

§ 722.561 National marketing quota referendum for the 1979 crop of ELS cotton.

The national marketing quota referendum for the 1979 crop of ELS cotton shall be held during the referendum period December 4 to 8, 1978, inclusive, by mail ballot in accordance with part 717 of this chapter (33 FR 18345, 34 FR 12940, 36 FR 12730, 38 FR 12891).

(Secs. 301, 343, 344, 347, 375; 52 Stat. 38, as amended; 63 Stat. 670, as amended; 63 Stat. 675, as amended; 52 Stat. 66, as amended; 7 U.S.C. 1301, 1343, 1344, 1347, 1375.)

NOTE.—The Agricultural Stabilization and Conservation Service has determined that this document does contain a major proposal requiring preparation of an impact statement. The impact statement is available from Charles V. Cunningham, ASCS, 202-447-7873.

Signed at Washington, D.C., on October 16, 1978.

BOB BERGLAND,
Secretary

[FR Doc. 78-29546 Filed 10-20-78; 8:45 am]

[3410-02-M]

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Lemon Reg. 169]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period October 22-28, 1978. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: October 22, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Findings. Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown

in California and Arizona, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act.

The committee met on October 17, 1978, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.469 Lemon Regulation 169.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period October 22, 1978, through October 28, 1978, is established at 225,116 cartons.

(b) As used in this section, "handled" and "carton(s)" mean the same as defined in the marketing order.

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

Dated: October 18, 1978.

JOHN J. GARDNER,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-29808 Filed 10-19-78; 8:45 am]

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. C-2929]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Interco Incorporated, et al.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require a St. Louis, Mo. manufacturer and distributor of footwear, wearing apparel, and accessories and its subsidiaries to cease suggesting resale prices for their products; maintaining price fixing agreements; compelling price adherence and exclusive dealings through coercion; and penalizing recalcitrant dealers. The firms are also required to reinstate terminated resellers; and maintain relevant records for a 5-year period.

DATES: Complaint and order issued September 26, 1978.¹

FOR FURTHER INFORMATION CONTACT:

Leroy Richie, Director, 8R, New York Regional Office, Federal Trade Commission, 2243-EB Federal Building, 26 Federal Plaza, New York, N.Y. 10007, 212-264-1207, or, Paul R. Peterson, Director, 4R, Cleveland Regional Office, Federal Trade Commission, 1339 Federal Office Building, 1240 East Ninth Street, Cleveland, Ohio 44199, 216-522-4207.

SUPPLEMENTARY INFORMATION: On Friday, July 21, 1978, there was published in the FEDERAL REGISTER, 43 FR 31345, a proposed consent agreement with analysis in the matter of Interco Inc., a corporation, London-town Corp., a corporation, and Queen Casuals, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Sub-

¹ Copies of the complaint, and the decision and order filed with the original document.

part—Coercing and Intimidating: § 13.350 Customers or prospective customers; § 13.358 Distributors. Subpart—Combining or Conspiring: § 13.395 To control marketing practices and conditions; § 13.425 To enforce or bring about resale price maintenance; § 13.430 To enhance, maintain or unify prices; § 13.470 To restrain or monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-45 Maintain records; § 13.533-65 renegotiation and/or amendment of contracts. Subpart—Cutting Off Access To Customers or Market: § 13.535 Contracts restricting customers' handling of competing products; § 13.560 Interfering with distributive outlets; § 13.605 Withholding supplies or goods from competitors' customers. Subpart—Cutting Off Supplies or Service: § 13.610 Cutting off supplies or service; § 13.613 Advertising contracts; § 13.655 Threatening disciplinary action or otherwise. Subpart—Dealing On Exclusive and Tying Basis: § 13.670 Dealing on exclusive and tying basis; § 13.670-10 Clayton Act, Sec. 3; § 13.670-20 Federal Trade Commission Act. Subpart—Discriminating Between Customers: § 13.685 Discriminating between customers; § 13.685-5 Clayton Act; § 13.685-10 Federal Trade Commission Act. Subpart—Discriminating In Price Under Section 2, Clayton Act—Payment For Services or Facilities For Processing, or Sale Under 2(d): § 13.825 Allowances for services or facilities.—Furnishing Services or Facilities For Processing, Handling, Etc. Under 2(e): § 13.845 Share of advertising expenses. Subpart—Discriminating In Price Under Section 5, Federal Trade Commission Act: § 13.880 Delivered price systems. Subpart—Maintaining Resale Prices: § 13.1130 Contracts and agreements; § 13.1140 Cutting off supplies; § 13.1145 Discrimination; § 13.1145-5 Against price cutters; § 13.1145-45 In favor of price maintainers; § 13.1150 Penalties; § 13.1155 Price schedules and announcements; § 13.1160 Refusal to sell; § 13.1165 Systems of espionage; § 13.1165-80 Requiring information of price cutting.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 2, 49 Stat. 1526; (15 U.S.C. 45, 13); sec. 3, 38 Stat. 731; (15 U.S.C. 14).)

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-29704 Filed 10-19-78; 8:45 am]

[6740-02-M]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. R-441]

PART 2—GENERAL POLICY AND INTERPRETATION

Modification in Finding Clause (1) of Order No. 455-C Issued May 19, 1978

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order denying requests for clarification, rehearing, and reconsideration and modifying order No. 455-C.

SUMMARY: In 1972 the Commission issued order No. 455 which established optional procedures for certifying new producer sales of gas. Order No. 455 was subsequently amended by order No. 455-C in May 1978. The subject regulations which were contained in § 2.75 relate to the collection of contract rates from customers for deliveries of natural gas at no higher than the prevailing nationwide rate. The Commission received petitions asking for clarification, rehearing, and reconsideration of order No. 455-C. This order denies requests for clarification, rehearing, and reconsideration and also modifies the language in finding clause No. (1) of order No. 455-C issued by the Commission on May 19, 1978.

EFFECTIVE DATE: Effective on date of issuance.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Pendley, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, 202-275-4216.

ORDER DENYING REQUESTS FOR CLARIFICATION, REHEARING, AND RECONSIDERATION AND MODIFYING ORDER NO. 455-C

OCTOBER 11, 1978.

On June 16, 1978, Ecee, Inc., Pinto, Inc., Vsea, Inc., Texas Production Co., and TBP Offshore Co., and on June 19, 1978, POGO Producing Co. and Pennzoil Oil & Gas, Inc. (hereinafter collectively referred to as Petitioners) filed for clarification, rehearing, and reconsideration of order No. 455-C, pursuant to section 19(a) of the Natural Gas Act and § 1.34 of the Commission's rules of practice and procedure.

¹ Prior to Oct. 1, 1977, the "Commission" refers to the Federal Power Commission;

ALLEGATIONS OF PETITIONERS

Petitioners contend that the Commission did not comply with the mandatory requirements of the Administration Procedure Act² nor did "good cause"³ exist to waive said requirements. Further, Petitioners allege that order No. 455-C is void as the Commission did not comply with the DOE Act. Petitioners contend that said Act obligates "the Commission (to) give notice of and have a hearing on any rulemaking which relates to the establishment of rates and charges under the Act."⁴ Petitioners contend that order No. 455-C will weaken optional procedure as a viable alternative mechanism, will create rate uncertainty by instituting an "open ended" period of collecting a rate which might be below that later found to be just and reasonable, and will exceed the Commission's statutory authority by instituting a retroactive rate increase.⁵ Petitioners also contend that the issuance of order No. 455-C does not comply with the Sunshine Act.⁶

BACKGROUND

In 1972 the Commission issued order No. 455⁷ which established the optional procedure for certifying new producer sales of natural gas. Optional procedure, § 2.75: (1) Permits the producer to request approval of contracts at rates that may exceed the maximum authorized by the applicable rate order; (2) allows the Commission to determine in a single proceeding whether "the public convenience and necessity" warrants the issuance of a certificate and whether the rates requested are "just and reasonable"; (3) allows the Commission to issue a permanent certificate which upon acceptance by the producer is not subject to change under section 4 of the Act; (4) allows the producer to collect these rates without risk of refund obligations; and (5) provides an abandonment assurance, if authorized, at the end of the contract term.⁸

Originally, paragraph (c) of § 2.75 permitted producers, 6 months after the commencement of deliveries, to

subsequent thereto, it refers to the Federal Energy Regulatory Commission.

² 5 U.S.C. 553.

³ 5 U.S.C. 553(b)(3).

⁴ Petition of Ecee, Inc., Pinto, Inc., Vsea, Inc., Texas Production Co., and TBP Offshore Co., for rehearing and reconsideration of order No. 455-C, p. 3.

⁵ Application of POGO Producing Co., and Pennzoil Oil & Gas, Inc., for clarification, rehearing, and reconsideration, pp. 2 and 3.

⁶ Id. at 9; Sunshine Act, 5 U.S.C. 552(b).

⁷ Order No. 455, Optional Procedure for Certifying New Producer Sales of Natural Gas, 48 FPC 218 (1972), affirmed in part and reversed in part sub nom., *Moss v. F.P.C.*, 502 F. 2d 461 (D.C. Cir. 1974), reversed in part, 424 U.S. 494 (1976).

⁸ 18 CFR 2.75; 424 U.S. at 497, 598.

collect their contract rate without any refund obligation until such time as a final order was issued by the Commission. Subsequently, the 6-month provision was extended to 9 months.⁹ The Commission reasoned that "the public interest requires a disposition of the certificate applications under the optional procedure . . . prior to the effectuation of a nonrefundable contract rate."¹⁰

ORDER No. 455-C

On May 19, 1978, the Commission further revised paragraph (c) of § 2.75 by again extending the time period for analysis.¹¹ Section 2.75(c) now states that upon determining that a final decision would not be reached by the Commission within the 9-month period, the Commission may extend the analysis period until a final order is issued. During the extended period, deliveries would continue to be made at rates no higher than the prevailing nationwide rate. Also, the revision provided for a surcharge to be recouped by the applicant if the final order established a just and reasonable rate in excess of the nationwide rate collected during the extended period. These revisions of § 2.75(c) became effective upon issuance of the Commission order.

COMPLIANCE WITH THE ADMINISTRATIVE PROCEDURE ACT

Petitioners contend that the Commission ignored the mandatory rulemaking procedure set by the Administrative Procedure Act (APA) which delineates a general notice of proposed rulemaking,¹² an opportunity for public participation or comment,¹³ and publication of the rule at least 30 days prior to its effective date.¹⁴ Although the commission acted under a finding of good cause¹⁵ which waives the pro-

cedural rulemaking steps, Petitioners contend that good cause did not exist and that the order violates the APA rulemaking procedure. Further, Petitioners state that jurisprudence requires more than an agency's bare allegation of "good cause" to justify its dispensing with normal procedures, and that any exception must be strictly scrutinized.

At the time order No. 455 was issued, the Commission reiterated its responsibility to assure reliable and adequate supplies at the lowest reasonable costs to the consumers of natural gas.

To this end, we seek to provide two incentives to domestic production, both fully congruous with consumer protection. First, we will certificate sales of gas not previously deliverable to the interstate market at prices which are shown to be in the public interest. Second, to the extent possible, we will lessen rate uncertainty which has prevailed since the early 1960's.¹⁶

Further, the Commission delineated its reasoning with regard to the 6-month period of analysis.

Such a limitation is, however, a reasonable one, since predicated on the assumption that the Commission will have acted by final order within that period of time . . . 6 months is clearly an adequate period for preliminary Staff analysis and review of applications tendered under the optional procedure. Accordingly, by action to deny or condition certificates prior to the expiration of the 6-month period, we can protect against the impact of a nonrefundable rate which is not just and reasonable.¹⁷

During the 6 years from issuance of order No. 455 to its revision in order No. 455-C, the applications requesting optional procedure have become more complex requiring lengthy detailed analysis, and additional information. As well, the contract rate sought has increased dramatically during this time period with producers now seeking to collect substantially higher rates. It has long been recognized that the Commission has the flexibility to adapt its policies to changing circumstances.¹⁸

Obviously, the consequences of allowing producers to automatically collect their contract rate no matter how high at the expiration of the 9-month period imposes a substantial hardship for the consumer. This would be true even if producers were required, as they were not under order Nos. 455, 455-A and 455-B, to make refunds of amounts collected at the expiration of the 6- to 9-month period in excess of the just and reasonable rate.

statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

¹⁶ Order No. 455, Mimeograph at 3.

¹⁷ Order No. 455, Mimeograph at 24.

¹⁸ *Permian Basin Area Rate cases*, 390 U.S. 747 at 800, 816 n. 99; *Wisconsin v. F.P.C.*, 373 U.S. 294, 309 (1963); *F.P.C. v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1942).

As we stated in order No. 455-C:

The Commission cannot permit consumers to go unprotected during the period of analysis and administrative proceedings necessary to determine the public interest and the necessity of allowing sales of gas at prices substantially in excess of the nationwide norm.¹⁹

The Administrative Procedures Act recognizes two exceptions to notice and public participation: One is for general statements of policy; the other is for a good cause finding that the procedure is impracticable, unnecessary or contrary to the public interest. The Commission utilized the latter exception.

The Commission did not peremptorily stamp "good cause" on the issuance of order No. 455-C; rather, in compliance with the Administrative Procedure Act, the Commission delineated its good cause findings that notice and public procedure were contrary to the public interest. The Commission stated that it was "concerned that a delay in the effective date of this rule until after public comment would trigger a flood of applications during the comment period from producers wishing to collect contract rates after the 9-month period without refund obligation."²⁰ The Commission feared that "Such a result would defeat the Commission's purpose of protecting consumers from the economic burden of nonrefundable rate collections in excess of the just and reasonable rate." The Commission feared that it would be so overwhelmed "with § 2.75 applications that existing as well as new applications could not be processed within the 9-month period."²¹

COMPLIANCE WITH DOE ACT

Petitioners contend that the order No. 455-C, issued under the "good cause" exception to APA rulemaking regulations is void under section 403(c) of the DOE Act. Section 403(c) provides: "Any function described in section 402 of this Act which relates to the establishment of rates and charges under the Federal Power Act or the Natural Gas Act, may be conducted by rulemaking procedures. Except as provided in subsection (d), the procedures in such a rulemaking proceeding shall assure full consideration of the issues

¹⁹ Order No. 455-C, Mimeograph at 4.

²⁰ During an en banc hearing before the Commission on June 19, 1978, a witness for United alluded to a sense of urgency on the part of PLATO to avoid a Commission order which would change § 2.75 as one of the reasons for filing the optional procedure petition hurriedly on May 17, 1978. Commission in en banc hearing in *Pennzoil Louisiana and Texas Offshore Co. Inc.*, docket Nos. CI78-767, CI77-702, CI78-499, CI78-501, et al., June 19, 1978, transcript pp. 354, 365-366, 368, 370-371, 372-373, 375.

²¹ Order No. 445-C, Mimeograph at 6.

⁹ In the *Pennzoil Louisiana and Texas Offshore Co., Inc.*, et al., order issued May 8, 1978, in docket Nos. CI77-702, et al., the applicable time period ran 9 months from the date the Commission was notified of commencement of deliveries as required by sec. 2.75(n).

¹⁰ Order No. 455-B, Amendment of Statement of Policy Relating to Optional Procedure for Certifying New Producer Sales of Natural Gas, issued Nov. 25, 1974, in docket No. R-441.

¹¹ Order No. 455-C, Further Amendment of Statement of Policy Relating to Optional Procedure for Certifying New Producer Sales of Natural Gas, issued on May 19, 1978, in docket No. R-441.

¹² Administrative Procedure Act, 5 U.S.C. 553(b).

¹³ Administrative Procedure Act, 5 U.S.C. 553(c).

¹⁴ Administrative Procedure Act, 5 U.S.C. 553(d).

¹⁵ Administrative Procedure Act, 5 U.S.C. 553(b)(3).

¹⁶ . . . when the agency for good cause finds (and incorporates the finding and a brief

and an opportunity for interested persons to present their views." Section 403(c) has no applicability to order No. 455-C because the Commission was not, in that order, establishing rates. Rather, the Commission was changing certain requirements regarding the time periods for which rates could be collected as well as provisions regarding refunds and surcharges. The rates which would be subject to the order would be established in separate proceedings under the optional procedure provisions of the Commission regulations.

Moreover section 403(c) is not the exclusive authority for the Commission's rulemakings, nor was it relied on in the issuance of the order. With respect to its authority to issue rules, the Commission in order No. 455-C, cited section 16 of the Natural Gas Act and section 401(a) of the Department of Energy Act. Both of these sections authorize the Commission, without qualification, to issue rules and regulations necessary to carry out its functions. Accordingly, it is the Administrative Procedure Act which governed order No. 455-C. As pointed out above, the Commission has complied with that Act.

RATE CERTAINTY

We agree that, at least for the period after the expiration of the 9-month period and prior to the Commission's determination of the just and reasonable rate, the provisions of order No. 455-C will diminish, for a period of time, the assurance to producers of the exact amount of revenues that they may retain. However, since throughout this period the producer will be authorized to keep the amount ultimately determined to be the just and reasonable rate, any asserted rate uncertainty does not really exist within the normal regulatory context. In any event, even if we were to accede to the producer's argument that rate certainty is a significant factor, it must be balanced against a need to adequately protect the consumer against unreasonable charges. The purpose of order No. 455-C was to strike a fair balance between these factors.

Petitioners' concern that our order violates the prohibition against retroactive ratemaking is misplaced. If the 9-month period is extended by us, the collection of the national ceiling rate will involve the collection of a tentative rate, which it is recognized, will be subject to upward adjustment in the event the just and reasonable rate is determined to be higher. It is thus the conditional nature of the rate which takes it out of the posture of retroactive ratemaking. We believe this procedure to be essentially the same as that followed when a producer collects an

above ceiling rate, subject to refund. The difference in procedure is that the consumer is not required to pay above ceiling rates pending the Commission's determination, and this is particularly important when the contract is substantially above the ceiling and the volumes are large. Furthermore, our procedure obviates the difficulties involved in the trickling down of refunds to consumers.²²

COMPLIANCE WITH THE SUNSHINE ACT

Petitioners question the Commission's compliance with the Sunshine Act²³ in the following manner: "To the best knowledge of Applicants, the Commission did not adopt this order during an open meeting as required by the Government in the Sunshine Act, 5 U.S.C.A. 552b, and its own regulations, 18 CFR 1.3a."²⁴

In fact, the Secretary of the Commission issued a notice of the meeting on the afternoon of May 19, 1978, in accordance with the Sunshine Act. The meeting was held at 2 p.m., May 19, 1978, in the Commission meeting room, and was, in compliance with the Act, open to the public. The Commission's actions in this matter were in compliance with the Sunshine Act.

MODIFICATION OF ORDER NO. 455-C

The Commission has determined to modify the language of finding clause (1) order No. 455-C to more accurately portray the Commission's position in this matter.

The Commission orders: (A) The requests for clarification, rehearing, and reconsideration filed by Petitioners on June 16, 1978, and June 19, 1978, respectively, are hereby denied based on reasons set forth herein.

(B) The language in finding clause (1) has been modified to read as follows:

Good cause exists to issue this amendment without notice and public procedure. It is contrary to the public interest to provide for notice and public procedure because to do so would deter the Commission's efforts to protect consumers against the collection by producers of rates in excess of the national ceiling rate, without refund obligation and would delay the protection consumers are required to receive under the Natural Gas Act.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-29564 Filed 10-19-78; 8:45 am]

²² *F.P.C. v. Tennessee Gas Transmission Co.*, 371 U.S. 145, 154 (1962).

²³ Sunshine Act, 5 U.S.C. 552b; order No. 562, Order Adopting Rules Governing Observation of Commission Meetings and Ex Parte Communications, issued Mar. 11, 1977, in docket No. RM77-4.

²⁴ Joint Application for Clarification, Rehearing, and Reconsideration, filed on June 19, 1978, in docket No. R-441 by Applicants, POGO producing Co. and Pennzoil Oil & Gas, Inc.

[4110-07-M]

Title 20—Employees' Benefits

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

[Regs. No. 16]

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

Subpart K—Income and Exclusions

EXCLUSION FROM INCOME OF ASSISTANCE BASED ON NEED FURNISHED BY STATES OR POLITICAL SUBDIVISIONS

AGENCY: Social Security Administration, HEW.

ACTION: Final rule.

SUMMARY: These rules provide for the exclusion from countable income in the Supplemental Security Income program (SSI) of assistance based on need furnished by a State or local government (including Indian tribes). The requirements that assistance payments must be made in cash to an individual, on a regular basis and in supplementation of an individual's SSI benefits have been removed. Thus payments made to a vendor on behalf of an eligible individual can now be excluded from countable income. For example, payments to providers of food, clothing, and shelter are now excluded if they are based on need.

DATES: These amendments will be effective October 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Harry Short, Legal Assistant, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-7455.

SUPPLEMENTARY INFORMATION: On September 30, 1977, a notice of proposed rulemaking and proposed amendments to subpart K of regulations No. 16 were published in the Federal Register (42 FR 52439).

ASSISTANCE FURNISHED BY A STATE OR POLITICAL SUBDIVISION

Section 1612(b) of the Social Security Act describes what income shall be excluded from countable income in determinations of eligibility for and amount of supplemental security income (SSI) benefits. Section 1612(b)(6) authorizes the exclusion of assistance based on need furnished by a State or local government. Effective October 1, 1976, the original requirements that assistance had to be made in cash to the individual on a regular

basis and in supplementation of SSI benefits were removed by section 505(b) of Pub. L. 94-566. This now permits the exclusion of certain State or local government payments which previously resulted in countable income (e.g., foster care payments, adoption subsidies, and other payments to providers of food, clothing or shelter) if they are based on need and are furnished wholly by a State or local government. Since the statute requires that the assistance payments be made by a State or local government, excludable assistance payments still may not include any Federal or private funding.

The original criteria are still used to describe certain State supplementary benefit payments. Technical amendments are also being made in the regulations defining State supplementary payments for purposes of clarity.

COMMENTS ON NOTICE OF PROPOSED RULEMAKING

Interested parties were given the opportunity to submit data, views, or arguments within 45 days with regard to the proposed amendments.

Six agencies submitted comments. A State welfare department and a neighborhood legal aid society endorsed the changes as proposed. An association for the mentally retarded, while endorsing the proposed changes, expressed regret that assistance from a program funded in whole or in part by Federal or nonpublic moneys cannot be excluded from countable income. A State welfare agency, a Federal agency and a State social services agency suggested revisions be made in the regulations to permit the exclusion of Federal moneys and private donations from countable income. The State welfare agency contended that it was not the intention of Pub. L. 94-566 that title XX funds be considered income in determinations of eligibility for and amount of SSI payments. The Federal agency was concerned over the fact that assistance payments it makes are considered income to the recipients. The agency acknowledged that existing laws may not permit the necessary revisions to the regulations.

The above suggestions have not been accommodated since section 1612(b)(6) requires that the assistance be furnished by a State or local political subdivision. This requirement has been interpreted to mean State and local governmental funding which does not include Federal and private moneys. Therefore, this regulation section cannot be revised to permit exclusion of assistance involving Federal or private funds. However, an existing regulation, §416.1109(b), excludes the value of social services provided under title XX from the definition of income for title XVI purposes. Thus, the sug-

gestions involving title XX funds are accommodated under that section.

The State social services agency also expressed concern that assistance furnished by a State or political subdivision under a program not solely using the person's income as the criterion for eligibility would not be excluded from countable income for SSI purposes. The agency referred to a program in which eligibility for assistance is based upon eligibility for SSI benefits. The amount of assistance given is based on the person's actual situation (for example, a utility arrearage) irrespective of income. These amendments provide for the exclusion from income of assistance provided by a State or political subdivision under a program which uses income, or income and resources, as criteria for determining eligibility for and amount of such assistance. Since eligibility for the program described by the State social services agency is based on eligibility for SSI (which uses an income and resources test) we believe, based on the facts presented, that assistance given under this program would be excludable under 1612(b)(6) and these regulations.

Accordingly, the amendments as proposed are hereby adopted and set forth below.

Secs. 1102, 1612, 1614, 1616, and 1631 of the Social Security Act; 49 Stat. 647, as amended, 86 Stat. 1468, 1471, 1474, and 1475; (42 U.S.C. 1302, 1382a, 1382c, 1382e, and 1383.) (Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income program.)

Dated: July 25, 1978.

DON WORTMAN,
Acting Commissioner
of Social Security.

Approved: October 11, 1978.

HALE CHAMPION,
Acting Secretary of Health, Education and Welfare.

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

1. Section 416.1145 is amended by revising paragraph (b)(2) to read as follows:

§ 416.1145 Exclusions from income; order of application.

(b) For the purpose of determining countable income in accordance with § 416.1115, the following income shall be excluded after income described in paragraph (a) of this section:

(2) Assistance based on need which is furnished by a State or political subdivision (including Indian tribes), or any combination of such jurisdictions (§ 416.1151).

2. Section 416.1151 is revised to read as follows:

§ 416.1151 State assistance based on need.

(a) Assistance based on need furnished to or on behalf of an eligible individual (and eligible spouse, if any) shall not be considered in determining countable income under title XVI provided:

(1) The assistance is furnished by a State or political subdivision (including Indian tribes) under a program which uses income, or income and resources, as criteria for determining eligibility for an amount of such assistance; and

(2) The assistance payment is funded wholly by a State or by a political subdivision of a State (including Indian tribes), or any combination of such jurisdictions. When Federal or nonpublic moneys are provided for the assistance payment, e.g., when there is a specific Federal/State program of project or formula grants (such as grants-in-aid under title IV-A of the Act), the assistance payment is not funded wholly by a State or a political subdivision.

(b) Any payments which are excluded from countable income under paragraph (a) of this section are also excluded from income to be deemed under § 416.1185 (published as a notice of proposed rulemaking with interim effectiveness at 42 FR 3316 on January 18, 1977).

3. Section 416.2001 is amended by revising paragraph (a) to read follows:

§ 416.2001 State supplementary payments; general.

(a) *State supplementary payments; defined.* State supplementary payments are any payments made by a State or one of its political subdivisions (including any such payments for which reimbursement is available from the Social Security Administration pursuant to Pub. L. 94-23, as amended) to a recipient of supplemental security income benefits (or to an individual who would be eligible for such benefits except for income), if the payments are made:

[FR Doc. 78-29700 Filed 10-19-78; 8:45 am]

[4110-03-M]

Title 21—Food and Drugs

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

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

[Docket No. 78N-0285]

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Neomycin Sulfate Sterile Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the animal drug regulations for neomycin sulfate sterile solution to indicate those conditions of use for which approval of identical products need not include certain types of efficacy data. Approval may require submission of bioequivalency or similar data. The product was the subject of a National Academy of Science—National Research Council, Drug Efficacy Study Group (NAS/NRC) evaluation.

EFFECTIVE DATE: October 23, 1978.

FOR FURTHER INFORMATION CONTACT:

Donald A. Gable, Bureau of Veterinary Medicine (HFV-114), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, Mich. 49001, is the sponsor of a new animal drug application (NADA 11-953V) which was conditionally approved August 14, 1959. The conditional approval concerned 50 and 200 milligram per milliliter neomycin sulfate sterile solutions for intramuscular, intravenous, or topical use for the treatment of cattle, horses, sheep, swine, dogs, and cats for chronic and acute bacterial infections due to organisms susceptible to neomycin. The status of the application was upgraded to approved on January 5, 1960.

Certain drug products containing neomycin were the subject of an NAS/NRC evaluation published in the FEDERAL REGISTER of August 21, 1970 (35 FR 13403). The Academy evaluated, and the agency concurred, these preparations as probably effective in treating systemic bacterial infections in cattle, horses, sheep, swine, dogs, and

cats caused by pathogens sensitive to the drug. The Academy stated that (1) each disease claim should be properly qualified as to the name of disease caused by pathogens sensitive to the drug, and if the claim cannot be so qualified it must be dropped; (2) the minimum inhibitory concentration table tends to be misleading and should be deleted; (3) the labeling should carry a warning concerning curare-like neuromuscular blockade; (4) the inclusive phraseology describing use of the drug tends to be misleading and an overstatement of the activity of the drug; (5) comments relating to development of resistant microorganisms should be rephrased as resistance to neomycin sulfate has been reported more frequently.

This evaluation concerned the drug's effectiveness and safety to the animal to which it is administered. It did not take into account the safety for food use of food derived from drug-treated animals. The August 21, 1970 announcement was published (1) To inform holders of new animal drug applications (NADA's) as to the findings of the Academy and the agency and (2) to inform all interested persons that such articles may be marketed providing they are the subject of an approved NADA and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

The Upjohn Co. responded by submitting a supplement to NADA 11-953V updating its application by providing current information concerning manufacturing and controls and revised labeling. No new efficacy data were required.

The supplement was approved by a regulation published in the FEDERAL REGISTER of November 9, 1971 (36 FR 21405). The regulation (21 CFR 135b.40, recodified 21 CFR 522.1484) did not specify those conditions of use which were NAS/NRC approved—drug uses for which approval of an NADA does not require efficacy data as specified by §§ 514.1(b)(8)(ii) and 514.111(a)(5)(vi) (21 CFR 514.1(b)(8)(ii) and 514.111(a)(5)(vi)) of the animal drug regulations.

This document amends the regulations to indicate those conditions of use for which approvals for identical products need not include certain types of efficacy data required for approval as above. In lieu of those data, approval may require bioequivalency or similar data as suggested in the guideline for submitting NADA's for NAS/NRC reviewed generic drugs, available with the Hearing Clerk (HFA-305), Food and Drug Administration.

In addition, the regulation is editorially revised to reflect current format.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82

Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), § 522.1484 is revised to read as follows:

§ 522.1484 Neomycin sulfate sterile solution.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains 50 milligrams of neomycin sulfate (equivalent to 35 milligrams of neomycin base). The neomycin sulfate used in manufacturing the drug conforms to the standards of identity, strength, quality, and purity prescribed by § 444.42(a)(1) of this chapter.¹

(b) *Sponsor.* See No. 000009 in § 510.600(c) of this chapter.

(c) *Conditions of use—(1) Amount.* 5 milligrams per pound of body weight daily divided into portions administered every 6 to 8 hours for 3 to 5 days.¹

(2) *Indications for use.* Administer to dogs and cats for the treatment of acute and chronic bacterial infections due to organisms susceptible to neomycin.¹

(3) *Limitations.* For intramuscular or intravenous use only. Neomycin is not for use parenterally in food-producing animals because of prolonged residues in edible tissues. Labeling shall bear an appropriate expiration date. For use by or on the order of a licensed veterinarian.¹

Effective date. This regulation shall be effective October 23, 1978.

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

Dated: October 12, 1978.

LESTER M. CRAWFORD,
Director, Bureau of Veterinary
Medicine.

[FR Doc. 78-29493 Filed 10-19-78; 8:45 am]

[4110-03-M]

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Selenium Disulfide Suspension.

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hart-Delta, Inc., providing for use of a selenium disulfide suspension on dogs as a cleansing shampoo and as an agent for removing skin debris.

¹These claims are NAS/NRC reviewed and deemed effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter.