burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective immediately upon publication in the FEDERAL REGISTER.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-625 (33 F.R. 10644) AD 68-15-4 is amended as follows:

Amend the compliance requirement to read:

Compliance required within the next 1,200 hours time in service after the effective date of this AD, unless already accomplished.

The amendment becomes effective on September 5, 1968.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Los Angeles, Calif., on August 22, 1968.

LEE E. WARREN,
Acting Regional Director,
FAA Western Region.

[F.R. Doc. 68-10512; Filed, Aug. 29, 1968; 8:49 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER C—AGE DISCRIMINATION IN EMPLOYMENT

PART 860—INTERPRETATIONS

Miscellaneous Amendments

Pursuant to the Age Discrimination in Employment Act of 1967 (81 Stat. 602; 29 U.S.C. 620) and Secretary's Orders No. 10-68 (33 F.R. 9729) and No. 11-68 (33 F.R. 9690), 29 CFR Part 860 is hereby amended by adding thereto new §§ 860.50, 860.95, 860.105, and 860.110, to read as set forth below.

As these new sections contain only interpretative rules and are not substantive, subsections (b), (c), and (d) of 5 U.S.C. 553 do not apply. I do not believe that either general notice of proposed rule making and public participation therein or delay in effective date would serve a useful purpose here. Accordingly, these rules shall be effective immediately.

1. The new § 860.50 reads as follows:

§ 860.50 "Compensation, terms, conditions, or privileges of employment * * *".

(a) Section 4(a)(1) of the Act specifies that it is unlawful for an employer "to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;"

(b) The term "compensation" includes all types and methods of remuneration paid to or on behalf of or received by an employee for his employment.

(c) The phrase "terms, conditions, or privileges of employment" encompasses a wide and varied range of job-related factors including, but not limited to, job security, advancement, status, and benefits. The following are examples of some of the more common terms, conditions, or privileges of employment: The many and varied employee advantages generally regarded as being within the phrase "fringe benefits," promotion, demotion or other disciplinary action, hours of work (including overtime), leave policy (including sick leave, vacation, holidays), career development programs, and seniority or merit systems (which govern such conditions as transfer, assignment, job retention, layoff and recall). An employer will be deemed to have violated the Act if he discriminates against any individual within its protection because of age with respect to any terms, conditions, or privileges of employment, such as the above, unless a statutory exception applies.

2. The new § 860.95 reads as follows:

§ 860.95 Job applications.

The term "job applications", within the meaning of the recordkeeping regulations under the Act (Part 850 of this chapter), refers to all inquiries about employment or applications for employment or promotion including, but not limited to, résumés or other summaries of the applicant's background. It relates not only to preemployment inquiries but to inquiries by employees concerning terms, conditions, or privileges of employment as specified in section 4 of the statute. As in the case with help wanted notices or advertisements (see § 860.92), a request on the part of an employer, employment agency, or labor organization for information such as "Date of Birth" or "State Age" on an employment application form is not, in itself, a violation of the Age Discrimination in Employment Act of 1967. But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate a discrimination based on age, employment application forms which request such information in the above, or any similar phrase, will be closely scrutinized to assure that the request is for a permissible purpose and not for purposes proscribed by the statute. That the purpose is not one proscribed by the statute should be made known to the applicant, as by a reference on the application form to the statutory prohibition in language to the following effect: "The Age Discrimination in Employment Act of 1967 prohibits discrimination on the basis of age with respect to individuals who are at least 40 but less than 65 years of age."

3. The new § 860.105 reads as follows:

§ 860.105 Bona fide seniority systems.

Section 4(f)(2) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of a bona fide seniority system * * * which is not a subterfuge to evade the purposes of this Act * * *."

(a) Though a seniority system may be qualified by such factors as merit, capacity, or ability, any bona fide seniority system must be based on length of service as the primary criterion for the equitable allocation of available employment opportunities and prerogatives among younger and older workers. In this regard it should be noted that a bona fide seniority system may operate, for example, on an occupational, departmental, plant, or company wide unit basis.

(b) Seniority systems not only distinguish between employees on the basis of their length of service, they normally afford greater rights to those who have the longer service. Therefore, adoption of a purported seniority system which gives those with longer service lesser rights, and results in discharge or less favored treatment to those within the protection of the Act, may, depending upon the circumstances, be a "subterfuge to evade the purposes" of the Act. Furthermore, a seniority system which has the effect of perpetuating discrimination which may have existed on the basis of age prior to the effective date of the Act will not be recognized as "bona fide."

(c) Unless the essential terms and conditions of an alleged seniority system have been communicated to the affected employees and can be shown to be applied uniformly to all of those affected, regardless of age, it will also be regarded as lacking the necessary bona fides to qualify for the exception.

(d) It should be noted that seniority systems which segregate, classify, or otherwise discriminate against individuals on the basis of race, color, religion, sex, or national origin, are prohibited under Title VII of the Civil Rights Act of 1964, where that Act otherwise applies. Neither will such systems be regarded as "bona fide" within the meaning of section 4(f)(2) of the Age Discrimination in Employment Act of 1967.

4. The new § 860.110 reads as follows:

§ 860.110 Involuntary retirement before age 65.

Section 4(f)(2) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of * * * any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual * * *." Thus, the Act authorizes involuntary retirement irrespective of age, provided that such retirement is pursuant to the terms of a retirement or pension plan meeting the requirements of section 4(f)(2). It should, however, be noted in this connection that section 5 of the Act directs the Secretary of Labor to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate

legislative recommendations to the President and to the Congress.

(81 Stat. 602; 29 U.S.C. 620. Secretary's Order No. 10-68, 33 F.R. 9729; Secretary's Order No. 11-68, 33 F.R. 9690)

Signed at Washington, D.C., this 27th day of August 1968.

CLARENCE T. LUNDQUIST,
Administrator.

[F.R. Doc. 68-10519; Filed, Aug. 29, 1968; 8:50 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER P—RECORDS

PART 290—AVAILABILITY TO THE PUBLIC OF DEFENSE CONTRACT AUDIT AGENCY INFORMATION

Exemptions From Public Disclosure

Section 290.10 has been amended to delete subparagraph (3) of paragraph (a).

MAURICE W. ROCHE,
Director, Correspondence and Directives Division OASD (Administration).

[F.R. Doc. 68-10490; Filed, Aug. 29, 1968; 8:47 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 32—HUNTING

Toppenish National Wildlife Refuge, Wash.

The following regulation is issued and is effective on date of publication in the FEDERAL REGISTER

§ 32.12 Special regulations; migratory birds; for individual wildlife refuge areas.

WASHINGTON

TOPPENISH NATIONAL WILDLIFE REFUGE

The public hunting of mourning doves on Toppenish National Wildlife Refuge is permitted on the area designated by signs and/or delineated on maps—special conditions applying are listed on the reverse side of the refuge hunting map. Maps are available at refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 730 Northeast Pacific Street, Portland, Oreg. 97208. Hunting shall be in accordance with all applicable State and Federal regulations.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through September 30, 1968.

JOHN D. FINDLAY,
Regional Director, Bureau of Sport Fisheries and Wildlife.

AUGUST 22, 1968.

[F.R. Doc. 68-10471; Filed, Aug. 29, 1968; 8:46 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER A—GENERAL

PART 8—COLOR ADDITIVES

Subpart D—Listing of Color Additives for Food Use Exempt From Certification

DIOCTYL SODIUM SULFOSUCCINATE AS DILUENT IN COLOR ADDITIVE MIXTURES; CONFIRMATION OF EFFECTIVE DATE

In the matter of amending § 8.300 to provide for the safe use under prescribed conditions of dioctyl sodium sulfosuccinate as a diluent in color additive mixtures for food use exempt from certification:

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c)(2), (d), 74 Stat. 399-403; 21 U.S.C. 376 (b), (c)(2), (d)) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), notice is given that no objections were filed to the order in the above-identified matter published in the FEDERAL REGISTER of July 11, 1968 (33 F.R. 9952). Accordingly, the amendment promulgated by that order will become effective September 9, 1968.

Dated: August 21, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-10496; Filed, Aug. 29, 1968; 8:48 a.m.]

PART 8—COLOR ADDITIVES

Synthetic Iron Oxide; Confirmation of Effective Date

In the matter of listing and exempting from certification the color additive synthetic iron oxide (21 CFR 8.325) for use in dog and cat foods under prescribed conditions:

1. Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c)(2), (d), 74 Stat. 399-403; 21 U.S.C. 376 (b), (c)(2), (d)) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), notice is given that no objections were filed to the order in the above-identified matter published in the FEDERAL REGISTER of July 11, 1968 (33 F.R. 9953). Accordingly, the regulation (§ 8.325) promulgated by that order will become effective September 9, 1968.

2. Effective September 9, 1968, § 8.501 *Provisional lists of color additives* (33 F.R. 982, 10844) is amended by deleting from paragraph (e) the item "Iron oxide."

Dated: August 21, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-10497; Filed, Aug. 29, 1968; 8:48 a.m.]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

O,O-diethyl O-[p-(Methylsulfinyl) phenyl] Phosphorothioate

A notice was published in the FEDERAL REGISTER of July 2, 1968 (33 F.R. 9619), proposing that a tolerance of 0.02 part per million be established for residues of the insecticide *O,O*-diethyl *O*-[*p*-(methylsulfinyl) phenyl] phosphorothioate in or on bananas.

In response to the proposal, a comment was received from the United Fruit Co., Pier 3, North River, New York, N.Y. 10006, suggesting that the portion of the preamble of said notice reading "around each cluster of the carrying plant" should have read "around each bearing or potentially productive plant and all of the adjacent suckers or followers." The Food and Drug Administration accepts the suggestion and the preamble of the proposal is accordingly considered changed.

No requests were received for referral of the proposal to an advisory committee pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act. Therefore, by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the act (sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e)) and delegated to the Commissioner (21 CFR 2.120), § 120.234 is amended by inserting the following tolerance after the tolerance "0.1 part per million * * *":

§ 120.234 *O,O*-diethyl *O*-[*p*-(methylsulfinyl)phenyl] phosphorothioate; tolerances for residues.

* * * * *

0.02 part per million (negligible residue) in or on bananas.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the

objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e))

Dated: August 21, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-10498; Filed, Aug. 29, 1968; 8:48 a.m.]

PART 121—FOOD ADDITIVES

Subpart D—Food Additives Permitted in Food for Human Consumption

DIETHYL PYROCARBONATE

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 7H2082) filed by Metachem, Inc., 425 Park Avenue, New York, N.Y. 10022, and other relevant material, has concluded that § 121.1117 should be amended (1) to provide for the safe use of diethyl pyrocarbonate in noncarbonated soft drinks and fruit-based beverages as set forth below and (2) to make editorial changes in paragraph (b) (1) and (2). Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.1117(b) is revised to read as follows:

§ 121.1117 Diethyl pyrocarbonate.

* * * * *

(b) It is used or intended for use as a fermentation inhibitor:

(1) In still wines to be added before or during bottling at a level not exceeding 200 parts per million, of which none shall remain when the wine is tested 5 days or more after the date of bottling.

(2) In fermented malt beverages to be added before or during packaging at a level not exceeding 150 parts per million. The treated fermented malt beverage shall not contain more than 5 parts per million of diethyl carbonate when tested 24 hours or more after the time of packaging.

(3) In noncarbonated soft drinks and fruit-based beverages to be added before or during packaging at a level not exceeding 300 parts per million, except beverages or fruit juices for which standards of identity have been established pursuant to section 401 of the act. The treated beverages shall not contain more than 5 parts per million of diethyl carbonate when tested 24 hours or more after the time of packaging.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: August 23, 1968.

J. K. KIRK,
Associate Commissioner for Compliance.

[F.R. Doc. 68-10499; Filed, Aug. 29, 1968; 8:48 a.m.]

SUBCHAPTER C—DRUGS

PART 141—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

Tests Regarding Certification of Antibiotic Drugs

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and delegated to the Commissioner of Food and Drugs (21 CFR 2.120), the following new sections containing specified tests are added to Part 141:

§ 141.501 Loss on drying.

Use the method specified in the individual section for each antibiotic.

(a) *Method 1.* In an atmosphere of about 10 percent relative humidity, grind the sample, if necessary, to obtain a fine powder. When tablets, troches, or capsules are to be tested, use four tablets, troches, or capsules in preparing the sample. Transfer about 100 milligrams of the sample to a tared weighing bottle equipped with a ground-glass stopper. Weigh the bottle and place it in a vacuum oven, tilting the stopper on its side so that there is no closure during the drying period. Dry at a temperature of 60° C. and a pressure of 5 millimeters of mercury or less for 3 hours. At the end of the drying period, fill the vacuum oven with air dried by passing it through a drying agent such as sulfuric acid or silica gel. Replace the stopper and place the weighing bottle in a desiccator over a desiccating agent, such as phosphorous pentoxide or silica gel, allow to cool to room temperature, and reweigh. Calculate the percent of loss.

(b) *Method 2.* Proceed as directed in paragraph (a) of this section, except use a tared weighing bottle or weighing tube equipped with a capillary-tube stopper, the capillary having an inside diameter of 0.20–0.25 millimeter, and place it in a vacuum oven without removing the stopper.

(c) *Method 3.* Proceed as directed in paragraph (a) of this section, except dry the sample at a temperature of 110° C. and a pressure of 5 millimeters of mercury or less for 3 hours.

(d) *Method 4.* Proceed as directed in paragraph (a) of this section, except dry the sample at a temperature of 40° C. and a pressure of 5 millimeters of mercury or less for 2 hours.

(e) *Method 5.* Proceed as directed in paragraph (a) of this section, except dry the sample at a temperature of 100° C. and a pressure of 5 millimeters of mercury or less for 4 hours.

(f) *Method 6.* Proceed as directed in paragraph (a) of this section, except dry the sample at a temperature of 40° C. and a pressure of 5 millimeters of mercury or less for 3 hours.

§ 141.503 pH.

(a) *Apparatus.* Use a suitable pH meter equipped with a glass and a calomel electrode.

(b) *Standardization.* Standardize the pH meter with two buffer solutions that differ by at least 2 pH units and of which one is within 2 pH units of the expected pH value of the sample.

(c) *Sample preparation.* If necessary, dilute the sample with carbon dioxide-free distilled water to the concentration specified in the individual section for each antibiotic.

(d) *Test procedure.* Determine the pH of the sample at 25°±2° C.

§ 141.504 Crystallinity.

Use the method specified in the individual section for each antibiotic.

(a) *Method 1.* To prepare the sample for examination, mount a few particles in mineral oil on a clean glass slide. Examine the sample by means of a polarizing microscope. The particles reveal the phenomena of birefringence and extinction positions on revolving the microscope stage.

(b) *Method 2.* Proceed as directed in paragraph (a) of this section, except to prepare the sample for examination mount a few particles in mineral oil, add 1 drop of ethyl alcohol, and allow to react for about 30 seconds.

§ 141.510 Residue on ignition.

Use the method specified in the individual section for each antibiotic.

(a) *Method 1.* Place approximately 1 gram of the sample, accurately weighed, in a tared porcelain crucible and carefully ignite at a low temperature until thoroughly charred. The crucible may be loosely covered with a porcelain lid during the charring. Add 2 milliliters of nitric acid and 5 drops of sulfuric acid to the contents of the crucible and cautiously heat until white fumes are evolved, then ignite, preferably in a muffle furnace, at 500° C. to 600° C. until