Natural Gas Association of America v. Federal Energy Regulatory Commission (INGAA–II), 756 F.2d 166 (D.C. Cir. 1985).

The Commission previously required natural gas purchasers to pay certain NGPA section 110 costs through an offset against certain refunds owed by first sellers.[1] In *INGAA–II*, The court directed the Commission to vacate that offset mechanism.[2]

In light of the court's decision, good cause exists not to hold natural gas purchasers that used the previously-allowed off-set procedures to pay these undisputed amounts to be in violation of the regulations requiring payment of these particular section 110 costs by December 31, 1984. (18 CFR 271.1104 (e)(3) (1984)), provided that the undisputed amounts are paid on or before September 30, 1985.

Since these costs were offset under Order No. 399–A and the dollar amounts at issue have already been identified, are not in dispute, and should not require additional verification, the Commission believes that requiring payment by September 30, 1985, affords natural gas purchasers a reasonable and sufficient time to pay these uncontested amounts. Natural gas purchasers failing to make payment of these uncontested amounts by September 30, 1985, will be considered to be in violation of 18 CFR 271.1104 (e)(3) (1984). Special circumstances warranting adjustment from payment may be addressed under the provisions and standards of NGPA section 502(c), 15 U.S.C. 3412(c) (1982), if affected parties determine a request for relief is necessary.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–18437 Filed 8–1–85; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 399–A, 49 FR 46,353 (Nov. 26, 1984). Refunds were owed because of a change in the method of measuring the energy content of natural gas for NGPA maximum lawful pricing purposes. Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 104 S. Ct. 1616 (1984) (INGAA–I) (charges for gas must be determined by measurement of Btu's (British thermal units) under "wet" conditions rather than the "as delivered" basis promulgated by the Commission).

[2] On July 18, 1985, the Commission implemented the court's mandate by issuing Order No. 399–B, Order on Direction of the Court Vacating, In Part, Order No. 399–A, and on Petitions for Rehearing and Reconsideration, 50 FR 30141 (July 24, 1985).

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 629

[Training and Employment Guidance Letter No. 6–84]

Job Training Partnership Act; States' Responsibilities in Incident Report Procedures; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of reporting procedures and instructions; correction.

SUMMARY: This document corrects a notice of reporting procedures and instructions that appeared at page 12243 in the **Federal Register** of Thursday, March 28, 1985, (50 FR 12243) (FR Doc. No. 85–7301). The action is necessary to correct a typographical error in citation.

FOR FURTHER INFORMATION CONTACT: Ms. Anna C. Hall, Telephone: (202) 376–6295.

Correction: Accordingly, the CFR Title and Part in the heading to FR Doc. No. 85–7301 appearing on page 12243 in the issue of Thursday, March 28, 1985, are corrected to read "20 CFR Part 629".

Signed at Washington, D.C., this 29th day of July, 1985.

Roberts T. Jones,

Acting Deputy Assistant Secretary of Labor.

[FR Doc. 85–18445 Filed 8–1–85; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 84F–0166]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of butene/ethylene copolymers containing up to 6 percent by weight of ethylene as articles or components of articles intended for use in contact with food. This action responds to a petition filed by the Shell Oil Co.

DATES: Effective August 2, 1985; objections by September 3, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 12, 1984 (49 FR 28456), FDA announced that a petition (FAP 4B3771) had been filed by Shell Oil Co., Suite 200, 1025 Connecticut Ave. NW., Washington, DC 20036, proposing that 21 CFR Part 177 of the food additive regulations be amended to provide for the safe use of butene/ethylene copolymers containing up to 6 percent by weight of ethylene as articles or components of articles intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe, and that 21 CFR 177.1570 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before September 3, 1985, submit to the Dockets Management

Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Polymeric food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for Part 177 is revised to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 177.1570 by revising paragraphs (a) and (b)(2) (i), (ii), and (iii) to read as follows:

§ 177.1570 Poly-1-butene resins and butene/ethylene copolymers.

* * * * *

(a) *Identity.* Poly-1-butene resins are produced by the catalytic polymerization of 1-butene liquid monomer. Butene/ethylene copolymers are produced by the catalytic polymerization of 1-butene liquid monomer in the presence of small amounts of ethylene monomer so as to yield no higher than a 6-weight percent concentration of polymer units derived from ethylene in the copolymer.

* * * * *

(b) * * *

(2) * * *

(i) Poly-1-butene resins may be used as articles or components of articles intended for use in contact with food, provided that the maximum extractables do not exceed 2.5 percent by weight of the polymer when film or molded samples are tested for 2 hours at 50 °C (122 °F) in *n*-heptane.

(ii) Butene/ethylene copolymers containing no more than 6 percent by weight of polymer units derived from ethylene may be used as articles or components or articles intended for contact with food under conditions of use B, C, D, E, F, G, or H described in Table 2 of § 176.170(c) of this chapter, subject to the provisions of this section and provided that the maximum extractables from test films 0.1 to 0.2 millimeter (0.004 to 0.008 inch) in thickness do not exceed 0.80 percent by weight of the polymer when extracted in a soxhlet extractor for 6 hours with refluxing 95 percent ethanol.

(iii) Poly-1-butene resins may be used as articles or components of articles intended for packaging or holding food during cooking, provided that the thickness of such polymers in the form in which they contact food shall not exceed 0.1 millimeter (0.004 inch) and yield maximum extractables of not more than 2.5 percent by weight of the polymer when films are extracted for 2 hours at 50 °C (122 °F) in *n*-heptane.

Dated: July 25, 1985.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-18347 Filed 8-1-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 177

[Docket No. 83F-0036]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,5-dimethyl-2,5-di(*tert*-butylperoxy)hexane in the production of polypropylene. This action responds to a petition filed by Amoco Corp., formerly Standard Oil Co. (Indiana).

DATES: Effective August 2, 1985; objections by September 3, 1985. The Director of the Federal Register approves the incorporation by reference of certain publications at 21 CFR 177.1520 effective on August 2, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 4, 1983 (48 FR 9376), FDA announced that a petition (FAP 2B3658) had been filed by Amoco Corp. (formerly Standard Oil Co. (Indiana)), 200 East Randolph Dr., Chicago, IL 60601, proposing that the food additive regulations be amended to provide for the safe use of 2,5-dimethyl-2,5-di(*tert*-butylperoxy)hexane in the production of polypropylene.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe, and that 21 CFR 177.1520 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's Regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of

this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

Any person who will be adversely affected by this regulation may at any time on or before September 3, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Incorporation by reference, Polymeric food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 177.1520 by alphabetically inserting a new item in the list of substances in paragraph (b) to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(b) * * *

Substances	Limitations
2,5-Dimethyl-2,5-di(*tert*-butylperoxy)hexane (CAS Reg. No. 78-63-7).	For use as an initiator in the production of polypropylene complying with § 177.1520 (a)(1), provided that the maximum concentration of *tert*-butyl alcohol detected in the polymer does not exceed 25 parts per million, as determined by a method titled "Determination of *tert*-Butyl Alcohol in Polypropylene," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF-300), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

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Dated: July 25, 1985.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-18349 Filed 8-1-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 177

[Docket No. 83F-0248]

Indirect Food Additives: Polymers; Polyetherimide Resin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyetherimide resin for use in contact with food. This action responds to a petition filed on behalf of General Electric Co.

DATES: Effective August 2, 1985; objections by September 3, 1985. The Director of the Federal Register approves the incorporation by reference of certain publications at § 177.2425 effective on August 2, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 19, 1983 (48 FR 37712), FDA announced that a petition (FAP 3B3731) had been filed on behalf of General Electric Co., Plastic Operations, Pittsfield, MA 01201, proposing that the food additive regulations be amended to provide for the safe use of polyetherimide resin in the manufacture of articles or components of articles intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use is safe, and that 21 CFR Part 177 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before September 3, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and

analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Incorporation by reference, Polymeric food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR Part 177 is revised to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. By adding new § 177.2425 to read as follows:

§ 177.2425 Polyetherimide resin.

The polyetherimide resin identified in this section may be safely used as an article or component of an article intended for use in contact with food, subject to the provisions of this section.

(a) *Identity.* For the purpose of this section, the polyetherimide resin is 1,3-isobenzofurandione, 5,5'[(1-methylethylidene)bis(4,1-phenyleneoxy)]bis-polymer with 1,3-benzenediamine (CAS Reg. No. 61128-46-9), and is derived from the condensation reaction of *m*-phenylenediamine and bisphenol A-dianhydride.

(b) *Optional adjuvants.* The basic polymer identified in paragraph (a) of this section may contain optional adjuvant substances required in the production of basic resins or finished food-contact articles. The optional adjuvant substances required in the production of the basic polymer may include substances permitted for such use by applicable regulations as set forth in Part 174 of this chapter.

(c) *Specifications and extractives limitations*—(1) *Specifications.* Polyetherimide resin identified in paragraph (a) of this section shall have an intrinsic viscosity in chloroform at 25 °C (77 °F) of not less than 0.35 deciliter per gram as determined by a method titled "Intrinsic Viscosity of ULTEM Polyetherimide Using Chloroform as the Solvent," which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(2) *Extractive limitations.* Extractive limitations are applicable to the basic polyetherimide resin in the form of molded discs of thickness 0.16 centimeter (0.063 inch). The resin discs when extracted with distilled water at 121 °C (250 °F) for 2 hours yield total nonvolatile extractives of not more than 12.3 micrograms per square centimeter.

Dated: July 25, 1985.

John M. Taylor,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-18350 Filed 8-1-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Lincomycin Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by The Upjohn Co., providing for safe and effective intramuscular use of a higher concentration lincomycin hydrochloride injection for the treatment of infectious arthritis and mycoplasma pneumonia in swine.

EFFECTIVE DATE: August 2, 1985.

FOR FURTHER INFORMATION CONTACT: Charles E. Haines, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3410.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, filed supplemental NADA 34-025 providing for safe and effective intramusclar use of a 300-milligram-per-milliliter lincomycin hydrochloride injectable (Lincomix), in addition to an existing approval of 25-, 50-, and 100-milligram-per-milliliter injectables for the treatment of swine for arthritis and mycoplasma pneumonia. The supplemental NADA is approved and the regulations are amended to reflect the approval. In addition, 21 CFR 522.1260(a) is editorially revised to delete a cross reference to 21 CFR 453.230 and the container sizes. These deletions will simplify the regulations.

This action provides for use of an additional concentration of drug and does not affect the currently approved conditions of use of the drug as reflected in the regulations in 21 CFR 522.1260(e)(2). Approval of this supplemental NADA did not require reevaluation of the safety and effectiveness data in the parent application. A freedom of information summary, as defined in 21 CFR 514.11(e)(2), is not required for this approval.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs, injectable.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

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

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. In § 522.1260 by revising paragraph (a) to read as follows:

§ 522.1260 Lincomycin injection.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains lincomycin hydrochloride equivalent to 25, 50, 100, or 300 milligrams of lincomycin.

* * * * *

Dated: July 26, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-18345 Filed 8-1-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR PART 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Growmark, Inc., providing for the manufacture of 5-, 10-, and 20-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: August 2, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Growmark, Inc., 1701 Towanda Ave., Bloomington, IL 61701, is the sponsor of a supplement to NADA 99-098 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of new 5- and 20-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The use of the currently approved 10-gram-per-pound premix is revised to include additional uses in chickens. The supplement is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.625 by revising paragraph (b)(27) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(27) To 020275: 8 grams per pound, paragraph (f)(1) (i), (iii), (iv), and (vi) of this section; 5, 10, 20, and 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Dated: July 26, 1985.

Marvin A Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-18346 Filed 8-1-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) submitted by Ralston-Purina Co., providing for additional claims for a 10-gram-per-pound tylosin premix to make finished feeds for beef cattle and chickens.

EFFECTIVE DATE: August 2, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Ralston-Purina Co., Checkerboard Square, St. Louis, MO 63199, has submitted a supplement to its previously approved NADA 43-387 for tylosin premix. The supplement provides for additional claims for a 10-gram-per-pound tylosin premix for use in making complete feeds for beef cattle and chickens.

The firm currently holds approval for use of the premix in swine feed as provided for in § 558.625(f)(1) (vi). This supplement provides for additional use in beef cattle and chicken feeds as provided in § 558.625(f)(1)(i) through (v). The supplement is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.625 by revising paragraph (b)(5) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(5) To 017800: 0.4, 0.8, 1, and 8 grams per pound, paragraph (f)(1)(vi)(*a*) of this section; 10 and 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Dated: July 26, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-18348 Filed 8-1-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

Foreign Service Grievance Board

22 CFR Parts 901, 902, 903, 904, 905, 906, 907, 908, 909, 910 and 911

[Departmental Reg. 108.842]

Foreign Service Grievance Board Regulations

AGENCY: Foreign Service Grievance Board, Department of State.

ACTION: Final rule.

SUMMARY: On April 29, 1985 (50 FR 16710), the Department of State published a proposed ruling on revisions to the regulations of the Foreign Service Grievance Board. This is a final ruling. The Foreign Service Grievance Board revises its regulations to conform to the provisions concerning grievances and separation for cause cases in the Foreign Service Act of 1980 (Pub. L. 96-456; 94 Stat. 2071) of October 17, 1980 and to implement agency regulations adopted by the foreign affairs agencies and the exclusive employee representatives pursuant to that Act. The revision provides explicit directions in procedures to follow when filing grievances and separation for cause cases. It also sets down rules and procedures the Board follows in handling these cases. This final rule is entered into force on August 15, 1985.

EFFECTIVE DATE: August 15, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond L. Perkins, Executive Secretary, Foreign Service Grievance Board (703) 235-9860.

List of Subjects in 22 CFR Parts 901-911

Administrative practice and procedure, Foreign Service.

In consideration of the foregoing, in Chapter IX of Title 22, Code of Federal Regulations, Parts 901-909 are revised and new Parts 910 and 911 are added to read as follows:

PART 901—GENERAL

Subpart A—Purpose and Scope

Sec.

Subpart B—Meanings of Terms as Used in This Chapter

Authority: Secs. 610, 1101, 1102, 1105, and 1106 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4131, 4132, 4135, and 4136).

Subpart A—Purpose and Scope

§ 901.1 Purpose and scope.

The regulations contained in this chapter establish the internal organization of the Foreign Service Grievance Board and prescribe its procedures in:

(a) Determining its jurisdiction in cases involving grievances and separation for cause proceedings;

(b) Compiling a record in such cases;

(c) Conducting hearings in such cases, when required or deemed necessary; and

(d) Deciding such cases, or otherwise disposing of them, so as to ensure the fullest measure of due process for the members of the Foreign Service.

Subpart B—Meanings of Terms As Used in This Chapter

§ 901.10 Act.

"Act" means the Foreign Service Act of 1980 (Pub. L. 96-465, October 17, 1980).

§ 901.11 Agency.

"Agency" means the Department of State, the Agency for International Development, the U.S. Information Agency, the Department of Agriculture, or the Department of Commerce, if the Agency employs the individual appearing in a case before the Board and/or has control over the act, omission, or condition forming the subject matter of such case.

§ 901.12 Board.

"Board" means the Foreign Service Grievance Board, including any designated panel or member thereof.

§ 901.13 Executive Secretary.

"Executive Secretary" means the Executive Secretary of the Board or his or her designee.

§ 901.14 Service.

"Service" means the Foreign Service of the United States.

§ 901.15 Exclusive Representative.

"Exclusive Representative" means any labor organization which is certified as the Exclusive Representative of the bargaining unit of which the grievant or Charged Employee is a member.

§ 901.16 Grievant.

"Grievant" means anyone who has filed a grievance and who is a Member of the Service and is a citizen of the United States, or for the purposes of § 901.18(a)(7) a former member of the Service, or in the case of death of the member, the surviving spouse or, if none, another member of the family.

§ 901.17 Charged employee.

"Charged Employee" means a Member of the Senior Foreign Service or a Member of the Service assigned to a salary class who has been proposed for separation for cause under Section 610(a)(2) of the Act.

§ 901.18 Grievance.

(a) "Grievance" means any act, omission, or condition subject to the control of an Agency which is alleged to deprive a Member of the Service who is a citizen of the United States of a right or benefit authorized by law or regulation or is otherwise a source of concern or dissatisfaction to the Member, including but not limited to:

(1) Complaints against separation of a Member allegedly contrary to law or regulation or predicated upon alleged inaccuracy, omission, error or falsely prejudicial character of information in any part of the official personnel record of the Member;

(2) Other alleged violation, misinterpretation or misapplication of applicable law, regulation, collective bargaining agreement or published post or agency policy affecting the terms and conditions of the employment or career status of the Member;

(3) Allegedly wrongful disciplinary action against the Member;

(4) Dissatisfaction with respect to the working environment of the Member;

(5) Alleged inaccuracy, omission, error, or falsely prejudicial character of information in the official personnel record of the Member which is or could be prejudicial to the Member;

(6) Action alleged to be in the nature of reprisal or other interference with freedom of action in connection with participation by a Member in a grievance; and

(7) Alleged denial of an allowance, premium pay or other financial benefit to which the Member claims entitlement under applicable laws or regulations.

(b) The scope of grievances described above may be modified by written agreement between an Agency and its Exclusive Representative.

(c) The term "grievance" does not include:

(1) Complaints against an individual assignment of a Member under Chapter

5 of the Act, other than an assignment which is alleged to be contrary to law or regulation;

(2) The judgment of a selection board (established under section 602 of the Act) or a tenure board (established under section 306(b) of the Act) or any other equivalent body established by laws or regulations which similarly evaluates the performance of Members of the Service on a comparative basis, including a merit promotion selecting official, except that alleged procedural violations of law, regulation or collective bargaining agreement or prohibited personnel practice(s) arising under these procedures are grievable;

(3) The expiration of a limited appointment, termination of a limited appointment under section 611 of the Act, or the denial of a limited career extension or denial of a renewal of a limited career extension under section 607(b) of the Act; or

(4) Pursuant to section 1109 of the Act, any complaint or appeal where a specific statutory hearing procedure exists other than procedures for considering prohibiting personnel practice charges before the Merit Systems Protection Board or Special Counsel (5 U.S.C. 1206).

(5) Non-adoption of a member suggestion or disapproval of a quality salary increase, performance award, or any other kind of honorary discretionary award, except where such action is alleged to be contrary to law, regulation or collective bargaining agreement; and

(6) The content of published agency policy which is not contrary to law, regulation or collective bargaining agreement.

(d) For the purposes of these regulations, the written complaint concerning any act, omission, or condition specified above may be referred to as the "grievance".

§ 901.19 Labor organization.

"Labor organization" means any employee organization accorded recognition as the exclusive employee representative under section 1002(11) of the Act. For the Department of State and the Agency for International Development (AID), the exclusive employee representative is the American Foreign Service Association; for the U.S. Information Agency (USIA), the exclusive employee representative is the American Federation of Government Employees, Local 1812 (AFL-CIO).

§ 901.20 Party.

"Party" means—

(a) The Grievant/Charged Employee;

(b) The Agency or Agencies employing the Grievant/Charged Employee and/or having control over the act, omission, or condition leading to appearance before the Board; or

(c) The Exclusive Representative if it has achieved Party status under § 903.5(a).

A Party may act through its duly designated representative.

§ 901.21 Record of proceedings.

"Record of Proceedings" means the case file maintained by the Board on each grievance case, or separation for cause proceeding.

§ 901.22 Representative.

"Representative" means the person(s) identified in writing to the Board as assisting the Party or Parties in the presentation of the case.

PART 902—ORGANIZATION

Sec.

Authority: Secs. 1105 and 1106 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4135 and 4136).

§ 902.1 Chairperson and Deputy Chairperson.

The Chairperson presides over meetings of the Board. The Chairperson shall select one of the Board Members as deputy. In the absence of the Chairperson, the Deputy Chairperson, or in his or her absence, another member designated by the Chairperson, may act for him or her.

§ 902.2 Board operations.

(a) The Board may operate either as a whole, or through panels or individual members designated by the Chairperson.

(b) When operating as a whole, the Board may not act in the absence of a quorum. A majority of the members shall constitute a quorum. The Board will act by a majority vote of those present. Amendments to these regulations and Board policies adopted pursuant to § 910.3 shall be adopted by the Board operating as a whole.

(c) Board panels and presiding members of panels shall be designated by the Chairperson subject only to the provisions of § 906.3.

§ 902.3 Board staff.

The Chairperson shall select the Board's Executive Secretary and other staff provided for in the Act. The Executive Secretary and staff shall be responsible only to the Board through the Chairperson.

PART 903—INITIATION AND DOCUMENTATION OF CASES

Sec.

Authority: Secs. 610, 1104, and 1106-1109 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4010, 4134, and 4136-4139).

§ 903.1 Initiation of cases.

(a) Grievances submitted to the Board shall be in writing, and shall explain the nature of the grievance, and the remedy sought; shall contain all the documentation furnished to the Agency and the Agency's final review; and shall be timely filed in accordance with applicable regulations.

(b) A member whose grievance is not resolved satisfactorily under Agency procedures, the representative of the grievant, or the exclusive representative (on behalf of a grievant who is a member of the bargaining unit), shall be entitled to file a grievance with the Board no later than 60 days after receiving the Agency decision. In the event that an Agency has not provided its decision within 90 days of filing with the Agency, the grievant, the representative of the grievant, or the exclusive representative (on the grievant's behalf) shall be entitled to file a grievance with the Board no later than 150 days after the date of filing with the Agency. The Board may extend or waive for good cause shown the time limits stated in this section, and may permit or request the views of the parties with respect to whether good cause has been shown for such an extension.

(c) Separation for cause proceedings against a Charged Employee shall be initiated before the Board by submission of a statement of the acts or behavior considered by the Agency to warrant separation.

§ 903.2 Record of proceedings.

Upon receipt of initial documents relating to a case, a Record of Proceedings shall be established, and all material received or obtained by the Board in connection with the case shall be placed in it unless the Board excludes such material under § 903.3. The parties and the Exclusive Representative, if any, shall have access to the Record of Proceedings. Classified

portions of the Record of Proceedings may be reviewed by the Parties and the Exclusive Representative, if any, under conditions prescribed by the Board to ensure appropriate security.

§ 903.3 Rulings on materials.

The Board may at any stage of the proceedings exclude materials from the Record of Proceedings at the request of a Party or on its own initiative, on the grounds that such materials are irrelevant, immaterial or unduly repetitive.

§ 903.4 Participation of exclusive representative.

(a) Upon the initiation of a case, the Executive Secretary shall ascertain from the Agency, the Grievant/Charged Employee and any labor organization which has been certified as the Exclusive Representative of employees of the Agency, whether the relevant position occupied by the Grievant/Charged Employee is part of the bargaining unit for which the labor organization is the Exclusive Representative. If a substantial dispute exists as to whether that position is part of the bargaining unit, and if the Board determines that resolution of that dispute is necessary for determining the status of the labor organization in a case, the Board shall notify the Parties and the labor organization, who may request the Foreign Service Labor Relations Board to make a final determination of that dispute. If the Foreign Service Labor Relations Board determines that the Grievant or Charged Employee is a member of a bargaining unit represented by an Exclusive Representative, the Executive Secretary shall promptly send a copy of the papers filed with the Board to the Exclusive Representative.

(b) The Exclusive Representative has the right to intervene as a Party to the case if such Exclusive Representative gives timely notice to the Board in writing of its decision to intervene as a Party. Notice shall be considered to be timely if given prior to or at the prehearing conference, or, in a case to be decided under Part 907 of this chapter, if given within 10 days of receipt of a notice from the Board of the Board's intent to close the Record of Proceedings.

(c) An Exclusive Representative which has not intervened under paragraph (b) of this section may be permitted to intervene as a Party upon written application. In ruling upon the application, the Board shall consider whether granting the application will unduly delay or prejudice the adjudication of the rights of the original parties, and may place conditions on the Exclusive Representative's participation to avoid such delay or prejudice.

§ 903.5 Service of documents.

Any Party submitting documents to the Board in connection with a case shall send a copy to the other Parties and to the Exclusive Representative, if any. The Board shall send copies of its correspondence concerning the case to the Parties and the Exclusive Representative, if any.

§ 903.6 Interrogatories.

Each Party shall be entitled to serve interrogatories upon another Party, and have such interrogatories answered by the other Party unless the Board finds such interrogatories irrelevant, immaterial, or unduly repetitive. Parties shall follow procedures established by the Board concerning the use of interrogatories.

§ 903.7 Acknowledgment.

Each case received shall be acknowledged in writing by the Executive Secretary of the Board. If in the judgment of the Executive Secretary additional documentation or information is needed, he or she may request such materials.

§ 903.8 Withdrawal.

A case may be withdrawn at any time by written notification to the Board from the Party initiating the case. A case may be determined by the Board to have lapsed when the Grievant fails to respond in writing to two successive written Board inquiries within any deadline fixed for such response. The Board may permit the reopening of lapsed cases upon a showing of good cause and may permit or request the views of the parties as to whether good cause has been shown.

§ 903.9 Access to records.

(a) If a Party is denied access to any Agency record prior to or during the consideration of a case by the Agency, the Party may protest such denial before the Board in connection with the case.

(b) In considering a case, the Board shall have access to any Agency record as follows:

(1) the Board shall request access to any Agency record which the Grievant/Charged Employee requests to substantiate his or her grievance or defense to a charge if the Board determines that such record may be relevant and material to the case.

(2) the Board may request access to any other Agency record which the Board determines may be relevant and material to the case.

(3) An Agency shall make available to the Board any Agency record requested under paragraphs (b)(1) and (2) of this section unless the head or deputy head or such Agency personally certifies in writing to the Board that disclosure of the record to the Board and the Parties would adversely affect the foreign policy or national security of the United States or that such disclosure is prohibited by law. If such a certification is made with respect to any record, the Agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentence preclude such a summary or extract.

(c) If the Board determines that an Agency record, or a summary or extract of a record, made available to the Board under paragraph (b) of this section is relevant and material to the case, the Agency concerned shall make such record, summary, or extract, as the case may be, available to the Parties.

(d) In considering a case, the Board may take into account the fact that the Parties or the Board were denied access to any Agency record which the Board determines is or may be relevant and material to the case.

(e) The Parties in any case decided by the Board shall have access to the Record of Proceedings and the decision of the Board.

§ 903.10 Access to witnesses.

The grievant or grievant's representative, or charged employee or his representative, shall be given access to witnesses employed by the foreign affairs agencies. In the event that the agency of the grievant determines that the requests for access are excessive, it may so notify the Board, which shall rule on the relevance and materiality of the potential testimony and may order that access be granted to any or all of the potential witnesses. It shall be the responsibility of the grievant to advise the agency of the agency witnesses to be interviewed and to request administrative leave.

PART 904—JURISDICTION AND RELATED MATTERS

Sec.

Authority: Secs. 1101, 1104, 1108, and 1109 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4131, 4134, 4138, and 4139.

§ 904.1 General.

The Board's jurisdiction extends to any grievance, and to any separation for

cause proceeding initiated pursuant to Section 610(a)(2) of the Act.

§ 904.2 Preliminary determinations.

(a) If an Agency, in its final review, has questioned whether a complaint constitutes a grievance, the Board will make a preliminary determination of its jurisdiction unless the Board concludes that resolution of the question of jurisdiction should be deferred until the Board has compiled a Record of Proceedings or held a hearing on the merits of the case.

(b) Prior to compiling a Record of Proceedings or holding a hearing on the merits of the case, the Board also may make a preliminary determination on any question raised by a Party concerning the timeliness of a grievance, the election of other remedies under § 904.3, or any other issue whose resolution might avoid the necessity of further proceedings.

(c) Before making a preliminary determination under this section, the Board shall obtain the views of the other Parties and transmit those views to all Parties.

(d) Where a preliminary determination is made under this section which would result in the termination of a case, a panel of three members of the Board who did not participate in the preliminary decision shall decide the question on review. This panel may permit or request the views of the parties with respect to the jurisdictional question.

§ 904.3 Relationship to other remedies.

(a) A Grievant may not file a grievance with the Board if the Grievant has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief provided under another provision of law, regulation, or Executive Order, and the matter has been carried to final decision under such provision on its merits or is still under consideration. This provision shall not apply to Grievants who have filed a prohibited personnel practice charge before the Special Counsel for the Merit Systems Protection Board.

(b) If a Grievant is not prohibited from filing a grievance under paragraph (a) of this section, the Grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief as a prohibited personnel practice complaint under the provisions of law relating to the Merit Systems Protection Board or Special Counsel, or under a regulation or Executive Order. An election of remedies under this section shall be final upon the acceptance of jurisdiction by the Board.

PART 905—BURDEN OF PROOF

Sec.

Authority: Secs. 610 and 1106 of the Foreign Service Act of 1980 (Pub. L. 95-465; 22 U.S.C. 4010 and 4136)

§ 905.1 Grievances other than disciplinary actions.

(a) In all grievances other than those concerning disciplinary actions, the grievant has the burden of establishing, by a preponderance of the evidence, that the grievance is meritorious.

(b) Where a grievant establishes that an evaluation contained falsely prejudicial material which may have been a substantial factor in an agency action, and the question is presented whether the agency would have taken the same action had the evaluation not contained that material, the burden will shift to the agency to establish, by a preponderance of the evidence, that it would have done so.

(c) Where a grievant establishes that a procedural error occurred which is of such a nature that it may have been a substantial factor in an agency action with respect to the grievant, and the question is presented whether the agency would have taken the same action had the procedural error not occurred, the burden will shift to the agency to establish, by a preponderance of the evidence, that it would have done so.

§905.2 Disciplinary grievances.

In grievances over disciplinary actions, the agency has the burden of establishing by a preponderance of the evidence that the disciplinary action was justified.

§ 905.3 Separation for cause.

In separation for cause cases, the agency has the burden of establishing, by a preponderance of the evidence, that the proposed separation is for such cause as will promote the efficiency of the service.

PART 906—HEARINGS

Sec.

Authority: Secs 610 and 1106 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4010 and 4136).

§ 906.1 Decision whether to hold a hearing.

After deciding either to accept jurisdiction over a grievance or to postpone decision of that question under 904.2(a) of this chapter, the Board will make an initial determination of whether a hearing shall be held in accordance with Part 906 of this chapter, or whether the grievance shall be resolved without a hearing in accordance with Part 907 of this chapter. The Board may reconsider its decision as to holding a hearing upon the written request of any Party or on its own initiative.

§ 906.2 Mandatory hearing.

The Board shall conduct a hearing—(a) At the request of the Grievant in any case which involves disciplinary action or a Grievant's retirement from the Service for expiration of time-in-class or based on relative performance, or (b) In any case which in the judgment of the Board can best be resolved by a hearing or presentation of oral argument. The Board shall also conduct a hearing in separation for cause proceedings unless the Charged Employee waives in writing his or her right to such hearing.

§ 906.3 Notification.

When the Board orders a hearing, the Executive Secretary shall so notify the Parties in writing. The Parties shall be given reasonable notice of the date and place selected by the Board for the hearing.

§ 906.4 Hearing panels and members.

Unless the Board and the Parties agree otherwise, all hearings shall be held before a panel of at least three members.

§ 906.5 Prehearing conferences.

(a) The Board may in its discretion order a prehearing conference of the Parties (which may be presided over by any member) for the purpose of considering:

(1) Simplification or clarification of the issues;

(2) Serving of interrogatories;

(3) Stipulations, admissions, agreements on documents, matters already on record, or similar agreements which will avoid the necessity of proving facts or issues not in dispute;

(4) Identification of witnesses the Parties may wish to call and the intended scope of their testimony; limitation on the number of witnesses;

and arrangement for the appearance of witnesses;

(5) Avoidance of irrelevant, immaterial, or unduly repetitive testimony;

(6) The possibility of disposition of the case through agreement;

(7) The order of presentation at the hearing and the allocation of the burden of proof; and

(8) Such other matters as may aid in the disposition of the case.

(b) The Parties authorized to attend the hearing may attend the prehearing conference.

(c) The results of the conference shall be summarized in writing by the Board and made a part of the Record of Proceedings. Copies of the summary shall be sent to the Parties. The Parties may submit comments or corrections on the summary.

§ 906.6 Powers of presiding member.

In connection with the hearing, the presiding member shall, as appropriate:

(a) Fix the time and place of the hearing;

(b) Order further conferences;

(c) Regulate the course of the hearing;

(d) Administer oaths and affirmations;

(e) Dispose of procedural requests and similar matters;

(f) Rule on admissibility of testimony and exhibits;

(g) Exclude any person from the hearing for behavior that obstructs the hearing;

(h) Authorize and set the time for the filing of briefs or other documents;

(i) Grant continuances and extensions of time;

(j) Reopen the record;

(k) Take any other action in the course of the proceedings consistent with the purpose of this part.

§ 906.7 Conduct of hearing.

(a) *Authorized attendance.* The Parties and, as determined by the Board, a reasonable number of representatives of the Parties are entitled to be present at the hearing. The Board may, after considering the views of the Parties and of any other individuals connected with the grievance, decide that a hearing should be open to others. No person shall be permitted to attend the hearing when classified material is being discussed unless that person possesses the appropriate security clearance.

(b) *Procedure.* Hearings shall be conducted by the presiding member so as to assure a full and fair proceeding. The Board shall not be limited by the legal rules of evidence. However, the presiding member shall exclude irrelevant, immaterial, or unduly repetitive evidence. The Board may require the Parties to designate one of their representatives as principal spokesperson.

(c) *Order of presentation.* In cases involving disciplinary action, including separation for cause cases, the Agency will ordinarily present its case first and will retain that order of precedence throughout the hearing. In other cases the Grievant will ordinarily present his or her case first and will retain that order of precedence throughout the hearing.

(d) *Evidence.* Subject to the presiding member's rulings on the relevancy, materiality, and repetitious nature of evidence, the Parties may offer such evidence, including interrogatories, depositions and Agency records as they desire. The shall produce such additional evidence as the presiding member shall consider relevant and material. Where deemed appropriate by the Board, the Parties may be supplied only with a summary or extract of classified material (also see § 903.9 of this chapter).

(e) *Testimony.* Testimony at a hearing shall be given under oath or affirmation.

(f) *Transcript.* A verbatim transcript shall be made of any hearing and shall be part of the Record of Proceedings.

§ 906.8 Witnesses.

(a) *General.* Each Party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition. A Party wishing to take the deposition of a witness shall give the other Parties reasonable notice of the time and place of the deposition and of the identity of the witness.

(b) *Availability.* Upon request of the Board or upon request of the Grievant/Charged Employee deemed relevant and material by the Board, an Agency shall promptly make available at the hearing or by deposition any witness under its control, supervision or responsibility. If the Board determines that the actual presence of such witness at the hearing is required for just resolution of the case, the witness shall be made available at the hearing, with necessary costs and travel expenses paid by the Agency which is a Party to the hearing.

(c) *Notice.* The Parties are responsible for notifying their witnesses and for arranging for their appearance at the time and place set for the hearing. The Board may preclude a witness from testifying because of the failure of the Party responsible for witness' appearance to comply with this section.

§ 906.9 Failure of party to appear.

The hearing may proceed in the absence of any Party who, after due notice and without good cause, fails to be present or obtain an adjournment.

PART 907—PROCEDURE WHEN HEARING IS NOT HELD

Authority: Sec. 1106 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4136).

§ 907.1 General.

(a) In a case in which a hearing is not required under § 906.1 of this chapter, the Board may request in writing that specified documents or other evidence be furnished to it and/or may authorize the Executive Secretary to obtain such additional documents or other evidence as may be necessary to understand and decide the case.

(b) Each Party will be offered the opportunity to review and to supplement, by written submissions, the Record of Proceedings, prior to the date fixed by the Board for closing of the Record. The Board shall then consider the case and make a decision based on that Record. This may include the ordering of a hearing in accordance with Part 906.

PART 908—REMEDIES

Sec.

908.1 Board orders.

908.2 Board recommendations.

Authority: Secs. 1106 and 1107 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4136 and 4137).

§ 908.1 Board orders.

If the Board finds that a grievance is meritorious, the Board shall have the authority to direct the Agency:

(a) To correct any official personnel record relating to the Grievant which the Board finds to be inaccurate or erroneous, to have an omission, or to contain information of a falsely prejudicial character;

(b) To reverse a decision denying the Grievant compensation or any other perquisite of employment authorized by laws or regulations when the Board finds that such decision was arbitrary, capricious, or contrary to laws or regulations;

(c) To retain in the Service a Member whose separation would be in consequence of the matter by which the Member is aggrieved;

(d) To reinstate the Grievant, and to grant the Grievant back pay, where it is established that the separation or suspension without pay of the employee was unjustified or unwarranted under the Back Pay Act (5 U.S.C. 5596(b)(1));

(e) To pay reasonable attorney fees to the same extent and in the same manner as such fees may be required by the

Merit Systems Protection Board under 5 U.S.C., Section 7701(g); or

(f) To take any corrective action deemed appropriate by the Board provided it is not contrary to law or collective bargaining agreement.

§ 908.2 Board recommendations.

(a) If the Board finds that the grievance is meritorious and that remedial action should be taken that relates directly to promotion or assignment of the Grievant or to other remedial action not otherwise provided for in this section, or if the Board finds that the evidence in a grievance proceeding warrants disciplinary action against any employee of an Agency, it shall make an appropriate recommendation to the head of the concerned Agency.

(b) The head of the Agency shall make a written decision on the recommendation of the Board within 30 days after receiving the recommendation and shall implement the recommendation of the Board except to the extent that the head of the Agency rejects the recommendation in whole or in part on the basis of a determination that implementation of the recommendation would be contrary to law or would adversely affect the foreign policy or national security of the United States. If the head of the Agency rejects the recommendation in whole or in part, the decision shall specify the reasons for such action. Copies of the decision shall be served on the other Parties. Pending the decision of the head of the Agency, there shall be no ex parte communication concerning the grievance between the head of the Agency and any person involved in the proceedings of the Board. The head of the Agency shall, however, have access to the entire Record of the Proceedings of the Board.

PART 909—DECISION MAKING

Sec.

Authority: Secs. 1106 and 1107 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4136 and 4137).

§ 909.1 Basis

Decisions of the Board shall be based upon the Record of Proceedings, shall be in writing, shall include findings of fact, and shall include a statement of the reasons for the decision.

§ 909.2 Board order.

Where the Board's decision imposes action on an Agency the decision shall be in the form of a remedial order addressed to the designated official of the Agency. A copy of the decision shall be supplied to each Party.

§ 909.3 Board recommendation.

Where the Board's decision is a recommendation, it shall be directed to the head of the Agency. A copy of the decision shall be supplied to each Party.

§ 909.4 Other decision.

Where the Board's decision requires no action by an Agency, the decision shall be forwarded to the Grievant. A copy of the decision shall be supplied to each Party.

§ 909.5 Time limits for compliance.

Orders of the Board and recommendations which are not rejected in accordance with § 908.2 of this chapter shall be complied with within any time limits for compliance established by the Board's decision, unless the Board extends the time limit on a showing of good cause.

§ 909.6 Summaries of Board decisions.

The Board may, from time to time, issue such summaries and expurgated versions of its decisions as it may consider necessary to permit the Agencies, the Exclusive Representative organization(s), and the Members of the Service to become aware of the general nature of the cases it has received and their manner of disposition, without invading the privacy of the Grievants.

PART 910—MISCELLANEOUS

Sec.

Authority: Secs. 1106, 1107, 1110, and 2401 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4136, 4137, 4140 and 4172).

§ 910.1 Suspension of Agency actions.

(a) If the Board determines that the Agency is considering the involuntary separation of the Grievant, disciplinary action against the Grievant, or recovery from the Grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the Board, and that such action should be suspended, the agency shall suspend such action until the Board has ruled on the grievance. Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude the grievant from official premises or from the performance of specified functions when such exclusion is determined in writing to be essential to the functioning of the post or office to which the grievant is assigned.

(b) The Board shall expedite its decisions on requested suspensions of proposed Agency actions. The Board may permit or require argument with respect to such requests by the Parties and Exclusive Representative, if any.

§ 910.2 Requests to reopen cases.

The Board may reconsider any decision upon the presentation of newly discovered or previously unavailable material evidence.

§ 910.3 Ex parte communications.

(a) "Ex parte communications" are oral or written communications between the Board or its staff and an interested party to a proceeding which are made without providing the other parties a chance to participate.

(b) Ex parte communications concerning the merits of any matter which has or may come before the Board for adjudication or which would otherwise contravene the rules regarding written submissions are prohibited until the Board renders a final decision. Any communication made in contravention of this rule shall be made a part of the record and an opportunty for rebuttal allowed. If the communication was oral, a memorandum stating the substance of the discussion shall be placed in the record.

(c) This rule does not apply to communications concerning such matters as the status of a case, the methods for transmitting evidence to the Board, and other procedural matters which do not concern the merits of any matter before the Board for adjudication and which do not otherwise contravene the rules regarding written submissions.

§ 910.4 Board policy statements.

The Board may publish statements regarding policies it has established as to its operations and procedures.

§ 910.5 Confidentiality.

(a) To the maximum extent practicable, the Board will make every effort to preserve the confidentiality of the identity of the Grievant or Charged Employee.

(b) The records of the Board shall be maintained by the Board under appropriate safeguards to preserve confidentiality and shall be separate from all records of the Agencies.

§ 910.6 Judicial review.

Any aggrieved Party may obtain judicial review of a final action of an Agency head or the Board on any grievance in the district courts of the United States in accordance with the standards set forth in Chapter 7 of title 5 of the United States Code. 5 U.S.C. 706 shall apply without limitation or exception.

§ 910.7 Pending grievances.

Any grievance pending before the Board prior to February 15, 1981 shall be resolved under the provisions of the Foreign Service Act of 1946 as amended, and the regulations promulgated thereunder.

PART 911—IMPLEMENTATION DISPUTES

Sec.
911.1 Definition.
911.2 Filing complaint.
911.3 Procedure.
911.4 Effect of Board decision.
911.5 Arbitrability of determination.
911.6 Finality of choice.
911.7 Review.

Authority: Sec. 1014 of the Foreign Service Act of 1980 (Pub. L. 96-465; 22 U.S.C. 4114).

§ 911.1 Definition.

An implementation dispute is any dispute between the agency and the exclusive representative, as provided in regulations adopted as a result of collective bargaining between the agencies and the employee representatives. Such a dispute, also referred to as an institutional dispute, is one which directly concerns the rights and obligations of an agency and an exclusive representative toward each other or the rights or obligations between an agency and one or more employees as set forth in a collective bargaining agreement.

§ 911.2 Filing complaint.

If the dispute is not satisfactorily resolved at the agency level, the moving party may file a complaint within 45 calendar days from the date of the response (or in any case must file within 90 days of filing the implementation dispute) with the Board in writing and with specificity as to the nature of the violation.

§ 911.3 Procedure.

Implementation disputes shall be handled by the Board in accordance with the procedures set forth in Parts 901 -910 of this chapter.

§ 911.4 Effect of Board decision.

The action of the Board shall be final and binding and shall be implemented by the parties, unless an exception is filed with the Foreign Service Labor Relations Board within 30 days after receipt of the Grievance Board action.

§ 911.5 Arbitrability of determination.

Questions that cannot be resolved by the parties as to whether a complaint is subject to this procedure may be referred by either party to the Grievance Board for a threshold determination.

§ 911.6 Finality of choice.

An alleged violation of an institutional right as reflected in a collective bargaining agreement may be filed under these procedures or as an unfair labor practice, but not both.

§ 911.7 Review.

Resolution of disputes under this section shall not be subject to judicial review.

Dated: July 24, 1985.

Arthur Stark,

Chairman, Foreign Service Grievance Board.

[FR Doc. 85-18412 Filed 8-1-85; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 107

[Docket No. R-85-1237; FR-2020]

Nondiscrimination and Equal Opportunity in Housing Under Executive Order 11063

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This rule would amend 24 CFR Part 107, "Nondiscrimination and Equal Opportunity Under Executive Order 11063," in order to reflect amendments made to Executive Order 11063 by Executive Order 12259, adding a prohibition against discrimination on the basis of sex and clarifying that the terms "religion" and "creed" are synonymous.

EFFECTIVE DATE: October 3, 1985.

FOR FURTHER INFORMATION CONTACT: Katrina Ross, Director, Fair Housing Enforcement Division, Room 5208, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 755-5673. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Executive Order 11063, "Equal Opportunity in Housing" (November 20, 1962, 27 FR 11527) directs Federal departments and agencies to take all action necessary and appropriate to prevent discrimination because of race, color, creed, or national origin in (1) the sale, leasing, rental or other disposition of residential property and related facilities which are owned or operated by the Federal Government or provided with Federal assistance; and (2) the lending practices with respect to residential property and related facilities of lending institutions, insofar as such practices relate to loans insured or guaranteed by the Federal Government. Executive Order 12259, "Leadership and Coordination of Fair Housing in Federal Programs" (January 6, 1981, 46 FR 1253) revised Executive Order 11063 by adding a prohibition against discrimination based on sex, and by clarifying the reach of E.O. 11063 with respect to "creed" by adding the word "religion".

On September 9, 1980, HUD published a final rule (45 FR 59510) which added Part 107 to 24 CFR Chapter I to (1) establish a process to implement Executive Order 11063, (2) state the discriminatory practices prohibited by Executive Order 11063, (3) provide for affirmative action to overcome the effects of past discrimination and to prevent discrimination, and (4) establish procedures and sanctions regarding the Department's enforcement of the Order. This final rule revises 24 CFR Part 107 to implement the changes made by Executive Order 12259 as discussed above. (This final rule also makes a technical correction to 24 CFR 107.30(b) by deleting "other" from the list of categories for noting racial and national origin data. The federally defined racial/ethnic grouping in OMB Circular A-46, dated May 12, 1977, does not include a category for "other.")

The Department has concluded that, because this rulemaking is limited to expanding the coverage of HUD's Executive Order 11063 implementation procedures in accordance with the policies reflected in Executive Order 12259, public comment on the rule is unnecessary. Accordingly, these amendments to Part 107 are being adopted as final rulemaking.

This rule does not constitute a "major rule" as the term is defined in Section 1(b) of the Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local