attainment by the State. Consequently, some of the State's designations have been modified as described below.

Under EPA's fugitive dust policy, as described in the March 3, 1978 (43 FR 8962) rulemaking, any rural areas experiencing TSP violations that could be attributed to fugitive dust could be designated attainment with respect to the TSP NAAQS. Rural areas for this purpose are defined as those that have: (1) A lack of major industrial development or the absence of significant industrial particulate emissions, and (2) low urbanized population densities. In this rulemaking, an area containing less than 50,000 population and with no major industrial development is considered to be rural. For this purpose major industrial development is defined as an industrial source in a category listed in the Prevention of Significant Deterioration regulations (40 CFR 52.21) with actual emissions of more than 100 tons per year or an industrial source in any other source category with actual particulate emissions of greater than 250 tons per year. Because the State of Arizona failed to properly designate areas with respect to TSP, EPA has modified certain of the designations to conform to the Clean Air Act and EPA's fugitive dust policy. Descriptions of the TSP areas are provided in the table following this notice.

The State of Arizona designated the Phoenix and Tucson areas as unclassified for TSP. A review of the air quality data shows violations of the primary TSP standards in both areas. Because of the recorded violations of the TSP standards, EPA does not accept the State's unclassified designation but retains the nonattainment designations promulgated by EPA on March 3, 1978. The boundaries defined by the State, which encompass the Phoenix and Tucson urban areas and contain major industrial development and sources of significant industrial particulate emissions, are acceptable.

The State of Arizona designated seven areas surrounding major stationary sources of particulate emissions as unclassified. The areas are Ajo, Douglas, Hayden, Miami (copper smelters), Joseph City, Page (power plants), and Paul Spur (lime plant). A review of the air quality data shows that each area has recorded violations of the TSP primary standards. Because of the violations, EPA does not accept the State's unclassified designations but retains the nonattainment designations promulgated by EPA on March 3, 1978. However, the major stationary sources of particulate emissions are located within the State's designated boundaries and EPA affirms those boundaries for each of the seven areas.

The State of Arizona designated ten other areas as unclassified for TSP. They are Casa Grande, Flagstaff, Florence, Mohave Valley, Nogales, Parker, Safford, Show Low, Superior, and Yuma. A review of the air quality data shows that violations of the TSP standards have been recorded in each area. However, each area can be designated attainment based on EPA's fugitive dust policy which considers low population and lack of major industrial development or the absence of significant industrial particulate emissions. Based on this consideration, EPA accepts the State's boundaries but revises the designation of each of the areas to attainment.

The San Manuel area of Pinal County has been designated attainment for TSP by the State of Arizona. No violations of the TSP NAAQS have been recorded in the area in recent years. However, preliminary air pollution dispersion modeling performed by EPA projects a violation of the 24-hour secondary TSP standard caused by the major stationary source of particulate emissions at San Manuel. The modeling also indicates that no monitors are located in the area of estimated maximum TSP concentration. Until sufficient information concerning the area's attainment status becomes available, EPA designates San Manuel unclassified for TSP.

Based on air quality data from a State operated air quality monitoring station, Morenci, Greenlee County, was designated attainment for TSP by EPA on March 3, 1978 and by the State of Arizona in their August 1978 submittal. However, a review of air quality data shows numerous violations of the TSP standards at several monitoring stations operated by the owner of the copper smelter at Morenci. The smelter is a source of significant industrial particulate emissions and because of the air quality data, EPA is proposing to revise the TSP designations of the Morenci area to nonattainment. Because Morenci was originally designated attainment by EPA, a separate notice of proposed rulemaking is being developed to consider the possible redesignation. Public comments will be solicited, particularly concerning the validity of the air monitoring data from the Morenci area.

Except for the 19 areas designated as unclassified for TSP, the rest of Arizona was designated attainment by the State of Arizona in their submittal of August, 1978. With the exception of the designations described in the preceeding paragraphs, EPA affirms the TSP attainment designation for the remainder of Arizona. The attainment designation is supported either by monitoring data or fugitive dust considerations in areas lacking major industrial development or significant industrial particulate emissions and with low population densities. The TSP designations promulgated in the table following this notice replace those promulgated by EPA on March 3, 1978.

Several public comments were received during the comment period following the March 3, 1978 promulgation of attainment status designations. Those relevant comments received by EPA concerning the designations of TSP and SO_2 in Arizona are summarized below.

Several commenters questioned the boundaries for the designated areas. Some suggested larger areas, and others suggested smaller areas. The State, on August 15, 1978, chose to designate the boundaries such that the sources contributing to air quality problems were contained within the designated areas. For the air quality planning purposes of these section 107(d) designations, the boundaries are sufficient to provide for control strategies that will insure attainment of the NAAQS and are therefore acceptable.

One commenter questioned the air quality monitoring data used to support a TSP nonattainment designation for the Tucson area. The designation is supported by violations at numerous monitoring sites. While there are provisions for adjusting air quality data to account for unusual phenomena (40 CFR 51.12(d)), the commenter did not provide sufficient technical information to support a revision in the current designation.

One commenter recommended that Phoenix, Tucson, Flagstaff, and Yuma be designated nonattainment for TSP until it can be demonstrated that violations were not caused by human activity. Violations of the TSP standards have been recorded in each of the four cities and the Phoenix and Tucson areas have

been designated nonattainment. Flagstaff and Yuma, however, have been designated attainment based on EPA's fugitive dust considerations (low population and lack of major industrial development or significant industrial particulate emissions).

Two commenters argued that it would be inconsistent to include an area classified Class I under the Agency's Prevention of Significant Deterioration (PSD) program in an area designated nonattainment under section 107 of the Act.

Under section 162 of the Act, Congress provided that certain areas of the country, because of their recreational or conservational value, should be designated Class I regardless of their present air quality. This does not mean that these areas could not be designated nonattainment under section 107 of the Act. This situation would occur if the air quality in the Class I area is worse than the national ambient air standards or if the Class I area is a clean air pocket within a larger area designated nonattainment. In either case, the existence of a Class I area within a nonattainment area does not mean that the Class I area will lose the protection of the PSD program. If a Class I area could not be designated nonattainment because of air quality violations, then the Act could not require States to revise their implementation plans to insure attainment of the NAAQS in such areas. This is not the case, however, because in this instance the nonattainment and PSD programs work independently, and an area can be both Class I and nonattainment at the same time.

To have any designation amended, a person should submit a petition with supporting data and analysis to the State, with a copy to the EPA Region IX Office at the location given in the ADDRESS section of this rulemaking. If the person is not satisfied with the State's response to the petition, he may then petition the EPA Region IX Office to modify the current designation.

Note.—The Environmental Protection Agency has determined that this document is not a significant regulation and does not require preparation of a regulatory analysis under Executive Order 12044.

Authority: Sections 107(d), 171(2), 301(a) of the Clean Air Act, as amended (42 U.S.C. 7407(d), 7501(2), 7601(a)).

Dated: April 2, 1979.

Douglas M. Costle,
Administrator.

Arizona—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Ajo:				
T11S, R6W	X			
T11S, R5W	X			
T12S, R6W	X			
T12S, R5W	X			
T13S, R6W	X			
T11S, R7W			X	
T12S, R7W			X	
T13S, R7W			X	
T13S, R5W			X	
Douglas:				
T23S, R27E	X			
T24S, R27E	X			
T24S, R28E	X			
T23S, R26E			X	
T23S, R28E			X	
T24S, R26E			X	
Hayden:				
T4S, R14E	X			
T4S, R15E	X			
T4S, R16E	X			
T5S, R14E	X			
T5S, R15E	X			
T5S, R16E	X			
T6S, R14E	X			
T6S, R15E	X			
T6S, R16E	X			
T4S, R13E			X	
T4S, R17E			X	
T5S, R13E			X	
T5S, R17E			X	
T6S, R13E			X	
T6S, R17E			X	
Miami:				
T2N, R14E	X			
T2N, R15E	X			
T1N, R13E [1]	X			
T1N, R14E	X			
T1N, R15E	X			
T1N, R16E	X			
T1S, R14E [1]	X			
T1S, R14½E	X			
T1S, R15E	X			
T2N, R13E [1]			X	
T2N, R16E			X	
T1S, R13E [1]			X	
T1S, R16E			X	
T2S, R14E [1]			X	
T2S, R15E			X	
Morenci:				
T3S, R28E [2]	X			
T3S, R29E	X			
T3S, R30E	X			
T4S, R28E [3]	X			
T4S, R29E	X			
T4S, R30E	X			
T5S, R28E [4]	X			

Arizona—SO ₂—Continued

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
T5S, R29E [3]	X			
T5S, R30E			X	
San Manuel:				
T8S, R16E	X			
T8S, R17E	X			
T8S, R18E	X			
T9S, R15E	X			
T9S, R16E	X			
T9S, R17E	X			
T9S, R18E	X			
T10S, R15E	X			
T10S, R16E	X			
T10S, R17E	X			
T11S, R16E	X			
T10S, R18E			X	
T11S, R17E			X	
T12S, R16E			X	
T12S, R17E			X	
Page:				
T41N, R9E			[3]X	
Rest of State				X
Ajo:				
T12S, R6W	[3]X			
Douglas:				
T24S, R27E	[3]X			
T24S, R28E	[3]X			
Hayden:				
T5S, R15E	[3]X			
Joseph City:				
T18N, R19E	[3]X			
Miami:				
T1N, R15E	[3]X			
Page:				
T41N, R9E	[3]X			
Paul Spur:				
T24S, R26E	[3]X			
Phoenix: That portion of Maricopa County known as the Maricopa association of Governments (MAG) Urban Planning Area	[3]X			
Tucson: That portion within Pima County of the area described by connecting the following geographical coordinates moving in a clockwise manner:				
LAT(N) and LON(W):				
32°36.5' 111°24.0'				
32°26.5' 110°47.5'				
32°12.5' 110°32.5'				
31°49.5' 110°25.5'				
31°42.0' 110°50.5'				
31°52.5' 111°12.5'				
32°24.5' 111°29.0'	[3]X			
San Manuel:				
T10S, R17E			[3]X	
T10S, R16E			[3]X	
Rest of State				[3]X

[1] Only that portion in Gila County.
[2] Only that portion in Greenlee County.
[3] EPA designation replaces State designation.

[FRL 1095-7]
[FR Doc. 79-11010 Filed 4-9-79; 8:45 am]
BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

41 CFR Part 3-2

Procurement by Formal Advertising

AGENCY: Department of Health, Education, and Welfare.

ACTION: Final rule.

SUMMARY: The Office of the Secretary, Department of Health, Education, and Welfare is amending the Departmental procurement regulations to reflect revisions to Part 3-2, Procurement by Formal Advertising.

In the section concerning mistakes in bids, amendments are being made to clarify recent delegated authorities concerning administrative determinations and to cancel and reserve those portions which restate, verbatim, what is in the Federal Procurement Regulations. Under the section concerning protests against award, amendments are being made to require that timely written confirmation of all oral protests filed with the Department are obtained, to extend the period for filing protests with the Department from five to ten Federal Government working days to coincide with the General Accounting Office's timeliness requirement, to clarify the timely filing of protests which result from amendments to solicitations, and to recognize the discretion allowed contracting officers in making determinations to resolve protests filed at the contracting officer level.

EFFECTIVE DATE: April 10, 1979.

FOR FURTHER INFORMATION CONTACT: E. S. Lanham, Division of Procurement Policy and Regulations Development, Office of Grants and Procurement, OASMB-OS, HEW, Washington, D.C. 20201 (202-245-6347).

SUPPLEMENTARY INFORMATION: It is the general policy of the Department to allow time for interested parties to participate in the rulemaking process. However, since the amendments primarily concern internal administrative procedures and, to the extent that they affect the public, liberalize previous procedures, the public rulemaking process was deemed unnecessary in this instance. The provisions of these amendments are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

Therefore, 41 CFR Chapter 3 is amended as set forth below.

Dated: March 28, 1979.

E. T. Rhodes,
Deputy Assistant Secretary for Grants and Procurement.

Under Subpart 3-2.4, Opening of Bids and Award of Contract, of Part 3-2, Procurement by Formal Advertising, sections 3-2.406-3, Other mistakes disclosed before award, 3-2.406-4, Disclosure of mistakes after award, and 3-2.407-8, Protests against award, are cancelled, and the sections indicated in the table of contents and following text are substituted:

Subpart 3-2.4—Opening of Bids and Award of Contract

Sec.

* * * * *

3-2.406 Mistakes in bids.
3-2.406-3 Other mistakes disclosed before award.
3-2.406-4 Disclosure of mistakes after award.
3-2.407 Award.
3-2.407-8 Protests against award.

Authority. 5 U.S.C. 301, 40 U.S.C 486(c).

* * * * *

§ 3-2.406 Mistakes in bids.

§ 3-2.406-3 Other mistakes disclosed before award.

(a) Circumstances permitting the correction or withdrawal of bids are set forth in § 1-2.406-3.

(b) Authority has been delegated to the Director, Division of Procurement Policy and Regulations Development,