

20857, Monday through Friday, 9 a.m. to 4 p.m., except on Federal holidays.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(1))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Parts 556 and 558 are amended as follows:

1. In Part 556, § 556.347 is revised to read as follows:

§ 556.347 Lasalocid sodium.

A tolerance of 0.05 part per million is established for total residues of lasalocid sodium in the edible tissues of chickens. A tissue residue assay measuring microbiologically active residues in

the target tissues, skin and fat, with a sensitivity of 0.01 part per million, serves to monitor the total residue in edible tissues. A marker residue concentration of 0.025 part per million in the target tissues corresponds to a total residue level of 0.05 part per million.

2. Part 558 is amended in § 558.311 by revising the introductory text of paragraph (e) and the first entry in the table in paragraph (e), to read as follows:

§ 558.311 Lasalocid sodium.

(e) *Conditions of use.* It is used in feed for broiler or fryer chickens as follows:

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(1) 68 (0.0075 pct.) to 113 (0.0125 pct.).	For the prevention of coccidiosis caused by <i>Eimeria tenella</i> , <i>E. necatrix</i> , <i>E. acerrulina</i> , <i>E. brunetti</i> , <i>E. mitis</i> , and <i>E. maxima</i> .	For broiler or fryer chickens only, feed continuously as the sole ration; withdraw 3 days before slaughter.	000004

Effective date. December 2, 1977.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(1)).)

Dated: November 21, 1977.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary
Medicine.

[FR Doc.77-34447 Filed 12-1-77;8:45 am]

[4110-03]

SUBCHAPTER F—BIOLOGICS

[Docket No. 75N-0313]

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

Blood Grouping Serum; Extension of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Extension of effective date.

SUMMARY: This document extends from December 6, 1977 to April 6, 1978 the time within which manufacturers must comply with the additional standards governing the manufacture of Blood Grouping Serum. The Commissioner has concluded that a 4-month extension of the effective date is required for manufacturers to implement the processing changes required by the new standards.

DATES: Effective December 2, 1977; compliance with §§ 660.20 through 660.27 and § 660.29 by April 6, 1978; compliance with § 660.28 remains August 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Donna C. Williams or Al Rothschild (HFB-620), Bureau of Biologics, Food and Drug Administration, Department

of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, MD 20014, 301-443-1920.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs issued in the FEDERAL REGISTER of October 7, 1977 (42 FR 54534) additional standards for Blood Grouping Serum, with an effective date of December 6, 1977 except for labeling requirements which are effective August 7, 1978. Although the standards prescribe requirements for specificity testing and manufacturing methods that are more stringent than those originally proposed, the Commissioner believed that these requirements could be implemented during the 60-day delayed effective date. However, the Commissioner has received requests from manufacturers to extend the effective date to enable revision of specificity testing methods, processing procedures, and quality control procedures and to locate donors for certain rare red blood cell antigens that are required for testing of antisera. A 4-month extension was requested to preclude disrupting the supply of reagents to users while these changes are made.

The Commissioner concludes that a 4-month extension will provide sufficient time for manufacturers to comply with the regulations without undue hardship and to preclude disrupting the supply of

these reagents to users. Accordingly, he is granting an extension until April 6, 1978. Changes required to implement the new standards must be submitted to the Director, Bureau of Biologics, in the form of a license amendment. Manufacturers should note that the effective date for labeling requirements remains August 7, 1978, as originally published in the final regulation of October 7.

Dated: November 29, 1977.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner
for Compliance.

[FR Doc.77-34695 Filed 12-1-77;8:45 am]

[1505-01]

SUBCHAPTER G—COSMETICS

[Docket No. 76N-0153]

PART 701—COSMETIC LABELING

Ingredient Designation of Cosmetics Sold by Direct Mail

Correction

In FR Doc. 77-26755 appearing on page 46514 in the issue of Friday, September 16, 1977; on page 46516, in § 701.3(r), the last line should read, "additional requirements are met:".

[1505-01]

SUBCHAPTER J—RADIOLOGICAL HEALTH

[Docket No. 75N-0259]

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

Exemptions From Performance Standards for Products Intended for United States Government Use

Correction

In FR Doc. 77-25676 appearing in the issue for Friday, September 2, 1977 on page 44229, in § 1010.5(c) the address in the 7th line should read, "Rockville, MD 20857".

On page 44230, § 1010.5(e), the introductory phrase should read, "Ruling on an application.".

[1505-01]

[Docket No. 75N-0331]

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

Performance Standard for Diagnostic X-Ray Systems and Their Major Components

Correction

In FR Doc. 77-25425 appearing on page 44230 in the issue of Friday, September 2, 1977, the 3rd column, the last paragraph, the citation in the 4th line should read, "§ 1020.30(b)(54)".

On page 44233, the 3rd column, the date in the 5th line, should read, "September 5, 1978".

[4510-29]

Title 29—Labor

CHAPTER XXV—PENSION AND WELFARE BENEFIT PLANS, DEPARTMENT OF THE LABOR

SUBCHAPTER B—DEFINITIONS AND COVERAGE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2510—DEFINITIONS OF TERMS USED IN SUBCHAPTERS C, D, E, F AND G OF THIS CHAPTER

Sheltered Annuity Programs

AGENCY: U. S. Department of Labor.

ACTION: Interim and proposed rule.

SUMMARY: This document announces the adoption on an interim basis and the proposal for permanent adoption of a regulation which sets forth the circumstances under which certain tax sheltered annuity programs under the Internal Revenue Code of 1954, as amended (the Code) will not be subject to certain requirements of the Employee Retirement Income Security Act of 1974 (the Act).

DATES: Interim regulation effective retroactively from January 1, 1975. Comments concerning the proposed final regulation due on or before January 16, 1978.

ADDRESS: Comments concerning this interim regulation will be received for consideration in the preparation of a final regulation. Interested persons are invited to submit written data, views, or arguments (at least six copies) concerning any part or all of the proposed regulation contained in this document to "Section 2510.3-2(f), Office of Regulatory Standards and Exceptions, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, Washington, D.C. 20216." All written submissions will be open to public inspection at the Public Documents Room, Pension and Welfare Benefit Programs, Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

Robert Doyle, Office of Regulatory Standards and Exceptions, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, 202-523-8685 (not a toll free number).

SUPPLEMENTARY INFORMATION: The Department of Labor (the Department) has adopted interim regulation § 2510.3-2(f), effective January 1, 1975, and proposes this regulation for permanent adoption. Section 2510.3-2(f) states that, under certain specified conditions, tax sheltered annuity programs which are described in section 403(b) of the Code (section 403(b) programs) are not "established or maintained" by an employer. Only plans which are "established or maintained" by an employer or employee organization, or both can be "employee pension benefit plans" and

"pension plans" as defined in section 3(2) of the Act. Inasmuch as section 403(b) programs clearly are not "employee welfare benefit plans" as defined in section 3(1) of the Act, section 403(b) programs meeting the conditions set forth in the regulation would not be "employee benefit plans" as defined in section 3(3) of the Act and, accordingly, would not be subject to the requirements of Title I of the Act. See, section 4(a) of the Act.

BACKGROUND

The Department has received a substantial number of inquiries from the public which indicate that there is considerable uncertainty as to the applicability of Title I of the Act to section 403(b) programs. Pursuant to section 403(b) programs, certain employers (such as religious, charitable, or educational organizations described in section 501(c)(3) of the Code, and educational organizations where the employer is a State, political subdivision of a State or agency or instrumentality of such persons) may purchase annuities for their employees.¹ While these section 403(b) programs are not required to meet the tax qualification requirements for ordinary pension plans, employees who participate under these programs receive certain tax advantages. There are two principal sources of contributions to section 403(b) programs. The first involves an agreement between an employee and his employer whereby the employee will accept a reduction in salary or forgo an increase in salary, and the employer will purchase an annuity for the employee with the salary reduction or forgone salary increase. The second source of contribution is the employer's own assets which are used to purchase an annuity for the employee.

Section 3(2) of the Act defines the terms "employee pension benefit plan" and "pension plan" to mean

any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(A) provides retirement income to employees, or

(B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan. [Emphasis added.]

Section 4(a) of the Act provides that the provisions of Title I of the Act, generally, shall apply to any employee benefit plan if it is established or maintained—

¹ Certain "governmental plans", defined in section 3(32) of the Act, and "church plans", defined in section 3(33) of the Act are excepted from the requirements of Title I of the Act by section 4(b) (1) and (2) of the Act.

(1) By any employer engaged in commerce or in any industry or activity affecting commerce; or

(2) By any employee organization or organization representing employees engaged in commerce or in any industry or activity affecting commerce; or

(3) By both. [Emphasis added.]

The Department believes that section 403(b) programs, where contributions result from salary reduction agreements or agreements to forego salary increases between an employer and employee, and certain other conditions are met, are not plans which are "established or maintained" by an employer or employee organization or both. Section 403(b) programs, where the conditions of the regulations are not met, would be plans "established or maintained" by an employer for purposes of section 3(2) of the Act, and, therefore, would be subject to the requirements of Title I of the Act, unless another exception, such as that applicable to "governmental plans" or "church plans" is available.

Tax sheltered annuity programs differ from ordinary pension or deferred compensation plans in important respects. First, they may be tailored to the desires and financial means of the individual employee, and the annuity contributions must be vested only in annuity contracts or in certain custodial accounts, the assets of which are invested in regulated investment company shares for the purpose of providing retirement benefits (section 403(b)(7) of the Code). Second, the existing regulatory supervision of insured annuity contracts and of regulated investment companies (as defined in section 851(a) of the Code) provides much of the disclosure, fiduciary and funding protection afforded by Title I of the Act. Finally, because section 403(b) programs may be individually tailored, the reporting and disclosure provisions of Title I would present substantial administrative difficulties for the employer and for the Department.

Additionally, section 403(b) programs are similar in some respects to those individual retirement accounts exempt from the provisions of Title I of the Act pursuant to § 2510.3-2(d). The Department believes that the similarity between these two arrangements is an added reason to consider section 403(b) programs which meet the conditions set forth in this regulation not to have been "established or maintained" by an employer.

REGULATION § 2510.3-2(f)

As noted above, section 2510.3-2(f) makes it clear that annuities purchased by an employer, described in section 403(b)(1)(A) of the Code, pursuant to a section 403(b) program, in accordance with salary reduction agreements or agreements to forego an increase in salary, are not "established or maintained" by an employer under section 3(2) of ERISA, provided that certain other factors are present. These factors are: (1) That participation of employees is completely voluntary, (2) that all rights under the annuity contract are enforce-

able solely by the employee or beneficiary of such employee, or by any authorized representative of such employee or beneficiary, (3) that the involvement of the employer is limited to certain specified activities, and (4) that the employer receive no consideration other than reasonable reimbursement for the services rendered in connection with the employer's obligations under the agreements with employees. In this latter regard, if an employer, or a person acting in the interest of any employer, receives, for example, such other consideration from an annuity contractor, the employer could be deemed to have "established or maintained" a plan.

Under paragraph (f) (3) of the regulation the involvement of the employer is limited to: permitting an annuity contractor to publicize its product to employees; requesting and summarizing relevant information in a manner which will help employees compare various programs; and collecting and remitting payments, as required by its agreements with employees. The regulation also includes different provisions for retroactive and prospective applicability with respect to the permissible scope of employer activity. This is done in order to recognize and accommodate what the Department believes to have been common practice among employers offering these types of programs prior to publication of this regulation when adequate guidance was not available from the Department. The regulation provides that an employer may previously have limited the funding media or products available to employees, or contractors who could approach employees, to those which, in the judgment of the employer, afforded employees with appropriate investment opportunities. However, beginning February 7, 1978, an employer may not for the future exercise this degree of authority and, thus, would have less discretion in limiting the choices available to its employees; rather, it could impose such limitations only when doing so would not preclude affording employees a reasonable choice in light of all relevant circumstances. Accordingly, if after February 6, 1978, an employer, for example, limits access of annuity contractors to employees and thereby precludes employees from having a reasonable choice, that employer would be deemed to have "established or maintained" a pension plan. This provision is designed to prevent an employer in the future from limiting available contractors to one selected by the employer when several seek to make their services and products available to employees unless to do so would afford employees a reasonable choice, in light of relevant circumstances. This provision would not require an employer to seek out annuity contractors.

The regulation contained in this document is adopted on an interim basis effective retroactive to January 1, 1975, and is proposed for final adoption pursuant to authority provided in section 505 of the Act (Pub. L. 93-406, 88 Stat. 829, 894, 29 U.S.C. 1135). The reason for

making this regulation effective immediately on a temporary basis is that plans covered by the Act, in most cases, are required to file summary plan descriptions within 120 days after the regulations regarding summary plan descriptions were published in the FEDERAL REGISTER on July 19, 1977. Consequently, section 403(b) programs must be notified of their status as to coverage as soon as possible in order to minimize unnecessary filings. For the foregoing reason, the undersigned finds that good cause exists for making this regulation temporarily effective without advance publication as specified in the Administrative Procedure Act (5 U.S.C. 533(d)(3)).

Accordingly, Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

By adding to § 2510.3-2 a new paragraph (f) to read as follows: Section 2510.3-2(f) Tax Sheltered Annuities.

§ 2510.3-2 Employee pension benefit plan.

(f) *Tax Sheltered Annuities.* For the purpose of Title I of the Act and this chapter, a program for the purchase of an annuity contract described in section 403(b) of the Code pursuant to salary reduction agreements or agreements to forego an increase in salary which meets the requirements of 26 CFR 1.403(b)-1(b)(3) shall not be "established or maintained by an employer" as that phrase is used in the definition of the terms "employee pension benefit plan" and "pension plan" if

(1) Participation is completely voluntary for employees;

(2) All rights under the annuity contract are enforceable solely by the employee, by a beneficiary of such employee, or by any authorized representative of such employee or beneficiary;

(3) The sole involvement of the employer, other than pursuant to paragraph (f) (2) of this section, is

(i) To permit an annuity contractor to publicize its product to employees,

(ii) To request certain information concerning proposed funding media, products or annuity contractors,

(iii) To summarize or otherwise compile the information provided with respect to the proposed funding media or products which are made available, or the annuity contractors whose services are provided in order to facilitate review and analysis by the employees,

(iv) To collect annuity considerations as required by salary reduction agreements or by agreements to forego salary increases and to remit them to annuity contractors,

(v) Before February 7, 1978, to have limited the funding media or products available to employees, or annuity contractors who could approach employees, to those which, in the judgment of the employer, afforded employees appropriate investment opportunities, or

(vi) After February 6, 1978 to limit the funding media or products available to employees, or the annuity contractors who may approach employees, which is

designed to afford employees a reasonable choice in light of all relevant circumstances; and

(4) The employer receives no direct or indirect consideration or compensation in cash or otherwise other than reasonable compensation to cover expenses to be properly and actually incurred by such employer in the performance of the employer's duties pursuant to the salary reduction agreements or agreements to forego salary increases described in this paragraph (f).

Effective date: January 1, 1975.

Signed at Washington, D.C., this 29th day of November 1977.

IAN D. LANOFF,
*Administrator of Pension and Welfare Benefit Programs,
Labor-Management Services
Administration, United States
Department of Labor.*

[FR Doc.77-34679 Filed 12-1-77;8:45 am]

[1505-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDE PROGRAMS

[FRL 807-4; PP 5F1535/R135]

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Aluminum Phosphide

Correction

In FR Doc. 77-30697, appearing at page 56113 in the issue for Friday, October 21, 1977, in § 180.225, in the last paragraph (page 56114), "0.1 part per million" should be changed to read "0.01 part per million".

[6560-01]

SUBCHAPTER R—TOXIC SUBSTANCES CONTROL ACT

PART 750—PROCEDURES FOR RULE-MAKING UNDER SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT

AGENCY: Environmental Protection Agency.

ACTION: Final rules.

SUMMARY: Section 6 of the Toxic Substances Control Act, 15 U.S.C. 2605, allows EPA to control potentially toxic substances by rulemaking. The statute requires EPA to follow certain procedures in promulgating these rules. It must establish a record to contain the documents being considered, and hold a hearing with some opportunity for cross-examination.

On April 21, 1977 EPA proposed procedures for implementing these requirements. 42 FR 20640. Comments have been received and analyzed, and the regulations are now being promulgated in final form. Only minor changes from the reg-

ulation as proposed have been made; those changes are discussed in "Supplemental Information" below.

EFFECTIVE DATE: December 2, 1977.

FOR FURTHER INFORMATION CONTACT:

William F. Pedersen, Jr. (A-130), Office of General Counsel, Environmental Protection Agency, 401 M. Street SW., Washington, D.C. 20460, telephone: 202-755-0434.

SUPPLEMENTARY INFORMATION: These regulations will take effect upon promulgation. This will enable the final procedural regulations to govern EPA's rulemaking implementing the provisions of TSCA which call for a gradual phasing out of all uses of polychlorinated biphenyls. Regulations to implement those provisions will be proposed shortly.

We find that good cause exists to make these regulations effective upon promulgation in that (i) 5 U.S.C. 554(d) only applies to "substantive" rules and these are procedural rules, (ii) the changes from the proposed rule are minimal and in the direction of greater flexibility, and (iii) it is desirable that the final rules govern the rulemaking on the PCB "ban" regulations.

A detailed Response to Comments document has been prepared to summarize and respond to the comments received, and to discuss the changes made to the regulation between proposal and promulgation. This document is an integral part of our decision to issue the rules promulgated today. Copies are available at the address given above.

The following changes to the regulation are of enough significance to warrant mention here in the preamble, as well as in the detailed Response to Comments:

1. A number of comments asserted the need for greater flexibility in the procedures as proposed. In response, the procedures have been modified to provide that flexibility in several respects. All deadlines contained in the rules will be subject to extension by the Record and Hearing Clerk or by the person chairing the hearing panel. Methods of clarifying the record that may be preferable to cross-examination or adequate substitutes for it are explicitly provided for. Finally, a strictly limited opportunity for cross-examination during the legislative hearing is provided.

This does not mean that deadlines will be extended as a normal matter. We anticipate that extensions will be granted only rarely, and only in the discretion of the hearing panel. Similarly, requests for cross-examination during the legislative hearing will be granted only in very exceptional cases, when the need for cross-examination is completely clear and it would be burdensome to defer it. The panel is to be left the very broadest discretion to deny requests for cross-examination at this stage.

In addition to these changes in the regulations aimed at greater flexibility, we will continue to conduct the panel

hearing in a flexible manner. In the first two hearings, for example, comments from the floor and the reappearance of witnesses to make brief responses to later witnesses have both been allowed, and have worked well.

Indeed, though a number of comments asserted the need for more formal procedures and greater reliance on cross-examination, the fact is that the two hearings held under section 6 of TSCA to date have not resulted in any serious cross-examination requests. The more flexible procedures that were used apparently produced a record satisfactory to all participants without cross-examination.

2. Comments also urged EPA to make clear that EPA employees or staff members were potentially subject to cross-examination. We agree that that is the proper reading of the statute. To the extent cross-examination of such persons is necessary to provide full and true disclosure with respect to disputed issues of material fact which it is necessary to resolve, it may be held provided the standards set forth in § 750.8 can be met.

3. One comment argued that hearing participants should have subpoenas available to them if a need for additional information could be justified. We agree that one purpose of public comment on a proposed rule could be to persuade EPA to use its subpoena power to obtain information necessary to a sound decision. Accordingly, the procedures have been amended to explicitly provide for such requests. The amendment also permits EPA to obtain similar information on its own motion.

The test provided in the statute for issuing subpoenas is whether the information at issue is needed by EPA to discharge its responsibilities under TSCA, not whether it would be useful to some other person in making a case. In addition, the legislative history indicates that subpoena authority should be sparingly exercised. For these reasons, and also to avoid delay in rulemaking, we anticipate that requests for subpoenas will be granted only in rare cases where the need for a subpoena is clearly demonstrated.

4. One comment stated that persons who did not participate in the hearing should have the right to submit reply comments. Nothing in either the proposed regulations or these final regulations was meant to forbid that.

5. Finally, one point of terminology should be clarified. As used in these rules the term "informal hearing" means the whole course of oral proceedings from the opening of the panel hearing through the end of any cross-examination; the term "legislative hearing" means the hearing before an EPA panel under section 750.7.

These final rules are issued under authority of section 6 of the Toxic Substances Control Act, 15 U.S.C. 2605.

Dated: November 21, 1977.

DOUGLAS M. COSTLE,
Administrator.

Title 40 of the Code of Federal Regulations is amended by adding a new Part 750 as set forth below:

Sec.
750.1 Applicability.
750.2 Notice of proposed rulemaking.
750.3 Record.
750.4 Public comments.
750.5 Subpoenas.
750.6 Participation in informal hearing.
750.7 Conduct of legislative hearing.
750.8 Cross-examination.
750.9 Final rule.
Appendix A

AUTHORITY: 15 U.S.C. 2605.

§ 750.1 Applicability.

This Part applies to all rulemakings under authority of section 6 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605.

§ 750.2 Notice of proposed rulemaking.

(a) Each rulemaking subject to this Part shall begin with the publication of a Notice of Proposed Rulemaking in the FEDERAL REGISTER.

(b) Each such notice shall contain:

(1) A draft finding that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use or disposal of the chemical substance(s) or mixture(s) at issue, or any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment.

(2) A Notice of Proposed Rulemaking stating with particularity the reasons for the proposed rule together with a statement why the proposed rule protects adequately against the risk(s) involved using the least burdensome requirements authorized by TSCA.

(3) Either the draft text of the proposed rule (which may include alternative approaches among which a final choice has not yet been made) or a description of the approaches and provisions being considered for inclusion in the rule, or some combination of the above.

(4) Except for rules published under authority of Section 6(e), a draft statement with respect to:

(i) the effects of the substance(s) or mixture(s) at issue on health and the magnitude of the exposure of human beings to such substance(s) or mixture(s);

(ii) The effects of the substance(s) or mixture(s) at issue on the environment and the magnitude of the exposure of the environment to such substance(s) or mixture(s).

(iii) The benefits of the substance(s) or mixture(s) at issue for various uses and the availability of substitutes for such uses; and

(iv) The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

(v) Major impacts of alternatives to the proposed rule shall also be analyzed.

(5) In cases where the Administrator, in his or her discretion, determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under a Federal law (or laws) other than TSCA administered in whole or in part by the Administrator, a finding that it is in the public interest to proceed against such risk under TSCA. Any such finding shall be accompanied by a brief statement discussing:

- (i) All relevant aspects of the risk;
- (ii) A comparison of the estimated costs of complying with actions taken under TSCA and under such other law (or laws); and
- (iii) The relative efficiency of actions under TSCA and under such other law (or laws) to protect against such risk of injury.

Two or more or all of the statements required above may be combined in the same narrative for efficiency of exposition as long as each of the required points is discussed. Any statement required by this paragraph may reference other documents which are not published in the FEDERAL REGISTER. All such referenced documents shall be included in the rulemaking record. Either the statements required by this paragraph or the documents they reference shall contain a discussion of the factual, analytical, policy and legal considerations behind the agency decision to issue the proposed rule in the form chosen. A brief summary of these considerations shall be included in the preamble in any case. All factual materials and each analytical methodology seriously considered shall be fully disclosed. Significant areas of uncertainty known to the Agency under each heading shall be identified, and the manner in which the Agency intends to deal with them shall be specified.

(c) In addition to the material required under paragraph (b), each notice of proposed rulemaking shall contain:

(1) A statement of the time and place at which the informal hearing required by section 6(c)(2)(C) of TSCA shall begin, or, to the extent these are not specified, a statement that they will be specified later in a separate FEDERAL REGISTER notice *Provided*. That FEDERAL REGISTER notice of the date and city at which any informal hearing shall begin shall be given at least 30 days in advance;

(2) A statement identifying the place at which the official record of the rulemaking is located, the hours during which it will be open for public inspection, the documents contained in it as of the date the notice of proposed rulemaking was issued, and a statement of the approximate times at which additional materials such as public comments, hearing transcripts, and agency studies in progress will be added to the record. If any material other than public comments or material generated by a hearing is added to the record after publication of the notice required by this

section, and notice of its future addition was not given at the time of that initial publication, a separate FEDERAL REGISTER notice announcing its addition to the record and inviting comment shall be published;

(3) The due date for public comments, which shall be at least two weeks prior to the informal hearing for main comments and no more than two weeks after the informal hearing for reply comments;

(4) The name, address and office telephone number of the Record and Hearing Clerk for the rulemaking in question; and

(5) A nonbinding target date for issuing the final rule.

§ 750.3 Record.

(a) No later than the date of proposal of a rule subject to this part, a rulemaking record for that rule shall be established. It shall consist of a separate identified filing space containing:

(1) All documents required by § 750.2 (b);

(2) All documents cited in the documents required by § 750.2(b);

(3) All public comments timely received;

(4) All public hearing transcripts;

(5) All material received during an informal hearing and accepted for the record of that hearing; and

(6) Any other information which the Administrator considers to be relevant to such rule and which the Administrator identified, on or before the date of the promulgation of the rule, in a notice published in the FEDERAL REGISTER.

All material in the record shall be appropriately indexed. Each record shall be available for public inspection during normal Agency business hours. Appropriate arrangements allowing members of the public to copy record materials that do not risk the permanent loss of such materials shall be made. All material required to be included in the record shall be added to the record as soon as feasible after its receipt by the Agency.

(b) The Record and Hearing Clerk for each rulemaking shall be responsible for Agency compliance with the requirements of paragraph (a) of this section.

§ 750.4 Public comments.

(a) Main comments shall be postmarked or received no later than the time specified in the Notice of Proposed Rulemaking and shall contain all comments on and criticisms of that Notice by the commenting person, based on information which is or reasonably could have been available to that person at the time.

(b) Reply comments shall be postmarked or received no later than two weeks after the close of all informal hearings on the proposed rule and shall be restricted to comments on:

(1) Other comments;

(2) Material in the hearing record; and

(3) Material which was not and could not reasonably have been available to the commenting party a sufficient time

before main comments were due.

(c) Extensions of the time for filing comments may be granted in writing by the Record and Hearing Clerk. Application for an extension shall be made in writing. Comments submitted after the comment period and all extensions of it have expired need not be added to the rulemaking record and need not be considered in decisions concerning the rule. Unless the Notice of Proposed Rulemaking states otherwise, four copies of all comments shall be submitted.

§ 750.5 Subpoenas.

(a) Where necessary, subpoenas requiring the production of documentary material, the attendance of persons at the hearing, or responses to written questions may be issued. Subpoenas may be issued either upon request as provided in paragraph (b) or by EPA on its own motion.

(b) All subpoena requests shall be in writing. Hearing participants may request the issuance of subpoenas as follows:

(1) Subpoenas for the attendance of persons, and for the production of documents or responses to questions at the legislative hearing may be requested at any time up to the deadline for filing main comments.

(2) Subpoenas for production of documents or answers to questions after the legislative hearing may be requested at any time between the beginning of the legislative hearing and the deadline for submitting reply comments.

(c) EPA will rule on all subpoena requests filed under paragraph (b)(1) no later than the beginning of the legislative hearing. Such requests may be granted, denied, or deferred. EPA will rule on all subpoena requests filed under paragraph (b)(2) and all deferred subpoena requests filed under paragraph (b)(1) no later than the promulgation of the final rule. Such requests shall be either granted or denied.

§ 750.6 Participation in informal hearing.

(a) Each person or organization desiring to participate in the informal hearing required by section 6(c)(2)(C) of TSCA shall file a written request to so participate with the Record and Hearing Clerk which shall be postmarked or received no later than three weeks prior to the scheduled start of such hearing. The request shall include:

(1) A brief statement of the interest of the person or organization in the proceeding;

(2) A brief outline of the points to be addressed;

(3) An estimate of the time required; and

(4) If the request comes from an organization, a nonbinding list of the persons to take part in the presentation. Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each of the areas to be addressed. No organization not filing

main comments in the rulemaking will be allowed to participate at the hearing, unless a waiver of this requirement is granted in writing by the Record and Hearing Clerk or the organization is appearing at the request of EPA or under subpoena.

(b) No later than one week prior to the start of the hearing, the Record and Hearing Clerk shall make a hearing schedule publicly available and mail or deliver it to each of the persons who requested to appear at the hearing. This schedule shall be subject to change during the course of the hearing at the discretion of those presiding over it.

(c) Opening statements should be brief, and restricted either to points that could not have been made in main comments, or to emphasizing points which are made in main comments, but which the participant believes can be more forcefully urged in the hearing context.

§ 750.7 Conduct of legislative hearing.

(a) A panel of EPA employees shall preside at each hearing conducted under section 6(c)(2)(C) of TSCA. In appropriate cases other Executive Branch employees may also sit with and assist the panel. The membership of the panel may change as different topics arise during the hearing. In general, the panel membership will consist of agency employees with special responsibility for the final rule or special expertise in the topics under discussion. One member of the panel shall be named to chair the proceedings and shall attend throughout the hearing, unless unavoidably prevented by sickness or similar personal circumstances.

(b) The panel may question any individual or group participating in the hearing on any subject relating to the rulemaking. Cross-examination by others will normally not be permitted at this stage. It may be granted in compelling circumstances at the sole discretion of the hearing panel. However, persons in the hearing audience may submit questions in writing for the hearing panel to ask the participants, and the hearing panel may, at their discretion, ask these questions.

(c) Participants in the hearing may submit additional material for the hearing record and shall submit such additional material as the hearing panel may request. All such submissions shall become part of the record of the hearing. A verbatim transcript of the hearing shall be made.

§ 750.8 Cross-examination.

After the close of the legislative hearing conducted under § 750.7, any participant in that hearing may submit a written request for cross-examination. The request shall be received by EPA within one week after a full transcript of the legislative hearing becomes available and shall specify:

(1) The disputed issue(s) of material fact as to which cross-examination is requested. This shall include an explanation of why the questions at issue are

"factual", rather than of an analytical or policy nature, the extent to which they are in "dispute" in the light of the record made thus far, and the extent to which and why they can reasonably be considered "material" to the decision on the final rule; and

(2) The person(s) the participant desires to cross-examine, and an estimate of the time necessary. This shall include a statement by the cross-examination requested can be expected to result in "full and true disclosure" resolving the issue of material fact involved.

(b) Within one week after receipt of all requests for cross-examination under paragraph (a) of this section the hearing panel shall rule on them. The ruling shall be served by the Record and Hearing Clerk on all participants who have requested cross-examination and shall be inserted in the record. Written notice of the ruling shall be given to all persons requesting cross-examination and all persons to be cross-examined. The ruling shall specify:

(1) The issues as to which cross-examination is granted, (2) The persons to be cross-examined on each issue, (3) The persons to be allowed to conduct cross-examination, and (4) Time limits for the examination of each witness by each cross-examiner.

In issuing this ruling, the panel may determine that one or more participants who have requested cross-examination have the same or similar interests and should be required to choose a single representative for purposes of cross-examination. In such a case the order shall simply assign time for cross-examination by that single representative without identifying the representative further. Subpoenas for witnesses may be issued where necessary.

(c) Within one week after the insertion into the record of the ruling under paragraph (b) of this section, the hearing at which the cross-examination will be conducted shall commence. One or more members of the original panel shall preside for the Agency. The panel shall have authority to conduct cross-examination on behalf of any participant, although as a general rule this right will not be exercised. The panel shall also have authority to modify the governing ruling in any respect and to make new rulings on group representation under section 6(c)(3)(C) of TSCA. A verbatim transcript of the hearing shall be made.

(d) (1) No later than the time set for requesting cross-examination, a hearing participant may request that other alternative methods of clarifying the record (such as informal conferences or the submittal of additional information) be used. Such requests may be submitted either in lieu of cross-examination requests, or in conjunction with them.

(2) The panel in passing on a cross-examination request may as a precondition to ruling on its merits require that alternative means of clarifying the record be used whether or not that has been requested under paragraph (d)(1). In such a case the results of the use of such alternative means shall be made

available to the person requesting cross-examination for a one-week comment period, and the panel shall make a final ruling on cross-examination within one week thereafter.

(e) Waivers or extensions of any deadline in this section applicable to persons other than EPA may be granted on the record of the hearing by the person chairing it or in writing by the Record and Hearing Clerk.

§ 750.9 Final rule.

(a) As soon as feasible after the deadline for submittal of reply comments, the Agency shall issue a final rule. Final versions of the statements required by paragraph (b) of § 750.2 shall be published in the FEDERAL REGISTER together with the final rule. The Agency shall also publish at that time:

(1) A list of all material added to the record (other than public comments and material from the hearing record) which has not previously been listed in a FEDERAL REGISTER document, and

(2) The effective date of the rule.

APPENDIX A

To assist in reading the regulations set forth above, this Appendix sets forth the principal stages through which rules promulgated under section 6 of TSCA will pass.

The second column gives the relationship that one date bears to another whenever that relationship is specified in the regulations, and cites the governing provision. The third column contains estimates of the time that a typical rulemaking is likely to require to reach and complete each stage of these proceedings. In drawing up this third column, we have assumed that 60 days will be allowed for the submission of main comments; that the legislative phase of the informal hearing will take two weeks, and that cross-examination will take four days. Since these are only estimates, in any given rulemaking shorter or longer times may actually be required for each of these stages.

Stage	Timing in relation to other stages	Estimated total time elapsed (days)
Proposed regulation..	Sec. 750.2..	-----
Requests to participate in informal hearing due.	3 weeks prior to beginning of hearing (sec. 750.5(a)).	53
Main comments due..	2 weeks prior to beginning of hearing (sec. 750.2(c)(3)).	60
Begin informal hearing.	-----	74
End legislative hearing.	-----	88
Requests for cross-examination due.	1 week after end of legislative hearing (sec. 750.8(a)).	95
Ruling on cross-examination requests.	1 week after requests are due (sec. 750.8(b)).	102
Cross-examination begins.	1 week after ruling on cross-examination requests (sec. 750.8(c)).	109
Cross-examination ends; informal hearing ends.	-----	113
Reply comments due.	2 weeks after end of informal hearing (sec. 750.4(b)).	127

[FR Doc.77-34536 Filed 12-1-77;8:45 am]

[1505-01]

Title 45—Public Welfare

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 12—DISPOSAL AND UTILIZATION OF SURPLUS REAL PROPERTY FOR EDUCATIONAL AND PUBLIC HEALTH PURPOSES

Conveyance of Former Federal Real Estate for Public Health, or Educational Purposes

Correction

In FR Doc. 77-33574, appearing at page 59842 in the issue for Tuesday, November 22, 1977:

1. On page 59844, first column, the line above paragraph (d), the cite “§ 12.0” should read “§ 12.9”.
2. On page 59845, second column, fourth line of paragraph (d) of § 12.9, “(e)” should read “(c)”.

[4110-12]

CHAPTER II—SOCIAL AND REHABILITATION SERVICE, (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 228—SOCIAL SERVICES PROGRAMS FOR INDIVIDUALS AND FAMILIES: TITLE XX OF THE SOCIAL SECURITY ACT

Provisions Regarding Child Day Care Services; Group Eligibility; and Certain Other Requirements

AGENCY: Administration for Public Services (APS), Office of Human Development Services (OHDS), Department of Health, Education, and Welfare.

ACTION: Amendment to regulations.

SUMMARY: This rule amends sections of Part 228 which implement Pub. L. 94-401, the 1976 Amendments to Title XX of the Social Security Act. The rule was published first as interim rules on December 21, 1976, and then incorporated into final Title XX regulations on January 31, 1977. The purpose of the regulations is to clarify certain policies, increase State options in the provision of services, extend time periods for States to claim reimbursement for certain services, and correct errors. These regulations provide a basis upon which the States can operate their social services programs. This action also revises the effective date of the title XX regulations (45 CFR Part 228). The new effective date will reduce publication and administrative costs and aid public understanding of changes in the State's social services program by avoiding unnecessary amendments.

EFFECTIVE DATE: The several sections of the regulations which implement Pub. L. 94-401 are effective October 1, 1975 except as follows:

Additional allotments to States (§ 228.52(c)) are available from July 1, 1976 through September 30, 1977;

State grants to child day care providers to employ welfare recipients (Subpart J) may be made on or after

September 7, 1976 for use through September 30, 1977; and

The option to waive Federal staffing standards in out-of-home facilities serving few title XX children (§ 228.42(c)(2)) is effective no earlier than September 7, 1976 and expires September 30, 1977.

Title XX regulations are effective at the beginning of the State's next program year following the January 31, 1977 publication date or earlier at State option with the following exceptions:

Section 228.70(d), regarding contracts with individual providers, is made retroactive to October 1, 1975 at State option; and

The several sections of Part 228 which implement Pub. L. 94-401 are effective as outlined above and further listed in the effective date statement.

FOR FURTHER INFORMATION CONTACT:

Mrs. Johnnie U. Brooks, Office of Policy Development, Interpretation, and Coordination, Administration for Public Services, 202-245-9415.

SUPPLEMENTARY INFORMATION:

Notice of interim final rule making to implement Pub. L. 94-401, the 1976 amendments to title XX of the Social Security Act, was published in the FEDERAL REGISTER (41 FR 55668) on December 21, 1976. These amendments provided (1) additional allotments to the States for the provision of child day care services and for grants to promote the employment of welfare recipients in the provision of child day care services; (2) for waiver of Federal child day care staffing standards under certain conditions; (3) for group determination of eligibility for services; (4) for family planning as a universal service; and (5) for certain program changes with respect to comprehensive services to drug and alcohol abusers. The amended final regulations which follow are issued after analysis of the comments received during the 45-day comment period and after reconsideration of the issues and policies proposed in the interim final regulations.

Twenty-five responses were received containing 94 detailed and comprehensive comments. Respondents included seven State title XX agencies; one local title XX agency; four national organizations; one Senator, three Congressmen, three local organizations; one Indian Tribal Council; one State university; one State Office of Aging; one territorial Government; and the Advisory Council on Intergovernmental Relations.

The following is a summary, by subpart, of the comments received, the Department's response, and the changes made in the regulations. A few technical, editorial, and coding changes have also been made.

The coding of the interim final regulations issued on December 21, 1976 was based on the title XX regulations then in effect, i.e., the final regulations published June 27, 1975. When subsequent final title XX regulations (45 CFR Part

228) were published January 31, 1977, they incorporated the interim final regulations of December 21, 1976, with necessary coding changes. The following summary uses the January 31, 1977, coding.

SUMMARY

PREAMBLE TO THE DECEMBER 21, 1976 REGULATIONS

The preamble to the interim final regulations contained two incorrect dates with respect to temporary and permanent changes under Pub. L. 94-401. First, the confidentiality provisions of Section 333 of the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 are a permanent feature of federally funded services for alcoholics and drug abusers. This provision does not expire September 30, 1977 as indicated in the preamble. (See § 228.48.) Second, the provision which allows States to waive Federal staffing standards in facilities serving few title XX children (§ 228.42(c)(2)(i)) expires September 30, 1977 and is not a permanent change as indicated in the preamble. For clarification, these time periods have also been incorporated into the regulation.

SUBPART C—COMPREHENSIVE ANNUAL SERVICE PROGRAM PLAN

Comment. A recommendation was made that the section entitled “Organizational Structure” (§ 228.30) contain the requirement that the State identify the point within its organizational structure for placing responsibility for granting waivers of Federal staffing standards.

Response. We accept the recommendation and have transferred the pertinent language from § 228.26(i) to § 228.30.

Comment. One respondent believed that clarifying language was needed in § 228.36, “Amendments to the final services plan,” to make explicit that no disallowance of FFP would be made if services were provided on the basis of group eligibility from October 1, 1975.

Response. The Department believes that § 228.36(d) clearly delineates what a State must do to amend its final services plan and obtain reimbursement for services provided on the basis of group eligibility back to October 1, 1975. If these requirements for amending the services plan are met, no disallowance of expenditures for services provided on the basis of group eligibility would be made on this basis alone.

SUBPART D—LIMITATIONS: SERVICES

Comment. The law states that one condition which must be met before a State can grant a waiver of Federal staffing standards in day care centers and group day care homes is that they serve “few” title XX children. Current regulations define “few” title XX children as 20 percent of the total number of children served in a group day care home and 20 percent or 5, whichever is less, in a day care center.

Upon review of the pertinent language of the law, we have determined that it is

possible to interpret the language less restrictively. That is to say, under current regulations, only a day care center serving 5 or less title XX children could be considered for a waiver. This, in effect, prevents States from utilizing the 20 percent figure in those day care centers serving a total of 25 or more children ($25 \times 20\% = 5$).

Response. Since we believe that the law itself is not that restrictive, and since we wish to maximize State flexibility in this area, we have modified § 228.42(c)(2)(ii) to define "few" title XX children in a day care center as either 5 title XX children or not more than 20 percent of the total number of children served at any given time in the center.

Comment. Several respondents urged that the Department use the legislative history of H.R. 9803 (vetoed by the President, April 6, 1976, but identical to Pub. L. 94-401 in this particular respect) as a guide for specifying in the regulations the criteria that States must use in determining that it is not feasible to require compliance with Federal staffing standards in day care centers or group day care homes.

Response. We accept this recommendation. To quote from Representative Corman's discussion in the Congressional Record (Page H 2245, March 23, 1976):

"If there is no day care center that meets the requirements within reasonable travel time, we would not want to force a welfare recipient, for example, that had a job to leave that job because of the day care problem. In most jurisdictions, in these days of work schedules and because of the age of the children involved, we would not want to force a working parent with a child in such day care to have to spend more than an hour taking or bringing a child to a center * * * But the matter of what is "infeasible" does not relate to cost considerations. If a given center operates at higher costs—and testimony I heard March 8 said it cost only a little more than a dollar a week to meet the requirements before we watered them down—that does not constitute an "infeasible" situation.

Therefore, § 228.42(c)(ii) is revised to specify that the criteria on which to base a "feasibility" decision shall be based only on factors pertaining to the geographic location of the facility or to its accessibility to the recipient of services. The criteria shall not be based on cost factors.

Comments. Several State title XX agencies pointed out that, as written, § 228.42(d) prevented States from counting (to determine adult to child ratios) the number of children of the family day care home operator over age 6, if it wished to do so. This meant, in effect, that States could not choose to implement higher standards (i.e., lower adult to child ratios) for better services to children.

Response. This recommendation is accepted, based on a broader interpretation of the law. It is in keeping with the intent of the law regarding day care services, namely, to protect children and to stimulate the provision of the best possible day

care services. Therefore, § 228.42(d) is revised to show that States continue to be required to count the children of the family day care home operator under age 6 and may, at their option, count the children of the operator over age 6.

Comment. Section 228.42(c)(1) allows FFP under certain conditions for day care centers and group day care homes which do not meet Federal staffing standards if State staffing standards in effect September 15, 1975, are met. Several State title XX agencies asked if State standards which are equal to or higher than the Federal standards may be waived.

Response. The answer is no. There is no authority under law to waive the standards a State had in effect on September 15, 1975.

Comment. Some respondents confused the terms "staffing standards" and "staffing ratios." For example, they interpreted § 228.42(c)(1)(ii) and (iii) to say that a State could not get FFP for day care centers which had lower staffing ratios than those in effect on September 15, 1975.

Response. To clarify, when we say a day care center has a 1 to 4 staffing ratio, we mean that it has a ratio of one adult to four children. This is a relatively low staffing ratio but a high staffing standard. Therefore, with respect to § 228.42(c), FFP is available for day care services which have staffing standards as high or higher than those in effect on September 15, 1975. Such high staffing standards could include low staff to child ratios.

Section 228.39 was inadvertently omitted in the publication of the title XX final regulations on January 31, 1977, and has been added.

SUBPART E—LIMITATIONS: FINANCIAL

Comment. Several respondents found the final sentence in § 228.51(c) regarding the purpose of the additional funds under Pub. L. 94-401 misleading and limiting.

Response. We agree and have deleted the sentence.

Comment. A range of respondents (State title XX agencies, national and local organizations) asked for clarification regarding the use of additional funds under Pub. L. 94-401 for day care equipment and supplies, pre-employment medical examinations, renovations and minor construction to help day care facilities meet standards, etc.

Response. These questions are not appropriately addressed in a regulation. The Department has issued a technical assistance memorandum (No. AT-77-47, May 2, 1977) to answer these questions. Interested persons may obtain a copy by contacting the State title XX agency.

Comment. Several respondents recommended changes in § 228.56(b)(1) and (2), so that costs of services provided on the basis of group eligibility (now apportioned to the 50 percent rule by accepted statistical sampling procedures) be apportioned on the same basis as costs of services provided without regard to in-

come (e.g., any appropriate method, including sampling or allocation of costs).

Response. The Department based this requirement on Section 2004(a)(4)(E) of the law as amended by Pub. L. 94-401, which states:

In any case in which services are provided to individuals to whom the provisions of paragraph (14) (group eligibility) are applied, the proportion of the expenditures for such services which are attributable to individuals described in the preceding sentence may be determined on the basis of generally accepted statistical sampling procedures.

The Department believes more experience with provision of services on the basis of group eligibility is necessary before reconsidering additional methods of cost apportionment.

Comment. One organization representing provider agencies objected to the requirement that each provider of services must meet the 50 percent rule with respect to persons served under a purchase of services contract with the State title XX agency.

Response. This is not a Federal requirement. The regulation (§ 228.56) requires only that the 50 percent rule be computed against the State's total title XX social services program. It does not require testing in individual service facilities.

SUBPART F—LIMITATIONS INDIVIDUALS SERVED, ELIGIBILITY AND FEES

Comment. A State title XX agency recommended that an additional phrase be added in § 228.61(a)(3)(i) for the purpose of clarification.

Response. The recommendation is accepted and the language change incorporated.

Comment. Nine of the 25 commentators responded to the invitation to react to the definition of "substantially all" in § 228.61(a)(3)(iii). (The law requires that substantially all members of the group receiving a service on the basis of group eligibility be members of families whose gross monthly income is no more than 90 percent of the State's median income, adjusted for family size.)

Two State title XX agencies and one local title XX agency agreed that 75 percent constituted a reasonable definition of this term. Four respondents urged a less restrictive percentage definition. They suggested figures of 60 percent, 65 percent, 66½ percent, or 75 percent as a "recommended" percentage. Two respondents urged no percentage requirement (e.g., "let each State determine this by applying reasonable judgment in all good faith on a case-by-case basis"). The latter recommendation is in line with Senate discussion (Congressional Record, pages S 14463 and S 14468, August 24, 1976) while House discussion mentioned "approximately 80 percent" as a definition. (See Congressional Record, page H 7143 as corrected, July 1, 1976.)

Response. The Department has studied the comments, consulted fur-

ther with a range of interested parties, and thoroughly reconsidered this issue. We have decided to make no change at this time. We believe the recommendation for a no percentage definition of "substantially all," although less restrictive, is administratively infeasible and does not carry out the Departmental responsibility to administer the program with minimum ambiguity. Past experience has shown the difficulties that can arise when States do not have clear guidelines within which to operate their programs. Percentages of 60 and 66 $\frac{2}{3}$ were weighed against the 80-percent figure. In sum, the admittedly somewhat arbitrary figure of 75 percent represents a reasonable compromise from among this range of percentage requirements. For further discussion of the basis of the Department's position, see the preamble to the interim final regulations, published December 31, 1976.

Comment. A State title XX agency asked for clarification of the seeming inconsistency between two regulation citations. Section 228.60(f)(2)(iv)(B) uses the phrase " * * * that substantially all of the individuals who would apply * * *" with respect to group eligibility. Section 228.61(a)(3) uses the phrase also with respect to group eligibility " * * * that substantially all members of the group who receive the particular service * * * "

Response. These two phrases, although similar and seemingly inconsistent, have a specific meaning within their respective sub-sections.

Section 228.60(f) details the requirements regarding a request for services, i.e., conditions under which a request for services must be documented, the nature of the request, and any exceptions to a written or documented request. Specifically, Section 228.60(f)(2)(iv)(B) states that for certain services provided on the basis of group eligibility, persons receiving those services do not need to make a written request or provide information for a documented request. In this context, the phrase "individuals who would apply" (e.g., to senior service centers, to migrant day care centers, etc.) means that by their presence at the service site, such individuals are deemed to be requesting (applying for) the service.

In contrast, the purpose of § 228.61 is to spell out the requirements for the determination and redetermination of eligibility. Section 228.61(a)(3) uses the language of the law (i.e., that "substantially all members of the group who receive the particular service * * *") in defining the basis for a State's decision on the use of the group eligibility determination method.

Comment. A State title XX agency asked for clarification of the terms "geographic area" and "characteristics of the community" as used in § 228.61(a)(3)(i)(A) and (B). The respondent wondered if "geographic area" couldn't be subsumed under "characteristics of the community."

Response. Exactly the opposite is true. The term "geographic area" means the geographic area(s) the State has defined and described in the service plan for the purpose of administering its service program. The term "characteristics of the community" may mean any subpart of that geographic area. For example, with respect to services being provided on the basis of group eligibility, a State may offer a service on a group eligibility basis to all persons throughout one geographic area. As another alternate, the State may define as a "community" a sub-division within the geographic area (such as a county, a town, or a housing project) as a location in which it will offer a service on a group eligibility basis.

Comment. Regarding § 228.61(c)(2)(i) and (ii), one state title XX agency and a local advocacy organization recommended annual redetermination for all persons receiving services on the basis of group eligibility. One commenter did not see a significant difference between those "conditions and characteristics apt to change" (for which redetermination is required every 6 months) and those "conditions and characteristics not apt to change substantially" (for which annual redetermination is required).

Response. The Department recognizes the need to reduce State administrative actions and costs and has tried to accept as many such recommendations as possible. On the other hand, we are also cognizant of the legislative mandate that FFP is available only for services provided to eligible categories of persons as described in the State's services plan. In this context, we believe a definite distinction can be made between "conditions and characteristics apt to change" and "conditions and characteristics not apt to change substantially." We recognize, however, that the distinctions between these conditions cannot be drawn exactly and clearly in all cases. For some persons, a condition apt to change (e.g., income level, residence) may be a condition not apt to change for another person in different circumstances. Therefore, this recommendation is not accepted at this time.

Comment. Respondents pointed out that in § 228.61(c)(2)(iii), the requirement that the service be discontinued at the end of the month (in the case of an individual found ineligible for a service provided on the basis of group eligibility) does not allow, in certain instances, for services to continue during the 10-day notification period required under the Fair Hearing regulations.

Response. The Department accepts the suggestion and the regulation is revised to allow services to continue through the period of time required for continuation of services under § 205.10, Fair Hearings.

Section 228.61(b)(2) pertaining to individual determination of eligibility has also been revised to incorporate the identical change.

Comment. Several respondents, including State title XX agencies and local advocacy organizations, recommended that the time period for validation of the

"substantially all" basis for establishing group eligibility in § 228.61(d)(2) be extended. Recommendations included extending the time period from 3 months to 6 months for States claiming back to October 1, 1975 and 12 months for all States. The recommendations were based on the fact that FFP for services provided on the basis of group eligibility has been somewhat confused since the inception of title XX.

Response. We accept the recommendation for a 6-month validation period (e.g., an additional 3 months) for States wishing to prepare claims for reimbursement back to October 1, 1975. The purpose of the change is the Department's wish to allow States to take full advantage of the opportunity to prepare claims for reimbursement back to October 1, 1975 as provided by law. However, the Department can find no justification for delaying for 12 months an initial validation check on services provided on the basis of group eligibility.

Comment. Two State title XX agency respondents suggested lengthening the 75-day period for discontinuance of services provided on the basis of group eligibility (required when a finding is made that less than 75 percent of the persons receiving the service meet the specified income standard), as specified in § 228.61(d)(6)(i). They recommended 120 days as more realistic. They claimed the 75-day period does not allow time to amend the State services plan, to provide a Notice of Fair Hearings to all persons concerned, and to determine persons eligible on an individual basis, when possible.

Response. The Department has reconsidered this matter and does not accept the recommendation. Section 228.61(d)(6)(i) allows a State to claim FFP for services for persons found "ineligible" not just for 75 days but until the end of the month in which the 75th day occurs. This could extend the time period to more than 100 days. The Department cannot justify a longer period to fund known "ineligibles" in view of its responsibility to assure that public funds under this program are spent in accordance with the law.

Comment. Regarding § 228.61(d)(6)(i), one State title XX agency recommended that no FFP be available for services provided on a group eligibility basis once a finding is made that less than 75 percent of the persons receiving the service meet the specified income standard.

Response. The Department believes this recommendation to be both fiscally and operationally restrictive and it is not accepted. The purpose of this section regarding group eligibility is to increase the State's capability to continue services while modifying their program or otherwise assisting individuals to meet eligibility requirements on an individual basis. Further, the purpose of the option regarding group eligibility is to encourage provision of services to recipients needing such services.

Comment. Regarding § 228.61(d)(6) (requiring State action when it finds that less than 75 percent of the persons receiving a service on the basis of group eligibility do not meet the specified income standard), a State title XX agency suggested that States should not be required to amend its services plan if the service had been available on both an individual and a group eligibility basis.

Response. This recommendation is not accepted on the basis that under title XX FFP is available only when the State services plan specifies the categories of individuals to whom the services will be available. Several sections in Subpart C and Subpart F clarify this requirement. (See §§ 228.24, 228.36, 228.60, and 228.61.)

To meet this requirement, a State services plan must show the categories of persons eligible to receive the service and any changes made in these categories. Although it can be argued that eligibility determination on a group basis is merely a method for the determination of eligibility and not a "category," the Department believes otherwise. For the provision of services on the basis of group eligibility, a State must, initially, define the group to be served, e.g., a category of persons who comprise that group. The group may have general or specific characteristics. They may be persons over 60 years of age, migrants, residents of a specific community, or, the example used in § 228.60(e)(2), teenage parents maintaining their home in public housing. Pub. L. 94-401 states the basis upon which a State can make the decision:

If, because of the geographic area in which any particular service is provided to him, the characteristics of the community to which it is provided, the nature of the service, the conditions (other than income) of eligibility to receive it, or other factors surrounding its provision * * *

The purpose of the requirement that the services plan must include information regarding categories of persons eligible to receive the services lies in the purpose of the public information and participation process. Lack of information concerning services or conditions of eligibility deprives individuals (and organizations) of the opportunity to learn about and to avail themselves of services. Lack of such information also deprives persons of the opportunity to comment on changes made which affect their receipt of or eligibility for services.

SUBPART J—GRANTS TO CHILD DAY CARE PROVIDERS TO EMPLOY WELFARE RECIPIENTS

Comment. A national organization suggested that language from the current Comprehensive Employment and Training Act (CETA) regulations be included in § 228.100(b)(3) to clarify the word "displaced" in the requirement that an eligible welfare recipient has not displaced any other individual from employment by a qualified provider of day care services.

Response. The recommendation is accepted. For the purpose of clarification,

the CETA language has been adapted to the purpose of this program and the regulation is revised accordingly.

Comment. Four respondents, including three State title XX agencies and a Congressman, urged that this subpart include criteria and definitions regarding the employment of low income persons in addition to the criteria and definitions pertaining to the employment of welfare recipients already contained in the regulations. These States reported few AFDC recipients and many low income persons appropriate for such employment.

Response. Although section 3(b) of Pub. L. 94-401 requires Federal funds "to be employed in such a way as to increase the employment of welfare recipients and other low income persons in jobs related to the provision of child day care services," the operative language of Pub. L. 94-401 relating to which employment expenses are subject to Federal financial participation does not appear in section 3(b) but rather in section 3(c)(1) and there provides that such participation is only available for costs relating to the employment of "welfare recipients." Accordingly, it is the Department's view that the reference in section 3(b) to "other low income persons" does not authorize the use of Federal funds for paying for the costs of employing such persons. That reference can presumably mean no more than that Federal funds are to be used to increase the employment of low income individuals by providing Federal funds to increase the employment of welfare recipients (who become low income individuals as a result of their employment).

Comment. A State title XX agency asked if the \$4,000 and \$5,000 grant to providers of day care services for the employment of the welfare recipient covered both salary and fringe benefits.

Response. The terms "salaries" in § 228.101 includes salary costs, i.e., fringe benefits such as FICA, unemployment compensation, and workmen's compensation, etc. However, the total salary for the employed welfare recipient is not limited to the amount of the grant. There is nothing to preclude the addition of other funds to these grants to meet the minimum wage or to pay a salary to the welfare recipient equal to the going rate in the community.

EFFECTIVE DATE STATEMENT—TITLE XX

Following publication of the final title XX regulations on January 31, 1977 (45 CFR Part 228), it came to our attention that a change was needed in the effective date statement concerning changes in the title XX regulations.

As stated in the regulations published January 31, 1977, the regulations became final 90 days after publication or earlier at State option. The two exceptions were § 228.70(d) and the several sections of Part 228 issued to implement Pub. L. 94-401.

The problem which became apparent was that the 90-day implementation date fell on May 1, 1977, and would have had

the effect of requiring States to publish amendments to their current services plans by April 1 to meet the May 1 deadline. At the same time, many States were also planning to publish their proposed services plan for the coming program year by April 1. In addition, many of the new requirements in the title XX final regulations pertained to the inclusion of new data in the services plan, e.g., the operational definition of Family; the State's Federal allotment; a summary of public comments; a detailed description of the medical and remedial care the State is providing under § 228.40, and so forth.

In view of these factors (e.g., dates and timing of publication requirements and appropriate inclusion of many of the requirements in the State's proposed services plan), the effective date of the title XX regulations has been changed to read: "These regulations shall be effective at the beginning of the State's next program year following the January 31, 1977 publication date, or earlier at State option * * *." The two exceptions (§ 228.70(d) and sections of Part 228 implementing Pub. L. 94-401) are unchanged. The purpose of this change is to reduce publication and administrative costs and aid public understanding of the changes made in the State's social services plan by avoiding unnecessary amendments.

EFFECTIVE DATE STATEMENT—PUB. L. 94-401

Questions have been raised regarding the use of the phrase "at State option" in two sentences in the effective date statement with respect to these sections of the regulations implementing Pub. L. 94-401. We have deleted these phrases and substituted new language in one instance.

To clarify, Pub. L. 94-401 contains multiple and complex provisions regarding requirements and options. For example, it gives States options with respect to certain services, e.g., provision of services on the basis of group eligibility, provision of family planning as a universal service, certain program changes with respect to services for alcohol and drug abusers, etc. The law also gives States the option to claim reimbursement for certain services back to October 1, 1975. Therefore, if a State chooses to implement any of the options available under Pub. L. 94-401, the regulations pertinent to that option are binding.

However, there are provisions that are binding even though a State does not choose to implement the additional options available under Pub. L. 94-401. For example, if a State provides services to drug and alcohol abusers, the law and implementing regulations at 42 CFR Part 2 require that the confidentiality of patient records be protected effective back to the beginning of the individual record if services did not end before March 21, 1972 in the case of drug abuse, or before May 14, 1974 in the case of alcohol abuse. (See § 228.48.) This re-

quirement is binding whether or not the State chooses to take advantage of the other options under Pub. L. 94-401 regarding services to alcoholics and drug abusers, e.g., the provisions in §§ 228.40, 228.41, and 228.44.

45 CFR Part 228 is revised as follows:
1. The Table of Contents for Subpart E is revised as set forth below:

* * *	
Subpart E—Limitations: Financial	
Sec.	
228.50	Services and individuals covered in the services plan.
228.51	Matching rates.
228.52	Allotments to States.
228.53	Public sources of State's share.
228.54	Private sources of State's share.
228.55	[Reserved]
228.56	Fifty Percent Rule.
* * *	

2. Section 228.20 is amended to correct the citation reference in paragraph (a) as follows:

§ 228.20 Conditions for FFP.

(a) The State's final services plan shall meet all requirements of this Subpart and of § 228.50; if it does not (except for family planning services provided pursuant to § 228.26(h)), there will be no FFP in expenditures for services under the services plan.

3. Section 228.26(a) is amended by adding two commas and revising and transferring the contents of paragraph (i) to § 228.30(c).

§ 228.26 Services.

The services plan shall: (a) Describe each discrete service, including the service(s) which is (are) available to individuals on the basis of group determination of eligibility, in as much detail as necessary to enable a reasonably prudent person to understand what is included in the service. For purposes of this paragraph, services such as "child welfare services", "services to alcoholics", or "protective services" are not discrete services but rather clusters of services, each of which shall be separately described. If medical or remedial care or room or board as described in §§ 228.40 and 228.41 are part of a service, the plan shall so specify in describing that service.

4. Section 228.30 is revised to recodify existing material and to incorporate the revised § 228.26(i) as § 228.30(c).

§ 228.30 Organizational structure.

The services plan shall:
(a) Describe the organizational structure of the State agency through which the program will be administered, including where individuals may apply for services and have their eligibility determined;

(b) Provide a brief description of the State's use of volunteers and volunteer activities or an estimated number of volunteers; and

(c) Identify the point in its organizational structure of the level of staff where it has placed authority:

(1) To make the decision for the State that it is not feasible to furnish child day care in a day care center or group day care home which complies with Federal staffing standards; and

(2) To furnish child day care by granting a waiver of otherwise applicable Federal staffing standards in a day care center or group day care home which serves few title XX funded children (see § 228.42(c)(2)) and meets applicable State staffing standards.

5. Subpart D is amended to reinstate § 228.39 which was inadvertently omitted from the regulations on January 31, 1977 (42 FR 5842).

Subpart D—Limitations: Services

§ 228.39 General.

FFP is available for services provided to eligible individuals pursuant to the State's services plan only if the requirements set forth in the sections of this subpart are met.

6. Section 228.42 is revised by amending paragraphs (c) (2) (i), (c) (2) (ii), and (d) as follows:

§ 228.42 Child care standards.

(c) Notwithstanding the Federal staffing requirements for out-of-home child day care services set forth in paragraph (a) (2) (ii) (B) of this section:

(1) FFP is available between October 1, 1975 and October 1, 1977 for title XX child day care services so long as day care centers and group day care homes providing day care services to children 6 weeks of age to 6 years of age apply staffing standards which:

(i) Are the State staffing standards which are in effect at the time the child day care services are provided;

(ii) Are no lower than the corresponding staffing standards which were imposed or required by applicable State law on September 15, 1975; and

(iii) Are no lower, in the case of a particular day care center or group day care home, than the corresponding standards actually being met in such center or home on September 15, 1975.

(2) (i) For the period September 7, 1976 through September 30, 1977, when States find that it is not feasible to furnish day care (partly or totally funded under title XX) for children of any age in a day care center or group day care home that complies with Federal staffing standards, they may furnish day care services in a center or group day care home which does not meet such Federal standards if the following two requirements are met:

(A) The day care center or group day care home complies with applicable State staffing standards; and

(B) The day care center or group day care home serves few title XX children. (For a group day care home, few title

XX children means not more than 20 percent of the total number of children served at any given time in that group day care home. For a day care center, few title XX children means either five children or not more than 20 percent of the total number of children served at any given time in the center.)

(ii) States shall establish criteria against which to assess the non-feasibility of their use of a day care center or group day care home which complies with Federal staffing standards. The criteria shall be based on the geographic location of the facility or its accessibility to the recipient of day care services. The criteria shall not be based on cost factors. States shall maintain a record of the waiver for each facility in terms of these criteria.

(d) Between October 1, 1975 and October 1, 1977, in applying Federal staffing standards, States shall be required to count only the children of the operator of a family day care home under 5 years of age.

7. Section 228.51 is revised to delete the final sentence in paragraph (c) to read as follows:

§ 228.51 Matching rates.

(c) *One hundred percent FFP.* Notwithstanding paragraph (a) of this section, FFP is available at the 100 percent rate up to the State's share of the additional allotments described in § 228.52(c) (3).

8. Section 228.61 is revised by amending paragraphs (a) (2) (iii), (a) (3) (i), (b) (2), (c) (2) (iii), and (d) (2) as follows:

§ 228.61 Determination and redetermination of eligibility.

(a) *Methods of determining (or redetermining) eligibility.* (1) Standards and methods for determination of eligibility will be consistent with the objectives of the program, and will respect the rights of individuals under the United States Constitution, the Social Security Act, title VI of the Civil Rights Act of 1964, and all other relevant provisions of Federal and State laws.

(2) States may establish any method or methods, including a declaration method, for determining individual eligibility in accordance with §§ 228.60 and 228.66.

(i) A determination of individual eligibility means a decision, reflected in the State's records, based on a dated and signed application and sufficient information which would lead a reasonable person to conclude that the criteria set forth in § 228.60 have been met and the individual is eligible to receive services on the basis of income or income maintenance status.

(A) *Documentation method* means that the State has sought and obtained verification regarding the source and amount of the gross family monthly in-

come of the individual applying, or has verified his income maintenance status.

(B) *Declaration method means acceptance of an individual's statements regarding the source and amount of his family's gross monthly income, and the income maintenance status (as described in § 228.60(b)(1)) of any member of the family.*

(ii) (For group determination of eligibility, see subparagraph (3) of this paragraph and § 228.60(f)(2)(iv).)

(3) (i) States may determine eligibility on a group basis if, upon consideration of one or more of the following factors, with respect to a particular service to be provided on a group eligibility basis, they can reasonably conclude without individual determination that substantially all members of the group who receive the particular service are members of families with monthly gross incomes of not more than 90 percent of the State's median income, adjusted for family size:

(A) The geographic area in which a particular service is provided;

(B) The characteristics of the community in which the service is provided;

(C) The nature of the service provided;

(D) The conditions, other than income, of eligibility to receive the service; or

(E) Other factors surrounding provision of the service.

(ii) "Substantially all" means that no less than 75 percent of the persons provided a service on the basis of group eligibility determination shall be members of families whose gross monthly incomes are no more than 90 percent of the State's median income, adjusted for family size.

(b) *Conditions for FFP.* (1) Regardless of the method chosen for determination or redetermination of eligibility:

(i) FFP is available in the cost of services provided prior to the actual date of an initial determination of eligibility only if such determination is made within 30 days of the date of application and the individual is properly determined to have been eligible when the services were initiated.

(ii) When a recipient of services was improperly determined to be eligible, FFP is not available in the cost of services provided during the period of improperly determined eligibility.

(2) When an individual properly determined to be eligible on the basis of information available to the agency at the time of determination of eligibility is subsequently found ineligible, FFP is available until the end of the month in which he is determined ineligible or through the period of time services are required to be provided under § 205.10 of this chapter regarding fair hearings. A proper determination of eligibility is a determination which is based on a correct assessment on the information available to the agency at the time of such determination, provided that all information necessary to make a de-

termination is available; a proper redetermination is one which meets those criteria and, in addition, is made within the time limits established by paragraph (c) of this section.

(c) *When redetermination shall be made.* (1) Redetermination of eligibility shall be made for persons whose eligibility is determined on an individual basis:

(i) When required on the basis of information the agency has obtained about anticipated changes in the individual's situation;

(ii) Promptly, not to exceed 30 days, after information is obtained about changes which have occurred in the individual's circumstances that may make him ineligible; and

(iii) Periodically, but not less frequently than every 6 months except that for individuals whose family gross monthly income at the time of determination is derived exclusively from pensions, or social security benefits, or SSI, or a combination thereof, redetermination may be made at 12-month intervals.

(2) If the State has established specific conditions or characteristics as a condition precedent to the receipt of a service on the basis of group eligibility (and, in accordance with § 228.60(g)(2)(iv)(A), has elicited information at intake that individuals applying for the service meet the conditions or have the characteristics for membership in the group), it shall, unless the characteristic is irreversible (such as being above a certain age), redetermine the eligibility of these individuals as follows:

(i) When the conditions or characteristics established by the State are apt to change in regard to an individual (such as place of residence, marital status, children living in the home), the State shall ascertain not less frequently than every 6 months whether persons receiving the service on a group eligibility basis still meet the conditions or have the characteristics which made them members of the group; or

(ii) When the conditions or characteristics established by the State are not apt to change substantially in regard to an individual (such as a physical disability), the State shall ascertain not less frequently than once a year whether persons receiving the service on a group eligibility basis still meet the conditions or have the characteristics which made them members of the group.

(iii) When an individual no longer meets the conditions or has the characteristics required for group membership, the State shall discontinue providing the service to the individual on the basis of group eligibility determination by the end of the month in which such a finding is made or at the end of the period of time services are required to be provided to the individual under § 205.10 of this chapter regarding fair hearings.

(d) *Validation of "substantially all" basis for establishing a group.* (1) Each group of persons receiving a service on the basis of group determination of eli-

gibility shall be subject to a validation check of whether at least 75 percent of those receiving the service are members of families with gross monthly incomes of no more than 90 percent of the State's median income, adjusted for family size.

(2) States shall conduct their initial validation check not later than 6 months after they have started providing a service to individuals on the basis of group eligibility. (If a State claims expenditures for services on a group determination of eligibility basis retroactively, as permitted to October 1, 1975, the validation shall be made by no later than June 30, 1977.)

9. Section 228.100(b)(3) is amended as follows:

Subpart J—Grants to Child Day Care Providers to Employ Welfare Recipients

§ 228.100 Definitions.

For purposes of this Subpart:

(a) A "qualified" child day care provider is one in whose facility at least 20 percent of the total number of children regularly served are partly or totally funded under title XX.

(b) An "eligible" welfare recipient is, as defined in section 50B(g) of the Internal Revenue Code of 1954, one who meets all the following requirements:

(1) Has been certified by the State or local welfare department as being eligible for financial assistance for aid to families with dependent children (AFDC) and as having continuously received AFDC during the 90-day period which immediately precedes the date on which the employee is hired;

(2) Has been a full-time employee of the provider for a period in excess of 30 consecutive days;

(3) Has not displaced any other individual from employment by the provider; (A "qualified" child day care provider may not terminate, lay-off, or reduce the working hours of an employee for the purpose of hiring an "eligible" welfare recipient with funds available under Pub. L. 94-401. Nor may an eligible welfare recipient be hired when another person is on lay-off from the same or any substantially equivalent job.); and

(4) Is not a migrant worker. (The Internal Revenue Code of 1954 defines a migrant worker as one who is employed in a job for which the customary period of employment by one employer is less than 30 days if the nature of the job requires the worker to travel from place to place over a short period of time.)

10. The effective date statement is revised as follows:

Effective date: These regulations shall be effective at the beginning of the State's next program year following the January 31, 1977 publication date, or earlier at State option with the following exceptions: (1) Section 228.70(d) is made retroactive to October 1, 1975, at State option; (2) Sections of Part 228 (as listed below), that were issued as interim final regulations implementing Pub. L. 94-401 (1976 Amendments to Title XX of the Social Security Act) published in the FEDERAL REGISTER (41 FR

55668) on December 21, 1976, are effective October 1, 1975, with the following exceptions: Additional allotments to States (§ 228.52) are available from July 1, 1976 through September 30, 1977; State grants to child day care providers (Subpart J) may be made on or after September 7, 1976 for use through September 30, 1977; and the option to waive Federal staffing standards in out-of-home facilities with few title XX children (§ 228.42(c)(2)) is effective no earlier than September 7, 1976 and ends September 30, 1977.

The following is a list of sections which contain requirements related to State implementation of Pub. L. 94-401:

SUBPART C

- § 228.24(e) and (f)
- § 228.26(a)
- § 228.29(d)
- § 228.36(d)

SUBPART D

- § 228.40(c) (1) and (2)
- § 228.41(e) (1) and (2)
- § 228.42(c) (1) and (d)
- § 228.44(e) (1) and (2)
- § 228.48

SUBPART E

- § 228.51(c)
- § 228.56(b)

SUBPART F

- § 228.60(b) (3)
- § 228.60(f) (2) (ii)
- § 228.60(f) (1) (iii)
- § 228.60(f) (2) (iv) (A) and (B)
- § 228.61(a) (3)
- § 228.61(c) (2)
- § 228.61(d)

AUTHORITY: Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302).

(Catalog of Federal Domestic Assistance Program No. 13.771, Social Services for Low Income and Public Assistance Recipients.)

NOTE.—The Office of Human Development Services has determined that this document does not require preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Dated: August 9, 1977.

ARABELLA MARTINEZ,
Assistant Secretary
for Human Development Services.

Approved: November 17, 1977.

HALE CHAMPION,
Acting Secretary.

[FR Doc.77-34625 Filed 12-1-77;8:45 am]

[7035-01]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Rev. Service Order No. 1237; Amdt. No. 1]

PART 1033—CAR SERVICE

Regulations for Return of Hopper Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Amendment No. 1 to Second Revised Service Order No. 1237).

SUMMARY: Second Revised Service Order No. 1237 requires return to owners of hopper cars owned by Baltimore and Ohio, Bessemer and Lake Erie, Chesapeake and Ohio Consolidated Rail Corporation, Louisville and Nashville, Norfolk and Western, Pittsburgh and Lake Erie and Western Maryland Railroads. Amendment No. 1 extends this order until December 15, 1977, by which time it is expected that the heavy demands on these carriers for hopper cars will have subsided.

DATES: Effective 11:59 p.m., November 30, 1977. Expires 11:59 p.m., December 15, 1977.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The Order (amendment) is printed in full below.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 28th day of November, 1977.

Upon further consideration of Second Revised Service Order No. 1237 (42 FR 28888), and good cause appearing therefor:

It is ordered, That: § 1033.1237 Second Revised Service Order No. 1237 Regulations for return of hopper cars is amended by substituting the following paragraph (g) thereof:

(g) Expiration date. The provisions of this order shall expire at 11:59 p.m., December 15, 1977, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date: This amendment shall become effective at 11:59 p.m., November 30, 1977.

(49 U.S.C. 1 (12), (15), (16), and (17) (2).)

It is further ordered, That copies of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association; and that notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.77-34585 Filed 12-1-77;8:45 am]

[7035-01]

[Amendment No. 4 to Third Revised Service Order No. 1171]

PART 1033—CAR SERVICE

Regulations for Return of Hopper Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Amendment No. 4 to Third Revised Service Order No. 1171).

SUMMARY: Third Revised Service Order No. 1171 requires return to owners of hopper cars owned by the Illinois Central Gulf, St. Louis-San Francisco and Southern Railway because of shortages of cars on these lines. Amendment No. 4 extends this order until December 15, 1977, by which date it is expected that the heavy demands on these carriers for hopper cars will have subsided.

DATES: Effective 11:59 p.m., November 30, 1977. Expires 11:59 p.m., December 15, 1977.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

SUPPLEMENTARY INFORMATION: The Order (amendment) is printed in full below.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held at its office in Washington, D.C., on the 28th day of November, 1977.

Upon further consideration of Third Revised Order No. 1171 (41 FR 3091, 21642, 52695; and 42 FR 28542), and good cause appearing therefor:

It is ordered, That

§ 1033.1171 Regulation for return of hopper cars.

Third Revised Service Order No. 1171 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) Expiration date. This order shall expire at 11:59 p.m., December 15, 1977, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., November 30, 1977.

(49 U.S.C. 1(12), (15), (16) and 17(2).)

It is further ordered, That copies of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.