It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) because this part requires that the rate of assessment for a particular fiscal period shall apply to all assessable potatoes from the beginning of such period.

The regulation follows:

§ 947.228 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period ending June 30, 1976, by the Oregon-California Potato Committee for its maintenance and functioning, and for such purposes as the Secretary determines to be appropriate, will amount to $39,420.

(b) The rate of assessment to be paid by each handler in accordance with this part shall be $0.005 per hundredweight or equivalent quantity of assessable potatoes handled by him as the first handler during the fiscal period: *Provided*, That seed potatoes and potatoes for canning, freezing and "other processing" as defined in the amendment to the act (P.L. 91-196) shall be exempt.

(c) In accordance with the provisions of § 947.41, late payment charges of $1.00 per month or one percent per month, whichever is greater, shall be charged on the unpaid balance for each past-due account. An account is past-due 60 days after the billing date.

(d) Unexpended income in excess of expenses for the fiscal period ending June 30, 1976, may be carried over as a reserve to the extent authorized in § 947.41.

(e) Terms used in this section have the same meaning as when used in said marketing agreement and this part.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

Dated: August 15, 1975.

D. S. KURYLOSKI,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.75-21974 Filed 8-19-75;8:45 am]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

[CCC Grain Price Support Regs., 1975 Crop Sorghum Supp.]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—1975 Crop Sorghum Loan and Purchase Program

CORRECTION

In FR Doc. 75-19486, appearing at page 31949 of the issue of Wednesday, July 30, 1975, the following changes should be made:

1. In the third column on page 31951, paragraph (b)(2), the material in parenthesis reading "(not over 13 percent moisture)" should read "(not over 14 percent moisture)".

2. In the third column on page 31951, paragraph (b)(2), the material in parenthesis reading "(not over 14 percent moisture)" should read "(not over 4 percent moisture)".

[CCC Grain Price Support Reg. 1970 and Subsequent Crops Wheat Supplement, Amdt. 6]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1970 and Subsequent Crops Wheat Loan and Purchase Program

ADJUSTMENT IN SUPPORT RATES FOR SHIPMENT

The regulations issued by the Commodity Credit Corporation published in the FEDERAL REGISTER at 35 FR 8204 and 9106, as amended, containing provisions for price support loans and purchases applicable to the 1970 and Subsequent Crops of Wheat are further amended as follows:

Section 1421.469(b) is amended to delete all references to "computed rates" applicable under the Uniform Grain Storage Agreement (UGSA) and to insert "truck receiving and rail loading-out charges in effect for the shipping warehouses at the time the loan is made". This change is required since we are no longer on a uniform rate basis. Section 1421.469(c)(2)(i) is amended to increase the add-on rate for grain stored within the switching limits of designated terminal markets.

Inasmuch as wheat is currently being harvested in many parts of the wheat-producing area, compliance with the notice of proposed rulemaking procedure would be impracticable and contrary to the public interest. Therefore, this amendment is issued without following such procedure

Section 1421.469 is amended by revising paragraphs (b) and (c) as follows:

§ 1421.469 Support rates.

* * * * *

(b) *Basic support rates for warehouse-stored wheat received by rail or utilizing combination barge-rail rates—(1) When shipped by rail and stored in transit at interior locations.* The applicable basic support rate for warehouse-storage loans on wheat which was received by rail and stored in an approved warehouse at other than a port terminal market shall be determined by adding to the basic support rate established for the county from which the wheat was shipped, the amount of freight charges per bushel actually paid in and the truck receiving and rail loading-out charges in effect for the shipping warehouse at the time the loan is made. The freight rate paid into the storage point shall be the lowest rate which will permit the storage intransit privilege and protect the lowest single car rate applying from origin through point of storage to a terminal market designated in paragraph (c)(2) of this section that would be used in commercial channels of trade. If the wheat is stored in an approved warehouse at a transit point which takes a penalty by reason of backhaul or out-of-line movement when destined to a designated terminal market that would be used in commercial channels of trade, such penalty or cost by reason of such movement shall be deducted from the support rates as determined in this paragraph.

(2) *When shipped by rail and stored at designated port terminal market locations.* The applicable basic support rate for warehouse storage loans on wheat which was received by rail and stored in an approved warehouse at a port terminal market designated in paragraph (c)(2)(iii) of this section shall be determined by adding to the basic support rate established for the county from which the wheat was shipped, the amount of freight charges per bushel actually paid in and the truck receiving and rail loading-out charges in effect for the shipping warehouse at the time the loan is made. The freight rate paid into the storage point shall be the lowest applicable freight rate to the port terminal market that would be used in commercial channels of trade.

(3) *When shipped utilizing combination barge-rail rates.* The applicable basic support rate for warehouse storage loans on wheat which was shipped utilizing combination barge-rail freight rates which are published and on file with the Interstate Commerce Commission and stored in an approved warehouse shall be determined by adding to the basic support rate established for the county from which the wheat was shipped, the amount of freight charges per bushel actually paid in and the truck receiving and rail loading-out charges in effect for the shipping warehouse at the time the loan is made. The freight rate paid into the storage point shall be a rate which will permit the storage in transit privilege and protect the lowest single car, or barge freight rate applying from origin through point of storage to one of the interior or port terminal markets designated in paragraph (c)(2) of this section that would be used in commercial channels of trade. If the wheat is stored in an approved warehouse at a transit point which takes a penalty by reason of backhaul or out-of-line movement when destined to the designated interior or port terminal market that would be used in commercial channels of trade, such penalty or cost by reason of such movement shall be deducted from the support rates as determined in this paragraph.

(c) *Basic support rates for warehouse-stored wheat received by truck or nontraiff barge.* (1) *Stored at other than terminal markets.* (i) The applicable basic support rate for warehouse-storage loans on wheat which was received by truck, or by barge not utilizing combination barge-rail freight rates, and stored in and approved warehouse located outside the switching limits of terminal markets designated in paragraph (c)(2) of this section shall be the basic county support rate established for the county in which the wheat is stored.

(ii) If two or more approved warehouses are located in the same or adjoining towns, villages, or cities which have the same freight rate, such towns, villages, or cities shall be deemed to constitute one shipping point and the same basic county support rate shall apply even though such warehouses are not all

located in the same county. Such support rate shall be the highest support rate of the counties involved.

(2) *Stored within the switching limits of designated terminal markets.* (i) The applicable basic county support rate for warehouse-storage loans on wheat which was received by truck, or by barge not utilizing combination barge-rail freight rates, and stored in an approved warehouse located within the switching limits of a terminal market designated in paragraph (c) (2) (ii) or (iii) of this section shall be determined by adding 8 cents per bushel to the basic county support rate established for the county (or city) in which the terminal market is located.

(ii) Designated interior terminal markets are as follows:

* * * * *

(Secs. 4 and 5, 62 Stat. 1070, as amended, (15 U.S.C. 714b and c); secs. 107, 401, 63 Stat. 1051, as amended, (7 U.S.C. 1445a, 1421))

Effective date: August 20, 1975.

Signed at Washington, D.C. on August 1, 1975.

E. J. PERSON,
Acting Executive Vice President,
Commodity Credit Corporation.

[FR Doc.75-21893 Filed 8-19-75;8:45 am]

[CCC Grain Price Support Regs., 1975 Crop Wheat Supp.]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—1975 Crop Wheat Loan and Purchase Program

CORRECTION

In FR Doc. 75-19469, appearing at page 31952 of the issue of Wednesday, July 30, 1975, the following changes should be made:

1. In the third column on page 31952, the rate per bushel for Bonner county in Idaho now reading "1.38", should be changed to read "1.33".

2. In the first column on page 31953, the county in Kansas reading "Chatauqua", should be changed to read "Chautauqua".

3. In the first column on page 31954, the following changes should be made:

a. The county of Wayne in Missouri should have the rate per bushel changed from "1.33" to "1.38".

b. The county of Big Horn in Montana should have the rate per bushel changed from "1.14" to "1.24".

c. The county of Lewis and Clark in Montana should have the rate per bushel changed from "1.26" to "1.28".

4. In the second column on page 31955, the rate per bushel for Tarrant county Texas should read: "1.49".

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 213—OIL IMPORT REGULATIONS

Deferral of Supplemental Fee Payments

On August 15, 1975, the President announced that he would indefinitely suspend supplemental fees on petroleum imports (Imposed pursuant to Proclamation No. 4341, amending Proclamation No. 3279, as amended, 40 FR 3965, January 27, 1975) effective July 1, 1975, if Congress sustains his veto of the bill extending the Emergency Petroleum Allocation Act. In light of this announcement, the Federal Energy Administration (FEA) hereby announces that fee payments due August 31 for imports made during July may be deferred for up to 15 days pending the resolution of the situation. This action is necessary because resolution is not expected until after August 31.

If the veto is sustained, and the supplemental fee suspended, FEA expects to refund to importers all supplemental fees collected with respect to imports made on or after July 1, 1975.

Issued in Washington, D.C. August 15, 1975.

ROBERT E. MONTGEMERY, Jr.,
General Counsel,
Federal Energy Administration.

[FR Doc.75-21924 Filed 8-15-75;2:29 pm]

CHAPTER III—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION (ERDA)

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION

General Provisions

On July 12, 1960, the Atomic Energy Commission published 10 CFR Part 10 to implement Section 145 of the Atomic Energy Act of 1954 as amended, 42 U.S.C. 2165.

The Atomic Energy Commission was abolished by the Energy Reorganization Act of 1974, Pub. L. 93-438, and the authority of the Commission under the Atomic Energy Act of 1954, as amended, was transferred to two new agencies, the Energy Research and Development Administration (ERDA) and the Nuclear Regulatory Commission (NRC). As a result of the reorganization, Part 10 of Chapter I of Title 10 of the Code of Federal Regulations, redesignated Part 710 of Chapter III of Title 10 by notice in the FEDERAL REGISTER March 3, 1975, at 40 FR 8794, is republished and recodified by the Energy Research and Development Administration as set forth below. The only substantive change occurs in § 710.11 (3) which has been amended in accordance with Executive Order 11785.

The purpose of the revisions in the proposed reissuance is to reflect wording, organizational and procedural changes effected or made necessary by the Energy Reorganization Act of 1974 and Executive Order 11785. For this reason, the Aministrator has found that general notice of proposed rulemaking and public procedure thereon are unnecessary and that good cause exists why these rules should be made effective immediately without the customary period of prior notice.

Accordingly, Part 710 redesignated from Part 10 of 10 CFR is republished to read as follows:

GENERAL PROVISIONS

CRITERIA FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION.

PROCEDURES

MISCELLANEOUS

AUTHORITY: Energy Reorganization Act of 1974, Pub. L. 93-438; Atomic Energy Act of 1954 as amended, and Executive Order 11785.

GENERAL PROVISIONS

§ 710.1 Purpose.

This part establishes the criteria, procedures and methods for resolving questions concerning the eligibility of individuals who are employed by or applicants for employment with ERDA contractors, agents, and access permittees of the ERDA, individuals who are ERDA employees or applicants for ERDA employment, and other persons designated by the Administrator of the ERDA, for access to Restricted Data pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974 or for access to national security information, and is published to implement Executive Order 10865, 25 FR 1583 (February 24, 1960), and 10450, 18 FR 2489 (April 27, 1954).

§ 710.2 Scope.

The criteria and procedures outlined in this part shall be used in those cases in which there are questions of eligibility for ERDA access authorization involving:

(a) Those employees (including consultants) of, and those applicants for employment with, contractors and agents of the ERDA.

(b) Access permittees of the ERDA and their employees (including consultants) and applicants for employment;

(c) Employees (including consultants) of, and applicants for employment with, the ERDA; and

(d) Those other persons designated by the Administrator of the ERDA.

§ 710.3 Reference.

The pertinent sections of the Atomic Energy Act of 1954, as amended, which remain in effect are set forth below. The Administrator or his designated representative shall be substituted for Commission or General Manager as appropriate.

Sec. 141. Policy. It shall be the policy of the Commission to control the dissemination and disclosure of Restricted Data in such a manner as to assure the common defense and security * * *

Sec. 145. Restriction. (a) No arrangement shall be made under section 31, no contract shall be made or continued in effect under section 141, and no license shall be issued under section 103 or 104, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, association, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(b) Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(c) In lieu of the investigation and report to be made by the Civil Service Commission pursuant to subsection (b) of this section, the Commission may accept an investigation and report on the character, associations, and loyalty of an individual made by another Government agency which conducts personnel security investigations, provided that a security clearance has been granted to such individual by another Government agency based on such investigation and report.

(d) In the event an investigation made pursuant to subsections (a) and (b) of this section develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Civil Service Commission shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Civil Service Commission for its information and appropriate action.

(e) If the President deems it to be in the national interest he may from time to time determine that investigations of any group or class which are required by subsections (a), (b), and (c) of this section be made by the Federal Bureau of Investigation.

(f) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, a majority of the members of the Commission shall certify those specific positions which are of a high degree of importance or sensitivity, and upon such certification, the investigation, and reports required by such provisions shall be made by the Federal Bureau of Investigation.

(g) The Commission shall establish standards and specifications in writing as to the scope and extent of investigations, the reports of which will be utilized by the Commission in making the determination, pursuant to subsections (a), (b), and (c) of this section, that permitting a person access to Restricted Data will not endanger the common defense and security. Such standards and specifications shall be based on the location and class or kind of work to be done, and shall, among other considerations, take into account the degree of importance to the common defense and security of the Restricted Data to which access will be permitted.

(h) Whenever the Congress declares that a state of war exists, or in the event of a national disaster due to enemy attack, the Commission is authorized during the state of war or period of national disaster due to enemy attack to employ individuals and to permit individuals access to Restricted Data pending the investigation report, and determination required by section 145b, to the extent that and so long as the Commission finds that such action is required to prevent impairment of its activities in furtherance of the common defense and security.

Sec. 161. General provisions. In the performance of its functions the Commission is authorized to:

(a) Establish advisory boards to advise with and make recommendations to the Commission on the legislation, policies, administration, research and other matters: Provided, That the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board.

* * * * *

(c) Make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in the administration or enforcement of this act, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. No person shall be excused from complying with any requirements under this paragraph because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893, shall apply with respect to any individual who specifically claims such privilege. Witnesses subpoenaed under this subsection, shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

* * * * *

(n) Delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this Act except those specified in sections 51, 57a(3), 61, 102 (with respect to the finding of a practical value), 108, 123, 145b (with respect to the determination of those persons to whom the Commission may reveal Restricted Data in the national interest), 145f and 161a.

§ 710.4 Policy.

It is the policy of the ERDA to carry out its responsibility for the security of the energy research and development programs in a manner consistent with traditional American concepts of justice. To this end, the Administrator has established criteria for determining eligibility for access authorization and will afford those individuals described in § 710.2 the opportunity for administrative review of questions concerning their eligibility for access authorization.

§ 710.5 Definitions.

As used in this part:

(a) "Access authorization" means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with ERDA contractors, agents, and access permittees of the ERDA is eligible for access to Restricted Data or National Security Information; and an individual (including a consultant) who is an ERDA employee or applicant for ERDA employment and other persons designated by the Administrator of the ERDA is eligible for security clearance;

(b) "Personnel Security Board" means an advisory board appointed by the Manager of Operations and consisting of three members, one of whom shall be designated as Chairman;

(c) "Hearing Counsel" means an ERDA attorney assigned to prepare and conduct Personnel Security Board hearings;

(d) "ERDA Personnel Security Review Board" means an advisory appeal board located in Washington, D.C., consisting of three members, one of whom shall be designated as Chairman;

(e) "Administration" means the Energy Research and Development Administration (ERDA), as provided by Section 101 of the Energy Reorganization Act of 1974.

(f) "Administrator" means the head of the Administration as provided by Section 102 of the Energy Reorganization Act of 1974.

CRITERIA FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION

§ 710.10 Application of the criteria.

(a) The decision as to access authorization is a comprehensive, commonsense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would endanger the common defense and security and would be clearly consistent with the national interest.

(b) To assist in making these determinations, on the basis of all the information in a particular case, there are set forth in this part a number of specific types of derogatory information. These criteria are not exhaustive but contain the principal types of derogatory information which create a question as to the individual's eligibility for access authorization. While there must necessarily be adherence to such criteria, the Administration is not limited thereto, nor precluded from exercising its judgment that information or facts in a case under its cognizance are derogatory although at variance with, or outside the scope of, the stated categories. These criteria are subject to continuing review and may be revised from time to time as experience and circumstances may make desirable.

(c) When the reports of investigation of an individual contain information reasonably tending to establish the truth of one or more of the items in the cri-

teria, such information shall be regarded as substantially derogatory and shall create a question as to his eligibility for access authorization. Managers of Operations shall refer cases involving substantially derogatory information to the Director, Division of Safeguards and Security, ERDA. The Director, Division of Safeguards and Security, ERDA, may authorize the granting of access authorization on the basis of the information in the case or may authorize the conduct of an interview with the individual and, on the basis of such interview and such other investigation as he deems appropriate, may authorize the granting of access authorization. Otherwise, a question concerning the eligibility of a n individual for access authorization shall be resolved in accordance with the procedures set forth in § 710.20 et seq.

(d) In resolving a question concerning the eligibility or continued eligibility of an individual for access authorization, the following principles shall be applied by the Board:

(1) Where there are grounds sufficient to establish a reasonable belief as to the truth of one or more of the items in Category "A", this shall be the basis for a recommendation for denying or revoking access authorization if not satisfactorily rebutted by the individual.

(2) Where there are grounds sufficient to establish a reasonable belief as to the truth of one or more of the items in Category "B", the extent of activities, the period in which such activities occurred, the length of time which has since elapsed, and the attitudes and convictions of the individual shall be considered in determining whether the recommendation will be adverse or favorable.

§ 710.11 Derogatory information.

(a) Category "A" derogatory information. Category "A" includes those cases in which the individual or his spouse has:

(1) Committed or attempted to commit, or aided, or abetted another who committed or attempted to commit, any act of sabotage, espionage, treason or sedition;

(2) Knowingly established an association with espionage or sabotage agents of a foreign nation; with individuals reliably reported as suspected of espionage or sabotage; with representtives of foreign nations whose interests may be inimical to the interests of the United States, with traitors, seditionists, anarchists, or revolutionists;

(3) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means.

(4) Publicly or privately advocated revolution by force or violence to overthrow the Government of the United States or the alteration of the form of Government of the United States by unconstitutional means;

Category "A" also includes those cases in which the individual has:

(5) Deliberately omitted significant information from or falsified his Personnel Security Questionnaire or Personal History Statement concerning a significant matter;

(6) Wilfully violated or disregarded security regulations to a degree which would endanger the common defense and security; or intentionally disclosed classified information to any person not authorized to receive it;

(7) Any mental illness of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the individual;

(8) Been convicted of crimes indicating habitual criminal tendencies:

(9) Been, or is, a user of narcotic or hallucinogenic drugs habitually, without adequate evidence of rehabilitation.

(b) Category "B" derogatory information. In evaluating items under this category, the extent of the activities, the period in which such activities occurred, the length of time which has since elapsed, and the attitudes and conviction of the individual shall be considered. Category "B" includes those cases in which the individual or his spouse has:

(1) Advocated totalitarian, fascist, communist or other subversive political ideologies and has not subsequently established his rejection of them.

(2) Associated with persons falling within the provisions of Category "B", paragraph (b)(1) of this section, when the individual himself did not establish his rejection of such ideologies. (Ordinarily this will not include chance or casual meetings nor contacts limited to normal business or official relations.)

(3) Affiliated with any organization, association, movement, group, or combination of persons falling within provisions of Category "A", paragraph (a)(3) of this section, provided the individual or his spouse did not discontinue his affiliation when he learned of its unlawful advocacy practices or objectives referred to in such paragraph (a)(3) of this section, or did not otherwise establish his rejection of such unlawful advocacy, practices, or objectives.

(4) Associated with any person affiliated with any organization, movement, group, or combination of persons falling within the provisions of Category "A", paragraph (a)(3) of this section, provided the individual or his spouse did not discontinue his association when he learned of the person's affiliation with such organization, association, movement, group, or combination of persons, or did not otherwise establish his rejection of the subversive aims of such organization, association, movement, group, or combination of persons. (Ordinarily, this will not include chance or casual meetings nor contacts limited to normal business or official relations.)

(5) Parent(s), brother(s), sister(s), spouse, or offspring residing in a nation whose interests may be inimical to the interests of the United States, or in satellites or occupied areas thereof (to be evaluated in the light of the risk that pressure applied through such close relatives could force the individual to reveal sensitive information or perform an act of sabotage); Category "B" also includes those cases in which the individual:

(6) Refuses to serve in the Armed Forces when such refusal cannot be clearly shown to be due to religious convictions;

(7) Has been grossly careless in failing to protect or safeguard any Restricted Data or national security information.

(8) Has abused trust, has been dishonest, or has engaged in infamous, immoral or notoriously disgraceful conduct without adequate evidence of reformation;

(9) Is a homosexual or other sexual pervert; or has engaged in homosexual or other sexually perverted conduct without adequate evidence of rehabilitation;

(10) Is a user of alcohol habitually and to excess, or has been such without adequate evidence of rehabilitation;

(11) Refuses, upon the ground of constitutional privilege against self-incrimination, to testify before a Congressional Committee regarding charges of his alleged disloyalty or other misconduct;

(12) Has used a narcotic or hallucinogenic drug, except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine;

(13) Engaged in any other conduct, or is subject to any other circumstance, including demonstrated financial irresponsibility, which tends to show that he is not reliable or trustworthy, or which furnishes reason to believe that he may be subject to coercion, influence or pressure which may cause him to act contrary to the best interests of the national security.

Procedures

§ 710.20 Purpose of the procedures.

These procedures establish methods for the conduct of Personnel Security Board hearings and administrative review of questions concerning an individual's eligibility for access authorization pursuant to the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974 and Executive Orders 10450 and 10865, when it has been determined that such questions cannot be favorably resolved by interview or other investigation.

§ 710.21 Suspension of access authorization.

In those cases where information is received which raises a question concerning the continued eligibility of an individual for ERDA access authorization, the Manager of the office concerned shall forward to the Assistant Administrator for National Security via the Director, Division of Safeguards and Security, ERDA, recommendation as to whether

the individual's access authorization should be suspended pending the final determination resulting from the operation of the procedures provided in this part. In making this recommendation the Manager shall consider such factors as the seriousness of the derogatory information developed, the possible access of the individual to classified information, and the individual's opportunity by reason of his position to commit acts adversely affecting the national security. The access authorization of an individual shall not be suspended except by direction of the Assistant Administrator for National Security.

§ 710.22 Notice to individual.

A notification letter, prepared by the Division of Safeguards and Security, ERDA, approved by the Office of the General Counsel, and signed by the Manager of Operations, shall be presented to each individual whose eligibility for access authorization is in question. Where practicable, such letter shall be presented to the individual in person. The letter shall state:

(a) That reliable information in possession of the Administration has created a substantial doubt concerning the individual's eligibility for access authorization;

(b) The information which creates a substantial doubt regarding the individual's eligibility for access authorization shall be as comprehensive and detailed as the national security permits;

(c) In the event the individual desires a Board hearing he must within twenty days of the date of receipt of the notification letter indicate in writing to the Manager from whom he receives such letter that he wishes a hearing before a Personnel Security Board;

(d) That within twenty days of the date of receipt of the notification letter, the individual shall file with the Manager from whom he received such letter his written answer under oath or affirmation to each item of reported information which raises the question of his eligibility for access authorization;

(e) That, if the individual so requests, a hearing will be scheduled before a Personnel Security Board with due regard for the convenience and necessity of the parties or their representatives for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization;

(f) That, if the individual requests a hearing, he will be notified in writing of the membership of a Personnel Security Board when it is appointed by the Manager;

(g) That the individual will have the right to appear personally before a Personnel Security Board, and present evidence in his own behalf, through witnesses, or by documents, or both, and subject to the limitations set forth in § 710.27(f), be present during the entire hearing and be accompanied, represented and advised by counsel of his own choosing;

(h) That the individual's failure to file a written request for a hearing before a Personnel Security Board, in accordance with paragraphs (c) and (d) of this section, will be considered as a relinquishment by him of the opportunity of availing himself of the hearing and review procedure provided in this part, and that in such event a recommendation as to the final action to be taken will be made by the Manager of Operations and submitted to the Assistant Administrator for National Security for his decision on the basis of the information in the case without reference to a Personnel Security Board;

(i) His access authorization status until further notice;

(j) The name of the designated ERDA official to contact for any further information desired.

§ 710.23 Additional information.

A copy of this part shall be given to the individual with the notification letter.

§ 710.24 Failure of individual to request a hearing.

(a) In the event the individual fails, within the prescribed time, to file a written request for a hearing before a Personnel Security Board, pursuant to § 710.22, a recommendation as to the final action to be taken shall be made by the Manager of Operations to the Assistant Administrator for National Security on the basis of the information in the case;

(b) The Manager of Operations may for good cause shown, at the request of the individual, extend the time for filing a written request for a hearing or time for filing a written answer to the matters contained in the notification letter.

§ 710.25 Selection of ERDA Hearing Counsel.

(a) Upon receipt from the individual of his written answer to the notification letter, signifying his desire to appear before a Personnel Security Board and answering under oath or affirmation the allegations contained in the notification letter, an ERDA attorney shall forthwith be assigned to act as Hearing Counsel;

(b) Hearing Counsel shall, prior to the scheduling of the Board hearing, review the information in the case and shall request the presence of witnesses and the production of physical evidence in accordance with the provisions of paragraphs (m), (n), (o), and (p) of § 710.27. When the presence of a witness is deemed by the hearing Counsel to be necessary or desirable to a proper determination of the issues before the Board, the Manager shall make arrangements by subpoena or otherwise for such witnesses to appear, be confronted by the individual, and be subject to examination and cross-examination;

(c) Hearing Counsel is authorized to consult directly with the individual if he is not represented by counsel, or if so represented with his counsel or representative, for purposes of reaching mutual agreement upon arrangements for expeditious hearing of the case. Such arrangements may include clarification of issues, and stipulations with respect to testimony and the contents of documents and other physical evidence. Such stipulations when entered into shall be binding upon the individual and the Administrator for the purposes of this part. Prior to such consultation the Hearing Counsel shall advise the individual of his right to Counsel or other representation and of the possibility that any statements made by the individual to the Hearing Counsel may be used in subsequent proceedings;

(d) The individual is responsible for producing witnesses in his own behalf or presenting other proof before the board to support his answer and defense to the allegations contained in the notification letter. When requested, however, Hearing Counsel shall assist him to the extent practicable and necessary. In the Hearing Counsel's sound discretion he may request the Manager of Operations to arrange for the issuance of subpoenas for witnesses to attend the hearing in the individual's behalf, or for the production of specific documents or other physical evidence, provided a showing of the necessity for such assistance has been made.

§ 710.26 Appointment of Personnel Security Boards.

(a) Upon receipt of advice from the Hearing Counsel that all arrangements for an expeditious hearing have been completed, the Manager shall forthwith appoint a Personnel Security Board consisting of three members, one of whom shall be designated as the Chairman of the Personnel Security Board;

(b) The personnel of the Board, when practicable as determined by the Manager, shall consist of at least one member who is an attorney and one member who is familiar with the general field of work of the individual;

(c) The personnel of the Board shall be selected from a panel of individuals possessing the highest degree of integrity, ability, and good judgment. Such panels may include employees of the ERDA or its contractors but no employee of an ERDA contractor shall serve as a member of a Personnel Security Board hearing the case of an employee of, or an applicant for employment with, that contractor; nor shall any employee of the ERDA serve as a member of a Personnel Security Board hearing the case of an employee of, or an applicant for employment with, the ERDA.

(d) All persons serving as members of Personnel Security Boards shall have a "Q" clearance;

(e) No person shall serve as a member of a Personnel Security Board who has prejudged the case to be heard; who possesses information that would make it embarrassing to render impartial recommendations or advice; or who for bias or prejudice generated for any reason would be unable to render fair and impartial recommendations or advice;

(f) Immediately upon the appointment of a Personnel Security Board, the Manager will notify the individual of the identity of the members of the Personnel

Security Board and of his right to challenge any member for cause, such challenge or challenges, accompanied by the reasons therefor, to be submitted to the Manager within seventy-two hours of the receipt of the notice;

(g) In the event that the individual challenges a member or members of the Personnel Security Board, the justification of the action of the individual shall be determined by the Manager. Where the challenge of the individual is sustained, the Manager shall forthwith appoint such new members as required to constitute a full Personnel Security Board and notify the individual. The individual shall have the right to challenge such new members for cause and such challenge shall be dealt with in the same manner as an original challenge. The Manager shall also notify the individual of his rejection of any challenge. The Personnel Security Board shall convene as soon as is reasonably practicable;

(h) The Manager of Operations shall notify the individual in writing, at least one week in advance, of the date, hour, and place the Personnel Security Board will convene. In the event the individual fails to appear at the time and place specified, a recommendation as to the final action to be taken shall be made by the Manager of Operations to the Assistant Administrator for National Security on the basis of the information in the case. However, the Manager of Operations may for good cause shown, at the request of the individual, permit the individual to appear before a Personnel Security Board at a newly scheduled date, hour, and place.

§ 710.27 Conduct of proceedings.

(a) The proceedings shall be conducted by the Chairman of the Personnel Security Board in an orderly, impartial, and decorous manner with every effort made to protect the interests of the Government and of the individual and to arrive at the truth. In no case will undue delay be tolerated nor will the individual be hampered by unduly restricting the time necessary for proper preparation and presentation. In performing their duties, the members of the Board shall always bear in mind and make clear to all concerned that the proceeding is an administrative hearing and not a trial;

(b) The proceedings shall be open only to duly authorized representatives of the staff of the ERDA, the individual, his counsel, and such persons as may be officially authorized by the Board. Witnesses shall not testify in the presence of other witnesses;

(c) (1) Hearing Counsel shall examine and cross-examine witnesses and otherwise assist the Board in such a manner as to bring out a full and true disclosure of all facts, both favorable and unfavorable, having a bearing on the issues before the Board. In performing his duties, he shall avoid the attitude of a prosecutor and shall always bear in mind that the proceeding is an administrative hearing and not a trial;

(2) Hearing Counsel shall not participate in the deliberations of the Board, and shall express no opinion to the Board concerning the merits of the case. He shall also advise the individual of his rights under these procedures when the individual is not represented by counsel of his own choosing;

(d) The Board may ask the individual, ERDA representatives, and other witnesses any supplemental questions which the Board deems appropriate to assure the fullest possible disclosure of relevant and material facts. The proponent of a witness shall conduct the direct examination of that witness;

(e) During the course of the proceedings the Chairman shall rule in open session on all questions presented to the Board for its determination, subject to the objection of any member of the Board. In the event of an objection by any member of the Board, a majority vote of the Board shall be determinative and constitute the ruling of the Chairman. Voting may be either in open or closed session on all questions except recommendations to grant or deny access authorization, which shall be in closed session;

(f) In the event it appears in the course of the hearing that Restricted Data or national security information may be disclosed, it shall be the duty of the Chairman to assure that disclosure is not made to persons who are not authorized to receive it;

(g) The Board shall admit in evidence any matters either oral or written which are material, relevant and competent in determining the issues involved, including the testimony of responsible persons concerning the integrity of the individual. The utmost latitude shall be permitted with respect to relevancy, materiality, and competency. Every reasonable effort shall be made to obtain the best evidence available. Hearsay evidence may for good cause shown be admitted without regard to technical rules of admissibility and accorded such weight as the circumstances warrant;

(h) Testimony of the individual and witness shall be given under oath or affirmation, and the individual and witnesses shall be subject to cross-examination. Attention of the individual and the witness shall be invited to 18 U.S.C. 1001 and 18 U.S.C. 1621;

(i) The individual shall be afforded the opportunity of testifying in his own behalf;

(j) The Board shall endeavor to obtain all the facts that are reasonably available in order for it to arrive at its recommendations. If, prior to or during the proceeding, in the opinion of the Board the allegations in the notification letter are not sufficient to cover all matters into which inquiry should be directed, the Board shall recommend to the Manager concerned that, in order to give more adequate notice to the individual, the notification letter should be amended. Any amendment shall be made with the concurrence of the Director, Division of Safeguards and Security, ERDA, and the Office of the General Counsel. If, in the opinion of the Board, the circumstances of such an amendment may involve an undue hardship to the individual, because of limited time to answer the new allegations in the notification letter, an appropriate adjournment shall be granted upon the request of the individual;

(k) Unless permitted by paragraphs (l), (m), (n), (o), and (p) of this section, the record may contain no information adverse to the individual on any controverted issue unless (1) the information or its substance has been made available to the individual and he offers no objection to its presentation; or (2) the information or its substance is made available to him and the individual is afforded an opportunity to cross-examine the person providing the information. Information whose admission is not prohibited by this paragraph, or by any other provision of this part, may be received and made a part of the record and may be considered by the Board or officials charged with making determinations under this part;

(l) A written or oral statement of a person relating to the characterization in the notification letter of any organization or person other than the individual may be received and considered by the Board without affording the individual an opportunity to cross-examine the person making the statement on matters relating to the characterization of such organization, or person, provided the individual is given notice that it has been received and may be considered by the Board, and is informed of its contents provided such is not prohibited by § 710.27(f);

(m) The individual shall be afforded an opportunity to cross-examine persons who have made oral or written statements adverse to the individual relating to a controverted issue except that any such statement may be received and considered by the Board without affording such opportunity in either of the following circumstances:

(1) The head of the department supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of his identity would be substantially harmful to the national interest;

(2) The Administrator or his special designee for that particular purpose has preliminarily determined, after considering information furnished by the investigative agency as to the reliability of the person and the accuracy of the statement concerned, that the statement concerned appears to be reliable and material, and the Administrator or such special designee has determined that failure of the Board to receive and consider such statement would, in view of the access to Restricted Data or national security information sought, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify

(i) due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the individual, or (ii) due to some other cause determined by the Administrator to be good and sufficient.

(n) Whenever procedures under paragraph (m) (1) or (2) of this section are used (1) the individual shall be given a summary of the information which shall be as comprehensive and detailed as the national security permits, and (2) appropriate consideration shall be accorded to the fact that the individual did not have an opportunity to cross-examine such person or persons;

(o) Records compiled in the regular course of business, or other physical evidence other than investigative reports, may be received and considered subject to rebuttal without authenticating witnesses, provided that such information has been furnished to the ERDA by an investigative agency pursuant to its responsibilities in connection with assisting the Administrator to safeguard Restricted Data or national security information.

(p) Records compiled in the regular course of business, or other physical evidence other than investigative reports, relating to a controverted issue which, because they are classified, may not be inspected by the individual, may be received and considered provided that:

(1) The Administrator or his special designee for that purpose has made a preliminary determination that such physical evidence appears to be material;

(2) The Administrator or such designee has made a determination that failure to receive and consider such physical evidence would, in view of the access to Restricted Data or national security information sought, be substantially harmful to the national security; and

(3) To the extent that national security permits, a summary or description of such physical evidence shall be made available to the individual. In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency shall be considered.

(q) The Board may request the Manager to arrange for additional investigation on any points which are material to the deliberations of the Board and which the Board believes need extension or clarification. In this event, the Board shall set forth in writing those issues upon which more evidence is requested, identifying where possible persons or sources from which evidence should be sought. The Manager shall make every effort through appropriate sources to obtain additional information upon the matters indicated by the Board;

(r) A written transcript of the entire proceedings shall be made by a person possessing appropriate ERDA clearance and, except for portions containing Restricted Data or national security information, a copy of such transcript shall be furnished the individual without cost.

§ 710.28 Recommendation of the Board.

(a) The Board shall carefully consider the record and the standards set forth herein. In reaching its determination the Board shall consider the demeanor of the witnesses who have testified before the Board, the probability or likelihood of the truth of their testimony, their credibility, the authenticity and accuracy of documentary evidence, or lack of evidence upon some material points in issue. If the individual is, or may be, handicapped by the non-disclosure to him of confidential information or by lack of opportunity to cross-examine confidential informants, the Board shall take that fact into consideration. The Board may also consider as part of the record the individuals past employment in the energy research and development program, and the nature and sensitivity of the job he is or may be expected to perform. Possible impact of the loss of the individual's services upon the ERDA program shall not be considered by the Board;

(b) The Board shall make specific findings based upon the records as to whether each of the allegations contained in the notification letter is true or false and the significance which the Board attaches to such allegations. These findings shall be supported fully by a statement of reasons which constitute the basis for such findings;

(c) The recommendation of the Board shall be predicated upon its findings. If, after considering all the factors in the light of the criteria set forth in this part, the Board is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant access authorization to the individual, it shall make a favorable recommendation; otherwise, it shall make an adverse recommendation;

(d) The recommendation of the Board shall be determined by a majority vote. In the event of a dissent from the majority, the recommendation of the minority member shall be made a matter of record together with a statement of the reasons leading to his conclusions. The recommendation of the Board shall be submitted to the Manager accompanied by a statement of the reasons leading to the Board's conclusions.

§ 710.29 New evidence.

(a) In the event of the discovery of new evidence by the individual prior to final determination of the individual's eligibility for access authorization, such evidence shall be submitted by the individual or his representative to the Manager of Operations from whom he received his notification letter;

(b) The Manager of Operations with the advice of Hearing Counsel shall review the application for the presentation of new evidence to ascertain its materiality and relevancy and further, that the individual or his representative is without fault in failing to present the evidence before. In the event it is determined that the new evidence should be received, the Manager of Operations shall:

(1) Refer the matter to the Personnel Security Board which had been appointed in the individual's case when the Manager of Operations has not yet transmitted the record to the Assistant Administrator for National Security. The Board receiving the application for the presentation of new evidence shall determine the form in which it shall be received, whether by testimony before the Board, by deposition, or by affidavit.

(2) In those cases where the Manager of Operations has forwarded the record to the Assistant Administrator for National Security, the application for presentation of new evidence shall be referred to the Assistant Administrator for National Security with appropriate comment and recommendations. In the event the Assistant Administrator for National Security determines that the new evidence should be received, he shall determine the form in which it shall be received, whether by testimony before a Personnel Security Board, by deposition or by affidavit.

§ 710.30 Actions on the recommendations.

(a) The recommendations of the Board and any dissent therefrom shall be signed by the members of the Board as appropriate, and together with the record of the case, shall be transmitted with the least practicable delay to the Manager of Operations concerned;

(b) Upon receipt of the findings and recommendation of the Board, and the record, the Manager shall forthwith transmit it to the Assistant Administrator for National Security through the Director, Division of Safeguards and Security. In those cases where denial of access authorization is recommended by the Board, the Manager of Operations shall forward a statement concerning the effect which denial of access authorization would have upon the energy research and development program.

(c) The Assistant Administrator for National Security may return the record to the Manager for further proceedings by the Personnel Security Board with respect to specific matters designated by the Assistant Administrator for National Security.

(d) (1) In the event a recommendation by the Board for a denial of access authorization, the individual shall be immediately notified in writing of that fact by the Assistant Administrator for National Security and shall be informed of the Board's findings with respect to each allegation contained in the notification letter. The individual shall also be notified of his right to request a review of his case by the ERDA Personnel Security Review Board and of his right to submit a brief in support of his contentions. The request for a review shall be submitted to the Assistant Administrator for National Security within five days after the receipt of the notice. The brief shall be forwarded to the Assistant Administrator for National Security through the Director, Division of Safeguards and Security not later than 10 days after receipt of

such notice, unless such time is extended by the Assistant Administrator for National Security for good cause shown;

(2) Where the individual requests a review of the adverse recommendation, the Assistant Administrator for National Security shall forthwith send the record, with all findings and recommendations, to the Personnel Security Review Board;

(3) In the event the individual fails to request a review by the ERDA Personnel Security Review Board of an adverse recommendation within the prescribed time, the final determination shall be made on the basis of the record with all findings and recommendations;

(e) Where the Board has made a recommendation favorable to the individual and the Assistant Administrator for National Security proposes to transmit the record to the Personnel Security Review Board for its recommendation, the Assistant Administrator for National Security shall immediately cause the individual to be notified of that fact and of those matters contained in the notification letter concerning which he desires the advice of the Personnel Security Review Board. He shall further inform the individual that he may submit a brief concerning such matters for the consideration of the Personnel Security Review Board. Such brief shall be filed not later than 10 days from the receipt of the notice by the individual, unless extended for good cause shown. The brief shall be forwarded to the Assistant Administrator for National Security for transmission to the Personnel Security Review Board.

§ 710.31 Recommendations of the ERDA Personnel Security Review Board.

(a) The ERDA Personnel Security Review Board shall make its deliberations based upon the record, supplemented by such brief as the individual submits. The Personnel Security Review Board may request such additional briefs as it deems appropriate. In any case where the ERDA Personnel Security Review Board determines that additional evidence or further proceedings are necessary, it may return the record to the Assistant Administrator for National Security with a recommendation that the case be remanded to the Manager of Operations for appropriate action:

(b) In its deliberations, the ERDA Personnel Security Review Board shall make its findings and recommendations as to the eligibility of an individual for access authorization on the record supplemented by additional testimony or briefs, as determined by the Board. When additional testimony is taken by the Personnel Security Review Board a verbatim transcript of such testimony shall be made part of the record;

(c) The Personnel Security Review Board shall not concern itself with the possible impact of the loss of the individuals' services upon the ERDA program;

(d) After its deliberations, the ERDA Personnel Security Review Board shall make its findings and recommendations on the record in writing to the Administrator.

§ 710.32 Action by the Assistant Administrator for National Security.

(a) The Assistant Administrator for National Security, on the basis of the record accompanied by all recommendations, shall then make a final determination whether access authorization shall be granted or denied;

(b) In making the determination as to whether access authorization shall be granted or denied, the Assistant Administrator for National Security shall give due recognition to the favorable as well as the unfavorable information concerning the individual and shall take into account the value of the individual's services to the energy research and the development program and the operational consequences of denial of access authorization;

(c) In the event of an adverse determination the Assistant Administrator for National Security shall notify the individual through the Manager of Operations of his decisions that access authorization is being denied or revoked and of his findings with respect to each allegation contained in the notification letter for transmittal to the individual.

§ 710.33 Action by the Administrator.

(a) Whenever an individual has not been afforded an opportunity to confront and cross-examine witnesses who have furnished information adverse to the individual under the provisions of § 710.27 (m), (n), (o), or (p) and an adverse recommendation has been made by the Assistant Administrator for National Security, the Administrator shall personally review the record and determine whether access authorization shall be granted, denied or revoked, based upon the record;

(b) When the Administrator determines to deny or revoke access authorization the individual will be notified through the Manager of Operations of his decision that access authorization is being denied or revoked and of his findings with respect to each allegation contained in the notification letter for transmittal to the individual;

(c) Nothing contained in these procedures shall be deemed to limit or affect the responsibility and powers of the Administrator to deny or revoke access to Restricted Data or national security information if the security of the nation so requires. Such authority may not be delegated and may be exercised only when the Administrator determines that the procedures prescribed in § 710.27 (m), (n), (o), or (p) cannot be invoked consistently with the national security and such determination shall be conclusive.

§ 710.34 Reconsideration of cases.

(a) Where, pursuant to the procedures set forth in §§ 710.20 through 710.33, the Assistant Administrator for National Security or the Administrator has made a determination granting access authorization to an individual, the individual's eligibility for access authorization shall be reconsidered only when, subsequent to the time of the prior hearing, there is new substantially derogatory information or a significant increase in the scope or sensitivity of the Restricted Data or national security information to which the individual has or will have access;

(b) Where, pursuant to these procedures, the Administrator or the Assistant Administrator for National Security has made a determination denying access authorization to an individual, the individual's eligibility for access authorization may be reconsidered when there is a bona fide offer of employment requiring access to Restricted Data or national security information and either material and relevant new evidence, which the individual and his representatives are without fault in failing to present before, or convincing evidence of reformation or rehabilitation. Requests for reconsideration shall be submitted in writing to the Assistant Administrator for National Security through the Manager of Operations having jurisdiction over the position for which access authorization is required. Such requests shall be accompanied by an affidavit setting forth in detail the information referred to above. The Assistant Administrator for National Security shall cause the individual to be notified as to whether his eligibility for access authorization will be reconsidered and, if so, the method by which such reconsideration will be accomplished;

(c) Where access authorization has been granted to an individual by a Manager of Operations without recourse to the procedures set forth in §§ 710.20 through 710.33, the individual's eligibility for access authorization shall be reconsidered only in a case where, subsequent to the granting of access authorization, new substantially derogatory information has been received or there is a significant increase in the scope or sensitivity of the Restricted Data or national security information to which the individual has, or will have access, and in any other case only with specific prior approval of the Director, Division of Safeguards and Security, ERDA.

MISCELLANEOUS

§ 710.35 Terminations.

In the event the individual is no longer an applicant for access authorization or no longer requires access authorization the procedures of this part shall be terminated without a final determination as to his eligibility for access authorization.

§ 710.36 Attorney representation.

In the event the individual is represented by an attorney or other such representative, the individual shall file with the ERDA a document designating such attorney or representative and authorizing such attorney or representative to receive all correspondence, transcripts and other documents pertaining to the proceeding under this part.

§ 710.37 Certifications.

Whenever information is made a part of the record under the exceptions authorized by § 710.27 (m), (n), (o), and (p), the record shall contain certificates evidencing that the determinations required therein have been made.

§ 710.38 Washington Area cases.

In those cases which may arise involving individuals within the Washington Area of ERDA operations the Assistant Administrator for Administration shall discharge the functions and responsibilities assigned to Managers of Operations in these procedures.

Effective date. The foregoing reissuance becomes effective August 20, 1975.

Dated at Washington, D.C., this 7th day of August 1975.

ROBERT C. SEAMANS, Jr.,
Administrator.

[FR Doc.75-21945 Filed 8-19-75;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

[Reg. Y]

PART 225—BANK HOLDING COMPANIES

Nonbanking Activities of Bank Holding Companies

On August 4, 1975, the United States Court of Appeals for the District of Columbia Circuit issued its decision in the combined cases of "National Courier Association v. Board of Governors of the Federal Reserve System," Docket No. 73-2235 and "Independent Bankers Association of America, Inc., v. Board of Governors of the Federal Reserve System," Docket No. 73-2240. The court upheld the Board's order, dated November 15, 1973, amending its Regulation Y (12 CFR 225.4 (a)(11)) to add certain financially related courier activities to the list of activities which are "closely related" to banking and therefore which bank holding companies may seek Board approval to engage in. The Court, however, struck down that portion of the Board's order, found in 12 CFR 225.129, which would have permitted bank holding companies to apply to provide nonfinancially related courier services where such services were unsolicited and otherwise unavailable, holding that such activities are not incidental to permissible courier activities.

§ 225.129 [Amended]

In accordance with the Court's decision, the following sentence is deleted from the first paragraph of the Board's courier interpretation, 12 CFR 225.129:

> However, the furnishing of courier services for nonfinancially-related material upon the specific, unsolicited request of a third party when courier services are not otherwise reasonably available may be regarded as an incidental activity of a bank-related courier.

Board of Governors of the Federal Reserve System, August 11, 1975.

[SEAL] GRIFFITH L. GARWOOD,
Assistant Secretary.

[FR Doc.75-21903 Filed 8-19-75;8:45 am]

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

[No. 75-759]

PART 545—OPERATIONS

Federal Savings and Loan System Investments in Service Corporations

SUMMARY

AUGUST 13, 1975.

The following outline of the amendment adopted by this Resolution is included for the reader's convenience and is subject to the full description in the preamble as well as the specific provisions in the regulation.

I. *Present Situation.* A service corporation must apply for Board approval before acquiring any office building of an association.

II. *Amended Regulation.* 1. Authorizes a service corporation to acquire, maintain and manage real estate to be used for offices and related facilities of a parent association as a preapproved activity if such acquisition is pursuant to a prudent program of property acquisition to meet either such association's present needs or its reasonable future needs for offices and related facilities.

2. Without prior Board approval, the total investment by the association and affiliated service corporations in offices and related facilities could not exceed the association's and affiliated service corporations' consolidated net worth.

III. *Reason for Amendment.* To increase the business planning flexibility available to management of associations and service corporations.

The Federal Home Loan Bank Board, by Resolution No. 75-445, dated May 19, 1975, proposed an amendment to § 545.9-1(a)(4) of the Rules and Regulations for the Federal Savings and Loan System (12 CFR 545.9-1(a)(4)) for the purpose of permitting a service corporation in which Federal savings and loan associations may invest under § 545.9-1 to acquire, maintain and manage any office building of an association which holds stock in such service corporation. Notice of such proposed rulemaking was duly published in the FEDERAL REGISTER on May 29, 1975 (40 F.R. 23321-23322) with an invitation for interested persons to submit written comments by June 30, 1975.

On the basis of its consideration of all relevant material presented by interested persons and otherwise available, the Board hereby amends § 545.9-1(a)(4) by adding a new paragraph (xii) thereof, with several changes from the proposal, renumbering §§ 545.9-1(a)(4) (xii) and (xiii) to read §§ 545.9-1(a)(4) (xiii) and (xiv), respectively, and changing the numerical reference in 545.9-1(b)(2), to read as set forth below, effective August 20, 1975.

Since this amendment relieves restriction, the Board hereby finds that publication of said amendment for the 30-day period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to the effective date of said amendment is unnecessary, and the Board hereby provides that said amendment shall become effective as hereinbefore set forth.

Prior to this amendment, Federal association service corporations were required to apply for Board approval before acquiring any office building of an association. Under this amendment a service corporation is authorized to acquire, maintain and manage any real estate to be used as offices and related facilities of a savings and loan association which holds stock in such service corporation, or for such offices and related facilities and for rental or sale, if such acquisition, maintenance and management is pursuant to a prudent program of property acquisition to meet either such association's present needs or its reasonable future needs for offices and related facilities. However, total investment in such real estate may not exceed the consolidated net worth of the association and affiliated service corporations.

The amendment differs in three ways from the proposal. First, service corporations are authorized to acquire office property directly as well as through an association. Second, acquisition of related facilities to an office, e.g., necessary parking facilities, is authorized. Third, service corporations are restricted from acquiring an office building or related facilities if as a result of such acquisition the total investment by the association and affiliated service corporations would exceed their consolidated net worth; this added provision accords with § 545.10, which limits acquisition of real estate for offices and related facilities by Federal associations.

With adoption of this amendment, a service corporation subsidiary of a subsidiary insured institution of a savings and loan holding company is authorized to perform this same activity, if it has legal power to do so, because of current § 584.2 (c) of the Regulations for Savings and Loan Holding Companies (12 CFR 584.2 (c)). That section incorporates any changes made in § 545.9-1(a)(4) into the Holding Company Regulations for service corporation subsidiaries. No similar amendment is necessary for multiple holding companies and their subsidiaries which are neither insured institutions nor service corporations of a subsidiary insured institution, since they are already authorized by section 408(c)(2) of the National Housing Act, as amended (12 U.S.C. 1730a(c)), to hold and manage an insured institution's office building.

In consideration of the above § 545.9-1 is amended to read as follows:

1. By revising subparagraph (a)(4);

2. By adding a new subparagraph (a)(4)(xii);

3. By renumbering the currents subparagraphs (a)(4)(xii) and (xiii) to read (a)(4)(xiii) and (xiv), respectively, and revising the text; and

4. By revising subparagraph (b)(2) to read as follows:

§ 545.9-1 Service corporations.

(a) *General service corporations.*

* * * * *

(4) Substantially all of the activities of such service corporation, performed directly or through one or more wholly-

owned subsidiaries or joint ventures, consist of one or more of the following:

* * * * *

(xii) Acquisition, maintenance and management of real estate (improved or unimproved) to be used for offices and related facilities of a savings and loan association which holds stock in such service corporation, or for such offices and related facilities and for rental or sale, if such acquisition, maintenance and management is pursuant to a prudent program of property acquisition to meet either such association's present needs or its reasonable future needs for offices and related facilities. However, without prior approval of the Board, no such real estate shall be acquired by such service corporation, if, as a result of such acquisition, the outstanding aggregate book value of all such real estate owned by such association and service corporations thereof would exceed their consolidated net worth.

(xiii) Activities reasonably incidental to the activities described in the foregoing subdivisions of this subparagraph (4); and

(xiv) Such other activities reasonably related to the activities of Federal savings and loan associations as the Board may approve on application therefor by any such service corporation or otherwise.

(b) *Other service corporations.*

* * * * *

(2) The activities of such corporation, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist solely of one or more of the activities specified in subdivisions (i) through (xii) of paragraph (a)(4) of this section, and such other activities reasonably related to the activities of Federal savings and loan associations as the Board may approve upon application therefor by such corporation or otherwise; and

* * * * *

(Sec. 5, 48 Stat., 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL] J. J. FINN, *Secretary.*

[FR Doc.75-21970 Filed 8-19-75;8:45 am]

[No. 75-758]

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

Federal Savings and Loan System Conversions

AUGUST 13, 1975.

The Federal Home Loan Bank Board considers it advisable to amend Part 546 of the Rules and Regulations for the Federal Savings and Loan System (12 CFR Part 546) by adding a new § 546.5 to make clear that a Federal association needs prior Board approval before converting to a State-chartered entity under the last paragraph of Section 5(i) of the Home Owners' Loan Act of 1933, as amended. Accordingly, the Board hereby amends Part 546 by inserting a new § 546.5 to read as set forth below, effective August 22, 1975.

Conversion of a Federal association under Section 5(i) to a State institution other than a savings and loan type institution is governed by the last paragraph of Section 5(i), which requires Board approval for such conversions. However, there has been a recent instance where an association inadvertently failed to recognize this requirement seasonably.

This amendment incorporates into the Rules and Regulations for the Federal Savings and Loan System the requirement in the last paragraph of Section 5(i) for Board approval of conversions thereunder and prescribes substantive and procedural requirements for such approval.

Since this amendment merely restates for the purpose of clarification an existing statutory requirement, the Board hereby finds that notice and public procedure are unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b) and that publication of said amendment for the 30-day period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) is likewise unnecessary. Therefore, the Board hereby provides that the amendment shall become effective as hereinbefore set forth.

Section 546.5 is added to read as follows:

§ 546.5 Conversion from Federal mutual to State charter mutual under last paragraph of subsection (i) of Section 5 of the Home Owners' Loan Act of 1933.

The following requirements are hereby prescribed for approvals pursuant to the last paragraph of subsection (i) of section 5 of the Home Owners' Loan Act of 1933, as amended:

(a) The conversion of an association shall be effected in accordance with a written plan approved by the Board, and in passing upon any such plan the Board may give consideration to any element of good-will value.

(b) The plan shall be submitted to the Board by action of the board of directors of such association prior to the giving of notice as hereinafter provided.

(c) The Board may prescribe such other substantive or procedural requirements as it deems necessary or proper to insure that the plan is fair and equitable to the association and its members.

(d) The association shall give formal notice of a special meeting called to vote on the plan, which shall be mailed, postage prepaid, at least 15 and not more than 45 days prior to the date of such meeting, and shall set forth the terms of the plan, the rights of the members, and such other matters as the Board may require. The use of said notice and accompanying proxy soliciting material, including the form of proxy, shall be authorized by the Board's Office of General Counsel before distribution is made to members.

(e) The plan shall be approved by a vote of at least a majority of the total votes eligible to be cast by members at the said special meeting.

(f) All requirements of or under State law shall have been complied with.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464, Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1947 Supp. Interpret or apply sec. 406, 48 Stat. 1259, as amended; 12 U.S.C. 1729.)

By the Federal Home Loan Bank Board.

[SEAL] J. J. FINN, *Secretary.*

[FR Doc.75-21971 Filed 8-19-75;8:45 am]

Title 13—Business Credit and Assistance

CHAPTER I—SMALL BUSINESS ADMINISTRATION

[Rev. 13, Amdt. 5]

PART 121—SMALL BUSINESS SIZE STANDARDS REGULATION

Certain Definitions

Correction

In FR Doc. 75-20299 appearing at page 32824 in the issue of Tuesday, August 5, 1975 the sixth line of the introductory text of § 121.3-8(e) on page 32824 reading "rine engineering service is classified as" should read "defined in this section is classified as".

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 75-EA-49; Amdt. 39-2347]

PART 39—AIRWORTHINESS DIRECTIVES

DeHavilland Aircraft

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to amend AD 69-02-01 applicable to DHC-6 airplanes. The amendment restricts the number of aircraft to which the AD is applied. This results from the manufacturer having incorporated the AD in production airplanes.

Since the amendment is less restrictive and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 [31 FR 13697] § 39.13 of Part 39 of the Federal Aviation Regulations is amended so as to amend AD 69-02-01 as follows:

1. In AD 69-02-01, in paragraph (b) delete the words "and subsequent" and insert in lieu thereof "thru 210".

This amendment is effective August 26, 1975.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958 [49 U.S.C. 1354(a), 1421 and 1423], and sec. 6(c) of the Department of Transportation Act [49 U.S.C. 1655(c)])

Issued in Jamaica, N.Y., on August 12, 1975.

LOUIS J. CARDINALI, *Acting Director, Eastern Region.*

[FR Doc. 75-21857 Filed 8-19-75;8:45 am]

[Airspace Docket No. 75-SO-45]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Terminal Control Area at Atlanta, Ga.

On July 30, 1975, FR Doc. 75-19691 was published in the FEDERAL REGISTER (40 FR 31927) altering Atlanta, Ga., Group I Terminal Control Area (TCA) effective October 9, 1975.

The purpose of the alteration was to raise certain floor altitudes in the southern portion of the TCA to 5,000 feet MSL. However, the Federal Aviation Administration (FAA) in reviewing the language has identified an incorrect description of Area C that failed to exclude that airspace underlying Area D. This inadvertent omission fails to raise the floor of that portion of the TCA from 3,500 feet to 5,000 feet MSL which was the intent of the amendment.

The phrase "that airspace within and underlying Area D" is added to the description of Area C to make sure that no possibility of misunderstanding exists.

Since this change is editorial and minor in nature, it is determined that notice and public procedure hereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., October 9, 1975, as hereinafter set forth.

In § 71.401(a) (FR 640, 10169, and 31927) the Atlanta, Ga., Terminal Control Area is amended as follows:

In the description of Area C "Area D" is deleted and "and that airspace within and underlying Area D" is substituted therefor.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on August 14, 1975.

B. KEITH POTTS,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.75-21856 Filed 8-19-75;8:45 am]

[Airspace Docket No. 75-PC-3]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Change of Reporting Point Name

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to change the name of the "ADISE" reporting point to "PARIS." The word ADISE is being mistakenly confused with similar sounding words such as ADIZ and ATIS in phonetic communication. This creates a potential hazard to specific position reporting by en route flights on V-1, V-2, V-3, V-6 and V-15 airways.

Since the identifying names of reporting points and the descriptions of their locations are minor matters in which the public is not particularly interested and since a potential hazard exists, notice and public procedure thereon are unnecessary. Since sufficient time is required to depict the change on appropriate aeronautical charts, this amendment will become effective October 9, 1975.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., October 9, 1975, as hereinafter set forth.

In § 71.215 (40 FR 639) the word "ADISE:" is deleted and "PARIS:" is substituted therefor.

(Sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on August 13, 1975.

B. KEITH POTTS,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.75-21855 Filed 8-19-75;8:45 am]

Title 15—Commerce and Foreign Trade

CHAPTER III—DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 379—TECHNICAL DATA

Revision of General License GTDR

Before exporting technical data relating to certain materials and equipment under the provisions of General License GTDR, the exporter must obtain from the importer a written assurance that neither the technical data nor the direct product thereof is intended to be shipped, directly or indirectly, to a destination in Country Group Q, W, Y, or Z.

The list of materials and equipment subject to this requirement for a written assurance is revised to include technical data relating to "Single crystal sapphire substrates."

Effective date of action: August 15, 1975.

Accordingly, § 379.4(e) of the *Export Administration Regulations* (15 CFR Part 379) is amended by adding paragraph 379.4(e)(1)(iii)(*n*) as follows:

§ 379.4 General License GTDR: technical data under restriction.

* * * * *

(e) *Written Assurance Requirements*

* * *

(1) * * *

(iii) Technical data relating to the following materials and equipment: * * *

(*n*) Single crystal sapphire substrates (ECC No. 66).

* * * * *

RAUER H. MEYER,
Director,
Office of Export Administration.

[FR Doc.75-21884 Filed 8-19-75;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket C-2681]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

The A & R Agency, et al.

Correction

In FR Doc. 75-20931 appearing at page 33656 in the issue of Monday, August 11, 1975, the eleventh line in the second column on page 33656 reading "Agency, and Anthony Abraham indi-" should read "Agency, Greek Newspaper Agency, and Anthony Abraham indi-".

Title 20—Employees' Benefits

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

[Reg. No. 5, further amended]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED (1965.....)

Exclusion of Certain Items and Services From Medicare Coverage

These amendments implement section 229 of the Social Security Amendments of 1972 (Pub. L. 92-603), enacted October 30, 1972, which added section 1862(d) to title XVIII of the Social Security Act (42 U.S.C. 1395y(d)). Under this provision the Secretary is authorized to exclude from coverage under the Federal Health Insurance for the Aged and Disabled Program (Medicare), items and services rendered by physicians, providers, and suppliers of services who are found to have committed program abuses, and in the case of such providers of services, to terminate their agreements to participate in the Medicare program. Determinations under this provision are also made applicable by section 229 to amounts paid for services furnished under State plans pursuant to title V (Maternal and Child Health and Crippled Children's Services) and title XIX (Grants to States for Medical Assistance Programs) of the Social Security Act.

In general, section 229 provides for the termination of payments to physicians, providers, and suppliers of services for certain specific types of program abuse. A determination to terminate payments because of a false statement or representation of a material fact can be made by the Secretary whereas a determination to terminate or exclude for other types of abuse generally requires the concurrence of a program review team. The law provides that, after consultation with appropriate State and local professional societies, the appropriate carriers and intermediaries utilized in the administration of the Medicare program and consumer representatives familiar with the health needs of the residents of the State, program review teams are to be