of the Tax Reform Act of 1976 (90 Stat. 1794, 1839). No comments were received and no public hearing was requested or held. The Treasury decision adopts the proposed amendments with minor clarifying revisions.

Explanation of Regulations

The amendment to section 512(b)(5) provides that gain from the lapse or termination of options occurring after December 31, 1975, will not constitute unrelated business taxable income to exempt organizations if it is in connection with the investment activities of such organizations. However, the amendment does not apply to organizations described in sections 501(c)(7) or 501(c)(9), or certain organizations described in section 501(c)(2). The amendment conforms the regulations to the amendments to section 512(b)(5) and defines what is meant by termination of an option. The amendment also conforms the regulations to reflect changes made to section 512(b) by the Tax Reform Act of 1976.

Drafting Information

The principal author of these regulations is Margie Glass of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are adopted, except that paragraph (d)(2) of § 1.512(b)–1, as set forth in paragraph 3 of the notice of proposed rulemaking, is changed.

§ 1.511 [Deleted]

Paragraph 1. Section 1.511 is deleted.

§ 1.511–2 [Amended]

Par. 1A. Paragraph (a)(3)(iii) of § 1.511–2 is amended by deleting "section 512 (b)(16)", and inserting in lieu thereof "section 512(b)(14)".

§ 1.512 [Amended]

Par. 2. Section 1.512(b) is deleted.

Par. 3. Section 1.512(b)–1 is amended as follows:

1. Paragraph "(d)" is redesignated "(d)(1)" and paragraph (d)(2) is added as set forth below.

2. Paragraph (j)(1) is amended by deleting "educational institution (as defined in section 151(e)(4))" and inserting in lieu thereof "educational organization described in section 170(b)(1)(A)(ii))".

§ 1.511 [Deleted]

3. Paragraph (j)(1)(iii) is amended by deleting "section 512(b)(17)" and inserting in lieu thereof "section 512(b)(15)".

4. Paragraph (1)(5) is amended by deleting "section 512(b)(15)" each place that it appears, and inserting in lieu thereof "section 512(b)(13)."

§ 1.512(b)–1 Modifications.

* * * * *

(d) *Gains and loses from the sale, etc. of property.* (1) * * *

(2) There shall be excluded from the computation of unrelated business taxable income any gain from the lapse or termination after December 31, 1975, of options to buy or sell securities (as that term is defined in section 1236 (c)). An option is considered terminated when the organization's obligation under the option ceases by any means other than by reason of the exercise or lapse of such option. If the exclusion is otherwise available it will apply whether or not the organization owns the securities upon which the option is written, that is, whether or not the option is "covered." However, income from the lapse or termination of an option is excludable only if the option is written in connection with the organization's investment activities. Thus, for example, if the securities upon which the options are written are held by the organization as inventory or for sale to customers in the ordinary course of a trade or business, the income from the lapse or termination will not be excludable under the provisions of this paragraph. Similarly, if an organization is engaged in the trade or business of writing options (whether or not such options are covered) the exclusion will not be available.

* * * * *

§ 1.514 [Amended]

Par. 4. Section 1.514(b) is deleted.

§ 1.514(b)–1 [Amended]

Par. 5. Paragraphs (b)(2)(ii) and example (3) of (b)(3) of § 1.514(b)–1 are amended by deleting "section 512(b)(15)" each place that it appears and inserting in lieu thereof "section 512(b)(13)".

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: July 5, 1979.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 79–22434 Filed 7–19–79; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[T.D. 7633; LR–1350]

Valuation Date for Pooled Income Funds and Applicability of Separate Share Rule to Successive Interests in Trusts

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding certain valuation dates under section 642(c) of the Internal Revenue Code of 1954. It also contains an amendment eliminating the application of the separate share rule of section 663(c) of the Code to successive interests in point of time. The regulation limits the application of the separate share rule to those concurrent trust interests where distributions closely parallel a distribution pattern that could occur if separate trusts had been created. The amendments affect certain pooled income funds and certain individuals receiving income from non-discretionary, multibeneficiary trusts.

DATES: The regulations dealing with pooled income funds are effective for transfers in trust made after July 31, 1969. The regulations involving separate shares apply in the case of taxable years ending after December 31, 1978.

FOR FURTHER INFORMATION CONTACT: Fred E. Grundeman of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: GG:LR:T, 202–566–3295 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On August 29, 1978, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 642(c) and 663(c) of the Internal Revenue Code of 1954 (43 FR 38601). No public hearing was requested or held on the proposed amendments.

This regulation does not meet the Treasury Department criteria for a significant regulation.

Pooled Income Funds

To qualify as a pooled income fund, a trust's assets must be valued periodically. In 1975, the regulations were amended to provide that, where the normal valuation date falls on a Saturday, Sunday, or legal holiday, the valuation may be made on the next succeeding day which is not a Saturday, Sunday, or legal holiday. The amendment to the regulations allows this valuation to be made on the next preceding day which is not a Saturday, Sunday, or legal holiday, provided that the selected practice is followed consistently when applicable. No comments were received on this amendment.

Separate Share Rule

Section 663(c) provides a rule for purposes of applying sections 661 and 662 (relating to income and deductions of "complex" trusts). In the case of a single trust having more than one beneficiary, substantially separate and independent shares of different beneficiaries are treated as separate trusts. The regulations state that the applicability of the separate share rule will generally depend upon whether distributions of the trust are to be made in substantially the same manner as if separate trusts have been created. [§ 1.663(c)–3.] However, paragraph (e) of § 1.663(c)–3 states that the separate share rule may also apply to successive interests in point of time, as for instance in the case of a trust providing for a life estate to *A*, remainder to *B*. In that case, in the taxable year of a trust in which the beneficiary dies, items of income and deduction properly allocable under trust accounting principles to the period before the beneficiary's death are attributed to one share and those allocable to the period after the beneficiary's death are attributed to the other share.

Under this rule, in the year of termination, the portion of gross income attributable to the remainderman will be reduced or eliminated by the allocation of all termination expenses to that share. Any excess termination expenses are not allocable against that portion of gross income attributable to the life income beneficiary. Under section 642(h) of the Code, however, the remainderman may carryover only those deductions in excess of the trust's total gross income for the entire year. This results in lost deductions in any case where termination expenses exceed that portion of gross income attributable to the remainderman.

Three comments were received indicating divided opinions on the deletion of the separate share rule for successive interest.

Those in favor of deletion point out that there is nothing expressly in the statute or legislative history of section 663 to indicate the rule should be applied to other than concurrent interests. Further, the rule is a complication that is little understood and rarely followed and, contrary to the general approach of Subchapter J, increases the probability of wasted deductions.

Those opposed point out that the present rule produces an equitable result and, having been in effect for many years without a change in section 663, should not now be abandoned.

The Treasurey Department believes the existing rule creates needless confusion and complexity. Further the Department believes than any potential inequity created by the elimination of the rule can usually be avoided by careful timing of trust transactions. After consideration of all comments regarding the proposed amendments, those amendments are adopted by this Treasury decision except that they are now effective for taxable years ending after December 31, 1978.

Deletion of Sections Merely Reproducing Statutory Material

As part of the effort to reduce the bulk of the Code of Federal Regulations several sections of the regulations which merely reproduce provisions of the Internal Revenue Code are being deleted.

Drafting Information

The principal author of these amendments is Fred E. Grundeman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 as set forth in the notice of proposed rulemaking published August 29, 1978 (43 FR 38601) are adopted with the following change:

Section 1.663(c)–3 as set forth in paragraph 3 of the notice of proposed rulemaking is amended by deleting the date "December 31, 1978" and inserting in its place the date "January 1, 1979".

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: June 26, 1979.

Donald C. Lubick,

Assistant Secretary of the Treasury.

June 26, 1979.

§ 1.642(c)–5 Definition of pooled income fund.

(vi) The term "determination date" means each day within the taxable year of a pooled income fund on which a valuation is made of the property in the fund. The property in the fund shall be valued on the first day of the taxable year of the fund and on at least 3 other days within the taxable year. The period between any two consecutive determination dates within the taxable year shall not be greater than 3 calendar months. In the case of a taxable year of less than 12 months, the property in the fund shall be valued on the first day of such taxable year and on such other days within such year as occur at successive intervals of no greater than 3 calendar months. Where a valuation date falls on a Saturday, Sunday, or legal holiday (as defined in section 7503 and the regulations thereunder), the valuation may be made on either the next preceding day which is not a Saturday, Sunday, or legal holiday or the next succeeding day which is not a Saturday, Sunday, or legal holiday, so long as the next such preceding day or next such succeeding day is consistently used where the valuation date falls on a Saturday, Sunday, or legal holiday.

§ 1.663(c)–3 Applicability of separate share rule.

(e) For taxable years ending before December 31, 1978, the separate share rule may also be applicable to successive interests in point of time, as for instance in the case of a trust providing for a life estate to A and a second life estate or outright remainder to B. In such a case, in the taxable year of a trust in which a beneficiary dies items of income and deduction properly allocable under trust accounting principles to the period before a beneficiary's death are attributed to one share, and those allocable to the period after the beneficiary's death are attributed to the other share. Separate share treatment is not available to a succeeding interest, however, with respect to distributions which would otherwise be deemed distributed in a taxable year of the earlier interest under

the throwback provisions of subpart D (section 665 and following), part I, subchapter J, chapter 1 of the Code. The application of this paragraph may be illustrated by the following example:

Example. A trust instrument directs that the income of a trust is to be paid to A for her life. After her death income may be distributed to B or accumulated. A dies on June 1, 1956. The trust keeps its books on the basis of the calendar year. The trust instrument permits invasions of corpus for the benefit of A and B, and an invasion of corpus was in fact made for A's benefit in 1956. In determining the distributable net income of the trust for the purpose of determining the amounts includible in A's income, income and deductions properly allocable to the period before A's death are treated as income and deductions of a separate share; and for that purpose no account is taken of income and deductions allocable to the period after A's death.

[FR Doc. 79-22432 Filed 7-19-79; 8:45 am]

BILLING CODE 4830-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1420

FMCS Services in Health Care Industry, Labor Disputes

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Promulgation of Final Regulations.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) promulgates Part 1420 of Title 29, CFR, governing FMCS services in health care industry labor disputes. This notice contains the text of the new regulations. The regulations are designed primarily to provide additional options to the parties in connection with the statutory Board of Inquiry factfinding procedure. The regulations provide an option for the parties to have some input to the selection of the individual(s) who may serve as the Board of Inquiry if one is appointed. The regulations also establish a deferral policy under which FMCS will decline to appoint a Board of Inquiry if the parties have their own factfinding or interest arbitration procedure which meets certain conditions.

EFFECTIVE DATE: August 1, 1979.

FOR FURTHER INFORMATION CONTACT: Scott Kruse, General Counsel, Federal Mediation and Conciliation Service, Washington, D.C., 20427, (202) 653-5305, FTS 653-5305.

SUPPLEMENTARY INFORMATION: On March 13, 1979, An Advance Notice of Proposed Rulemaking was published in the Federal Register (44 FR 14577) proposing to establish regulations governing optional input by the parties into the Board of the Inquiry selection process and to establish an FMCS policy of deferral to the parties' own factfinding or interest arbitration procedures under certain conditions. The basic concept of these two ideas was set forth. Interested persons were invited to submit comments on these proposals. Numerous oral comments were received from both labor and management representatives, all favoring these proposals.

On this basis, on May 4, 1979, Proposed Regulations were published in the Federal Register (44 FR 26128), setting forth the actual regulations to implement these proposals. Interested persons were again invited to submit comments on these regulations. All comments received were again in favor of the adoption of the regulations. No comments were received regarding the actual language of the proposed regulations. Therefore, no changes have been made in the language of the regulations.

The applicable provisions of Executive Order 12044 have been complied with.

Accordingly, 29 CFR Part 1420 is promulgated as set forth below.

EFFECTIVE DATE: These regulations shall become effective on August 1, 1979.

Adopted by the Federal Mediation and Conciliation Service at its office in Washington, D.C. on the 16th day of July 1979.

Wayne L. Horvitz,

Director.

29 CFR Part 1420 is added to read as follows:

PART 1420—FEDERAL MEDIATION AND CONCILIATION SERVICE—ASSISTANCE IN THE HEALTH CARE INDUSTRY

Sec.

Authority: Secs. 8(d), 201, 203, 204, and 213 of the Labor Management Relations Act, as amended in 1974 (29 U.S.C. 158(d), 171, 173, 174 and 183).

§ 1420.1 Functions of the Service in health care industry bargaining under the Labor-Management Relations Act, as amended (hereinafter "the Act").

(a) *Dispute Mediation.* Whenever a collective bargaining dispute involves employees of a health care institution, either party to such collective bargaining must give certain statutory notices to the Federal Mediation and Conciliation Service (hereinafter "the Service") before resorting to strike or lockout and before terminating or modifying any existing collective bargaining agreement. Thereafter, the Service will promptly communicate with the parties and use its best efforts, by mediation and conciliation, to bring them to agreement. The parties shall participate fully and promptly in such meetings as may be called by the Service for the purpose of aiding in a settlement of the dispute. (29 U.S.C. Sections 158(d) and 158(g).).

(b) *Boards of Inquiry.* If, in the opinion of the Director of the Service a threatened or actual strike or lockout affecting a health care institution will substantially interrupt the delivery of health care in the locality concerned, the Director may establish within certain statutory time periods an impartial Board of Inquiry. The Board of Inquiry will investigate the issues involved in the dispute and make a written report, containing the findings of fact and the Board's non-binding recommendations for settling the dispute, to the parties within 15 days after the establishment of such a Board. (29 U.S.C. 183.)

§ 1420.2–1420.4 [Reserved]

§ 1420.5 Optional input of parties to Board of Inquiry selection.

The Act gives the Director of the Service the authority to select the individual(s) who will serve as the Board of Inquiry if the Director decides to establish a Board of Inquiry in a particular health care industry bargaining dispute (29 U.S.C. 183). If the parties to collective bargaining involving a health care institution(s) desire to have some input to the Service's selection of an individual(s) to serve as a Board of Inquiry (hereinafter "BoI"), they may jointly exercise the following optional procedure: (a) At any time at least 90 days prior to the expiration date of a collective bargaining agreement in a contract renewal dispute, or at any time prior to the notice required under clause (B) of Section 8(d) of the Act (29 U.S.C. 158(d)) in an initial contract dispute, the employer(s) and the union(s) in the dispute may jointly submit to the Service a list of arbitrators or other impartial individuals who would be

acceptable BoI members both to the employer(s) and to the union(s). Such list submission must identify the dispute(s) involved and must include addresses and telephone numbers of the individuals listed and any information available to the parties as to current and past employment of the individuals listed. The parties may jointly rank the individuals in order of preference if they desire to do so.

(b) The Service will make every effort to select any BoI that might be appointed from that jointly submitted list. However, the Service cannot promise that it will select a BoI from such list. The chances of the Service finding one or more individuals on such list available to serve as the BoI will be increased if the list contains a sufficiently large number of names and if it is submitted at as early a date as possible. Nevertheless, the parties can even preselect and submit jointly to the Service one specific individual if that individual agrees to be available for the particular BoI time period. Again the Service will not be bound to appoint that individual, but will be receptive to such a submission by the parties.

(c) The jointly submitted list may be worked out and agreed to by (1) A particular set of parties in contemplation of a particular upcoming negotiation dispute between them, or (2) a particular set of parties for use in all future disputes between that set of parties, or (3) a group of various health care institutions and unions in a certain community or geographic area for use in all disputes between any two or more of those parties

(d) Submission or receipt of any such list will not in any way constitute an admission of the appropriateness of appointment of a BoI nor an expression of the desirability of a BoI by any party or by the Service.

(e) This joint submission procedure is a purely optional one to provide the parties with an opportunity to have input into the selection of a BoI if they so desire.

(f) Such jointly submitted lists should be sent jointly by the employer(s) and the union(s) to the appropriate regional office of the Service. The regional offices of the Service are as follows:

Region 1, Federal Building, Room 2937, 26 Federal Plaza, New York, NY 10007.
Region 2, Mall Building, Room 401, Fourth and Chestnut Streets, Philadephia, PA 19106.
Region 3, Suite 400, 1422 West Peachtree Street, N.W., Atlanta, GA 30309.
Region 4, Superior Building, Room 1525, 815 Superior Avenue, N.E., Cleveland, OH 44114.
Region 5, Insurance Exchange Building, 16th Floor, 175 West Jackson Boulevard, Chicago, IL 60604.
Region 6, Chromalloy Plaza, Fifth Floor, 120 South Central Street, St. Louis, MO 63105.
Region 7, Francisco Bay Building, Suite 235, 50 Francisco Street, San Francisco, CA 94133.
Region 8, Fourth and Vine Building, Room 444, 2615 Fourth Avenue, Seattle, WA 98121.

§ 1420.6–1420.7 [Reserved]

§ 1420.8 FMCS deferral to parties' own private factfinding procedures.

(a) The Service will defer to the parties' own privately agreed to factfinding procedure and decline to appoint a Board of Inquiry (BoI) as long as the parties' own procedure meets certain conditions so as to satisfy the Service's responsibilities under the Act. The Service will decline to appoint a BoI and leave the selection and appointment of a factfinder to the parties to a dispute if both the parties have agreed in writing to their own factfinding procedure which meets the following conditions:

(1) The factfinding procedure must be invoked automatically at a specified time (for example, at contract expiration if no agreement is reached).

(2) It must provide a fixed and determinate method for selecting the impartial factfinder(s).

(3) It must provide that there can be no strike or lockout and no changes in conditions of employment (except by mutual agreement) prior to or during the factfinding procedure and for a period of at least seven days after the factfinding is completed.

(4) It must provide that the factfinder(s) will make a written report to the parties, containing the findings of fact and the recommendations of the factfinder(s) for settling the dispute, a copy of which is sent to the Service.

The parties to a dispute who have agreed to such a factfinding procedure should jointly submit a copy of such agreed upon procedure to the appropriate regional office of the Service at as early a date as possible, but in any event prior to the appointment of a BoI by the Service. See § 1420.5(f) for the addresses of the regional offices.

(b) Since the Service does not appoint the factfinder under paragraph (a) of this section, the Service cannot pay for such factfinder. In this respect, such deferral by the Service to the parties' own factfinding procedure is different from the use of stipulation agreements between the parties which give to the Service the authority to select and appoint a factfinder at a later date than the date by which a BoI would have to be appointed under the Act. Under such stipulation agreements by which the parties give the Service authority to appoint a factfinder at a later date, the Service can pay for the factfinder. However, in the deferral to the parties' own factfinding procedure, the parties choose their own factfinder and they pay for the factfinder.

§ 1420.9 FMCS deferral to parties' own private interest arbitration procedures.

(a) The Service will defer to the parties' own privately agreed to interest arbitration procedure and decline to appoint a Board of Inquiry (BoI) as long as the parties' own procedure meets certain conditions so as to satisfy the Service's responsibilities under the Act. The Service will decline to appoint BoI if the parties to a dispute have agreed in writing to their own interest arbitration procedure which meets the following conditions:

(1) The interest arbitration procedure must provide that there can be no strike or lockout and no changes in conditions of employment (except by mutual agreement) during the contract negotiation covered by the interest arbitration procedure and the period of any subsequent interest arbitration proceedings.

(2) It must provide that the award of the arbitrator(s) under the interest arbitration procedure is final and binding on both parties.

(3) It must provide a fixed and determinate method for selecting the impartial interest arbitrator(s).

(4) The interest arbitration procedure must provide for a written award by the interest arbitrator(s).

(b) The parties to a dispute who have agreed to such an interest arbitration procedure should jointly submit a copy of their agreed upon procedure to the appropriate regional office of the Service at as early a date as possible, but in any event prior to the appointment of BoI by the Service. See § 1420.5(f) for the addresses of regional offices.

These new regulations are a part of the Service's overall approach to implementing the health care amendments of 1974 in a manner consistent with the Congressional intent of promoting peaceful settlements of labor disputes at our vital health care facilities. The Service will work with the parties in every way possible to be flexible and to tailor its approach so as to accommodate the needs of the parties in the interest of settling the dispute. This was the motivating principle behind these new regulations which

permit input by the parties to the Board of Inquiry selection and allow the parties to set up their own factfinding or arbitration procedures in lieu of the Board of Inquiry procedure. We encourage the parties, both unions and management, to take advantage of these and other options and to work with the Service to tailor their approach and procedures to fit the needs of their bargaining situations.

[FR Doc. 79-22566 Filed 7-19-79; 8:45 am]

BILLING CODE 6732-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL 1276-6]

Air Quality Control Regions, Criteria, and Control Techniques; Change of Title

AGENCY: Environmental Protection Agency.

ACTION: Administrative revision—change of title of Part 81.

SUMMARY: The current title of Part 81, "Air Quality Control Regions, Criteria, and Control Techniques," gives an incorrect description of its contents. Part 81 includes no criteria or control techniques. This action changes the title of Part 81 to the following: "Designation of Areas for Air Quality Planning Purposes."

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Sableski, Chief, Plans Guidelines Section, Control Programs Development Division (MD-15), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711 (919-541-5437).

EFFECTIVE DATE: July 20, 1979.

SUPPLEMENTARY INFORMATION

Presidential Order 12044 requires government agencies to review existing regulations and determine how to improve such regulations. EPA reviewed the Part 81 regulation and concluded that no language changes are needed in the text, but that the title of the Part should be revised. Part 81, now entitled, "Air Quality Control Regions, Criteria, and Control Techniques," includes no criteria or control techniques, but is composed of three separate lists of air quality planning areas as follows: air quality control regions; areas designated as nonattainment; and the proposed visibility problem areas. Thus, the new title of Part 81 will be, "Designation of Areas for Air Quality Planning Purposes." This action falls within the exception of 5 U.S.C. 553 which allows an agency to dispense with the notice of proposed rulemaking when taking public comment is impractical or unnecessary. Due to the minor nature of this action, EPA feels that providing opportunity for public comment is unnecessary.

Authority: Section 301(a), Clean Air Act, as amended (42 U.S.C. 7601).

Dated: July 14, 1979.

Edward F. Tuerk,

Acting Assistant Administrator for Air, Noise, and Radiation.

EPA revises Title 40, Chapter I, Subchapter C by changing the title of Part 81 to read as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

* * * * *

[FR Doc. 79-22436 Filed 7-19-79; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

42 CFR Part 51e

Grants for Demonstrating the Training of Personnel to Provide Home Health Services

AGENCY: Public Health Service, HEW.

ACTION: Final rule.

SUMMARY: This document establishes a regulation which contains the requirements for receiving demonstration grants for the training of personnel to provide home health services. The program is designed to improve the training of these personnel to assure a high quality of health care provided in the home setting.

EFFECTIVE DATE: July 20, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Harold Dame, Director, Home Health Service Programs, Bureau of Community Health Services, Room 7A-42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301-443-2270).

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking to implement the program of grants for demonstrating the training of home health professionals and paraprofessionals under section 602(b) of Public Law 94-63 (42 U.S.C. 1395x note, extended by Public Laws 94-460 and 95-83) appeared in the Federal Register on June 20, 1978, with public comment invited (43 FR 26443). Section 207 of the Health Services and Centers Amendments of 1978, Public Law 95-626, amended the Public Health Service Act by revising section 339 (42 U.S.C. 255) to include the authorization for home health services and home health training grants, previously authorized by Section 602 of Public Law 94-63. Summaries of the substantive comments received, the Department's responses to these comments, and the changes to the proposed regulation follow:

1. Section 51e.202 defines those "personnel" who would be eligible for training as persons who are current employees of home health agencies or home health organizations, or persons who have a written assurance of employment upon completion of training in one of these types of agencies. One respondent requested deletion of the requirement for providing an assurance of employment. The comment indicated that, although in all probability trainees would be employed upon completion of training, he understood that an assurance of a job would mean that the minimum hourly wage must be paid, in accordance with the Fair Labor Standards Act.

The Department of Labor has advised that the requirement that a potential trainee has a written assurance of a job would not mean that the minimum hourly wage would need to be paid under the Fair Labor Standards Act during the training period, for one or more of the following reasons:

(a) An independent training facility, such as an educational or training institution, would not be an employer with respect to the trainees being trained for other organizations, since no employer-employee relationship exists between those being trained and the institution providing the training.

(b) The monetary provisions of the Act would not apply to any city, county, or State health department providing the training, even if the trainees are, or will be, employees of these agencies.

(c) There would be no coverage under the Act for trainees employed or to be employed by a private nonprofit organization, where the training will not be "on-the-job" or "in-service" training.

(d) In those instances where the training organization is a private home health agency and where the training will not be in the nature of "on-the-job" training or "in-service" training, but is similar to that provided by an educational institution, and there are no services provided or work done by the trainees, the Department of Labor will not assert that these trainees would be employees within the meaning of the Fair Labor Standards Act.