Commission Action

I. Pursuant to the authority in sections 6 and 38(a) of the Investment Company Act of 1940, the Securities and Exchange Commission hereby amends § 270.17a–7 of Part 270 of Chapter II of Title 17 of the Code of Federal Regulations to become effective on November 1, 1974, and to read as follows:

§ 270.17a–7 Exemption of certain purchase or sale transactions between affiliated registered investment companies.

A purchase or sale transaction between registered investment companies, which are affiliated persons, or affiliated persons of affiliated persons, of each other, or between separate series of a registered investment company, shall be exempt from section 17(a) of the Act: *Provided:*

(a) The transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery, of a security traded on a national securities exchange or of a security traded in the over-the-counter market;

(b) If the principal market for such security is a national securities exchange, the transaction is effected at the independent current market price of such security on such principal market. For the purposes of this paragraph, the "current market price" shall be the last independent sale price of such security on such exchange if such security was traded on such exchange on such day, or the average of the highest current independent bid and the lowest current independent offer for such security on such exchange if it was not traded on such exchange on such day;

(c) If the principal market for such security is the over-the-counter market, (1) the security is entered in an inter-dealer quotation system which is sponsored and governed by the rules of a national securities association registered pursuant to section 15A of the Securities Exchange Act of 1934 and which displays quotations for such security on a current and continuous basis, (2) the transaction is effected at the average of the highest current independent bid and the lowest current independent offer for such security as quoted on such quotation system, and (3) at the time of such transaction, such quotation system carries at least two independent current bids and offers furnished or submitted by at least two brokers or dealers with respect to such security;

(d) The transaction is consistent with the policy of each registered investment company, or of separate series of a registered investment company, as recited in its registration statement and reports filed nder the Act; and

(e) No brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with the transaction.

II. The proposed amendments to Item 2.07 of Form N–1R are adopted as set forth below and will become effective for all fiscal years ending on or after December 31, 1974.

Item 2.07 Transactions between registrant or controlled company and affiliated or certain other persons (sections 17(a), 17(b), 17(c), and 21).

* * * * *

(b) If during the fiscal year any of the persons specified below, acting as principal, sold to the registrant, or to any company controlled by the registrant, any security or other property, other than pursuant to any of the exemptions specified in section 17(a) (1) or 17(c) of the Act, cite the specific order, if any, of the Commission pursuant to section 17(b) of the Act relied upon for exemption, or, in the absense of such an order, describe the transaction, identify the persons and the nature of the affiliation with the registrant, and cite the rule, if any, under the Act relied upon for exemption. If Rule 17a–7 was relied upon for exemption, also state the reasons why the registrant purchased and the persons sold such security or property.

(c) If during the fiscal year any of the persons specified in paragraph (b) above, acting as principal, purchased from the registrant, or from any company controlled by the registrant, any security or other property, other than pursuant to any of the exceptions specified in section 17(a)(2) or 17(c) of the Act, furnish the information required in paragraph (b) above, including, if Rule 17a–7 was relied upon for exemption, the reasons why the persons purchased and the registrant sold such security or property.

* * * * *

III. The proposed amendments to Item 2.07 of the EDP Attachment to Form N–1R are adopted as set forth below and will become effective for all fiscal years ending on or after December 31, 1974.

Item 2.07(a) Transactions between registrant or controlled company and affiliated or certain other persons (Sections 17(a), 17 (b), 17(c) and 21). State whether registrant reported in Item 2.07 of its annual report on Form N–1R for fiscal year any transaction which was not exempted by an order of the Commission or exempted or excepted by any provision of sections 17 or 21 of the Act or any Rule thereunder.

-------- (Yes or No)

Item 2.07(b) Certain Purchase or Sale Transactions Between Certain Registered Investment Companies (Rule 17a–7). State whether registrant reported in Item 2.07 of its annual report on Form N–1R for fiscal year any transaction which was exempted by Rule 17a–7 under the Act.

-------- (Yes or No)

(Sec. 6(c), 30, 38(a), Pub. L. 76–768, 54 Stat. 800, 836, 841 (15 U.S.C. 80a–6(c), 80a–29, 80a–37(a); sec. 13, 15(d), Pub. L. 73–291, 48 Stat. 894, 895 (15 U.S.C. 78m, 78o(d)))

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

SEPTEMBER 13, 1974.

[FR Doc.74–23220 Filed 10–4–74;8:45 am]

Title 20—Employees' Benefits

CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Regs. 16]

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart O—Representation of Parties

On December 14, 1973, there was published in the FEDERAL REGISTER (38 FR 34469) a notice of proposed rulemaking with a proposed new subpart (Subpart O) of Regulations No. 16. The proposed regulations were designed to implement the provisions of title XVI of the Social Security Act, as amended by the Social Security Amendments of 1972 (Pub. L. 92–603), relating to representation of parties in proceedings under the supplemental security income program. They provide the rules and procedures governing the representation of parties in proceedings as provided in section 1631(d)(3) of the Social Security Act. The proposed provisions parallel the provisions of 20 CFR 404.971 through 404.990, dealing with the representation of parties in proceedings under titles II and XVIII of the Social Security Act, except that there is no provision in these proposed regulations for the direct payment by the Social Security Administration of fees to attorneys out of the past-due benefits of claimants. Interested parties were given 30 days within which to submit their data, views, and arguments.

Only two letters of comment have been received in response to the proposal.

In the proposed § 416.1503(b)(1) there is a provision that any person (other than an attorney) who "is of good character, is in good repute, and has the necessary qualifications to enable him to render valuable assistance to an individual in connection with his claim" may be appointed a representative. It was suggested that this provision is too vague and would render arbitrary the acceptance or preclusion of a representative. The provision paraphrases the regulation governing the representation of parties under titles II and XVIII and is intended to be the uniform criterion applied for the appointment of all representatives before the Social Security Administration. It is purposely patterned after the language of the statute (section 1631(d)(3)) so as not to restrict the acceptance of appointments to any set of limited qualifications. Rather than preventing the selection of various types or classes, such language provides discretion to select individuals meeting the basic fundamental qualifications for sound representation.

In the proposed § 416.1503(b)(3) there appears as a condition under which a person other than an attorney may represent a claimant in a proceeding before the Social Security Administration, that he is "not, pursuant to any provision of law, otherwise prohibited from acting as a representative." The comment was made that in some States individuals who are not attorneys would be precluded from representing claimants before the Social Security Administration. This has not been the case in the past with respect to representation under titles II and XVIII. The statute governing representation of parties before the Social Security Administration is a Federal statute and supersedes State statute with respect to representation before the Social Security Administration. Therefore, it would not be necessary to construe a State statute as precluding such representation. Rather, this provision was intended to preclude representation not permissible under Federal law, e.g., a provision prohibiting Federal employees from representing individuals in claims against the Government.

Another comment suggested that a distinction be made between non-lawyers who seek a fee and those who do not seek a fee, and that those who do not seek a fee be exempted from the regulations. Unfortunately, this would not be consistent with the statutory provision governing representation of parties. The provision governing the appointment of representatives is separate and distinct from that governing approval of fees. The first is to assure, to the extent possible, that a claimant will have adequate and competent representation. The latter is to assure that he is no charged unreasonable fees. The criteria in determining whether or not the proposed representative will adequately represent the interests of the individual are equally as important when the representative is not seeking a fee as when he is. These criteria do not preclude the use of paralegal personnel or individuals participating in legal training. The regulation merely requires that the appointment by the individual be submitted in writing. No writing is required for attorneys as there is a presumption, in light of his position in the legal profession, that his services have been requested.

As a practical matter, in the past appointments have rarely been refused unless the proposed representative was shown to be blatantly inadequate.

There was a further comment expressing concern that, because the proposed regulations are more stringent than those issued by the Social and Rehabilitation Service, there would be dual standards for representation of claimants for Aid to Families with Dependent Children and for representation of claimants for Aid to the Aged, Blind, and Disabled. However, the respective regulations are designed to implement separate and distinct titles of the Social Security Act. It is desirable, from a procedural standpoint, to have standards with respect to the representation of claimants before the Social Security Administration as uniform as possible with respect to all the titles of the Act which it administers.

Accordingly, the proposed regulations are adopted with only an editorial change and are set forth below.

Effective date. These regulations will be effective on October 7, 1974.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program.)

Dated: August 19, 1974.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: October 1, 1974.

CASPAR W. WEINBERGER,
Secretary of Health, Education, and Welfare.

Chapter III of Title 20 of the Code of Federal Regulations is amended by adding new Subpart O to Part 416 to read as follows:

Subpart O—Representation of Parties

AUTHORITY: Secs. 1102 and 1631(d)(3), 49 Stat. 647, as amended, 86 Stat. 1475 (42 U.S.C. 1302, 1383).

Subpart O—Representation of Parties

§ 416.1501 Appointment of representative.

Any individual who is or claims to be an eligible individual or an eligible spouse in any proceeding before the Administration, may appoint as his representative in any such proceeding only an individual who is qualified under § 416.1503 to act as a representative. Where the individual appointed by a party to represent him is not an attorney, written notice of the appointment must be given, signed by the party appointing the representative, and accepted by the representative appointed. The notice of appointment shall be filed at an office of the Administration, with an administrative law judge, with a hearing examiner—SSI, or with the Appeals Council of the Administration, as the case may be. Where the representative appointed is an attorney, in the absence of information to the contrary, his representation that he has such authority shall be accepted as evidence of the attorney's authority to represent a party.

§ 416.1503 Qualifications of representative.

(a) *Attorney.* Any attorney in good standing who (1) is admitted to practice before a court of a State, Territory, District, or insular possession or before the Supreme Court of the United States or an inferior Federal court, (2) has not been disqualified or suspended from acting as a representative in proceedings before the Administration, and (3) is not, pursuant to any provision of law, otherwise prohibited from acting as a representative, may be appointed as a representative in accordance with § 416.1501.

(b) *Person other than attorney.* Any person (other than an attorney described in paragraph (a) of this section) who (1) is of good character, in good repute, and has the necessary qualifications to enable him to render valuable assistance to an individual in connection with his claim, (2) has not been disqualified or suspended from acting as a representative in proceedings before the Administration, and (3) is not, pursuant to any provision of law, otherwise prohibited from acting as a representative, may be appointed as a representative in accordance with § 416.1501.

§ 416.1505 Authority of representative.

A representative, appointed and qualified as provided in §§ 416.1501 and 416.1503, may make or give, on behalf of the party he represents, any request or notice relative to any proceeding before the Administration under title XVI of the Act, including reconsideration, hearing, and review, except that such representative may not execute an application for benefits unless he is a person designated in § 416.315 as authorized to execute an application for benefits. A representative shall be entitled to present or elicit evidence and allegations as to facts and law in any proceeding affecting the party he represents and to obtain information with respect to the claim of such party to the same extent as such party. Notice to any party of any administrative action, determination, or decision, or request to any party for the production of evidence may be sent to the representative of such party, and such notice or request shall have the same force and effect as if it had been sent to the party represented. (For fees to representatives for services performed before the Administration for an individual, see § 416.1510.)

§ 416.1507 Proceedings before a State or Federal court.

Any service rendered by any representative in any proceeding before any State or Federal court shall not be considered services in any proceeding before the Administration for purposes of §§ 416.1503 and 416.1510. However, if the representative has also rendered services in connection with the claim in any proceeding before the Administration, as defined in § 416.1525, he must specify what, if any, amount of the fee he desires to charge is for services performed before the Administration, and if he charges any fee for such services, he must file the petition and furnish all of the information required by § 416.1515 (a).

§ 416.1510 Fee for services performed for an individual before the Administration.

(a) *General.* A fee for services performed for an individual before the Administration in any proceeding under title XVI of the Act may be charged and received only as provided in paragraph (b) of this section.

(b) *Charging and receiving fee.* An individual who desires to charge or receive a fee for services rendered for an individual in any proceeding under title XVI of the Act before the Administration (see § 416.1525), and who is qualified under § 416.1503, must file a written petition therefor in accordance with § 416.1515 (a). The amount of the fee he may charge or receive, if any, shall be authorized on the basis of the factors described in § 416.1515(b) by an authorized official of the appropriate component of the Administration, where the services were concluded by an initial, reconsidered, or revised determination, or by the Bureau of Hearings and Appeals where there is a decision or action by an administrative law judge or the Appeals Council of the Administration, as the case may be. Every such fee which is charged or received must be approved as provided in this section and no fee shall be charged or received which is in excess of the amount so approved. This rule shall be applicable whether the fee is charged to or received from a party to the proceeding or someone else.

(c) *Notice of fee authorization.* Written notice of a fee authorization made in accordance with paragraph (b) of this section shall be mailed to the representative and the claimant at their last known addresses. Such notice shall inform the parties of the amount of the fee authorized, the basis of the authorization, the fact that the Administration assumes no responsibility for payment, and that each party may request an administrative review of the authorization within 30 days of the date of the notice.

(d) *Administrative review of fee authorization.* Administrative review of a fee authorization will be granted only if a request is filed by either the representative or the claimant within 30 days of the date of the notice of the fee authorization. The request for administrative review shall be in writing and filed at an office of the Administration and a copy sent to the other party. Upon the filing of such request for review of a fee authorization, an authorized official of the Administration who did not participate in the fee authorization in question will review the authorization.

§ 416.1515 Petition for approval of fee.

(a) *Filing of petition.* In accordance with § 416.1510, to obtain approval of a fee for services performed before the Administration in any proceeding under the Act, a representative, upon completion of the proceedings in which he rendered services, must file at an office of the Administration a written petition which shall contain the following information:

(1) The dates his services began and ended;

(2) An itemization of services rendered by him in a proceeding under the Act, with the amount of time spent in hours, or parts thereof, on each type of service;

(3) The amount of the fee he desires to charge for services performed;

(4) The amount of fee requested or charged for services rendered in the same matter before any State or Federal court;

(5) The amount and itemization of expenses incurred for which reimbursement has been made or is expected;

(6) The special qualifications which enabled him to render valuable services to the claimant (this requirement does not apply where the representative is an attorney); and

(7) A statement showing that a copy of the petition was sent to the person represented.

(b) *Factors considered in evaluating a petition for fee.* In evaluating a request for approval of a fee, the purpose of the supplemental security income program—to assure a minimum level of income for people who are age 65 or over, or who are blind or disabled and who do not have sufficient income or resources to maintain a standard of living at the established minimum income level—will be considered, together with the following factors:

(1) The services performed (including type of service);

(2) The complexity of the case;

(3) The level of skill and competence required in rendition of the services;

(4) The amount of time spent on the case;

(5) The results achieved. (While consideration is always to be given to the amount of benefits, if any, which are payable in a case, the amount of fee will not be based on the amount of such benefits alone but on a consideration of all of the factors listed in this section. The benefits payable in a given claim are governed by specific statutory provisions and by the occurrence of termination, suspension, or nonpayment events specified in the law, factors which are unrelated to efforts of the representative. In addition, the amount of accrued benefits payable in a given claim is affected by the length of time that has elapsed since the claimant became entitled to benefits.);

(6) The level of administrative review to which the claim was carried within the Administration and the level of such review at which the representative entered the proceedings; and

(7) The amount of the fee requested for services rendered, excluding the amount of any expenses incurred but including any amount previously authorized or requested.

§ 416.1525 Services rendered for an individual in a proceeding before the Administration under title XVI of the Act.

Services rendered for an individual in a proceeding before the Administration under title XVI of the Act consist of services performed for an individual in connection with any claim before the Secretary of Health, Education, and Welfare under title XVI of the Act, including any services in connection with any asserted right calling for an initial or reconsidered determination by the Administration, and a decision or action by an administrative law judge or by the Appeals Council of the Bureau of Hearings and Appeals of the Administration, whether such determination, decision, or action is rendered before or after remand of a claim by a court. Such services include, but are not limited to, services in connection with an application for benefits, a request for modification of the amount of benefits, and the reinstatement of benefits.

§ 416.1530 Rules governing the representation and advising of claimants and parties.

No attorney or other person shall:

(a) With intent to defraud, in any matter willfully and knowingly deceive, mislead, or threaten by word, circular, letter, or advertisement, either oral or written, any claimant or prospective claimant or beneficiary with respect to benefits under title XVI, or any other initial or continued right under the Act; or

(b) Knowingly charge or collect, or make any agreement to charge or collect, directly or indirectly, any fee in connection with any claim except under the circumstances prescribed in § 416.-1510, or knowingly charge, demand, receive, or collect for services rendered before a Federal court in connection with a claim under title XVI of the Act, any amount in excess of that allowed by the court; or

(c) Knowingly make or participate in the making or presentation of any false statement, representation, or claim as to any material fact affecting the right of any person to benefits under title XVI of the Act, or as to the amount of any benefit; or

(d) Divulge, except as may be authorized by regulations now or hereafter prescribed by the Secretary, any information furnished or disclosed to him by the Administration relating to the claim or prospective claim of another person.

§ 416.1540 Disqualification or suspension of an individual from acting as a representative in proceedings before the Administration.

Whenever it appears that an individual has violated any of the rules in § 416.1530, or has been convicted of a violation under section 1631(d)(3) of the Act, or has otherwise refused to comply with the Secretary's rules and regulations governing representation of claimants before the Administration, the Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance may institute proceedings as herein provided to suspend or disqualify such individual from acting as a representatvie in proceedings before the Administration.

§ 416.1545 Notice of charges.

The Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance will prepare a notice containing a statement of charges that constitutes the basis for the proceeding against the individual. This notice will be delivered to the individual charged, either by certified or registered mail to his last known address or by personal delivery, and will advise the individual charged to file an answer, within 30 days from the date the notice was mailed, or was delivered to him personally, indicating why he should not be suspended or disqualified from acting as a representative before the Administration. This 30-day period may be extended for good cause shown by the Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance. The answer must be in writing under oath (or affirmation) and filed with the Social Security Administration, Bureau of Hearings and Appeals, P.O. Box 2518, Washington, D.C. 20013, with a copy to the Bureau of Retirement and Survivors Insurance, 6401 Security Boulevard, Baltimore, Maryland 21235, within the prescribed time limitation. If an individual charged does not file an answer within the time prescribed, he shall not have the right to present evidence. However, see § 416.1560(f) relating to statements with respect to sufficiency of the evidence upon which the charges are based or challenging the validity of the proceedings.

§ 416.1550 Withdrawal of charges.

If an answer is filed or evidence is obtained that establishes, to the satisfaction of the Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance, that reasonable doubt exists about whether the individual charged should be suspended or disqualified from acting as a representative before the Administration, the charges may be withdrawn. The notice of withdrawal shall be mailed to the individual charged at his last known address.

§ 416.1555 Referral to Bureau of Hearings and Appeals for hearing and decision.

If action is not taken to withdraw the charges before the expiration of 15 days after the time within which an answer may be filed, the record of the evidence in support of the charges shall be referred to the Bureau of Hearings and Appeals with a request for a hearing and a decision on the charges.

§ 416.1560 Hearing on charges.

(a) *Hearing officer.* Upon receipt of the notice of charges, the record, and the request for hearing (see § 416.1555), the Director, Bureau of Hearings and Appeals, or his delegate shall designate an administrative law judge to act as a hearing officer to hold a hearing on the charges. No hearing officer shall conduct a hearing in a case in which he is prejudiced or partial with respect to any party, or where he has any interest in the matter pending for decision before him. Notice of any objection which a party to the hearing may have to the hearing officer who has been designated to conduct the hearing shall be made at the earliest opportunity. The hearing officer shall consider the objection(s) and shall, in his discretion, either proceed with the hearing or withdraw. If the hearing officer withdraws, another hearing officer shall be designated as provided in this section to conduct the hearing. If the hearing officer does not withdraw, the objecting party may, after the hearing, present his objections to the Appeals Council as reason why he believes the hearing officer's decision should be revised or a new hearing held before another hearing officer.

(b) *Time and place of hearing.* The hearing officer shall notify the individual charged and the Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance, of the time and place for a hearing on the charges. The notice of the hearing shall be mailed to the individual charged at his last known address and to the Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance, not less than 20 days prior to the date fixed for the hearing.

(c) *Change of time and place for hearing.* The hearing officer may change the time and place for the hearing (see paragraph (b) of this section) either on his own motion or at the request of a party for good cause shown. The hearing officer may adjourn or postpone the hearing, or he may reopen the hearing for the receipt of additional evidence at any time prior to the mailing of notice of the decision in the case (see § 416.1565). Reasonable notice shall be given to the parties of any change in the time or place of hearing or of an adjournment or reopening of the hearing.

(d) *Parties.* A person against whom charges have been preferred under the provisions of § 416.1540 shall be a party to the hearing. The Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance, shall also be a party to the hearing.

(e) *Subpoenas.* Any party to the hearing may request the hearing officer or a member of the Appeals Council to issue subpoenas for the attendance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents which are relevant and material to any matter in issue at the hearing. The hearing officer may on his own motion issue subpoenas for the same purposes when he deems such action reasonably necessary for the full presentation of the facts. Any party who desires the issuance of a subpoena shall, not less than 5 days prior to the time fixed for the hearing, file with the hearing officer a written request therefor, designating the witnesses or documents to be produced, and describing the address or location thereof with sufficient particularity to permit such witnesses or documents to be found. The request for a subpoena shall state the pertinent facts which the party expects to establish by such witness or document and whether such facts could be established by other evidence without the use of a subpoena. Subpoenas, as provided for above, shall be issued in the name of the Secretary of Health, Education, and Welfare, and the Administration shall pay the cost of the issuance and the fees and mileage of any witness so subpoenaed, as provided in section 205(d) of the Act.

(f) *Conduct of the hearing.* The hearing shall be open to the parties and to such other persons as the hearing officer or the individual charged deems necessary or proper. The hearing officer shall inquire fully into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material to such matters: *Provided, however,* That if the individual charged has filed no answer he shall have no right to present evidence but in the discretion of the hearing officer may appear for the purpose of presenting a statement of his contentions with regard to the sufficiency of the evidence or the validity of the proceedings upon which his suspension or disqualification, if it occurred, would be predicated or, in his discretion, the hearing officer may make or recommend a decision (see § 416.1565) on the basis of the record referred in accordance with § 416.1555. If the individual has filed an answer and if the hearing officer believes that there is relevant and material evidence available which has not been presented at the hearing, the hearing officer may at any time prior to the mailing of notice of the decision, or submittal of a recommended decision, reopen the hearing for the receipt of such evidence. The order in which the evidence and the allegations shall be presented and the conduct of the hearing shall be at the discretion of the hearing officer.

(g) *Evidence.* Evidence may be received at the hearing, subject to the provision herein, even though inadmissible under the rules of evidence applicable to court procedure. The hearing officer shall rule on the admissibility of evidence.

(h) *Witnesses.* Witnesses at the hearing shall testify under oath or affirmation. The witnesses of a party may be examined by such party or by his representative, subject to interrogation by the other party or by his representative. The hearing officer may ask such questions as he deems necessary. He shall rule upon any objection made by either party as to the propriety of any question.

(i) *Oral and written summation.* The parties shall be given, upon request, a reasonable time for the presentation of an oral summation and for the filing of briefs or other written statements of proposed findings of fact and conclusions of law. Copies of such briefs or other written statements shall be filed in sufficient number that they may be made available to any party in interest requesting a copy and to any other party designated by the Appeals Council.

(j) *Record of hearing.* A complete record of the proceedings at the hearing shall be made and transcribed in all cases.

(k) *Representation.* The individual charged may appear in person and he may be represented by counsel or other representative.

(l) *Failure to appear.* If after due notice of the time and place for the hearing, a party to the hearing fails to appear and fails to show good cause as to why he could not appear, such party shall be considered to have waived his right to be present at the hearing. The hearing officer may hold the hearing so that the party present may offer evidence to sustain or rebut the charges.

(m) *Dismissal of charges.* The hearing officer may dismiss the charges in the event of the death of the individual charged.

(n) *Cost of transcript.* On the request of a party, a transcript of the hearing before the hearing officer will be prepared and sent to the requesting party upon the payment of cost, or if the cost is not readily determinable, the estimated amount thereof, unless for good cause such payment is waived.

§ 416.1565 Decision by hearing officer.

(a) *General.* As soon as practicable after the close of the hearing, the hearing officer shall issue a decision (or certify the case with a recommended decision to the Appeals Council for decision under the rules and procedures described in §§ 404.942 through 404.944 of this chapter) which shall be in writing and contain findings of fact and conclusions of law. The decision shall be based upon the evidence of record. If the hearing officer finds that the charges have been sustained, he shall either:

(1) Suspend the individual for a specified period of not less than 1 year, nor more than 5 years, from the date of the decision, or

(2) Disqualify the individual from further practice before the Administration until such time as the individual may be reinstated under § 416.1595.

A copy of the decision shall be mailed to the individual charged at his last known address and to the Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance, together with notice of the right of either party to request the Appeals Council to review the decision of the hearing officer.

(b) *Effect of hearing officer's decision.* The hearing officer's decision shall be final and binding unless reversed or modified by the Appeals Council upon review (see § 416.1585).

(1) If the final decision is that the individual is disqualified from practice before the Administration, he shall not be permitted to represent an individual in a proceeding before the Administration until authorized to do so under the provisions of § 416.1595.

(2) If the final decision suspends the individual for a specified period of time, he shall not be permitted to represent an individual in a proceeding before the Administration during the period of suspension unless authorized to do so under the provisions of § 416.1595.

§ 416.1570 Right to request review of the hearing officer's decision.

(a) *General.* After the hearing officer has issued a decision either of the parties (see § 416.1560) may request the Appeals Council to review the decision.

(b) *Time and place of filing request for review.* The request for review shall be made in writing and filed with the Appeals Council within 30 days from the date of mailing the notice of the hearing officer's decision, except where the time is extended for good cause. The requesting party shall certify that a copy of the request for review and of any documents that are submitted therewith (see § 416.1575) have been mailed to the opposing party.

§ 416.1575 Procedure before Appeals Council on review of hearing officer's decision.

The parties shall be given, upon request, a reasonable time to file briefs or other written statements as to fact and law and to appear before the Appeals Council for the purpose of presenting oral argument. Any brief or other written statement of contentions shall be filed with the Appeals Council, and the presenting party shall certify that a copy has been mailed to the opposing party.

§ 416.1580 Evidence admissible on review.

(a) *General.* Evidence in addition to that introduced at the hearing before the hearing officer may not be admitted except where it appears to the Appeals Council that the evidence is relevant and material to an issue before it and subject to the provisions in this section.

(b) *Individual charged filed answer.* Where it appears to the Appeals Council that additional relevant material is available and the individual charged filed an answer to the charges (see § 416.1545), the Appeals Council shall require the production of such evidence and may designate a hearing officer or member of the Appeals Council to receive such evidence. Before additional evidence is admitted into the record, notice that evidence will be received with respect to certain issues shall be mailed to the parties unless such notice is waived, and each party shall be given a reasonable opportunity to comment on such evidence and to present other evidence which is relevant and material to the issues.

(c) *Individual charged did not file answer.* Where the individual charged filed no answer to the charges (see § 416.1545), evidence in addition to that introduced at the hearing before the hearing officer may not be admitted by the Appeals Council.

§ 416.1585 Decision by Appeals Council on review of hearing officer's decision.

The decision of the Appeals Council shall be based upon evidence received into the hearing record (see § 416.1560 (f)) and such further evidence as the Appeals Council may receive (see § 416.1580) and shall either affirm, reverse, or modify the hearing officer's decision. The Appeals Council, in modifying a hearing officer's decision suspending the individual for a specified period shall in no event reduce a period of suspension to less than 1 year, or in modifying a hearing officer's decision to disqualify an individual shall in no event impose a period of suspension of less than 1 year. Where the Appeals Council affirms or modifies a hearing officer's decision, the period of suspension or disqualification shall be effective from the date of the Appeals Council's decision. Where a period of suspension or disqualification is initially imposed by the Appeals Council, such suspension or disqualification shall be effective from the date of the Appeals Council's decision. The decision of the Appeals Council will be in writing and a copy of the decision will be mailed to the individual at his last known address and to the Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance.

§ 416.1590 Dismissal by Appeals Council.

The Appeals Council may dismiss a request for the review of any proceedings instituted under § 416.1540 pending before it in any of the following circumstances:

(a) *Upon request of party.* Proceedings pending before the Appeals Council may be discontinued and dismissed upon written application of the party or parties who filed the request for review provided there is no party who objects to discontinuance and dismissal.

(b) *Death of party.* Proceedings before the Appeals Council may be dismissed upon death of a party against whom charges have been preferred.

(c) *Request for review not timely filed.* A request for review of a hearing officer's decision shall be dismissed when the party has failed to file a request for review within the time specified in § 416.1570(b) and such time is not extended for good cause.

§ 416.1595 Reinstatement after suspension or disqualification.

(a) *General.* An individual shall be automatically reinstated to serve as a representative before the Administration at the expiration of any period of suspension. In addition, after 1 year from the effective date of any suspension or disqualification, an individual who has been suspended or disqualified from acting as a representative in proceedings before the Administration may petition the Appeals Council for reinstatement prior to the expiration of a period of suspension or following a disqualification order. The petition for reinstatement shall be accompanied by any evidence the individual wishes to submit. The Appeals Council shall notify the Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance, of the receipt of the petition and grant him 30 days in which to present a written report of any experiences which the Administration may have had with the suspended or disqualified individual during the period subsequent to the suspension or disqualification. A copy of any such report shall be made available to the suspended or disqualified individual.

(b) *Basis of action.* A request for revocation of a suspension or a disqualification shall not be granted unless the Appeals Council is reasonably satisfied that the petitioner is not likely in the future to conduct himself contrary to the provisions of section 1631(d)(3) of the Act or the rules and regulations of the Administration.

(c) *Notice.* Notice of the decision on the request for reinstatement shall be mailed to the petitioner and a copy shall be mailed to the Deputy Commissioner, or the Director (or Deputy Director) of the Bureau of Retirement and Survivors Insurance.

(d) *Effect of denial.* If a petition for reinstatement is denied, a subsequent petition for reinstatement shall not be considered prior to the expiration of 1 year from the date of notice of the previous denial.

[FR Doc.74-23242 Filed 10-4-74;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER J—RADIOLOGICAL HEALTH

PART 1020—DIAGNOSTIC X-RAY SYSTEMS AND THEIR MAJOR COMPONENTS

Radiation Therapy Simulation Systems

In a notice of proposed rulemaking published in the FEDERAL REGISTER of July 22, 1974 (39 FR 26651), the Commissioner of Food and Drugs proposed to amend the performance standard for diagnostic x-ray systems and their major components (21 CFR 1020.30, 1020.31, and 1020.32) by changing the applicability of specific provisions of the standard with respect to those x-ray systems intended for radiation therapy simulation.

The proposed amendments would add a new subparagraph (50) to § 1020.30(b) to define "radiation therapy simulation system." Radiation therapy simulation systems would be exempt from the requirements of §§ 1020.31(g) and 1020.32 (b)(2) regarding beam limitation and alignment on fluoroscopic x-ray systems equipped with spot-film devices and image intensifiers. These systems would also be exempt from the requirements of § 1020.32(a)(1), regarding primary protective barriers, if they are intended only for remote control operation and the manufacturer sets forth instructions to assemblers with respect to control location and precautions to users concerning the importance of remote control operation, in addition to the information presently required in § 1020.9(g) and (h)(1)(i). Finally, § 1020.32(g) would be amended to permit alternative performance requirements for the fluoroscopic timer of radiation therapy simulation systems so that these systems would provide a means to measure the total cumulative exposure time and would be capable of being reset between x-ray examinations. This action was initiated to avoid the necessity of issuing an individual variance to each manufacturer of the equipment.

Interested persons were given until August 21, 1974, to file written comments with the Hearing Clerk, Food and Drug Administration, regarding the proposal. Three letters commenting on the proposed amendments were received from manufacturers of diagnostic x-ray equipment. All letters expressed agreement with and support of the proposed amendments as published. One letter urged final action on the amendments at the earliest possible date.

The Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f) states that each regulation prescribing, amending, or revoking a standard shall specify the date on which it shall take effect which, in the case of any regulation prescribing, or amending any standard, may not be sooner that 1 year or not later than 2 years after the date on which such regulation is issued, unless the Secretary finds, for good cause shown, that an earlier or later effective date is in the public interest and publishes in the FEDERAL REGISTER his reason for such finding, in which case such earlier or later date shall apply. In addition, the Administrative Procedure Act (5 U.S.C. 553(d)(3)) states that the required publication of a substantive rule shall be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.

The Commissioner has determined that an earlier effective date is in the public interest to permit the uninterrupted availability of therapy simulation systems to the health-care community. The early effective date will not impose a burden on manufacturers of these systems. On the contrary, manufacturers would be burdened by a delay in the effective date.

A minor change in structure is being made in the last sentence of § 1020.32(g). This change is for clarity only and does not affect the substance or the intent of the amendment.

Pursuant to provisions of § 6.1(b) (21 CFR 6.1(b)), the possible environmental consequences of these amendments have been carefully considered. In accordance with the guidelines of the Council on Environmental Quality (40 CFR 1500.6 (a)), concerning the identification of actions which may cumulatively have a significant effect upon the environment, the possible environmental consequences of these amendments have been evaluated. It has been concluded that this action will not have a significant effect upon the environment and, therefore, an environmental impact statement pursuant to section 102(2)(c) of the National Environmental Policy Act is not required.

Data and information supporting the Commissioner's conclusions with respect to this order and a copy of the environmental assessment report are available for public review in the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852.

Therefore, pursuant to provisions of the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179; 42 U.S.C. 263f) and under authority delegated to the Commissioner (21 CFR 2.120), Part 1020 is amended as follows:

1. In § 1020.30 by adding a new paragraph (b)(50) to read as follows:

§ 1020.30 Diagnostic x-ray systems and their major components.

* * * * *

(b) * * *

(50) "Radiation therapy simulation system" means a fluoroscopic x-ray system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

* * * * *

2. In § 1020.31 by revising the introductory text of paragraph (g) to read as follows:

§ 1020.31 Radiographic equipment.

* * * * *

(g) *Field limitation and alignment for spot-film devices.* The following requirements shall apply to spot-film devices, except when the spot-film device is provided for use with a radiation therapy simulation system:

* * * * *

3. In § 1020.32 by revising paragraphs (a)(1), (b)(2), and (g) to read as follows:

§ 1020.32 Fluoroscopic equipment.

* * * * *

(a) *Primary protective barrier*—(1) *Limitation of useful beam.* The entire cross section of the useful beam shall be intercepted by the primary protective barrier of the fluoroscopic image assembly at any SID. The fluoroscopic tube shall not produce x rays unless the barrier is in position to intercept the entire useful beam. The exposure rate due to transmission through the barrier with the attenuation block in the useful beam combined with radiation from the image intensifier, if provided, shall not exceed 2 milliroentgens per hour at 10 centimeters from any accessible surface of the fluoroscopic imaging assembly beyond the plane of the image receptor for each roentgen per minute of entrance exposure rate. Radiation therapy simulation systems shall be exempt from this requirement provided the systems are intended only for remote control operation and the manufacturer sets forth instructions for assemblers with respect to control location as part of the information required in § 1020.30(g). Additionally, the manufacturer shall provide to users, pursuant to § 1020.30(h)(1)(i), precautions concerning the importance of remote control operation.

* * * * *

(2) *Image-intensified fluoroscopy.* For image-intensified fluoroscopic equipment other than radiation therapy simulation systems, the total misalignment of the edges of the x-ray field with the respective edges of the visible area of the image receptor along any dimension of the visually defined field in the plane of the image receptor shall not exceed 3 percent of the SID. The sum, without regard to sign, of the misalignment along any two orthogonal dimensions intersecting at the center of the visible area of the image receptor shall not exceed 4 percent of the SID. For rectangular x-ray fields used with circular image receptors, the error in alignment shall be determined along the length and width dimensions of the x-ray field which pass through the center of the visible area of the image receptor. Means shall be provided to permit further limitation of the field. The minimum field size, at the greatest SID, shall be equal to or less than 5x5 centimeters.

* * * * *

(g) *Fluoroscopic timer.* Means shall be provided to preset the cumulative on-time of the fluoroscopic tube. The maximum cumulative time of the timing device shall not exceed 5 minutes without resetting. A signal audible to the fluoroscopist shall indicate the completion of any preset cumulative on-time. Such signal shall continue to sound while x rays are produced until the timing device is reset. As an alternative to the requirements of this paragraph, radiation therapy simulation systems may be provided with a means to indicate the total cumulative exposure time during which x rays were produced, and which is capable of being reset between x-ray examinations.

Effective date. This order shall become effective on October 17, 1974.

(Sec. 358, 82 Stat. 1177–1179; 42 U.S.C. 263f)

Dated: September 30, 1974.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.74-23243 Filed 10-4-74;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7323]

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

Requirements of a Domestic International Sales Corporation (DISC)

Correction

In FR Doc. 74-22294 appearing at page 34400 in the issue of Wednesday, September 25, 1974, paragraph (d)(1)(iii) and (iv) on page 34409 should be inserted immediately following paragraph (c)(3)(ii) on page 34408.

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING PRODUCTION AND MORTGAGE CREDIT—FEDERAL HOUSING COMMISSIONER (FEDERAL HOUSING ADMINISTRATION), DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—MORTGAGE AND LOAN INSURANCE PROGRAMS UNDER NATIONAL HOUSING ACT

[Docket No. R-74-288]

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

Subpart A—Eligibility Requirements for Mortgage Insurance

MAXIMUM MORTGAGE AMOUNTS

Section 236.12 is being amended to increase the maximum per unit mortgage amounts to those authorized by the Housing and Community Development Act of 1974. In the amendments to Chapter II of this title, implementing the Housing and Community Development Act of 1974, published in the FEDERAL REGISTER on September 6, 1974, Part 236 was amended at 39 FR 32437 to limit the maximum per unit mortgage amounts to those in effect for that part prior to August 22, 1974, the date of the Housing and Community Development Act of 1974. Since the publication of the amendment to Part 236, the Secretary has determined that limiting the maximum per unit mortgage amounts to those in effect before August 22, 1974 would result in a hardship to participants in the Section 236 program who are involved in projects which are in various stages of processing.

Since this amendment is implementing the Housing and Community Development Act of 1974, advance notice and public procedure are not necessary and good cause exists for making this amendment effective on October 7, 1974.

Accordingly, Part 236 is amended as follows:

Section 236.12(a)(1)(i) through (v) and (b)(1) through (5) are revised as follows:

§ 236.12 Maximum mortgage amounts.

(a) * * *

(1) * * *

(i) $11,240 without a bedroom.
(ii) $15,540 with one bedroom.
(iii) $18,630 with two bedrooms.
(iv) $23,460 with three bedrooms.
(v) $26,570 with four or more bedrooms.

* * * * *

(b) * * *

(1) $13,120 per family unit without a bedroom.

(2) $16,200 per family unit with one bedroom.

(3) $22,080 per family unit with two bedrooms.

(4) $27,600 per family unit with three bedrooms.

(5) $32,000 per family unit with four or more bedrooms.

* * * * *

(Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Effective date. This amendment will be effective on October 7, 1974.

SHELDON B. LUBAR,
Assistant Secretary for Housing Production and Mortgage Credit—Federal Housing Commission.

[FR Doc.74-23254 Filed 10-4-74;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 578-74]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart Q—Bureau of Prisons

CONFINEMENT OF PERSONS IN DISTRICT OF COLUMBIA CORRECTIONAL INSTITUTIONS

This order revises the regulations authorizing transfer of prisoners from District of Columbia correctional institutions to other appropriate institutions or facilities within the District of Columbia. The Appendix of Subpart Q is revised to read as follows:

CONFINEMENT OF PERSONS IN DISTRICT OF COLUMBIA CORRECTIONAL INSTITUTIONS

By virtue of the authority vested in me by the Act of September 1, 1916, 39 Stat. 711 (D.C. Code section 24-402), by section 11 of the Act of July 15, 1932, as added by the Act of June 6, 1940, 54 Stat. 244 (D.C. Code section 24-425), and by the Act of September 10, 1965 (18 U.S.C. 4082), (a) the Mayor of the District of Columbia or his authorized representative is hereby authorized to transfer such prisoners as may be in his custody and supervision, by virtue of having been placed in a correctional institution of the District of Columbia pursuant to the authority of the Attorney General, from such institution to any available, suitable, or appropriate institution or facility (including a residential community treatment center) within the District of Columbia, and the Mayor or his authorized representative is further authorized to extend the limits of the place of confinement of such prisoners for the purposes specified, and within the limits established, by the Act of September 10, 1965 (18 U.S.C. 4082).

(b) With respect to a prisoner convicted of a crime of violence who is not within six months of a firm date of release from confinement, the authority conferred by subsection (a) shall be exercised only in exceptional circumstances and only upon written justification and approval of the Director of the District of Columbia Department of Corrections personally. Prior to the exercise of authority under this subsection, notice and justification of transfers or extensions of the limits of confinement shall be provided to the Mayor.

(c) With respect to all other prisoners, the authority conferred by subsection (a) may be exercised by an authorized representative designated by the Mayor.

(d) As used in this Order "crime of violence" means murder manslaughter, rape, kidnapping, robbery, burglary, assault with intent to kill, assault with intent to rape, or assault with intent to rob.

Dated: October 1, 1974.

WILLIAM B. SAXBE,
Attorney General.

[FR Doc.74-23290 Filed 10-4-74;8:45 am]

Title 32—National Defense

CHAPTER VII—DEPARTMENT OF THE AIR FORCE

SUBCHAPTER H—AIR FORCE RESERVE OFFICERS' TRAINING CORPS

PART 872—AIR FORCE JUNIOR RESERVE OFFICERS' TRAINING CORPS

Establishment, Probation, and Disestablishment Procedures

This change implements new Department of Defense procedures for establishment, probation, and disestablishment of Junior Reserve Officers' Training Corps units, and makes other minor changes to increase clarity.

Part 872, Subchapter H of Chapter VII of Title 32 of the Code of Federal Regulations is amended as follows:

§ 872.8 [Amended]

1. Section 872.8 is amended by deleting the last sentence, in parenthesis, of paragraph (a) and by deleting the phrase "at established units" from the first sentence of paragraph (b).

2. Section 872.9 is amended by revising paragraph (b) to read as follows:

§ 872.9 Procedures for establishment.

* * * * *

(b) Each fall, Air University will forward to HQ USAF/DPPE, Washington, DC 20330, rank-ordered nominations of schools recommended to host units. If a request is made by a school system, Air University will include recommendations stating the advantages and disadvantages of organizing the AFJROTC program as a multiple unit. Upon approval by HQ USAF, Air University will notify the schools selected for establishment and any applicants not selected.

3. Section 872.10 is revised to read as follows:

§ 872.10 Conditions for retaining units.

(a) Each school must constantly meet the requirements in § 872.8 and will be visited periodically to determine whether the requirements are being met. The Commandant, AFROTC, will notify school officials, in writing, of the specific nature of the deficiency when a visit (or a report) reveals that the school is not meeting required standards, and will inform them that the unit is on official probation. AFROTC will visit each unit during the period of probation to evaluate progress toward correcting the deficiency and offer all possible assistance in correcting it.

(1) Any unit in the second or subsequent year of existence that does not meet enrollment standards as of September 30 will be placed in a 1-year probationary status. The unit will be evaluated carefully by AFROTC during the academic year it is placed on probation.

(i) If the evaluation indicates that the unit is unlikely to achieve the required enrollment standard by September 30 of the year following its placement on probation, school officials will be encouraged to concur in disestablishment at the end of the academic year the unit went on probation.

(ii) If the evaluation indicates that the unit is likely to enroll at least 100 students by September 30, probation should be continued for the full year.

(2) Any unit with a deficiency other than enrollment will be placed in a probationary status until the beginning of the next academic year. In justifiable cases, the probation may be extended by Air University on a year-by-year basis.

(b) Units that do not correct deficiencies by the end of the probationary period will be identified for disestablishment. The Commander, Air University, will notify school officials in writing of the scheduled withdrawal of the unit.

(c) Copies of all correspondence concerning probation and disestablishment will be forwarded to HQ USAF/DPPE, Washington, D.C. 20330.

(d) HQ USAF/DPPE will be requested to obtain the approval of the Secretary of the Air Force before a disestablishment letter is dispatched to any school hosting an AFJROTC unit, unless the disestablishment has been requested by the host school officials or is the result of continued low enrollment.

4. Section 872.11 is amended by revising paragraph (b) to read as follows:

§ 872.11 Disestablishment of units.

* * * * *

(b) *Phase out.* Upon notification of scheduled disestablishment, the unit will be phased out and the equipment removed in an orderly manner. No new enrollments will be accepted. The total removal of the unit will be accomplished within a maximum of 1 academic year following notification of scheduled disestablishment. Earlier phase out is encouraged.

5. Section 872.12 is amended by revising paragraph (g) to read as follows:

§ 872.12 Eligibility requirements.

* * * * *

(g) Be selected by the AEI with the approval of the principal or a representative of the principal.

6. Section 872.14 is amended by revising paragraph (c) to read as follows:

§ 872.14 Special students.

* * * * *

(c) If the applicant is a citizen of a foreign country recognized by the United States, the national interest of which is compatible with that of the United States, the applicant must obtain a letter fro ma representative of his or her government stating that there is no objection to the student's receiving AFJROTC instruction. The AEI will retain the original of the letter in the student's personnel records and send a copy of the letter to AFJROTC. If the AEI is in doubt about relations between the United States and another country, the AEI will send a request for review through channels for decision.

* * * * *

(10 U.S.C. 8012)

By order of the Secretary of the Air Force.

WALTER G. FENERTY,
Acting Chief, Legislative Division Office of The Judge Advocate General.

[FR Doc.74-23276 Filed 10-4-74;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER G—NOISE ABATEMENT PROGRAMS

[FRL 265-2]

PART 210—PRIOR NOTICE OF CITIZEN SUITS

On March 8, 1974 (39 F.R. 9200), the Administrator of the Environmental Protection Agency proposed the addition of a new Part 210 to subchapter G, Chapter I, title 40, Code of Federal Regulations establishing procedures for giving notice of civil actions initiated by citizens pursuant to section 12 of the Noise Control Act of 1972 (sec. 12, Pub. L. 92-574, 86 Stat. 1234) (42 U.S.C. 4911)). Public comments on the proposed rule were received and reviewed. Due consideration has been given to these comments and, as a result, the following changes have been made in the rules as proposed:

(1) Section 210.2(a) has been redrafted to provide that in the case of an alleged violation of a noise control requirement of section 611 of the Federal Aviation Act of 1958 (49 U.S.C. 1431), a copy of the notice of intent to commence a civil action shall be sent to the Regional Administrator of the Federal Aviation Administration for the region in which the violation is alleged to have occurred as well as to the Administrator of the FAA. The purpose of this change is to facilitate action by the FAA to determine whether a violation of section 611 has occurred and, if so, to initiate abatement or enforcement action.

(2) Sections 210.2(a)(1), 210.2(a)(2) and 210.2(a)(3) have been redrafted to provide that service of notice by mail shall be accomplished "by registered mail, return receipt requested" rather than "by certified mail." In addition, § 210.2(d) has been revised to provide that notice of intent to commence a civil action shall be deemed to have been accomplished on the date of receipt. That section further provides that the date of receipt will be deemed to be the date noted on the return receipt card if service was accomplished by mail.

The effect of these revisions is to change the date of service for computing