TABLE II—NATURAL GAS CEILING PRICES: NGPA SECTIONS 104 AND 106(a) (SUBPART D, PART 271)—Continued

Category of natural gas and type of sale or contract	Maximum lawful price per MMBtu for deliveries in—		
	Nov. 1990	Dec. 1990	Jan. 1991
Certain Rocky Mountain gas:			
Small producer	0.854	0.857	0.860
Large producer	0.724	0.726	0.728
Certain Appalachian Basin gas:			
North subarea contracts dated after 10-7-69	0.690	0.692	0.694
Other contracts	0.638	0.640	0.642
Minimum rate gas: [1] All producers	0.374	0.375	0.376

[1] Prices for minimum rate gas are expressed in terms of dollars per Mcf, rather than MMBtu.
[2] This price may also be applicable to other categories of gas (see §§ 271.402 and 271.602).

Dated: January 23, 1991.

Lois D. Cashell,

Secretary.

[FR Doc. 91-2004 Filed 1-28-91; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960-AB29

[Regulation No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; How We Count Earned and Unearned Income; Funds Used to Pay Indebtedness

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final rules clarify the regulations to reflect a longstanding Social Security Administration (SSA) policy that amounts withheld from earned and unearned income for payment of a debt or other legal obligation are included in income for the purpose of determining eligibility and payment amount under the Supplemental Security Income (SSI) program. This action is expected to eliminate the confusion with respect to the treatment of income withheld for payments of debts or other legal obligations under the SSI program. To the extent that Medicaid eligibility is based on title XVI eligibility, these regulations also affect the Medicaid program.

DATES: These rules are effective January 29, 1991.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, 3-B-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 965-1755.

SUPPLEMENTARY INFORMATION:

Introduction

These rules were published as Notice of Proposed Rulemaking in the **Federal Register** on September 15, 1987 (52 FR 34813). A 60-day comment period was provided. Comments received in response to the Notice of Proposed Rulemaking are discussed under the heading "*Discussion of Comments*".

To be eligible for SSI an individual's income must not exceed certain limits set by law. In addition, the amount of an eligible individual's SSI benefit is determined by the amount of his or her income.

Section 1612(a)(1) of the Social Security Act (the Act) provides that earned income, for SSI purposes, includes wages as determined under section 203(f)(5)(C) of the Act. Since section 203(f)(5)(C) does not specifically exclude wages which are withheld to satisfy an indebtedness, such amounts are charged as wages for title II purposes. Thus, such amounts also are considered as wages, and therefore as earned income, for title XVI purposes.

Section 1612(a)(2) of the Act states that unearned income includes "all other income" which does not meet the statutory definition of earned income.

Section 1612(b) of the Act lists items which are specifically excluded from income. Since amounts which are withheld from income, either earned or unearned, to pay an indebtedness or other legal obligation are not specifically excluded, it is the policy of SSA to treat such amounts as income. Examples of such includable amounts are monies withheld from an individual's income by garnishment, child support payments (both court ordered and voluntary), and payment of other debts. Although our longstanding policy has been to include such amounts as income, our regulations have explicitly provided only for including garnished income and payments such as Medicare premiums. The amendment to the regulations makes explicit that any income withheld to pay a debt would be considered income.

The effect of not considering such funds as income is to have the SSI program subsidize child support obligations or other debts, which is not its purpose as a program designed to meet the subsistence needs of its claimants only. While we do have authority under the deeming provisions in section 1614(f) of the Act to disregard portions of a deemor's income to satisfy the needs of the deemor's ineligible dependent children, we do not have authority under the Act to allocate a portion of an SSI claimant's income for use of the claimant's dependents. When court-ordered obligations reduce income to the extent that there are insufficient funds to meet food, clothing, and shelter needs, an individual may petition the court to have the payments reduced. In addition, when an individual voluntarily incurs a debt that is to be repaid from future income, the terms and amount of the payment installment are, at least initially, within the individual's control.

To lend further support to our policy of counting amounts which are withheld from income to pay a debt or other legal obligation, we are revising 20 CFR 416.1102 to state that sometimes income also includes more or less than actually received. We may include more or less unearned income than actually received, but we do not include less earned income than actually received since gross wages are considered earned income. We have also included cross-references to the specific regulations on earned income (20 CFR 416.1110) and unearned income (20 CFR 416.1123(b)(2)) which explain this concept in more detail.

We are expanding 20 CFR 416.1110 and 416.1123(b)(2) to state specifically our policy with respect to funds which are pledged or which are withheld from earned and unearned income, voluntarily or by court order, for

payment of a debt or other legal obligation, or to make any other payments such as Medicare premiums. That is, funds which are withheld to pay an indebtedness or other legal obligation or to make any other payment will be listed as situations where we include in earned and unearned income more than actually received.

However, a fundamental tenet of SSI policy is that we do not count the same income twice. One illustration of that rule is highlighted in 20 CFR 416.1123(b)(1), *Exception.* It is not our intent that 20 CFR 416.1123(b)(2) change that tenet. Thus, if we considered an overpayment to be unearned income for SSI purposes at the time the payment was received, we do not consider as income any amounts later deducted to repay the debt.

Since the publication of the Notice of Proposed Rulemaking, the United States District Court for the Eastern District of California has rendered an opinion in *Cervantez* v. *Sullivan*, 719 F. Supp. 899 (E.D. Cal. 1989), pertinent to this regulation. In its decision, the district court held that 20 CFR 416.1123(b)(2) contravened Ninth Circuit precedent that has defined unearned income as including only items of value that are actually available to an SSI recipient. The district court also ruled that the regulation contravened the plain meaning of section 1612(a)(2)(B) of the Act.

An appeal of this decision has been filed based on other court decisions favorable to the Government on this issue. A number of recent Federal appeals court decisions have ruled, contrary to the holding of the district court in *Cervantez*, that Congress did not intend to require that the payments set forth in section 1612(a)(2)(B) be actually received in order to be counted as unearned income. See *Lyon* v. *Bowen*, 802 F.2d 794 (5th Cir. 1986); *Szlosek* v. *Secretary of Health and Human Services*, 851 F.2d 13 (1st Cir. 1988); *Robinson* v. *Bowen*, 828 F.2d 71 (2d Cir. 1987); and *Healea* v. *Bowen*, 871 F.2d 48 (7th Cir. 1986).

Discussions of Comments

Comments were received from three organizations in response to the Notice of Proposed Rulemaking published in the **Federal Register** on September 15, 1987 (52 FR 34813). A summary of the comments submitted and our responses follow.

Comment

One commenter requested that the proposed rules not be adopted and the regulations be left as they are. Only income which is available should be included when determining what the SSI monthly benefits will be. In cases where a person's legal obligations, such as child support, are being paid directly out of his or her income, the person never has the income available. To allow the proposed changes in the regulations would undercut the purpose of the Act, which assures recipients basic income with which to meet their subsistence needs for food, clothing and shelter.

Response

The proposed regulations did not reflect a change in policy. It has been longstanding SSI policy that amounts withheld from earned and unearned income for payment of a debt or other legal obligation are included in income for purposes of determining eligibility and payment amount under the SSI program. However, up to now, our regulations have explicitly provided only for considering garnished income and payments such as Medicare premiums to be included in unearned income for SSI purposes; and gross wages (before any deductions) to be included in earned income. The proposed rules would make it explicit that any income withheld to pay a debt or other legal obligation would be considered income. Since such income is used to pay off an obligation, it is considered available income.

Concerning the child support comment, if the SSI program were not to consider monies withheld for child support as income, the SSI program, in effect, would be subsidizing individuals' child support obligations.

In addition, considering as income only the amount of money received after payment of a debt or legal obligation could lead to manipulation of obligations to offset income and, thus, could increase Federal/State assistance. That is, an individual could choose to pay his indebtedness by having it deducted from income received rather than paying the debt after receiving the income. In effect, the debt would be paid off at the expense of the program. This is not the intent of a means-tested program.

Comment

One commenting organization believes the proposed rules will affect those who have incurred an overpayment on a Social Security claim. It takes exception as to how we treat people who have been overpaid Social Security benefits. It suggests, in effect, that SSI is being reduced to collect Social Security overpayments.

Response

The proposed regulations do not affect how SSA treats people who have been overpaid Social Security benefits. SSA already has specific regulatory authority at 20 CFR 416.1123(b)(1) to count as unearned income the gross amount of the title II benefit (including the debt reduction amount), unless the individual also was receiving SSI at the time the overpayment occurred and the overpaid amount was used then to figure the SSI benefit. (Not to count the overpayment would, in effect, result in the SSI program subsidizing the collection of the Social Security overpayment). These proposed rules would clarify the current regulations on counting title II benefit overpayments; they would not change them.

Comment

One commenter suggests that the effect of the proposed rules is to punish people who are working, because their earnings can be reached by a court judgment. As a result, many of these people choose not to work and keep SSI benefits as their sole income, as the SSI benefits cannot be reached by court order.

Response

We have had no indication that recipients choose not to work because they fear court judgments. Moreover, there are numerous incentives available for recipients who want to try to work, and our experience has been that the work incentives have encouraged work activity. While it is true that gross earnings are considered income for SSI purposes, much of that income (whether garnished or not) is excluded by law in determining SSI eligibility and payment amount. SSI recipients who work are in a better financial position than those who do not.

Comment

One commenter indicated that the regulations, as proposed, will impose a severe hardship on elderly couples where one of the individuals (for example, the husband) is in a nursing home. In States where Medicaid eligibility is determined on the basis of SSI financial eligibility, counting the husband's support obligations as income to him could preclude his Medicaid eligibility and result in his eviction from the nursing home. The applicant for Medicaid is faced with a choice of either not paying the court-ordered payment and risking being held in contempt of court, or making the payment and still not being eligible for Medicaid.

Response

As previously stated, it has been longstanding SSI policy that amounts withheld from earned and unearned income for payment of a debt or other legal obligation are included in income for purposes of determining eligibility and payment amount under the SSI program. The proposed regulations do not reflect any change in that policy.

In addition, when one member of a couple (e.g., the husband) is in a nursing home, not counting the husband's support obligations as income to him could result in manipulation of those obligations to offset income and, thus, increase Federal/State assistance. In effect, the husband's support obligations would be paid off at the expense of the program. This is not the intent of a means-tested program.

Under the provisions of the Medicare Catastrophic Coverage Act of 1988, States could elect in determining Medicaid eligibility to disregard garnished income or income which has been designated by court order for specific use. This income disregard is available to the extent that it will not result in the State exceeding the income limitations specified in section 1903(f) of the Act. Section 1902(r)(2)(A) of the Act (subject to specific Federal Financial Participation (FFP) limits) affords States the option to use more liberal income and resource eligibility methodologies for determining Medicaid eligibility for individuals who are not receiving cash assistance than those which are employed by the cash assistance programs.

In addition, the regulations will have no Medicaid consequences for States within the Ninth Circuit because of a Ninth Circuit decision which precludes Medicaid from using the SSI rules which count court-ordered support payments.

This Ninth Circuit decision, *Department of Health Services* v. *Secretary of Health and Human Services*, which was cited by the commenter, was issued less than 2 months prior to the publication of the Notice of Proposed Rulemaking. The Court of Appeals, therefore, was addressing the SSI policy on the treatment of court-ordered support payments without the benefit of seeing the Secretary's proposed statement and clarification of the longstanding policy that income obligated for support payments is considered as income. The court apparently assumed that there was no SSI policy on this issue and reasoned that since no explicit exclusion was necessary to exclude this income and since support payments are considered as income to the recipient, it would not consider such payments as income to the payer. Under the existing section 20 CFR 416.1123(b), however, it has always been SSI policy to count income which has been withheld to meet other obligations. These new regulations merely set forth this policy more clearly and explain its underlying rationale. Since the Ninth Circuit discussed the SSI policy only in the context of a Medicaid case and without knowledge of the actual policy or the clarification later set forth in the Notice of Proposed Rulemaking, we do not believe that SSA is bound by this interpretation. Since we do not believe that the Ninth Circuit's construction of the SSI statute is compelled by either the statute or the United States Constitution, we are proceeding with this final rule as it applies in the SSI program.

Comment

If an SSI recipient were orderd by a court to pay alimony to a spouse who lives apart from him, and that spouse also receives SSI, SSA would count the contributed amount as income to each person and reduce each person's SSI benefit. The commenter states that in such cases, the alimony is counted twice—to the payer and to the payee. Alimony should only be counted as income once. Since Congress has mandated that alimony be considered income to the payee, it should not be income to the payer.

Response

We do not count alimony twice—as income to each person. Money paid as alimony is only income to the payee of the alimony. The monies from which the alimony payments are derived (e.g., wages, pension, etc.) are considered income to the payer in the month received.

When money changes hands, it takes on a different character each time it passes from one person (or entity) to another. In the situation described by the commenter, the money is not counted twice to the same household. The individuals are living in separate households for SSI purposes. When the legal obligation of an individual is met by a reduction of either earned or unearned income for the payment of alimony, that individual has in effect realized the benefit of that earned or unearned income. When the individual's spouse receives the alimony payments, such money is income to the spouse for SSI purposes since it can be used to meet food, clothing, or shelter needs.

Comment

One commenter drew a distinction between court-ordered support obligations and other legal debts, stating that legal debts to creditors are clearly distinguishable from support obligations. The underlying debt to creditors represents an expenditure which benefited the recipient. The obligation to pay alimony is a duty, not a debt. A dependent is not in the same category as a creditor. In the typical debtor/creditor relationship both the debtor and the creditor have voluntarily entered into the transaction to the benefit of each. A spouse's claim to support is based on public policy grounds, not the debtor/creditor relationship.

Response

While we do not disagree that there are distinctions between a debtor/creditor relationship and the obligation to pay alimony, the overall result, we believe, is basically the same; i.e., the payer benefits financially from the satisfaction of the debt/obligation. It is not the purpose of the SSI program to subsidize any types of indebtedness whether that indebtedness results from a debtor/creditor relationship or from an obligation imposed by public policy.

Accordingly, the proposed regulations are adopted without significant change as set forth below.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations will not result in costs or savings, or otherwise meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, is not required.

Paperwork Reduction Act of 1980

These regulations do not impose reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Programs No. 13.807, SSI Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, SSI.

Dated: June 13, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: October 29, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 416 of title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631, of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154; sec. 2639 of Pub. L. 90–363, 98 Stat. 1144.

2. Section 416.1102 is revised to read as follows:

§ 416.1102 What is income.

Income is anything you receive in cash or in kind that you can use to meet your needs for food, clothing, and shelter. Sometimes income also includes more or less than you actually recieve (see § 416.1110 and § 416.1123(b)). In-kind income is not cash, but is actually food, clothing, or shelter, or something you can use to get one of these.

3. In § 416.1110, the introductory text preceding paragraph (a) is revised to read as follows:

§ 416.1110 What is earned income.

Earned income may be in cash or in kind. We may include more of your earned income than you actually receive. We include more than you actually receive if amounts are withheld from earned income because of a garnishment or to pay a debt or other legal obligation, or to make any other payments. Earned income consists of the following types of payments:

* * * * *

4. In § 416.1123, paragraph (b)(2) is revised to read as follows:

§ 416.1123 How we count unearned income.

* * * * *

(b) *Amount considered as income.*

* * *

(2) We also include more than you actually receive if amounts are withheld from unearned income because of a garnishment, or to pay a debt or other legal obligaton, or to make any other payment such as payment of your Medicare premiums.

* * * * *

[FR Doc. 91–2057 Filed 1–28–91; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R–90–1475; FR–2487–P–01]

RIN 2502–AE51

Single Family Insurance Claim Settlements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: At present, there are no regulatory provisions specifying the time period within which mortgagees may submit applications for supplementary FHA insurance benefits. The Department has, however, instructed lenders to file these supplementary claims within one year from the date of the original insurance settlement. The instructions for such claims are contained in the Instructions for Single Family Application for Insurance Benefits, Form-HUD 27011. This rule changes the one-year time frame to six months and sets forth in the Code of Federal Regulations the requirement that lenders conform to a six-month filing period for supplementary claims.

EFFECTIVE DATE: February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph Bates, Jr., Acting Director, Single Family Servicing Division, Department of Housing and Urban Development, room 9180, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1672. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Currently, HUD pays approximately 90,000 single family mortgage insurance claims annually, and it is estimated that for Fiscal Year 1990 claim payments will exceed $5 billion. In addition, about 9,000 supplemental claims are processed each year. Many of these supplemental claims filed by lenders are for relatively small amounts.

The Department has determined that a significant number of the approximately 9,000 supplemental claims filed by mortgagees each year are attributable to careless or inadequate preparation when submitting the original claim. Each supplemental claim requires manual review, and the processing costs to HUD are high. In addition, HUD has had to retain the original claim file on site indefinitely to provide information for the processing of later supplementary claims. This also increases processing costs. For these reasons, HUD is limiting payment of supplemental claims to those submitted within six months of the date of Form HUD–27011, Part B, settlement. This will allow HUD to reduce some of these costs and will encourage mortgagees to reconcile their claims promptly. Exceptions will be allowed where a deficiency judgment is requested or required or where the Commissioner otherwise expressly permits an extension of this time period.

The Department now provides administrative instructions to lenders requiring supplementary claims to be filed within one year of the date of the original insurance settlement. This information is contained in the Instructions for Single Family Application for Insurance Benefits, Form HUD–27011. This rule formalizes, in the Code of Federal Regulations, the requirement that there be a deadline on the filing of supplemental claims. It also changes the one-year period to six months.

The reduction in time to file supplementary claims is supported by the results of several studies conducted or authorized by the Department, including those prepared by Irving Burton Associates. These studies indicated a need to reduce the length of time during which supplemental claims would be permitted. The Department believes that six months is an adequate time for completion of this follow-up claim process.

Public Comments

On May 25, 1990 the Department published at 55 FR 21620 a proposed rule, the text of which is identical to that in this final rule. Six public comments were received with respect to the proposed rule—two from national trade organizations and four from private mortgage companies. What follows is a description of the substantive issues raised by the commenters.

1. *Many claim filing delays are beyond the lender's control.* Four commenters raised this issue. Typical was the comment of the Mortgage Bankers Association of America. While agreeing that "under normal circumstances, six months is an adequate amount of time to file a

supplemental claim," they expressed concern that:

Lenders depend on outside third parties such as investors, contractors and insurance companies for information, refunds and/or billings to file supplemental claims. There are situations when a lender will not be able to file a supplemental claim within the six month time period. When an investor such as Fannie Mae or Freddie Mac is the owner of a mortgage, the claim payment and the claim payment analysis is forwarded directly to the investor. In these situations, the lender is not afforded the opportunity to immediately verify any discrepancies in the amount of the claim payment sought and what is actually received by the investor. Nor can the lender immediately verify that all reimbursable expenses were claimed on the original claim.

HUD's regulation 24 CFR 203.382, cancellation of hazard insurance, requires the lender to estimate the hazard insurance refund due and almost always the lender will have to submit a supplemental claim. Insurance companies may or may not refund the unearned premium on a timely basis. It is inequitable to penalize lenders because of the inaction of third parties when refunds and/or billings are received beyond the six month period.

HUD response: The Department provides both the servicer and holder identified on the claim with identical claim payment information. The fact that investors such as Fannie Mae or Freddie Mac may hold the servicer responsible if the claim payment is less than anticipated does not affect the servicer's responsibility to prepare and file claims accurately and in a timely manner. It is the lender's responsibility to follow up with all outside third parties to ensure complete and timely claim submissions.

If a hazard insurance premium (HIP) refund is estimated under 24 CFR 203.382, HUD will permit a correction. A supplemental claim is the vehicle for correction since the lender is required by regulation to estimate the HIP refund. If the "correction" is received by HUD within two weeks of the issuance of the insurer's notice of adjustment, the claim will be honored and will meet the criteria "expressly authorized" as provided in § 203.401(c)(2) of this rule.

2. *HUD processing performance for paying supplemental claims.* Two commenters raised this issue. As one commenter stated:

HUD should also establish a standard for paying supplemental claims. It is estimated that supplemental claim payments are received by lenders up to eight months after claim filing. This period should be drastically reduced to mirror claim payment on original filings and in any event should not exceed thirty days.

HUD response: HUD's automated systems for processing and paying claims is being enhanced to enable the Department to pay most supplemental claims via the automated system. This initiative will allow the Department to process properly prepared supplemental claims more efficiently. However, the large volume of incorrect and incomplete claim submissions submitted will continue to delay the processing and payment of all supplemental claims. Excluding submissions to correct hazard insurance refund estimates, some lenders continue to submit 3, 4 or more supplemental claims for the same case, each claim resulting from the lenders separate reconciliations for different line items. This practice is a waste of time for both the lender and for HUD.

3. *There is an inequity in allowing mortgagee only six months to file a supplemental claim while HUD has three years to collect claim overpayment.* Four commenters raised this issue. Typical was the comment of the LOGS Group.

Our initial comment is that there seems to be a basic unfairness promulgated in the proposal given HUD's policy of relying on a three year period to collect claim overpayments while restricting lenders to a six month period to collect underpayments. Since billing errors and disputes typically are not discovered or resolved until some internal or external audit or reconciliation is concluded, the proposed rule places a lender under an unreasonable timeframe in which to complete any review of accounts. It should be recognized that servicers perform a function for investors that have their unique schedule for audits and reconciliations. National servicers deal with a multitude of vendors and on occasions, their accounts are in need of correction and reconciliation. The Department cannot expect that all servicers, investors and vendors are capable of completing any necessary reviews within a six month period. HUD should not attempt to enforce more restrictive standards on the industry than it is prepared to impose upon itself.

HUD response: There is no basic unfairness in this situation. In the interest of ensuring that lender's receive their claim payment promptly, HUD for the most part pays the claim without reviewing any supporting information. Thus, the claim process is a matter largely under the control of the lender with HUD's post claim review being conducted later. HUD insistance that lenders complete and file their claims in a reasonable time is a matter completely separable from HUD's post claim review process and the time frame HUD allows itself for conducting its reviews.

4. *Standards should be established for exercise of Commissioner's discretion in allowing extensions.* Two commenters raised this issue. One commenter stated:

Exceptions to the six-month supplemental claim filing time limit should also be allowed for:

—Cases wherein HUD requests a mortgagee to pay an item (i.e. electric bills, gas bills, etc.) *after* the property was conveyed to HUD and to submit a supplemental claim for reimbursement.

—Cases wherein a HUD audit disclosed an underpayment by HUD to the mortgagee.

The second commenter stated:

As proposed, the rule permits extensions when a deficiency judgment is required or requested and on other occasions as "expressly" authorized. We believe that it is appropriate to establish some semblance of a standard for the exercise of the commissioner's discretion. For example, are extensions to be routinely granted if a servicer is unable to clear a discrepancy in a bill with a vendor within a six month period? Further, it is suggested that the rule be clarified to indicate that the exercise of discretion does not constitute a "waiver" of the regulations as that term is used in the HUD Reform Act of 1989.

HUD response: HUD recognizes the need for simplification and clarification in the process of requesting and reviewing extensions. A new extension form will be introduced in the near future which will be used as a turn-around document for both the mortgagee's request and HUD's response. This form will simplify and standardize all requests for extensions of time. Accompanying the introduction of this form, HUD will offer clarification on many of the more common problems associated with extensions such as those cited in the first comment above.

However, except for costs associated with deficiency judgments, which are specifically excluded from the six month timeframe, the servicer should, in almost every instance, be able to determine the final costs associated with the conveyance on or before the date the fiscal data is submitted.

Extensions granted by HUD under the rule's proposed § 203.401(c)(2) would not constitute a "waiver" of the regulations as that term is used in the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235).

5. *Mortgagees should not be penalized because HUD can only handle supplemental claims on a manual basis.* Two commenters raised this issue. As one commenter stated:

Mortgagees should not be asked to bear the costs associated with an inability to correct a bill to the government (submission of claim) because HUD's system is designed only to handle supplemental claims on a manual basis. The technology exists today that would enable lenders to both file and correct claims on an "on line" basis. If HUD were to adopt such a system, the elimination of data entry costs achievable by a direct lender-HUD

interface would more than offset any special expenses in processing supplemental claims for a more extended period than that proposed.

HUD response: We appreciate the commenter's suggestion for improving our claim payment system. Our claims system is presently being improved to allow the Department to process and pay supplemental claims by means of an automated system. However, the "manual" aspect of our claims processing is not the issue. Rather, HUD wants to establish a better discipline in the claims process and be able to close out claims sooner. Again, many supplementals are submitted because of errors made on the initial claim submission. If lenders submitted only complete and accurate claims (including all required documentation), HUD could process and pay supplemental claims in the same time frame as it currently processes and pays Part A claims.

6. *HUD should define "supplemental claim."*

This question was raised by one commenter who stated:

HUD should define "Supplementary Claims". Quite often, HUD unjustifiably curtails a conveyance and/or claim settlement usually for alleged late mailings of the 27011 Part A–C when, in fact, the mortgagee has receipts/driver manifests supporting overnight delivery. This, then, requires the lender to prepare, support and submit a claim for reimbursement of the curtailed conveyance and/or claim settlement, which should not have been curtailed from the outset. The word "supplementary" as defined by Webster's Dictionary means "additional—added as a supplement".

In the case of an unjustified curtailment by HUD, the submission of a "supplemental claim", which is currently the only method provided by HUD to obtain reimbursement after conveyance and claim settlements have been issued, does not constitute an "additional" submission of an item(s) which was not previously included in the initial conveyance/claim, rather a submission for reimbursement of an unjustified curtailment, which should not have been curtailed to begin with.

HUD response: A supplemental claim will remain the mechanism by which mortgagees shall submit any adjustment or correction necessary after the mortgagee files Form HUD–27011, Parts A and B.

As a matter of policy, HUD will honor supplemental claims representing corrections for Hazard Insurance Premium (HIP) adjustments if the "correction" is received by HUD within two weeks of the issuance of the insurer's notice of adjustment. Under these circumstances, the claim will be honored and will meet the criteria "expressly authorized" as provided in § 203.401(c)(2) of this rule.

An "unjustified curtailment" correction is also a separate issue. A supplemental claim will remain the mechanism by which the mortgagee may seek to recover any underpayment.

Often in reviewing courier receipts, we have found errors in the addressing which delayed proper receipt. We have also noted that the claim was not mailed on the date on which it was prepared. As with any other supplemental claim, lenders may request an extension of time from the local HUD office if the claim cannot be submitted before the expiration of the six-month period.

7. *There should be a "phased in" implementation of this rule.* One commenter stated:

If HUD does reduce the supplemental claim filing time limit to six months, they should provide a specific implementation date with claims filed from a certain date forward so as not to affect pending supplemental claims to be filed, which may already be beyond the six months.

HUD response: This rule will take effect 30 days after its date of publication. The six-month requirement established in the rule will apply to claims filed (initial submission of HUD form 27011, Part A) after the rule's effective date.

8. *HUD actions in interpreting regulations can cause delay in filing supplemental claims.* One commenter notes:

In addition to the above problem, ANMC notes that HUD regulations regarding the submission of claims are not always clear in their interpretation. The various HUD field offices issue notices to mortgagees concerning their interpretation of the regulations setting forth whether certain expense items are payable. The effect of these notices requires ANMC to audit its claims previously submitted and file supplemental claims which result in additional funds due and owing to ANMC, or funds reimbursable to HUD for expenses previously charged based on these "revised" interpretations.

HUD response: The Department does not believe this issue will be a problem in the future. The responsibility for the interpretation and enforcement of HUD's claim regulations and instructions will rest with HUD Headquarters.

In certain circumstances, HUD Headquarters will direct Field Offices to issue additional instruction to mortgagees which will be specific to the jurisdiction of the Field Office (such as with preservation and protection costs limits). In the case of conflicting guidance, the instructions issued by Headquarters will prevail.

Procedural Requirements

Major Rule

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Semiannual Agenda

This rule is listed in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530, 44552) under Executive Order 12291 and the Regulatory Flexibility Act at Sequence Number 1211.

The Catalog of Federal Domestic Assistance program numbers are 14.117, 14.119, 14.120, 14.121, 14.122, 14.123, 14.133, 14.165 and 14.166.

Regulatory Flexibility Act

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would have only a minor impact on existing HUD procedures associated with mortgage insurance claims.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule do not have Federalism implications and, thus, are not subject to review under the Order. The rule is limited to revising, and formalizing in the Code of Federal

Regulations, HUD's supplemental claim procedures. No significant programmatic or policy changes would result from its promulgation.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

List of Subjects in 24 CFR part 203

Mortgage insurance.

Accordingly, 24 CFR part 203 is amended as follows:

1. The authority citation for part 203 continues to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Section 203.401 is amended by adding a new paragraph (c) to read as follows:

§ 203.401 Amount of payment—conveyed properties and non-conveyed properties.

* * * * *

(c) The mortgagee may not file for any additional payments of its mortgage insurance claim after six months from payment by the Commissioner of the final payment except for:

(1) Cases where the Commissioner requests or requires a deficiency judgment.

(2) Other cases where the Commissioner determines it appropriate and expressly authorizes an extension of time.

For the purpose of this section, the term "final payment" shall mean, in the case of claims filed for conveyed properties, the payment under subpart B of this part which is made by the Commissioner based upon the submission by the mortgagee of all required documents and information filed pursuant to § 203.365 of this part. In the case of claims filed under claims without conveyance of title, "final payment" shall mean the payment which is made by the Commissioner based upon submission by the mortgagee of all required documents and information filed pursuant to §§ 203.368 and 203.401(b) of this part.

3. Section 203.404 is amended by adding a new paragraph (c) to read as follows:

§ 203.404 Amount of payment—assigned mortgages.

* * * * *

(c) The mortgagee may not file for any additional payments of its mortgage insurance claim after six months from final payment by the Commissioner. For the purpose of this section, the term "final payment" shall mean the payment which is made by the Commissioner based upon the submission by the mortgagee of all required documents and information pursuant to § 203.351 of this part.

Dated: January 23, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 91–2087 Filed 1–28–91; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of an amendment to the Utah permanent regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of changes to title 40, chapter 10, of the Utah Code Annotated (U.C.A. 1953), otherwise known as the Utah Coal Mining and Reclamation Act (the Utah Act). The amendment pertains to rulemaking authority and procedures, the deadline for review and proposal of revision of rules, and the deadline for revision of rules. The amendment is intended to improve the operational efficiency of Utah's program.

EFFECTIVE DATE: January 29, 1991.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue SW., suite 310, Albuquerque, NM 87102; Telephone (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Progam

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. Information regarding the general background for the Utah program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Actions taken subsequent to the approval of the Utah program are codified at 30 CFR 944.15, 944.16, and 944.30.

II. Submission of Amendment

By letter dated October 10, 1990 (administative record No. UT–589), Utah submitted a proposed amendment to its program pursuant to SMCRA. In the amendment, Utah reproposed State-initiated provisions that it previously withdrew (administrative record No. UT–568) from another amendment (administrative record No. UT–540). Specifically, Utah proposed to add provisions to the Utah Act at U.C.A. 40–10–6.5 (1), (2), and (3) (rulemaking authority and procedures) and U.C.A. 40–10–6.6 (1) and (2) (deadline for review and proposal of revision of rules, and deadline for revision of rules).

OSM announced receipt of the proposed amendment in the October 30, 1990, **Federal Register** (55 FR 45618) and in the same notice, opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment. The public comment period closed on November 29, 1990. The public hearing, scheduled for November 26, 1990, was not held because no one requested an opportunity to testify.

III. Director's Findings

After a thorough review, the Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the proposed amendment submitted by Utah on October 10, 1990, is no less stringent than SMCRA and no less effective than 30 CFR chapter VII, as discussed below. However, the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and OSM's ongoing oversight of the Utah program.

1. U.C.A. 40–10–6.5 (1), (2), and (3), Rulemaking Authority and Procedures

Utah proposed to amend the Utah Act by adding a new section at U.C.A. 40–10–6.5, which establishes rulemaking