in the full text of the Treasury decision. This document corrects this error by changing "Paragraph (c)(6)" to "Paragraph (c)(5)".

Drafting Information

The principal author of this correction is Douglas W. Charnas of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service.

Correction of Treasury Decision

Accordingly, FR Doc. 81-2305 (46 FR 6924) is corrected as follows:

In Par. 5 on page 6926 "Paragraph (c)(6)" is changed to "Paragraph (c)(5)".

David E. Dickinson,

Director, Legislation and Regulations Division.

[FR Doc. 81-24805 Filed 8-25-81; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 15a

[T.D. 7768]

Temporary Income Tax Regulations; Installment Sales—General Rules; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations; correction.

SUMMARY: This document corrects a technical error in the publication of temporary regulations (Treasury Decision 7768) relating to the general rules for reporting gains from installment sales that were published at 46 FR 10708, February 4, 1981. The text of those temporary regulations also served as the text for a notice of proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Phoebe A. Mix of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3297, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 1981, the **Federal Register** published Treasury Decision 7768 (46 FR 10708) which prescribed emporary regulations relating to general rules for reporting gains from installment sales. The text of the temporary regulations also served as the text of the proposed regulations under 26 CFR Part 1 (46 FR 10749).

Need for Correction

Treasury Decision 7768 must be corrected to add the part heading and a table of contents for Part 15a (Temporary Income Tax Regulations Under the Installment Sales Revision Act).

Drafting Information

The principal author of this correction notice is Phoebe A. Mix of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service.

Correction of Treasury Decision

Accordingly, FR Doc. 81-4141 (46 FR 10708) is corrected as follows:

1. On page 10709, in the second column, the amendatory language in the paragraph titled *Proposed amendments to the regulations* is removed and replaced with the following new amendatory language, part heading, table of contents, and authority cite:

Amendments to the Regulations

A new part, Part 15a, is added in the appropriate place to Title 26 of the Code of Federal Regulations:

PART 15a—TEMPORARY INCOME TAX REGULATIONS UNDER THE INSTALLMENT SALES REVISION ACT

Sec.

15a.453-0 Taxable years affected.

15a.453-1 Installment method reporting for sales of real property and casual sales of personal property.

15a.453-2 Installment obligations received as liquidating distribution. [Reserved]

Authority: Sections 453 and 7805 of the Internal Revenue Code of 1954 (94 Stat. 2251, 68A Stat. 917; 26 U.S.C. 453 (i), 7805).

* * * * *

§§ 15a.453-0, 15a.453-1 [Corrected]

2. On page 10709, correct "§ 15A.453-0" to read "§ 15a.453-0" and correct "§ 15A.453-1" to read § 15a.453-1" where ever they appear.

§ 15a.453-2 [Corrected]

3. On page 10710, column two, correct § 15A.453-2" to read "§ 15a.453-2."

David E. Dickinson,

Director, Legislation and Regulations Division.

[FR Doc. 81-24825 Filed 8-25-81; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 20

[T.D. 7786]

Special Use Valuation of Certain Farm and Closely Held Business Real Property for Estate Tax Purposes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule.

SUMMARY: This document modifies portions of the existing regulations relating to special use valuation of farms and closely held business real estate for Federal estate tax purposes. The document removes certain restrictive provisions from the regulations and affects estates consisting largely of farm and other closely held business interests and heirs receiving such property from the estates.

DATES: The regulations are effective for estates of decedents dying after December 31, 1976.

FOR FURTHER INFORMATION CONTACT: Fred E. Grundeman of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Attention CC:LR:T 202-566-3287, not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The regulations at § 20.2032A-3(b)(1) require (1) that a qualified heir receive or acquire a "present interest" in property before it may be considered qualified real property, and (2) that the decedent have an equity interest in the operation of the farm or other business.

It has been concluded that the present interest requirement should not apply if all the potential beneficiaries and remaindermen of a discretionary trust are members of the decedent's family and, therefore, would have been qualified heirs if the property passed to them directly. It has also been determined that the equity interest requirement may be satisfied by either the decedent or a member of the decedent's family. Thus, a passive rental of a farm by a decedent to a member of the decedent's family should not disqualify the property from special use valuation.

The purpose of this regulation is to implement these decisions.

Because this regulation is liberalizing in nature, it is found unnecessary to issue this Treasury decision with notice and public procedure. At a future date the regulations will be revised to provide guidance where the parties involved include persons other than qualified heirs and members of the decedent's family.

Regulatory Flexibility Act

The Internal Revenue Service has concluded that this Treasury decision is liberalizing in nature and publishable without public hearing and comment and, therefore, the notice and public procedure requirements of 5 U.S.C. 553

do not apply. Accordingly, these regulations do not constitute regulations subject to the Regulatory Flexibility Act [5 U.S.C. chapter 6].

Drafting Information

The principal author of these regulations is Fred E. Grundeman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Accordingly, 26 CFR Part 20 is amended as follows:

§ 20.2032A-3 [Amended]

Paragraph 1. Section 20.2032A-3(b)(1) is revised by removing the third sentence; by inserting the phrase "to a party other than a member of the decedent's family" immediately after the word "property" in the ninth sentence; and by inserting the phrase "or a member of the decedent's family" immediately after the word "decedent" in the tenth sentence.

§ 20.2032A-8 [Amended]

Par. 2. Section 20.2032A-8(a)(2) is revised by removing the last 2 sentences and inserting in lieu thereof the following.

* * * Where successive interests in specially valued property are created, remainder interests are treated as being received by qualified heirs only if such remainder interests are not contingent upon surviving a nonfamily member or are not subject to divestment in favor of a nonfamily member.

Because this regulation is liberalizing in nature it is found unnecessary to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: July 7, 1981.

John E. Chapoton,
Assistant Secretary of the Treasury.

[FR Doc. 81-24652 Filed 8-25-81; 8:45 am]
BILLING CODE 4830-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

Procedural Regulations on Filing and Deferral of Charges of Discrimination

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission published an interim revision to its procedural regulation on the filing and deferral of charges of discrimination on December 9, 1980 (45 FR 81039). After consideration of all submitted comments and with appropriate modifications, the interim revision is republished in final form.

EFFECTIVE DATE: These regulations are effective August 26, 1981.

FOR FURTHER INFORMATION CONTACT: Anthony J. De Marco, Acting Associate General Counsel (tele: 202-634-6595) or Thomas J. Schlageter (tele: 202-653-5490), Legal Counsel Division, EEOC, 2401 E Street, N.W., Washington, D.C. 20506.

SUPPLEMENTARY INFORMATION: On December 9, 1980, the Equal Employment Opportunity Commission published a revision to its Title VII procedural regulation on filing and deferral located at 29 CFR 1601.13 (1979) (45 FR 81039, December 9, 1980). Although the revised regulation was effective immediately on an interim basis, comments were requested for consideration prior to republication of the revised regulation in final form.

The interim regulation was necessitated by the partial invalidation of former § 1601.13 by the Supreme Court in *Mohasco Corp.* v. *Silver*, 447 U.S. 807 (1980). The interim regulation provided that a deferred charge could not be filed with EEOC until after the expiration of the statutory deferral period unless there was an earlier termination of state proceedings or a waiver of the right to exclusive processing by the state. The interim regulation also provided, in reliance upon the language of *Mohasco* and *Oscar Mayer & Co.* v. *Evans*, 441 U.S. 750 (1979), that charges which arise in deferral jurisdictions and which are apparently untimely under state or local statutes of limitations may still be timely filed with the EEOC within 300 days after the date of the alleged violation. The remaining subsections were rearrangements, clarifications and editorial changes to the prior regulation. The Commission received 12 comments and carefully considered each one. The major suggestions and objections are discussed below.

Several correspondents objected to revised subsection (a)(3) which provides that an apparently untimely state or local charge may be a timely federal charge if filed with EEOC within 300 days of the alleged violation. It is argued that this provision is not supported by *Mohasco* or *Oscar Mayer*, that it ignores caselaw to the contrary, that it encourages the bypassing of 706 agencies and that it fortuitously and unfairly confers upon persons in deferral jurisdictions a longer filing period than persons in nondeferral jurisdictions. After further consideration, the Commission has decided that interim (a)(3) correctly states the law.

In *Mohasco*, the Supreme Court rejected the Eighth Circuit's holding in *Olson* v. *Rembrandt Printing Co.*, 511 F.2d 1228 (8th Cir. 1975). The Eighth Circuit had held that a charging party must file with a 706 Agency within 180 days or within the state or local statute of limitations, whichever is longer, in order to receive the benefit of the 300 day federal filing period. The Supreme Court stated that Congress did not, in section 706(e), require that a charge be filed with a 706 Agency within any specific time after the alleged violation as a condition to invoking the 300-day limitations period for filing with EEOC in deferral jurisdictions and that courts should not read into that section a time limitation which Congress had not seen fit to include. *Mohasco Corp.* v. *Silver*, 447 U.S. 807, 814 n.16, 816 n.19 (1980). The Court at footnote 16 also rejected the First Circuit's holding in *Ciccone* v. *Textron, Inc.*, 616 F.2d 1216 (1st Cir. 1980) for employing the same approach under similar provisions in the Age Discrimination in Employment Act, 29 U.S.C. 621-634. In *Oscar Mayer*, the Court construed similar provisions in the Age Discrimination in Employment Act and approved the federal filing of an untimely state charge (the state charge was not filed within the 120 day state limit or within 180 days of the alleged violation). The court held that state or local limitations periods could not govern the efficacy of the federal remedy. *Id.* at 762. The court refused to attribute to Congress the intent to incorporate state and local statutes of limitations by implication or to consign federal lawsuits to the vagaries of diverse state limitations statutes. *Id.* at 763. *Mohasco* and *Oscar Mayer* indicate that complainants in deferral jurisdictions are entitled to the extended 300 day federal filing period even if they do not timely file with an appropriate 706 Agency.

The case law supports this view and any pre-Mohasco case law to the contrary is no longer valid. In *Bean v. Crocker National Bank*, 600 F.2d 754 (9th Cir. 1979), the Ninth Circuit held that an ADEA plaintiff in a deferral jurisdiction was entitled to the extended 300 day federal filing period even though he did not timely file with a 706 Agency (no state charge was filed within the 706 Agency's one year limitations period). In *Ewald v. Great Atlantic & Pacific Tea Co.*, 620 F.2d 1183 (6th Cir. 1980), the Sixth Circuit affirmed the dismissal of an ADEA claim on the grounds that the plaintiff failed to file a federal charge within 180 days. The court rejected the Ninth Circuit's conclusion in *Bean* and held that a complainant was not entitled to the 300 day period unless he had filed with a 706 Agency within 180 days of the alleged violation. *Accord Ciccone v. Textron, Inc.*, 616 F.2d 1216 (1st Cir. 1980); *Davis v. Calgon Corp.*, 627 F.2d 674, (3d Cir. 1980). The Supreme Court vacated the judgments in both *Ewald* and *Ciccone* and remanded the cases for futher consideration in light of *Mohasco*. *Ewald v. Great Atlantic & Pacific Tea Co.*, 101 S.Ct. 311 (1980); *Ciccone v. Textron Corp.*, 101 S.Ct. 311 (1980). On remand, the Sixth Circuit reversed the district court's dismissal of the complaint as untimely. *Ewald v. Great Atlantic & Pacific Tea Co.*, Docket No. 77–1600 (6th Cir., Jan. 6, 1981). On remand, the First Circuit cited *Mohasco* for the proposition that in deferral jurisdictions, a claimant is allowed 300 days to file with EEOC even though he fails to file with a 706 Agency within 180 days of the alleged violation. *Ciccone v. Textron Corp.*, 25 EPD ¶ 31598 (1st Cir. 1981). The court held "on the authority of *Mohasco* that the longer period of 300 days is to be allowed for federal filing in deferral states." *Id.* at p. 19458. On a rehearing of *Davis*, the Third Circuit found that the Supreme Court's statements in *Mohasco* controlled disposition of the issue and held that a complainant in a deferral jurisdiction is entitled to the extended federal filing period regardless of whether he has filed with the appropriate 706 Agency within 180 days of the alleged violation. *Davis v. Calgon Corp.*, 627 F.2d 674, 677 (3d Cir. 1980). The Second Circuit has also adopted the position that the 300 days period is available to complainants in deferral jurisdictions even though no charge was filed with a 706 Agency within 180 days of the alleged violation. *Goodman v. Heublein Inc.*, Docket No. 567 (2d Cir., March 25, 1981). Most recently, the Fifth Circuit has relied on *Mohasco* for the proposition that complainants in deferral jurisdictions are entitled to the 300 day federal filing limit and that the general rule requiring filing within 180 days is not applicable in such cases. *Friel v. Transamerica Airlines, Inc.*, Docket No. 80–7325 (5th Cir., April 28, 1981). Accordingly, the case law supports the availability of the extended filing period in deferral jurisdictions without regard to the timeliness of state or local filing.

This regulation will not encourage the deliberate bypass of state and local remedies. No reason suggests itself why an individual would wish to forego an available state or local remedy. Most persons would prefer two separate opportunities for administrative relief to one. It is our experience that most persons file charges as soon as they discover the discrimination or as soon as they learn of their rights to file a charge. A deliberate bypass of state or local remedies will not expedite a charging party's access to court. The charge must still be processed by the Commission and any time expended in waiting for the local limitations period to expire is likely to exceed the 60 day deferral period. The risk of bypass appears negligible. See *Oscar Mayer & Co. v. Evans*, 441 U.S. 750, 764 (1979).

This regulation does not confer a "fortuitous" benefit on persons who live in deferral jurisdictions. Any difference in treatment based upon geographic location is mandated by the statute which provides the two different filing periods. Our correspondents urge that the availability of the extended period should depend upon whether the charging party has complied with the applicable state or local statute of limitations. The timeliness of a state or local charge as the factor which determines the existence of a federal right under Title VII appears to have been firmly rejected by the Supreme Court in *Oscar Mayer* and *Mohasco* and by the Circuit courts cited above. The regulation does not create or confer any fortuitous benefits but rather follows from a plain, literal construction of the section. For the foregoing reasons, no change is made in subsection (a)(3).

Several correspondents have objected to the legality of 706 Agency waivers of the right to exclusive processing or to EEOC's filing of a charge after a waiver but before 60 days have passed in light of *Mohasco*. The factual situation in *Mohasco* did not involve such a waiver. A waiver of exclusive processing does not conflict with the *Mohasco* court's specific concerns that the 706 Agency be given a limited opportunity to redress employment grievances and that all charges be promptly processed. In a waiver situation, the 706 Agency has the opportunity to process the charge if it so elects and those charges which the 706 Agency chooses not to pursue are promptly processed by the Commission. *Mohasco* does not cast doubt upon such a waiver. Waivers with the consent of the charging party and the consequent attaching of federal jurisdiction have been explicitly and implicitly approved by many courts. *Love v. Pullman Co.*, 404 U.S 522, 526 (1972); *EEOC v. U.S. Fidelity & Guaranty Trust Co.*, 13 FEP Cases 990, 10 EPD ¶ 10549 (D. Md. 1975), *aff'd.*, 538 F. 2d 324 (4th Cir.) *cert. denied*, 429 U.S. 1023 (1976); *White v. Dallas Independent School District*, 581 F. 2d 556, 561 n.7 (5th Cir. 1978); *Barela v. United Nuclear Corporation*, 462 F. 2d 149, 151–152 (10th Cir. 1972); *Waters v. Heublein Inc.*, 547 F. 2d 466, 469 (9th Cir. 1976), *cert. denied*, 433 U.S. 915 (1977).

Every court addressing the issue has held that when a 706 Agency has waived its authority to exclusively process a charge, state proceedings have terminated within the meaning of section 706(c) and the charge may be immediately filed with EEOC. *Yeung v. Lockheed Missiles & Space Co.*, 24 FEP Cases 1070 (N.D. Calif. 1980) (California's waiver of exclusive jurisdiction to process charges such as plaintiff's pursuant to work-sharing agreement with the EEOC, "terminates" its proceedings under section 706(c) for purpose of determining when charge is deemed filed with EEOC); *Cattell v. Bob Frensley Ford, Inc.*, 24 FEP Cases 1290, (M.D. Tenn. 1980) (Tennessee FEPC's deferral of initial consideration of complaint to EEOC, in accordance with work-sharing agreement, constitutes termination of proceedings under section 706(c); state agency effectively waived its jurisdiction); *EEOC v. Western States Machine Co.*, 17 FEP Cases 1356, 1357, 17 EPD ¶ 8435 at 6293–94 (S.D. Ohio 1978) (FEPC's agreement not to process charges which the EEOC wished to handle in accord with well-settled law that a state may waive its statutory "obligations" and the EEOC may then proceed); *Lombardi v. Margolis Wine & Spirits, Inc.*, 465 F. Supp. 99, 101 (E. D. Pa. 1979) ("Virtually anything the State agency does of its own initiative in order to be rid of a case may be sufficient to pass jurisdiction on to the EEOC via section 2000e–5(c)."); *Eldredge v. Carpenters Local 46*, 440 F. Supp. 506, 515 (N.D. Calif. 1977) ("Section 2000e–5(c) * * * is satisfied by * * * reference of the matter to the state agency by EEOC, followed by notification from the state agency that it will take no action."). The Commission is not aware of any conclusive case law to the contrary.

Therefore, after due consideration, no substantive change in this regard will be made in the regulation.

Three correspondents commented on the need for clarification of subsection (b)(1). One suggested that the term "institution of state proceedings" be defined. Another thought that filing 60 days after state proceedings have been instituted could be construed as only allowing a 59 day deferral period. (This comment is equally applicable to subsections (a)(5)(ii)(B) and (b)(2)(ii).) It is evident from these comments that the Commission's intent was not clearly stated. Subsection b(1) (as well as subsections (a)(5)(ii)(B) and (b)(2)(ii)) are revised to better expres that intent and meet the correspondents' concerns. It was intended that charges will be deemed filed after the full 60 day period (unless there has been an earlier termination or waiver) and that the deferral period starts according to section 706(c) on the date that a written and signed statement of the facts upon which the charge is based is sent to the 706 Agency by registered mail or otherwise received by the 706 Agency. In addition, it was discovered that a phrase had been inadvertently omitted from subsections (b)(1) and (b)(2)(ii). Filing takes place after the deferral period, upon termination of 706 Agency proceedings or upon 706 Agency waiver of exclusive processing whichever occurs earliest. The waiver alternative had been omitted and is now added, along with the explanatory phrase "whichever is earliest" to clarify the provision.

One correspondent objected to the language of subsection (b)(1) which could deem a charge to be filed with the Commission even though it is not physically received by the Commission and cites *Chappell* v. *Emco Machine Works*, 601 F.2d 1295 (5th Cir. 1979) as disapproving such a deeming procedure. In *Chappell*, a divided panel ruled that the failure of a state employment agency to forward a charge to the EEOC as requested by the charging party and as promised by the state agency employee, did not equitably toll the running of the federal filing period. *Chappell* is factually distinguishable from the situation covered by subparagraph (b)(1) in that the state agency involved in *Chappell* was not a 706 Agency and was therefore not part of the statutory processing scheme envisaged by Title VII. The instant regulation pertains only to charges received by 706 Agencies. Secondly, the principal issue in *Chappell* was whether or not equitable tolling was available to the plaintiff whereas the regulation does not concern tolling. Thirdly, the Commission has entered into Work Sharing contracts with almost all 706 Agencies. A standard contract clause in each of them is that the 706 Agency agrees to forward charges to EEOC upon the request of the charging party. The charging party is a third party beneficiary of this provision and the 706 Agency by entering into the contract assumes this duty on behalf of a complainant. Such a contract duty was not at issue in *Chappell*. Finally, the analysis which rejected the plaintiff's equitable arguments in *Chappell* was not subscribed to by a majority of the panel. For these reasons we do not find *Chappell* to be controlling on this issue. The Commission also notes the strong and well reasoned dissent by Justice Wisdom which would have found jurisdiction.

One correspondent requested that the regulation define the term "termination of state proceedings." The regulation does not define the term because of the variety of factual patterns which may constitute a termination. In most cases, the date of termination will be evident. In some cases, however, all of the circumstances must be examined prior to such a determination. The Commission has decided that a suitable general rule cannot be drafted at this time.

One correspondent objected to the use of the term "initial institution of proceedings" in the titles of subsections (a) and (b) and suggests the use of the term "initial presentation of charge" instead. The correspondent understands the term "institution" to be synonomous with "filing". The word "institution" as used in the statute and the regulation is not synonomous with filing. According to section 706(c), state or local proceedings can be instituted for purposes of Title VII by mailing a written and signed statement of facts even though this may not satisfy state or local filing requirements. Institution is synonomous with commencement. *Mohasco*, 447 U.S. at 816. Nevertheless, in the interest of clarity, the titles of the subsections are revised to read "initial presentation of a charge."

One correspondent objected to subsection (a)(5)(i)(B) deeming state or local proceedings to have commenced on the date EEOC mails or delivers notice of the charge to a 706 Agency as an attempt to interfere with or repal state or local laws. The regulation does not purport to define as a matter of state or local law when a charge is filed with a 706 Agency. It merely deems state or local proceedings to have commenced for purposes of Title VII. This deeming is authorized by section 706(c) and has been approved by the Supreme Court in *Mohasco Corp.* v. *Silver*, 447 U.S. 807, 816 (1980) and *Love* v. *Pullman Co.*, 404 U.S. 522, 525 (1972).

A new paragraph (b)(2)(i) has been added in order to provide explicit guidance for the situation in which a 706 Agency refuses to accept a charge initially presented to it. In such case, the charging party or the 706 Agency may present the charge to the Commission and it will be processed as an initial presentation to the Commission in accordance with paragraph (a). Interim paragraphs (b)(2)(i) and (b)(2)(ii) are renumbered (b)(2)(ii) and (b)(2)(iii) respectively. One sentence is also added to the latter paragraph. In order to avoid any ambiguity, the sentence repeats the holding of *Mohasco* that the filing must be effected within 300 days in order to be timely.

Several additional minor editorial changes are made to the revision. The phrase "state statute of limitations" is revised to read "state or local statute of limitations" in subsections (a)(3), (a)(4), (a)(5) and (a)(5)(ii). The phrase "state or local agency" is revised to read "706 Agency" in subsections (a)(5)(i)(B) and (a)(5)(i)(C). The phrase "state proceedings terminated" is revised to read "the 706 Agency terminated its proceedings" in subsection (a)(5)(ii)(B). The phrase "state proceedings" is revised to read "706 Agency proceedings" in subsections (b)(2)(i) and (b)(2)(ii).

This revised regulation has been reviewed pursuant to Executive Order 12291 (46 FR 13193 February 19, 1981), and has been determined not to be a major rule.

Section 1601.13 of Title 29 of the Code of Federal Regulations is revised as appears below.

Signed at Washington, D.C. this 28th day of July 1981.

For the Commission.

J. Clay Smith, Jr.,

Acting Chairman, Equal Employment Opportunity Commission.

PART 1601—PROCEDURAL REGULATIONS

29 CFR 1601.13 is revised as follows:

§ 1601.13 Filing; deferrals to State and local agencies.

(a) *Initial presentation of a charge to the Commission.* (1) Charges arising in jurisdictions having no 706 Agency are filed with the Commission upon receipt. Such charges are timely filed if received by the Commission within 180 days from the date of the alleged violation.

(2) A jurisdiction having a 706 Agency without subject matter jurisdiction over a charge (e.g., and agency which does not cover sex discrimination or does not cover nonprofit organizations) is equivalent to a jurisdiction having no 706 Agency. Charges over which a 706 Agency has no subject matter jurisdiction are filed with the Commission upon receipt and are timely filed if received by the Commission within 180 days from the date of the alleged violation.

(3) Charges arising in jurisdictions having a 706 Agency but which charges are apparently untimely under the applicable state or local statute of limitations are filed with the Commission upon receipt. Such charges are timely filed if received by the Commission within 300 days from the date of the alleged violation. Copies of all such charges will be forwarded to the appropriate 706 Agency.

(4) Charges arising in jurisdictions having a 706 Agency and which charges are apparently timely under the applicable state or local statute of limitations, are to be processed in accordance with the Commission's deferral policy set forth below and the procedures in subparagraph (5).

(i) In order to give full weight to the policy of section 706(c) of the Act, which affords State and local fair employment practice agencies that come within the provisions of that section an opportunity to remedy alleged discrimination concurrently regulated by Title VII and State or local law, the Commission adopts the following procedures with respect to allegations of discrimination filed with the Commission. It is the intent of the Commission to thereby encourage the maximum degree of effectiveness in the State and local agencies. The Commission shall endeavor to maintain close communication with the State and local agencies with respect to all matters forwarded to such agencies and shall provide such assistance to State and local agencies as is permitted by law and as is practicable.

(ii) Section 706(c) of Title VII grants States and their political subdivisions the exclusive right to process allegations of discrimination filed by a person other than a Commissioner for a period of 60 days (or 120 days during the first year after the effective date of the qualifying State or local law). This right exists where, as set forth in § 1601.70, a State or local law prohibits the employment practice alleged to be unlawful and a State or local agency has been authorized to grant or seek relief. After the expiration of the exclusive processing period, the Commission may commence processing the allegation of discrimination.

(iii) A 706 Agency may waive its right to the period of exclusive processing of charges provided under section 706(c) of Title VII with respect to any charge or category of charges. Copies of all such charges will be forwarded to the appropriate 706 Agency.

(5) The following procedures shall be followed with respect to charges which arise within the jurisdiction of a 706 Agency and which are apparently timely under the applicable state or local statute of limitations:

(i) Where any document, whether or not verified, is received by the Commission as provided in § 1601.8 which may constitute a charge cognizable under Title VII, and where the 706 Agency has not waived its right to the period of exclusive processing with respect to that document, that document shall be deferred to the appropriate 706 Agency as provided in the procedures set forth below:

(A) All such documents shall be dated and time stamped upon receipt.

(B) A copy of the originial document, shall be transmitted by registered mail, return receipt requested, to the appropriate 706 Agency, or, where the 706 Agency has consented thereto, by certified mail, by regular mail or by hand delivery. State or local proceedings are deemed to have commenced on the date such document is mailed or hand delivered.

(C) The person claiming to be aggrieved and any person filing a charge on behalf of such person shall be notified, in writing, that the document which he or she sent to the Commission has been forwarded to the 706 Agency pursuant to the provisions of section 706(c).

(ii) Charges which arise within the jurisdiction of a 706 Agency and which are apparently timely under the applicable state or local statute of limitations are deemed to be filed with the Commission as follows:

(A) Where the document on its face constitutes a charge within a category of charges over which the 706 Agency has waived its rights to the period of exclusive processing referred to in paragraph (a)(4)(iii) of this section, the charge is deemed to be filed with the Commission upon receipt of the document. Such filing is timely if the charge is received within 300 days from the date of the alleged violation.

(B) Where the document on its face constitutes a charge which is not within a category of charges over which the 706 Agency has waived its right to the period of exclusive processing referred to in paragraph (a)(4)(iii) of this section, the Commission shall process the document in accordance with paragraph (a)(5)(i) of this section. The charge shall be deemed to be filing with the Commission upon expiration of 60 (or where appropriate, 120) days after deferral, or upon the termination of 706 Agency proceedings, or upon waiver of the 706 Agency's right to exclusively process the charge, whichever is earliest. Where the 706 Agency earlier terminates its proceedings or waives its right to exclusive processing of a charge, the charge shall be deemed to be filed with the Commission on the date the 706 Agency terminated its proceedings or the 706 Agency waived its right to exclusive processing of the charge. Such filing is timely if effected within 300 days from the date of the alleged violation.

(b) *Initial presentation of a charge to a 706 Agency.* (1) When a charge is initially presented to a 706 Agency and the charging party requests that the charge be presented to the Commission, the charge will be deemed to be filed with the Commission upon expiration of 60 (or where appropriate, 120) days after a written and signed statement of facts upon which the charge is based was sent to the 706 Agency by registered mail or was otherwise received by the 706 Agency, or upon the termination of 706 Agency proceedings, or upon waiver of the 706 Agency's right to exclusively process the charge, whichever is earliest. Such filing is timely if effected within 300 days from the date of the alleged violation.

(2) When a charge is initially presented to a 706 Agency but the charging party does not request that the charge be presented to the Commission, the charging party may present the charge to the Commission as follows:

(i) If the 706 Agency has refused to accept a charge, a subsequent submission of the charge to the Commission will be processed as if it were an initial presentation in accordance with paragraph (a) of this section.

(ii) If the 706 Agency proceedings have terminated, the charge may be timely filed with the Commission within 30 days of receipt of notice that the 706 Agency proceedings have been terminated or within 30 days from the date of the alleged violation, whichever is earlier.

(iii) If the 706 Agency proceedings have not been terminated, the charge may be presented to the Commission within 300 days from the date of the alleged violation. Once presented, such a charge will be deemed to be filed with the Commission upon expiration of 60 (or where appropriate, 120) days after a written and signed statement of facts upon which the charge is based was sent to the 706 Agency by certified mail or was otherwise received by the 706 Agency, or upon the termination of the 706 Agency proceedings, or upon waiver of the 706 Agency's right to exclusively process the charge, whichever is earliest. To be timely, however, such filing must be effected within 300 days from the date of the alleged violation.

(c) *Agreements With Fair Employment Practice Agencies.* Pursuant to section 705(g)(1) and section 706(b) of Title VII, the Commission shall endeavor to enter into agreements with 706 Agencies and other fair employment practice agencies to establish effective and integrated resolution procedures. Such agreements may include, but need not be limited to, cooperative arrangements to provide for processing of certain charges by the Commission, rather than by the 706 Agency, during the period specified in section 706(c) and section 706(d) of Title VII.

(d) *Preliminary relief.* When a charge is filed with the Commission, the Commission may make a preliminary investigation and commence judicial action for immediate, temporary or preliminary relief pursuant to section 706(f)(2) of Title VII.

(e) *Commissioner charges.* A charge made by a member of the Commission shall be deemed filed upon receipt by the Commission office responsible for investigating the charge. The Commission will notify a 706 Agency when an allegation of discrimination is made by a member of the Commission concerning an employment practice occurring within the jurisdiction of the 706 Agency. The 706 Agency will be entitled to process the charge exclusively for a period of not less than 60 days if the 706 Agency makes a written request to the Commission within 10 days of receiving notice that the allegation has been filed. The 60-day period shall be extended to 120 days during the first year after the effective date of the qualifying State or local law.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 900, 913, 914, 917, 935, and 942

Surface Coal Mining and Reclamation Programs for Alabama, Illinois, Indiana, Kentucky, Ohio, Tennessee; General Statement of Policy

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: General statement of policy.

SUMMARY: The Secretary is announcing revised schedules for resubmission of State regulatory programs by Alabama, Illinois, Indiana, Kentucky, Ohio and Tennessee until the injunction against each terminates, but in no case for longer than one year after the injunction was first issued. In the meantime, regulation of surface exploration, mining and reclamation operations will be conducted pursuant to OSM's interim program.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining, 1951 Constitution Avenue, N.W., Washington, D.C. 20240, Telephone: (202) 343-4225.

SUPPLEMENTARY INFORMATION:

General Background

Under the Surface Mining Control and Reclamation Act (SMCRA or the Act), a State which seeks to regulate surface coal mining and reclamation operations within its border must apply to the Secretary of the Interior for approval of its State program. In order for a program to be approved, a State must submit a program containing laws and regulations which are consistent with the Act and the regulations of the Secretary of the Interior. Section 503 of SMCRA provides that once a State submits a program, the Secretary of the Interior has six months in which to consider the State's application. Under it and 30 CFR 732.13 at the end of that six-month period the Secretary must decide whether to approve, conditionally approve, approve in part and disapprove in part, or completely disapprove the State program submission. If the Secretary partially approves or completely disapproves the State program submission, the State has 60 days to resubmit its program. SMCRA then gives the Secretary 60 days to review the resubmitted program and make a final decision. If, after the end of this 10 months period, the Secretary is unable to approve or conditionally approve the State program, he is required to promulgate a Federal program.

The Secretary reviewed the initial program submissions of the States of Alabama, Illinois, Indiana, Kentucky, Ohio, and Tennessee and announced in the **Federal Register** his partial approval/partial disapproval or complete disapproval of each of those programs.

45 FR 68665 (Alabama, October 16, 1980)
45 FR 69940 (Illinois, October 31, 1980)
45 FR 78482 (Indiana, November 25, 1980)
45 FR 69940 (Kentucky, October 22, 1980)
45 FR 64962 (Ohio, October 1, 1980)
45 FR 67372 (Tennessee, October 10, 1980)

Following the Secretary's announcement, each State had 60 days within which to revise and resubmit its program. In each of those States, except for Indiana where an injunction had previously been issued, an injunction was entered enjoining the State from resubmitting its program within the 60 day period.

Section 503(d) of SMCRA provides:

> * * * [T]he inability of a State to take any action, the purpose of which is to prepare, submit or enforce a State program, or any portion thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result . . . in the imposition of a Federal program. Regulation of the surface coal mining and reclamation operations covered or to be covered by the State program subject to an injunction shall be conducted by the State pursuant to Section 502 of the Act, until such time as the injunction terminates or for one year, whichever is shorter, at which time the requirements of Sections 503 and 504 shall again be fully applicable.

Previous Suspension Notices

Because the Secretary had completed all the actions that were possible without further participation by the States and because the States were enjoined from taking further formal action, the Secretary issued notices in the **Federal Register** for Alabama, Illinois, Indiana, Kentucky, Ohio and Tennessee temporarily suspending the State program resubmission schedules for those States and inviting public comment.

46 FR 1306 (Alabama, January 6, 1981)
45 FR 78499 (Indiana, November 25, 1980, public comment period extended, 46 FR 1309, January 6, 1981)
46 FR 4951 (Illinois, January 19, 1981)
45 FR 3030 (Kentucky, January 13, 1981)
45 FR 85797 (Ohio, December 30, 1980)
46 FR 1309 (Tennessee, January 6, 1981)

Each of the six notices specified the period of time within which the State

would be required to resubmit its program following the lifting of the injunction or the expiration of one year as set in section 503(d). The resubmittal period for each State was designated as the number of days remaining in the initial 60 day resubmittal period at the time the injunction was imposed.

Each notice also invited public comment on:

(1) The applicability of Section 503(d) of SMCRA in the State, given the circumstances surrounding the injunction.

(2) The State's compliance with Section 502 of SMCRA. Section 503(d) of SMCRA requires a State which is subject to an injunction to continue regulation under the interim program.

(3) Suggestions on how the Secretary ought to adopt or modify the permanent program regulations to meet the local conditions in each State if implementation of a Federal program becomes necessary as a consequence of the State's inability ultimately to obtain approval of its program or because, as prescribed under Section 503(d), the term of the injunction exceeds one year.

Discussion of Public Comments

A total of 15 comments were received as a result of the six notices. The Indiana notice elicited the most comments, nine. The notice for the State of Tennessee, 46 FR 1309 (January 6, 1981), prompted four persons to comment, two of whom requested a public hearing. Separate single comments were received in response to the Kentucky and Illinois notices.

Generally, the comments were directed at the interpretation of section 503(d) of SMCRA. The Secretary had indicated that he was not bound to honor a State court injunction if the circumstances surrounding its issuance did not warrant doing so and that he had discretion to determine whether to give effect to the suspension provision of section 503(d). In response, industry and State representatives asserted that the Secretary had no such discretion and citizens and citizen groups urged investigating the reasons for issuance of the injunctions to determine whether they had been used as a dilatory tactic by industry and States.

In light of the final decisions announced here to give effect to the State court injunctions, reconsideration of the interpretation given the section in the earlier notices is unnecessary. The discretion to examine separately the circumstances surrounding issuance of the injunctions is not being exercised. A rebuttable presumption is made that each State exercised good faith in pursuing resubmission and that injunctions were not sought by the States as a dilatory tactic. The responses to the earlier notices brought no information which would rebut this presumption.

The Environmental Policy Institute (EPI) urged that Indiana had actually sought the section 503(d) injunction to avoid the permanent program requirements of SMCRA. It asserted that section 503(d) was not intended, nor should be used, to extend the statutory periods for Secretarial decisions on State programs. Section 503(d) does not provide criteria for not giving effect to an injunction. It merely provides that issuance of an injunction by a court of competent jurisdiction preventing preparation, submission or enforcement of a program shall delay the process for State program approval or implementation of a Federal program until the injunction is lifted or for one year whichever is sooner. Consequently, the injunction in Indiana which prevents the State from resubmitting its program is sufficient to invoke 503(d).

Other comments were directed at the Secretary's announced decisions to begin the preparation of Federal programs. Commenters asserted that rather than undertake such an effort, initiatives ought to be directed at working with the involved States to achieve approvable programs. The point is well taken and the initial plan to begin preparation of Federal programs has been changed. No work will begin on a Federal program for any of the involved States unless it becomes clear that a State program will not be or has not been resubmitted or cannot or will not be approved. That point could come as early as the date the injunction in any of the States is lifted or after the expiration of one year. By deferring preparation of Federal programs, effort can be directed to working with the involved States to correct deficiencies in their programs.

One citizen requested a hearing be held in order to determine whether the State of Indiana had adequately complied with the interim program. The information submitted by the commenter was insufficient to make a case that a hearing was necessary. For this reason and in the interest of economy, the Secretary has decided to deny the request for a hearing, but to complete the record has asked the Regional Director to telephone to invite the commenter to meet and discuss with him his concern regarding Indiana's compliance. In addition, the one year period of the injunction in Indiana terminates on July 29, 1981, and the State's resubmission is due 60 days thereafter. Comments on the Indiana program can be presented during the public comment period on the resubmission either in writing or at the hearing that will be held on it.

Of the four comments received on the notice for the State of Tennessee, two commenters requested public hearings. One commented extensively on the State's alleged failure to enforce adequately the interim program and suggested specific modifications to be made in a Federal program for the State. Another asserted that the injunction was merely a dilatory measure in which the State acquiesced in order to avoid failing to meet its resubmission deadline.

The Secretary has decided to deny the commenters' requests for a hearing, but has asked the Regional Director to invite the two persons who requested a hearing to meet with him to discuss their concerns. In addition, the one year period of the injunction in Tennessee will end on October 10, 1981, although the State's resubmission of its program for a final decision by the Secretary could come sooner than that date. Any relevant comments on the Tennessee program and its performance under the interim program can be presented during the public comment period on the resubmission either in writing or at the hearing that will be held on it.

Final Suspension Determinations

After reviewing the public comments received in response to the six **Federal Register** notices and after giving consideration to all the circumstances surrounding the State program approval process in each State, the Secretary has made the following determinations:

In the case of Alabama, Kentucky, Ohio, Illinois, Indiana, and Tennessee information has not been brought to light which casts sufficient doubt on the States' resubmission efforts.

Accordingly, the injunctions issued by State courts in the States of Alabama, Illinois, Indiana, Kentucky, Ohio and Tennessee are determined to invoke validly the operation of Section 503(d) of SMCRA.

Therefore, the Secretary is suspending the schedule for resubmission of a State program in each of these six States until such time as the injunction is lifted or for one year from the date the injunction was issued, whichever is sooner.

The dates on which resubmission periods will begin running, unless the injunction is lifted sooner in the State involved, are as follows:

Alabama—November 12, 1981
Illinois—December 11, 1981
Indiana—July 30, 1981

Kentucky—October 31, 1981
Ohio—November 24, 1981
Tennessee—October 10, 1981

The Secretary expressly reserves the right to take appropriate action at any time if information is brought to light which sufficiently rebuts a presumption of good faith exercised in the resubmission process.

Reconsideration of Resubmittal Period

With regard to the rescheduling of the resubmission process for each State where it has been suspended, the Secretary has decided to allow each State 60 days after the lifting of the injunction to resubmit its State program. This decision supersedes the Secretary's earlier decision on this matter, as announced in each of the six suspension notices, that the allowable resubmittal period would be the number of days remaining in the initial 60 day resubmittal period at the time the injunction was imposed. Allowing a full 60 day resubmission period was initially rejected as excessive because (a) each State had already utilized part of the initial 60 days to develop its resubmission and (b) the operation of the injunction had already given each State considerably more time than the normal 60 days to develop an acceptable program.

The Secretary now believes that allowing a full 60 day resubmittal period is appropriate because States may need to modify their programs not only to correct the deficiencies noted in the Secretary's initial findings, but also to reflect changes which are being made in the Federal permanent program regulations since the Secretary's initial findings on a State program. This extended period is intended to afford the affected States the opportunity to continue to revise their programs so as to achieve readily approvable ones and to make adjustments needed to reflect local conditions.

Section 502 State Compliance

In each State in which an injunction prohibited resubmission of a State program, the Secretary has reviewed the State's compliance with the interim program provisions of SMCRA and the interim program regulations issued by the Secretary related to the interim program, 30 CFR Parts 701–719. For Alabama, Illinois, Indiana, Kentucky, Ohio and Tennessee the Secretary has not been made aware of information which would support a conclusion that the involved States have not been adequately enforcing the interim program.Therefore, it is determined that the States of Alabama, Illinois, Indiana, Kentucky, Ohio and Tennessee are adequately enforcing the requirements of Section 502. These States will continue to enforce the interim program until the injunction is lifted or until one year from the date of its issuance, whichever occurs first.

Preparation of Federal Programs

For each State in which an injunction enjoined the State from resubmitting its program for approval, the Secretary has decided to defer preparation of a Federal program for that State. No Federal program will be prepared for a State until it appears that a State program will or has not been resubmitted, or that it is finally disapproved.

Every effort will be made to give States primary regulatory responsibility so that there will not be a need for a Federal program. The effort which would have been expended on Federal program development will be used instead to help the States in gaining primacy. Finally, preparation of Federal programs is premature in light of the complete review now underway of the permanent program regulations on which Federal programs are based.

Other Determinations

The decisions announced in this notice do not constitute a major Federal action which has a significant effect on the human environment. Therefore, an environmental impact statement, as required under the National Environmental Policy Act, 42, U.S.C. 4332(2)(C), has not been prepared.

The Department of the Interior has also analyzed the possible economic effects to small entities as specified in the Regulatory Flexibility Act.

In accordance with 43 CFR Part 14, the Department of the Interior has determined that the proposed rule will not have a significant effect on a substantial number of small entities.

Finally, publication of this notice announcing the decision to give effect to State court injunctions suspending the State program approval process is not a major rule under Executive Order 12291 of February 17, 1981 (46 FR 13193). The effect of the decisions will not add a cost to $100 million or more to the economy, will not produce major cost or price increases for consumers, industries or governments and will not have significant adverse results for competition, employment, investment, productivity, innovation or foreign competition. A Regulatory Impact Analysis has therefore not been prepared.

Dated: July 27, 1981.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

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BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 204

Danger Zone, Isle of Oahu, Hawaii

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is establishing a danger zone in the navigable waters of the United States at the Marine Corps Air Station, (MCAS) Kaneohe Bay, Island of Oahu, Hawaii. The danger zone is needed to outline the affected area and provide formal notice of hazards due to potential ricochet rounds and accidental firings from the existing Ulupau Crater Weapons Training Range at the MCAS.

EFFECTIVE DATE: September 25, 1981.

ADDRESS: HQDA, DAEN–CWO–N, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley T. Arakaki at (808) 438–9258 or Mr. Ralph T. Eppard at (202) 272–0199.

SUPPLEMENTARY INFORMATION: The Commanding Officer, Marine Corps Air Station, Kaneohe Bay, Hawaii has requested that danger zone regulations be established to designate an area considered unsafe for boaters when firing is in progress and provide formal notice of potential hazards associated with the existing tactical weapons training range in Ulupau Crater.

The Corps of Engineers published a proposed regulation in the Notice of Proposed Rulemaking section of the **Federal Register** on March 23, 1981 (46 FR 18050–18051) with the comment period expiring on April 30, 1981. One comment was received which recommended an established firing schedule and the installation of range marker navigational aids to mark the zone limits day and night. The marine Corps has previously rejected established schedules for the weapons firing as impractical for all concerned. In addition, the requirements as stated in the regulation for flashing red warning beacons, manned observation posts and extended clear visibility during weapons firing are sufficient to alert operators of vessels of the situation and to warn the Marine Corps of the presence of the