ered products under the Mandatory Petroleum Price Regulations. Accordingly, each of the components which Intenco purchases to use as the feedstocks for its "Pyroblack" process at the HCCL plant is exempt from the price regulations set forth at 10 CFR Part 212.

Likewise, neither of the products produced at the HCCL plant and sold by Intenco is a covered product for the purposes of 10 CFR Part 212. Although the synthetic oil produced by Intenco shares certain physical and chemical similarities to crude oil and may be used as a raw material in the refining of gasoline and fuel oil, the synthetic oil [25] clearly does not meet the definition of crude oil contained in 10 CFR 212.31. The definition provides in part that:

" 'Crude oil' means a mixture of hydrocarbons that existed in liquid phase in underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities."

The synthetic oil did not exist in liquid phase in an underground reservoir. Rather, the synthetic oil is a product obtained by the processing of discarded automotive tires and recycled lubricating oil. Thus, Intenco may sell the synthetic oil it produces by the "Pyroblack" process at prices not subject to the price regulations set forth at 10 CFR Part 212.

In addition, the carbon black produced from the HCCL plant is not a covered product under the Mandatory Petroleum Price Regulations. Carbon black is an almost pure carbon product which is not normally produced by petroleum refining processes. It clearly does not qualify as "crude oil" or as "residual fuel oil" under the definitions of those substances set forth at 10 CFR 212.31. The carbon black is also not a refined petroleum product, i.e., "gasoline, kerosene, distillates, (including Number 2 fuel oil), LPG, refined lubricating oils or diesel fuel," under the definition set forth at § 3 of the EPAA. Thus, carbon black has never been a product covered by the Mandatory Petroleum Price Regulations.

Accordingly, Intenco's purchases of recycled lubricating oils and discarded automotive tires are not covered by the price regulations, and it may sell the synthetic oil and carbon black produced from the HCCL plant at prices not subject to the Mandatory Petroleum Price Regulations.

[FR Doc. 78-16044 Filed 6-8-78; 8:45 am]

[25] Tests of the synthetic oil indicate an API gravity of 19°, 0.774% sulphur content by weight and a pour point of −15° F.

[6320-01]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATION

[Reg. ER-1052; Amdt. 8]

PART 298—CLASSIFICATION AND EXEMPTION OF AIR TAXI OPERATORS

Increase in Aircraft Size for All-Cargo Air Taxis

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule increases the maximum allowable size for all-cargo air taxis from 7,500 pounds to 18,000 pounds payload capacity, except for Alaska and Hawaii. The larger aircraft gives the air taxi operators greater flexibility and will provide improved service to the small and rural communities they serve. The change in the regulations is in response to a petition from nine all-cargo commuter air carriers.

DATES: Adopted: June 1, 1978. Effective: June 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Joseph Brooks, Office of the General Counsel, Rules Division, CAB, 1825 Connecticut Avenue NW., Washington, D.C., 202-673-5442.

SUPPLEMENTARY INFORMATION: In response to a joint petition for rulemaking filed by nine all-cargo commuter air carriers, the Board, in December 1977, issued notice of proposed rulemaking EDR-341 (42 FR 62930), asking for public comment on proposed rules to raise the aircraft size limit for all-cargo air taxis to 18,000 pounds maximum payload capacity. The notice was limited to the relief requested by the petitioners, which excluded air taxi operations in Hawaii and Alaska, in order to simplify and expedite the proceeding.[1]

Twenty-seven comments, reply comments, and letters have been received from air freight forwarders, direct air carriers, air taxis, and various government and civic parties.[2] The scheduled and supplemental carriers generally oppose this change in the rules, while most other comments are in favor of increasing the aircraft size as proposed. In response to the Board's tentative conclusions in EDR-341, three general issues are discussed in the comments: Whether the recent all-cargo deregulation legislation (Pub. L. 95-163) eliminates the need for this rulemaking; whether tariffs should be required of any air taxi operating 18,000 pound aircraft; and whether the proposed exemption is lawful under § 416 of the Act. Various modifications to the proposed rules are also suggested in the comments, such as limiting the application of the new rule to interstate transportation, allowing certificated carriers to operate the same size of aircraft under the same exemptions as apply to air taxis, and strengthening labor protection for air taxi employees.

The Board has decided to adopt the rule as proposed in EDR-341. The inceased size will enable the all-cargo air taxis to serve more efficiently their primary purpose as a feeder service to the larger certificated carriers, and in providing vital air links to rural and non-hub communities.

TIA and TWA both argue that the air taxis have already obtained the relief sought, in the form of liberalized all-cargo certificates under new § 418 of the Act. They claim that this type of certificate serves the same purpose as the new rule, thus demonstrating Congressional intent that the expanded, freely operating all-cargo service asked for by the air taxis is to be conducted under a § 418 certificate, not under § 416 exemption authority. These carriers argue that by proceeding under its exemption power to expand the less-regulated air taxis in direct competition with the § 418 carriers, as well as with certain operations of other certificate, carriers, the Board is circumventing the Congressional regulatory scheme. In addition, states TIA, since Part 298 grants air taxis operating authority in foreign as well as domestic air transportation, the Board is going beyond the Congressionally authorized cargo deregulation, which is limited to domestic markets.

We reject these arguments. While all-cargo carriers operating under § 418 do have substantially more freedom than under a § 401 certificate, even the relatively light burdensome regulatory requirements that may be suitable for large aircraft operations under § 418 do not go far enough to allow operators of small aircraft to respond to the needs of the market with maximum flexibility. Air taxis are, and will continue to be, merely an adjunct to certificated air transportation, whether certificates are issued under § 401, or, in the case of all-cargo carriers, under § 418. Nothing in the text of Pub. L.

[1] Supplemental notice of proposed rulemaking EDR-341A (43 FR 13892), issued on March 28, 1978, proposes to include Alaska and Hawaii in the change in aircraft size. We are proceeding with the basic rulemaking, however, so as not to delay relief to the vast majority of air taxis, while we continue to consider separately the Alaska and Hawaii issues. It is our intent to reach a decision on the Alaska and Hawaii part of the rulemaking by August 1, 1978.

[2] Comments and/or reply comments have been filed by: Federal Reserve Bank of Chicago, Columbia House, Precision Valley Aviation, Air Freight Forwarders Association of America (AFFA), Novo Airfreight Corp. (Novo), William J. Godbout Co., Cosmopolitan Aviation Corp., Jet Way Shippers Association, United Air Lines (United), Commuter Airline Association of America, Summit Airlines, Trans International Airlines (TIA), the Flying Tiger Line (FTL), U.S. Department of Transportation (DOT), Federal Express Corp., International Brotherhood of Teamsters, eight commuter all-cargo air carriers (Blackhawk Airways, Burl-Air Freight, Great Western Airlines, Meridian Air Cargo, Midwest Air Cargo, Midwest Air Charter, Pinehurst Airlines, Sedalia-Marshall-Boonville Stage Line, Viking International Airlines) (commuters), county of Maui, State of Hawaii, Hawaii Air Cargo Shippers Association, Meridian Air Cargo, and Trans World Airlines (TWA).

95-163 or in its legislative history indicates a Congressional intention that the degree of deregulation there provided for all-cargo operations, regardless of the size of aircraft utilized, is to prevent the Board from continuing to provide in Part 298 its long established system of even freer authorization for air transportation of both passengers and cargo performed by a class of air carriers operating only "small aircraft," or from continuing to redefine that term, from time to time, in light of developments in the air transportation industry, taken as a whole.

The question then is whether the maximum size of cargo aircraft available under the present air taxi system is adequate for the demand of its primary markets. As more fully discussed below, we conclude that the small, short and medium haul markets which air taxis are designed to serve now need the larger cargo capacity made available by this rule, as shown in the answers and comments in this proceeding.

Between 1970 and 1976, cargo carried by commuters increased at an average annual rate of 30.5 percent, from 43.5 to 214.8 million pounds. DOT states that during the same period, the number of small communities (those with less than 100,000 population) served by certificated carriers decreased 14 percent, while the number served by commuters increased 21 percent. Further, where these small communities still do receive certificated service, AFFA complains, the cargo lift provided is often inadequate and untimely. Although § 418 carriers may fill part of this need, the Board concludes that it is, and will continue to be, the air taxis, operating small aircraft, that can best respond to the changing demands and circumstances of these markets.

In addition to the general arguments opposing this rule on the basis of an alleged preemption by § 418, some comments specifically argue that Pub. L. 95-163 demonstrates a Congressional intent that tariffs be filed by any carrier operating all-cargo aircraft as large as the 18,000 pound plane porposed here. Summit Airlines (one of the original petitioners, but now a § 418 carrier and opposed to the rule) argues that the tariff-filing requirement imposed on a § 418 certificated carrier is not burdensome for the air taxi operator, as evidenced by the many commuter rate schedules now published by these carriers. TIA and TWA support this argument, and add that to exempt all-cargo commuters from filing tariffs when they will be operating aircraft competitive with certificated carriers would be discriminatory.

United, though supporting the size increase, argues that tariff filings would be the most effective means of enabling the Board to monitor all-cargo rate levels to prevent predatory pricing. This is especially important, it claims, to protect small shippers against discriminatory rates for favored or large-volume shippers. Novo, an airfreight forwarder, specifically argues that no carrier should be exempt from tariffs, which provide protection for customers and stability in the market.

At the outset, it should be emphasized that the Board has not yet finally decided whether Pub. L. 95-163 mandates that all-cargo carriers having § 418 certificates must file tariffs. To date, it is only in the current regulations, speedily adopted to implement Pub. L. 95-163 for carriers having "grandfather" rights to immediate issuance of § 418 certificates, that the Board decided not to exempt this new class of carriers from the tariff filing requirements of section 403 of the Act.[3] Moreover, even if it were unquestionable that Congress intended that all § 418 carriers must file tariffs, it by no means follows that all-cargo carriers exercising Part 298 authority (i.e., operators of small aircraft) must do so, Nor are we persuaded that we should, as a matter of policy, regard the filing of tariffs as a necessary tool to monitor the pricing practices of the all-cargo air taxis. On the contrary, air taxis have long been exempt from filing tariffs, and there have been no problems of the type which concerns these commenters. Consequently, we adhere to our long-standing view that to require air taxis to file tariffs would place an unnecessary burden on these operators of small aircraft, hindering competition in service to small community markets.

In short, the enactment of Pub. L. 95-163 has not impaired our authority to extend the broad exemptions of Part 298 to operators of small all-cargo aircraft, so long as we can make the necessary statutory findings under § 416 of the Act.[4] The Board has now concluded, on consideration of the comments, that we can make final our tentative findings, in EDR-341 that increasing to 18,000 pounds the maximum size of small aircraft used for all-cargo air taxi operations, excluding Hawaii and Alaska, meets these standards.

FTL, TIA, and TWA argue strenuously that the public interest is not served when unregulated air taxis are allowed to operate similar aircraft in direct competition with fully regulated certificated carriers.[5] TIA claims that 18,000-pounds unregulated air taxi aircraft will be directly competitive with both its markets and operations. While air taxis might still be unable to compete with certificated carriers in the long-haul markets that require wide-bodied jet aircraft, the increased size of their aircraft proposed here, it asserts, will allow unregulated all-cargo air taxi flights in direct competition with TIA's turboprop Electras in the medium and short-haul domestic routes, carrying primarily freight forwarder traffic.

The Board disagrees with these arguments. The comments, answers and letters received in this proceeding show a clear public interest in providing the air taxi with aircraft capacity needed to meet the growing market demand. As stated by Federal Express, there is simply no reason to force these small carriers to refuse cargo for lack of space, or to waste fuel and resources by using mulitple flights to meet existing demands that are too large for present air taxi aircraft and too small to attract the certificated carriers.

The Board does not regard this competition as direct or unfair. The vast majority of aircraft used today by certificated carriers are in no way competitive with 18,000 pound aircraft.[6] Nor are the air taxi markets similar to most of those served by certificated carriers. In addition, the percentage of the present air cargo market held by air taxis is small in comparison to that of the certificated carriers. For example, using the latest comparable figures, in 1976, the commuter carriers transported 16,520,847 ton-miles of cargo, while the certificated carriers transported 2,909,257,000.[7] The air

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[3] See preamble to Part 291, ER-1037, p. 4, adopted December 23, 1977 (42 FR 65139), where the Board stated that it would fully consider this question in the rulemaking that will be instituted for the full implementation of § 418.

[4] Section 416 states that in order for the Board to exempt a carrier from provisions of the Act, it must find that enforcing these provisions would not be in the public interest, and also that enforcement would be an undue burden on the carrier, either because of the limited extent of its operations or because of unusual circumstances affecting those operations.

[5] As specific examples: (1) TIA states that its Electras have a cargo payload of 32,500 pounds, but a useable cube of only 3,200 cubic feet, while the Convair 580, which is proposed for use by air taxis under the new rule, has a useable cube of 2,800 cubic feet; (2) TWA states that an 18,000 pound aircraft is approximately equal in cargo capacity to the belly space of a B-707 aircraft.

[6] For example, as of 1976, only 8 out of the 82 aircraft used by the supplementals would be within the 18,000 pound all-cargo capacity class. TIA also has 12 L-100-30 aircraft at 50,000 pounds, and 9 L-188 aircraft at 35,000 pounds. In comparison, the smallest jet aircraft used by the supplementals, local service carriers, or the trunks has approximately 34,000 to 40,000 pounds all-cargo capacity.

[7] Commuter air carrier traffic statistics, year ended December 31, 1976; air carrier traffic statistics, December 1977.

taxis would thus have to increase at a phenomenal rate to match the certificated carriers (which have also been steadily increasing), an unlikely occurrence because of the divergent markets and types of services provided.

In fact, commuter traffic tends to be at the expense of surface transportation, not of the larger air carriers, as the Board found in the *Part 298 Weight Limitation Investigation* (Orders 72-7-61, 72-9-62). As the commuter traffic increases under these new rules, it is also likely that any such increase will be fed into the certificated system, thereby increasing rather than diverting from, its freight traffic. As discussed earlier and as stated in EDR-341, the larger aircraft size is needed for these markets served by air taxis, and poses no substantial threat to other classes of air carriers.

In any event, whatever public interest argument may otherwise be sought to be implicitly grounded in the Act as indicative of congressional policy favoring the protection of certificated carriers from diversion, that argument has been invalidated as to domestic all-cargo service by Pub. L. 95-163. If nothing else, Congress has now made it unequivocally clear that there is to be no "route protection" or other artificial restraint on freedom of competition in providing domestic all-cargo air services.[8] Consequently, certificated air carriers can no longer be heard to complain that there is any public interest against competitors' diversion, as such, insofar as domestic all-cargo service is concerned.

Under the second part of the § 416 test, FTL and TIA argue that there are neither unusual circumstances surrounding, nor limited operations of, air taxis capable of operating this size of aircraft. They contend that obtaining certification under the new, easier requirements of § 418, no longer entails a significant burden for air taxis operating 18,000 pound aircraft.

The Board, however, agrees with the commuters that, due to the limited extent of air taxi operations, and the surrounding unusual circumstances of the air taxi market, even certification under § 418 would be an unwarranted burden on these small carriers. As we found in the *Part 298 Investigation*, air taxis provide a financially risky, unsubsidized service, which needs maximum operational flexibility to best serve its small community markets. It is our opinion that even the reduced requirements of a § 418 certificate would needlessly hamper this flexibility. For example, tariff filings require additional initial and on-going monthly expenses, future rate changes would be delayed for 60 days under the tariff mechanism, and market response would be delayed by the forms and regulations of the § 418 certificate. Taken individually, these requirements may not appear an undue burden, but taken as a whole, the Board views them and similar regulations as an unwarranted burden for this unusual type of carrier and the services provided. Equally important, however, in determining whether such requirements are a burden, is the limited extent of air taxi all-cargo operations. For example, in 1976, the largest all-cargo commuter, Federal Express, carried 46.9 million revenue ton-miles of cargo, and the next largest carried only 3.4 million RTM's of cargo. In comparison, for the same year, FTL's freight, express and mail revenue ton-miles amounted to 977,065,000; while TIA's (without including data from Saturn, which it acquired in 1976) civilian freight ton miles amounted to 51,441,427. Only nine commuter carriers transported 5,000,000 or more pounds of cargo, while approximately one-third of the commuters carried less that 50,000 pounds. Further, only 16 commuter airports handled 5,000,000 or more pounds of cargo; while over half handled less than 50,000 pounds. Of 252 commuter air carriers, only 31, or approximately 12.5 percent, conducted all-cargo operations in 1976.

TIA has made several requests to the Board to modify the proposed rules if adopted. First, supported by Rich, it asks that the Board give certificated carriers authority to provide service with similar aircraft under the same exemptions as air taxis. If such authority is not granted, the certificated carriers are placed at an unfair competitive advantage, claims TIA. The possibility of extending Part 298 exemption authority to those few members of the certificated class of carriers operating a number of small aircraft is outside the scope of this proceeding. This question, however, will be considered in the upcoming rulemaking fully implementing § 418.

We are also denying TIA's request for a full evidentiary hearing. The Board is not required to use evidentiary hearing procedures in exercising its exemption authority. Particularly where the exemption has general applicability to an entire class of carriers, an informal rulemaking is a suitable procedure on which to base the requisite legislative findings under § 416. In this case, there have been extensive answers, comments and reply comments, which have presented facts and arguments on all sides of the issue. No material factual issues have been raised of the kind that require resolution through oral testimony and cross-examination. The Board finds, therefore, that the record is sufficient to make the required findings under § 416, and that no further procedures are needed.

TIA's final request is to limit the application of this expanded all-cargo air taxi aircraft to interstate air transportation. It argues that no specific need has been shown for extending this change to foreign air transportation, and that a limitation to interstate markets is consistent with the geographic scope of § 418. We see no reason to limit this amendment of Part 298 as TIA requests. Air taxis have always been permitted to operate in foreign air transportation, and TIA has presented no legal or economic reason why all-cargo air taxis should be so restricted. While § 418 does apply only to domestic air transportation, we reiterate our view that Pub. L. 95-163, in providing certain limits on certificated all-cargo service deregulation affecting aircraft of all sizes, does not indicate that air taxi operators, providing only small aircraft cargo service, should also be so limited. We are thus adopting the rule as proposed, which permits 18,000 pound aircraft to be operated throughout the present geographical scope of Part 298, except for Hawaii and Alaska.[9]

The Teamsters oppose expansion of the aircraft size for all-cargo air taxis for the same reasons they oppose legislation increasing the aircraft size if air taxis in general. They argue that expansion of air taxi operations could cause loss of jobs, and would increase the danger of safety-related accidents, since these carriers are not as strictly regulated by the FAA as others. Their primary complaint, however, is that the Board has not considered the impact on labor of any change in the air taxi exemption.

We have seen no evidence that the expansion of air taxi all-cargo aircraft to 18,000 pounds will have the adverse effects on employment claimed by the Teamsters. In fact, as stated above, it is our opinion that this rule will lead to an increase in all-cargo air taxi operations and, in turn, to an increase in the cargo operations of scheduled carriers, thus providing an increased opportunity for employment. Moreover, as we discussed in EDR-341, several shippers and civic parties state that this amendment is needed to spur or to continue the economic development of the areas and communities served by air taxis, which again should expand employment opportunity.

The Board finds that because this amendment removes a restriction, and the public will benefit from the rule taking effect without delay, good cause is shown to make it effective immediately.

[8] See new paragraph (b) of section 102 of the Act, as added by section 16 of Pub. L. 95-163.

[9] Upon review of the comments that we shall receive on EDR-341A, we shall subsequently decide whether to extend this amendment to Hawaii or Alaska, or both.

Accordingly, the Board amends Part 298 of its economic regulations (14 CFR Part 298) as follows:

1. Paragraph (i) of § 298.2 is revised to read as follows:

§ 298.2 Definitions.

* * * * *

(i) "Large aircraft" means: (1) Any aircraft used in passenger service having a maximum seating capacity of more than 30, or a maximum payload capacity of more than 7,500 pounds; *Provided, however,* That for the purposes of this part, large aircraft shall include all models of the Convair 240, 340, and 440; Martin 202 and 404; F-27, and FH-227; and Hawker-Siddeley 748; and shall also include any other aircraft with a maximum zero fuel weight in excess of 35,000 pounds.

(2) Any aircraft used solely in all-cargo service having a maximum payload capacity of more than 18,000 pounds, except that in connection with operations within the states of Hawaii and Alaska, such aircraft shall have a maximum payload capacity of more than 7,500 pounds.

2. Paragraph (l) of § 298.2 is amended by adding a second proviso at the end of the paragraph to read as follows:

§ 298.2 Definitions.

* * * * *

(l) "Maximum payload capacity" means * * *

Provided further, however, That for any aircraft used solely in all-cargo service under the exemption provided by this part, the maximum payload capacity shall be 18,000 pounds, based upon an aircraft having a maximum zero fuel weight of 55,000 pounds or less, or any aircraft developed subsequent to September 15, 1977, which has a higher zero fuel weight, but only a designed maximum payload of 18,000 pounds or less.

(3) Section 298.31 is revised to read as follows:

§ 298.31 Scope of service and equipment authorized.

Nothing in this part shall be construed as authorizing the operation of large aircraft in air transportation, and the exemption provided by this part to air taxi operators which register and reregister with the Board extends only to the direct operation in air transportation in accordance with the limitations and conditions of this part of aircraft having maximum passenger capacities and maximum payload capacities as defined in §§ 298.2(i) and 298.2(l) of Subpart A of this part, except that with respect to operations conducted within Hawaii and Alaska such exemption extends only to such operation of aircraft having a maximum payload capacity of 7,500 pounds or less.

(Sec. 204, 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 771 (49 U.S.C. 1324, 1386).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-16064 Filed 6-8-78; 8:45 am]

[4110-07]

Title 20—Employees' Benefits

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

[Reg. Nos. 4, 16]

PART 404—FEDERAL OLD-AGE SURVIVORS, AND DISABILITY INSURANCE BENEFITS

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

Extension of Special Age 72 Payments and Supplemental Security Income Benefits to the Northern Mariana Islands

AGENCY: Social Security Administration, HEW.

ACTION: Final rules.

SUMMARY: The final amendments provide that people residing in the Northern Mariana Islands (NMI), who are otherwise qualified, are eligible for special age 72 payments and supplemental security income (SSI) benefits in the same manner and under the same conditions as people now residing in the 50 States and the District of Columbia. Individuals who received interim United States citizenship under the Constitution considered citizens and qualified aliens of the United States; and residents of the NMI will be considered residents of the United States. These final amendments to the regulations are designed to implement section 502(a) of the Northern Marianas Convenant (Pub. L. 94-241; 90 Stat. 268).

DATE: These amendments shall be effective June 9, 1978. Comments will be accepted until July 10, 1978.

ADDRESSES: Although the notice of proposed rulemaking is being dispensed with for the reasons cited in the Supplementary Information section consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203.

Copies of all comments received in response to this notice will be available during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Mr. S. J. Weissman, Legal Assistant, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-7341.

SUPPLEMENTARY INFORMATION: On October 24, 1977, President Carter, in accordance with sections 1003(b) and 1004(b) of the Northern Marianas Covenant (Pub. L. 94-241; 90 Stat. 277), proclaimed that the Constitution of the NMI and certain sections and articles of the Northern Marianas Covenant shall come into full force and effect on January 9, 1978 (42 FR 56593). The Covenant had been approved by joint resolution of Congress on March 24, 1976, and had previously been approved by the NMI District Legislature on February 20, 1975, and by the people of the NMI voting in a plebiscite on June 17, 1975.

The Covenant provides that the NMI of the Trust Territory of the Pacific Islands will become a commonwealth in political union with the United States upon termination of the Trusteeship Agreement (i.e., about 1981). Until then, the NMI will be in a transition period with self-government.

As herein pertinent, section 502(a) of the Covenant (effective January 9, 1978) provides: "[t]he following Laws of the United States * * * will apply to the Northern Mariana Islands * * * (1) * * * Section 228 of Title II and Title XVI of the Social Security Act as it applies to the several States * * *" Section 228 of Title II authorizes special age 72 payments to certain uninsured individuals. Title XVI (SSI program) authorizes benefit payments to needy individuals who are age 65 or older, or blind, or disabled.

When social security programs are extended to new geographical areas eligibility is ordinarily provided (unless express exceptions are prescribed) on a basis which is comparable to that for individuals who are already covered by the program. Therefore, section 502(a) of the Covenant is being interpreted to permit residents and individuals who received interim United States citizenship status under the Constitution of the NMI, or quali-

fied aliens in the NMI to qualify for special age 72 payments and SSI benefits just as if they were residents of one of the 50 States or the District of Columbia and citizens of (or qualified aliens in) the United States. Any other interpretation would not give effect to the pertinent parts of section 502(a) of the Covenant.

Since section 502(a) of the Covenant was effective January 9, 1978, operating personnel have been alerted to this change and the need to process such cases in a timely manner. This action was taken to insure prompt recognition and equitable handling of these cases, on an interim basis, until final regulations are in effect.

The amendments to the regulations are being published in final. They are substantive rules which extend special age 72 payments and SSI benefits to the people of the NMI as required by section 502(a) of Pub. L. 94-241. This section, as previously mentioned, went into effect by Presidential Proclamation January 9, 1978, and the rules have already been implemented by the Social Security Administration. Consequently, the Secretary finds that it would be unnecessary and impracticable for the Social Security Administration to publish the rules with Notice of Proposed Rulemaking.

Accordingly, Part 404 and Part 416 of 20 CFR are being amended as follows:

1. Section 404.374(a) concerning residency and citizenship requirements for entitlement to special age 72 payments is being amended to include people in the NMI, effective January 9, 1978.

2. Section 404.379 concerning suspension of special age 72 payments is being amended to provide that individuals residing in the NMI and receiving special age 72 benefits will be considered residents of the United States and, thus, are not subject to suspension while residing in the NMI.

3. Sections 416.120(c) (9) and (10), are being amended to expand the definitions of "State" and "United States" to include the NMI for purposes of the SSI program.

4. Section 416.202(b) concerning residency and citizenship requirements for SSI benefits is being amended to include people in the NMI, effective January 9, 1978.

5. Section 416.1327(a) concerning suspension of SSI benefits due to absence from the United States is being amended by expanding the definition of "outside the United States" to mean outside the 50 States, the District of Columbia, and the NMI and, thus, residents of the NMI would not be subject to suspension of their SSI benefits.

(Sec. 228, 1102, 1614(a)(1) and 1631 of the Social Security Act as amended, 80 Stat. 67, 49 Stat. 647, 86 Stat. 1471, 86 Stat. 1475; (42 U.S.C. 428, 1302, 1382c, 1383) sec. 502(a) of Pub. L. 94-241, 90 Stat. 268)

(Catalog of Federal Domestic Assistance Program No. 13.804 Special Benefits For Persons Aged 72 or Over; No. 13.807 Supplemental Security Income Program)

NOTE.—The Social Security Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Dated: March 27, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: May 31, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary of Health, Education, and Welfare.

Part 404 and Part 416 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

1. Section 404.374 is amended by revising paragraph (a)(3) and adding subparagraphs (3)(iii) and (3)(iv) to read as follows:

§ 404.374 Special payments at age 72 to certain uninsured individuals.

(a) *Requirements for entitlement.* An individual is entitled under section 228 of the Act to special payments at age 72 if such individual:

* * * * *

(3) Is a resident of one of the 50 States, the District of Columbia, or effective January 9, 1978, the Northern Mariana Islands and is:

(i) A citizen of the United States; or

(ii) An alien lawfully admitted for permanent residence who has resided in the United States (as defined in sec. 210(i) of the Act, i.e., the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa) continuously during the 5 years immediately preceding the month in which he files application for special payments under section 228; or

(iii) An individual who meets the requirement of the interim definition of United States citizen in section 8 of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands; or

(iv) An alien lawfully admitted for permanent residence in the Northern Mariana Islands who has continuously during the 5 years immediately preceding the month in which he or she files an application for special benefits under section 228 resided in: The Northern Mariana Islands; the United States (having been lawfully admitted for permanent residence); or the Northern Mariana Islands and the United States.

2. Section 404.379 is being amended as follows:

§ 404.379 Suspension where individual is residing outside the United States.

No special payment under section 228 for any month may be paid if, during such month, the individual entitled to such special payment is not a resident of one of the 50 States, the District of Columbia, or effective January 9, 1978, the Northern Mariana Islands.

3. Section 416.120 is amended by revising paragraphs (c) (9) and (10) to read as follows:

§ 416.120 General definitions and use of terms.

* * * * *

(c) *Miscellaneous.* As used in this part unless otherwise indicated:

* * * * *

(9) "State", unless otherwise indicated, means a State of the United States, the District of Columbia, or effective January 9, 1978, the Northern Mariana Islands.

(10) The term "United States" when used in a geographical sense means the 50 States, the District of Columbia, and effective January 9, 1978, the Northern Mariana Islands.

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4. Section 416.202 is amended by revising paragraph (b) and adding paragraphs (b)(3), (b)(4), and (b)(5) to read as follows:

§ 416.202 Eligibility requirements: General.

* * * * *

(b) Is a resident of the United States, as defined in § 416.120(c)(10) and is:

(1) A citizen of the United States, or

(2) An alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1153, 1182)), or

(3) An individual who meets the requirements of the interim definition of United States citizen in section 8 of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands, or

(4) An individual who is born in the Northern Mariana Islands after June 17, 1975, who is a citizen of the Trust Territory of the Pacific Islands and who is domiciled in the Northern Mariana Islands or in the United States, or

(5) An alien lawfully admitted for permanent residence in the Northern Mariana Islands, or otherwise permanently residing in the Northern Mariana Islands under color of law.

(5) Section 416.1327 is amended by revising paragraph (a) to read as follows:

§ 416.1327 Suspension due to absence from the United States.

(a) *Suspension effective date.* A recipient is ineligible for benefits beginning with the first full calendar month he is outside the United States, and his payments are subject to suspension for such month. For purposes of this paragraph, "outside the United States" means outside the 50 States, the District of Columbia, and effective January 9, 1978, the Northern Mariana Islands. After a recipient has been outside the United States for 30 consecutive calendar days, he is considered as remaining outside the United States until he has returned to and remained in the United States for a period of 30 consecutive calendar days. Each calendar day consists of a full 24-hour day.

Example 1: * * *
Example 2: * * *
Example 3: * * *
Example 4: * * *

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[FR Doc. 78-15792 Filed 6-8-78; 8:45 am]

[3810-01]

Title 32—National Defense

CHAPTER XVIII—DEFENSE CIVIL PREPAREDNESS AGENCY

PART 1801—CONTRIBUTIONS FOR CIVIL DEFENSE EQUIPMENT

Miscellaneous Amendments

AGENCY: Defense Civil Preparedness Agency (DCPA).

ACTION: Final rule.

SUMMARY: These amendments delete some portions and revise other portions of 32 CFR 1801 to reflect the current criteria and procedures already applicable to the obtaining of Federal financial contributions under section 201(i) of the Federal Civil Defense Act of 1950, as amended. The amendments in this part are editorial in nature, do not impose new restrictions and are already in effect under DCPA guidance. Hence they are effective June 9, 1978.

EFFECTIVE DATE: June 9, 1978.

FOR FURTHER INFORMATION CONTACT:

William L. Harding, Acting General Counsel, Defense Civil Preparedness Agency, Room 1C521, Pentagon, Washington, D.C. 20301, 202-695-3763.

SUPPLEMENTARY INFORMATION: The action taken is essentially one of editing to delete rules which, due to changes in law and other Federal regulations are no longer applicable, and to update references to set forth new citations.

DCPA has instituted a Civil Preparedness Guide (CPG) and Civil Preparedness Circular (CPC) series as described in 32 CFR 1800.20 (42 FR 34880, July 7, 1977) to replace the Federal Civil Defense Guide. CPG 1-3 entitled "Federal Assistance Handbook" is furnished to all participating States and political subdivisions as part of the grant agreement. It contains detailed guidance on submission of project applications, billings and payment, allowable costs and grant program criteria, including standards required pursuant to OMB Circular No. A-102 (42 FR 45828) and other Federal regulations and statutes.

The definitions section is being alphabetized. Also, for brevity and clarity of text the terms "grantee," "CPG 1-3," "matching share," and "State" are being defined. This will not expand or restrict the eligibility of grantees, the applicability of DCPA manuals and circulars, the amount of DCPA's contribution, or the coverage of the term "State" from that in effect under existing DCPA criteria set forth in the body of the rules and regulations governing DCPA's financial assistance program under section 201(i) of the Federal Civil Defense Act of 1950, as amended. The cost principles set forth in Federal Management Circular 74-4 (41 CFR Subpart 1-15.7) formerly, OMB Circular No. A-87 have been set forth in appendix H of CPG 1-3 as applicable to Federal assistance under DCPA programs. The definition of "allowable costs" is being updated to delete the reference to BoB Circular A-87, which has been rescinded.

Under Pub. L. 94-519 (90 Stat. 2451) Federal agencies are prohibited from obtaining excess personal property for purposes of furnishing such property to grantees of such agencies except as set forth in subsection 202(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483) as amended. The provisions on "loan of excess personal property" are being revised to reflect this change in the law.

DCPA long ago stopped its practice of purchasing civil defense equipment for transfer of ownership to a grantee upon its payment to DCPA of one-half the purchase price. Procurement standards set forth in appendix E of CPG 1-3 are as required by attachment N of OMB Circular No. A-102. Except as required for compliance with Federal law, including Executive orders, DCPA is precluded from imposing additional procurement standards on grantees. The provisions on procurement are being revised to delete reference to Federal procurement and any requirements in excess of Federal standards.

Pub. L. 94-361 (90 Stat. 932) approved July 14, 1976, added a provision to the Federal Civil Defense Act of 1950, as previously amended (50 U.S.C. App. 2251-2297) to provide specific authority for the use of civil defense personnel, activities, organizational equipment, materials, and facilities in any area of the United States which suffers a disaster other than disaster caused by enemy attack. Prior to this, DCPA had authorized such use under its general authority where it served to provide experience for civil defense units without impairing the availability of the resources for civil defense. These provisions in the regulations are being changed to reflect the specific language of the statute.

In consonance with U.S. Supreme Court decisions concerning oaths generally, DCPA no longer directs States or their political subdivisions to require the taking of an oath (of the character provided for in section 403 of the Federal Civil Defense Act of 1950, as amended) by each person appointed to serve in a State or local civil defense organization. Therefore, the provisions for a loyalty oath are being deleted.

CPG 1-3 contains provisions of financial management, property management, and grant closeout procedures which reflect the requirements of OMB Circular No. A-102. Provisions which deal with these matters are revised to delete those which appear to exceed such standards and to add references to CPG 1-3.

Under the provisions of CPG 1-3 reflecting the requirements of attachment N of OBM Circular No. A-102, the Federal Government retains an interest in nonexpendable property purchased with Federal financial assistance at a unit price of $1,000 or more, as long as it has some fair market value. One State has pointed out that as a joint applicant with its political subdivision which procures an item, a State may find it is legally unable to guarantee payment of a share of the market value to the United States of America, but that no such constraint would apply to guaranteeing return of all or part of the Federal financial contribution. In order to accommodate State law, provision is being made in the regulations to limit the State's guarantee in such cases so as not to exceed the amount of the Federal financial contribution for the property in question.

Notice and public participation regarding these amendments in unnecessary because DCPA is, without choice,