

44664

Code of Federal Regulations



28

Judicial Administration

Revised as of July 1, 1976

of
the
Federal
Register
and
the
Federal
Gazette



28

Judicial Administration

Revised as of July 1, 1976

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT
AS OF JULY 1, 1976

With Ancillaries

Published by
the Office of the Federal Register
National Archives and Records Service
General Services Administration

as a Special Edition of
the Federal Register

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1976

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402
Subscription Price: \$350 per year; \$75 additional for foreign mailing.
Single copies vary in price. This issue \$3.10

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Cite this Code CFR

thus: 28 CFR 0.0

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1

Title 17 through Title 27.....as of April 1

Title 28 through Title 41.....as of July 1

Title 42 through Title 50.....as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether there have been any amendments since the revision date of the Code volume in which the user is interested (in this case, July 1, 1976) the following two lists must be consulted: the "Cumulative List of CFR Sections Affected" issued monthly and the "Cumulative List of Parts Affected" which appears daily in the Federal Register. These two lists will refer the user to the Federal Register page where he may find the latest amendment of any given rule.

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Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date.

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Designation	Nature
Table I—Parallel Table of Statutory Authorities and Rules.	Table of U.S.C. citations with related CFR citations.
Table II—Presidential Documents Included or Cited in Currently Effective Rules.	Table of Proclamations, Executive orders, Memoranda, Letters, Reorganization Plans, etc. included or cited in CFR.
Table III—Acts Requiring Publication in Federal Register.	Table of Acts with Statutory and U.S.C. citations.

This volume also contains lists of current and superseded CFR volumes, an alphabetical list of agencies appearing in the CFR, and a table of CFR titles, chapters, and parts.

The Federal Register Index is issued monthly, quarterly, and annually, and is a consolidation of the "Contents" entries in the daily Federal Register.

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FRED J. EMERY,
Director.

Office of the Federal Register.

July 1, 1976.

THIS TITLE

Title 28—JUDICIAL ADMINISTRATION is composed of one volume. The contents of this volume represent all current regulations codified under this title of the CFR as of July 1, 1976.

The *Code of Federal Regulations* is published under the editorial direction of Robert E. Lewis, assisted by Robert Jordan. For this volume, Gladys M. Queen was Chief Editor, and James L. Graves, Associate Editor.

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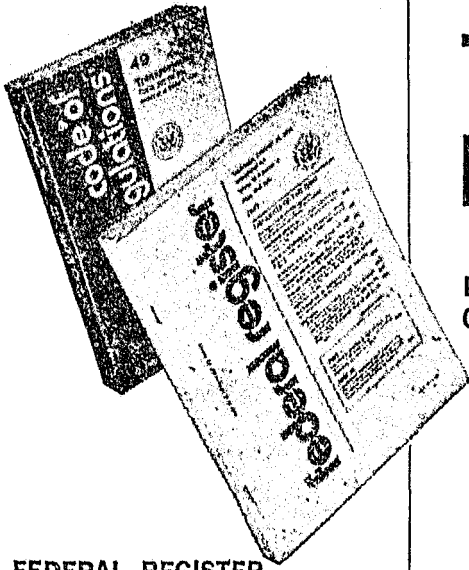
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Internal Revenue Service, Department of the Treasury: See Internal Revenue, 26 CFR Chapter I.

Employees' Benefits: See Title 20.

Federal Trade Commission: See Commercial Practices, 16 CFR Chapter I.

NOTE: Other regulations issued by the Department of Justice appear in Title 8; Title 4; Title 21.

SUPPLEMENTAL PUBLICATIONS: *The official opinions of the Attorneys General of the United States.* (Op. A. G.) *Irregular, 1789—; Washington, v. 1—, 1852—.*

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AUTHORITY: The provisions of this Part 0 issued under 5 U.S.C. 301; 28 U.S.C. 509, 510.

SOURCE: The provisions of this Part 0 contained in Order No. 423-69, 84 F.R. 20388, Dec. 31, 1969, as amended by Order 445-70, 35 F.R. 19397, Dec. 23, 1970, unless otherwise noted.

§ 0.0 Supersedure of prior documents and exceptions.

(a) *Supersedure of documents relating to departmental organization and functions.* The following-described orders are incorporated in this part and are hereby superseded: No. 271-62 of May 29, 1962; No. 273-62 of June 14, 1962; No. 274-62 of June 14, 1962; No. 275-62 of July 10, 1962; No. 276-62 of July 11, 1962; No. 281-62 of September 28, 1962; No. 291-62 of December 13, 1962, except for section 5 thereof; No. 299-63 of July 19, 1963; No. 303-63 of August 20, 1963; No. 308-63 of December 12, 1963; No. 310-64 of January 28, 1964; No. 315-64 of June 1, 1964; No. 316-64 of June 23, 1964; No. 319-64 of July 31, 1964; No. 327-64 of November 24, 1964; No. 329-65 of January 12, 1965; No. 331-65 of February 18, 1965, except for section 1 thereof; No. 334-65 of April 19, 1965; No. 335-65 of April 22, 1965; No. 339-65 of May 26, 1965; No. 343-65 of June 8, 1965; No. 347-65 of September 20, 1965; No. 348-65 of October 8, 1965, insofar as it applies to 28 CFR Part 0; No. 352-66 of January 13, 1966; No. 353-66 of January 26, 1966; No. 354-66 of February 21, 1966; No. 355-66 of March 25, 1966; No. 356-66 of March 25, 1966; No. 360-66 of April 20, 1966; No. 361-66 of April 22, 1966; No. 362-66 of May 6, 1966; No. 367-66 of August 31, 1966; No. 370-66 of November 10, 1966; No. 374-67 of January 20, 1967; No. 377-67 of April 28, 1967; No. 378-67 of May 29, 1967; No. 381-67 of June 29, 1967, insofar as it amends 28 CFR Part 0; No. 382-67 of July 24, 1967; No. 385-67 of October 30, 1967; No. 386-67 of November 28, 1967; No. 387-67 of November 29, 1967; No. 395-68 of May 28, 1968; No. 397-68 of July 2, 1968, insofar as it amends 28 CFR Part 0; No. 400-68 of July 29, 1968; No. 402-68 of August 8, 1968; No. 405-68 of November 4, 1968; No. 406-68 of November 18, 1968; No. 412-69 of March 21, 1969, insofar as it amends 28 CFR Part 0; No. 415-69 of May 12, 1969; No. 417-69 of June 5, 1969; No. 418-69 of June 30, 1969; No. 419-69 of July 7, 1969. Any existing delegation of authority made pursuant to the foregoing superseded orders shall continue in force and effect until modified or re-

voked: *Provided*, That nothing in this section shall be construed to modify the provisions of any other part of this title, or to modify any orders or regulations of the Attorney General issued pursuant to Executive Order No. 10450 of April 27, 1953, or No. 10501 of November 5, 1953, as amended.

(b) *Existing delegations or assignments to U.S. Attorneys or U.S. Marshals.* Unless otherwise indicated herein this part shall not be construed as superseding any part of any document making an assignment or delegation to U.S. Attorneys or U.S. Marshals.

(c) All references to sections of these regulations in departmental memoranda and directives are changed to conform to the section designations in this part.¹

Subpart A—Organizational Structure of the Department of Justice

§ 0.1 Organizational Units.

The Department of Justice shall consist of the following principal organizational units:

OFFICES

Office of the Attorney General
Office of the Deputy Attorney General
Office of the Solicitor General
Office of Legal Counsel
Office of Legislative Affairs
Office of Public Information
Office of Management and Finance
Office of Policy and Planning
Office of Watergate Special Prosecution Force
Office of the Pardon Attorney
Office of Professional Responsibility
Community Relations Service
Executive Office for United States Attorneys

DIVISIONS

Antitrust Division
Civil Division
Civil Rights Division
Criminal Division
Land and Natural Resources Division
Tax Division

BUREAUS

Federal Bureau of Investigation
Bureau of Prisons
Drug Enforcement Administration
Immigration and Naturalization Service
Law Enforcement Assistance Administration
United States Marshals Service

¹ Such changes and other conforming changes have been made in references in memoranda and directives set forth in this part.

BOARDS

Board of Immigration Appeals
Board of Parole

[Order No. 565-74, 39 FR 15875, May 6, 1974, as amended by Order No. 576-74, 39 FR 31527, Aug. 29, 1974; Order No. 589-75, 40 FR 3410, Jan. 22, 1975; Order No. 623-75, 40 FR 42745, Sept. 16, 1975; Order No. 635-75, 40 FR 58643, Dec. 18, 1975]

Subpart B—Office of the Attorney General

§ 0.5 Attorney General.

The Attorney General shall:

(a) Supervise and direct the administration and operation of the Department of Justice, including the offices of U.S. Attorneys and U.S. Marshals, which are within the Department of Justice.

(b) Represent the United States in legal matters generally.

(c) Furnish advice and opinions, formal and informal, on legal matters to the President and the Cabinet and to the heads of the executive departments and agencies of the Government, as provided by law.

(d) Appear in person to represent the Government in the Supreme Court of the United States, or in any other court, in which he may deem it appropriate.

(e) Designate, pursuant to Executive Orders No. 9788 of October 4, 1946, and No. 10254 of June 15, 1951, officers and agencies of the Department of Justice to act as disbursing officers for the Office of Alien Property.

(f) Perform or supervise the performance of other duties required by statute or Executive order.

§ 0.6 Office of Policy and Planning.

The Office of Policy and Planning is headed by a Director of Policy and Planning. Under the general supervision and direction of the Attorney General, the Director of Policy and Planning shall:

(a) Provide an overview of problems in the criminal justice system.

(b) Initiate, implement and evaluate proposals—

(1) To improve the effectiveness and the fairness of crime control and criminal justice administration; and

(2) To promote consistency and coordination in the handling of accused and convicted offenders by law enforcement, court, and correctional agencies in the Federal and District of Columbia systems.

(c) Establish a Consumer Affairs Unit within the Office of Policy and Planning, to be headed by a Consumer Affairs Advisor appointed by the Attorney General—

(1) To assist the Attorney General and the Deputy Attorney General in the development and coordination of all Departmental policies, procedures, and programs affecting consumers;

(2) To serve as liaison with other federal, state, and local agencies whose activities affect consumers with regard to matters within the jurisdiction of the Department; and

(3) To provide such additional support as may be necessary to insure proper consideration of the potential effect of Departmental activities on consumers.

(d) Undertake such other projects relating to policy development as may specifically be assigned by the Attorney General.

[Order No. 623-76, 40 FR 42745, Sept. 16, 1975, as amended by Order No. 638-76, 41 FR 5634, Feb. 9, 1976]

§ 0.7 Office of Public Information.

The Office of Public Information is headed by a Director of Public Information. Under the general supervision and direction of the Attorney General, the Director shall:

(a) Handle matters pertaining to relations with the public generally.

(b) Disseminate information to the press, the radio and television services, the public, members of Congress, officials of Government, schools, colleges, and civic organizations.

(c) Coordinate the relations of the Department of Justice with news media.

(d) Serve as a central agency for information relating to the work and activities of all agencies of the Department.

(e) Prepare public statements and news releases.

(f) Coordinate Departmental publications.

(g) [Reserved]

[Order No. 543-73, 38 FR 29583, Oct. 26, 1973, as amended by Order No. 565-74, 39 FR 15875, May 6, 1974; Order No. 623-75, 40 FR 42746, Sept. 16, 1975]

§§ 0.8-0.9 [Reserved]

§ 0.10 Attorney General's Advisory Committee of United States Attorneys.

(a) The Attorney General's Advisory Committee of United States Attorneys

shall consist of fifteen United States Attorneys, designated by the Attorney General. The membership shall be selected to represent the various geographic areas of the Nation and both large and small offices. Members shall serve at the pleasure of the Attorney General, but such service normally shall not exceed three years and shall be subject to adjustment by the Attorney General so as to assure the annual rotation of approximately one-third of the Committee's membership.

(b) The Committee shall make recommendations to the Attorney General and to the Deputy Attorney General concerning any matters which the Committee believes to be in the best interests of justice, including but not limited to the following:

(1) Establishing and modifying policies and procedures of the Department;

(2) Improving management, particularly with respect to the relationships between the Department and the United States Attorneys;

(3) Cooperating with State Attorneys General and other State and local officials for the purpose of improving the quality of justice in the United States;

(4) Promoting greater consistency in the application of legal standards throughout the Nation and at the various levels of government; and

(5) Aiding the Attorney General and the Deputy Attorney General in formulating new programs for improvement of the criminal justice system at all levels, including proposals relating to legislation and court rules.

(c) The Committee shall select from its membership a chairman, a vice-chairman and a secretary, and shall establish such subcommittees as it deems necessary to carry out its objectives. United States Attorneys who are not members of the Committee may be included in the membership of subcommittees.

(d) The Executive Office for United States Attorneys shall provide the Committee with such staff assistance and funds as are reasonably necessary to carry out the Committee's responsibilities.

[Order No. 640-76, 41 FR 7748, Feb. 20, 1976]

§ 0.11 Incentive Awards Board.

The Incentive Awards Board shall consist of the Deputy Attorney General, who shall be the chairman, and four members selected by the Attorney General

from among the Assistant Attorney Generals, bureau heads or persons equivalent rank in the Department. The duties of the Board shall be:

(a) Consider and make recommendations to the Attorney General concerning honorary awards and cash awards in excess of \$1,000 to be granted for suggestions or inventions, sustained superior performance, or special acts or services in the public interest.

(b) Consider and make recommendations to the Attorney General for transmittal to the Civil Service Commission and the President for Presidential awards under 5 U.S.C. 4504.

(c) Evacuate periodically the effectiveness of the employee recognition program and recommend needed improvements to the Attorney General.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445-70, 35 FR 19397, Dec. 23, 1970. Redesignated by Order No. 543-73, 38 FR 29583, Oct. 26, 1973]

§ 0.12 Young American Medals Committee.

There shall be in the Office of the Attorney General a Young American Medals Committee, which shall be composed of three members, one of whom shall be the Director of Public Information, who shall be the Executive Secretary of the Committee. The Chairman of the Committee shall be designated by the Attorney General. The Committee shall issue regulations relating to the establishment of the Young American Medal for Bravery and Young American Medal for Service provided for by the act of August 3, 1950, 64 Stat. 397, and governing the requirements and procedures for the award of such medals. The regulations of the Committee in effect on the effective date of this part shall continue in effect until amended, modified, or revoked by the Committee.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445-70, 35 FR 19397, Dec. 23, 1970. Redesignated by Order No. 543-73, 38 FR 29583, Oct. 26, 1973]

Subpart C—Office of the Deputy Attorney General

§ 0.15 Deputy Attorney General.

(a) The Deputy Attorney General is authorized to exercise all the power and authority of the Attorney General specified in § 0.5 of Subpart B of this part, unless any such power or authority is required by law to be exercised by the Attorney General personally or has been

specifically delegated to another Department official.

(b) The Deputy Attorney General shall act as Attorney General and perform all the duties of the Office of Attorney General in case of a vacancy in that office or in case of the absence or disability of the Attorney General and shall:

(1) Assist the Attorney General in the development of broad Department program policy and in the overall supervision and direction of the Department, including coordination of the activities of the divisions and other organizational units of the Department.

(2) Prepare, for the consideration of the Attorney General, recommendations for Presidential appointments to judicial positions and positions within the Department.

(3) Exercise the power and authority vested in the Attorney General and in the Law Enforcement Assistance Administration to take final action in matters pertaining to:

(i) The employment, separation, and general administration of personnel in General Schedule grades GS-16 through GS-18, or the equivalent, and of attorneys regardless of grade or pay in the Department; and

(ii) The appointment of Assistant U.S. Attorneys and other attorneys to assist U.S. Attorneys when the public interest so requires, and fixing their salaries.

(4) Administer the Attorney General's recruitment program for Honor Law Graduates and judicial law clerks.

(5) Coordinate and control the Department's reaction to civil disturbances.

(6) Coordinate the Department's response to requests for production or disclosure of information under 5 U.S.C. 552(a). (See Part 16(A) of this Chapter).

(7) Coordinate Departmental liaison with the White House staff and the Executive Office of the President.

(8) Perform such other duties and functions as may be especially assigned from time to time by the Attorney General.

(c) The Deputy Attorney General may review any personnel action taken by any officer of the Department.

[Order No. 565-74, 39 FR 15875, May 6, 1974]

§ 0.16 Executive Office for U.S. Attorneys.

The Executive Office for U.S. Attorneys, established in the Office of the

Deputy Attorney General by Order No. 8-53 of April 6, 1953, under the supervision of the Deputy Attorney General, shall provide general executive assistance and supervision to the offices of the U.S. Attorneys, and coordinate and direct the relationship of agencies of the Department with such offices.

§ 0.17 [Reserved]

§ 0.18 Freedom of Information Appeals Unit.

The Freedom of Information Appeals Unit is established in the Office of the Deputy Attorney General, under the supervision of the Deputy Attorney General, to assist in acting on Freedom of Information appeals under § 16.7 of this chapter, except that in the case of appeals from initial decisions in which the Deputy Attorney participated this assistance shall be provided by the Office of Legal Counsel.

[Order No. 596-75, 40 FR 6496, Feb. 12, 1975, as amended by Order No. 615-75, 40 FR 33214, Aug. 7, 1975]

Subpart D—Office of the Solicitor General

§ 0.20 General functions.

Subject to the general supervision and direction of the Attorney General, the following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Solicitor General, in consultation with each agency or official concerned:

(a) Conducting, or assigning and supervising, all Supreme Court cases, including appeals, petitions for and in opposition to certiorari, briefs and arguments, and, in accordance with § 0.163, settlement thereof.

(b) Authorizing or declining to authorize appeals by the Government to all appellate courts (including petitions for rehearing en banc) and petitions to such courts for the issuance of extraordinary writs.

(c) Authorizing the filing of all briefs amicus curiae by the Government in all appellate courts.

(d) Surveying and listing appellate cases in the courts of appeals in which the Government is participating.

(e) Assist the Attorney General and the Deputy Attorney General in the development of broad Department program policy.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445-70, 35 FR 19397,

Dec. 23, 1970; Order No. 543-73, 38 FR 29584, Oct. 26, 1973; Order No. 565-74, 39 FR 15875, May 6, 1974]

§ 0.21 Authorizing intervention by the Government in certain cases.

The Solicitor General may in consultation with each agency or official concerned, authorize intervention by the Government in cases involving the constitutionality of acts of Congress.

Subpart E—Office of Legal Counsel

§ 0.25 General functions.

Subject to the general supervision and direction of the Attorney General the following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General in charge of the Office of Legal Counsel:

(a) Preparing the formal opinions of the Attorney General; rendering informal opinions and legal advice to the various agencies of the Government; and assisting the Attorney General in the performance of his functions as legal adviser to the President and as a member of, and legal adviser to, the Cabinet.

(b) Preparing and making necessary revisions of proposed Executive orders and proclamations, and advising as to their form and legality prior to their transmission to the President; and performing like functions with respect to regulations and other similar matters which require the approval of the President or the Attorney General.

(c) [Reserved]

(d) Rendering opinions to the Attorney General and to the heads of the various organizational units of the Department on questions of law arising in the administration of the Department.

(e) Approving proposed orders of the Attorney General, and orders which require the approval of the Attorney General, as to form and legality and as to consistency and conformity with existing orders and memoranda.

(f) Except as to proposed legislation, acting in a liaison capacity for cooperation with the Council of State Governments.

(g) Coordinating the work of the Department of Justice with respect to the participation of the United States in the United Nations and related international organizations and advising with respect

to the legal aspects of treaties and other international agreements.

(h) When requested, advising the Attorney General in connection with his review of decisions of the Board of Immigration Appeals and other organizational units of the Department.

(i) Advising Executive agencies and organizational units of the Department on questions relating to interpretation and application of the Public Information Section of the Administrative Procedure Act. (5 U.S.C. 552).

(j) Providing liaison for the Department with the Administrative Conference of the United States.

(k) Providing guidance and assistance to personnel of the Department of Justice in matters relating to ethical conduct, particularly matters subject to the provisions of the conflict of interest laws, Executive Order No. 11222 of May 8, 1965, or Part 45 of this title.

(l) Designating within the Office of Legal Counsel (1) a liaison officer, and an alternate, as a representative of the Department in all matters concerning the filing of departmental documents with the Office of the Federal Register, and (2) a certifying officer, and an alternate, to certify copies of documents (except those issued by the Commissioner of Immigration and Naturalization, or his designee, and the Director of the Bureau of Narcotics and Dangerous Drugs) required to be filed with the Office of the Federal Register (1 CFR 1.21).

(m) Performing such special duties as may be assigned by the Attorney General or the Deputy Attorney General from time to time.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 543-73, 38 FR 29584, Oct. 26, 1973; Order No. 565-74, 39 FR 15875, May 6, 1974; Order No. 623-75, 40 FR 42746, Sept. 16, 1975]

Subpart E-1—Office of Legislative Affairs

§ 0.27 General functions.¹

Subject to the general supervision and direction of the Attorney General the following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General in charge of the Office of Legislative Affairs:

(a) Maintaining liaison between the Department and the Congress.

¹ 38 FR 6893, Mar. 14, 1973.

(b) Reviewing, coordinating and submitting departmental legislative reports.

(c) Coordinating the preparation and submission of proposed departmental legislation.

(d) Performing such other duties respecting legislative matters as may be assigned by the Attorney General or the Deputy Attorney General.

[Order No. 504-73, 38 FR 6393, Mar. 14, 1973, as amended by Order No. 565-74, 39 FR 15875, May 6, 1974; Order No. 623-75, 40 FR 42746, Sept. 16, 1975]

Subpart F—Community Relations Service

§ 0.30 General functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Director of the Community Relations Service:

(a) Exercise of the powers and performance of the functions vested in the Attorney General by sections 204(d), 205, 1002, and 1003(a) of the Civil Rights Act of 1964 (78 Stat. 267) and section 2 of Reorganization Plan No. 1 of 1966.

(b) Preparation and submission of the annual report to the Congress required by section 1004 of that Act.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 543-73, 38 FR 29584, Oct. 26, 1973]

§ 0.31 Designating officials to perform the functions of the Director.

(a) In case of a vacancy in the Office of the Director of the Community Relations Service, the Deputy Director of the Service shall perform the functions and duties of the Director.

(b) The Director is authorized, in case of absence from his office or in case of his inability or disqualification to act, to designate the Deputy Director to act in his stead. In unusual circumstances, or in the absence of the Deputy Director, a person other than the Deputy Director may be so designated by the Director.

§ 0.32 Applicability of existing departmental regulations.

Departmental regulations which are generally applicable to units or personnel of the Department of Justice shall be applicable with respect to the Community Relations Service and to the Director and personnel thereof, except to the

extent, if any, that such regulations may be inconsistent with the intent and purposes of section 1003(b) of the Civil Rights Act of 1964.

Subpart G—Office of the Pardon Attorney

CROSS REFERENCE: For regulations pertaining to the Office of Pardon Attorney, see Part 1 of this chapter.

§ 0.35 Applications for clemency.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the Pardon Attorney shall have charge of the receipt, investigation, and disposition of applications to the President for pardon and other forms of Executive clemency, and shall perform any other duties assigned by the Attorney General or the Deputy Attorney General.

[Order No. 543-73, 38 FR 29584, Oct. 26, 1973]

§ 0.36 Recommendations.

The Pardon Attorney shall submit all all recommendations in clemency cases to the Attorney General through the Deputy Attorney General.

[Order No. 543-73, 38 FR 29584, Oct. 26, 1973]

Subpart G-1—Office of Watergate Special Prosecution Force

§ 0.37 General functions.

The Office of Watergate Special Prosecution Force shall be under the direction of a Director who shall be the Special Prosecutor appointed by the Attorney General. The duties and responsibilities of the Special Prosecutor are set forth in the attached appendix below which is incorporated and made a part hereof.

[Order 551-73, 38 FR 30738, Nov. 7, 1973]

§ 0.38 Specific functions.

The Special Prosecutor is assigned and delegated the following specific functions with respect to matters specified in this subpart:

(a) Pursuant to 28 U.S.C. 515(a), to conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings, which United States attorneys are authorized by law to conduct, and to designate attorneys to conduct such legal proceedings.

(b) To approve or disapprove the production or disclosure of information or files relating to matters within his cognizance in response to a subpoena, order,

or other demand of a court or other authority. (See Part 16(B) of this chapter.)

(c) To apply for and to exercise the authority vested in the Attorney General under 18 U.S.C. 6005 relating to immunity of witnesses in Congressional proceedings.

APPENDIX—DUTIES AND RESPONSIBILITIES OF THE SPECIAL PROSECUTOR

The Special Prosecutor. There is appointed by the Attorney General, within the Department of Justice, a Special Prosecutor to whom the Attorney General shall delegate the authorities and provide the staff and other resources described below.

The Special Prosecutor shall have full authority for investigating and prosecuting offenses against the United States arising out of the unauthorized entry into Democratic National Committee Headquarters at the Watergate, all offenses arising out of the 1972 Presidential Election for which the Special Prosecutor deems it necessary and appropriate to assume responsibility, allegations involving the President, members of the White House staff, or Presidential appointees, and any other matters which he consents to have assigned to him by the Attorney General.

In particular, the Special Prosecutor shall have full authority with respect to the above matters for:

Conducting proceedings before grand juries and any other investigations he deems necessary;

Reviewing all documentary evidence available from any source, as to which he shall have full access;

Determining whether or not to contest the assertion of "Executive Privilege" or any other testimonial privilege;

Determining whether or not application should be made to any Federal court for a grant of immunity to any witness, consistently with applicable statutory requirements, or for warrants, subpoenas, or other court orders;

Deciding whether or not to prosecute any individual, firm, corporation or group of individuals;

Initiating and conducting prosecutions, framing indictments, filing informations, and handling all aspects of any cases within his jurisdiction (whether initiated before or after his assumption of duties), including any appeals;

Coordinating and directing the activities of all Department of Justice personnel, including United States Attorneys;

Dealing with and appearing before Congressional committees having jurisdiction over any aspect of the above matters and determining what documents, information, and assistance shall be provided to such committees.

In exercising this authority, the Special Prosecutor will have the greatest degree of independence that is consistent with the At-

torney General's statutory accountability for all matters falling within the jurisdiction of the Department of Justice. The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions. The Special Prosecutor will determine whether and to what extent he will inform or consult with the Attorney General about the conduct of his duties and responsibilities. In accordance with assurances given by the President to the Attorney General that the President will not exercise his Constitutional powers to effect the discharge of the Special Prosecutor or to limit the independence that he is hereby given, (1) the Special Prosecutor will not be removed from his duties except for extraordinary improprieties on his part and without the President's first consulting the Majority and the Minority Leaders and Chairmen and ranking Minority Members of the Judiciary Committees of the Senate and House of Representatives and ascertaining that their consensus is in accord with his proposed action, and (2) the jurisdiction of the Special Prosecutor will not be limited without the President's first consulting with such Members of Congress and ascertaining that their consensus is in accord with his proposed action.

STAFF AND RESOURCE SUPPORT

1. *Selection of Staff.* The Special Prosecutor shall have full authority to organize, select, and hire his own staff of attorneys, investigators, and supporting personnel, on a full or part-time basis, in such numbers and with such qualifications as he may reasonably require. He may request the Assistant Attorneys General and other officers of the Department of Justice to assign such personnel and to provide such other assistance as he may reasonably require. All personnel in the Department of Justice, including United States Attorneys, shall cooperate to the fullest extent possible with the Special Prosecutor.

2. *Budget.* The Special Prosecutor will be provided with such funds and facilities to carry out his responsibilities as he may reasonably require. He shall have the right to submit budget requests for funds, positions, and other assistance, and such requests shall receive the highest priority.

3. *Designation and responsibility.* The personnel acting as the staff and assistants of the Special Prosecutor shall be known as the Watergate Special Prosecution Force and shall be responsible only to the Special Prosecutor.

Continued responsibilities of Assistant Attorney General, Criminal Division. Except for the specific investigative and prosecutorial duties assigned to the Special Prosecutor, the Assistant Attorney General in charge of the Criminal Division will continue to exercise all of the duties currently assigned to him.

Applicable departmental policies. Except as otherwise herein specified or as mutually agreed between the Special Prosecutor and

the Attorney General, the Watergate Special Prosecution Force will be subject to the administrative regulations and policies of the Department of Justice.

Public reports. The Special Prosecutor may from time to time make public such statements or reports as he deems appropriate and shall upon completion of his assignment submit a final report to the appropriate persons or entities of the Congress.

Duration of assignment. The Special Prosecutor will carry out these responsibilities, with the full support of the Department of Justice, until such time as, in his judgment, he has completed them or until a date mutually agreed upon between the Attorney General and himself.

[Order 551-73, 38 FR 30738, Nov. 7, 1973, as amended by Order 554-73, 38 FR 32805, Nov. 28, 1973]

Subpart G-2—Office of Professional Responsibility

SOURCE: Order No. 835-74, 40 FR 58643, Dec. 18, 1975, unless otherwise noted.

§ 0.39 Organization.

The Office of Professional Responsibility shall be headed by a Counsel, appointed by the Attorney General. The Counsel shall be subject to the general supervision and direction of the Attorney General or, whenever appropriate, of the Deputy Attorney General or the Solicitor General.

§ 0.39a Functions.

The Counsel on Professional Responsibility shall:

(a) Receive and review any information or allegation presented to him concerning conduct by a Department employee that may be in violation of law, of Department regulations or orders, or of applicable standards of conduct. However, this provision does not preempt the primary responsibility of internal inspection units of the Department to receive such information or allegations and to conduct investigations.

(b) Make such preliminary inquiry as may be necessary to determine whether the matter should be referred to another official within the Department.

(c) Refer any matter that appears to warrant examination in the following manner:

(1) If the matter appears to involve a violation of law, to the head of the investigative agency having jurisdiction to investigate such violations;

(2) If the matter appears not to involve a violation of law, to the head of the office, division, bureau, or board to

which the employee is assigned, or to the head of its internal inspection unit;

(3) If referral to the official indicated in paragraph (c) (1) or (2) of this section would be inappropriate, to the Attorney General and the Deputy Attorney General or, if referral to both the Attorney General and the Deputy Attorney General would also be inappropriate, to whichever of them would be proper or to the Solicitor General.

(d) Recommend to the Attorney General, the Deputy Attorney General, or the Solicitor General what further action should be undertaken with regard to any matter referred to such official under paragraph (c) (3) of this section, including the assignment of any task force or individual to undertake the action recommended and any special arrangements that appear warranted.

(e) Undertake any investigation of a matter referred under paragraph (c) (3) of this section that may be assigned by the Attorney General, the Deputy Attorney General, or the Solicitor General, or cooperate with any other organization, task force, or individual that may be assigned by such official to undertake the investigation.

(f) Submit to the Attorney General and the Deputy Attorney General or, if submission to both would be inappropriate, to whichever of them would be proper or to the Solicitor General:

(1) An immediate report concerning any matter referred under paragraph (c) (1) or (c) (2) of this section that should be brought to the attention of a higher official;

(2) An immediate report concerning the adequacy of any investigation of a matter referred under paragraph (c) of this section, if the Counsel believes that a significant question exists as to the adequacy of such investigation;

(3) A monthly report summarizing all matters referred under paragraph (c) of this section during the preceding month; and

(4) An annual report, or a semi-annual report if the Counsel determines this to be necessary, reviewing and evaluating the activities of internal inspection units or, where there are no such units, the discharge of comparable duties within the Department.

(g) Submit recommendations to the Attorney General and the Deputy Attorney General on the need for changes in policies or procedures that become evident during the course of his inquiries.

(h) Undertake any other responsibilities assigned by the Attorney General, including duties relating to the improvement of the performance of the Department.

§ 0.39b Relationship to other departmental units.

(a) Primary responsibility for assuring the maintenance of the highest standards of professional responsibility by Department employees shall continue to rest with the heads of the offices, divisions, bureaus, and boards of the Department.

(b) Primary responsibility for investigating an allegation of unprofessional conduct that is lodged against an employee of the Department normally shall continue to rest with the head of the office, division, bureau, or board to which the employee is assigned, or with the head of its internal inspection unit, or, if the conduct appears to constitute a violation of law, with the head of the investigative or prosecutive agency having jurisdiction over the subject matter involved.

(c) The heads of the offices, divisions, bureaus, and boards shall provide information and assistance requested by the Counsel in connection with reviews or investigations conducted by the Counsel or by any other person assigned to conduct reviews or investigations and shall keep the Counsel informed of major investigations that they are conducting.

(d) Employees of the Department may be assigned to the Office of Professional Responsibility on a case-by-case basis to conduct such inquiries as may be warranted. However, no investigative personnel shall be assigned except under the specific direction of the Attorney General or the Deputy Attorney General and, in normal course, with the agreement of the head of the unit to which the investigative personnel are regularly assigned. Personnel assigned to the Office shall work under the direction of the Counsel.

§ 0.39c Committee on Professional Responsibility.

The Committee on Professional Responsibility shall consist of Department officials designated by the Attorney General and shall serve as an advisory body to the Counsel.

Subpart H—Antitrust Division

Source: Order No. 615-75, 40 FR 36118, Aug. 19, 1975, unless otherwise noted.

§ 0.40 General functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the following-described matters are assigned to and shall be conducted, handled, or supervised by, the Assistant Attorney General in charge of the Antitrust Division:

(a) General enforcement, by criminal and civil proceedings, of the federal antitrust laws and other laws relating to the protection of competition and the prohibition of restraints of trade and monopolization, including conduct of surveys of possible violations of antitrust laws, conduct of grand jury proceedings, designation of attorneys to present evidence to grand juries, issuance and enforcement of civil investigative demands, civil actions to obtain orders and injunctions, civil actions to recover forfeitures or damages for injuries sustained by the United States as a result of antitrust law violations, proceedings to enforce compliance with final judgments in antitrust suits, and negotiation of consent judgments in civil actions; criminal actions to impose penalties including actions for the imposition of penalties for conspiring to defraud the Federal Government by violation of the antitrust laws; participation as *amicus curiae* in private antitrust litigation; and prosecution or defense of appeals in antitrust proceedings.

(b) Intervention or participation before administrative agencies (including wholly or partly under regulatory statutes in administrative proceedings which require consideration of the antitrust laws or competitive policies, including such agencies as the Civil Aeronautics Board, Interstate Commerce Commission, Federal Communications Commission, Federal Maritime Commission, Federal Power Commission, Federal Reserve Board, Federal Trade Commission, Nuclear Regulatory Commission, and Securities and Exchange Commission, except proceedings referred to any agency by a federal court as an incident to litigation being conducted under the supervision of another Division in this Department.

(c) Developing procedures to implement, receiving information, maintaining records, and preparing reports by the Attorney General to the President as required by Executive Order No. 10936 of April 25, 1961 relating to identical bids

submitted to Federal and State departments and agencies.

(d) As the delegate of the Attorney General furnishing reports and summaries thereof, respecting the competitive factors involved in proposed mergers or consolidations of insured banks required by subsection (c) of Section 18 of the Federal Deposit Insurance Act (64 Stat. 891) as amended (12 U.S.C. 1828 (c)), furnishing reports respecting the competitive factors involved in proposed acquisitions under the Savings and Loan Holding Company Act (12 U.S.C. 1730a (e)), furnishing the advice regarding the proposed disposition of surplus Government property required by Section 207 of the Federal Property and Administrative Services Act (63 Stat. 391) as amended (40 U.S.C. 488), and furnishing advice regarding nuclear licenses under sections 105(c) of the Atomic Energy Act (42 U.S.C. 2135).

(e) Preparing the approval or disapproval of the Attorney General whenever such action is required by statute from the standpoint of the antitrust laws as a prerequisite to the development of Defense Production Act voluntary programs or agreements and small business production or raw material pools, the national defense program and atomic energy matters.

(f) Assembling information and preparing reports required or requested by the Congress or the Attorney General as to the effect upon the maintenance and preservation of competition under the free enterprise system of various Federal laws or programs, including the Defense Production Act, the Small Business Act, and the joint resolution of July 28, 1955, giving consent to the Interstate Compact to Conserve Oil and Gas.

(g) Preparing for transmittal to the President, Congress, or other departments or agencies views or advice as to the propriety or effect of any action, program or practice upon the maintenance and preservation or competition under the free enterprise system.

(h) Representing the Attorney General on interdepartmental or interagency committees concerned with the maintenance and preservation of competition generally and in various sections of the economy and the operation of the free enterprise system and when authorized participating in conferences and committees with foreign governments and treaty organizations concerned with com-

petition and restrictive business practices in international trade.

(i) Collecting fines, penalties, judgments, and forfeitures arising in antitrust cases.

§ 0.41 Special functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the following-described matters are assigned to and shall be conducted, handled, or supervised by, the Assistant Attorney General in charge of the Antitrust Division:

(a) Institution of proceedings to impose penalties for violations of section 202(a) of the Communications Act of 1934 (48 Stat. 1070), as amended (47 U.S.C. 202(a)), which prohibits common carriers by wire or radio from unjustly or unreasonably discriminating among persons, classes of persons, or localities.

(b) Upon appropriate certification by the Federal Trade Commission the institution of civil or criminal proceedings to impose penalties for violations of the unfair or deceptive practices provisions of the Federal Trade Commission Act.

(c) Representing the United States in suits pending as of February 28, 1975, before three-judge district courts under section 2321-2325 of title 28 of the United States Code, to enforce, suspend, enjoin, annul, or set aside, in whole or in part, any order of the Interstate Commerce Commission. (Pub. L. 93-584, § 10, 88 Stat. 1917)

(d) Representing the United States in proceedings before courts of appeals to review orders of the Interstate Commerce Commission, the Federal Communications Commission, the Federal Maritime Commission and the Nuclear Regulatory Commission (28 U.S.C. 2341-2350).

(e) Representing the Civil Aeronautics Board, and the Secretary of the Treasury or his delegates under the Federal Alcohol Administration Act, in courts of appeals reviewing their respective administrative orders.

(f) Defending the Secretary of the Treasury or his delegates under the Federal Alcohol Administration Act, and the agencies named in paragraph (c), (d) and (e) of this section or their officers against the injunctive actions brought in Federal courts when the matter which is the subject of the actions will ultimately be the subject of review under

paragraph (c), (d), (e) or (g) of this section, or of an enforcement action under paragraph (b) of this section.

(g) Seeking review of or defending judgments rendered in proceedings under paragraphs (a) through (f) of this section and judgments rendered upon review of Federal Trade Commission orders by courts of appeals.

(h) All litigation arising under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.), the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.), the Child Protection and Toy Safety Act of 1969 (15 U.S.C. 1261, 1261 note, 1262, and 1274), the Automobile Information Disclosure Act (15 U.S.C. 1231 et seq.), the odometer requirements section of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1981 et seq.), the Federal Cigarette Labeling and Advertising Act as amended by the Public Health Cigarette Smoking Act (15 U.S.C. 1331 et seq.), the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.), the Federal Cautic Poison Act (15 U.S.C. 401 note), sections 112, 619 and 620 of the Consumer Credit Protection Act (15 U.S.C. 1611, 1681q and 1681r), the Wool Products Labeling Act of 1939 (15 U.S.C. 68 et seq.), the Fur Products Labeling Act (15 U.S.C. 69 et seq.), the Textile Fiber Products Identification Act (15 U.S.C. 70 et seq.), and the Consumer Product Safety Act (Public Law 92-573), and any statute the functions of which are transferred to the Consumer Product Safety Commission by virtue of section 30 of that Act, except as the Commission may direct its attorneys to handle litigation arising under section 12 of the Act. This delegation includes the authority of the Attorney General to concur, in specific proceedings, that litigation other than that arising under section 12 of the Act may be handled directly by the Commission, pursuant to section 27(b) (7).

§ 0.42 [Reserved]

§ 0.43 Designation of attorneys to present evidence to grand juries.

The Assistant Attorney General in charge of the Antitrust Division is authorized to designate attorneys to present evidence to grand juries in all cases assigned to, conducted, handled, or supervised by the Assistant Attorney General in charge of the Antitrust Division.

Subpart I—Civil Division

CROSS REFERENCE: For regulations pertaining to the Civil Division, see Part 15 of this chapter.

§ 0.45 General functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General in charge of the Civil Division:

(a) **Admiralty and Shipping Cases**—civil and admiralty litigation in any court by or against the United States, its officers and agents, which involves ships or shipping (except suits to enjoin final orders of the Federal Maritime Commission under the Shipping Act of 1916 and under the Intercoastal Shipping Act assigned to the Antitrust Division by Subpart H of this part), defense of regulatory orders of the Maritime Administration affecting navigable waters or shipping thereon (except as assigned to the Land and Natural Resources Division by § 0.65(a)), workmen's compensation, and litigation and waiver of claims under reciprocal-aid maritime agreements with foreign governments.

(b) **Court of Claims Cases**—defense of all suits against the United States in the Court of Claims, except cases assigned to the Land and Natural Resources Division and to the Tax Division by Subparts M and N of this part, respectively.

(c) **Customs Cases**—all litigation incident to the reappraisal and classification of imported goods, including the defense of all suits in the Customs Court and presentation of customs appeals in the Court of Customs and Patent Appeals;

(d) **Fraud Cases**—civil claims arising from fraud on the Government (other than antitrust, land, and tax frauds), including alleged claims under the False Claims Act, the Surplus Property Act, the Anti-Kickback Act, the Contract Settlement Act, and common law fraud.

(e) **Gifts and Bequests**—handling matters arising out of devises and bequests and inter vivos gifts to the United States, except determinations as to the validity of title to any lands involved and litigation pertaining to such determinations.

(f) Patent and Allied Cases and Other Patent Matters—patent, copyright, and trademark litigation before the U.S. courts and the Patent Office, including patent and copyright infringement suits in the Court of Claims (28 U.S.C. 1498), suits for compensation under the Patent Secrecy Act where the invention was ordered to be kept secret in the interest of national defense (35 U.S.C. 183), suits for compensation for unauthorized practice of a patented invention in the furnishing of assistance under the Foreign Assistance Act (22 U.S.C. 2356), suits for compensation for the unauthorized communication of restricted data by the Atomic Energy Commission to other nations (42 U.S.C. 2223), interference proceedings (35 U.S.C. 135, 141, 142, 146), defense of the Register of Copyrights in his administrative acts, suits for specific performance to acquire title to patents, and civil patent-fraud cases.

(g) Tort Cases—defense of tort suits against the United States arising under the Federal Tort Claims Act and special acts of Congress; similar litigation against cost-plus Government contractors and Federal employees whose official conduct is involved (except actions against Government contractors and Federal employees which are assigned to the Land and Natural Resources Division by § 0.65(a); prosecution of tort claims for damage to Government property, and actions for the recovery of medical expenses under Public Law 87-693 and Part 43 of this title.

(h) General Civil Matters—litigation by and against the United States, its agencies, and officers in all courts and administrative tribunals to enforce Government rights, functions, and monetary claims (except defense of injunctive proceedings assigned to the Antitrust Division by Subpart H of this part and proceedings involving judgments, fines, penalties, and forfeitures assigned to other divisions by § 0.171), and to defend challenged actions of Government agencies and officers, not otherwise assigned, including, but not limited to, civil penalties and forfeitures, actions in the Tax Court under the Renegotiation Act, claims against private persons or organizations for which the Government is, or may ultimately be, liable, except as provided in § 0.70(c)(2), defense of actions arising under section 2410 of title 28 of the United States Code whenever the United States is named as a party as the result of the

existence of a Federal lien against property, defense of actions for the recovery of U.S. Government Life Insurance and National Service Life Insurance (38 U.S.C. 784), enforcement of reemployment rights in private industry pursuant to the Military Selective Service Act of 1967 (50 U.S.C., App. 459); reparations suits brought by the United States as a shipper under the Interstate Commerce Act; civil actions by the United States for penalties for violations of car service orders (49 U.S.C. 1(17a)); actions restraining violations of Part II of the Interstate Commerce Act (49 U.S.C. 322 (b) and 322(h)); civil actions under Part I of the Interstate Commerce Act (49 U.S.C. 6(10) and 16(9)); injunctions against violations of Interstate Commerce Commission orders (49 U.S.C. 16(12)); mandamus to compel the furnishing of information to the Interstate Commerce Commission (49 U.S.C. 19a(1) and 20(9)); recovery of rebates under the Elkins Act (49 U.S.C. 41(3)); compelling the appearance of witnesses before the Interstate Commerce Commission and enforcement of subpoenas and punishment for contempt (49 U.S.C. 12(3)); suits to enforce final orders of the Secretary of Agriculture under the Perishable Agricultural Commodities Act (7 U.S.C. 499g), and the Packers and Stockyards Act (7 U.S.C. 216); suits to set aside orders of State regulatory agencies (49 U.S.C. 13(4)); and civil matters, except those required to be handled by the Board of Parole, under section 504(a) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 504(a)). [Order No. 423-89, 34 FR 20388, Dec. 31, 1969, as amended by Order 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 543-73, 38 FR 29584, Oct. 26, 1973]

§ 0.46 Certain civil litigation and foreign criminal proceedings.

The Assistant Attorney General in charge of the Civil Division shall, in addition to litigation coming within the scope of § 0.45, direct all other civil litigation including claims by or against the United States, its agencies or officers, in domestic or foreign courts, special proceedings, and similar civil matters not otherwise assigned, and shall employ foreign counsel to represent before foreign criminal courts, commissions or administrative agencies officials of the Department of Justice and all other law enforcement officers of the United States who are charged with violations of

foreign law as a result of acts which they performed in the course and scope of their Government service.

[Order 441-70, 35 F.R. 18318, Oct. 17, 1970]

§ 0.47 Alien Property matters.

The Office of Alien Property shall be a part of the Civil Division:

(a) The following described matters are assigned to, and shall be conducted, handled, or supervised by the Assistant Attorney General in charge of the Civil Division, who shall also be the Director of the Office of Alien Property:

(1) Exercising or performing all the authority, rights, privileges, powers, duties, and functions delegated to or vested in the Attorney General under the Trading with the Enemy Act, as amended, Title II of the International Claims Settlement Act of 1949, as amended, the act of September 28, 1950, 64 Stat. 1079 (50 U.S.C. App. 40), the Philippine Property Act of 1946, as amended, and the Executive orders relating to such acts, including, but not limited to, vesting, supervising, controlling, administering, liquidating, selling, paying debt claims out of, returning, and settling of inter-custodial disputes relating to, property subject to one or more of such acts.

(2) Conducting and directing all civil litigation with respect to the Trading with the Enemy Act, Title II of the International Claims Settlement Act, the Foreign Funds Control Program and the Foreign Assets Control Program.

(3) Designating within the Office of Alien Property a certifying officer, and an alternate, to certify copies of documents issued by the Director, or his designee, which are required to be filed with the Office of the Federal Register.

(b) The Director of the Office of Alien Property shall act for and on behalf of the Attorney General.

(c) All the authority, rights, privileges, powers, duties, and functions of the Director of the Office of Alien Property may be exercised or performed by any agencies, instrumentalities, agents, delegates, or other personnel designated by him.

(d) Existing delegations by the Assistant Attorney General, Director, Office of Alien Property, or the Director, Office of Alien Property, shall continue in force and effect until modified or revoked.

(e) The Assistant Attorney General in charge of the Civil Division is authorized to administer and give effect to the provisions of the agreement entitled

"Agreement Between the United States of America and the Republic of Austria Regarding the Return of Austrian Property, Rights and Interests," which was concluded on January 30, 1959, and was ratified by the Senate of the United States on February 25, 1964.

§ 0.48 Service in customs litigation.

The Chief, Customs Section, at 26 Federal Plaza, New York, N.Y. 10007, in the office of the Assistant Attorney General in charge of the Civil Division, is designated to accept service of notices of appeals to the Court of Customs and Patent Appeals and all pleadings and other papers filed in the Customs Court, when the United States is an adverse party in any customs litigation (28 U.S.C. 2601 (b) and 2632(e), as amended by Public Law 91-271, June 2, 1970, 84 Stat. 275, 279).

[Order No. 437-70, 35 F.R. 11391, July 16, 1970]

§ 0.49 International Judicial Assistance.

The Assistant Attorney General in charge of the Civil Division shall direct and supervise the following functions:

(a) The functions of the "Central Authority" under the Convention between the United States and other Governments on the Taking of Evidence Abroad in Civil and Commercial Matters, TIAS 7444, which entered into force on October 7, 1972.

(b) The functions of the "Central Authority" under the Convention between the United States and other Governments on the Service Abroad of Judicial and Extrajudicial Documents, TIAS 6638, which entered into force on February 10, 1969.

(c) To receive letters of requests issued by foreign and international judicial authorities which are referred to the Department of Justice through diplomatic or other governmental channels, and to transmit them to the appropriate courts or officers in the United States for execution.

(d) To receive and transmit through proper channels letters of request addressed by courts in the United States to foreign tribunals in connection with litigation to which the United States is a party.

[Order 555-73, 38 FR 32805, Nov. 28, 1973]

Subpart J—Civil Rights Division

§ 0.50 General functions.

Subject to the general supervision of the Attorney General and under the

direction of the Deputy Attorney General, the following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General in charge of the Civil Rights Division:

(a) Enforcement of all Federal statutes affecting civil rights, including those pertaining to elections and voting, public accommodations, public facilities, school desegregation, employment, housing, and the constitutional and civil rights of Indians arising under 25 U.S.C. 1301 et seq. and authorization of litigation in such enforcement, including criminal prosecutions and civil actions and proceedings on behalf of the Government, and designation of attorneys to present evidence to grand juries; and appellate proceedings in all such cases. Notwithstanding the provisions of the foregoing sentence, the responsibility for the enforcement of the following-described provisions of the United States Code is assigned to the Assistant Attorney General in charge of the Criminal Division—

(1) Sections 591 through 593 and sections 595 through 612 of title 18, United States Code, relating to elections and political activities;

(2) Sections 241, 242, and 594 of title 18, and sections 1973i and 1973j of title 42, United States Code, insofar as they relate to voting and election matters not involving discrimination or intimidation on grounds of race or color, and section 245(b) (1) of title 18, United States Code, insofar as it relates to matters not involving discrimination or intimidation on grounds of race, color, religion, or national origin;

(3) Section 245(b) (3) of title 18, United States Code, pertaining to forcible interference with persons engaged in business during a riot or civil disorder; and

(4) Sections 241 through 256 of title 2, United States Code (Federal Corrupt Practices Act).

(b) Requesting and reviewing investigations arising from reports or complaints of public officials or private citizens with respect to matters affecting civil rights.

(c) Conferring with individuals and groups who call upon the Department in connection with civil rights matters, advising such individuals and groups thereon, and initiating action appropriate thereto.

(d) Coordination within the Department of Justice of all matters affecting civil rights.

(e) Consultation with and assistance to other Federal departments and agencies and State and local agencies on matters affecting civil rights.

(f) Research on civil rights matters, and the making of recommendations to the Attorney General as to proposed policies and legislation relating thereto.

(g) Representation of Federal officials in private litigation arising under 42 U.S.C. 2000d or under other statutes pertaining to civil rights.

[Order 423-69, 34 F.R. 20388, Dec. 31, 1969, as amended by Order 484-72, 37 F.R. 11317, June 7, 1972; Order 540-73, 38 F.R. 26910, Sept. 27, 1973; Order No. 543-73, 38 F.R. 29584, Oct. 26, 1973]

§ 0.51 Assistance to other Federal agencies.

(a) Upon request, the Assistant Attorney General in charge of the Civil Rights Division may assist the Commission on Civil Rights or other similar Federal bodies in carrying out research and formulating recommendations.

(b) A Special Assistant to the Attorney General in the Civil Rights Division, designated by the Attorney General, and responsible to him and to the Assistant Attorney General in charge of the Civil Rights Division, shall assist the Attorney General in carrying out the responsibility assigned to him under Executive Order No. 11247 of September 24, 1965, to coordinate the programs and activities of Federal departments and agencies with respect to the enforcement of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

§ 0.52 Certifications under 18 U.S.C. 3503.

The Assistant Attorney General in charge of the Civil Rights Division and his Deputy Assistant Attorney Generals are each authorized to exercise or perform the functions or duties conferred upon the Attorney General by section 3503 of title 18, United States Code, to certify that the legal proceeding, in which a motion to take testimony by deposition is made, is against a person who is believed to have participated in an organized criminal activity, where the subject matter of the case or proceeding in which the motion is sought is within the cognizance of the Civil Rights Division pursuant to § 0.50.

[Order No. 452-71, 36 F.R. 2601, Feb. 9, 1971]

Appendix To Subpart J
CIVIL RIGHTS DIVISION
 [Memo 75-2]

DELEGATION OF AUTHORITY REGARDING DENIALS OF FREEDOM OF INFORMATION ACT REQUESTS

1. The Deputy Assistant Attorney General, Civil Rights Division, who is authorized to assume the responsibilities of the Assistant Attorney General in his absence (the First Deputy Assistant Attorney General) will assume the duties and responsibilities previously assigned to the Assistant Attorney General by 28 CFR 16.5 (b) and (c) (as amended March 1, 1975), and defined in those sections, for denying requests and obtaining extensions of time under the Freedom of Information Act, 5 U.S.C. 552 et seq.

2. In the absence or unavailability of the First Deputy Assistant Attorney General, the Chief of the Appellate Section or, in his absence or unavailability, the Deputy Chief of the Appellate Section, is authorized to assume the duties and responsibilities described in paragraph 1.

3. The First Deputy Assistant Attorney General, Chief of the Appellate Section, or Deputy Chief of the Appellate Section, who signs a denial of a request for records made under the Freedom of Information Act, shall be the "person responsible for the denial" within the meaning of 5 U.S.C. 552(a).

[40 FR 44326, Sept. 26, 1975]

Subpart K—Criminal Division

\$ 0.55 General functions.

Subject to the general supervision of the Attorney General and under the direction of the Deputy Attorney General, the following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General in charge of the Criminal Division:

(a) Prosecutions for Federal crimes not otherwise specifically assigned.

(b) Cases involving criminal frauds against the United States except cases assigned to the Antitrust Division by § 0.40(a) involving conspiracy to defraud the Federal Government by violation of the antitrust laws, tax fraud cases assigned to the Tax Division by Subpart N of this part and false statement or perjury cases assigned to the Internal Security Division by § 0.61(a).

(c) All criminal and civil litigation under the Controlled Substances Act, 84 Stat. 1242, and the Controlled Substances Import and Export Act, 84 Stat. 1285 (titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970).

(d) Libels or civil penalty actions (including petitions for remission or mitigation of civil penalties and forfeitures, offers in compromise and related proceedings) under the Federal Aviation Act, Contraband Transportation Act, customs laws, Export Control Act, Federal Alcohol Administration Act, Federal Insecticide, Fungicide, and Rodenticide Act, Federal Seed Act, Gold Reserve Act, Hours of Service Act, laws relating to liquor, narcotics and dangerous drugs, other controlled substances, gambling, and firearms, Locomotive Inspection Act, Prison-Made Goods Act, Safety Appliance Act, Standard Container Act, Sugar Act of 1948, and Twenty-Eight Hour Law.

(e) Subject to the provisions of Subpart Y of this part, consideration, acceptance, or rejection of offers in compromise of criminal and tax liability under the laws relating to liquor, narcotics and dangerous drugs, gambling, and firearms, in cases in which the criminal liability remains unresolved.

(f) All litigation arising under the immigration and nationality laws (except Japanese renunciation proceedings, which are assigned to the Civil Division, and suits under the Tucker Act for the recovery of money covered into the Treasury on forfeited immigration bonds), and the passport and visa laws (except injunction actions against the Secretary of State to require the issuance of passports, which are within the jurisdiction of the Civil Division under § 0.45(h)).

(g) Coordination of enforcement activities directed against organized crime and racketeering.

(h) Enforcement of the Act of January 2, 1951, 64 Stat. 1134, as amended by the Gambling Devices Act of 1962, 76 Stat. 1075, 15 U.S.C. 1171 et seq., including registration thereunder. (See also 28 CFR 3.2.)

(i) Habeas corpus proceedings of all types, except that any such proceeding may be conducted, handled, or supervised by another division by agreement between the head of the division concerned and the Assistant Attorney General in charge of the Criminal Division.

(j) International extradition proceedings.

(k) Relation of military to civil authority with respect to criminal matters affecting both.

(l) All criminal matters arising under the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519).

(m) Enforcement of the following-described provisions of the United States Code—

(1) Sections 591 through 593 and sections 595 through 612 of title 18, United States Code, relating to elections and political activities;

(2) Sections 241, 242, and 594 of title 18, and sections 19731 and 1973j of title 42, United States Code, insofar as they relate to voting and election matters not involving discrimination or intimidation on grounds of race or color, and section 245(b) (1) of title 18, United States Code, insofar as it relates to matters not involving discrimination or intimidation on grounds of race, color, religion, or national origin;

(3) Section 245(b) (3) of title 18, United States Code, pertaining to forcible interference with persons engaged in business during a riot or civil disorder; and

(4) Sections 241 through 256 of title 2, United States Code (Federal Corrupt Practices Act). (See § 0.50(a).)

(n) Civil actions arising under 39 U.S.C. 3010, 3011 (Postal Reorganization Act).

(o) Resolving questions that arise as to Federal prisoners held in custody by Federal officers or in Federal prisons, commitments of mentally defective defendants and juvenile delinquents, validity and construction of sentences, probation, and parole.

(p) Supervision of matters arising under the Escape and Rescue Act (18 U.S.C. 751, 752), the Fugitive Felon Act (18 U.S.C. 1072, 1073), and the Obstruction of Justice Statute (18 U.S.C. 1503).

(q) Supervision of matters arising under the Ball Reform Act of 1966 (28 U.S.C. 3041, 3141-3143, 3146-3152, 3568).

(r) Supervision of matters arising under the Narcotic Addict Rehabilitation Act of 1966 (18 U.S.C. 4251-4255; 28 U.S.C. 2901-2906; 42 U.S.C. 3411-3426, 3441, 3442).

(s) All legal functions performed by the Office for Drug Abuse Law Enforcement prior to its abolishment.

[Order No. 423-69, 34 F.R. 20388, Dec. 31, 1970, as amended by Order No. 446-70, 35 F.R. 19666, Dec. 29, 1970; Order No. 458-71, 36 F.R. 10862, June 4, 1971; Order 481-72, 37 F.R. 9214, May 6, 1972; Order 511-73, 38 F.R. 8152, March 29, 1973; Order No. 520-73, 38 F.R. 18380, July 10, 1973; Order No. 543-73, 38 F.R. 29585, Oct. 26, 1973]

§ 0.56 Exclusive or concurrent jurisdiction.

The Assistant Attorney General in charge of the Criminal Division is authorized to determine administratively whether the Federal Government has exclusive or concurrent jurisdiction over offenses committed upon lands acquired by the United States, and to consider problems arising therefrom.

§ 0.57 Criminal prosecutions against juveniles.

The Assistant Attorney General in charge of the Criminal Division and his Deputy Assistant Attorneys General are each authorized to exercise the power and authority vested in the Attorney General by sections 5032 and 5036 of title 18, United States Code, relating to criminal proceedings against juveniles. The Assistant Attorney General in charge of the Criminal Division is authorized to redelegate any function delegated to him under this section to United States Attorneys.

[Order No. 579-74, 39 F.R. 37771, Oct. 24, 1974]

§ 0.58 Delegation respecting payment of benefits for disability or death of law enforcement officers not employed by the United States.

The Assistant Attorney General in charge of the Criminal Division is authorized to exercise or perform any of the functions or duties conferred upon the Attorney General by the Act to Compensate Law Enforcement Officers not Employed by the United States Killed or Injured While Apprehending Persons Suspected of Committing Federal Crimes (5 U.S.C. 8191, 8192, 8193).

§ 0.59 Certain certifications under 18 U.S.C. 3331 and 3503.

(a) The Assistant Attorney General in charge of the Criminal Division is authorized to exercise or perform the functions or duties conferred upon the Attorney General by section 3331 of title 18, United States Code, to certify that in his judgment a special grand jury is necessary in any judicial district of the United States because of criminal activity within such district.

(b) The Assistant Attorney General in charge of the Criminal Division and his Deputy Assistant Attorney Generals are each authorized to exercise or perform the functions or duties conferred upon the Attorney General by section 3503 of title 18, United States Code, to certify that the legal proceeding, in which a motion to take testimony by deposition is made, is against a person who is believed to have participated in an organized criminal activity, where the subject matter of the case or proceeding in which the motion is sought is within the cognizance of the Criminal Division pursuant to § 0.55, or is not within the cognizance of the Civil Rights Division. [Order No. 452-71, 38 FR 2801, Feb. 9, 1971; Order 511-73, 38 FR 8152, March 29, 1973]

§ 0.60 Designation of attorneys to present evidence to grand juries.

The Assistant Attorney General in charge of the Criminal Division is authorized to designate attorneys to present evidence to grand juries in all cases assigned to, conducted, handled, or supervised by the Assistant Attorney General in charge of the Criminal Division.

[Order 487-72, 37 FR 13695, July 13, 1972]

CROSS REFERENCE: For regulations pertaining to the Internal Security Section, see Parts 5, 10, and 12 of this chapter.

§ 0.61 Functions relating to internal security.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General in charge of the Criminal Division:

(a) Enforcement of all criminal laws relating to subversive activities and kindred offenses directed against the internal security of the United States, including the laws relating to treason, sabotage, espionage, and sedition; enforcement of the Foreign Assets Control Regulations issued under the Trading With the Enemy Act (31 CFR 500.101 et seq.); criminal prosecutions under the Atomic Energy Act, the Smith Act, the neutrality laws, the Munitions Control Act, section 1203 of the Federal Aviation Act of 1958 (49 U.S.C. 1523), relating to offenses involving the security control of air traffic, and section 799 of title 18 of the United States Code; and

criminal prosecutions for offenses, such as perjury and false statements, relating to subversive activities or involving individuals with a subversive background.

(b) Administration and enforcement of the Foreign Agents Registration Act of 1938, as amended; the act of August 1, 1956, 70 Stat. 899 (50 U.S.C. 851-857), including the determination in writing that the registration of any person coming within the purview of the act would not be in the interest of national security; and the Voorhis Act.

(c) Administration and enforcement of the Internal Security Act of 1950, as amended, including the presentation of cases before the Subversive Activities Control Board regarding petitions against Communist organizations and membership in Communist-action organizations under the provisions of the Subversive Activities Control Act of 1950, as amended.

(d) All civil cases relating to Internal Security matters.

(e) [Reserved]

(f) [Reserved]

(g) Interpretation of Executive Order No. 10450 of April 27, 1953, as amended, and advising other departments and agencies in connection with the administration of the Federal employees security program, including the designation of organizations as required by the order; the interpretation of Executive Order No. 10501 of November 5, 1953, as amended, and of regulations issued thereunder in accordance with section 11 of that order; and the interpretation of Executive Order No. 10865 of February 20, 1960.

(h) Labels and civil penalty actions (including petitions for remission or mitigation of civil penalties and forfeitures, offers in compromise and related proceedings) arising out of violations of the Trading with the Enemy Act, the neutrality statutes, and the Mutual Security Act of 1954, as amended.

(i) Administration and enforcement of the act of May 20, 1964, 78 Stat. 194 (16 U.S.C. 1081-1085) and the act of October 14, 1966, 80 Stat. 908 (16 U.S.C. 1091-1094), relating to the regulation of foreign fishing vessels.

(j) Enforcement and administration of the provisions of section 613 of title 18 of the United States Code, relating to contributions by agents of foreign principals.

(k) Enforcement and administration of the provisions of section 219 of title 18 of the United States Code, relating to

officers and employees of the United States acting as agents of foreign principals.

(l) Criminal matters arising under the Military Selective Service Act of 1967.

(m) [Reserved]

(n) All criminal cases involving Federal law violations perpetrated by terrorist or revolutionary groups or members of such groups, including, but not limited to, the enforcement of Title XI of the Organized Crime Control Act of 1970, 18 U.S.C. 841-848, and 18 U.S.C. 1361, when the offense is committed by members of terrorist or revolutionary groups.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 451-71, 36 FR 1251, Jan. 27, 1971; Order No. 492-72, 37 FR 16873, Aug. 22, 1972; Order 511-73, 38 FR 8152, Mar. 29, 1973; Order No. 543-73, 38 FR 29585, Oct. 26, 1973]

§ 0.62 Representative capacities.

The Assistant Attorney General in charge of the Criminal Division shall:

(a) Be a member and serve as Chairman of the committee which represents the Department of Justice in the development and implementation of plans for exchanging visits between the Iron Curtain countries and the United States and have authority to designate an alternate to serve on such committee.

(b) Provide Department of Justice representation on the Interdepartmental Committee on Internal Security.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 511-73, 38 FR 8152, Mar. 29, 1973]

§ 0.63 Delegation respecting admission of certain aliens.

The Assistant Attorney General in charge of the Criminal Division is authorized to exercise the power and authority vested in the Attorney General by section 7 c. the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403h), with respect to entry of certain aliens into the United States for permanent residence.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 511-73, 38 FR 8152, Mar. 29, 1973]

§ 0.64 Certifications under 18 U.S.C. 3503.

The Assistant Attorney General in charge of the Criminal Division and his Deputy Assistant Attorney Generals are each authorized to exercise or perform the functions or duties conferred upon

the Attorney General by section 3503 of title 18, United States Code, to certify that the legal proceeding, in which a motion to take testimony by deposition is made, is against a person who is believed to have participated in an organized criminal activity, where the subject matter of the case or proceeding in which the motion is sought is within the cognizance of the Criminal Division pursuant to § 0.61.

[Order No. 452-71, 36 FR 2601, Feb. 9, 1971, as amended by Order 511-73, 38 FR 8152, Mar. 29, 1973]

Appendix To Subpart K

CRIMINAL DIVISION

[Directive 8-75]

DELEGATION OF AUTHORITY RESPECTING DENIALS OF INFORMATION REQUESTS

The Assistant Attorney General in charge of the Criminal Division, hereby delegates pursuant to 28 CFR 16.5(b) (as amended March 1, 1975), his authority under that section to deny a request for information under 5 U.S.C. 552(a) to the Deputy Assistant Attorneys General of the Criminal Division. The Deputy Assistant Attorney General who signs the denial shall be the "person responsible for the denial," within the meaning of 5 U.S.C. 552(a).

[40 FR 36564, Aug. 21, 1975]

Subpart L—[Reserved]

Subpart M—Land and Natural Resources Division

§ 0.65 General functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General in charge of the Land and Natural Resources Division:

(a) Civil suits and matters in Federal and State courts (and administrative tribunals), by or against the United States, its agencies, officers, or contractors, or in which the United States has an interest, whether for specific or monetary relief, and also nonlitigation matters, relating to

(1) The public domain lands and the outer continental shelf of the United States,

(2) Other lands and interests in real property owned, leased, or otherwise claimed or controlled, or allegedly im-

paired or taken, by the United States, its agencies, officers, or contractors, including the acquisition of such lands by condemnation proceedings or otherwise,

(3) The water and air resources controlled or used by the United States, its agencies, officers, or contractors, without regard to whether the same are in or related to the lands enumerated in subparagraphs (1) and (2) of this paragraph, and

(4) The other natural resources in or related to such lands, water, and air,

except that the following matters which would otherwise be included in such assignment are excluded therefrom:

(i) Suits and matters relating to the use or obstruction of navigable waters or the navigable capacity of such waters by ships or shipping thereon, the same being specifically assigned to the Civil Division;

(ii) Suits and matters involving tort claims against the United States under the Federal Tort Claims Act and special acts of Congress, the same being specifically assigned to the Civil Division;

(iii) Suits and matters involving the foreclosure of mortgages and other liens held by the United States, the same being specifically assigned to the Civil and Tax Divisions according to the nature of the lien involved;

(iv) Suits arising under 28 U.S.C. 2410 to quiet title or to foreclose a mortgage or other lien, the same being specifically assigned to the Civil and Tax Divisions according to the nature of the lien held by the United States, and all other actions arising under 28 U.S.C. 2410 involving federal tax liens held by the United States, which are specifically assigned to the Tax Division;

(v) Matters involving the immunity of the Federal Government from State and local taxation specifically delegated to the Tax Division by § 0.71.

(b) Representation of the interests of the United States in all civil litigation in Federal and State courts, and before the Indian Claims Commission, pertaining to Indians, Indian tribes, and Indian affairs, and matters relating to restricted Indian property, real or personal, and the treaty rights of restricted Indians (except matters involving the constitutional and civil rights of Indians assigned to the Civil Rights Division by Subpart J of this part).

(c) Rendering opinions as to the validity of title to all lands acquired by

the United States, except as otherwise specified by statute.

(d) Criminal suits and matters involving air and water pollution.

(e) Criminal suits and matters involving obstructions to navigation, and illegal dredging or filling (33 U.S.C. 403).

[Order No. 423-69, 34 F.R. 20388, Dec. 31, 1969, as amended by Order No. 457-71, 36 F.R. 10862, June 4, 1971; Order 485-72, 37 F.R. 11724, June 13, 1972; Order 540-73, 38 F.R. 26910, Sept. 27, 1973; Order No. 543-73, 38 F.R. 29585, Oct. 26, 1973]

§ 0.66 Delegation respecting title opinions.

(a) The Assistant Attorney General in charge of the Land and Natural Resources Division or such members of his staff as he may specifically designate in writing, are authorized to sign the name of the Attorney General to opinions on the validity of titles to property acquired by or on behalf of the United States, except those which, in the opinion of the Assistant Attorney General involve questions of policy or for any other reason require the personal attention of the Attorney General.

(b) Pursuant to the provisions of section 1 of Public Law 91-393, approved September 1, 1970, 84 Stat. 835, the Assistant Attorney General in charge of the Land and Natural Resources Division is authorized (1) to exercise the Attorney General's power of delegating to other departments and agencies his (the Attorney General's) responsibility for approving the title to lands acquired by them, (2) with respect to delegations so made to other departments and agencies, to exercise the Attorney General's function of general supervision regarding the carrying out by such departments and agencies of the responsibility so entrusted to them, and (3) to promulgate regulations and any appropriate amendments thereto governing the approval of land titles by such departments and agencies. [Order 440-70, 35 F.R. 16084, Oct. 14, 1970]

§ 0.67 Delegation respecting conveyances for public-airport purposes.

The Assistant Attorney General in charge of the Land and Natural Resources Division, and such members of his staff as he may specifically designate in writing, are authorized to exercise the power and authority vested in the Attorney General by section 23(b) of the Airport and Airway Development Act of 1970 (84 Stat. 219; 49 U.S.C. 1723) with respect to approving the performance of

acts and execution of instruments necessary to make the conveyances requested in carrying out the purposes of that section, except those acts and instruments which, in the opinion of the Assistant Attorney General, involve questions of policy or for any other reason require the personal attention of the Attorney General.

[Order No. 468-71, 36 F.R. 20428, Oct. 22, 1971]

§ 0.68 Delegation respecting mineral leasing.

The Assistant Attorney General in charge of the Land and Natural Resources Division, and such members of his staff as he may specifically designate in writing, are authorized to execute the power and authority of the Attorney General under the provisions of section 3 of the act of August 7, 1947, 61 Stat. 914, 30 U.S.C. 352, respecting the leasing of minerals on lands under the jurisdiction of the Department of Justice. [Order No. 542-73, 38 FR 28289, Oct. 12, 1973]

Subpart N—Tax Division

§ 0.70 General functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the following-described matters are assigned to, and shall be conducted, handled, or supervised by, the Assistant Attorney General in charge of the Tax Division:

(a) Prosecution and defense in all courts, other than the Tax Court, of civil suits, and the handling of other matters, arising under the internal revenue laws, and litigation resulting from the taxing provisions of other Federal statutes (except civil forfeiture and civil penalty matters arising under laws relating to liquor, narcotics, gambling, and firearms assigned to the Criminal Division by § 0.55(d)).

(b) Criminal proceedings arising under the internal revenue laws, except the following: Proceedings pertaining to misconduct of Internal Revenue Service personnel, to taxes on liquor, narcotics, firearms, coin-operated gambling and amusement machines, and to wagering, forcible rescue of seized property (26 U.S.C. 7212(b)), corrupt or forcible interference with an officer or employee acting under the Internal Revenue laws (26 U.S.C. 7212(a)), unauthorized disclosure of information (26 U.S.C. 7213),

and counterfeiting, mutilation, removal, or reuse of stamps (26 U.S.C. 7208).

(c) (1) Enforcement of tax liens, and mandamus, injunctions, and other special actions or general matters arising in connection with internal revenue matters.

(2) Defense of actions arising under section 2410 of title 28 of the United States Code whenever the United States is named as a party to an action as the result of the existence of a Federal tax lien, including the defense of other actions arising under section 2410, if any, involving the same property whenever a tax-lien action is pending under that section.

(d) Appellate proceedings in connection with civil and criminal cases enumerated in paragraphs (a) through (c) of this section and in § 0.71, including petitions to review decisions of the Tax Court of the United States.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 543-73, 38 FR 29585, Oct. 26, 1973]

§ 0.71 Delegation respecting immunity matters.

The Assistant Attorney General in charge of the Tax Division is authorized to handle matters involving the immunity of the Federal Government from State or local taxation (except actions to set aside ad valorem taxes, assessments, special assessments, and tax sales of Federal real property, and matters involving payments in lieu of taxes), as well as State or local taxation involving contractors performing contracts for or on behalf of the United States.

Subpart O—Office of Management and Finance

SOURCE: Order No. 543-73, 38 FR 29505, Oct. 26, 1973, unless otherwise noted.

§ 0.75 Policy functions.

The Assistant Attorney General for Administration shall head the Office of Management and Finance and shall provide advice relating to basic Department policy for budget and financial management, auditing, personnel management and training, automatic data processing and telecommunications, security and for all matters pertaining to organization, management, and administration. Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the following-described matters are assigned

to, and shall be conducted, handled, or supervised by, the Assistant Attorney General for Administration:

(a) Conduct, direct, review, and evaluate management studies and surveys of the Department's organizational structure, functions, and programs, operating procedures and supporting systems, and management practices throughout the Department; and make recommendations to reduce costs and increase productivity.

(b) Supervise, direct, and review the preparation, justification and execution of the Department of Justice budget, including the coordination and control of the programming and reprogramming of funds.

(c) Review, analyze, and coordinate the Department's programs and activities to ensure that the Department's use of resources and estimates of future requirements are consistent with the policies, plans, and mission priorities of the Attorney General.

(d) Plan, direct, and coordinate Department-wide personnel management programs, develop and issue Department-wide policy in all personnel program areas, including training, position classification and pay administration, staffing employee performance evaluation, employee development, employee relations and services, employee recognition and incentives, equal employment opportunity programs, personnel program evaluation, labor-management relations, adverse action hearings and appeals, employee grievances, and employee health and safety programs.

(e) Develop and direct Department-wide financial management policies, programs, procedures, and systems including financial accounting, planning, analysis, and reporting.

(f) Supervise and direct the operation of the Department's central payroll system, Justice Data Center, Department Publication Services Facility and any other Department-wide central services which are established by or assigned to the Office of Management and Finance.

(g) Formulate and administer the General Administration Appropriation of the Department's budget.

(h) Supervise and direct independent and comprehensive internal audits, including examinations authorized by 28 U.S.C. 526, of all organizations, programs, and functions of the Department

to assure that the programs and functions of the Department are being carried out efficiently and economically.

(i) Establish, control, and manage a Department-wide internal policy and management directives system.

(j) Plan, direct, and administer Department-wide policies, procedures, and regulations concerning records, reports, procurement, printing, graphics, forms management, supply management, motor vehicles, real and personal property, space assignment and utilization, and all other administrative service functions.

(k) Formulate Department policies, standards, and procedures for management information systems and the management and use of automatic data processing equipment; review the use and performance of management information systems with respect to Department objectives, plans, policies, and procedures; provide technical leadership and support to new Department-wide information systems; review and approve all automatic data processing contracts let by the Department; and provide the final review and approval of systems and procedures and standards for use of data elements and codes.

(l) Formulate policies, standards, and procedures for Department telecommunications systems and equipment and review their implementation.

(m) Provide computer and digital telecommunications services on an equitable resource-sharing basis to all organizational units within the Department.

(n) Formulate Department policies for the use of consultants and nonpersonal service contracts, review, and approve all nonpersonal service contracts, and review the implementation of Department policies.

(o) Serve as liaison with state and local governments on management affairs, and coordinate the Department's participation in Federal regional inter-agency bodies.

(p) Direct all Department security programs including personnel, physical, document, and automatic data processing and telecommunications security, and formulate and implement Department defense mobilization and contingency planning.

(q) Review legislation for potential impact on the Department's resources.

(r) Establish and direct liaison and central operational activities related to

the International Criminal Police Organization (22 U.S.C. 263(a)).

[Order No. 543-73, 39 FR 29585, Oct. 26, 1973, as amended by Order No. 565-74, 39 FR 15875, May 6, 1974; Order No. 654-76, 41 FR 26857, June 30, 1976]

§ 0.76 Specific functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the functions delegated to the Assistant Attorney General for Administration by this Subpart 0 shall also include the following specific policy functions:

(a) Directing the Department's financial management operations, including control of the accounting for appropriations and expenditures, employment limitations, voucher examination and audit, overtime pay, establishing per diem rates, promulgation of policies for travel, transportation, and relocation expenses, and issuance of necessary regulations pertaining thereto.

(b) Submission of requests to the Office of Management and Budget for apportionment or reapportionment of appropriations, including the determination, whenever required, that such apportionment or reapportionment indicates the necessity for the submission of a request for a deficiency or supplemental estimate, and to make allotments to organizational units of the Department of funds made available to the Department within the limits of such apportionments or reapportionments (31 U.S.C. 665).

(c) Approving per diem allowances for travel by airplane, train or boat outside the continental United States in accordance with paragraph 6.2c of the Standardized Government Travel Regulations.

(d) Exercising the claims settlement authority under the Federal Claims Collection Act of 1966 (31 U.S.C. 952).

(e) Authorizing payment of actual expense of subsistence (5 U.S.C. 5702 (c)).

(f) Prescribing regulations providing for premium pay pursuant to subchapter V of title 5, United States Code (5 U.S.C. 5541-5549).

(g) Settling and authorizing payment of employee claims under the Military and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243).

(h) Submitting requests to the Comptroller General for decisions (31 U.S.C. 74).

(i) Making determinations with respect to employment and wages under section 3122 of the Federal Insurance Contributions Act (26 U.S.C. 3122).

(j) Supervising and directing the Department's procurement and contracting functions (excluding grant contracts) and assuring that equal employment opportunity is practiced by the Department's contractors and subcontractors and in federally assisted programs under the Department's control (other than those of the Law Enforcement Assistance Administration for which the LEAA has responsibility).

(k) Designating Contracts Compliance Officers pursuant to Executive Order 11246, as amended.

(l) Taking final action, including making all required determinations and findings in connection with negotiated purchases and contracts (excluding grant contracts), as provided in paragraphs (1) through (11) and (14) and (15) of section 252(c) of title 41, United States Code, except that the authority as to paragraph (11) of section 252(c) shall be limited not to exceed an expenditure of \$25,000 per contract and shall not be further delegated.

(m) Making the certificate required with respect to the necessity for including illustrations in printing (44 U.S.C. 1104).

(n) Making the certificates with respect to the necessity of long distance telephone calls (31 U.S.C. 680a).

(o) Taking final action with respect to certain unclaimed privately owned personal property (including abandoned property) of an estimated value of \$100 or less, and cash or negotiable instruments not to exceed \$5,000 (41 CFR 101-42.4, 101-45.4).

(p) Making certificates of need for space (68 Stat. 518, 519).

(q) Exercising, except for the authority conferred in § 0.15 of Subpart C and §§ 0.137 and 0.138 of Subpart X, and subject to the discretionary review of the Deputy Attorney General, the power and authority vested in the Attorney General to take final action on matters pertaining to the employment, separation, and general administration of personnel in General Schedule grades GS-1 through GS-15, and in wage board positions; to classify positions in the Department under the General Schedule and wage board systems regardless of grade; to postaudit and correct any personnel action within the Department; and to

inspect at any time any personnel operations of the various organizational units of the Department.

(r) Selecting and assigning employees for training by, in, or through non-Government facilities, paying the expenses of such training or reimbursing employees therefor, and preparing and submitting the required annual report to the Civil Service Commission (5 U.S.C. 4103-4118).

(s) Exercising authority for the temporary employment of experts or consultants or organizations thereof, including stenographic reporting services (5 U.S.C. 3109(b)).

(t) Auditing expenditures made under the Department's contracts (other than external audit of the grantees and law enforcement assistant contractors of the Law Enforcement Assistance Administration).

(u) Providing assistance in furnishing information to the public under the Public Information Section of the Administrative Procedure Act (5 U.S.C. 552).

(v) Representing the Department in its contacts on matters relating to administration and management with the Congressional Appropriations Committees, Office of Management and Budget, the General Accounting Office, the Civil Service Commission, the General Services Administration, the Joint Committee on Printing, the Government Printing Office, and all other Federal departments and agencies.

[Order No. 543-73, 38 FR 29585, Oct. 26, 1973, as amended by Order No. 585-74, 39 FR 15876, May 6, 1974; Order No. 583-74, 39 FR 41977, Dec. 4, 1974; Order No. 634-76, 40 FR 58644, Dec. 18, 1975]

§ 0.77 Operational functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the Assistant Attorney General for Administration shall provide all direct administrative support services to the Offices, Divisions and Boards of the Department, and to the U.S. Marshals Service, except where independent administrative authority has been delegated to the Director, U.S. Marshals Service. These services shall include the following:

(a) Planning, directing and coordinating the personnel management program; providing personnel services including employment and staffing, employee relations, and classification, and including

the employment, separation and general administration of employees, except attorneys, in General Schedule grades GS-15 and below, or equivalent pay levels.

(b) Formulating policies and plans for efficient administrative management and organization and developing and coordinating all management studies and reports on the operations of the Offices, Divisions and Boards.

(c) Planning, justifying, and compiling the annual and supplemental budget estimates of the Offices, Divisions and Boards.

(d) Planning, directing and executing accounting operations for the Offices, Divisions and Boards.

(e) Providing information systems analysis, design, computer programming, and systems implementation services consistent with Departmental information systems plans, policies and procedures.

(f) Implementing and administering management programs for the creation, organization, maintenance, use, and disposition of Federal records, and providing mail and messenger service.

(g) Implementing and administering programs for procurement, personal property, and supply, motor vehicle and space management.

(h) Operating and maintaining the Department Library.

(i) Routing and controlling correspondence, maintaining indices of legal cases and matters, replying to correspondence not assignable to a division, safeguarding confidential information, attesting to the correctness of records, and related matters.

(j) Accepting service of summons, complaints or other papers, as a representative of the Attorney General, under the Federal Rules of Civil and Criminal Procedure or in any suit within the purview of subsection (a) of Section 208 of the Department of Justice Appropriation Act, 1953 (66 Stat. 560 (43 U.S.C. 666(a))).

(k) Making the certificates required in connection with the payment of expenses of collecting evidence: *Provided*, That each such certificate shall be approved by the Attorney General.

(l) Determining the amounts of bonds required of U.S. Marshals (28 U.S.C. 564).

(m) Designating a highway mileage guide containing a shortline nationwide table of distances for use in determining

mileage payable to witnesses (28 U.S.C. 1821).

(n) Authorizing payment of extraordinary expenses incurred by ministerial officers of the United States in executing acts of Congress (28 U.S.C. 1929).

(o) Representing the Attorney General with the Secretary of State in arranging for reimbursement by foreign governments of expenses incurred in extradition cases, and certifying to the Secretary the amounts to be paid to the United States as reimbursement (18 U.S.C. 3195).

[Order No. 565-74, 39 FR 15876, May 6, 1974]

§ 0.78 Redelegation of authority.

The Assistant Attorney General for Administration is authorized to redelegate to any Department official any of the power or authority vested in him by this Subpart O. Existing redelegations by the Assistant Attorney General for Administration shall continue in force and effect until modified or revoked.

[Order No. 543-73, 38 FR 29585, Oct. 26, 1973. Redesignated by Order No. 565-74, 39 FR 15876, May 6, 1974]

Appendix to Subpart O

ADMINISTRATIVE DIVISION

[Memo No. 514]

DELEGATION OF AUTHORITY TO DIRECTOR, BUREAU OF PRISONS, AS TO DISPOSITION OF UNCLAIMED PROPERTY

Pursuant to the authority vested in me by § 0.76(k) of Title 28 of the Code of Federal Regulations, I hereby delegate to the Director of the Bureau of Prisons the authority vested in me by § 0.76(b) (7) of that title to exercise the authority conferred by section 203(m) of the Federal Property and Administrative Services Act of 1949, as amended (1) to take possession of all unclaimed privately owned personal property (including abandoned property) of an estimated value of \$100 or less which is now or may hereafter be in the official custody or control of any officer, employee, or agent of the Bureau of Prisons on premises owned or leased by the United States, and which remains unclaimed for a period of 6 months, (2) to determine that title to such property has vested in the United States, (3) to utilize, transfer, or otherwise dispose of such property, (4) to determine, when necessary, the fair value of such property, (5) to receive, examine, and determine claims filed by former owners thereof, and (6) to pay such claims, or

any portion thereof, which he shall determine to be due and payable in accord with section 203(m) of that Act.

All proceeds from the property disposed of under this delegation shall, if not paid to the owner thereof under section 203(m), be covered into the U.S. Treasury as miscellaneous receipts.

The authority herein delegated may be redelegated to any officer or employee of the Bureau of Prisons.

ADMINISTRATIVE DIVISION

[Memo No. 515]

VESTING OF UNCLAIMED PROPERTY

Pursuant to the authority vested in me by § 0.76(b) (7) of Title 28 of the Code of Federal Regulations, the title to all unclaimed and abandoned privately owned personal property of an estimated value of \$100 or less, and cash or negotiable instruments not to exceed \$500, which are now or may hereafter come into the official custody of any officer, employee, bureau, or other subdivision of this Department and remain unclaimed for a period of 6 months, shall after the expiration of such period vest in the United States.

Subpart P—Federal Bureau of Investigation

CROSS REFERENCE: For regulations pertaining to the Federal Bureau of Investigation, see Part 3 of this chapter.

§ 0.85 General functions.

Subject to the general supervision and direction of the Attorney General, the Director of the Federal Bureau of Investigation shall:

(a) Investigate violations of the laws of the United States and collect evidence in cases in which the United States is or may be a party in interest, except in cases in which such responsibility is by statute or otherwise specifically assigned to another investigative agency.

(b) Conduct the acquisition, collection, exchange, classification, and preservation of identification records, including personal fingerprints voluntarily submitted, on a mutually beneficial basis, from law enforcement and other governmental agencies, railroad police, national banks, member banks of the Federal Reserve System, FDIC-Reserve-Insured Banks, and banking institutions insured by the Federal Savings and Loan Insurance Corporation; provide expert testimony in Federal or local courts as to fingerprint examinations; and provide

identification assistance in disasters and in missing-persons type cases, including those from insurance companies.

(c) Conduct personnel investigations requisite to the work of the Department of Justice and whenever required by statute or otherwise.

(d) Carry out the Presidential directive of September 6, 1939, as reaffirmed by Presidential directives of January 8, 1943, July 24, 1950, and December 15, 1953, designating the Federal Bureau of Investigation to take charge of investigative work in matters relating to espionage, sabotage, subversive activities, and related matters.

(e) Establish and conduct law enforcement training programs to provide training for State and local law enforcement personnel; operate the Federal Bureau of Investigation National Academy; develop new approaches, techniques, systems, equipment, and devices to improve and strengthen law enforcement and assist in conducting State and local training programs, pursuant to section 404 of the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 204.

(f) Operate a central clearinghouse for police statistics under the Uniform Crime Reporting Program, and a computerized nationwide index of law enforcement information under the National Crime Information Center.

(g) Operate the Federal Bureau of Investigation Laboratory, to serve not only the Federal Bureau of Investigation, but also to provide, without cost, technical and scientific assistance, including expert testimony in Federal or local courts, for all duly constituted law enforcement agencies, other organizational units of the Department of Justice, and other Federal agencies, which may desire to avail themselves of the service.

(h) Make recommendations to the Civil Service Commission in connection with applications for retirement under 5 U.S.C. 8336(c).

(i) Investigate alleged fraudulent conduct in connection with operations of the Federal Housing Administration and other alleged violations of the criminal provisions of the National Housing Act, including section 1010 of title 18 of the United States Code.

(j) Exercise the power and authority vested in the Attorney General by section 201 of the Department of Justice Appropriation Act, 1973, Public Law 92-544, 86 Stat. 1115, to approve exchanges

of identification records with State and local governments for purposes of employment and licensing.

[Order No. 423-69, 84 F.R. 20388, Dec. 31, 1969, as amended by Order No. 498-12, 37 F.R. 25917, Dec. 6, 1972; Order No. 666-74, 39 F.R. 15876, May 6, 1974; Order No. 623-75, 40 F.R. 42746, Sept. 16, 1975]

§ 0.86 Seizure of gambling devices.

The Director, Associate Director, Assistants to the Director, Assistant Directors, inspectors and agents of the Federal Bureau of Investigation are authorized to exercise the power and authority vested in the Attorney General under the act of January 2, 1951, 64 Stat. 1135, as amended, and section 2513 of title 18, United States Code, to make seizures of gambling devices and wire or oral communication intercepting devices.

§ 0.87 Representation on committee for visit-exchange.

The Director of the Federal Bureau of Investigation shall be a member of the committee which represents the Department of Justice in the development and implementation of plans for exchanging visits between the Iron Curtain countries and the United States and shall have authority to designate an alternate to serve on such committee.

§ 0.88 Certificates for expenses of unforeseen emergencies.

The Director of the Federal Bureau of Investigation is authorized to exercise the power and authority vested in the Attorney General by 28 U.S.C. 537, to make certificates with respect to expenses of unforeseen emergencies of a confidential character: *Provided*, That each such certificate made by the Director of the Federal Bureau of Investigation shall be approved by the Attorney General.

§ 0.89 Authority to seize arms and munitions of war.

The Director of the Federal Bureau of Investigation is authorized to exercise the authority conferred upon the Attorney General by section 1 of E.O. No. 10863 of February 18, 1960 (25 F.R. 1507), relating to the seizure of arms and munitions of war, and other articles, pursuant to section 1 of title VI of the act of June 15, 1917, 40 Stat. 223, as amended by section 1 of the act of August 13, 1953, 67 Stat. 577 (22 U.S.C. 401).

Subpart P-1—Law Enforcement Assistance Administration

§ 0.90 Prisoner work-release programs.

Subject to the general supervision and direction of the Attorney General, the Administrator of the Law Enforcement Assistance Administration is authorized to exercise the power and authority vested in the Attorney General by Executive Order No. 11755 of December 29, 1973, with respect to certification and revoking certification of work-release laws or regulations.

(18 U.S.C. 4082) [Order No. 569-74, 39 FR 18646, May 29, 1974]

§ 0.91 Redelegation of authority.

The Administrator of LEAA is authorized to redelegate to any of his subordinates any of the authority delegated to him by § 0.90.

(18 U.S.C. 4082) [Order No. 569-74, 39 FR 18646, May 29, 1974]

Subpart Q—Bureau of Prisons

CROSS REFERENCE: For regulations pertaining to the Bureau of Prisons, see Parts 6 and 7 of this chapter.

§ 0.95 General functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the Director of the Bureau of Prisons shall direct all activities of the Bureau of Prisons, including:

(a) Management and regulation of all Federal penal and correctional institutions (except military or naval institutions), and prison commissaries.

(b) Provision of suitable quarters for, and safekeeping, care, and subsistence of, all persons charged with or convicted of offenses against the United States or held as witnesses or otherwise.

(c) Provision for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States.

(d) Classification, commitment, control, or treatment of persons committed to the custody of the Attorney General.

(e) Payment of rewards with respect to escaped Federal prisoners (18 U.S.C. 3059).

(f) Certification with respect to the insanity or mental incompetence of a prisoner whose sentence is about to expire pursuant to section 4247 of title 18 of the United States Code.

(g) Entering into contracts with State or territorial officials for the custody,

care, subsistence, education, treatment, and training of State or territorial prisoners, upon certification with respect to the availability of proper and adequate treatment facilities and personnel, pursuant to section 5003 of title 18 of the United States Code.

(h) Conduct of studies and the preparation and submission of reports and recommendations to committing courts respecting disposition of cases in which defendants have been committed for such purposes pursuant to section 4208 (b) of title 18 of the United States Code.

(i) Conduct and prepare, or cause to be conducted and prepared, studies and submit reports to the court and the attorneys with respect to disposition of cases in which juveniles have been committed, pursuant to 18 U.S.C. 5037, and to contract with public or private agencies or individuals or community-based facilities for the observation and study and the custody and care of juveniles, pursuant to 18 U.S.C. 5040.

(j) Observation, conduct of studies, and preparation of reports in cases in which youth offenders have been committed by the courts for such purposes pursuant to section 5010(e) of title 18 of the United States Code.

(k) Conduct of examinations to determine whether an offender is an addict and is likely to be rehabilitated through treatment, as well as the preparation and submission of reports to committing courts, pursuant to section 4252 of title 18 of the United States Code.

(l) Transmittal of reports of boards of examiners and certificates to clerks of the district courts pursuant to section 4245 of title 18 of the United States Code.

(m) Providing technical assistance to State and local governments in the improvement of their correctional systems (18 U.S.C. 4042).

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 565-74, 39 FR 15876, May 6, 1974; Order No. 579-74, 39 FR 37771, Oct. 24, 1974]

§ 0.96 Delegations.

The Director of the Bureau of Prisons is authorized to exercise or perform any of the authority, functions, or duties conferred or imposed upon the Attorney General by any law relating to the commitment, control, or treatment of persons (including insane prisoners and juvenile delinquents) charged with or convicted of offenses against the United

States, including the taking of final action in the following-described matters:

(a) Requesting the detail of Public Health Service officers for the purpose of furnishing services to Federal penal and correctional institutions (18 U.S.C. 4005).

(b) Consideration, determination, adjustment, and payment of claims in accordance with section 1 of the act of June 10, 1949, 63 Stat. 167 (31 U.S.C. 238).

(c) Designating places of confinement where the sentences of prisoners shall be served, and ordering transfers from one institution to another whether maintained by the Federal Government or otherwise (18 U.S.C. 4082).

(d) Extending the limits of the place of confinement of prisoners for the purposes specified, and within the limits established, by section 4082 of title 18 of the United States Code, and otherwise performing the functions of the Attorney General under that section.

(e) Designation of agents for the transportation of prisoners (18 U.S.C. 4008).

(f) Accepting gifts or bequests of money for credit to the "Commissary Funds, Federal Prisons" (31 U.S.C. 725s).

(g) Prescribing regulations for the use of surplus funds in "Commissary Funds, Federal Prisons" to provide advances not in excess of \$150 to prisoners at the time of their release (18 U.S.C. 4284).

(h) Allowance, forfeiture, and restoration of all good time (18 U.S.C. 4161, 4162, 4165, and 4166).

(i) Release of prisoners held solely for nonpayment of fine (18 U.S.C. 3569).

(j) Furnishing transportation, clothing, and payments to released prisoners (18 U.S.C. 4281).

(k) Removal of insane prisoners to suitable institutions and retransfer to penal or correctional institutions upon recovery (18 U.S.C. 4241, 4242).

(l) Granting permits to States or public agencies for rights of way upon lands administered by the Director in accordance with the provisions of sections 931c and 961 of title 43 of the United States Code.

(m) Designating, in his discretion, the Director of the Alcoholic Rehabilitation Clinic, as the representative of the Attorney General to carry out the purpose of the act of August 4, 1947, 615 Stat. 744, with respect to persons committed for

diagnosis, classification, and treatment (D.C. Code 24-506(b)).

(n) Contracting with appropriate public or private agencies or with persons for supervisory aftercare of certain conditionally released offenders (18 U.S.C. 4255).

(o) Settlement of claims arising under the Federal Tort Claims Act if the amount of settlement does not exceed \$2,500. (See 28 CFR 0.172.)

(p) Entering into reciprocal agreements with fire organizations for mutual aid and rendering emergency assistance in connection with extinguishing fires within the vicinity of a Federal correctional facility, as authorized by sections 2 and 3 of the Act of May 27, 1955. (42 U.S.C. 1856a, 1856b.)

(q) Deciding upon requests by States for temporary transfer of custody of inmates for prosecution under Article IV of the Interstate Agreement on Detainers (84 Stat. 1399) and pursuant to other available procedures.

(r) The approval of the operation or contracts for the operation, by pretrial services agencies with the cooperation of the Administrative Office of the United States Courts, of appropriate facilities for the custody or care of persons released pursuant to the Speedy Trial Act of 1974.

(s) Prescribing rules and regulations applicable to the carrying of firearms by Bureau of Prisons officers and employees. (18 U.S.C. 3050).

[Order No. 423-69, 34 F.R. 20388, Dec. 31, 1969, as amended by Order No. 454-71, 36 F.R. 6748, Apr. 8, 1971; Order No. 422-71, 36 F.R. 12212, June 29, 1971; Order No. 641-76, 41 F.R. 8346, Feb. 26, 1976; Order No. 648-76, 41 F.R. 19220, May 11, 1976]

§ 0.96a Interstate Agreement on Detainers.

The Director of the Bureau of Prisons is designated as the United States Officer under Article VII of the Interstate Agreement on Detainers (84 Stat. 1402).

[Order No. 462-71, 36 F.R. 12212, June 29, 1971]

§ 0.97 Redelegation of authority.

The Director of the Bureau of Prisons is authorized to redelegate to any of his subordinates any of the authority, functions, or duties vested in him by this Subpart Q. Existing redelegations by the Director of the Bureau of Prisons shall continue in force and effect until modified or revoked.

§ 0.98 Functions of Commissioner of Federal Prison Industries.

The Director of the Bureau of Prisons is authorized as ex officio Commissioner of Federal Prison Industries and in accordance with the policy fixed by its Board of Directors to:

(a) Exercise jurisdiction over all industrial enterprises in all Federal penal and correctional institutions.

(b) Sponsor vocational training programs in Federal penal and correctional institutions.

(c) Contract for the transfer of property or equipment from the District of Columbia for industrial employment and training of prisoners confined in a penal or correctional institution of the District of Columbia, pursuant to 18 U.S.C. 4122.

§ 0.99 Compensation to Federal prisoners.

The Board of Directors of Federal Prison Industries, or such officer of the corporation as the Board may designate, may exercise the authority vested in the Attorney General by section 4126 of title 18 of the United States Code, as amended, to prescribe rules and regulations governing the payment of compensation to inmates of Federal penal and correctional institutions employed in any industry, or performing outstanding services in institutional operations, and to inmates or their dependents for injuries suffered in any industry or in any work activity in connection with the maintenance of operation of the institution where confined.

Appendix To Subpart Q

CONFINEMENT OF PERSONS IN DISTRICT OF COLUMBIA CORRECTIONAL INSTITUTIONS

By virtue of the authority vested in me by the Act of September 1, 1916, 39 Stat. 711 (D.C. Code section 24-402), by section 11 of the Act of July 15, 1932, as added by the Act of June 6, 1940, 54 Stat. 244 (D.C. Code section 24-425), and by the Act of September 10, 1965 (18 U.S.C. 4082), (a) the Mayor of the District of Columbia or his authorized representative is hereby authorized to transfer such prisoners as may be in his custody and supervision, by virtue of having been placed in a correctional institution of the District of Columbia pursuant to the authority of the Attorney General, from

such institution to any available, suitable, or appropriate institution or facility (including a residential community treatment center) within the District of Columbia, and the Mayor or his authorized representative is further authorized to extend the limits of the place of confinement of such prisoners for the purposes specified, and within the limits established, by the Act of September 10, 1965 (18 U.S.C. 4082).

(b) With respect to a prisoner convicted of a crime of violence who is not within six months of a firm date of release from confinement, the authority conferred by subsection (a) shall be exercised only in exceptional circumstances and only upon written justification and approval of the Director of the District of Columbia Department of Corrections personally. Prior to the exercise of authority under this subsection, notice and justification of transfers or extensions of the limits of confinement shall be provided to the Mayor.

(c) With respect to all other prisoners, the authority conferred by subsection (a) may be exercised by an authorized representative designated by the Mayor.

(d) As used in this Order "crime of violence" means murder, manslaughter, rape, kidnapping, robbery, burglary, assault with intent to kill, assault with intent to rape, or assault with intent to rob.

[Order No. 636-76, 41 FR 3289, Jan. 26, 1976]

Subpart R—Drug Enforcement Administration

SOURCE: Order No. 520-73, 38 FR 18380, July 10, 1973, unless otherwise noted.

§ 0.100 General functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the following described matters are assigned to, and shall be conducted, handled, or supervised by, the Administrator of the Drug Enforcement Administration:

(a) Functions vested in the Attorney General by sections 1 and 2 of Reorganization Plan No. 1 of 1968.

(b) Functions vested in the Attorney General by the Comprehensive Drug Abuse Prevention and Control Act of 1970.

(c) Functions vested in the Attorney General by section 1 of Reorganization

Plan No. 2 of 1973 and not otherwise specifically assigned.

[Order No. 520-73, 38 FR 18380, July 10, 1973, as amended by Order No. 565-74, 39 FR 15876, May 6, 1974]

§ 0.101 Specific functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the Administrator shall be responsible for:

(a) The development and implementation of a concentrated program throughout the Federal Government for the enforcement of Federal drug laws and for cooperation with State and local governments in the enforcement of their drug abuse laws.

(b) The development and maintenance of a National Narcotics Intelligence System in cooperation with Federal, State, and local officials, and the provision of narcotics intelligence to any Federal, State, or local official that the Administrator determines has a legitimate official need to have access to such intelligence.

[Order No. 520-73, 38 FR 18380, July 10, 1973, as amended by Order No. 565-74, 39 FR 15876, May 6, 1974]

§ 0.102 [Reserved]

§ 0.103 Release of information.

(a) The Administrator of DEA is authorized—

(1) To release information obtained by DEA and DEA investigative reports to Federal, State, and local officials engaged in the enforcement of laws related to controlled substances.

(2) To release information obtained by DEA and DEA investigative reports to Federal, State, and local prosecutors, and State licensing boards, engaged in the institution and prosecution of cases before courts and licensing boards related to controlled substances.

(3) To authorize the testimony of DEA officials in response to subpoenas issued by the prosecution in Federal, State, or local criminal cases involving controlled substances.

(b) Except as provided in paragraph (a) of this section, all other production of information or testimony of DEA officials in response to subpoenas or demands of courts or other authorities is governed by Subpart B of Part 16 of this chapter. However, it should be recog-

nized that Subpart B is not intended to restrict the release of noninvestigative information and reports as deemed appropriate by the Administrator of DEA. For example, it does not inhibit the exchange of information between governmental officials concerning the use and abuse of controlled substances as provided for by section 503(a)(1) of the Controlled Substances Act (21 U.S.C. 873(a)(1)).

§ 0.104 Redefinition of authority.

The Administrator of the Drug Enforcement Administration is authorized to redelegate to any of his subordinates any of the powers and functions vested in him by this Subpart B.

Appendix to Subpart B

[Directive 73-1]

REDELEGATION OF FUNCTIONS

SECTION 1. Scope of authority. The authority delegated by this Directive is applicable to all officers and employees of the Drug Enforcement Administration. All regulations or other action made, prescribed, issued, granted or performed in respect of or by the agencies or functions affected by section 1 of Reorganization Plan No. 2 of 1973 shall, until rescinded, modified, superceded, or made inapplicable, have the same effect as if the reorganization had not been made. Except, that until further consideration may be given to establishing the course and methods by which the Drug Enforcement Administration's procedural, administrative and operational functions are changed and carried out, all of the procedures, guidelines, regulations, manuals, papers, documents, forms, and reports previously utilized by the former Bureau of Narcotics and Dangerous Drugs shall be applicable to the functions of all units and employees of the Drug Enforcement Administration.

SEC. 2. Supervisors and administrators.

(a) All persons having supervisory and administrative authority in the agencies from which functions were transferred to the Drug Enforcement Administration by Order 520-73, will continue to exercise those authorities with full force and effect until further notified.

(b) All Regional Directors are authorized to conduct enforcement hearings under 21 U.S.C. 883 with the concurrence of the Chief Counsel and to take custody of seized property in accordance

with directions from the Administrator under 21 U.S.C. 881 to adjust, determine, compromise and settle any claim involving the Drug Enforcement Administration under 28 U.S.C. 2672 relating to tort claims where the claim is for property damage not exceeding \$250; to release information obtained by DEA and DEA investigative reports under 28 CFR 0.103(a) (1) and (2); and to authorize the testimony of DEA officials in response to prosecution subpoenas under 28 CFR 0.103(a) (3).

SEC. 3. *Enforcement officers.* (a) All criminal investigators (series 1811 under Civil Service Commission regulations) are authorized to exercise all of the powers of enforcement personnel granted by 21 U.S.C. 876, 878 and 879; to serve subpoenas, administer oaths, examine witnesses, and receive evidence under 21 U.S.C. 875; to execute administrative inspection warrants under 21 U.S.C. 880; and to seize property under 21 U.S.C. 881.

(b) All compliance investigators (series 1810 under Civil Service Commission regulations) are authorized to administer oaths and serve subpoenas under 21 U.S.C. 875 and 876; to execute administrative inspection warrants under 21 U.S.C. 878(2) and 880; and to seize property incident to compliance and registration inspections and investigations under 21 U.S.C. 881.

(c) All Regional Administrators are authorized to sign and issue subpoenas under 21 U.S.C. 875 and 876; to conduct enforcement hearings under 21 U.S.C. 883 with the concurrence of the Acting Chief Counsel; and to take custody of and dispose of seized property in accordance with directions from the Administrator under 21 U.S.C. 881.

SEC. 4. *Legal functions.* The Chief Counsel is authorized to exercise all necessary functions with respect to decisions on petitions under 19 U.S.C. 1618 for remission or mitigation of forfeitures incurred under 21 U.S.C. 881; to execute under seal any certification required to authenticate any documents pursuant to § 0.146 of title 28, Code of Federal Regulations; to adjust, determine, compromise, and settle any claims involving the Drug Enforcement Administration under 28 U.S.C. 2672, relating to tort claims where the amount of the proposed adjustment, compromise, settlement or award does not exceed \$2,500; to formulate and coordinate the proceedings relating to the conduct of hearings under 21 U.S.C. 875, including

the signing and issuance of subpoenas, examining of witnesses and receiving evidence; and to conduct enforcement hearings under 21 U.S.C. 883.

SEC. 5. *Import and export permits.* The Acting Chief, Registration and Audit Division is authorized to perform all functions with respect to the issuance of importation and exportation permits for controlled substances under 21 U.S.C. 952 and 953, and all functions in regard to transshipments and in-transit shipments of controlled substances under 21 U.S.C. 954.

SEC. 6. *Promulgation of regulations.* The Deputy Administrator is authorized to exercise all necessary functions with respect to the promulgation and implementation of the following regulations published in Chapter II, Title 21, Code of Federal Regulations:

(a) Part 1301, incident to the registration of manufacturers, distributors, and dispensers of controlled substances, except that final orders in connection with suspension, denial or revocation of registration shall be made by the Administrator.

(b) Part 1302 relating to labelling and packaging requirements for controlled substances.

(c) Part 1304 relating to records and reports of registrants.

(d) Part 1305 relating to order forms.

(e) Part 1306 relating to prescriptions, except provisions relating to dispensing of narcotic drugs for maintenance purposes.

(f) Part 1307, Title 21, Code of Federal Regulations, relating to miscellaneous provisions, except § 1307.31 concerning special exempt persons.

(g) The following sections of Part 1308: §§ 1308.21 and 1308.22 relating to excluded nonnarcotic substances; §§ 1308.23 and 1308.24 relating to exempt chemical preparations; and §§ 1308.31 and 1308.32 relating to excepted stimulant or depressant compounds, except that any final order following a contested proposed rulemaking shall be made by the Administrator.

(h) Part 1311 relating to registration of importers and exporters of controlled substances, except that final orders in connection with suspension, denial or revocation of registration shall be made by the Administrator.

(i) Part 1312 relating to importation and exportation of controlled substances, except those functions specified in section 5 of this Appendix to Subpart R

which are delegated to the Chief, Registration and Audit Division. Also, all final orders following a contested proposed rulemaking regarding the denial of an application for an import, export or transshipment permit shall be made by the Administrator.

Sec. 7. Issuance of Subpoenas. (a) All Regional Directors and the Chief Inspector are authorized to sign and issue subpoenas with respect to controlled substances under 21 U.S.C. 875 and 876.

(b) All special agents in charge of offices, with the concurrence in each case of the responsible Regional Director, are authorized to sign and issue subpoenas with respect to controlled substances under 21 U.S.C. 875 and 876 in regard to matters within their respective jurisdiction.

(c) All Inspectors-in-Charge of field offices, with the concurrence of the Chief Inspector in each case, are authorized to sign and issue subpoenas under 21 U.S.C. 875 and 876 in any investigation relating to the functions of the Office of Inspection with respect to controlled substances.

[Order No. 520-73, 38 FR 18380, July 10, 1973, as amended by Directive 73-2, 38 FR 34662, Dec. 17, 1973; Directive 74-1, 39 FR 4080, Feb. 1, 1974; Directive 74-2, 39 FR 10581, Mar. 21, 1974; Order No. 568-74, 39 FR 18646, May 29, 1974; Directive 44-3, 39 FR 40584, Nov. 19, 1974; Directive 75-1, 40 FR 4419, Jan. 30, 1975; Directive 76-1, 41 FR 22815, June 7, 1976]

Subpart S—Immigration and Naturalization Service

§ 0.105 General functions.

Subject to the general supervision of the Attorney General and under the direction of the Deputy Attorney General, the Commissioner of Immigration and Naturalization shall:

(a) Subject to the limitations contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) and the provisions for review by the Board of Immigration Appeals, administer and enforce the Immigration and Nationality Act and all other laws relating to immigration (including, but not limited to, admission, exclusion, and deportation), naturalization, and nationality. Nothing in this paragraph shall be construed to authorize the Commissioner of Immigration and Naturalization to supervise the litigation of, or to approve the filing of records on review, appeals, or peti-

tions for writs of certiorari or to intervene or have independent representation in cases under the Immigration and Nationality laws except as provided in paragraph (e) of this section.

(b) For the purposes of paragraph (a) of this section, and as limited therein, exercise or perform any of the authority, functions, or duties conferred or imposed upon the Attorney General by the laws mentioned in that paragraph, including the authority to issue regulations.

(c) Investigate alleged violations of the immigration and nationality laws, and make recommendations for prosecutions when deemed advisable.

(d) Patrol the borders of the United States to prevent the entry of aliens into the United States in violation of law.

(e) Supervise naturalization work in the specific courts designated by section 310 of the Immigration and Nationality Act (8 U.S.C. 1421) to have jurisdiction in such matters, including the requiring of accountings from the clerks of such courts for naturalization fees collected, investigation through field officers of the qualifications of citizenship applicants, and representation of the Government at all court hearings.

(f) Cooperate with the public schools in providing citizenship textbooks and other services for the preparation of candidates for naturalization.

(g) Register and fingerprint aliens in the United States, as required by section 262 of the Immigration and Nationality Act (8 U.S.C. 1304).

(h) Prepare reports on private bills pertaining to immigration matters.

(i) Designate within the Immigration and Naturalization Service a certifying officer, and an alternate, to certify copies of documents issued by the Commissioner, or his designee, which are required to be filed with the Office of the Federal Register.

(j) Direct officers and employees of the Immigration and Naturalization Service, assigned to accompany commercial aircraft, to perform the functions of a U.S. deputy marshal as a peace officer, in particular those set forth in 28 U.S.C. 570 and 18 U.S.C. 3053, (1) while aboard any aircraft to which they have been assigned, or (2) while within the general vicinity of such aircraft so long as it is within the jurisdiction of the United States. Such functions shall be in addi-

tion to those vested in such officers and employees pursuant to law.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 565-74, 39 FR 15876, May 6, 1974]

§ 0.106 Certificates for expenses of unforeseen emergencies.

The Commissioner of Immigration and Naturalization is authorized to exercise the power and authority vested in the Attorney General by section 6 of the act of July 28, 1950, 64 Stat. 380 (8 U.S.C. 1555), to make certificates with respect to expenses of unforeseen emergencies of a confidential character: *Provided*, That each such certificate made by the Commissioner of Immigration and Naturalization shall be approved by the Attorney General.

§ 0.107 Representation on committee for visit-exchange.

The Commissioner of Immigration and Naturalization shall be a member of the committee which represents the Department of Justice in the development and implementation of plans for exchanging visits between the Iron Curtain countries and the United States and shall have authority to designate an alternate to serve on such committee.

§ 0.108 Redelegation of authority.

The authority conferred by § 0.105 upon the Commissioner of Immigration and Naturalization may be redelegated by him, to such extent as he may deem desirable, to any officer or employee of the Immigration and Naturalization Service as he may designate. Existing redelegations by the Commissioner shall continue in force and effect until modified or revoked.

§ 0.109 Implementation of the Treaty of Friendship and General Relations Between the United States and Spain.

The Commissioner of Immigration and Naturalization and immigration officers (as defined in 8 CFR 103.1(i)) are hereby designated as "competent national authorities" on the part of the United States within the meaning of Article XXIV of the Treaty of Friendship and General Relations Between the United States and Spain (33 Stat. 2105, 2117), and shall fulfill the obligations assumed by the United States pursuant to that Article in the manner and form prescribed.

(E.O. 11267; 3 CFR, 1966 Comp.)

§ 0.110 Implementation of the Convention Between the United States and Greece.

The Commissioner of Immigration and Naturalization and immigration officers (as defined in 8 CFR 103.1(i)) are hereby designated as "local authorities" and "competent officers" on the part of the United States within the meaning of Article XIII of the Convention Between the United States and Greece (33 Stat. 2122, 2131), and shall fulfill the obligations assumed by the United States pursuant to that Article in the manner and form prescribed.

(E.O. 11800, 3 CFR, 1966 Supp.)

Subpart T—United States Marshals Service

AUTHORITY.—28 U.S.C. 509, 510, 569; 5 U.S.C. 301.

SOURCE: Order No. 516-73, 38 FR 12917, May 17, 1973, unless otherwise noted.

§ 0.111 General functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the Director of the U.S. Marshals Service shall direct and supervise all activities of the U.S. Marshals Service including:

(a) Execution of Federal arrest warrants pursuant to rule 4 of the Federal Rules of Criminal Procedure, Federal parole violator warrants pursuant to section 4206 of title 18, United States Code, and Federal custodial and extradition warrants as directed.

(b) The service of all civil and criminal process emanating from the Federal judicial system including the execution of lawful writs and court orders pursuant to section 569(b), title 28, United States Code.

(c) Provision for the health, safety, and welfare of Government witnesses and their families pursuant to sections 501-504 of Public Law 91-452 (18 U.S.C. prec. 3481).

(d) Administration and implementation of courtroom security requirements for the Federal judiciary.

(e) Protection of Federal jurists and other court officers from criminal intimidation.

(f) Provision of assistance in the protection of Federal property and buildings.

(g) Cooperation with other Federal agencies in the deterrence and prevention of air piracy.

(h) Direction and supervision of a training school for U.S. Marshals Service personnel.

(i) Disbursement of appropriated funds to satisfy Government obligations incurred in the administration of justice pursuant to section 571 of title 28, United States Code.

(j) Maintenance of custody and control of money and property seized pursuant to section 1955(d) of title 18, United States Code, when seized property is turned over to the U.S. Marshals Service.

(k) Sustention of custody of Federal prisoners from the time of their arrest by a marshal or their commitment to the marshal by other law enforcement officers, until the prisoner is delivered to a designated penal institution or released, and the transportation of Federal prisoners upon request by the Bureau of Prisons.

(l) Coordination and direction of the relationship of the offices of U.S. Marshals with the other organizational units of the Department of Justice.

(m) Approval of staffing requirements of the offices of U.S. Marshals.

(n) Investigation of alleged improper conduct on the part of U.S. Marshals Service personnel.

[Order No. 516-73, 38 FR 12917, May 17, 1973, as amended by Order No. 543-73, 38 FR 29586, Oct. 26, 1973]

§ 0.112 Special deputation.

The Director, U.S. Marshals Service, is authorized to deputize selected officers or employees of the United States to perform the functions of a U.S. deputy marshal in any district designated by the Director, and to deputize whenever the needs of the U.S. Marshals Service so require selected State or local law enforcement officers to perform the functions in any district designated by the Director.

§ 0.113 Redlegation of authority.

The Director, U.S. Marshals Service, is authorized to redelegate to any of his subordinates any of the powers and functions vested in him by this subpart.

Subpart U—Board of Immigration Appeals

§ 0.115 General functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney Gen-

eral, the Board of Immigration Appeals shall review and determine:

(a) Appeals from decisions of special inquiry officers in exclusion and deportation cases.

(b) Appeals from decisions of district directors and special inquiry officers on applications for the advance exercise of the discretionary authority contained in section 212(c) of the Immigration and Nationality Act (8 U.S.C. 1182(c)) and from decisions of district directors and officers in charge on applications for the advance exercise of the discretionary authority contained in section 212(d) (3) of that act (8 U.S.C. 1182 (d) (3)).

(c) Appeals from decisions of district directors involving administrative fines and penalties, including mitigation thereof.

(d) Appeals from decisions of district directors on petitions filed in accordance with section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) and from decisions revoking the approval of such petitions in accordance with section 205 of that act (8 U.S.C. 1155).

(e) Appeals from determinations of regional commissioners or district directors relating to the bond, conditional parole, or detention of an alien under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(f) Cases involving the decisions referred to in paragraphs (a) through (d) of this section which may be certified to the Board by the Commissioner or any duly authorized officer of the Service, or which the Board may require to be certified to it.

(g) Cases in which the Board has rendered a decision which are reopened or reconsidered in accordance with 8 CFR 3.2.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 543-73, 38 FR 29586, Oct. 26, 1973]

§ 0.116 Decisions subject to review by Attorney General.

The Board, through the Deputy Attorney General, shall refer to the Attorney General for review of its decision all cases which:

(a) The Attorney General directs the Board to refer to him.

(b) The Chairman or a majority of the Board believes should be referred to the Attorney General for review.

(c) The Commissioner requests be referred to the Attorney General for review. [Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 543-73, 38 FR 29586, Oct. 26, 1973]

§ 0.117 Finality of decision.

Except in those cases referred to the Attorney General in accordance with § 0.116, the decision of the Board shall be final. The Board may, however, return a case to the Immigration and Naturalization Service for such further action as may be appropriate therein without entering a final decision on its merits.

§ 0.118 Delegation of authority.

Subject to any specific limitation prescribed by regulation, in considering and determining cases before it, the Board shall exercise such discretion and authority conferred upon the Attorney General by law as is appropriate and necessary for the disposition of the case.

Subpart V—The Board of Parole

CROSS REFERENCE: For regulations pertaining to the Board of Parole, see Parts 2 and 4 of this chapter.

§ 0.125 General functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, as to policy and programming, the Board of Parole shall have:

(a) Sole authority to grant, modify, or revoke paroles of all U.S. prisoners (18 U.S.C. 4203, 4207).

(b) Responsibility for the supervision, through Federal probation officers, of Federal parolees and Federal mandatory releases upon the expiration of their sentences with allowances for statutory good time, and for prescribing and modifying the terms and conditions governing the prisoner during parole or mandatory release.

(c) Sole authority to issue warrants for violation of parole or mandatory release (18 U.S.C. 4205).

(d) Sole authority to re-parole or re-release on mandatory release (18 U.S.C. 4207, 4164).

(e) Sole authority to determine the date the prisoner shall become eligible for parole in any case in which the committing court specifies that such eligibility date shall be that determined by the Board of Parole (18 U.S.C. 4208(a)).

(f) Sole authority to promulgate rules and regulations for the supervision, discharge from supervision, or recommitment of paroled prisoners (18 U.S.C. 4208(d)).

(g) The authority to determine, in accordance with the provisions of section 504(a) of the Labor-Management Reporting and Disclosure Act of 1959, whether the services of certain persons in any capacity referred to in clause (1) or clause (2) of that section would be contrary to the purposes of that act (sec. 504(a) of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 536).

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 543-73, 38 FR 29586, Oct. 26, 1973]

§ 0.126 Delegations.

The Board of Parole is authorized to exercise:

(a) The authority vested in the Attorney General by section 3569 of title 18 of the United States Code to make a finding that a parolee is unable to pay a fine in whole or in part and to direct release of such parolee based on such finding.

(b) The authority vested in the Attorney General by section 3655 of title 18 of the United States Code to request probation officers to perform such duties with respect to persons on parole as the Board of Parole deems necessary for maintaining proper supervision of such persons.

§ 0.127 Youth Correction Division.

(a) All members of the Board of Parole shall serve as members of the Youth Correction Division, and one member shall be designated by the Attorney General as Youth Division Chairman.

(b) The Youth Correction Division of the Board of Parole shall:

(1) Consult with, and make recommendations to, the Director of the Bureau of Prisons as to general treatment and correctional policies for committed youth offenders.

(2) Make recommendations to the Director of the Bureau of Prisons as to individuals committed under the Federal Youth Corrections Act.

(3) Report, within 60 days to the committing court, the findings as to individuals committed for observation and study.

(4) Prescribe the terms and conditions governing those under supervision.

(5) Order parole for youth offenders committed under the Federal Youth Corrections Act and juvenile delinquents sentenced under the Federal Juvenile Delinquency Act.

(6) Direct Federal probation officers to submit reports as to parole supervision of committed youth offenders and to limit and define the powers and duties of voluntary supervisory agents and sponsors.

(7) Issue warrants for the retaking of parole or mandatory release violators, and order the return to custody for further treatment of committed youth offenders.

(8) Revoke parole or mandatory release, or reparole or re-release under supervision.

(9) Discharge committed youth offenders unconditionally at its discretion after a year of parole supervision.

[Order No. 535-73, 38 FR 23311, Aug. 29, 1973]

§ 0.128 Organization.

(a) The Board of Parole shall consist of eight members appointed by the President with the advice and consent of the Senate (18 U.S.C. 4201).

(b) The Board shall consist of a headquarters office and such regional offices as are needed to efficiently and effectively execute the Board's responsibilities. The Chairman of the Board, who shall be designated by the Attorney General, and at least two Board members shall be designated National Directors and serve in the headquarters office, i.e., Washington, D.C., and each regional office shall be directed by a Board member who shall be designated the Regional Director.

[Order No. 535-73, 38 FR 23311, Aug. 29, 1973]

§ 0.129 Chairman of the Board of Parole.

The Chairman of the Board of Parole shall:

(a) Represent the position and policies of the Board to the Attorney General, the Administrative Office of the U.S. Courts, other Federal agencies, and the U.S. Congress.

(b) Assign Board members to serve as Regional Directors.

(c) Call meetings of the entire Board at least quarterly to consider, promul-

gate and oversee Board of Parole policies, and call special meetings at the written request of three Board members.

(d) Designate a Board member, from the National Directors serving in the headquarters office, as Vice Chairman to assist the Chairman in the execution of his responsibilities.

(e) Assign on a temporary basis, any Board member to act for any Regional Director or National Board member in his absence to ensure the proper functioning of the Board.

(f) Ensure that regional offices comply with established Board of Parole policies and procedures.

(g) Exercise the power and authority vested in the Attorney General to take final action in matters pertaining to the employment, direction and general administration, e.g., including appointment, assignment, training, promotion, demotion, compensation, leave, classification and separation, of Board of Parole personnel, except as provided in 28 CFR 0.135.

(h) Allocate, use, and monitor the expenditure of Board funds.

(i) Direct the preparation of the Board's budget request for submission to the Attorney General.

(j) Perform all other executive functions and duties required to execute the responsibilities and policies of the Board.

[Order No. 535-73, 38 FR 23311, Aug. 29, 1973]

§ 0.129-1 Regional Director.

A Board member serving as Regional Director shall:

(a) Implement the policies, regulations, and procedures of the Board in the region.

(b) Serve as initial reviewing officer of parole decisions in the appellate process.

(c) Assign and supervise, subject to Board personnel policies, all personnel employed in the regional office.

(d) Prepare and submit to the Chairman a proposed regional budget for each fiscal year.

(e) Serve as the Board's regional liaison representative with Federal and state agencies, the judiciary, the state legislatures, law enforcement and probation officials, correctional and institutional personnel, and the general public.

[Order No. 535-73, 38 FR 23311, Aug. 29, 1973]

§ 0.129-2 Discretionary authority of the Board of Parole to delegate decision-making authority to hearing examiners.

Under authority of sections 4203, 4207, 5017, and 5020 of Title 18 of the United States Code, the Board of Parole may, at its discretion, delegate decision-making authority to its hearing examiners.

[Order No. 535-73, 38 FR 23311, Aug. 29, 1973]

Subpart W—Additional Assignments of Functions and Designation of Officials to Perform the Duties of Certain Offices in Case of Vacancy, or Absence Therein or in Case of Inability or Disqualification to Act

§ 0.130 Functions common to heads of organizational units.

Subject to the general supervision and direction of the Attorney General, the head of each organizational unit within the Department shall:

(a) Direct and supervise the personnel, administration, and operation of the office, division, bureau, or board of which he is in charge.

(b) Under regulations prescribed by the Attorney General with the approval of the Director of the Bureau of the Budget, have authority to reallocate funds allotted by the Assistant Attorney General for Administration and to redelegate to persons within his organizational unit authority and responsibility for the reallocation of such funds and control of obligations and expenditures within reallocations.

(c) Perform such special assignments as may from time to time be made to him by the Attorney General.

(d) Except as otherwise provided in this chapter, receive submittals and requests relative to the functions of his organizational unit.

§ 0.131 Designation of Acting United States Attorneys.

Each U.S. Attorney is authorized to designate any Assistant U.S. Attorney in his office to perform the functions and duties of the U.S. Attorney during his absence from office, and to sign all necessary documents and papers as Acting U.S. Attorney while performing such functions and duties.

§ 0.132 Designating officials to perform the functions and duties of certain offices in case of vacancy therein.

(a) In case of vacancy in the office of Attorney General, the Deputy Attorney General shall, pursuant to 28 U.S.C. 508, perform the functions and duties of and act as Attorney General. In case of vacancy in both the office of Attorney General and the office of Deputy Attorney General, the Solicitor General shall perform the functions and duties of and act as Attorney General.

(b) In the event of a vacancy in the office of Deputy Attorney General, an Associate Deputy Attorney General designated by the Attorney General shall perform the functions and duties of and act as Deputy Attorney General.

(c) [Reserved]

(d) In the event of a vacancy in the office of head of any other organizational unit, the ranking deputy (or his equivalent) in such unit who is available shall perform the functions and duties of and act as such head, unless the Attorney General shall direct otherwise. Except as otherwise provided by law, if there is no ranking deputy available, the Attorney General shall designate another official of the Department to perform the functions and duties of and act as such head.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 520-73, 38 FR 16380, July 10, 1973; Order 563-74, 39 FR 10430, Mar. 20, 1974]

§ 0.133 Designating officials to perform the functions and duties of certain offices in case of absence therein or in case of inability or disqualification to act.

The head of each organizational unit within the Department is authorized, in case of absence from his office or in case of his inability or disqualification to act, to designate his ranking deputy (or his equivalent) who is available to act in his stead. If there is no deputy available, or in the case of inability or disqualification of each deputy, or in other unusual circumstances, any other official in such unit may be so designated.

Subpart X—Authorizations With Respect to Personnel and Certain Administrative Matters

§ 0.134 Applicability to Law Enforcement Assistance Administration.

Insofar as provisions of this subpart, or other provisions of this part, authorize

the exercise by other officers of the Department of Justice of functions vested by law in the Law Enforcement Assistance Administration, such provisions have been promulgated with the concurrence of the Administration, and shall be deemed to be delegations to such officers by the Administration pursuant to section 502 of title I of P.L. 90-351, 82 Stat. 197, 205.

§§ 0.135-0.136 [Reserved]

§ 0.137 Federal Bureau of Investigation.

Except as to persons in the positions of Associate Director, Assistant to the Director, and Assistant Director of the Federal Bureau of Investigation, the Director of the Federal Bureau of Investigation is authorized to exercise the power and authority vested in the Attorney General by law to take final action in matters pertaining to the employment, direction, and general administration (including appointment, assignment, training, promotion, demotion, compensation, leave, classification, and separation) of personnel, including personnel in wage board positions, in the Federal Bureau of Investigation. All personnel actions taken under this section shall be subject to postaudit and correction by the Assistant Attorney General for Administration.

[Order No. 423-09, 34 FR 20388, Dec. 31, 1969, as amended by Order 445-70, 35 FR 16397, Dec. 23, 1970; Order No. 543-73, 38 FR 29586, Oct. 26, 1973]

§ 0.138 Bureau of Prisons, Federal Prison Industries, Immigration and Naturalization Service, Drug Enforcement Administration, and Law Enforcement Assistance Administration.

The Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of the Immigration and Naturalization Service, and the Administrator of the Drug Enforcement Administration are, as to their respective jurisdictions, authorized to exercise the power and authority vested in the Attorney General by law to take final action in matters pertaining to the employment, direction, and general administration (including appointment, assignment, training, promotion, demotion, compensation, leave, classification, and separation) of personnel in General Schedule grades GS-1 through GS-15 and in wage board positions. Such officials, and the Administrator of the Law

Enforcement Assistance Administration, are, as to their respective jurisdictions, authorized to exercise the power and authority vested in the Attorney General by law to employ on a temporary basis experts or consultants or organizations thereof, including stenographic reporting services (5 U.S.C. 3109(b)). All personnel actions taken under this section shall be subject to postaudit and correction by the Assistant Attorney General for Administration.

[Order No. 543-73, 38 FR 29586, Oct. 26, 1973]

§ 0.138a U.S. Marshals Service.

The Director of the United States Marshals Service is authorized to exercise the power and authority vested in the Attorney General by law to take final action in matters pertaining to the employment, direction, and general administration (including appointment, assignment, training, promotion, demotion, compensation, leave classification, and separation) of personnel in General Schedule grades GS-1 through GS-13 and in wage board positions, and to employ on a temporary basis experts or consultants or organizations thereof, including stenographic reporting services (5 U.S.C. 3109(b)). All personnel actions taken under this section shall be subject to postaudit and correction by the Assistant Attorney General for Administration.

[Order No. 565-74, 39 FR 15876, May 6, 1974]

§ 0.139 Procurement matters.

The following shall control as to procurement matters:

(a) Except as to those matters designated by the Assistant Attorney General for Administration, to whom the responsibility for control of expenditures is assigned by Subpart O, the Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration, the Administrators of the Law Enforcement Assistance Administration and the Director of the U.S. Marshals Service are, as to their respective jurisdictions, authorized to exercise the authority vested in the Attorney General by law with respect to procurement matters.

(b) The Assistant Attorney General for Administration is authorized to postaudit and correct any procurement transactions throughout the Depart-

ment entered into pursuant to the delegation of authority set forth in paragraph (a) of this section, and to inspect at any time the procurement operations of the Federal Bureau of Investigation, the Bureau of Prisons, the Federal Prison Industries, the Immigration and Naturalization Service, the Drug Enforcement Administration and the U.S. Marshals Service.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 516-73, 38 FR 12918, May 17, 1973; Order No. 520-73, 38 FR 18380, July 10, 1973]

§ 0.140 Authority relating to advertisements, and purchase of certain supplies and services.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration, the Administrators of the Law Enforcement Assistance Administration and the Director of the U.S. Marshals Service as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department including U.S. Attorneys, are authorized to exercise the power and authority vested in the Attorney General by law to take final action in the following-described matters:

(a) Authorizing the publication of advertisements, notices, or proposals under section 3828 of the Revised Statutes of the United States (44 U.S.C. 324).

(b) Making determinations as to the acquisition of articles, materials, or supplies in accordance with sections 2 and 3 of the Buy American Act (47 Stat. 1520; 41 U.S.C. 10a, 10b).

(c) Placing orders with other agencies of the Government for materials or services, and accepting orders therefor, in accordance with section 686 of title 31 of the United States Code.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 516-73, 38 FR 12918, May 17, 1973; Order No. 520-73, 38 FR 18380, July 10, 1973]

§ 0.141 Audit and ledger accounts.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Ad-

ministration, and the Administrators of the Law Enforcement Assistance Administration are, as to their respective jurisdictions, authorized to audit vouchers and to maintain general ledger accounts with respect to appropriations allotted to them.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 520-73, 38 FR 18380, July 10, 1973]

§ 0.142 Per diem and travel allowances.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration, the Director of the United States Marshals Service, and the Administrators of the Law Enforcement Assistance Administration as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department (including U.S. Attorneys), are authorized to exercise the power and authority vested in the Attorney General by law to take final action in the following-described matters:

(a) Authorizing travel, subsistence, and mileage allowances under sections 5702-5707 of title 5 of the United States Code in accordance with regulations prescribed by the Bureau of the Budget and the Assistant Attorney General for Administration.

(b) Fixing rates in accordance with sections 5702-5704 and 5707 of title 5, United States Code, and regulations prescribed by the Bureau of the Budget and the Assistant Attorney General for Administration.

(c) Authorizing travel advances pursuant to 5 U.S.C. 5705.

(d) Authorizing travel and transportation expenses, and, when applicable, relocation expenses for transferred employees, new appointees and student trainees, in accordance with 5 U.S.C. 5721-5732 and regulations prescribed by the Bureau of the Budget and the Assistant Attorney General for Administration.

(e) Authorizing or approving, for purposes of security, the use of compartments or other transportation accommodations superior to lowest first-class ac-

commodations under applicable travel regulations subject to 5 U.S.C. 5731.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 520-73, 38 FR 18380, July 10, 1973; Order No. 565-74, 39 FR 15877, May 6, 1974]

§ 0.143 Incentive Awards Plan.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration, the Administrators of the Law Enforcement Assistance Administration and the Director of the U.S. Marshals Service, as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department (including U.S. Attorneys), are authorized to exercise the power and authority vested in the Attorney General by law with respect to the administration of the Incentive Awards Plan and to approve honorary awards and cash awards under such plan not in excess of \$1,000.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 516-73, 38 FR 12918, May 17, 1973; Order No. 520-73, 38 FR 18380, July 10, 1973]

§ 0.144 Determination of basic workweek.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration, the Administrators of the Law Enforcement Assistance Administration and the Director of the U.S. Marshals Service, as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department (including U.S. Attorneys), are authorized to exercise the authority vested in the Attorney General by section 6101 (a) of title 5, United States Code, to determine that the organizational unit concerned would be seriously handicapped in carrying out its functions or that costs would be substantially increased except upon modification of the basic workweek, and whenever such determination is made to fix the basic workweek of offi-

cers and employees of the unit concerned.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 516-73, 38 FR 12918, May 17, 1973; Order No. 520-73, 38 FR 18380, July 10, 1973]

§ 0.145 Overtime pay.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration, the Administrators of the Law Enforcement Assistance Administration and the Director of the U.S. Marshals Service as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department (including U.S. Attorneys), may, subject to any regulations which the Attorney General may prescribe, authorize overtime pay (including additional compensation in lieu of overtime of not less than 10 percent nor more than 25 percent pursuant to section 5545(c) (2) of title 5, United States Code) for such positions as may be designated by them.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 516-73, 38 FR 12918, May 17, 1973; Order 520-73, 38 FR 18380, July 10, 1973]

§ 0.146 Seals.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Chairman of the Board of Parole, the Administrator of the Drug Enforcement Administration, the Administrator of the Law Enforcement Assistance Administration, and the Director of the U.S. Marshals Service shall each have custody of the seal pertaining to his respective jurisdiction and he, or such person or persons as he may designate, may execute under seal any certification required to authenticate any books, records, papers, or other documents as true copies of official records of their respective jurisdictions. The Assistant Attorney General for Administration shall have custody of the seal of the Department of Justice, and he, or such person or persons as he may designate, may execute under seal any certifi-

cation required to authenticate any books, records, papers, or other documents as true copies of official records of the Department of Justice. He may also prescribe regulations governing the use of the seal of the Department and various organizational units.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 516-73, 38 FR 12918, May 17, 1973; Order 520-73, 38 FR 18380, July 10, 1973]

§ 0.147 Certification of obligations.

The following-designated officials are authorized to make the certifications required by section 1311(c) of the Supplemental Appropriations Act, 1955 (68 Stat. 831 (31 U.S.C. 200(c))) ; for the Federal Bureau of Investigation, the Assistant Director, Administrative Division; for the Bureau of Prisons, the Assistant Director for Planning and Development; for Federal Prison Industries, the Secretary; for the Immigration and Naturalization Service, the Assistant Commissioner, Administrative Division; for the Drug Enforcement Administration, the Director of Administration and Management; for the Law Enforcement Assistance Administration, the Comptroller; and for all other organizational units of the Department (including U.S. Attorneys and Marshals), the Assistant Attorney General for Administration or the Director, Budget and Finance Staff, Office of Management and Finance.

[Order No. 565-74, 39 FR 15877, May 6, 1974, as amended by Order No. 573-74, 39 FR 28154, Aug. 5, 1974; Order No. 605-75, 40 FR 24726, June 10, 1975]

§ 0.148 Certifying officers.

The following-named officials are authorized to designate employees to certify vouchers under section 1 of the Act of December 29, 1941, 55 Stat. 875 (31 U.S.C. 82b), and to certify that such persons are bonded pursuant to 6 U.S.C. 14; for the Federal Bureau of Investigation the Director; for the Bureau of Prisons, the Director; and the Associate Commissioner, Federal Prison Industries; for the Federal Prison Industries, the Associate Commissioner, and the Director, Bureau of Prisons; for the Immigration and Naturalization Service, the Commissioner; for the Drug Enforcement Administration, the Administrator; for the Law Enforcement Assistance Administration, the Administrators; for the United States Marshals Service, the Director; and for all other organiza-

tional units of the Department (including U.S. Attorneys), the Assistant Attorney General for Administration.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 520-73, 38 FR 18381, July 10, 1973; Order No. 565-74, 39 FR 15877, May 6, 1974]

§ 0.149 Disbursing employees.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration, the Director of the United States Marshals Service, and the Administrators of the Law Enforcement Assistance Administration, as to their respective jurisdictions, and the Assistant Attorney General for Administration as to all other organizational units of the Department (including U.S. Attorneys), are authorized to request Treasury Department designation of disbursing employees (including cashiers), and to certify that such employees are bonded pursuant to 6 U.S.C. 14. Existing authorizations to request designations and approve bonds shall remain in effect until terminated by the official who by this section would be authorized to request such designations.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 520-73, 38 FR 18380, July 10, 1973; Order No. 565-74, 39 FR 15877, May 6, 1974]

§ 0.150 Collection of erroneous payments.

The Director of the Federal Bureau of Investigation for the FBI and the Assistant Attorney General for Administration for all other organizational units of the Department are authorized, in accordance with the regulations prescribed by the Attorney General under Section 5514(b) of Title 5, United States Code, to collect indebtedness resulting from erroneous payments to employees.

[Order No. 634-75, 40 FR 58644, Dec. 18, 1975]

§ 0.151 Administering Oath of Office.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration, the Administrators of the Law Enforcement Assistance Administration and the Director of the U.S. Mar-

shals Service, as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department (including U.S. Attorneys), are authorized to designate, in writing, pursuant to the provisions of sections 2903 (b) and 2904 of title 5, United States Code, officers or employees to administer the oath of office required by section 3331 of title 5, United States Code, and to administer any other oath required by law in connection with employment in the executive branch of the Federal Government.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 516-73, 38 FR 12918, May 17, 1973; Order 520-73, 38 FR 18380, July 10, 1973]

§ 0.152 Approval of funds for attendance at meetings.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration and the Administrators of the Law Enforcement Assistance Administration, as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department (including U.S. Attorneys and Marshals), are authorized to exercise the power and authority vested in the Attorney General by law to prescribe regulations for the expenditure of appropriated funds available for expenses of attendance at meetings of organizations.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 520-73, 38 FR 18380, July 10, 1973]

§ 0.153 Selection and assignment of employees for training.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, and the Administrator of the Drug Enforcement Administration, the Administrators of the Law Enforcement Assistance Administration and the Director of the U.S. Marshals Service, as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department (including U.S. Attorneys), are hereby authorized to exercise the authority vested in the Attorney General

by section 4109 of title 5, United States Code, with respect to the selection and assignment of employees for training by, in, or through Government facilities and the payment or reimbursement of expenses for such training.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 516-73, 38 FR 12918, May 17, 1973; Order 520-73, 38 FR 18380, July 10, 1973; Order No. 565-74, 39 FR 15876, May 6, 1974]

§ 0.154 Advance and evacuation payments and special allowances.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration, the Director of the United States Marshals Service, and the Administrators of the Law Enforcement Assistance Administration, as to their respective jurisdictions, and the Assistant Attorney General for Administration, as to all other organizational units of the Department (including U.S. Attorneys), are hereby authorized to exercise the authority vested in the Attorney General by sections 5522-5527 of title 5, United States Code, and Executive Order No. 10982 of December 25, 1961, and to administer the regulations adopted by the Attorney General in Order No. 269-62 with respect to advance and evacuation payments and special allowances.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 520-73, 38 FR 18380, July 10, 1973; Order No. 565-74, 39 FR 15877, May 6, 1974]

§ 0.155 Waiver of claims for erroneous payments of pay and allowances.

The Director of the Federal Bureau of Investigation, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Administrator of the Drug Enforcement Administration, and the Administrator of the Law Enforcement Assistance Administration, as to their respective jurisdictions, and the Assistant Attorney General for Administration as to all other organizational units of the Department (including U.S. Attorneys and Marshals) are authorized to exercise the authority under 5 U.S.C. 5584, as amended by Public Law 92-453, for the waiver of claims of the United States for erroneous payments of pay and allowances to em-

ployees of the Department of Justice in accordance with the standards prescribed by the Comptroller General in 4 CFR parts 91-93.

[Order No. 514-73, 38 FR 12110, May 17, 1973, as amended by Order No. 520-73, 38 FR 18380, July 10, 1973]

§ 0.156 Execution of U.S. Marshals' deeds or transfers of title.

A chief deputy or deputy U.S. Marshal who sells property—real, personal, or mixed—on behalf of a U.S. Marshal, may execute a deed or transfer of title to the purchaser on behalf of and in the name of the U.S. Marshal.

§§ 0.157—0.158 [Reserved]

§ 0.159 Redelegation of authority.

Except as to the authority delegated by § 0.147, the authority conferred by this Subpart X upon heads of organizational units may be redelegated by them, respectively, to any of their subordinates. Existing delegations of authority to officers and employees and to U.S. Attorneys, not inconsistent with this Subpart X, made by any officer named in this section or by the Assistant Attorney General for Administration, shall continue in force and effect until modified or revoked.

[Order No. 543-73, 38 FR 29587, Oct. 26, 1973]

Subpart Y—Authority to Compromise and Close Civil Claims and Responsibility for Judgments, Fines, Penalties, and Forfeitures

§ 0.160 Offers which may be accepted by Assistant Attorney Generals.

Each Assistant Attorney General is authorized with respect to matters assigned to his division, to accept offers in compromise of claims in behalf of the United States in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed \$250,000, and of claims against the United States in all cases, or in administrative actions to settle, in which the amount of the proposed settlement does not exceed \$250,000 except:

(a) When for any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totaling more than the respective amounts designated in the preceding part of this section.

(b) When the Assistant Attorney General is of the opinion that because of a question of law or policy presented, or because of opposition to the proposed settlement by the agency or agencies involved, or for any other reason, the offer should receive the personal attention of the Deputy Attorney General or the Attorney General.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 543-73, 38 FR 29587, Oct. 26, 1973]

§ 0.161 Recommendations to Deputy Attorney General of acceptance of certain offers.

In all cases in which the amount of the offer in proposed settlement exceeds the applicable amount specified in § 0.160 and in any case falling within any of the exceptions enumerated in the said section, the Assistant Attorney General concerned shall, if in his opinion the offer of compromise, or administrative action to settle, should be accepted, transmit his recommendation to the Deputy Attorney General to that effect.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 543-73, 38 FR 29587, Oct. 26, 1973]

§ 0.162 Offers which may be rejected by Assistant Attorney Generals.

Each Assistant Attorney General is authorized, with respect to matters assigned to his division or office, to reject offers in compromise of any claims in behalf of the United States, or, in compromises or administrative actions to settle, against the United States, except in those cases which come within paragraph (b) of § 0.160.

§ 0.163 Approval by Solicitor General of action on compromise offers in certain cases.

In any Supreme Court case the acceptance, recommendation of acceptance, or rejection, under § 0.160, § 0.161, or § 0.162, of a compromise offer by the Assistant Attorney General concerned, shall have the approval of the Solicitor General. In any case in which the Solicitor General has authorized an appeal to any other court, a compromise offer, or any other action, which would terminate the appeal, shall be accepted or acted upon by the Assistant Attorney General concerned only upon advice from the Solicitor General that the principles of law

involved do not require appellate review in that case.

§ 0.164 Civil claims which may be closed by Assistant Attorney Generals.

Each Assistant Attorney General is authorized, with respect to matters assigned to his division or office, to close (other than by compromise or by entry of judgment) civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed \$250,000, except:

(a) When for any reason, the closing of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims the total gross amounts of which exceed \$250,000.

(b) When the Assistant Attorney General concerned is of the opinion that because of a question of law or policy presented, or because of opposition to the proposed closing by the agency or agencies involved, or for any other reason, the proposed closing should receive the personal attention of the Deputy Attorney General or the Attorney General.
[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 543-73, 38 FR 29587, Oct. 26, 1973]

§ 0.165 Recommendations to Deputy Attorney General that certain claims be closed.

In case the gross amount of the original claim asserted by the Government exceeds \$250,000, or one of the exceptions enumerated in § 0.164 is involved, the Assistant Attorney General concerned shall, if in his opinion the claim should be closed, transmit his recommendation to that effect, together with a report on the matter, to the Deputy Attorney General for review and final action. Such report shall be in such form as the Deputy Attorney General may require.
[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 543-73, 38 FR 29587, Oct. 26, 1973]

§ 0.166 Memorandum pertaining to closed claim.

In each case in which a claim is closed under § 0.164 the Assistant Attorney General concerned shall execute and place in the file pertaining to the claim a memorandum which shall contain a description of the claim and a full statement of the reasons for closing it.

§ 0.167 Submission to Deputy Attorney General by Director of Office of Alien Property of certain proposed allowances and disallowances.

In addition to the matters which he is required to submit to the Deputy Attorney General under preceding sections of this Subpart Y, the Director of the Office of Alien Property, shall submit to the Deputy Attorney General for such review as he may desire to make the following:

(a) Any proposed allowance by the Director, without hearing, of a title or debt claim pursuant to §§ 502.102, 502.201, or 502.202 of the Rules of Procedure of the Office of Alien Property for Claims (8 CFR 502.102, 502.201, 502.202).

(b) Any final determination of a title or debt claim, whether by allowance or disallowance, pursuant to §§ 502.22, 502.23, 502.25, 502.105 of the said Rules of Procedures for Claims (8 CFR 502.22, 502.23, 502.25, 502.105).

(c) Any proposed allowance or disallowance by the Director, without hearing, of a title claim under section 9(a) of the Trading with the Enemy Act, as amended, filed less than 2 years after the date of vesting in or transfer to the Alien Property Custodian or the Attorney General of the property or interest in respect of which the claim is made:

Provided, That any such title or debt claim is within one of the following-described categories.

(1) Any title claim which involves the return of assets having a value of \$50,000 or more, or any debt claim in the amount of \$50,000 or more.

(2) Any title claim which will, as a practical matter, control the disposition of related title claims involving, with the principal claim, assets having a value of \$50,000 or more; or any debt claim which will, as a practical matter, control the disposition of related debt claims in the aggregate amount, including the principal claim, of \$50,000 or more.

(3) Any title claim or debt claim presenting a novel question of law or a question of policy which, in the opinion of the Director, should receive the personal attention of the Deputy Attorney General or the Attorney General.

(d) Any sale or other disposition of vested property involving assets of \$50,000 or more.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445-70, 35 FR 19397]

Dec. 23, 1970; Order No. 543-73, 38 FR 29587, Oct. 26, 1973; Order No. 568-74, 39 FR 18646, May 29, 1974]

§ 0.168 Redelelegation by Assistant Attorney Generals.

(a) The Assistant Attorney Generals are authorized to redelegate, to such extent and subject to such limitations as may be deemed advisable, to subordinate division officials and U.S. Attorneys authority delegated by §§ 0.160, 0.162, 0.164, and 0.172.

(b) Redele delegations under this section shall be in writing and shall be approved by the Deputy Attorney General before becoming effective.

(c) Existing delegations and redelegations of authority to such officials and U.S. Attorneys to compromise or close claims shall continue in force and effect until modified or revoked by the Assistant Attorney General in charge of the Division concerned.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 490-72, 37 FR 16603, Aug. 17, 1972; Order No. 543-73, 38 FR 29587, Oct. 26, 1973]

§ 0.169 Definition of "gross amount of original claim."

The phrase "gross amount of the original claim", as used in this Subpart Y and as applied to any civil fraud claim described in § 0.45(d), shall mean the amount of single damages involved.

§ 0.170 Interest on monetary limits.

In computing the gross amount of the original claim and the amount of the proposed settlement pursuant to this Subpart Y, accrued interest shall be excluded.

§ 0.171 Judgments, fines, penalties, and forfeitures.

(a) Subject to the general supervision of the Attorney General and under the direction of the Deputy Attorney General, each Assistant Attorney General shall be responsible for conducting, handling, or supervising such litigation or other actions as may be appropriate to accomplish the satisfaction, collection, or recovery, as the case may be, of judgments, fines, penalties, and forfeitures (including bail-bond forfeitures) arising in connection with cases under his jurisdiction. In order to assure the efficient and effective performance of the functions described in the first sentence of

this paragraph, each Assistant Attorney General shall designate an individual or unit in his division to be responsible for the performance of those functions.

(b) Each U.S. Attorney shall designate an Assistant U.S. Attorney, and such other employees as may be necessary, or shall establish an appropriate unit within his office, to be responsible for activities related to the satisfaction, collection, or recovery, as the case may be, of judgments, fines, penalties, and forfeitures (including bail-bond forfeitures).

(c) The Director of the Bureau of Prisons shall take such steps as may be necessary to assure that the appropriate U.S. Attorney is notified whenever a prisoner is released prior to the payment of his fine.

(d) The Pardon Attorney shall notify the appropriate U.S. Attorney whenever the President issues a pardon and whenever the President remits or commutes a fine.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 445-70, 35 FR 19397, Dec. 23, 1970; Order No. 543-73, 38 FR 29587, Oct. 26, 1973]

§ 0.172 Authority; Federal tort claims.

(a) The Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Director of the United States Marshals Service and the Administrator of the Drug Enforcement Administration shall have authority to adjust, determine, compromise, and settle a claim involving the Bureau of Prisons, Federal Prison Industries, the Immigration and Naturalization Service, the United States Marshals Service and the Drug Enforcement Administration, respectively, under section 2672 of title 28, United States Code, relating to the administrative settlement of Federal tort claims, if the amount of a proposed adjustment, compromise, settlement or award does not exceed \$2,500. When in the opinion of one of the said Directors or one of the said Commissioners such a claim pending before him presents a novel question of law or a question of policy, he shall obtain the advice of the Assistant Attorney General in charge of the Civil Division.

(b) Subject to the provisions of § 0.160, the assistant Attorney General in charge of the Civil Division shall have authority to adjust, determine, compro-

mise, and settle any other claim involving the Department under section 2672 of title 28, United States Code, relating to the administrative settlement of Federal tort claims.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order 520-73, 38 FR 18381, July 10, 1973; Order No. 565-74, 39 FR 15877, May 8, 1974]

Appendix to Subpart Y—Redelegations of Authority To Compromise and Close Civil Claims

CIVIL DIVISION

[Memo No. 374]

DELEGATION OF AUTHORITY TO U.S. ATTORNEYS IN CIVIL DIVISION CASES

By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations, particularly sections 0.45, 0.46, 0.160, 0.162, 0.164, 0.166, and 0.168, it is hereby ordered as follows:

SECTION 1. Scope of authority. The authority delegated by this Memorandum is applicable to civil claims, both by and against the Government, which are under the jurisdiction and authority of the Assistant Attorney General in charge of the Civil Division (hereafter in this Memorandum referred to as the Assistant Attorney General). U.S. Attorneys are hereby authorized to take all necessary steps, with regard to the claims described in this Memorandum, to protect the interests of the United States, including the institution, conduct, compromise and termination of appropriate legal proceedings, without prior approval of the Assistant Attorney General or his representative, but subject to the limitations and conditions set forth in this Memorandum, the limitations set forth in special instructions and manuals, and the requirements set forth in the U.S. Attorneys Manual. Except as provided in section 0.131 of Title 28 of the Code of Federal Regulations, the authority conferred by this Memorandum shall not be redelegated by U.S. Attorneys except in case of their protracted absence from their offices or in other unusual circumstances.

Sec. 2. Responsibility. The Assistant Attorney General has and, of course, retains the ultimate responsibility for the proper handling and administration of all civil litigation (excepting certain areas of specialized civil litigation assigned to other divisions of this Department—see Part 0 of Title 28 of the Code of Federal Regulations) involving the

United States, its departments, and agencies, including the President of the United States, the heads of Executive Departments and agencies, and certain other officers and employees of the Government. Each U.S. Attorney shall be immediately responsible for the proper handling of each claim involving an exercise of any authority delegated to him by this Memorandum. The Assistant Attorney General shall provide U.S. Attorneys with such advice or assistance as may be deemed necessary. The Assistant Attorney General may, at any time, withdraw any authority delegated by this Memorandum as it relates to any particular case, or part thereof, or to any particular category of cases.

Sec. 3. Claims covered—A. Admiralty and Shipping Section matters. Claims for civil penalties and forfeitures not exceeding \$10,000, exclusive of interest and costs for violation of the laws relating to inspection and documentation of vessels and to obstruction and pollution of navigable waters, interference with or damage to aids to navigation, and all similar matters but not including any claim for injunctive or declaratory relief. (Referred by local offices of the Coast Guard, the Bureau of Customs and the Army Engineers.)

B. Fraud Section matters. Civil claims arising from fraud on the Government (other than fraud matters referred to the Antitrust, Land and Natural Resources, and Tax Divisions), including claims under the False Claims Act, the Surplus Property Act, the Anti-Kickback Act, the Contract Settlement Act, and common law fraud whenever the amount of single damages claimed (exclusive of double damages, forfeitures, interest, and costs) does not exceed \$10,000.

C. General claims section matters. 1. Claims by the Government and Government owned corporations, other than claims involving fraud, or negligence claims arising out of personal injury or property damage, whenever the amount claimed does not exceed \$10,000, exclusive of interest and costs, as follows:

a. Claims for the recovery of the possession of Government personal property or for the conversion thereof, including the conversion of personal property mortgaged to the Government, but excluding conversion claims involving ships, cargoes and other maritime property.

b. Statutory civil penalty and civil monetary forfeiture claims of the Gov-

ernment which are not assigned to any other organizational unit within the Department of Justice.

c. Claims in bankruptcy, insolvency and decedents' estate proceedings involving non-tax debts due the Government.

d. Loan default, contractual and quasi-contractual claims arising under statutes administered by the Department of Agriculture.

e. Contractual and quasi-contractual claims of the Army and Air Force Exchange Service and other non-appropriated fund instrumentalities of the Government.

f. Claims referred upon General Accounting Office certificates of indebtedness, except those involving carriage of goods by water.

g. Loan default, contractual and quasi-contractual claims arising under statutes administered by the General Services Administration.

h. Claims of the Department of Housing and Urban Development on account of loans made or insured by that Department and claims arising under HUD planning advance agreements.

i. Contractual and quasi-contractual claims of the U.S. Postal Service.

j. Claims of the Railroad Retirement Board for the recovery of benefit payments and the enforcement or vindication of RRB liens.

k. Claims of the Small Business Administration arising out of the lending programs of that agency, except loans on the security of vessels.

l. Claims by the Treasury Department for the collection of customs duties and for recovery against sureties on customs bonds provided by importers.

m. Claims by the Veterans Administration on account of farm, business and home loans made, guaranteed or insured by that Agency.

n. Claims by the Veterans Administration for the escheat of funds pursuant to 38 U.S.C. 3203(e) and for the vesting of personal estates of deceased veterans pursuant to 38 U.S.C. 5220-5228.

2. Suits in which the United States or an officer or agency thereof or a Government-owned corporation has been made a party defendant pursuant to 28 U.S.C. 2410 in a quiet title, foreclosure, partition or interpleader action because of a lien of the Government and the current lien interest of the Government does not exceed \$10,000, exclusive of interest and costs, but excluding suits in

which the Government's interest is a tax lien, a lien on a vessel or other maritime property, or in which the lien arises from a criminal fine judgment or judgment on an appearance bond.

D. *General Litigation Section matters.* Claims seeking specific relief, as follows:

1. Suits to enjoin violations of, and collect penalties up to \$10,000 under, the Agricultural Adjustment Act of 1938; 7 U.S.C. 1376.

2. Suits to enjoin violations of, and collect penalties up to \$10,000 under, the Packers and Stockyards Act; 7 U.S.C. 203, 216.

3. Suits to enjoin violations of, and collect penalties up to \$10,000 under, the Perishable Agricultural Commodities Act; 7 U.S.C. 499c(a), 499h(d).

E. *Tort Section matters.* 1. Claims for hospital and medical care and treatment and for damage to Government property, other than ships, cargoes, or other maritime property whenever the amount claimed does not exceed \$10,000 exclusive of interest and costs.

2. Federal Tort Claims Suits—

a. Suits under the Federal Tort Claims Act, 28 U.S.C. 1346(b), whenever all claims for damages arising out of one incident do not exceed \$20,000.

b. In all suits under the Federal Tort Claims Act, regardless of the amount claimed, the U.S. attorney may compromise all claims arising out of one incident for an aggregate amount of \$20,000 or less without prior approval of the Assistant Attorney General unless previously instructed to the contrary.

F. *Civil Division judgments.* Final civil judgments in favor of the United States in cases in which the judgment amount does not exceed \$10,000 exclusive of interest and costs.

Sec. 4. *Further delegations.*

Notwithstanding any of the provisions of this Memorandum, Section Chiefs, may delegate to U.S. Attorneys any claims or suits, including those involving amounts greater than as set forth above, and up to the maximum limit of said Section Chiefs' authority, where the circumstances warrant such delegation. Upon recommendations of Section Chiefs, the Assistant Attorney General may delegate to U.S. Attorneys any claims or suits including those involving amounts greater than as set forth above, and up to the maximum limit of said Assistant Attorney General's authority,

where the circumstances warrant such delegations. Such further delegations are intended to effect maximum utilization of U.S. Attorneys' resources and provide on-site litigating authority wherever feasible.

SEC. 5. *Exceptions to special delegations of authority.* Notwithstanding any of the provisions of this Memorandum, U.S. Attorneys shall not compromise or close any claim described in this Memorandum in any case in which (1) there is a divergence of views between the U.S. Attorney and the agency or department originating the claim as to the action to be taken when the views of such agency are required to be obtained (see section 5 of this Memorandum); or (2) the claim involves a new point of law (or otherwise may constitute a significant precedent); or (3) in the opinion of the U.S. Attorney, or of the Assistant Attorney General, a question of policy is, or may be, involved. In such cases, a compromise or closing memorandum must be submitted to the Assistant Attorney General for approval.

SEC. 6. *Solicitation of agency recommendation for compromise.* The views and recommendations of the referring office of agencies and departments for the compromising and closing of claims involving authority delegated by this Memorandum should be obtained whenever: (1) the agency or department has specifically requested that it be consulted; (2) a question of agency or department policy is or may be involved; (3) a question of enforcement is present, i.e., cases involving civil fines and penalties.

SEC. 7. *Bases for compromise or closing of claims and judgments.* (a) A claim may be compromised or closed by a U.S. Attorney pursuant to the authority delegated by this Memorandum even though substantial legal or factual problems exist, but only if the amount of the offer fairly reflects the litigative probability and no question of policy or enforcement is present.

(b) A claim or a judgment may be compromised or closed on the basis of doubtful collectibility, having due regard for the debtor's anticipated future financial status. A claim or a judgment may be closed if the cost of further collection efforts will substantially exceed the amount that can be recovered thereby.

(c) Whenever a claim is closed or compromised by a U.S. Attorney pursuant to the authority conferred upon him by

this Memorandum, he shall execute and place in the file a memorandum which shall contain a description of the claim and a full statement of the reasons for closing it.

SEC. 8. *Return of civil judgment cases to agencies.* A. Where all claims have been reduced to judgment and all moneys to be collected thereon are payable to a single referral agency, a case may be returned to that agency for servicing and surveillance, provided each of the following conditions is fully met.

(1) The judgments to be transferred to the referral agencies must be limited to:

(a) Judgments determined to be uncollectible except by installment payments which debtors agree to make to the agencies or, if otherwise enforceable, where such enforcement is being forborne in consideration of the promise of such payments; or

(b) Judgments determined to be presently uncollectible but to have potential future collectibility and the U.S. attorney is not in a better position than the agency to keep them under surveillance.

(2) If the uncollected principal balance is in excess of \$5,000, or if the Division has an open file on the case, such action must have the approval of the Division.

(3) The U.S. attorney must be satisfied that, as a practicable matter, the transfer will not adversely affect the chances or amounts of collections.

(4) The agency must be willing to accept the transfer and must be given to understand that it is not authorized to undertake final settlement, reduction or release of judgments in respect of unpaid balances without the specific approval of the Department of Justice, and that all judicial proceedings to enforce or release judgments must be conducted by the U.S. attorney.

(5) The U.S. attorney must consider it unlikely that the case will be returned to him for further proceedings within an unreasonably brief period of time.

B. Upon transferring responsibility to an agency under this section, the U.S. attorney may close his file, subject to reopening, however, if, upon request by the agency or for any other reason, it appears that further action should be taken by his office.

C. After the return of judgments to referral agencies, judgment liens should neither be renewed nor revised, unless there is reason to believe that substantial

assets have or may become subject thereto or unless the referral agencies furnish credit data showing that such action is economically desirable.

D. If the U.S. attorney can properly close a judgment under the applicable criteria, he should close the file and remove the judgment from the Department of Justice inventory, rather than return the judgment to the referral agency.

SEC. 9. *Appeals.* All judicial decisions adverse to the Government involving these claims must be reported promptly to the Assistant Attorney General.

SEC. 10. *Revocations.* The following-described orders and memoranda are hereby superseded: Order No. 103-55, as amended, revised, and supplemented, Memo No. 119, Order No. 266-62, Order No. 301-63, Memo No. 180, as supplemented, Memo No. 351.

[Memo No. 374, 29 F.R. 7422, June 9, 1964, as amended by Memo No. 415, 30 F.R. 7810, June 17, 1965; Memo No. 374, 36 F.R. 12739, July 7, 1971; 36 FR 24115, Dec. 21, 1971; Memo 374, 38 FR 21495, Aug. 9, 1973]

CRIMINAL DIVISION

[Directive No. 1]

REDELEGATION OF AUTHORITY WITH RESPECT TO COMPROMISE OF CIVIL PENALTIES AND FORFEITURES

Delegation of authority to the Deputy Assistant Attorney Generals and to section chiefs. By virtue of the authority vested in me by § 0.168 of Title 28 of the Code of Federal Regulations, as amended, the authority delegated to me by §§ 0.160, 0.162, and 0.164 of that title to compromise civil penalties and forfeitures and to allow or deny petitions for remission or mitigation of civil penalties and forfeitures is hereby redelegated to the Deputy Assistant Attorney Generals and to section chiefs in the Criminal Division.

[Memo No. 375]

STANDARDS AND PROCEDURES WITH RESPECT TO CRIMINAL PROSECUTIONS INVOLVING CERTAIN AGRICULTURAL MARKETING QUOTA PENALTY CASES

By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations, particularly Sections 0.55, 0.160, 0.162, 0.164, 0.166, and 0.168, it is hereby ordered as follows:

SECTION 1. *Purpose.* The purpose of this Memorandum is to prescribe standards and procedures for U.S. Attorneys with respect to the handling of the criminal aspects of agricultural marketing quota

penalty cases which are submitted to the U.S. Attorneys by direct referral from the attorney in charge of the local office of the General Counsel of the Department of Agriculture (hereinafter in this Memorandum referred to as the General Counsel), Supplement No. 1 of October 26, 1955, to Memorandum No. 119 is hereby superseded. Attention is invited to the fact that Memorandum No. 374, of June 3, 1964, which superseded Memorandum No. 119 of December 8, 1954, deals with the civil aspects of agricultural marketing quota penalty cases.

SEC. 2. *Scope of authority.* (a) The authority conferred by this Memorandum is applicable to alleged criminal violations involving the provisions of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1311-1376), in cases in which the gross amount involved does not exceed \$5,000.

(b) Matters involving alleged criminal violations of the Agricultural Adjustment Act of 1938, as amended, shall be referred directly to the U.S. Attorney concerned by the attorney in charge of the local office of the General Counsel which has jurisdiction over any such matter requiring action. U.S. Attorneys may initiate criminal prosecution or decline to do so as they, in their judgment, may deem appropriate. U.S. Attorneys are, of course, urged to obtain the advice and assistance of this Department whenever they feel that such advice and assistance might be helpful.

SEC. 3. *Correspondence.*—(a) *With the Department of Justice.* Inquiries to the Department concerning any matters covered by this Memorandum should be directed to the attention of the Assistant Attorney General in charge of the Criminal Division (hereinafter in this Memorandum referred to as the Assistant Attorney General). Any such inquiry should be accompanied by copies of all pertinent correspondence and other documents, including the indictment if one shall have been returned, since files concerning these matters will not be maintained in Washington.

(b) *With the Department of Agriculture.* Correspondence calling for additional factual details, and requests for investigations, documents, witnesses, and similar matters, should be directed to the General Counsel's attorney in charge who originated the matter. However, only the U.S. Attorney and his duly appointed assistants are authorized to exercise any control whatsoever over the

handling of any such matter referred to the U.S. Attorney for action. The U.S. Attorney is charged with the entire responsibility for the manner in which such matters are handled.

Sec. 4. Closing of the Prosecution. (a) U.S. Attorneys may decline to prosecute any case involving a matter covered by this Memorandum without prior consultation or approval of the Assistant Attorney General. If, however, prosecution has been initiated by way of indictment or information, the indictment or information shall not be dismissed until authority to do so has been obtained from the Assistant Attorney General or his representative unless the reason for the dismissal is one which does not necessitate the prior approval of the Criminal Division. (See U.S. Attorneys' Manual, Title 2: Criminal Division, pages 18-20.)

(b) In each instance in which a case is closed by a U.S. Attorney and in which prior approval of the Assistant Attorney General or his representative has not been obtained, a memorandum shall be prepared and placed in the file describing the action taken and the reasons therefor.

Sec. 5. Appeals. The instructions existing with reference to criminal appeals shall govern appeals in cases covered by this Memorandum.

LAND AND NATURAL RESOURCES DIVISION

[Memo. No. 388]

REDELEGATION OF AUTHORITY TO U.S. ATTORNEYS TO ACT IN CONNECTION WITH AND TO COMPROMISE LAND AND NATURAL RESOURCES DIVISION DIRECT-REFERENCE CASES

By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations, particularly §§ 0.65, 0.160, 0.162, 0.164, 0.166, and 0.168, I hereby redelegate to U.S. Attorneys authority to act in connection with and to compromise Land and Natural Resources Division direct-reference cases as follows:

SECTION 1. Matters Subject to Direct Reference. U.S. Attorneys are hereby authorized to act in matters concerning real property of the United States, including tribal and restricted individual Indian land, not involving new or unusual questions or questions of title or water rights, on behalf of any other department or agency in response to a direct request in writing from an author-

ized field officer of the department or agency concerned, without prior authorization from the Land and Natural Resources Division in the following-described cases:

(1) Actions to recover possession of property from tenants, squatters, trespassers, or others, and actions to enjoin trespasses on Federal property;

(2) Actions to recover damages resulting from trespasses when the amount of the claim for actual damage based upon an innocent trespass does not exceed \$5,000. The U.S. Attorneys may seek recovery of amounts exceeding \$5,000: (A) if the actual damages are \$5,000 or less and State statutes permit the recovery of multiple damages, e.g., double or treble, for either a willful or an innocent trespass; (B) if the actual damages are \$5,000 or less, but the action is for conversion to obtain recovery of the enhanced value of property served and removed in the trespass;

(3) Actions to collect delinquent rentals or damages for use and occupancy of not more than \$5,000;

(4) Actions to collect costs of forest fire suppression and other damages resulting from such fires if the total claim does not exceed \$5,000;

(5) Actions to collect delinquent operation and maintenance charges accruing on Indian irrigation projects and federal reclamation projects of not more than \$5,000;

(6) Actions to collect loans of money or livestock made by the United States to individual Indians without limitation on amount, including loans made by Indian tribal organizations to individual Indians if the loan agreements, notes and securities have been assigned by the tribal organizations to the United States.

In each such case, the U.S. Attorneys shall, prior to taking action, assure that a copy of a written request of the authorized field officer has been forwarded to the Land and Natural Resources Division, General Litigation Section, Department of Justice, Washington, D.C.

Sec. 2. Compromise, dismissal, or closing of direct-reference cases. (1) Subject to the limitations imposed by paragraph (3) of this section, U.S. Attorneys are hereby authorized to accept or reject offers in compromise in direct-reference cases described in section 1 without the prior approval of the Land and Natural Resources Division if the authorized field

officer of the interested agency concurs in writing, except that a U.S. Attorney may accept an offer without the concurrence of the field officer if the acceptance is based solely upon the financial circumstances of the debtor.

(2) A direct-reference matter described in section 1 may be closed without action by the U.S. Attorney or, if filed in court, may be dismissed by him, if the field officer of the interested agency concurs in writing that it is without merit legally or factually. The U.S. Attorney may close a claim without consulting the field officer of the interested agency if the claim is for money only and if he concludes (A) that the cost of collection under the circumstances would exceed the amount of the claim or (B) that the claim is uncollectable.

(3) The U.S. Attorneys are not authorized, without the prior approval of the Land and Natural Resources Division, to act with respect to the dismissal, compromise, or closing of a case, if (A) the claim is not a direct reference described in section 1; (B) there is a divergence of views between the U.S. Attorney and the field officer of the referring agency in a case requiring concurrence; (C) subsequent to acceptance of the reference, it becomes apparent that the claim involves a novel point of law, a question of policy, or otherwise constitutes a precedent; (D) for any reason, the compromise of a claim, as a practical matter, will control or adversely affect the disposition of other claims totaling more than the amounts designated in section 1 as being subject to direct reference. If any of these conditions exist, the matter shall be submitted to the Land and Natural Resources Division for decision.

SEC. 3. Circular No. 3745½, dated November 9, 1942, is superseded to the extent that it is inconsistent with the provisions of this memorandum. The U.S. Attorneys' Manual will be revised accordingly.

SEC. 4. This memorandum shall be effective upon its publication in the FEDERAL REGISTER.

TAX DIVISION

[Memo. No. 391]

REDELEGATION OF AUTHORITY TO RELEASE RIGHTS OF REDEMPTION IN CERTAIN CASES

By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations, particularly §§ 0.70,

0.160, 0.162, 0.164, 0.166, and 0.168, it is hereby ordered as follows:

The U.S. Attorney for each district in which is located real property, which is subject to a right of redemption of the United States in respect of Federal tax liens, arising under section 2410(c) of title 28 of the United States Code, or under State law when the United States has been joined as a party to a suit, is authorized to release the right of redemption, subject to the following limitations and conditions—

(1) This redelegation of authority relates only to real property on which is located only one single-family residence, and to all other real property having a fair market value not exceeding \$10,000. That limitation as to value or use shall not apply in those cases in which the release is requested by the Veterans Administration or any other Federal agency.

(2) The consideration paid for the release must be equal to the value of the right of redemption, or fifty dollars (\$50), whichever is greater. However, no consideration shall be required for releases issued to the Veterans Administration or any other Federal agency.

(3) The following described documents must be placed in the U.S. Attorney's file in each case in which a release is issued—

(A) The favorable recommendation of the appropriate Regional Counsel of the Internal Revenue Service.

(B) Appraisals by two disinterested and well-qualified persons. In those cases in which the applicant is a Federal agency, the appraisal of that agency may be substituted for the two appraisals generally required.

(C) Such other information and documents as the Tax Division may prescribe.

TAX DIVISION

[Tax Division Directive No. 27]

REDELEGATION OF AUTHORITY TO COMPROMISE, SETTLE, AND CLOSE CLAIMS

By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations, particularly §§ 0.70, 0.160, 0.162, 0.164, 0.166, and 0.168, it is ordered as follows:

SEC. 1. The Chiefs of the Civil Trial Sections, the Court of Claims Section, and the Appellate Section are authorized to reject offers in compromise, regardless of amount, without reference to the Review Section, provided that such ac-

tion is not opposed by the agency or agencies involved.

Sec. 2. Subject to the conditions and limitations set forth in Section 6 hereof, the Chiefs of the Civil Trial Sections and Court of Claims Section are authorized to accept offers in compromise in all cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed \$75,000, provided that such action is not opposed by the agency or agencies involved.

Sec. 3. Subject to the conditions and limitations set forth in Section 6 hereof, the Chief of the Review Section shall have authority to—

(A) Accept offers in compromise in all cases in which the amount of the Government's concession, exclusive of statutory interest does not exceed \$75,000;

(B) Approve administrative settlements not exceeding \$75,000;

(C) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed \$75,000, and

(D) Reject offers in compromise, or disapprove administrative settlements or concessions, regardless of amounts,

provided that the action is not opposed by the agency or agencies involved or the chief of the section to which the case is assigned.

Sec. 4. Subject to the conditions and limitations set forth in Section 6 hereof, the Director, Civil Litigation, shall have authority to—

(A) Accept offers in compromise in all cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed \$250,000,

(B) Approve administrative settlements not exceeding \$250,000,

(C) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed \$250,000, and

(D) Reject offers in compromise, or disapprove administrative settlements or concessions, regardless of amount,

provided that the action is not opposed by the agency or agencies involved, the Chief of the Review Section, or the chief of the section to which the case is assigned, and provided further that the limiting amount in (A), (B), and (C) shall be \$100,000 if the case is subject to reference to the Joint Committee on Internal Revenue Taxation.

Sec. 5. Subject to the conditions and limitations set forth in Section 6 hereof, the Deputy Assistant Attorneys General each shall have authority to—

(A) Accept offers in compromise in all cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed \$250,000,

(B) Approve administrative settlements not exceeding \$250,000,

(C) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed \$250,000, and

(D) Reject offers in compromise, or disapprove administrative settlements or concessions, regardless of amount,

provided that the limiting amount of (A), (B), and (C) shall be \$100,000, if the proposed disposition of the claim is opposed by the agency or agencies involved or if the case is subject to reference to the Joint Committee on Internal Revenue Taxation.

Sec. 6. The authority redelegated herein shall be subject to the following conditions and limitations:

(A) When, for any reason, the compromise or administrative settlement or concession of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totaling more than the respective amounts designated in Sections 2, 3, 4, and 5, the case shall be forwarded for review at the appropriate level.

(B) When, because of the importance of a question of law or policy presented, the position taken by the agency or agencies or by the United States Attorney involved, or any other considerations, the person otherwise authorized herein to take final action is of the opinion that the proposed disposition should be reviewed at a higher level, he shall forward the case for such review.

(C) Nothing in this Directive shall be construed as altering any provision of Subpart Y of Part O of Title 28 of the Code of Federal Regulations requiring the submission of certain cases to the Attorney General, the Deputy Attorney General, or the Solicitor General.

(D) Authority to approve recommendations that the Government confess error, or make administrative settlements, in cases on appeal, is excepted from the foregoing redelegations.

(E) The Assistant Attorney General, at any time, may withdraw any author-

ity delegated by this Directive as it relates to any particular case or category of cases, or to any part thereof.

Sec. 7. This Directive supersedes Tax Division Directive No. 19, approved November 27, 1973.

Sec. 8. This Directive shall become effective June 9, 1976.

[41 FR 23198, June 9, 1976]

CIVIL DIVISION

[Directive No. 18-71]

DELEGATION OF AUTHORITY WITH RESPECT TO THE COMPROMISE AND CLOSING OF LITIGATION

By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations, particularly §§ 0.45, 0.46, 0.160, 0.162, 0.164, 0.166, and 0.168, it is hereby ordered as follows:

SECTION 1. *Delegation of authority to Section Chiefs, Chiefs of Units and Attorneys in Charge of Field Offices.* Authority delegated to the Assistant Attorney General in charge of the Civil Division to accept or reject offers in compromise, or to close claims other than by compromise or entry of judgment is hereby redelegated, in part, to the several Section and Unit Chiefs and to the Attorneys in Charge of Field Offices, of the Civil Division as follows (subject to the exceptions set forth in section 2 of this directive):

(1) *Section Chiefs and Chiefs of Units.* In all cases against the Government in which the amount to be paid by the Government pursuant to the offer, and in all cases involving claims asserted by the Government in which the amount demanded by the Government, does not exceed \$50,000, exclusive of interests and costs.

(2) *Attorneys in Charge of Field Offices.* In all cases against the Government in which the amount to be paid by the Government pursuant to the offer, and in all cases involving claims asserted by the Government in which the amount demanded by the Government, does not exceed \$10,000, exclusive of interests and costs.

(3) *Closings.* Section Chiefs, Unit Chiefs, and Attorneys in Charge of Field Offices may close claims asserted by the Government in which the gross amount demanded falls within the sums of the respective delegations herein.

Sec. 2. *Exceptions.* (a) In any case in which any of the following-described conditions exist all offers in compro-

mise, whether asserted against or on behalf of the Government, must be presented to the Assistant Attorney General for his consideration:

(1) Whenever the agency or agencies involved oppose the settlement;

(2) Whenever a new precedent or a new point of law is involved;

(3) Whenever in the opinion of the Section Chief, the Unit Chief or the Attorney in Charge of the Field Office, as the case may be, a question of policy is or may be involved;

(4) Whenever the U.S. attorney has requested reconsideration of a compromise offer previously recommended by him and rejected;

(5) Whenever the total amount involved in other claims arising out of the same transaction exceeds the sum covered by the delegation; and

(6) Whenever, for any reason, the compromise of a particular claim, as a practical matter, will control the disposition of related claims totaling an amount in excess of the sum covered by the delegation.

(b) In any case in which any of the following-described conditions exist, the closing of a claim asserted by the Government must be presented to the Assistant Attorney General for his consideration.

(1) Whenever, for any reason, the closing of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims the total amounts of which exceed the sum covered by the delegation;

(2) Whenever, in the opinion of the Section Chief, Unit Chiefs, or the Attorneys in Charge of Field Offices as the case may be, that because of a question of law or policy, or because of opposition to closing by the agency or agencies involved, or for any other reason, the proposed closing should receive the personal attention of the Assistant Attorney General.

Sec. 3. *Record of action.* (a) In each case in which a compromise has been accepted or rejected by a Section Chief, Unit Chief, or Attorney in Charge of a Field Office pursuant to the authority delegated to him by this directive, a memorandum shall be prepared for the files which shall include:

(1) A statement of the offer;

(2) A statement of the action taken; and

(3) A full statement of the reasons for the action taken.

(b) In each case in which a claim has been closed by a Section Chief, Unit Chief, or Attorney in Charge of a Field Office pursuant to authority delegated to him by this directive, a memorandum shall be prepared for the file containing a full statement of the reasons for the action taken.

(c) In each case in which a compromise has been accepted or rejected or a case in which a claim has been closed by a Section Chief or Unit Chief pursuant to the authority delegated to him by this directive, involving an amount not less than \$20,000, a copy of the file memorandum shall be sent to the Assistant Attorney General.

SEC. 4. Necessity for submission to agency involved. (a) No offer in compromise, either of a claim asserted against or a claim asserted on behalf of the Government, shall be finally acted upon pursuant to the authority delegated by this directive without first obtaining the views of the agency or agencies involved, except in cases in which no question of policy of interest to the agency or agencies involved, is present and one of the following-described conditions exists:

(1) The amount of the claim asserted on behalf of the Government, or the amount to be paid in satisfaction of the claim against the Government, does not exceed \$5,000; or

(2) The compromise is based solely upon uncollectibility of the full amount of a claim asserted on behalf of the United States; or

(3) The compromise is one within the scope of section 784(1) of title 38 of the United States Code.

(b) No claim shall be closed pursuant to the authority delegated by this directive without first obtaining the views of the agency or agencies involved.

SEC. 5. Counteroffers by the Government. The delegations of authority made by this directive to compromise include the authority to make counteroffers in situations in which the making of a counteroffer seems appropriate and might accelerate disposition of the case.

SEC. 6. Recommendations for compromise or closings submitted for approval of the Assistant Attorney General. All recommendations for acceptance or rejection of compromise offers or closings which require the approval of either the Attorney General or the Assistant Attorney General shall be prepared in conformity with the format prescribed for that purpose.

SEC. 7. Prior directive superseded. Civil Division Directive No. 3-68, published September 6, 1968, is hereby superseded.

SEC. 8. Effective date. The provisions of this directive shall be effective upon the date of the publication of this directive in the *FEDERAL REGISTER* (8-13-71). [36 F.R. 15431, Aug. 14, 1971]

LAND AND NATURAL RESOURCES DIVISION

[Directive No. 4-73]

DELEGATION OF AUTHORITY TO COMPROMISE CLAIMS

Pursuant to the authority contained in 28 CFR 0.168, the Deputy Assistant Attorney General in the Land and Natural Resources Division is hereby authorized, with respect to matters assigned to the Land and Natural Resources Division, to accept or reject offers in compromise of claims against the United States in which the amount of the proposed settlement does not exceed \$100,000, and of claims in behalf of the United States in which the gross amount of the original claim does not exceed \$100,000; and the Chief of the Land Acquisition Section and the Chief of the General Litigation Section of the Land and Natural Resources Division are hereby authorized, with respect to matters assigned to their respective sections, to accept or reject offers in compromise of claims against the United States in which the amount of the proposed settlement does not exceed \$50,000, and of claims in behalf of the United States in which the gross amount of the original claim does not exceed \$50,000; except:

(1) When, for any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totaling more than the respective amounts designated above;

(2) When because a novel question of law or a question of policy is presented, or for any other reason, the offer should, in the opinion of the officer or employee concerned, receive the personal attention of the Assistant Attorney General in charge of the Land and Natural Resources Division; and

(3) When the agency or agencies involved are opposed to the proposed acceptance or rejection of the offer in compromise.

Land Division Directive No. 27, dated April 11, 1961, is superseded. [37 FR 20237, Sept. 28, 1972]

LAND AND NATURAL RESOURCES DIVISION
[Directive No. 5-72]

REDELEGATION OF AUTHORITY TO
COMPROMISE CLAIMS

By virtue of the authority vested in me by Part O of Title 28 of the Code of Federal Regulations, particularly §§ 0.65, 0.160, 0.162, 0.164, 0.166, and 0.168, I hereby redelegate to U.S. Attorneys authority to compromise condemnation cases subject to and in accordance with the following limitations and conditions:

1. Except as provided in paragraph 2 hereof, U.S. Attorneys are authorized to accept or reject offers in compromise of claims against the United States for just compensation in condemnation proceedings in any case in which the gross amount of the proposed settlement does not exceed \$20,000: *Provided, That—*

(a) The settlement is approved in writing (to be retained in the file of the U.S. Attorney concerned) by the authorized field representative of the acquiring agency if the amount of the settlement exceeds the amount deposited with the declaration of taking as to the particular tract of land involved; and

(b) The amount of the settlement is compatible with the sound appraisal, or appraisals, upon which the United States would rely as evidence in the event of trial, due regard being had for probable minimum trial costs and risks.

2. This re delegation of authority shall not apply—

(a) In any case in which, for any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totalling an amount in excess of \$20,000; or

(b) In any case in which the U.S. Attorney concerned is of the opinion that because of a question of law or policy presented, or for any other reason, the offer should receive the attention of the Land and Natural Resources Division of the Department; or

(c) When the case involves the reversion of any land or improvements or any interest, or interests, in land under the Act of October 21, 1942, 56 Stat. 797 (40 U.S.C. 258f).

3. The procedural functions necessary for completing disposition of the matter, including the entry of judgment and

distribution of the award, shall be performed promptly when a settlement has been made under this re delegation of authority. The U.S. Attorney concerned shall immediately forward to the Department a report, in the form of a letter or memorandum, bearing his signature or showing his personal approval. The report, an initialed copy of which shall be retained in the file of the U.S. Attorney, shall show the action taken and shall contain an adequate statement of the reasons therefor. In routine cases, a form, containing the minimum elements of the required report, may be used in lieu of a letter or memorandum. In any case, special care shall be taken to see that the report contains a statement as to what the valuation testimony of the United States would have been if the case had been tried.

Land and Natural Resources Division Memo No. 389 is superseded.

[37 FR 20237, Sept. 28, 1972]

CIVIL DIVISION

[Directive No. 31-72]

DELEGATION OF AUTHORITY WITH RESPECT
TO ADMINISTRATIVE CLAIMS UNDER THE
FEDERAL TORT CLAIMS ACT

By virtue of the authority vested in me by Part O of Title 28 of the Code of Federal Regulations, particularly §§ 0.45, 0.160, 0.162, 0.164, 0.168, and 0.172: *It is hereby ordered*, as follows:

The authority delegated to the Assistant Attorney General in charge of the Civil Division to adjust, determine, compromise, and settle claims involving the Department of Justice under section 2672 of title 28, U.S.C., relating to the administrative settlement of Federal Tort Claims, is hereby redelegated to the Chief of the Tort Section:

(a) If the amount to be paid on a single claim does not exceed \$50,000 and,

(b) No question of Department or Government policy is or may be involved and,

(c) The Bureau, Service, Division, Board, Office, or Administration whose activity gives rise to the claim has not interposed objection to settlement.

Effective date. The provisions of this directive shall be effective upon the date of publication of this directive in the FEDERAL REGISTER.

[37 FR 16936, Aug. 23, 1972]

Subpart Z—Assigning Responsibility Concerning Applications for Orders Compelling Testimony or Production of Evidence by Witnesses

AUTHORITY: The provisions of this Subpart Z issued under secs. 509 and 510, title 28, sec. 301, title 5, sec. 6003(b), title 18, U.S.C.; sec. 501, Comprehensive Drug Abuse Prevention and Control Act of 1970 (Public Law 91-513).

SOURCE: The provisions of this Subpart Z contained in Order 445-70, 35 F.R. 19397, Dec. 23, 1970, unless otherwise noted.

§ 0.175 Judicial and administrative proceedings.

(a) The Assistant Attorney General in charge of the Criminal Division is authorized to exercise the authority vested in the Attorney General by sections 2514 and 6003, of title 18, United States Code, to approve the application of a U.S. attorney to a Federal court for an order compelling testimony or the production of information by a witness in any proceeding before or ancillary to a court or grand jury of the United States, and the authority vested in the Attorney General by section 6004 of title 18, United States Code, to approve the issuance by an agency of the United States of an order compelling testimony or the production of information by a witness in a proceeding before the agency, when the subject matter of the case or proceeding is either within the cognizance of the Criminal Division or is not within the cognizance of the Divisions or Administration designated in paragraphs (b) and (c) of this section.

(b) The Assistant Attorney Generals in charge of the Antitrust Division, the Civil Division, the Civil Rights Division, the Internal Security Division, the Land and Natural Resources Division, and the Tax Division are authorized to exercise the power and authority vested in the Attorney General by sections 2514 and 6003 of title 18, United States Code, to approve the application of a U.S. Attorney to a Federal court for an order compelling testimony or the production of information in any proceeding before or ancillary to a court or grand jury of the United States when the subject matter of the case or proceeding is within the cognizance of their respective Divisions: *Provided, however,* That no approval shall be granted unless the Criminal Division indicates that it has no

objection to the proposed grant of immunity.

(c) The Assistant Attorney Generals designated in paragraph (b) of this section, and the Administrator of the Drug Enforcement Administration are authorized to exercise the authority vested in the Attorney General by section 6004 of title 18, United States Code, to approve the issuance by an agency of the United States of an order compelling testimony or the production of information by a witness in a proceeding before the agency when the subject matter of the proceeding is within the cognizance of their respective Divisions or the Administration: *Provided, however,* That no approval shall be granted unless the Criminal Division indicates that it has no objection to the proposed grant of immunity.

[Order 445-70, 35 FR 19397, Dec. 23, 1970, as amended by Order 520-73, 38 FR 18381, July 10, 1973; Order No. 541-73, 38 FR 27285, Oct. 2, 1973]

§ 0.176 Congressional proceedings.

(a) A notice of an intention to request an order from a district court compelling testimony or the production of information in a congressional proceeding when submitted to the Attorney General by either House of Congress or a committee or a subcommittee of the Congress pursuant to section 6005 of title 18, United States Code, shall be referred to the Assistant Attorney General of the Division or the Administrator of the Administration having cognizance of the subject matter of the proceedings: *Provided, however,* That either the notice or a copy thereof shall in any event be referred to the Assistant Attorney General in charge of the Criminal Division.

(b) The Assistant Attorney General in charge of the Criminal Division and the Assistant Attorney Generals designated in § 0.175(b) are authorized to exercise the power and authority vested in the Attorney General by section 6005 of title 18, United States Code, to apply to a district court of the United States to defer the issuance of an order compelling the testimony of a witness or the production of information in a proceeding before either House of Congress, or any committee or subcommittee of either House, or any joint committee of the two Houses.

[Order 445-70, 35 FR 19397, Dec. 23, 1970, as amended by Order 520-73, 38 FR 18381, July 10, 1973]

§ 0.177 Applications for orders under the Comprehensive Drug Abuse Prevention and Control Act.

Notwithstanding the delegation of functions contained in Subpart R of this part, the Assistant Attorney General in charge of the Criminal Division is authorized to exercise the authority vested in the Attorney General by section 514 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 84 Stat. 1276, to approve the application of a U.S. Attorney to a Federal court for an order compelling testimony or the production of information in any proceeding before a court or grand jury of the United States. Immunity shall be granted in agency proceedings under that Act only with the concurrence of the Assistant Attorney General in charge of the Criminal Division.

§ 0.178 Redelegation of authority.

(a) The Assistant Attorney General in charge of the Criminal Division and the Assistant Attorney Generals designated in § 0.175(b) are authorized to redelegate the authority delegated by this subpart to their respective Deputy Assistant Attorneys Generals to be exercised solely during the absence of such Assistant Attorneys Generals from the City of Washington.

(b) The Administrator of the Drug Enforcement Administration is authorized to redelegate the authority delegated by this subpart to the Deputy Administrator of DEA, to be exercised solely during the absence of the Administrator from the City of Washington.

[Order 445-70, 35 FR 19397, Dec. 23, 1970, as amended by Order 520-73, 38 FR 18381, July 10, 1973]

Subpart Z-1—Prosecutions for Obstruction of Justice and Related Charges

SOURCE: Order No. 630-75, 40 FR 53390, Nov. 18, 1975, unless otherwise noted.

§ 0.179 Scope.

This subpart applies to the following matters:

(a) Obstruction of justice and obstruction of a criminal investigation (18 U.S.C. 1501-1511);

(b) Perjury and subornation of perjury (18 U.S.C. 1621, 1622);

(c) False declarations before a grand jury or court (18 U.S.C. 1623);

(d) Fraud and false statements in matters within the jurisdiction of a government agency (18 U.S.C. 1001); and

(e) Conspiracy to defraud the United States (18 U.S.C. 371).

§ 0.179a Enforcement responsibilities.

(a) Matters involving charges of obstruction of justice, perjury, fraud or false statement, as described in § 0.179, shall be under the supervisory jurisdiction of the Division having responsibility for the case or matter in which the alleged obstruction occurred. The Assistant Attorney General in charge of each Division shall have full authority to conduct prosecution of such charges, including authority to appoint special attorneys to present evidence to grand juries. However, such enforcement shall be preceded by consultation with the Assistant Attorney General in charge of the Criminal Division, to determine the appropriate supervisory jurisdiction. (See 38 CFR 0.55(p).)

(b) In the event the Assistant Attorney General in charge of the Division having responsibility for the case or matter does not wish to assume supervisory jurisdiction he shall refer the matter to the Assistant Attorney General in charge of the Criminal Division for handling by that Division.

Subpart AA—Orders of the Attorney General

AUTHORITY: The provisions of this Subpart AA issued under 28 U.S.C. 509, 510; 5 U.S.C. 301.

SOURCE: The provisions of this Subpart AA contained in Order No. 460-71, 36 FR. 12096, June 25, 1971, unless otherwise noted.

§ 0.180 Documents designated as orders.

All documents relating to the organization of the Department or to the assignment, transfer, or delegation of authority, functions, or duties by the Attorney General or to general departmental policy shall be designated as orders and shall be issued only by the Attorney General in a separate, numbered series. Classified orders shall be identified as such, included within the numbered series, and limited to the distribution provided for in the order or determined by the Assistant Attorney General for Administration. All documents amending, modifying, or revoking such orders, in whole or in part, shall likewise be designated as orders within such numbered series, and no other designation of such documents shall be used.

§ 0.181 Requirements for orders.

Each order prepared for issuance by or approval of the Attorney General shall be given a suitable title, shall contain a clear and concise statement explaining the substance of the order, and shall cite the authority for its issuance.

§ 0.182 Submission of proposed orders to the Office of Legal Counsel.

All orders prepared for the approval or signature of the Attorney General shall be submitted to the Office of Legal Counsel for approval as to form and legality and consistency with existing orders.

§ 0.183 Distribution of orders.

The distribution of orders, unless otherwise provided by the Attorney General, shall be determined by the Assistant Attorney General for Administration.

Subpart BB—Sections and Subunits**§ 0.190 Changes within organizational units.**

The head of each Office, Division, Bureau or Board may from time to time propose the establishment, transfer, reorganization or termination of major functions within his organizational unit as he may deem necessary or appropriate. In each instance, the head of the Office, Division, Bureau or Board shall submit the proposed change in writing to the Assistant Attorney General for Administration who shall evaluate it and submit the proposed change along with his recommendation to the Deputy Attorney General. Final authority to implement the proposed change is contingent upon the approval of the Attorney General.

[Order No. 565-74, 39 FR 15877, May 6, 1974]

§ 0.191 Continuance in effect of the existing organization of departmental units.

The existing organization of each organizational unit with respect to sections and subunits shall continue in full force and effect until changed in accordance with this Subpart AA.

Subpart CC—Jurisdictional Disagreements**§ 0.195 Procedure with respect to jurisdictional disagreements.**

Any disagreement between or among heads of the organizational units as to their respective jurisdictions shall be

resolved by the Attorney General, who may, if he so desires, issue an order in the numbered series disposing of the matter.

§ 0.196 Procedure for resolving disagreements concerning mail or case assignments.

When an assignment for the handling of mail or a case has been made by the Records Administration Office through established procedures and the appropriate authorities in any organizational unit of the Department disagree concerning jurisdiction of the unit for handling the matter or matters assigned, the Records Administration Officer shall refer the disagreement, together with a statement of the view of the unit or units involved, to the Assistant Attorney General for Administration for determination. If the disagreement cannot be resolved, the matter shall be referred to the Deputy Attorney General for final disposition.

PART 1—EXECUTIVE CLEMENCY**Sec.**

- 1.1 Submission of petition; form to be used.
- 1.2 Contents of petition.
- 1.3 Eligibility for filing petition for pardon.
- 1.4 Eligibility for filing petition for commutation of sentence.
- 1.5 Offenses against the laws of possessions or territories of the United States.
- 1.6 Disclosure of files.
- 1.7 Consideration of petitions by the Attorney General; recommendations to the President.
- 1.8 Notification of grant of clemency.
- 1.9 Notification of denial of clemency.

AUTHORITY: The provisions of this Part 1 issued under U.S. Const., Art. II, sec. 2, and authority of the President as Chief Executive.

SOURCE: The provisions of this Part 1 contained in Order No. 283-62, 27 F.R. 11292, Nov. 10, 1962, unless otherwise noted.

CROSS REFERENCE: For Organization Statement, Office of the Pardon Attorney, see Subpart G of Part 0 of this Chapter.

§ 1.1 Submission of petition; form to be used.

Persons seeking Executive clemency, by pardon or by commutation of sentence, including remission of fine, shall execute formal petitions therefor which shall be addressed to the President of the United States and which, except those relating to military or naval offenses, shall be submitted to the Attorney General of the United States.

Appropriate forms for such petitions will be furnished by the Department of Justice, Washington, D.C., upon application therefor. Forms for petition for commutation of sentence may also be obtained from the warden of Federal penal institutions. Forms furnished by the Department of Justice for use in pardon cases may be used by petitioners in cases relating to the forfeiture of veterans' benefits, with appropriate modifications. A petitioner applying for Executive clemency with respect to military or naval offenses should submit his petition directly to the Secretary of the military department which had original jurisdiction over the court-martial trial and conviction of the petitioner. In such instance, a form furnished by the Department of Justice may be used but should be modified to meet the needs of the particular case.

§ 1.2 Contents of petition.

Each petition for Executive clemency should include: The name and age of the petitioner; the court, district, and State in which he was convicted; the date of sentence; the crime of which he was convicted; the sentence imposed; the date he commenced service of sentence; and the place of confinement. In the case of a petition for pardon, the petitioner should also state his age at the time of commission of the offense; the date of release from confinement; whether he is a citizen of the United States or an alien; his marital status; his prior and subsequent criminal record, if any; his employment since conviction; and his place of residence. A petition may be accompanied by endorsements. It is desirable that all applications for pardon be accompanied by at least three character affidavits.

§ 1.3 Eligibility for filing petition for pardon.

No petition for pardon should be filed until the expiration of a waiting period of at least three years subsequent to the date of the release of the petitioner from confinement, or, in case no prison sentence was imposed, until the expiration of a period of at least three years subsequent to the date of the conviction of the petitioner. In some cases, such as those involving violation of narcotic laws, income tax laws, perjury, violation of public trust involving personal dishonesty, or other crimes of a serious nature a waiting period of five years is

usually required. In cases of aliens seeking a pardon to avert deportation, the waiting period may be waived. Generally, no petition should be submitted by a person who is on probation or parole.

§ 1.4 Eligibility for filing petition for commutation of sentence.

A petition for commutation of sentence, including remission of fine, should be filed only if no other form of relief is available, such as from the court or the United States Board of Parole, or if unusual circumstances exist, such as critical illness, severity of sentence, ineligibility for parole, or meritorious service rendered by the petitioner.

§ 1.5 Offenses against the laws of possessions or territories of the United States.

Petitions for Executive clemency shall relate only to violations of laws of the United States. Petitions relating to violations of laws of the possessions of the United States or territories subject to the jurisdiction thereof should be submitted to the appropriate official or agency of the possession or territory concerned.

§ 1.6 Disclosure of files.

Reports, memoranda, and communications submitted or furnished in connection with the consideration of a petition for Executive clemency shall be available only to officials concerned with the consideration of the petition: *Provided*, That they may be open to inspection by the petitioner or by his attorney or other representative if, in the opinion of the Attorney General or his representative, the disclosure sought is required by the ends of justice.

§ 1.7 Consideration of petitions by the Attorney General; recommendations to the President.

(a) Upon receipt of a petition for Executive clemency, the Attorney General shall consider that petition and cause such investigation to be made with respect thereto as he may deem appropriate and necessary, using the services of, or obtaining reports from appropriate officials and agencies of the Government, including the Federal Bureau of Investigation, to the extent deemed necessary or desirable.

(b) The Attorney General shall review each petition and all pertinent information developed by his investigation

thereof and shall advise the President whether, in his judgment, the request for clemency is of sufficient merit to warrant favorable action by the President.

(c) If he determines that the request merits favorable action by the President, he shall submit the petition to the President together with a warrant prepared for the signature of the President granting the clemency recommended by the Attorney General.

(d) If he determines that the petition and information developed by his investigation do not, in his judgment, merit favorable action by the President, he shall provide the President with a concise statement enumerating the essential facts concerning the petitioner, the petition, and his reasons for recommending denial of clemency.

§ 1.8 Notification of grant of clemency.

When a petition for pardon is granted, the petitioner or his attorney shall be notified of such action, and the warrant of pardon shall be mailed to the petitioner. When commutation of sentence is granted, the petitioner shall be notified of such action, and the warrant of commutation shall be sent to the petitioner through the officer in charge of his place of confinement, or directly to the petitioner if he is on parole.

§ 1.9 Notification of denial of clemency.

(a) Whenever the President notifies the Attorney General that he is denying a request for clemency, the Attorney General, or at his direction the Pardon Attorney, shall so advise the petitioner and close the case.

(b) Whenever the Attorney General recommends that the President deny a request for clemency and the President does not disapprove or take other action with respect to that adverse recommendation within thirty days after the date of its submission to him, it shall be presumed that the President concurs in that adverse recommendation of the Attorney General, and the Attorney General, or at his direction the Pardon Attorney, shall so advise the petitioner and close the case.

PART 2—PAROLE, RELEASE, SUPERVISION AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS

Sec.

2.1 Definitions.

2.2 Eligibility for parole, adult sentences.

Sec.

2.3 Same; Narcotic Addict Rehabilitation Act.

2.4 Same; juvenile delinquent.

2.5 Same; youth offenders.

2.6 Withheld and forfeited good time.

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2.33 Release plans.

2.34 Rescission of parole.

2.35 Mandatory release in the absence of parole.

2.36 Same; youth offenders.

2.37 Reports to police departments of names of parolees; statement of policy.

2.38 Community supervision by United States Probation Officers.

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2.42 Probation Officer's Reports to Commissions.

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2.45 Same; youth offenders.

2.46 Execution of warrant and service of summons.

2.47 Warrant placed as a detainer and dispositional review.

2.48 Revocation by the Commission; preliminary interview.

2.49 Place of revocation hearing.

2.50 Revocation hearing procedure.

2.51 Issuance of subpoena for the appearance of witnesses or production of documents.

2.52 Revocation of parole or mandatory release.

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2.53 Mandatory parole.

2.54 Reviews pursuant to 18 U.S.C. §§ 4203/4215.

2.55 Disclosure of records.

2.56 Special parole terms.

2.57 Effective date.

2.58 Absence of hearing examiner.

AUTHORITY: 28 CFR Chapter I, Part O, Subpart I, and 18 U.S.C. 4201-4210 and 5005, 5037.

SOURCE: 41 FR 19327, May 12, 1976, unless otherwise noted.

§ 2.1 Definitions.

As used in this part:

(a) The term "Commission" refers to the United States Parole Commission.

(b) The term "Commissioner" refers to members of the United States Parole Commission.

(c) The term "National Appeals Board" refers to the Vice Chairman of the Commission and two additional Commissioners who are assigned in the headquarters office of the Commission in Washington, D.C. The Chairman of the Commission and the three members of the National Appeals Board in the absence or vacancy of the Vice Chairman or other member of the National Appeals Board.

(d) The term "National Commissioners" refers to the Chairman of the Commission and the three members of the National Appeals Board.

(e) The term "Regional Commissioner" refers to Commissioners assigned to the Commission's regional offices.

(f) The term "eligible prisoner" refers to any Federal prisoner eligible for parole pursuant to this Part and includes any Federal prisoner whose parole has been revoked and who is not otherwise ineligible for parole.

(g) The term "parolee" refers to any Federal prisoner released on parole or as if on parole pursuant to 18 U.S.C. 4164 or 4205(f). The term "mandatory release" refers to release pursuant to 18 U.S.C. 4163 and 4164.

(h) All other terms used in this part shall be deemed to have the same meaning as identical or comparable terms as used in Chapter 311 of Part IV of Title 18 of the United States Code or Chapter I, Part O, Subpart V of Title 28 of the Code of Federal Regulations.

§ 2.2 Eligibility for parole; adult sentences.

(a) Unless otherwise provided by statute, a Federal prisoner confined and

serving a definite term or terms of more than one year is eligible for parole consideration after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years (18 U.S.C. 4205(a)).

(b) A Federal prisoner who has been sentenced to a maximum term of more than one year is, if the court has designated a minimum term, which may be less than but not more than one-third of the maximum sentence imposed, eligible for parole consideration after service of the minimum term (18 U.S.C. 4205(b)(1)). In cases in which the court designates only a maximum term and specifies that the Commission may release or parole at any time, the prisoner may be released on parole in the discretion of the Commission (18 U.S.C. 4205(b)(2)).

(c) A Federal prisoner sentenced to a maximum term or terms of at least six months but not more than one year prior to May 14, 1976 is eligible for parole consideration after service of one-third of such term or terms.

(d) A Federal prisoner sentenced under 18 U.S.C. 924(a) or 26 U.S.C. 5871 for violation of Federal gun control laws is eligible for parole consideration as if sentenced under 18 U.S.C. 4205(b)(2).

(e) A Federal prisoner committed under 18 U.S.C. 3651 for a period of six months or less with a period of probation to follow is not eligible for parole.

§ 2.3 Same; Narcotic Addict Rehabilitation Act.

A Federal prisoner committed under the Narcotic Addict Rehabilitation Act is eligible for parole consideration after at least six months in treatment, not including any period of time for "study" prior to final judgment of the court. Before parole is ordered by the Commission, the Surgeon General or his designated representative must certify that the prisoner has made sufficient progress to warrant his release and the Attorney General or his designated representative must also report to the Commission whether the prisoner should be released. Recertification by the Surgeon General prior to rep parole consideration is required (18 U.S.C. 4254).

§ 2.4 Same; juvenile delinquent.

A committed juvenile delinquent may be released on parole at any time in the discretion of the Commission (18 U.S.C. 5041).

§ 2.5 Same; youth offenders.

A committed youth offender may be released on parole at any time in the discretion of the Commission (18 U.S.C. 5017(a)).

§ 2.6 Withheld and forfeited good time.

(a) While neither a forfeiture of good time nor a withholding of good time shall bar a prisoner from receiving a parole hearing, § 4206 of Title 18 of the United States Code permits the Commission to parole only those prisoners who have substantially observed the rules of the institution.

(b) Forfeiture of statutory good time not restored shall be deemed, in itself, to indicate that the prisoner has violated the rules of the institution to a serious degree.

§ 2.7 Committed fines.

In any case in which a prisoner shall have had a fine imposed upon him by the committing court for which he is to stand committed until it is paid or until he is otherwise discharged according to law, such prisoner shall not be released on parole or mandatory release until payment of the fine, or until the fine commitment order is discharged according to law as follows:

(a) An indigent prisoner may make application to a U.S. Magistrate in the District wherein he is incarcerated or to the chief executive officer of the institution setting forth, under the institutional regulations, his inability to pay such fine; if the magistrate or chief executive officer shall find that the prisoner, having no assets exceeding \$20 in value except such as are by law exempt from being taken on execution for debt, is unable to pay the fine, and if the prisoner takes a prescribed oath of indigency, he shall be discharged from the commitment obligation of the committed fine sentence.

(b) If the prisoner is found to possess assets in excess of the exemption in paragraph (a) of this section, nevertheless if the Chief Executive Officer of the institution or U.S. Magistrate shall find that retention of all such assets is reasonably necessary for his support or that of his family, upon taking of the prescribed oath concerning his assets the prisoner shall be discharged from the commitment obligation of the committed fine sentence. If the Chief Executive Officer of the institution or U.S. Magis-

trate shall find that retention by the prisoner of any part of his assets is reasonably necessary for his support or that of his family, the prisoner upon taking of the prescribed oath concerning his assets, shall be discharged from the commitment obligation of the committed fine sentence upon payment on account on his fine or that portion of his assets in excess of the amount found to be reasonably necessary for his support or that of his family.

(c) Discharge from the commitment obligation of any committed fine does not discharge the prisoner's obligation to pay the fine as a debt due the United States.

§ 2.8 Mental competency proceedings.

(a) Whenever a prisoner or parolee is scheduled for a hearing in accordance with the provisions of this part and reasonable doubt exists as to his mental competency, i.e., his ability to understand the nature of and participate in scheduled proceedings, a preliminary hearing to determine his mental competency shall be conducted by a panel of hearing examiners or other official(s) (including a U.S. Probation Officer) designated by the Commission.

(b) At the competency hearing, the hearing examiners or designated official(s) shall receive oral or written psychiatric testimony and other evidence that may be available. A preliminary determination of the prisoner's mental competency shall be made upon the testimony, evidence, and personal observation of the prisoner. If the examiner panel or designated official(s) determines that the prisoner is mentally competent, the previously scheduled hearing shall be held. If they determine that the prisoner is not mentally competent, the previously scheduled hearing shall be temporarily postponed.

(c) Whenever the hearing examiners or designated official(s) determine that a person is incompetent and postpone the previously scheduled hearing, they shall forward the record of the preliminary hearing with their findings to the Regional Commissioner for review. If the Regional Commissioner concurs with their findings, he shall order the temporarily postponed hearing to be postponed indefinitely until such time as it is determined that the prisoner or parolee has recovered sufficiently to understand the nature of and participate in the proceedings and, in the case of a parolee,

may order such parolee transferred to a Bureau of Prisons facility for further examination. In any such case, the Regional Commissioner shall require a progress report on the mental health of the prisoner at least every six months. When the Regional Commissioner determines that the prisoner has recovered sufficiently, he shall reschedule the hearing for the earliest feasible date.

(d) If the Regional Commissioner disagrees with the findings of the hearing examiners or designated official(s) as to the mental competency of the prisoner, he shall take such action as he deems appropriate.

§ 2.9 Study prior to sentencing.

(a) When an adult Federal offender has been committed to an institution by the sentencing court for observation and study prior to sentencing, under the provisions of 18 U.S.C. 4205(c), the report to the sentencing court is prepared and submitted directly by the United States Bureau of Prisons.

(b) The court may order a youth to be committed to the custody of the Attorney General for observation and study at an appropriate classification center or agency. Within sixty days from the date of the order, or such additional period as the court may grant, the Commission shall report its findings to the court (18 U.S.C. 5010(e)).

§ 2.10 Date service of sentence commences.

(a) Service of a sentence of imprisonment commences to run on the date on which the person is received at the penitentiary, reformatory, or jail for service of the sentence: *Provided, however*, That any such person shall be allowed credit toward the service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed.

(b) Service of the sentence of a committed youth offender or a person committed under the Narcotic Addict Rehabilitation Act commences to run and continues to run uninterruptedly from the date of conviction, except when such offender is on bail pending appeal or is in escape status.

§ 2.11 Application for parole.

(a) A federal prisoner (including a committed youth offender or prisoner sentenced under the Narcotic Addict Rehabilitation Act) desiring to apply for

parole shall execute an application form as prescribed by the Commission. Such forms shall be available at each federal institution and shall be provided to prisoners eligible for parole. Prisoners committed under the Federal Juvenile Delinquency Act shall be considered for parole without application and may not waive parole consideration. A prisoner who receives an initial hearing need not apply for subsequent hearings.

(b) A prisoner may knowingly and intelligently waive any parole consideration on a form provided for that purpose. If a prisoner waives parole consideration, he may later apply for parole and may be heard during the next visit of the Commission to the institution at which he is confined, provided that he has applied at least 45 days prior to the first day of the month in which such visit of the Commission occurs.

(c) A prisoner who fails to submit either an application for parole or a waiver form shall be referred to the Commission's representatives by the chief executive officer of the institution. The prisoner shall then receive an explanation of his right to apply for parole at a later date.

(d) In addition to the above procedures relating to parole application, all prisoners prior to initial hearing shall be provided with an inmate background statement by the Bureau of Prisons for completion by the prisoner.

§ 2.12 Hearing procedure.

(a) Whenever feasible, the initial parole determination hearing for an eligible prisoner shall be held at least 30 days prior to the expiration of his minimum sentence, or in the case of a prisoner with no minimum sentence within one-hundred and twenty days after his reception at a federal institution. The prisoner shall, at least 30 days prior to the hearing, be provided with written notice of the time and place of the hearing and of his right to review the documents to be considered by the Commission as provided by § 2.55. A prisoner may waive such notice, except that if such notice is not waived, the case shall be continued to the time of the next regularly scheduled proceeding of the Commission at the institution in which the prisoner is confined.

(b) A prisoner may be represented at a hearing by a person of his choice. The function of the prisoner's representative shall be to offer a statement at the con-

clusions of the interview of the prisoner by the examiner panel, and to provide such additional information as the examiner panel shall request. Interested parties who oppose parole may select a representative to appear and offer a statement. The presiding hearing examiner shall limit or exclude any irrelevant or repetitious statement.

(c) No interviews with the Commission or any representative thereof, shall be granted to a prisoner unless his name is docketed for a hearing in accordance with Commission procedures. Hearings shall not be open to the public.

§ 2.13 Initial hearing.

(a) An initial hearing shall be conducted by a panel of two hearing examiners. The examiners shall discuss with the prisoner his offense severity rating and salient factor score as described in § 2.20, his institutional conduct and, in addition, any other matter the panel may deem relevant. At the conclusion of the hearing, the panel shall orally inform the prisoner of its recommendation and, if such recommendation is for denial, of the reasons therefor.

(b) Written notice of the official decision, including the decision to refer under § 2.17 or § 2.24, shall be mailed or transmitted to the prisoner within 21 days of the date of the hearing, except in emergencies.

(c) If parole is denied, the prisoner shall also receive in writing the reasons therefor. In accordance with 18 U.S.C. 4206, reasons for parole denial may include the following, with further specification as appropriate:

(1) The prisoner has not substantially observed the rules of the institution or institutions in which confined;

(2) Release, in the opinion of the Commission, would depreciate the seriousness of the offense or promote disrespect for the law; or

(3) Release, in the opinion of the Commission, would jeopardize the public welfare.

In lieu of, or in combination with, the above reasons the prisoner shall be furnished with a guidelines evaluation statement containing his offense severity rating and salient factor score (including the points credited on each item of such score) as described in § 2.20, as well as the specific factors and information relied upon for any decision to continue such prisoner for a period outside the range indicated by the guidelines.

(d) A full and complete record of every hearing shall be retained by the Commission. Upon a request, pursuant to § 2.55, the Commission shall make available to any eligible prisoner such record as the Commission has retained of the hearing.

§ 2.14 Subsequent hearings.

(a) Subsequent hearings shall be conducted under the same procedure as initial hearings, except that the primary purpose of a subsequent hearing shall be to focus on any developments or changes in the prisoner's status that may have occurred subsequent to the initial hearing.

(b) During the month preceding a regularly scheduled institutional review hearing the case may be reviewed by an examiner panel on the record (including a current institutional progress report). If the recommendation is to grant parole, and the Regional Commissioner concurs, no hearing shall be conducted. However, cases in which the previous continuance has been limited by statute or Commission policy shall be placed directly on the docket for hearing.

(c) Notification of subsequent decisions shall be given as set forth at § 2.13(b).

(d) No prisoner shall be continued without further review for more than (1) 18 months in the case of the prisoner with a term or terms of less than 7 years, or (2) 24 months in the case of a prisoner with a term or terms of 7 years or longer.

(e) A prisoner sentenced under the Youth Corrections Act or Federal Juvenile Delinquency Act or a prisoner sentenced to a maximum term of more than 18 months under 18 U.S.C. 4205 (b) (2), 18 U.S.C. 924, or 26 U.S.C. 5871 shall not be continued past one-third of his maximum sentence at an initial hearing without further hearing upon completion of one-third of his maximum sentence (except in cases where there is less than four months between the date of the initial hearing and the one-third date).

§ 2.15 Petition for consideration of parole prior to date set at hearing.

When a prisoner has served the minimum term of imprisonment required by law, the Bureau of Prisons may petition the responsible Regional Commissioner for reopening the case under § 2.28 and consideration of parole prior to the date set by the Commission at the initial or review hearing. The petition must show

cause why it should be granted, i.e., an emergency, hardship, or the existence of other extraordinary circumstances that would warrant consideration of early parole.

§ 2.16 Parole of prisoner in state, local, or territorial institution.

(a) Any person who is serving a sentence of imprisonment for any offense against the United States, but who is confined therefor in a state reformatory or other state or territorial institution, shall be eligible for parole by the Commission on the same terms and conditions, by the same authority, and subject to recommitment for the violation of such parole, as though he were confined in a Federal penitentiary, reformatory, or other correctional institution.

(b) Federal prisoners serving concurrent state and Federal sentences in state, local, or territorial institutions shall be furnished upon request parole application forms. Upon receipt of the application and any supplementary classification material submitted by the institution, parole consideration shall be made by an examiner panel of the appropriate region on the record only. If such prisoner is released from his state sentence prior to a Federal grant of parole, he shall be given a personal hearing as soon as feasible after receipt at a Federal institution.

(c) Prisoners who are serving federal sentences exclusively but who are being boarded in State, local, or territorial institutions may be considered for parole on the record only, provided they sign a waiver of their right to a personal hearing. If such a prisoner does not waive a personal hearing, he may be transferred by the Bureau of Prisons to a Federal institution where he will be considered for parole at the next visit by an examiner panel of the Commission.

§ 2.17 Original jurisdiction cases.

(a) A Regional Commissioner may designate certain cases for decision by a quorum of Commissioners as described below, as original jurisdiction cases. In such instances, he shall forward the case with his vote, and any additional comments he may deem germane, to the National Commissioners for decision. Decisions shall be based upon the concurrence of three votes with the appropriate Regional Commissioner and each National Commissioner having one vote.

Additional votes, if required, shall be cast by the other Regional Commissioners on a rotating basis as established by the Chairman of the Commission.

(b) The following criteria will be used in designating cases as original jurisdiction cases:

(1) Prisoners who have committed serious crimes against the security of the Nation, e.g., espionage or aggravated subversive activity.

(2) Prisoners whose offense behavior (A) involved an unusual degree of sophistication or planning or (B) was part of a large scale criminal conspiracy or a continuing criminal enterprise.

(3) Prisoners who have received national or unusual attention because of the nature of the crime, arrest, trial, or prisoner status, or because of the community status of the offender or his victim.

(4) Long-term sentences. Prisoners sentenced to a maximum term of forty-five years (or more) or prisoners serving life sentences.

§ 2.18 Granting of parole.

The granting of parole to an eligible prisoner rests in the discretion of the United States Parole Commission. As prerequisites to a grant of parole, the Commission must determine that the prisoner has substantially observed the rules of the institution or institutions in which he has been confined; and upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, must determine that release would not deprecate the seriousness of his offense or promote disrespect for the law, and that release would not jeopardize the public welfare (i.e., that there is a reasonable probability that, if released, the prisoner would live and remain at liberty without violating the law or the conditions of his parole).

§ 2.19 Information considered.

(a) In making a determination under this chapter (relating to release on parole) the Commission shall consider, if available and relevant:

(1) Reports and recommendations which the staff of the facility in which such prisoner is confined may make;

(2) Official reports of the prisoner's prior criminal record, including a report or record of earlier probation and parole experiences;

(3) Presentence investigation reports;
 (4) Recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge and prosecuting attorney; and

(5) Reports of physical, mental, or psychiatric examination of the offender.

(b) There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available (18 U.S.C. 4207). The Commission encourages the submission of relevant information concerning an eligible prisoner by interested persons.

§ 2.20 Paroling policy guidelines; statement of general policy.

(a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the United States Parole Commission has adopted guidelines for parole release consideration.

(b) These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole

prognosis) characteristics. The time ranges specified by the guidelines are established specifically for cases with good institutional adjustment and program progress.

(c) These time ranges are merely guidelines. Where the circumstances warrant, decisions outside of the guidelines (either above or below) may be rendered.

(d) The guidelines contain examples of offense behaviors for each severity level. However, especially mitigating or aggravating circumstances in a particular case may justify a decision or a severity rating different from that listed.

(e) An evaluation sheet containing a "salient factor score" serves as an aid in determining the parole prognosis (potential risk of parole violation). However, where circumstances warrant, clinical evaluation of risk may override this predictive aid.

(f) Guidelines for reparole consideration are set forth at § 2.21.

(g) The Commission shall review the guidelines, including the salient factor score, periodically and may revise or modify them at any time as deemed appropriate.

ADULT

[Guidelines for decisionmaking, customary total time served before release (including jail time)]

Offense characteristics: severity of offense behavior (examples)	Offender characteristics: parole prognosis (salient factor score)			
	Very good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 0)
LOW				
Immigration law violations.....	6 to 10 mo.....	8 to 12 mo.....	10 to 14 mo.....	12 to 16 mo.
Minor theft (includes larceny and simple possession of stolen property less than \$1,000).....				
Walkaway.....				
LOW MODERATE				
Alcohol law violations.....	8 to 12 mo.....	12 to 16 mo.....	16 to 20 mo.....	20 to 25 mo.
Counterfeit currency (passing/possession less than \$1,000).....				
Drugs: marijuana, simple possession (less than \$500).....				
Forgery/fraud (less than \$1,000).....				
Income tax evasion (less than \$10,000).....				
Selective Service Act violations.....				
Theft from mail (less than \$1,000).....				

ADULT—Continued

[Guidelines for decisionmaking, customary total time served before release (including jail time)]

Offense characteristics: severity of offense behavior (examples)	Offender characteristics: parole prognosis (salient factor score)			
	Very good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 0)
MODERATE				
Bribery of public officials.....	12 to 16 mo. 16 to 20 mo. 20 to 24 mo. 24 to 30 mo.			
Counterfeit currency (passing/possession \$1,000 to \$19,999).....				
Drugs:				
Marihuana, possession with intent to distribute/sale (less than \$5,000).....				
"Soft drugs", possession with intent to distribute/sale (less than \$5,000).....				
Embezzlement (less than \$20,000).....				
Explosives, possession/transportation.....				
Firearms Act, possession/purchase/sale (single weapon-not sawed-off shotgun or machinegun).....				
Income tax evasion (\$10,000 to \$50,000).....				
Interstate transportation of stolen/forged securities (less than \$20,000).....				
Mailing threatening communications.....				
Misprision of felony.....				
Receiving stolen property with intent to resell (less than \$20,000).....				
Smuggling/transporting of aliens.....				
Theft/forgery/fraud (\$1,000 to \$19,999).....				
Theft of motor vehicle (not multiple theft or for resale).....				
HIGH				
Burglary or larceny (other than embezzlement) from bank or post office.....	16 to 20 mo. 20 to 26 mo. 26 to 32 mo. 32 to 38 mo.			
Counterfeit currency (passing/possession \$20,000-\$100,000).....				
Counterfeiting (manufacturing).....				
Drugs:				
Marihuana, possession with intent to distribute/sale (\$5,000 or more).....				
"Soft drugs", possession with intent to distribute/sale (\$500 to \$5,000).....				
Embezzlement (\$20,000 to \$100,000).....				
Firearms Act, possession/purchase sale (sawed-off shotgun(s), machine gun(s), or multiple weapons).....				
Interstate transportation of stolen/forged securities (\$20,000 to \$100,000).....				
Mann Act (no force—commercial purposes).....				
Vehicle theft (for resale).....				
Receiving stolen property (\$20,000 to \$100,000).....				
Theft/forgery/fraud (\$20,000 to \$100,000).....				
VERY HIGH				
Robbery (weapon or threat).....	26 to 36 mo. 36 to 45 mo. 45 to 55 mo. 55 to 65 mo.			
Drugs:				
"Hard drugs" (possession with intent to distribute sale) [no prior conviction for sale of "hard drugs"].....				
"Soft drugs", possession with intent to distribute/sale (over \$5,000).....				
Extortion.....				
Mann Act (force).....				
Sexual act (force).....				
GREATEST				
Aggravated felony (e.g., robbery, sexual act, aggravated assault)—weapon fired or personal injury.....	46 to 56 mo. 56 to 66 mo. 66 to 76 mo. 76 to 86 mo.			
Aircraft hijacking.....				
Drugs: "Hard drugs" (possession with intent to distribute/sale) for profit (prior conviction(s) for sale of "hard drugs").....				
Espionage.....				
Explosives (detonation).....				
Kidnapping.....				
Willful homicide.....				
(Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category.)				

NOTES

1. These guidelines are predicated upon good institutional conduct and program performance.
2. If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed.

NOTES—Continued

3. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.

4. If an offense behavior involved multiple separate offenses, the severity level may be increased.

5. If a continuance is to be given, allow 30 d (1 mo) for release program provision.

6. "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes; "soft drugs" include, but are not limited to, barbiturates, amphetamines, LSD, and hashish.

YOUTH

[Guidelines for decisionmaking, customary total time served before release (including jail time)]

Offense characteristics: Severity of offense behavior (examples)	Offender characteristics: Parole prognosis (salient factor score)			
	Very good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 0)

LOW

Immigration law violations.....	8 to 10 mo.....	8 to 12 mo.....	10 to 14 mo.....	12 to 16 mo.
Minor theft (includes larceny and simple possession of stolen property less than \$1,000).				
Walkaway.....				

LOW MODERATE

Alcohol law violations.....	8 to 12 mo.....	12 to 16 mo.....	16 to 20 mo.....	20 to 25 mo.
Counterfeit currency (passing/possession less than \$1,000).				
Drugs: marihuana, simple possession (less than \$500).				
Forgery/fraud (less than \$1,000).....				
Income tax evasion (less than \$10,000).....				
Selective Service Act violations.....				
Theft from mail (less than \$1,000).....				

MODERATE

Bribery of public officials.....	9 to 13 mo.....	13 to 17 mo.....	17 to 21 mo.....	21 to 26 mo.
Counterfeit currency (passing/possession \$1,000 to \$10,000).				
Drugs:				
Marihuana, possession with intent to distribute/sale (less than \$5,000).				
"Soft drugs", possession with intent to distribute/sale (less than \$500).....				
Embezzlement (less than \$20,000).....				
Explosives, possession/transportation.....				
Firearms Act, possession purchase sale (single weapon—not sawed-off shotgun or machine gun).				
Income tax evasion (\$10,000 to \$50,000).....				
Interstate transportation of stolen/forged securities (less than \$20,000).				
Mailing threatening communications.....				
Misprision of felony.....				
Receiving stolen property with intent to resell (less than \$20,000).				
Smuggling: Transporting of aliens.....				
Theft/forgery/fraud (\$1,000 to \$19,999).....				
Theft of motor vehicle (not multiple theft or for resale).				

HIGH

Burglary or larceny (other than embezzlement) from bank or post office.	12 to 16 mo.....	16 to 20 mo.....	20 to 24 mo.....	24 to 28 mo.
Counterfeit currency (passing possession \$20,000-\$100,000).				
Counterfeiting (manufacturing).....				
Drugs:				
Marihuana, possession with intent to distribute/sale (\$5,000 or more).				
"Soft drugs", possession with intent to distribute/sale (\$500 to \$5,000).....				
Embezzlement (\$20,000 to \$100,000).....				
Firearms Act, possession purchase sale (sawed-off shotgun(s), machine gun(s), or multiple weapons).				
Interstate transportation of stolen/forged securities (\$20,000 to \$100,000).				
Mann Act (no force—commercial purposes).....				
Vehicle theft (For Resale).....				
Receiving stolen property (\$20,000 to \$100,000).....				
Theft/forgery/fraud (\$20,000 to \$100,000).....				

YOUTH—Continued

[Guidelines for decisionmaking, customary total time served before release (including jail time)]

Offense characteristics: severity of offense behavior (examples)	Offender characteristics: parole prognosis (salient factor score)			
	Very good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 0)
VERY HIGH				
Robbery (weapon or threat).....	20 to 27 mo.	27 to 32 mo.	32 to 36 mo.	36 to 42 mo.
Drugs:				
"Hard drugs" (possession with intent to distribute/sale) (no prior conviction for sale of "hard drugs").				
"Soft drugs", possession with intent to distribute/sale (over \$5,000).				
Extortion.....				
Mann Act (force).....				
Sexual act (force).....				
GREATEST				
Aggravated felony (e.g., robbery, sexual act, aggravated assault) — weapon fired or personal injury.	(Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category.)			
Aircraft hijacking.....				
Drugs: "Hard drugs" (possession with intent to distribute/sale) for profit (prior conviction(s) for sale of "hard drugs").				
Espionage.....				
Explosives (detonation).....				
Kidnaping.....				
Willful homicide.....				

NOTES

1. These guidelines are predicated upon good institutional conduct and program performance.
2. If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of offense behavior with those of similar offense behaviors listed.
3. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
4. If an offense behavior involved multiple separate offenses, the severity level may be increased.
5. If a continuance is to be given, allow 30 d (1 mo) for release program provision.
6. "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes; "soft drugs" include, but are not limited to barbiturates, amphetamines, LSD, or hashish.

NARA

LOW				
Immigration law violations.....	6 to 12 mos.			12 to 18 mos.
Minor theft (includes larceny and simple possession of stolen property less than \$1,000).				
Walkaway.....				
LOW MODERATE				
Alcohol law violations.....	6 to 12 mos.			12 to 18 mos.
Counterfeit currency (passing/possession less than \$1,000).				
Drugs: Marihuana, simple possession (less than \$500).				
Forgery/fraud (less than \$1,000)				
Income tax evasion (less than \$10,000).				
Selective Service Act violations.....	12 to 18 mos.			18 to 24 mos.
Theft from mail (less than \$1,000).....				
MODERATE				
Bribery of public officials.....				
Counterfeit currency (passing/possession \$1,000 to \$10,000).				
Drugs:				
Marihuana, possession with intent to distribute/sale (less than \$5,000).				
"Soft drugs", possession with intent to distribute/sale (less than \$500).				
Embezzlement (less than \$20,000).....	12 to 18 mos.			18 to 24 mos.
Explosives, possession/transportation.....				
Firearms Act, possession purchase sale (single weapon — not sawed-off shotgun or machine gun).				
Income tax evasion (\$10,000 to \$50,000).....				
Interstate transportation of stolen/forged securities (less than \$20,000).				
Mailing threatening communications.....				
Misprision of felony.....				
Receiving stolen property with intent to resell (less than \$20,000).				
Smuggling: Transporting of Aliens.....				
Theft: Forgery/fraud (\$1,000 to \$10,000).....				
Theft of motor vehicle (not multiple theft or for resale).				

Chapter I—Department of Justice

§ 2.20

NARA—Continued

[Guidelines for decisionmaking, customary total time served before release (including jail time)]

Offense characteristics: severity of offense behavior (examples)	Offender characteristics: parole prognosis (salient factor score)			
	Very good (11 to 9)	Good (8 to 6)	Fair (5 to 4)	Poor (3 to 0)
HIGH				
Burglary or larceny (other than embezzlement) from bank or post office, Counterfeit currency (passing possession \$20,000- \$100,000), Counterfeiting (manufacturing) -----				
Drugs: Marihuana, possession with intent to distrib- ute/sale (\$5,000 or more), "Soft drugs", possession with intent to distrib- ute/sale (500 to \$5,000) -----				
Embezzlement (\$20,000 to \$100,000) -----	12 to 18 mos.		18 to 24 mos.	
Firearms Act, possession purchase sale (sawed-off shotgun(s), machine gun(s), or multiple weapons), Interstate transportation of stolen/forged securities (\$20,000 to \$100,000), Mann Act (no force—commercial purposes) -----				
Vehicle theft (for resale) -----				
Receiving stolen property (\$20,000 to \$100,000) -----				
Theft/forgery/fraud (\$20,000 to \$100,000) -----				
VERY HIGH				
Robbery (weapon or theft) -----				
Drugs: "Hard drugs" (possession with intent to dis- tribute/sale) (no prior conviction for sale of "hard drugs"), "Soft drugs", possession with intent to distrib- ute/sale (over \$5,000) -----				
Extortion -----	20 to 26 mos.		26 to 32 mos.	
Mann Act (force) -----				
Sexual act (force) -----				
GREATEST				
Aggravated felony (e.g. robbery, sexual act, aggra- vated assault)—weapon fired or personal injury, Aircraft hijacking -----				
Drugs: "Hard drugs" (possession with intent to dis- tribute/sale) for profit (prior conviction(s) for sale of "hard drugs") -----				
Espionage -----	Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variations in severity possible within the category.)			
Explosives (detonation) -----				
Kidnapping -----				
Willful homicide -----				

NOTES

1. These guidelines are predicated upon good institutional conduct and program performance.
2. If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed.
3. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.
4. If an offense behavior involved multiple separate offenses, the severity level may be increased.
5. If a continuance is to be given, allow 30 d (1 mo.) for release program provision.
6. "Hard drugs" include heroin, cocaine, morphine, or opiate derivatives, and synthetic opiate substitutes; "soft drugs" include, but are not limited to, barbiturates, amphetamines, LSD, or hashish.

SALIENT FACTOR SCORE

Case name ----- Register No. -----

Item A ----- ☐

No prior convictions (adult or juvenile) = 2
One or two prior convictions = 1
Three or more prior convictions = 0

Item B ----- ☐

No prior incarcerations (adult or juvenile) = 2
One or two prior incarcerations = 1
Three or more prior incarcerations = 0

SALIENT FACTOR SCORE—Continued

Case name	Register No.
Item C	<input type="checkbox"/>
Age at first commitment (adult or juvenile) 18 years or older=1	
Otherwise=0	
Item D	<input type="checkbox"/>
Commitment offense did not involve auto theft=1	
Otherwise=0	
Item E	<input type="checkbox"/>
Never had parole revoked or been committed for a new offense while on parole=1	
Otherwise=0	
Item F	<input type="checkbox"/>
No history of heroin or opiate dependence=1	
Otherwise=0	
Item G	<input type="checkbox"/>
Has completed 12th grade or received GED (prior to this commitment)=1	
Otherwise=0	
Item H	<input type="checkbox"/>
Verified employment (or full-time school attendance) for a total of at least 6 months during the last 2 years in the community=1	
Otherwise=0	
Item I	<input type="checkbox"/>
Release plan to live with spouse and/or children=1	
Otherwise=0	
Total score	<input type="checkbox"/>

[41 FR 19327, May 12, 1976; 41 FR 22344, June 3, 1976]

§ 2.21 Reparole consideration guidelines.

(a) If revocation is based upon administrative violation(s) *only* (i.e., violations other than new criminal conduct) the following guidelines shall apply.

Positive supervision history (examples):

- a. No serious alcohol/drug abuse and no possession of weapon(s) [and]
- b. At least 8 months from date of release to date of violation behavior [and]
- c. Positive employment/school record during supervision [and]
- d. Present violation represents first instance of failure to comply with parole regulations of this term

0-8

Negative supervision history (examples):

- a. Serious alcohol/drug abuse (e.g. readiction to hard drugs) or possession of weapon(s) [or]
- b. Less than 8 months from date of release to date of violation behavior [or]
- c. Negative employment/school record during supervision [or]
- d. Negative attitude toward supervision demonstrated by lack of positive efforts to cooperate with parole (aftercare) plan or by repetitious or persistent violations

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(b) (1) If a finding is made that the prisoner has engaged in behavior constituting new criminal conduct, the appropriate severity rating for the new criminal behavior shall be calculated. New Criminal conduct may be determined either by a new federal, state, or local conviction or by an independent finding by the Commission at revocation hearing. As violations may be for state or local offenses, the appropriate severity level may be determined by analogy with listed federal offense behaviors.

(2) The guidelines for parole consideration specified at 28 CFR 2.20 for the poor parole risk category shall then be applied. The original sentence type (i.e., adult, youth) shall determine the applicable guidelines for the parole violator term. Time served on a new state or federal sentence shall be credited as time in custody.

(c) The above are merely guidelines. A decision outside these guidelines (either above or below) may be made when circumstances warrant. For example, violations of an assaultive nature, or violations by a person with a history of assaultive conduct or by a person with a history of repeated parole failure may warrant a decision above the guidelines. Petty offense(s) (e.g., traffic infractions, disorderly conduct) shall normally be treated under administrative violations.

§ 2.22 Communication with the Commission.

Attorneys, relatives, or interested parties wishing a personal interview to discuss a specific case with a representative of the Commission must submit a written request to the appropriate regional office setting forth the nature of the information to be discussed. Such personal interview may be conducted by Staff Personnel in the regional offices. Personal interviews, however, shall not be held by an examiner or member of the Commission except under the Commission's appeals procedures.

§ 2.23 Delegation to hearing examiners.

(a) There is hereby delegated to hearing examiners the authority necessary to conduct hearings and make recommendations relative to the grant or denial of parole or reparole, revocation or reinstatement of parole or mandatory release, and conditions of parole.

(b) Hearing examiners shall function as two-man panels except as provided by § 2.47 and the concurrence of two examiners shall be required for their recommendation. In the event of a divided recommendation by the panel, the appropriate regional Administrative Hearing Examiner shall cast the deciding vote.

(c) In the event the Administrative Hearing Examiner is serving as a member of a hearing examiner panel or is otherwise unavailable, cases requiring his action under paragraph (b) of this section will be referred to another hearing examiner.

(d) A recommendation of a hearing examiner panel shall become an effective Commission decision upon review at the Regional Office and docketing, unless action is initiated by the regional Commissioner pursuant to § 2.24.

§ 2.24 Review of panel recommendation by the Regional Commissioner.

(a) A Regional Commissioner may review the recommendation of any examiner panel and refer this recommendation, prior to written notification to the prisoner, with his recommendation and vote to the National Commissioners for consideration and any action deemed appropriate. Written notice of this referral action shall be mailed or transmitted to the prisoner within twenty-one days of the date of the hearing. The Regional Commissioner and each National Commissioner shall have one vote and decisions shall be

based upon the concurrence of two votes. Action shall be taken by the National Commissioners within thirty days of the date of referral action by the Regional Commissioner, except in emergencies.

(b) Notwithstanding the above, a Regional Commissioner may, on the motion of the Administrative Hearing Examiner, modify the recommendation of a hearing examiner panel that is outside the guidelines to bring such decision closer to or to the nearer limit of the appropriate guideline range.

§ 2.25 Regional appeal.

(a) A prisoner or parolee may submit to the responsible Regional Commissioner a written appeal of a decision to grant, deny, or revoke, parole, except that any appeal of a Commission decision pursuant to § 2.17 shall be pursuant to § 2.27. This appeal must be filed on a form provided for that purpose within thirty days from the date of entry of such decision.

(b) The Regional Commissioner may affirm the decision, order a new institutional hearing on the next docket, order a regional appellate hearing, reverse the decision, or modify a continuance or the effective date of parole. Reversal of a decision or the modification of a decision by more than one hundred eighty days whether based upon the record or following a regional appellate hearing shall require the concurrence of two out of three Regional Commissioners. Decisions requiring a second or additional vote shall be referred to other Regional Commissioners on a rotating basis as established by the Chairman.

(c) Regional appellate hearings may be held at the regional office before the Regional Commissioner. If a regional appellate hearing is ordered, attorneys, relatives and other interested parties who wish to appear must submit a written request to the Regional Commissioner stating their relationship to the prisoner and the general nature of the information they wish to present. The Regional Commissioner shall determine if the requested appearances will be permitted. The prisoner shall not appear personally.

(d) Within 30 days of receipt of the appeal, except in emergencies, the Regional Commissioner shall inform the applicant in writing of the decision and the reasons therefor.

(e) If no appeal is filed within thirty days of the date of the entry of the original decision, such decision shall stand as the final decision of the Commission.

(f) Appeals under this section may be based upon the following grounds:

(1) The reasons given for a denial or continuance do not support the decision; or

(2) There was significant information in existence but not known at the time of the hearing.

§ 2.26 Appeal to National Appeals Board.

(a) Within 30 days of entry of a Regional Commissioner's decision under § 2.25, a prisoner or parolee may appeal to the National Appeals Board on a form provided for that purpose. However, any matter not raised on a regional level appeal may not be raised on appeal to the National Appeals Board. The National Appeals Board may, upon the concurrence of two members, affirm, modify, or reverse the decision, or order a rehearing at the institutional or regional level.

(b) The National Appeals Board shall act within 60 days of receipt of the appellant's papers, to affirm, modify, or reverse the decision.

(c) Decisions of the National Appeals Board shall be final.

§ 2.27 Appeal of original jurisdiction cases.

(a) Cases decided under the procedure specified in § 2.17 may be appealed within thirty days of the entry of the decision on a form provided for this purpose. Attorneys, relatives and other interested parties who wish to submit written information in support of a prisoner's appeal should send such information to the National Appeals Board Analyst, United States Parole Commission, 320 First Street, N.W., Washington, D.C. 20537. Appeals of original jurisdiction cases shall be reviewed by the Commission at its next quarterly meeting. A quorum of five Commissioners shall be required and all decisions shall be by majority vote. The Chairman shall vote on the decision only in the absence of a Commissioner. This appellate decision shall be final.

(b) Attorney's relatives, or other interested parties who wish to speak for or against parole at such consideration must submit a written request to the Chairman of the Commission stating their relationship to the prisoner and the general nature of the material they wish to present. The Chairman shall determine if the requested appearances will be permitted.

(c) If no appeal is filed within thirty days of the entry of the decision under § 2.17, that decision shall stand as the final decision of the Commission.

§ 2.28 Reopening of cases.

Notwithstanding the appeal procedure of § 2.25 and § 2.26, the appropriate Regional Commissioner may, on his own motion, reopen a case at any time upon the receipt of new information of substantial significance and may then take any action authorized under the provisions and procedures of § 2.25. Original jurisdiction cases may be reopened upon the motion of the appropriate Regional Commissioner under the procedures of § 2.17.

§ 2.29 Release on parole.

(a) A grant of parole shall not be deemed to be effective until a certificate of parole has been delivered to the prisoner.

(b) Parole release dates generally will not be set more than six months from the date of the parole hearing. Residence in a Community Treatment Center as part of a parole release plan generally shall not exceed one hundred and twenty days. An effective date of parole shall not be set for a Saturday, Sunday, or a legal holiday.

(c) When an effective date of parole has been set by the Commission, release on that date shall be conditioned upon continued good conduct by the prisoner and the completion of a satisfactory plan for parole supervision. The appropriate Regional Commissioner may, on his own motion, reconsider any case prior to release and may reopen and advance or retard a parole date. A parole grant may be retarded for up to one hundred and twenty days without a hearing for development and approval of release plans.

§ 2.30 False or withheld information.

All paroles are ordered on the assumption that information from the prisoner has not been fraudulently given to or withheld from the Commission. If evidence comes to the attention of the Regional Commissioner that a prisoner willfully concealed or misrepresented information deemed significant, the Regional Commissioner may initiate action pursuant to § 2.34(b) to determine whether such parole should be revoked or rescinded.

§ 2.31 Parole to detainers; statement of policy.

(a) Where a detainer is lodged against a prisoner, the Commission may grant parole if the prisoner in other respects meets the criteria set forth in § 2.18. The presence of a detainer is not in itself a valid reason for the denial of parole.

(b) The Commission will cooperate in working out arrangements for concurrent supervision with other jurisdictions where it is feasible and where release on parole appears to be justified.

§ 2.32 Parole to local or immigration detainers.

(a) When a state or local detainer is outstanding against a prisoner whom the Commission wishes to parole, the Commission may order either of the following:

(1) "Parole to the actual physical custody of the detaining authorities only." In this event, release is not to be effected except to the detainer. When such a detainer is withdrawn, the prisoner is not to be released unless and until the Commission makes a new order of parole.

(2) "Parole to the actual physical custody of the detaining authorities or an approved plan." In this event, release is to be effected even though the detainer might be withdrawn, providing there is an acceptable plan for community supervision.

(b) When the Commission wishes to parole a prisoner subject to a detainer filed by Federal immigration officials, the Commission may order one of the following:

(1) "Parole for deportation only." In this event, release is not to be effected unless immigration officials make full arrangements for deportation immediately upon release.

(2) "Parole to the actual physical custody of the immigration authorities only." In this event, release is not to be effected unless immigration officials take the prisoner into custody—regardless of whether or not deportation follows:

(3) "Parole to the actual physical custody of the immigration authorities or an approved plan." In this event, release is to be effected regardless of whether or not immigration officials take the prisoner into custody, providing there is an acceptable plan for community supervision.

(c) As used in this section "parole to a detainer" means release to the "physical

custody" of the authorities who have lodged the detainer. Temporary detention in a jail in the county where the institution of confinement is located does not constitute release on parole to such detainer. If the authorities who lodged the detainer do not take the prisoner into custody for any reason, he shall be returned to the institution to await further order of the Commission.

§ 2.33 Release plans.

(a) A grant of parole is conditioned upon the approval of release plans by the Regional Commissioner. In general, the following factors are considered as elements in the prisoner's release plan.

(1) Availability of legitimate employment and an approved residence for the prospective parolee; and

(2) Availability of necessary aftercare for a parolee who is ill or who requires special care.

(b) Generally, parolees will be released only to the place of their legal residence unless the Commission is satisfied that another place of residence will serve the public interest more effectively or will improve the probability of the applicant's readjustment.

(c) Where the circumstances warrant, the Commission on its own motion, or upon recommendation of the probation officer, may require that an adviser who is a responsible, reputable, and law-abiding citizen living in or near the community in which the releasee will reside be available to the releasee. Such adviser shall serve under the direction of and in cooperation with the probation officer to whom the parolee is assigned.

§ 2.34 Rescission of parole.

(a) When an effective date of parole or mandatory parole has been set by the Commission, release on that date shall be conditioned upon continued good conduct by the prisoner. If a prisoner has been granted parole and has subsequently been charged with institutional misconduct sufficient to become a matter of record, the Regional Commissioner shall be advised promptly of such misconduct. The prisoner shall not be released until the institution has been notified that no change has been made in the Commissioner's order to parole.

(1) Upon receipt of information that a prisoner has violated the rules of the institution, the Regional Commissioner may retard the parole grant for up to sixty days without a hearing or may re-

tard the parole grant and schedule the case for a rescission hearing. If the prisoner was confined in a Federal prison at the time of the order retarding parole, the rescission hearing shall be scheduled for the next docket of parole hearings at the institution. If the prisoner was residing in a Federal community treatment center or a state or local halfway house, the rescission hearing shall be scheduled for the first docket of parole hearings after return to a Federal institution. When the prisoner is given written notice of the Commission action retarding parole, he shall be given notice of the charges of misconduct to be considered at the rescission hearing. The purpose of the rescission hearing shall be to determine whether rescission of the parole grant is warranted. At the rescission hearing the prisoner may be represented by a person of his choice and may present documentary evidence.

(2) An institution discipline committee hearing conducted by the institution resulting in a finding that the prisoner has violated the rules of his confinement, may be relied upon by Commission as conclusive evidence of institutional misconduct.

(3) If the parole grant is rescinded, the prisoner shall be furnished a written statement of the findings of misconduct and the evidence relied upon.

(b) (1) Upon receipt of new information adverse to the prisoner regarding matters other than institutional misconduct, the Regional Commissioner may refer the case to the National Commissioners under the procedures of § 2.17(a) with his recommendation and vote, to retard a previously granted parole. If parole is retarded the case shall be scheduled for a hearing on the next docket of parole hearings or at the first docket of parole hearings following return to a federal institution.

(2) The prisoner shall be given notice of the nature of the new adverse information upon which the rescission consideration is to be based. The hearing shall be conducted in accordance with the procedures set out in §§ 2.12 and 2.13. The purpose of the hearing shall be to determine if the parole grant should be rescinded or if a new parole date should be established.

§ 2.35 Mandatory release in the absence of parole.

A prisoner shall be mandatorily released by operation of law at the end of

the sentence imposed by the court less such good time deductions and extra good time deductions as he may have earned through his behavior and efforts at the institution of confinement. If released pursuant to 18 U.S.C. 4164, such prisoner shall be released, as if on parole, under supervision until the expiration of the maximum term or terms for which he was sentenced less 180 days. If released pursuant to 18 U.S.C 4205(f), such prisoner shall remain under supervision until the expiration of the maximum term or terms for which he was sentenced. In so far as possible, release plans shall be completed before the release of any such prisoner.

§ 2.36 Same; youth offenders.

A prisoner committed under the Youth Corrections Act must be initially released conditionally under supervision not later than two years before the expiration of the term imposed by the court.

§ 2.37 Reports to police departments of names of parolees; statement of policy.

Names of parolees under supervision will not be furnished to a police department of a community, except as required by law. All such notifications are to be regarded as confidential.

§ 2.38 Community supervision by United States Probation Officers.

(a) Pursuant to sections 3655 and 4203 (b) (4) of Title 18 of the United States Code, United States Probation Officers shall provide such parole services as the Commission may request. In conformity with the foregoing, probation officers function as parole officers and provide supervision to parolees and mandatory releasees under the Commission's jurisdiction.

(b) A parolee or mandatory releasee may be transferred to a new district of supervision with the permission of the probation officers of both the transferring and receiving district, provided such transfer is not contrary to instructions from the Commission.

§ 2.39 Jurisdiction of the Commission.

(a) Jurisdiction of the Commission over a parolee shall terminate no later than the date of expiration of the maximum term or terms for which he was sentenced, except as provided by § 2.35, § 2.43, or § 2.52.

(b) The parole of any parolee shall run concurrently with the period of pa-

role or probation under any other Federal, State, or local sentence.

(c) The parole of any prisoner sentenced before June 29, 1932, shall be for the remainder of the term or terms specified in his sentence, less good time allowances provided by law.

(d) Upon the termination of jurisdiction, the Commission shall issue a certificate of discharge to such parolee and to such other agencies as it may determine.

§ 2.40 Conditions of release.

(a) The conditions of release are printed on the release certificate and are binding regardless of whether the parolee signs the certificate. The following conditions are deemed necessary to provide adequate supervision and to protect the public welfare:

(1) The parolee shall go directly to the district named in the certificate (unless released to the custody of other authorities). Within three days after his arrival, he shall report to his parole adviser, if he has one, and to the United States Probation Officer whose name appears on the certificate. If in any emergency the parolee is unable to get in touch with his parole adviser or his probation officer or his office, he shall communicate with the United States Parole Commission, Washington, D.C. 20537.

(2) If the parolee is released to the custody of other authorities, and after release from the physical custody of such authorities, he is unable to report to the United States Probation Officer to whom he is assigned within three days, he shall report instead to the nearest United States Probation Officer.

(3) The parolee shall not leave the limits fixed by his certificate of parole without written permission from the probation officer.

(4) The parolee shall notify his probation officer immediately of any change in his place of residence.

(5) The parolee shall make a complete and truthful written report (on a form provided for that purpose) to his probation officer between the first and third day of each month, and on the final day of parole. He shall also report to his probation officer at other times as the probation officer directs.

(6) The parolee shall not violate any law, nor shall he associate with persons engaged in criminal activity. The parolee shall get in touch immediately with his

probation officer or his office if he is arrested or questioned by a law-enforcement officer.

(7) The parolee shall not enter into any agreement to act as an informer or special agent for any law-enforcement agency.

(8) The parolee shall work regularly unless excused by his probation officer, and support his legal dependents, if any, to the best of his ability. He shall report immediately to his probation officer any changes in employment.

(9) The parolee shall not drink alcoholic beverages to excess. He shall not purchase, possess, use, or administer marihuana or narcotic or other habit-forming drugs, unless prescribed or advised by a physician. The parolee shall not frequent places where such drugs are illegally sold, dispensed, used, or given away.

(10) The parolee shall not associate with persons who have a criminal record unless he has permission of his probation officer.

(11) The parolee shall not have firearms (or other dangerous weapons) in his possession without the written permission of his probation officer, following prior approval of the United States Parole Commission.

(b) The Commission or a member thereof may at any time modify or add to the conditions of release pursuant to this section, on its own motion or on the request of the U.S. Probation Officer supervising the parolee. The parolee shall receive notice of the proposed modification and unless waived shall have ten days following receipt of such notice to express his views thereon. Following such ten day period, the Commission shall have 21 days, exclusive of holidays, to order such modification of or addition to the conditions of release.

(c) The Commission may require a parolee to reside in or participate in the program of a residential treatment center, or both, for all or part of the period of parole.

(d) The Commission may require a parolee, who is an addict, within the meaning of 18 U.S.C. 4251(a), or a drug dependent person within the meaning of section 2(8) of the Public Health Service Act, as amended, to participate in the community supervision program authorized by 18 U.S.C. 4255 for all or part of the period of parole.

(e) A parolee may petition the Commission on his own behalf for a modifi-

cation of conditions pursuant to this section.

(f) The notice provisions of subsection (b) of this section shall not apply to modification of parole or mandatory release conditions pursuant to a revocation proceeding or pursuant to paragraph (e) of this section.

(g) A parolee may appeal an order to impose or modify parole conditions under the procedures of § 2.25 and § 2.26 as applicable not later than thirty days after the effective date of such conditions.

§ 2.41 Travel by parolees and mandatory releasees.

(a) The probation officer may approve travel outside the district without approval of the Regional Commissioner in the following situations:

(1) Vacation trips not to exceed thirty days.

(2) Trips, not to exceed thirty days, to investigate reasonably certain employment possibilities.

(3) Recurring travel across a district boundary, not to exceed fifty miles outside the district, for purpose of employment, shopping, or recreation.

(b) Specific advance approval by the Regional Commissioner is required for other travel, including travel to or from the contiguous forty-eight states, employment more than fifty miles outside the district, and vacations exceeding thirty days. A request for such permission shall be in writing and must demonstrate a substantial need for such travel. In cases falling under the criteria of § 2.17, a quorum of two out of three members shall be required to grant such permission. A special condition imposed by the Regional Commissioner prohibiting certain travel shall supersede any general rules relating to travel as set forth above.

§ 2.42 Probation Officer's Reports to Commission.

A supervision report shall be submitted by the responsible probation officer to the Commission for each parolee or mandatory releasee after the completion of 12 months of continuous supervision and annually thereafter. The probation officer shall submit such additional reports as the Commission may direct.

§ 2.43 Early Termination of Parole.

(a) (1) Upon its own motion or upon request of the parolee, the Commission

may terminate supervision, and thus jurisdiction, over a parolee prior to the expiration of his maximum sentence. A committed youth offender may be granted an early termination of jurisdiction (unconditional discharge) at any time after one year of continuous supervision on parole.

(2) Two years after each parolee's release on parole, and at least annually thereafter, the Commission shall review the status of the parolee to determine the need for continued supervision. In calculating such two-year period there shall not be included any period of release on parole prior to the most recent such release, nor any period served in confinement on any other sentence.

(3) Five years after each parolee's release on parole, the Commission shall terminate supervision over such parolee unless it is determined, after a hearing conducted in accordance with the procedures prescribed in 18 U.S.C. 4214(a)(2), that such supervision should not be terminated because there is a likelihood that the parolee will engage in conduct violating any criminal law.

(4) If supervision is not terminated under paragraph (a)(3) of this section the parolee may request a hearing annually thereafter, and a hearing shall be conducted with respect to such termination of supervision not less frequently than biennially.

(5) In calculating the five-year period referred to in paragraph (a)(3), there shall not be included any period of release on parole prior to the most recent such release or any period served in confinement on any other sentence.

(6) When termination of jurisdiction prior to the expiration of sentence is granted in the case of a youth offender, his conviction shall be automatically set aside. A certificate setting aside his conviction shall be issued in lieu of a certificate of termination.

(b) The Regional Commissioner in the region of supervision may release a parolee from supervision pursuant to this section if warranted by the circumstances of the case and reports of the supervising probation officer. Except that, in the case of a parolee previously considered pursuant to § 2.17, the decision to grant termination of supervision must also be pursuant to the provisions of § 2.17.

(c) A parolee may appeal an adverse decision under paragraphs (a)(3) or

(4) of this section pursuant to §§ 2.25, 2.26, or 2.27 as applicable.

§ 2.44 Summons To Appear or Warrant for Retaking of Parolee.

(a) If a parolee is alleged to have violated the conditions of his release, and satisfactory evidence thereof is presented, the Commission or a member thereof may:
offender to appear

(1) issue a summons requiring the offender to appear for a preliminary interview or local revocation hearing.

(2) issue a warrant for the apprehension and return of the offender to custody.

A summons or warrant may be issued or withdrawn only by the Commission, or a member thereof.

(b) Any summons or warrant under this section shall be issued as soon as practicable after the alleged violation is reported to the Commission, except when delay is deemed necessary. Issuance of a summons or warrant may be withheld until the frequency or seriousness of violations, in the opinion of the Commission, requires such issuance. In the case of any parolee charged with a criminal offense, issuance of a summons or warrant may be withheld, or a warrant may be issued and held in abeyance pending disposition of the charge.

(c) A summons or warrant may be issued only within the prisoner's maximum term or terms except that in the case of a prisoner released as if on parole pursuant to 18 U.S.C. 4164, such summons or warrant may be issued only within the maximum term or terms, less one-hundred eighty days. A summons or warrant shall be considered issued when signed and placed in the mail at the Commission Headquarters or appropriate regional office.

(d) The issuance of a warrant under this section suspends the running of a sentence until such time as the parolee may be retaken into custody and a final determination of the charges may be made by the Commission.

(e) A summons or warrant issued pursuant to this section shall be accompanied by a statement of the charges against the parolee, the applicable procedural rights under the Commission's regulations and the possible actions which may be taken by the Commission. A summons shall specify the time and

place the parolee shall appear for a revocation hearing. Failure to appear in response to a summons shall be grounds for issuance of a warrant.

§ 2.45 Same, Youth offenders.

(a) In addition to the issuance of a summons or warrant pursuant to § 2.44 above, the Commission or a member thereof, when of the opinion that a youth offender will be benefitted by further treatment in an institution or other facility, may direct his return to custody or issue a warrant for his apprehension and return to custody.

(b) Upon his return to custody, such youth offender shall be scheduled for a revocation hearing.

§ 2.46 Execution of Warrant and Service of Summons.

(a) Any officer of any Federal correctional institution or any Federal officer authorized to serve criminal process within the United States, to whom a warrant is delivered, shall execute such warrant by taking the prisoner and returning him to the custody of the Attorney General.

(b) On arrest of the parolee the officer executing the warrant shall deliver to him a copy of the Warrant Application listing the charges against the parolee, the applicable procedural rights under the Commission's regulations and the possible actions which may be taken by the Commission.

(c) If execution of the warrant is delayed pending disposition of local charges, for further investigation, or for some other purpose, the parolee is to be continued under supervision by the probation officer until the normal expiration of the sentence, or until the warrant is executed, whichever first occurs. Monthly supervision reports are to be submitted, and the parolee must continue to abide by all the conditions of release.

(d) A summons to appear at a preliminary interview or revocation hearing shall be served upon the parolee in person by delivering to the parolee a copy of the summons. Service shall be made by any federal officer authorized to serve criminal process within the United States, and certification of such service shall be returned to the appropriate regional office of the Commission.

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§ 2.47 Warrant placed as a Detainer and Dispositional Review.

(a) In those instances where a parolee is serving a new sentence in an institution, a parole violation warrant may be placed against him as a detainer. Such warrant shall be reviewed by the regional Commissioner not later than 180 days following notification to the Commission of such placement. The parolee shall receive notice of the pending review, and shall be permitted to submit a written application containing information relative to the disposition of the warrant. He shall also be notified of his right to request counsel under the provisions of § 2.43(b) to assist him in completing his written application.

(b) Following a dispositional review under this section, the regional Commissioner may:

(1) Let the detainer stand and order further review at an appropriate time;

(2) Withdraw the detainer and (i) order reinstatement of the parolee to supervision upon release from custody, or (ii) close the case if the expiration date has passed;

(3) Order a revocation hearing to be conducted by a hearing examiner or an official designated by the regional Commissioner at the institution in which the parolee is confined.

Following a revocation hearing conducted pursuant to this section, the Commission may take any action specified at § 2.48, including the ordering of concurrent or consecutive service of all or part of any violator term imposed. Such revocation hearing shall be conducted under the applicable procedures at § 2.50, and the parolee may be represented by his own or appointed counsel as provided in § 2.48(b).

(c) It shall be the general policy of the Commission that, in the absence of substantial mitigating circumstances the violator term of a parolee convicted of a new offense subsequent to release on parole shall run consecutively to any term imposed for the new offense.

§ 2.48 Revocation by the Commission, preliminary interview.

(a) *Interviewing Officer.* A parolee who is retaken on a warrant issued by a Commissioner shall be given a preliminary interview by an official designated by the Regional Commissioner to enable the Commission to determine if there is probable cause to believe that the parolee

has violated his parole as charged, and if so, whether a revocation hearing should be conducted. The official designated to conduct the preliminary interview may be a United States Probation Officer in the district where the prisoner is confined, provided he is not the officer who recommended that the warrant be issued.

(b) *Notice and Opportunity to Postpone Interview.* At the beginning of the preliminary interview, the interviewing officer shall ascertain that the Warrant Application has been given to the prisoner as required by § 2.46(b), and shall advise the prisoner that he may have the preliminary interview postponed in order to obtain representation by an attorney or arrange for the attendance of witnesses. The prisoner shall also be advised that if he cannot afford to retain an attorney he may apply to a United States District Court for appointment of counsel to represent him at the preliminary interview and the revocation hearing pursuant to 18 U.S.C. 3006A. In addition, the prisoner may request the Commission to obtain the presence of persons who have given information upon which revocation may be based. Such adverse witnesses shall be requested to attend the preliminary interview unless the prisoner admits a violation or has been convicted of a new offense while on supervision or unless the interviewing officer finds good cause for their non-attendance. Pursuant to § 2.49(a) a subpoena may issue for the appearance of adverse witnesses or the production of documents.

(c) *Review of the charges.* At the preliminary interview, the interviewing officer shall review the violation charges with the prisoner, apprise the prisoner of the evidence which has been presented to the Commission, receive the statements of witnesses and documentary evidence on behalf of the prisoner, and allow cross-examination of those witnesses in attendance. Disclosure of the evidence presented to the Commission shall be made pursuant to § 2.50(e).

(d) At the conclusion of the preliminary interview, the interviewing officer shall inform the parolee of his recommended decision as to whether there is probable cause to believe that the parolee has violated the conditions of his release, and shall submit to the Commission a digest of the interview together with his recommended decision.

(1) If the interviewing officer's recommended decision is that no probable

cause may be found to believe that the parolee has violated the conditions of his release, the responsible regional Commissioner shall review such recommended decision and notify the parolee of his final decision concerning probable cause as expeditiously as possible following receipt of the interviewing officer's digest. A decision to release the parolee shall be implemented without delay.

(2) If the interviewing officer's recommended decision is that probable cause may be found to believe that the parolee has violated a condition (or conditions) of his release, the responsible regional Commissioner shall notify the parolee of his final decision concerning probable cause within 21 days of the date of the preliminary interview.

(3) Notice to the parolee of any final decision of a regional Commissioner finding probable cause and ordering a revocation hearing shall state the charges upon which probable cause has been found and the evidence relied upon.

(e) Release notwithstanding probable cause: If the Commission finds probable cause to believe that the parolee has violated the conditions of his release, re-instatement to supervision or release pending further proceeding may nonetheless be ordered if it is determined that:

(1) continuation of revocation proceedings is not warranted despite the violations found; or

(2) incarceration pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations, and that the parolee is not likely to fail to appear for further proceedings, and that the parolee does not constitute a danger to himself or others.

(f) Conviction as probable cause: Conviction of a Federal, State, or Local crime committed subsequent to release on parole or mandatory release shall constitute probable cause for the purposes of this section and no preliminary interview shall be required.

(g) Local revocation hearing: A postponed preliminary interview may be conducted as a local revocation hearing by an examiner panel or other interviewing officer designated by the regional Commissioner provided that the prisoner has been advised that the postponed preliminary interview will constitute his final revocation hearing.

§ 2.49 Place of revocation hearing.

(a) If the prisoner requests a local revocation hearing, he shall be given a revocation hearing reasonably near the place of the alleged violation(s) or arrest, if the following conditions are met:

(1) The prisoner has not been convicted of a crime committed while under supervision; and

(2) The prisoner denies that he has violated any condition of his release. However, the Regional Commissioner may, on his own motion, designate a case for a local revocation hearing.

(b) If there are two or more alleged violations, the hearing may be conducted near the place of the violation chiefly relied upon as a basis for the issuance of the warrant or summons as determined by the regional Commissioner.

(c) A prisoner who voluntarily waives his right to a local revocation hearing, or who admits any violation of his release, or who is retaken following conviction of a new crime, shall be given a revocation hearing upon his return to a Federal institution.

(d) A prisoner retaken on a warrant issued by the Commission shall be retained in custody until final action relative to revocation of his release, unless otherwise ordered by the regional Commissioner under § 2.48(d) (2). A parolee who has been given a revocation hearing pursuant to the issuance of a summons under § 2.44 shall remain on supervision pending the decision of the Commission.

(e) Local revocation hearings shall be scheduled to be held within sixty days of the probable cause determination. Institutional revocation hearings shall be scheduled to be held within ninety days of the date of the execution of the violator warrant upon which the prisoner was retaken. However, if a prisoner requests and receives any postponement of his preliminary interview or revocation hearing, or consents to a postponed revocation proceeding initiated by the Commission; or if a prisoner by his actions otherwise precludes the prompt conduct of such proceedings, the above stated time limits may be extended.

§ 2.50 Revocation hearing procedure.

(a) A revocation hearing shall be conducted by a hearing examiner panel or, in a local revocation hearing only may be conducted by another official designated by the Regional Commissioner. In the case of a revocation hearing conducted by such other official or in the

case of a revocation hearing conducted by a single examiner pursuant to § 2.47, a recommendation relative to revocation shall be made by the concurrence of two examiners on the basis of a review of the record. A revocation decision may be appealed under the provisions of § 2.25 and § 2.26, or § 2.27 as applicable.

(b) The purpose of the revocation hearing shall be to determine whether the prisoner has violated the conditions of his release and, if so, whether his parole or mandatory release should be revoked or reinstated.

(c) The alleged violator may present witnesses and documentary evidence in his behalf. However, the presiding hearing officer or examiner panel may limit or exclude any irrelevant or repetitious statement or documentary evidence.

(d) At a local revocation hearing, the Commission may on the request of the alleged violator or on its own motion, request the attendance of persons who have given statements upon which revocation may be based. Those witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator unless the presiding hearing officer or examiner panel finds good cause for their non-attendance.

(e) All evidence upon which the finding of violation may be based shall be disclosed to the alleged violator at the revocation hearing. The hearing officer or examiner panel may disclose documentary evidence by permitting the alleged violator to examine the document during the hearing, or where appropriate, by reading or summarizing the document in the presence of the alleged violator.

(f) In lieu of an attorney, an alleged violator may be represented at a revocation hearing by a person of his choice. However, the role of such non-attorney representative shall be limited to offering a statement on the alleged violator's behalf with regard to reparole or reinstatement to supervision.

§ 2.51 Issuance of a subpoena for the appearance of witnesses or production of documents.

(a) (1) Preliminary Interview or Local Revocation Hearing: If any person who has given information upon which revocation may be based refuses, upon request by the Commission to appear, the regional Commissioner may issue a subpoena for the appearance of such wit-

ness. Such subpoena may also be issued at the discretion of the regional Commissioner in the event such adverse witness is judged unlikely to appear as requested.

(2) In addition, the regional Commissioner may, upon his own motion or upon a showing by the parolee that a witness whose testimony is necessary to the proper disposition of his case will not appear voluntarily at a local revocation hearing or provide an adequate written statement of his testimony, issue a subpoena for the appearance of such witness at the revocation hearing.

(3) Both such subpoenas may also be issued at the discretion of the regional Commissioner if it is deemed necessary for orderly processing of the case.

(b) A subpoena issued pursuant to subsection (a) above may require the production of documents as well as, or in lieu of, a personal appearance. The subpoena shall specify the time and the place at which the person named therein is commanded to appear, and shall specify any documents required to be produced.

(c) A subpoena may be served by any Federal officer authorized to serve criminal process. The subpoena may be served at any place within the judicial district in which the place specified in the subpoena is located, or any place where the witness may be found. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person.

(d) If a person refuses to obey such subpoena, the Commission may petition a court of the United States for the judicial district in which the parole proceeding is being conducted, or in which such person may be found, to require such person to appear, testify, or produce evidence. The court may issue an order requiring such person to appear before the Commission, and failure to obey such an order is punishable by contempt.

§ 2.52 Revocation of parole or mandatory release.

(a) Whenever a parolee is summoned or retaken by the Commission, and the Commission finds by a preponderance of the evidence, that the parolee has violated a condition of the parole, the Commission may take any of the following actions:

(1) Restore the parolee to supervision including where appropriate (i) reprimand (ii) modification of the parolee's

conditions of release (iii) referral to a residential community treatment center for all or part of the remainder of his original sentence; or

(2) Revoke parole.

(b) If parole is revoked pursuant to this section, the Commission shall also determine, on the basis of the revocation hearing, whether reparole is warranted or whether the prisoner should be continued for further review.

(c) A parolee whose release is revoked by the Commission will receive credit on service of his sentence for time spent under supervision, except as provided below:

(1) If the Commission finds that such parolee intentionally refused or failed to respond to any reasonable request, order, summons or warrant of the Commission or any agent thereof, the Commission may order the forfeiture of the time during which the parolee so refused or failed to respond, and such time shall not be credited to service of the sentence.

(2) If the parolee has been convicted of a new offense committed subsequent to his release on parole, which is punishable by a term of imprisonment, the Commission may order the forfeiture of the time from the date of the parolee's original release to the date of execution of the warrant, and such time shall not be credited to service of the sentence. An actual term of confinement or imprisonment need not have been imposed for such conviction; it suffices that the statute under which the parolee was convicted permits the trial court to impose any term of confinement or imprisonment in any penal facility. However, in no event shall the violator term imposed under this subsection, taken together with the time served before release, exceed the total length of the original sentence.

(d) (1) Notwithstanding the above, prisoners committed under the Narcotic Addict Rehabilitation Act or the Youth Corrections Act shall not be subject to any forfeiture provision, but shall serve uninterrupted sentences from the date of conviction, except as provided in § 2.10(b).

(2) The commitment of a juvenile offender under the Federal Juvenile Delinquency Act may not be extended past the offender's twenty-first birthday unless the juvenile has attained his nineteenth birthday at the time of his commitment, in which case his commitment shall not exceed the lesser of two years

or the maximum term which could have been imposed on an adult convicted of the same offense.

§ 2.53 Mandatory parole.

(a) A prisoner (including a prisoner sentenced under the Narcotic Addiction Rehabilitation Act, Federal Juvenile Delinquency Act, or the provisions of 5010 (c) of the Youth Corrections Act) serving a term or terms of five years or longer shall be released on parole after completion of two-thirds of each consecutive term or terms or after completion of thirty years of each term or terms of more than 45 years (including life terms), whichever comes earlier, unless pursuant to a hearing under this section, the Commission determines that there is a reasonable probability that the prisoner will commit any Federal, State, or local crime or that the prisoner has frequently or seriously violated the rules of the institution in which he is confined. If parole is denied pursuant to this section such prisoner shall serve until the expiration of his sentence less good time. The forfeiture or withholding of statutory good time shall be deemed to be presumptive evidence that the prisoner has frequently or seriously violated the rules of the institution or institutions in which he is confined.

(b) At least sixty days prior to the scheduled two-thirds date, a review of the record shall be conducted by an examiner panel. If a mandatory parole is ordered following this review, no hearing shall be conducted.

(c) A prisoner released on mandatory parole pursuant to this section shall remain under supervision until the expiration of the full term of his sentence unless the Commission terminates parole supervision pursuant to § 2.43 prior to the full term date of the sentence.

(d) A prisoner whose parole has been revoked and whose parole violator term is five years or more shall be eligible for mandatory parole under the provisions of this section upon completion of two-thirds of the violator term and shall be considered for mandatory parole under the same terms as any other eligible prisoners.

§ 2.54 Reviews pursuant to 18 U.S.C. § 4203/4215.

(a) The Attorney General, within thirty days after entry of a Regional Commissioner's decision, may request in writing that the National Appeals Board

review such decision. Within sixty days of the receipt of the request the National Appeals Board shall, upon the concurrence of two members, affirm, modify, or reverse the decision, or order a rehearing at the institution or regional level. The Attorney General and the prisoner affected shall be informed in writing of the decision, and the reasons therefor.

(b) Notwithstanding the above provision, the Commission, by majority vote, may, upon its own motion, review any decision of a Regional Commissioner relative to grant or denial of parole, imposition of parole conditions or revocation of parole, upon the receipt of new and significant information. Referrals for this purpose may be made by not less than three Commissioners. Such review by the Commission must be made within thirty days following the entry of the decision by the Regional Commissioner. Following the review the Commission shall inform the affected prisoner in writing of its action and, if parole is denied, the reasons therefor.

§ 2.55 Disclosure of Records.

(a) At any time prior to an initial parole hearing conducted pursuant to § 2.13 or any review hearing thereafter, a prisoner may review reports and other documents in the institution file which will be considered by the Commission at his parole hearing. These documents are generally limited to official reports bearing on the prisoner's offense behavior, personal history, and institutional progress. Review of such reports shall be permitted by the Bureau of Prisons within seven days of a request by the prisoner, except that in the case of reports which must be sent to the originating agency for clearance pursuant to paragraph (c) of this section, a reasonable amount of time shall be permitted to obtain such clearance. Copies of reports and documents may be furnished under applicable Bureau of Prisons regulations.

(b) A report shall not be disclosed to the extent it contains:

(1) diagnostic opinions which, if known to the prisoner, could lead to a serious disruption of his institutional program;

(2) material which would reveal sources of information obtained upon a promise of confidentiality; or

(3) any other information which, if disclosed, might result in harm, physical or otherwise, to any person. The term "otherwise" shall be deemed to include

the legitimate privacy interests of such person under the Privacy Act of 1974.

(c) It shall be the duty of the agency which originated any report or document referred to in paragraph (a) to determine whether or not to apply any of the exceptions to disclosure set forth in paragraph (b). If any report or portion thereof is deemed by the originating agency to fall within an exception to disclosure, such agency shall prepare and furnish for inclusion in the institution file a summary of the basic contents of the material to be withheld, bearing in mind the need for confidentiality or impact on the prisoner, or both. In the case of a report prepared by an agency other than the Bureau of Prisons, the Bureau shall refer such report to the originating agency for a determination relative to disclosure, if the report has not been previously cleared or prepared for disclosure.

(d) Upon request by the prisoner, the Commission shall make available a copy of any record which it has retained of a parole or parole revocation hearing pursuant to 18 U.S.C. 4208 (f).

(e) Except for deliberative memoranda referred to in paragraph (f), reports or documents received at regional offices which may be considered by the Commission at any proceeding shall be forwarded for inclusion in the prisoner's institutional file so that he may review them pursuant to paragraph (a) of this section. Such reports will first be referred by the Commission to originating agencies pursuant to paragraph (c) for a determination relative to disclosure if the report has not previously been cleared or prepared for disclosure.

(f) Duplicate copies of records in a prisoner's institutional file as well as deliberative memoranda among Commission Members or staff which do not contain new factual information relative to the parole release determination are retained in Parole Commission regional office files following initial hearing. Records maintained in these files shall be made available to prisoners, parolees, mandatory releasees, their authorized representative and members of the public upon written request in accordance with applicable law and Department of Justice regulations at 28 CFR Part 16, Subparts C & D. The Commission reserves the right to invoke statutory exemptions to disclosure of its files in appropriate cases under the Freedom of

Information Act or Privacy Act text provisions and Alternate Means of Access.

§ 2.56 Special parole terms.

(a) The Drug Abuse Prevention and Control Act, 21 U.S.C. 801 to 966, provides that, on conviction of certain offenses, mandatory "special parole terms" must be imposed by the court as part of the sentence. This term is an additional period of supervision which follows the completion of the regular sentence (including completion of any period on parole or mandatory release).

(b) At the time of release under the regular sentence, whether under full term expiration or under a mandatory release certificate or a parole certificate, a separate Special Parole Term certificate will be issued to the prisoner by the Bureau of Prisons.

(c) Should a releasee be found to have violated conditions of release during supervision under his regular sentence, i.e., before commencement of the Special Parole Term, he will be returned as a violator of his basic supervision period under his regular sentence; the Special Parole Term will follow unaffected, as in paragraph (a) above. Should a releasee violate conditions of release during the Special Parole Term he will be subject to revocation on the Special Parole Term as provided in § 2.52, and subject to reparole or mandatory release under the Special Parole Term.

(d) If the prisoner is repared under the revoked Special Parole Term a certificate of parole to Special Parole Term is issued by the Commission. If the inmate is mandatorily released under the revoked "special parole term" a certificate of mandatory release to Special Parole Term will be issued by the Bureau of Prisons.

(e) If the prisoner is terminated from regular parole under § 2.43, the Special Parole Term commences to run at that point in time. Early termination from supervision from a Special Parole Term may occur as in the case of a regular parole term, except that the time periods considered shall commence from the beginning of the Special Parole Term.

§ 2.57 Effective date.

The effective date of the regulations in this Part shall be May 14, 1976. Any order of the United States Board of Parole entered prior to May 14, 1976, including, but not limited to, orders granting, denying, rescinding or revoking

parole or mandatory release, shall be a valid order of the United States Parole Commission according to the terms stated in the order.

§ 2.58 Absence of hearing examiner.

In the absence of a hearing examiner, a regional commissioner may exercise the authority delegated to hearing examiners in § 2.23 of this Part.

PART 3—GAMBLING DEVICES

Sec.

3.1 Definition.

3.2 Assistant Attorney General, Criminal Division.

3.3 Registration.

3.4 Registration to be made by letter.

3.5 Seizure of gambling devices.

3.6 Seized gambling devices.

AUTHORITY: The provisions of this Part 3 issued under 89 Stat. 379; 5 U.S.C. 301, sec. 2, Reorganization Plan No. 2 of 1950, 64 Stat. 1261; 3 CFR, 1949-1953 Comp.

SOURCE: The provisions of this Part 3 contained in Order No. 331-65, 30 F.R. 2316, Feb. 20, 1965, unless otherwise noted.

CROSS REFERENCE: For Organization Statement, Federal Bureau of Investigation, see Subpart F of Part 0 of this Chapter.

§ 3.1 Definition.

For the purpose of this part, the term "Act" means the Act of January 2, 1951, 64 Stat. 1134, as amended by the Gambling Devices Act of 1962, 76 Stat. 1075, 15 U.S.C. 1171 et seq.

§ 3.2 Assistant Attorney General, Criminal Division.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General, the Assistant Attorney General in charge of the Criminal Division is authorized to exercise the power and authority and to perform the functions vested in the Attorney General by the Act. (See also 28 CFR 0.55 (i).)

[Order No. 543-73, 38 FR 29588, Oct. 26, 1973]

§ 3.3 Registration.

Persons required to register pursuant to section 3 of the Act shall register with the Assistant Attorney General, Criminal Division, Department of Justice, Washington, D.C. 20530.

§ 3.4 Registration to be made by letter.

No special forms are prescribed for the purpose of registering under the Act. Registration shall be accomplished by a letter addressed to the Assistant Attor-

ney General, Criminal Division, setting forth the information required by section 3(b)(4) of the Act. Registration should be made by registered or certified mail inasmuch as receipt of registrations will not otherwise be acknowledged. The registration requirement of the Act is an annual requirement. Any person engaged in any one or more of the activities for which registration is required under the Act must, in conformity with the provisions of the Act, register in each calendar year in which he engages in such activities.

§ 3.5 Seizure of gambling devices.

The Director, Associate Director, Assistant to the Director, Assistant Directors, inspectors, and agents of the Federal Bureau of Investigation are authorized to exercise the power and the authority vested in the Attorney General by the Act to make seizures of gambling devices. (See also 28 CFR 0.86.)

§ 3.6 Seized gambling devices.

All gambling devices seized pursuant to the Act shall be held for, or turned over to, the United States Marshal for the district in which the seizure is made. Except for the power and authority conferred by § 3.5 and the power described in the last sentence of this section, United States Marshals are, in accordance with the proviso in the last sentence of section 7 of the Act, authorized and designated as the officers to perform the various duties with respect to seizures and forfeitures of gambling devices under the Act which are comparable to the duties performed by collectors of customs or other persons with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws. The power to authorize remission or mitigation of seizure or forfeiture of gambling devices under the Act shall be exercised only by the Attorney General, the Deputy Attorney General, or the Assistant Attorney General in charge of the Criminal Division. [Order No. 333-65, 30 FR 5510, Apr. 17, 1965, as amended by Order No. 543-73, 38 FR 29588, Oct. 26, 1973]

PART 4—PROCEDURE GOVERNING APPLICATIONS FOR CERTIFICATES OF EXEMPTION

- Sec.
4.1 Definitions.
4.2 Who may apply for Certificate of Exemption.

- Sec.
4.3 Contents of application.
4.4 Supporting affidavit; additional information.
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4.6 Institution of proceedings.
4.7 Notice of hearing; postponements.
4.8 Hearing.
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4.10 Waiver of oral hearing.
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4.12 Evidence which may be excluded.
4.13 Record for decision. Receipt of documents comprising record-timing and extension.
4.14 Examiner's recommended decision; exceptions thereto; oral arguments before Commission.
4.15 Certificate of Exemption.
4.16 Rejection of application.
4.17 Availability of decisions.

AUTHORITY: Secs. 504, 606, 73 Stat. 536, 540; (29 U.S.C. 504, 526).

SOURCE: 41 FR 3853, Jan. 27, 1976, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to Part 4 appear at 41 FR 24349, June 16, 1976.

CROSS REFERENCE: For Organization Statement, U.S. Parole Commission see Subpart V of Part 0 of this chapter.

§ 4.1 Definitions.

As used in this part:

- (a) "Act" means the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519).
(b) "Commission" means the United States Parole Commission.
(c) "Secretary" means the Secretary of Labor or his designee.
(d) "Employer" means the labor organization, or person engaged in an industry or activity affecting commerce, or group or association of employers dealing with any labor organization, which an applicant under § 4.2 desires to serve in a capacity for which he is ineligible under section 504(a) of the Act.

§ 4.2 Who may apply for Certificate of Exemption.

Any person who has been convicted of any of the crimes enumerated in section 504(a) of the Act whose service, present or prospective, as described in that section is or would be prohibited by that section because of such a conviction or a prison term resulting therefrom may apply to the Commission for a Certificate of Exemption from such prohibition.

§ 4.3 Contents of application.

A person applying for a Certificate of Exemption shall file with the Office of General Counsel, U.S. Parole Commission, 320 First Street, NW., Washington, D.C. 20537, as signed application under oath, in ten copies, which shall set forth clearly and completely the following information:

(a) The name and address of the applicant and any other names used by the applicant and dates of such use.

(b) A statement of all convictions and imprisonments which prohibit the applicant's service under the provisions of section 504(a) of the Act.

(c) Whether any citizenship rights were revoked as a result of conviction or imprisonment and if so the name of the court and date of judgment thereof and the extent to which such rights have been restored.

(d) The name and location of the employer and a description of the office or paid position, including the duties thereof, for which a Certificate of Exemption is sought.

(e) A full explanation of the reasons or grounds relied upon to establish that the applicant's service in the office or employment for which a Certificate of Exemption is sought would not be contrary to the purposes of the Act.

(f) A statement that the applicant does not, for the purpose of the proceeding, contest the validity of any conviction.

§ 4.4 Supporting affidavit; additional information.

(a) Each application filed with the Commission must be accompanied by a signed affidavit, in 10 copies, setting forth the following concerning the personal history of the applicant:

(1) Place and date of birth. If the applicant was not born in the United States, the time of first entry and port of entry, whether he is a citizen of the United States, and if naturalized, when, where and how he became naturalized and the number of his Certificate of Naturalization.

(2) Extent of education, including names of schools attended.

(3) History of marital and family status, including a statement as to whether any relatives by blood or marriage are currently serving in any capacity with any labor organization, group or association of employers deal-

ing with labor organizations or industrial labor relations group, or currently advising or representing any employer with respect to employee organizing, concerted activities, or collective bargaining activities.

(4) Present employment, including office or offices held, with a description of the duties thereof.

(5) History of employment, including military service, in chronological order.

(6) Licenses held, at the present time or at any time in the past five years, to possess or carry firearms.

(7) Veterans' Administration claim number and regional office handling claim, if any.

(8) A listing (not including traffic offenses for which a fine of not more than \$25 was imposed or collateral of more than \$25 was forfeited) by date and place of all arrests, convictions for felonies, misdemeanors, or offenses and all imprisonment or jail terms resulting therefrom, together with a statement of the circumstances of each violation which led to arrest or conviction.

(9) Whether applicant was ever on probation or parole, and if so the names of the courts by which convicted and the dates of conviction.

(10) Names and locations of all labor organizations or employer groups with which the applicant has ever been associated or employed, and all employers whom he has advised or represented concerning employee organizing, concerted activities, or collective bargaining activities, together with a description of the duties performed in each such employment or association.

(11) A statement of applicant's net worth, including all assets held by him or in the names of others for him, the amount of each liability owed by him or by him together with any other person, and the amount and source of all income during the immediately preceding five calendar years plus income to date of application.

(12) Any other information which the applicant feels will assist the Commission in making its determination.

(b) The Commission may require of the applicant such additional information as it deems appropriate for the proper consideration and disposition of his application.

§ 4.5 Character endorsements.

Each application filed with the Board must be accompanied by letters

or other forms of statement (in three copies) from six persons addressed to the Chairman, U.S. Parole Commission, attesting to the character and reputation of the applicant. The statement as to character shall indicate the length of time the writer has known applicant, and shall describe applicant's character traits as they relate to the position for which the exemption is sought and the duties and responsibilities thereof. The statement as to reputation shall attest to applicant's reputation in his community or in his circle of business or social acquaintances. Each letter or other form of statement shall indicate that it has been submitted in compliance with procedures under section 504(a) of the Act and that applicant has informed the writer of the factual basis of his application. The persons submitting letters or other forms of statement shall not include relatives by blood or marriage, prospective employers, or persons serving in any official capacity with any labor organization, group or association of employers dealing with labor organizations or industrial labor relations group.

§ 4.6 Institution of proceedings.

All applications and supporting documents received by the Commission shall be reviewed for completeness by the Office of General Counsel of the Parole Commission and if complete and fully in compliance with the regulations of this part the Office of General Counsel shall accept them for filing. Applicant and/or his representative will be notified by the Office of General Counsel of any deficiency in the application and supporting documents. The amount of time allowed for deficiencies to be remedied will be specified in said notice. In the event such deficiencies are not remedied within the specified period or any extension thereof, granted after application to the Commission in writing within the specified period, the application shall be deemed to have been withdrawn and notice thereof shall be given to applicant.

§ 4.7 Notice of hearing; postponements.

Upon the filing of an application, the Commission shall: (a) Set the application for hearing on a date within a reasonable time after its filing and notify by certified mail the applicant of such date; (b) give notice, as required by section 504 (a) of the Act, to the appropriate State, County, or Federal prosecuting officials

in the jurisdiction or jurisdictions in which the applicant was convicted that an application for a Certificate of Exemption has been filed and the date for hearing thereon; and (c) notify the Secretary that an application has been filed and the date for hearing thereon and furnish him copies of the application and all supporting documents. Any party may request a postponement of a hearing date in writing from the Office of General Counsel at any time prior to ten (10) days before the scheduled hearing date. No request for postponement other than the first for any party will be considered unless a showing is made of cause entirely beyond the control of the requester. The granting of such requests will be within the discretion of the Commission. In the event of a failure to appear on the hearing date as originally scheduled or extended, the absent party will be deemed to have waived his right to a hearing. The hearing will be conducted with the parties present participating and documentation, if any, of the absent party entered into the record.

§ 4.8 Hearing.

The hearing on the application shall be held at the offices of the Commission in Washington, D.C., or elsewhere as the Commission may direct. The hearing shall be held before the Commission, before one or more Commissioners, or before one or more examiners appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105) as the Commission by order shall determine. Hearings shall be conducted in accordance with sections 7 and 8 of the Administrative Procedure Act (5 U.S.C. 556, 557).

§ 4.9 Representation.

The applicant may be represented before the Commission by any person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any State or territory of the United States, or the District of Columbia, and who is not under any order of any court suspending, enjoining, restraining, or disbaring him from, or otherwise restricting him in, the practice of law. Whenever a person acting in a representative capacity appears in person or signs a paper in practice before the Commission, his personal appearance or signature shall constitute a representation to the Commission that under the provisions of this part and ap-

plicable law he is authorized and qualified to represent the particular person in whose behalf he acts. Further proof of a person's authority to act in a representative capacity may be required. When any applicant is represented by an attorney at law, any notice or other written communication required or permitted to be given to or by such applicant shall be given to or by such attorney. If an applicant is represented by more than one attorney, service by or upon any one of such attorneys shall be sufficient.

§ 4.10 Waiver of oral hearing.

The Commission upon receipt of a statement from the Secretary that he does not object, and in the absence of any request for oral hearing from the others to whom notice has been sent pursuant to § 4.7 may grant an application without receiving oral testimony with respect to it.

§ 4.11 Appearance; testimony; cross-examination.

(a) The applicant shall appear and, except as otherwise provided in § 4.10, shall testify at the hearing and may cross-examine witnesses.

(b) The Secretary and others to whom notice has been sent pursuant to § 4.7 shall be afforded an opportunity to appear and present evidence and cross-examine witnesses, at any hearing.

(c) In the discretion of the Commission or presiding officer, other witnesses may testify at the hearing.

§ 4.12 Evidence which may be excluded.

The Commission or officer presiding at the hearing may exclude irrelevant, untimely, immaterial, or unduly repetitious evidence.

§ 4.13 Record for decision. Receipt of documents comprising record—timing and extension.

(a) The application and all supporting documents, the transcript of the testimony and oral argument at the hearing, together with any exhibits received and other documents filed pursuant to these procedures and/or the Administrative Procedures Act shall be made parts of the record for decision.

(b) At the conclusion of the hearing the presiding officer shall specify the time for submission of proposed findings of fact and conclusions of law (unless waived by the parties); transcript of the hearing, and supplemental exhibits, if any. He shall set a tentative date

for the recommended decision based upon the timing of these preliminary steps. Extensions of time may be requested by any party, in writing, from the Parole Commission. Failure of any party to comply with the time frame as established or extended will be deemed to be a waiver on his part of his right to submit the document in question. The adjudication will proceed with the absence of said document and reasons therefore noted in the record.

§ 4.14 Examiner's recommended decision; exceptions thereto; oral argument before Commission.

Whenever the hearing is conducted by an examiner, at the conclusion of the hearing he shall submit a recommended decision to the Commission, which shall include a statement of findings and conclusions, as well as the reasons thereof. The applicant, the Secretary and others to whom notice has been sent pursuant to § 4.7 may file with the Commission, within 10 days after having been furnished a copy of the recommended decision, exceptions thereto and reasons in support thereof. The Commission may order the taking of additional evidence and may request the applicant and others to appear before it. The Commission may invite oral argument before it on such questions as it desires.

§ 4.15 Certificate of Exemption.

The applicant, the Secretary and others to whom notice has been sent pursuant to § 4.7 shall be served a copy of the Commission's decision and order with respect to each application. Whenever the Commission decision is that the application be granted, the Commission shall issue a Certificate of Exemption to the applicant. The Certificate of Exemption shall extend only to the stated employment with the prospective employer named in the application.

§ 4.16 Rejection of application.

No application for a Certificate of Exemption shall be accepted from any person whose application for a Certificate of Exemption has been withdrawn, deemed withdrawn due to failure to remedy deficiencies in a timely manner, or denied by the Commission within the preceding 12 months.

§ 4.17 Availability of decisions.

The Commission's Decisions under section 504(a) of the Labor-Management

Reporting and Disclosure Act of 1959 (73 Stat. 519) and those which will be forthcoming under section 411 of the Employees Retirement Income Security Act are and will be available for examination in the Office of the U.S. Parole Commission, 320 First Street, NW., Washington, D.C. 20537. Copies will be mailed upon written request to the Office of General Counsel, U.S. Parole Commission, at the above address at a cost of ten cents per page.

PART 4a—PROCEDURE GOVERNING APPLICATIONS FOR CERTIFICATES OF EXEMPTION UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

- Sec.
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4a.16 Rejection of application.
4a.17 Availability of Decisions.

AUTHORITY: Secs. 411, 507a, 88 Stat. 887, 894; 29 U.S.C. 1111, 1137.

SOURCE: 41 FR 3855, Jan. 27, 1976, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to Part 4a appear at 41 FR 24349, June 16, 1976.

CROSS REFERENCE: For Organization Statement, U.S. Parole Commission, see Subpart V of Part 0 of this chapter.

§ 4a.1 Definitions.

As used in this part:

- (a) "Act" means the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406) (88 Stat. 829).
(b) "Commission" means the United States Parole Commission.
(c) "Secretary" means the Secretary of Labor or his designee.

(d) "Employer" means the employee benefit plan with which an applicant under § 4a.2 desires to serve in a capacity for which he is ineligible under section 411(a) of the Act.

(e) All other terms used in this part shall have the same meaning as identical or comparable terms when those terms are used in the Employee Retirement Income Security Act of 1974 (Pub. L. 93-406) (88 Stat. 829).

§ 4a.2 Who may apply for certificate of exemption.

Any person who has been convicted of any of the crimes enumerated in section 411(a) of the Act whose service, present or prospective, as described in that section is or would be prohibited by that section because of such a conviction or a prison term resulting therefrom may apply to the Commission for a Certificate of Exemption from such a prohibition.

§ 4a.3 Contents of application.

A person applying for a Certificate of Exemption shall file with the Office of General Counsel, U.S. Parole Commission, 320 First Street, NW., Washington, D.C. 20537, a signed application under oath, in 10 copies, which shall set forth clearly and completely the following information:

(a) The name and address of the applicant and any other names used by the applicant and dates of such use.

(b) A statement of all convictions and imprisonments which prohibit the applicant's service under the provisions of section 411(a) of the Act.

(c) Whether any citizenship rights were revoked as a result of conviction or imprisonment and if so the name of the court and date of judgment thereof and the extent to which such rights have been restored.

(d) The name and location of the employer and a description of the office or paid position, including the duties thereof, for which a Certificate of Exemption is sought.

(e) A full explanation of the reasons or grounds relied upon to establish that the applicant's service in the office or employment for which a Certificate of Exemption is sought would not be contrary to the purposes of the Act.

(f) A statement that the applicant does not, for the purpose of the proceeding, contest the validity of any conviction.

§ 4a.4 Supporting affidavit; additional information.

(a) Each application filed with the Commission must be accompanied by a signed affidavit, in 10 copies, setting forth the following concerning the personal history of the applicant:

(1) Place and date of birth: If the applicant was not born in the United States, the time of first entry and port of entry, whether he is a citizen of the United States, and if naturalized, when, where and how he became naturalized and the number of his Certificate of Naturalization.

(2) Extent of education, including names of schools attended.

(3) History of marital and family status, including a statement as to whether any relatives by blood or marriage are currently serving in any capacity with any employee benefit plan or with any labor organization, group or association of employers dealing with labor organizations or industrial labor relations group, or currently advising or representing any employer with respect to employee organizing concerted activities, or collective bargaining activities.

(4) Present employment, including office or offices held, with a description of the duties thereof.

(5) History of employment, including military service, in chronological order.

(6) Licenses held, at the present time or at any time in the past five years, to possess or carry firearms.

(7) Veterans' Administration claim number and regional office handling claim, if any.

(8) A listing (not including traffic offenses for which a fine of not more than \$25 was imposed or collateral of not more than \$25 was forfeited) by date and place of all arrests, convictions for felonies, misdemeanors, or offenses and all imprisonment or jail terms resulting therefrom, together with a statement of the circumstances of each violation which led to arrest or conviction.

(9) Whether applicant was ever on probation or parole, and if so the names of the courts by which convicted and the dates of conviction.

(10) Names and locations of all employee benefit plans and all labor organizations or employer groups with which the applicant has ever been associated or employed and all employers or employee benefit plans which he has ad-

vised or represented concerning employee organizing concerted activities, or collective bargaining activities, together with a description of the duties performed in each such employment or association.

(11) A statement of applicant's net worth, including all assets held by him or in the names of others for him, the amount of each liability owed by him or by him together with any other person, and the amount and source of all income during the immediately preceding five calendar years plus income to date of application.

(12) Any other information which the applicant feels will assist the Commission in making its determination.

(b) The Commission may require of the applicant such additional information as it deems appropriate for the proper consideration and disposition of his application.

§ 4a.5 Character endorsements.

Each application filed with the Board must be accompanied by letters or other forms of statement (in three copies) from six persons addressed to the Chairman, U.S. Parole Commission, attesting to the character and reputation of the applicant. The statement as to character shall indicate the length of time the writer has known applicant, and shall describe applicant's character traits as they relate to the position for which the exemption is sought and the duties and responsibilities thereof. The statement as to reputation shall attest to applicant's reputation in his community or in his circle of business or social acquaintances. Each letter or other form of statement shall indicate that it has been submitted in compliance with procedures under Section 411 of the Act and that applicant has informed the writer of the factual basis of his application. The persons submitting letters or other forms of statement shall not include relatives by blood or marriage, prospective employers, or persons serving in any official capacity with any employee benefit plan, labor organization group or association of employers dealing with labor organizations or industrial labor relations group.

§ 4a.6 Institution of proceedings.

All applications and supporting documents received by the Commission shall be reviewed for completeness by the

Office of General Counsel of the Commission and if complete and fully in compliance with the regulations of this part the Office of General Counsel shall accept them for filing. Applicant and/or his representative will be notified by the Office of General Counsel of any deficiency in the application and supporting documents. The amount of time allowed for deficiencies to be remedied will be specified in said notice. In the event such deficiencies are not remedied within the specified period or any extension thereof granted after application to the Commission in writing within the specified period, the application shall be deemed to have been withdrawn, and notice thereof shall be given to applicant.

§ 4a.7 Notice of hearing; postponements.

Upon the filing of an application, the Commission shall: (a) Set the application for hearing on a date within a reasonable time after its filing and notify by certified mail the applicant of such date;

(b) Give notice, as required by section 411(a) of the Act, to the appropriate State, County, or Federal prosecuting officials in the jurisdiction or jurisdictions in which the applicant was convicted that an application for a Certificate of Exemption has been filed and the date for hearing thereon; and

(c) Notify the Secretary that an application has been filed and the date for hearing thereon and furnish him copies of the application and all supporting documents.

Any party may request a postponement of a hearing date in writing from the Office of General Counsel at any time prior to ten (10) days before the scheduled hearing date. No request for postponement other than the first for any party will be considered unless a showing is made of cause entirely beyond the control of the requestor. The granting of such requests will be within the discretion of the Commission. In the event of a failure to appear on the hearing date as originally scheduled, or extended, the absent party will be deemed to have waived his right to a hearing. The hearing will be conducted with the parties present participating and documentation, if any, of the absent party entered into the record.

§ 4a.8 Hearing.

The hearing on the application shall be held at the offices of the Commission in Washington, D.C., or elsewhere as the Commission may direct. The hearing shall be held before the Commission, before one or more Commissioners, or before one or more examiners appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105) as the Commission by order shall determine. Hearings shall be conducted in accordance with sections 7 and 8 of the Administrative Procedure Act (5 U.S.C. 556, 557).

§ 4a.9 Representation.

The applicant may be represented before the Commission by any person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any State or territory of the United States, or the District of Columbia, and who is not under any order of any court suspending, enjoining, restraining, or disbaring him from, or otherwise restricting him in, the practice of law. Whenever a person acting in a representative capacity appears in person or signs a paper in practice before the Commission his personal appearance or signature shall constitute a representation to the Commission that under the provisions of this part and applicable law he is authorized and qualified to represent the particular person in whose behalf he acts. Further proof of a person's authority to act in a representative capacity may be required. When any applicant is represented by an attorney at law, any notice or other written communication required or permitted to be given to or by such applicant shall be given to or by such attorney. If an applicant is represented by more than one attorney, service by or upon any one of such attorneys shall be sufficient.

§ 4a.10 Waiver of oral hearing.

The Commission upon receipt of a statement from the Secretary that he does not object, and in the absence of any request for oral hearing from the others to whom notice has been sent pursuant to § 4a.7 may grant an application without receiving oral testimony with respect to it.

§ 4a.11 Appearance; testimony; cross-examination.

(a) The applicant shall appear and, except as otherwise provided in § 4a.10 shall testify at the hearing and may cross-examine witnesses.

(b) The Secretary and others to whom notice has been sent pursuant to § 4a.7 shall be afforded an opportunity to appear and present evidence and cross-examine witnesses, at any hearing.

(c) In the discretion of the Commission or presiding officer, other witnesses may testify at the hearing.

§ 4a.12 Evidence which may be excluded.

The Commission or officer presiding at the hearing may exclude irrelevant, untimely, immaterial, or unduly repetitious evidence.

§ 4a.13 Record for decision. Receipt of documents comprising record—timing and extensions.

(a) The application and all supporting documents, the transcript of the testimony and oral argument at the hearing, together with any exhibits received, and other documents filed pursuant to these procedures and/or the Administrative Procedures Act, shall be made parts of the record for decision.

(b) At the conclusion of the hearing the presiding officer shall specify the time for submission of proposed findings of fact and conclusion; of law (unless waived by the parties); transcript of the hearing, and supplemental exhibits, if any. He shall set a tentative date for the recommended decision based upon the timing of these preliminary steps. Extensions of time may be requested by any party, in writing, from the Parole Commission. Failure of any party to comply with the time frame as established or extended will be deemed to be a waiver on his part of his right to submit the document in question. The adjudication will proceed with the absence of said document and reasons therefor noted in the record.

§ 4a.14 Examiner's recommended decision; exceptions thereto; oral argument before Commission.

Whenever the hearing is conducted by an examiner, at the conclusion of the hearing he shall submit a recommended decision to the Commission, which shall

include a statement of findings and conclusions, as well as the reasons therefor. The applicant, the Secretary and others to whom notice has been sent pursuant to § 4a.7 may file with the Commission, within 10 days after having been furnished a copy of the recommended decision, exceptions thereto and reasons in support thereof. The Commission may order the taking of additional evidence and may request the applicant and others to appear before it. The Commission may invite oral argument before it on such questions as it desires.

§ 4a.15 Certificate of exemption.

The applicant, the Secretary and others to whom notice has been sent pursuant to § 4a.7 shall be served a copy of the Commission's decision and order with respect to each application. Whenever the Commission's decision is that the application be granted, the Commission shall issue a Certificate of Exemption to the applicant. The Certificate of Exemption shall extend only to the stated employment with the prospective employer named in the application.

[41 FR 3857, Jan. 27, 1976; 41 FR 5387, Feb. 6, 1976]

§ 4a.16 Rejection of application.

No application for a Certificate of Exemption shall be accepted from any person whose application for a Certificate of Exemption has been withdrawn, deemed withdrawn due to failure to remedy deficiencies in a timely manner, or denied by the Commission within the preceding 12 months.

§ 4a.17 Availability of decisions.

Section 411 of the Employees Retirement Income Security Act is similar to section 504(a) of the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519). The procedure governing Applications for Certificates of Exemption is similar as to both sections. The Commission decisions under section 504(a) and those which will be forthcoming under section 411 are and will be available for examination in the Office of the U.S. Parole Commission, 320 First Street, NW., Washington D.C. 20537. Copies will be mailed upon written request to the Office of General Counsel, U.S. Parole Commission, at the above address at a cost of ten cents per page.

PART 5—ADMINISTRATION AND ENFORCEMENT OF FOREIGN AGENTS REGISTRATION ACT OF 1938, AS AMENDED

- Sec.
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 - 5.400 Filing of political propaganda.
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 - 5.800 Ten-day filing requirement.
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AUTHORITY: The provisions of this Part 5 issued under sec. 1, 56 Stat. 248, 257; 22 U.S.C. 620.

SOURCE: The provisions of this Part 5 contained in Order No. 376-67, 32 FR. 6362, Apr. 22, 1967, unless otherwise noted.

§ 5.1 Administration and enforcement of the Act.

(a) The administration and enforcement of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611-

621), is subject to the general supervision and direction of the Attorney General, assigned to, conducted, handled, and supervised by the Assistant Attorney General in charge of the Criminal Division (§ 0.60(*) of this chapter).

(b) The Assistant Attorney General is authorized to prescribe such forms, in addition to or in lieu of those specified in the regulations in this part, as may be necessary to carry out the purposes of this part.

(c) Copies of the Act, and of the rules, regulations, and forms prescribed pursuant to the Act, and information concerning the foregoing may be obtained upon request without charge from the Registration Unit, Criminal Division, Department of Justice, Washington, D.C. 20530.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 523-73, 38 FR 18235, July 9, 1973; Order No. 568-74, 39 FR 18646, May 29, 1974]

§ 5.2 Inquiries concerning application of the Act.

Any inquiry concerning the application of the Act to any person should be addressed to the Registration Unit and should be accompanied by a detailed statement containing the following information:

(a) The identity of the agent and the foreign principal involved;

(b) The nature of the agent's activities for or in the interest of the foreign principal;

(c) A copy of the existing or proposed written contract with the foreign principal, or a full description of the terms and conditions of each existing or proposed oral agreement.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 568-74, 39 FR 18646, May 29, 1974]

§ 5.3 Filing of a registration statement.

All statements, exhibits, amendments, and other documents and papers required to be filed under the Act or under this part shall be submitted in duplicate to the Registration Unit. Filing of such documents may be made in person or by mail, and they shall be deemed to be filed upon their receipt by the Registration Unit.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 523-73, 38 FR 18235, July 9, 1973]

§ 5.4 Computation of time.

Sundays and holidays shall be counted in computing any period of time prescribed in the Act or in the rules and regulations in this part.

§ 5.100 Definition of terms.

(a) As used in this part:

(1) The term "Act" means the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611-621).

(2) The term "Attorney General" means the Attorney General of the United States.

(3) The term "Assistant Attorney General" means the Assistant Attorney General in charge of the Criminal Division, Department of Justice, Washington, D.C. 20530.

(4) The term "Secretary of State" means the Secretary of State of the United States.

(5) The term "Registration Unit" means the Registration Unit, Internal Security Section, Criminal Division, Department of Justice, Washington, D.C. 20530.

(6) The term "rules and regulations" includes the regulations in this part and all other rules and regulations prescribed by the Attorney General pursuant to the Act and all registration forms and instructions thereon which may be prescribed by the regulations in this part or by the Assistant Attorney General.

(7) The term "registrant" means any person who has filed a registration statement with the Registration Unit, pursuant to section 2(a) of the Act and § 5.3.

(8) Unless otherwise specified, the term "agent of a foreign principal" means an agent of a foreign principal required to register under the Act.

(9) The term "foreign principal" includes a person any of whose activities are directed or indirectly supervised, directed, controlled, financed, or subsidized in whole or in major part by a foreign principal as that term is defined in section 1(b) of the Act.

(10) The term "initial statement" means the statement required to be filed with the Attorney General under section 2(a) of the Act.

(11) The term "supplemental statement" means the supplement required to be filed with the Attorney General under section 2(b) of the Act at intervals

of 6 months following the filing of the initial statement.

(12) The term "final statement" means the statement required to be filed with the Attorney General following the termination of the registrant's obligation to register.

(13) The term "short form registration statement" means the registration statement required to be filed by certain partners, officers, directors, associates, employees, and agents of a registrant.

(b) As used in the Act, the term "control" or any of its variants shall be deemed to include the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person, whether through the ownership of voting rights, by contract, or otherwise.

(c) The term "agency" as used in sections 1(c), 1(o), 1(q), 3(g), and 4(e) of the Act shall be deemed to refer to every unit in the executive and legislative branches of the Government of the United States, including committees of both Houses of Congress.

(d) The term "official" as used in sections 1(c), 1(o), 1(q), 3(g), and 4(e) of the Act shall be deemed to include Members and officers of both Houses of Congress as well as officials in the executive branch of the Government of the United States.

(e) The terms "formulating, adopting, or changing," as used in section 1(o) of the Act, shall be deemed to include any activity which seeks to maintain any existing domestic or foreign policy of the United States. They do not include making a routine inquiry of a Government official or employee concerning a current policy or seeking administrative action in a matter where such policy is not in question.

(f) The term "domestic or foreign policies of the United States," as used in sections 1(o) and (p) of the Act, shall be deemed to relate to existing and proposed legislation, or legislative action generally; treaties; executive agreements, proclamations, and orders; decisions relating to or affecting departmental or agency policy, and the like.

[Order No. 378-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 523-73, 38 FR 18235, July 9, 1973]

§ 5.200 Registration.

(a) Registration under the Act is accomplished by the filing of an initial statement together with all the exhibits required by § 5.201 and the filing of a supplemental statement at intervals of 6 months for the duration of the principal-agent relationship requiring registration.

(b) The initial statement shall be filed on Form DJ-301.

§ 5.201 Exhibits.

(a) The following described exhibits are required to be filed for each foreign principal of the registrant:

(1) *Exhibit A.* This exhibit, which shall be filed on Form DJ-306, shall set forth the information required to be disclosed concerning each foreign principal.

(2) *Exhibit B.* This exhibit, which shall be filed on Form DJ-304, shall set forth the agreement or understanding between the registrant and each of his foreign principals as well as the nature and method of performance of such agreement or understanding and the existing or proposed activities engaged in or to be engaged in, including political activities, by the registrant for the foreign principal.

(b) Any change in the information furnished in Exhibit A or B shall be reported to the Registration Unit within 10 days of such change. The filing of a new exhibit may then be required by the Assistant Attorney General.

(c) Whenever the registrant is an association, corporation, organization, or any other combination of individuals, the following documents shall be filed as Exhibit C:

(1) A copy of the registrant's charter, articles of incorporation or association, or constitution, and a copy of its bylaws, and amendments thereto;

(2) A copy of every other instrument or document, and a statement of the terms and conditions of every oral agreement, relating to the organization, powers and purposes of the registrant.

(d) The requirement to file any of the documents described in paragraph (c) (1) and (2) of this section may be wholly or partially waived upon written application by the registrant to the Assistant Attorney General setting forth fully the reasons why such waiver should be granted.

(e) Whenever a registrant, within the United States, receives or collects con-

tributions, loans, money, or other things of value, as part of a fund-raising campaign, for or in the interests of his foreign principal, he shall file as Exhibit D a statement so captioned setting forth the amount of money or the value of the thing received or collected, the names and addresses of the persons from whom such money or thing of value was received or collected, and the amount of money or a description of the thing of value transmitted to the foreign principal as well as the manner and time of such transmission.

[Order No. 376-87, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 523-73, 38 FR 18235, July 9, 1973]

§ 5.202 Short form registration statement.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, each partner, officer, director, associate, employee, and agent of a registrant is required to file a registration statement under the Act. Unless the Assistant Attorney General specifically directs otherwise, this obligation may be satisfied by the filing of a short form registration statement.

(b) A partner, officer, director, associate, employee, or agent of a registrant who does not engage directly in activity in furtherance of the interests of the foreign principal is not required to file a short form registration statement.

(c) An employee or agent of a registrant whose services in furtherance of the interests of the foreign principal are rendered in a clerical, secretarial, or in a related or similar capacity, is not required to file a short form registration statement.

(d) Whenever the agent of a registrant is a partnership, association, corporation, or other combination of individuals, and such agent is not within the exemption of paragraph (b) of this section, only those partners, officers, directors, associates, and employees who engage directly in activity in furtherance of the interests of the registrant's foreign principal are required to file a short form registration statement.

(e) The short form registration statement shall be filed on Form DJ-305. Any change affecting the information

furnished with respect to the nature of the services rendered by the person filing the statement, or the compensation he receives, shall require the filing of a new short form registration statement within 10 days after the occurrence of such change. There is no requirement to file exhibits or supplemental statements to a short form registration statement.

§ 5.203 Supplemental statement.

(a) Supplemental statements shall be filed on Form DJ-302.

(b) The obligation to file a supplemental statement at 6-month intervals during the agency relationship shall continue even though the registrant has not engaged during the period in any activity in the interests of his foreign principal.

(c) The time within which to file a supplemental statement may be extended for sufficient cause shown in a written application to the Assistant Attorney General.

§ 5.204 Amendments.

(a) An initial, supplemental, or final statement which is deemed deficient by the Assistant Attorney General must be amended upon his request. Such amendment shall be filed upon Form DJ-307 and shall identify the item of the statement to be amended.

(b) A change in the information furnished in an initial or supplemental statement under clauses (3), (4), (6), and (9) of section 2(a) of the Act shall be by amendment, unless the notice which is required to be given of such change under section 2(b) is deemed sufficient by the Assistant Attorney General.

§ 5.205 Termination of registration.

(a) A registrant shall, within 30 days after the termination of his obligation to register, file a final statement on Form DJ-302 with the Registration Unit for the final period of the agency relationship not covered by any previous statement.

(b) Registration under the Act shall be terminated upon the filing of a final statement, if the registrant has fully discharged all his obligations under the Act.

(c) A registrant whose activities on behalf of each of his foreign principals become confined to those for which an exemption under section 3 of the Act is available may file a final statement notwithstanding the continuance of the

agency relationship with the foreign principals.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 523-73, 38 FR 18235, July 9, 1973]

§ 5.206 Language and wording of registration statement.

(a) Except as provided in the next sentence, each statement, amendment, exhibit, or notice required to be filed under the Act shall be submitted in the English language. An exhibit may be filed even though it is in a foreign language if it is accompanied by an English translation certified under oath by the translator before a notary public, or other person authorized by law to administer oaths for general purposes, as a true and accurate translation.

(b) A statement, amendment, exhibit, or notice required to be filed under the Act should be typewritten, but will be accepted for filing if it is written legibly in ink.

(c) Copies of any document made by any of the duplicating processes may be filed pursuant to the Act if they are clear and legible.

(d) A response shall be made to every item on each pertinent form, unless a registrant is specifically instructed otherwise in the form. Whenever the item is inapplicable or the appropriate response to an item is "none," an express statement to that effect shall be made.

§ 5.207 Incorporation by reference.

(a) Each initial, supplemental, and final statement shall be complete in and of itself. Incorporation of information by reference to statements previously filed is not permissible.

(b) Whenever insufficient space is provided for response to any item in a form, reference shall be made in such space to a full insert page or pages on which the item number and inquiry shall be restated and a complete answer given. Inserts and riders of less than full page size should not be used.

§ 5.208 Disclosure of foreign principals.

A registrant who represents more than one foreign principal is required to list in the statements he files under the Act only those foreign principals for whom he is not entitled to claim exemption under section 3 of the Act.

§ 5.209 Information relating^a to employees.

A registrant shall list in the statements he files under the Act only those employees whose duties require them to engage directly in activities in furtherance of the interests of the foreign principal.

§ 5.210 Amount of detail required in information relating to registrant's activities and expenditures.

A statement is "detailed" within the meaning of clauses 6 and 8 of section 2 (a) of the Act when it has that degree of specificity necessary to permit meaningful public evaluation of each of the significant steps taken by a registrant to achieve the purposes of the agency relation.

§ 5.211 Sixty-day period to be covered in initial statement.

The 60-day period referred to in clauses 5, 7, and 8 of section 2(a) of the Act shall be measured from the time that a registrant has incurred an obligation to register and not from the time that he files his initial statement.

§ 5.300 Burden of establishing availability of exemption.

The burden of establishing the availability of an exemption from registration under the Act shall rest upon the person for whose benefit the exemption is claimed.

§ 5.301 Exemption under section 3(a) of the Act.

(a) A consular officer of a foreign government shall be considered duly accredited under section 3(a) of the Act whenever he has received formal recognition as such, whether provisionally or by exequatur, from the Secretary of State.

(b) The exemption provided by section 3(a) of the Act to a duly accredited diplomatic or consular officer is personal and does not include within its scope an office, bureau, or other entity.

§ 5.302 Exemptions under sections 3 (b) and (c) of the Act.

The exemptions provided by sections 3 (b) and (c) of the Act shall not be available to any person described therein unless he has filed with the Secretary of State a fully executed Notification of Status with a Foreign Government (Form D.S. 394).

§ 5.303 Exemption available to persons accredited to international organizations.

Persons designated by foreign governments as their representatives in or to an international organization, other than nationals of the United States, are exempt from registration under the Act in accordance with the provisions of the International Organizations Immunities Act, if they have been duly notified to and accepted by the Secretary of State as such representatives, officers, or employees, and if they engage exclusively in activities which are recognized as being within the scope of their official functions.

§ 5.304 Exemptions under sections 3 (d) and (e) of the Act.

(a) As used in section 3(d), the term "trade or commerce" shall include the exchange, transfer, purchase, or sale of commodities, services, or property of any kind.

(b) For the purpose of section 3(d) of the Act, activities of an agent of a foreign principal as defined in section 1(c) of the Act, in furtherance of the bona fide trade or commerce of such foreign principal, shall be considered "private," even though the foreign principal is owned or controlled by a foreign government, so long as the activities do not directly promote the public or political interests of the foreign government.

(c) For the purpose of section 3(d) of the Act, the disclosure of the identity of the foreign person that is required under section 1(q) of the Act shall be made to each official of the U.S. Government with whom the activities are conducted. This disclosure shall be made to the Government official prior to his taking any action upon the business transacted. The burden of establishing that the required disclosure was made shall lie upon the person claiming the exemption.

(d) The exemption provided by section 3(e) of the Act shall not be available to any person described therein if he engages in political activities as defined in section 1(o) of the Act for or in the interests of his foreign principal.

[Order No. 876-67, 32 F.R. 6362, Apr. 22, 1967, as amended by Order No. 463-71, 36 F.R. 12312, June 29, 1971]

§ 5.305 Exemption under section 3(f) of the Act.

The exemption provided by section 3(f) of the Act shall not be available unless

the President has, by publication in the **FEDERAL REGISTER**, designated for the purpose of this section the country the defense of which he deems vital to the defense of the United States.

§ 5.306 Exemption under section 3(g) of the Act.

For the purpose of section 3(g) of the Act—

(a) Attempts to influence or persuade agency personnel or officials other than in the course of established agency proceedings, whether formal or informal, shall include only such attempts to influence or persuade with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party; and

(b) If an attorney engaged in legal representation of a foreign principal before an agency of the U.S. Government is not otherwise required to disclose the identity of his principal as a matter of established agency procedure, he must make such disclosure, in conformity with this section of the Act, to each of the agency's personnel or officials before whom and at the time his legal representation is undertaken. The burden of establishing that the required disclosure was made shall lie upon the person claiming the exemption.

[Order No. 376-67, 32 F.R. 6362, Apr. 22, 1967, as amended by Order No. 468-71, 36 F.R. 12212, June 29, 1971]

§ 5.400 Filing of political propaganda.

(a) The two copies of each item of political propaganda required to be filed with the Attorney General under section 4(a) of the Act shall be filed with the Registration Unit.

(b) Whenever two copies of an item of political propaganda have been filed pursuant to section 4(a) of the Act, an agent of a foreign principal shall not be required, in the event of further dissemination of the same material, to forward additional copies thereof to the Registration Unit.

(c) Unless specifically directed to do so by the Assistant Attorney General, a registrant is not required to file two copies of a motion picture containing political propaganda which he disseminates on behalf of his foreign principal, so long as he files monthly reports on its dissemination. In each such case

this registrant shall submit to the Registration Unit either a film strip showing the label required by section 4(b) of the Act or an affidavit certifying that the required label has been made a part of the film.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 523-73, 38 FR 18235, July 9, 1973; Order No. 568-74, 39 FR 18646, May 29, 1974]

§ 5.401 Dissemination report.

(a) A Dissemination Report shall be filed with the Registration Unit for each item of political propaganda that is transmitted, or caused to be transmitted, in the U.S. mails, or by any means or instrumentality of interstate or foreign commerce, by an agent of a foreign principal for or in the interests of any of his foreign principals.

(b) The Dissemination Report shall be filed on Form DJ-310.

(c) Except as provided in paragraph (d) of this section, a Dissemination Report shall be filed no later than 48 hours after the beginning of the transmittal of the political propaganda.

(d) Whenever transmittals of the same political propaganda are made over a period of time, a Dissemination Report may be filed monthly for as long as such transmittals continue.

(e) A Dissemination Report shall be complete in and of itself. Incorporation of information by reference to reports previously filed is not permissible.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 568-74, 39 FR 18646, May 29, 1974]

§ 5.402 Labeling political propaganda.

(a) Within the meaning of this part, political propaganda shall be deemed labeled whenever it has been marked or stamped conspicuously at its beginning with a statement setting forth such information as is required under section 4(b) of the Act.

(b) An item of political propaganda which is required to be labeled under section 4(b) of the Act and which is in the form of prints shall be marked or stamped conspicuously at the beginning of such item with a statement in the language or languages used therein, setting forth such information as is required under section 4(b) of the Act.

(c) An item of political propaganda which is required to be labeled under section 4(b) of the Act but which is not in the form of prints shall be accom-

panied by a statement setting forth such information as is required under section 4(b) of the Act.

(d) Political propaganda as defined in section 1(j) of the Act which is televised or broadcast, or which is caused to be televised or broadcast, by an agent of a foreign principal, shall be introduced by a statement which is reasonably adapted to convey to the viewers or listeners thereof such information as is required under section 4(b) of the Act.

(e) An agent of a foreign principal who transmits or causes to be transmitted in the U.S. mails or by any means or instrumentality of interstate or foreign commerce a still or motion picture film which contains political propaganda as defined in section 1(j) of the Act shall insert at the beginning of such film a statement which is reasonably adapted to convey to the viewers thereof such information as is required under section 4(b) of the Act.

(f) For the purpose of section 4(e) of the Act, the statement that must preface or accompany political propaganda or a request for information shall be in writing.

§ 5.500 Maintenance of books and records.

(a) A registrant shall keep and preserve in accordance with the provisions of section 5 of the Act the following books and records:

(1) All correspondence, memoranda, cables, telegrams, teletype messages, and other written communications to and from all foreign principals and all other persons, relating to the registrant's activities on behalf of, or in the interest of any of his foreign principals.

(2) All correspondence, memoranda, cables, telegrams, teletype messages, and other written communications to and from all persons, other than foreign principals, relating to the registrant's political activity, or relating to political activity on the part of any of the registrant's foreign principals.

(3) Original copies of all written contracts between the registrant and any of his foreign principals.

(4) Records containing the names and addresses of persons to whom political propaganda has been transmitted.

(5) All bookkeeping and other financial records relating to the registrant's activities on behalf of any of his foreign principals, including canceled checks, bank statements, and records of income

and disbursements, showing names and addresses of all persons who paid moneys to, or received moneys from, the registrant, the specific amounts so paid or received, and the date on which each item was paid or received.

(6) If the registrant is a corporation, partnership, association, or other combination of individuals, all minute books.

(7) Such books or records as will disclose the names and addresses of all employees and agents of the registrant, including persons no longer acting as such employees or agents.

(8) Such other books, records, and documents as are necessary properly to reflect the activities for which registration is required.

(b) The books and records listed in paragraph (a) of this section shall be kept and preserved in such manner as to render them readily accessible for inspection pursuant to section 5 of the Act.

(c) A registrant shall keep and preserve the books and records listed in paragraph (a) of this section for a period of 3 years following the termination of his registration under § 5.205.

(d) Upon good and sufficient cause shown in writing to the Assistant Attorney General, a registrant may be permitted to destroy books and records in support of the information furnished in an initial or supplemental statement which he filed 5 or more years prior to the date of his application to destroy.

§ 5.501 Inspection of books and records.

Officials of the Criminal Division and the Federal Bureau of Investigation are authorized under section 5 of the Act to inspect the books and records listed in § 5.500(a).

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 623-73, 38 FR 18235, July 9, 1973]

§ 5.600 Public examination of records.

Registration statements, Dissemination Reports, and copies of political propaganda filed under section 4(a) of the Act, shall be available for public examination at the Registration Unit on official business days, from 10 a.m. to 4 p.m.

§ 5.601 Copies of records available.

(a) Copies of registration statements and Dissemination Reports may be obtained from the Registration Unit upon payment of a fee at the rate of 10 cents

per copy of each page of the material requested.

(b) Information as to the fee to be charged for copies of registration statements and Dissemination Reports and the time required for their preparation may be obtained upon request to the Registration Unit.

(c) Payment of the fee shall accompany an order for copies, and shall be made in cash, by U.S. postal money order, or by certified bank check made payable to the Treasurer of the United States. Postage stamps will not be accepted.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 523-73, 38 FR 18235, July 9, 1973]

§ 5.800 Ten-day filing requirement.

The 10-day filing requirement provided by section 8(g) of the Act shall be deemed satisfied if the amendment to the registration statement is deposited in the U.S. mails no later than the 10th day of the period.

§ 5.801 Activity beyond 10-day period.

A registrant who has within the 10-day period filed an amendment to his registration statement pursuant to a Notice of Deficiency given under section 8(g) of the Act may continue to act as an agent of a foreign principal beyond this period unless he receives a Notice of Noncompliance from the Registration Unit.

[Order No. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 523-73, 38 FR 18235, July 9, 1973]

PART 6—TRAFFIC IN CONTRABAND ARTICLES IN FEDERAL PENAL AND CORRECTIONAL INSTITUTIONS

§ 6.1 Consent of warden or superintendent required.

The introduction or attempt to introduce into or upon the grounds of any Federal penal or correctional institution or the taking or attempt to take or send therefrom anything whatsoever without the knowledge and consent of the warden or superintendent of such Federal penal or correctional institution is prohibited. (Pub. Law 772, 80th Cong.; 18 U.S.C. 1791) [13 F.R. 6660, Sept. 30, 1948]

CROSS REFERENCE: For Organization Statement, Bureau of Prisons, see Subpart Q of Part 0 of this Chapter.

PART 7—REWARDS FOR CAPTURE OF ESCAPED FEDERAL PRISONERS

Sec.

7.1 Standing offer of reward.

7.2 Amount of reward.

7.3 Eligibility for reward.

7.4 Procedure for claiming reward.

7.5 Certification.

AUTHORITY: The provisions of this Part 7 issued under 5 U.S.C. 301; 18 U.S.C. 3059.

SOURCE: The provisions of this Part 7 appear at 25 F.R. 2420, Mar. 23, 1960, unless otherwise noted.

CROSS REFERENCE: For Organization Statement, Bureau of Prisons, see Subpart Q of Part 0 of this Chapter.

§ 7.1 Standing offer of reward.

A standing offer of reward is made for the capture, or for assisting in, or furnishing information leading to, the capture, of an escaped Federal prisoner, in accordance with the conditions stated in this part.

§ 7.2 Amount of reward.

Within the discretion of the Warden or United States Marshal concerned, a reward not in excess of \$200 may be granted for each capture of a prisoner and to more than one claimant, as determined applicable and appropriate. The Director of the Bureau of Prisons may in exceptional circumstances, as determined by him, grant rewards in excess of \$200. Bodily harm, damage, violence, intimidation, terrorizing, risks, etc., will be considered in determining the appropriate amount of reward.

§ 7.3 Eligibility for reward.

A reward may be paid to any person, except an official or employee of the Department of Justice or a law-enforcement officer of the United States Government, who personally captures and surrenders an escaped Federal prisoner to proper officials, or who assists in the capture, of an escaped Federal prisoner.

§ 7.4 Procedure for claiming reward.

A person claiming a reward under this part shall present his claim, within six months from the date of the capture, in the form of a letter to the Warden or United States Marshal concerned. The letter shall state fully the facts and circumstances on which the claim is based, and shall include the name of each escapee captured and the time and place of

the capture, and details as to how the arrest was made by the claimant or as to how assistance was rendered to others who made the arrest.

§ 7.5 Certification.

The claim letter required under § 7.4 shall contain the following certification immediately preceding the signature of the claimant:

I am not an officer or employee of the Department of Justice or a law-enforcement officer of the United States Government.

PART 8—CONFISCATION OF WIRE OR ORAL COMMUNICATION INTERCEPTING DEVICES

Sec.

8.1 Seizure of intercepting devices.

8.2 Seized intercepting devices.

AUTHORITY: The provisions of this Part 8 issued under 28 U.S.C. 509, 510; 5 U.S.C. 301; 18 U.S.C. 2513.

SOURCE: The provisions of this Part 8 contained in Order 409-69, 34 F.R. 1557, Jan. 31, 1969, unless otherwise noted.

§ 8.1 Seizure of intercepting devices.

The Director, Associate Director, Assistant to the Director, Assistant Directors, inspectors and agents of the Federal Bureau of Investigation are authorized to exercise the power and authority vested in the Attorney General by section 2513 of title 18, United States Code to make seizures of wire or oral communication intercepting devices.

§ 8.2 Seized intercepting devices.

All wire or oral communication intercepting devices seized pursuant to section 2513 of title 18, United States Code shall be held for or turned over to the U.S. Marshal for the district in which the seizure was made. Except for the power and authority conferred by § 8.1 and the powers described in the last sentence of this section, U.S. Marshals are, in accordance with section 2513 of title 18, United States Code, authorized and designated as the officers to perform the various duties with respect to seizures and forfeitures of wire and oral communication intercepting devices under section 2513 of title 18, United States Code which are comparable to the duties performed by collectors of customs or other persons with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the cus-

toms laws. The Assistant Attorney General in charge of the Criminal Division is designated as the officer authorized to take final action under section 2513 of title 18, United States Code on claims for remission or mitigation of forfeitures, offers of payment for release of property, claims for award of compensation to an informer, offers in compromise and matters relating to bonds or other security.

PART 9—REMISSION OR MITIGATION OF CIVIL FORFEITURES

Sec.

9.1 Purpose and scope.

9.2 Definitions.

9.3 Procedure relating to judicial forfeitures.

9.4 Procedure relating to administrative narcotic forfeitures.

9.5 General administrative procedures.

9.6 Provisions applicable to particular situations.

9.7 Terms and conditions of remission.

AUTHORITY: The provisions of this Part 9 issued under secs. 509 and 510, 28 U.S.C. 509, 510; 5 U.S.C. 501, Reorganization Plan No. 1 of 1968.

SOURCE: The provisions of this Part 9 appear in Order 430-70, 35 F.R. 7013, May 21, 1970, unless otherwise noted.

§ 9.1 Purpose and scope.

The following definitions, regulations and criteria are designed to reflect the intent of Congress relative to the remission or mitigation of forfeiture of certain property as set out in section 1618 of title 19, United States Code, and are applicable only to those civil forfeitures which arise under the Contraband Transportation Act, Comprehensive Drug Abuse Prevention and Control Act of 1970, customs laws, Federal Alcohol Administration Act and other laws relating to gambling, firearms, and liquor (except the Indian Liquor Laws), and which are assigned to the supervision of the Criminal Division or the Drug Enforcement Administration by the Attorney General or his duly authorized delegate (§§ 0.55(d), 0.100 of this chapter).

[Order No. 477-72, 37 FR 2768, Feb. 5, 1972, as amended by Order 520-73, 38 FR 18381, July 10, 1973]

§ 9.2 Definitions.

As used in this part:

(a) The term "Attorney General" means the Attorney General of the United States or his delegate.

(b) The term "related crime" means any crime similar in nature to that which gives rise to the seizure of property for forfeiture, for example, where property is seized for a violation of the Federal laws relating to liquor, a "related crime" would be any previous offense involving a violation of the Federal laws relating to liquor or the laws of any State or political subdivision thereof relating to liquor.

(c) The term "determining official" means the official who has the authority to grant or deny petitions for remission or mitigation of forfeitures of property incurred under the laws referred to in § 9.1.

(d) The terms "net equity," "net lien," and "net interest" mean the actual interest a petitioner has in property seized for forfeiture at the time a petition for remission or mitigation of forfeiture is granted by the determining official: *Provided, however,* That in computing a petitioner's actual interest the determining official shall make no allowances for unearned interest, finance charges, dealer's reserve, attorney's fees or other similar charges.

(e) The term "owner" means the person who holds primary and direct title to the property seized for forfeiture.

(f) The term "person" means an individual, partnership, corporation, joint business enterprise, or other entity capable of owning property.

(g) The term "petition" means the petition for remission or mitigation of forfeiture.

(h) The term "petitioner" means the person applying for remission or mitigation of the forfeiture of seized property.

(i) The term "property" means property of any kind capable of being owned or possessed.

(j) The term "record" means an arrest followed by a conviction, except that a single arrest and conviction and the expiration of any sentence imposed as a result of such conviction, all of which occurred more than 10 years prior to the date the petitioner acquired its interest in the seized property, shall not be considered a record: *Provided, however,* That two convictions shall always be considered a record regardless of when the convictions occurred: *And provided further,* That the determining official may, in his discretion, consider as constituting a record, an arrest or series of arrests to which the charge or charges

were subsequently dismissed for reasons other than acquittal or lack of evidence.

(k) The term "reputation" means repute with a law enforcement agency or among law enforcement officers or in the community generally, including any pertinent neighborhood or other area.

(l) The term "violation" means the person whose use of the property in violation of the law subjected such property to seizure for forfeiture.

[Order No. 430-70, 35 F.R. 7013, May 21, 1970, as amended by Order No. 477-72, 37 F.R. 2768, Feb. 5, 1972]

§ 9.3 Procedure relating to judicial forfeitures.

(a) A petition for remission or mitigation of forfeiture shall be addressed to the Attorney General, and shall be sworn to by the petitioner, or by his counsel upon information and belief, and shall be submitted in triplicate to the U.S. attorney for the judicial district in which the property is seized.

(b) Upon receipt of a petition, the U.S. attorney shall direct the seizing agency to investigate the merits of the petition and to submit a report thereon to him. Upon receipt of such report, the U.S. attorney shall forward a copy thereof together with the petition and his recommendation as to allowance or denial of the petition to the Assistant Attorney General, Criminal Division.

(c) Upon receipt of a petition and report thereon, the Assistant Attorney General shall assign it to the appropriate section of the Criminal Division which shall prepare a report based upon the allegations of the petition and the report of the seizing agency. No hearing shall be held. Upon the basis of the report prepared in this section, the Chief of the section shall either grant the petition by remission or mitigation of the forfeiture or shall deny it.

(d) If the Chief of the section grants a petition or otherwise mitigates the forfeiture, he shall cause appropriate notices of such action to be mailed to the petitioner or his attorney and to the appropriate U.S. attorney. The U.S. attorney shall be advised of the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures to be followed in order for the petitioner to obtain a release of the property, or, in the case of a chattel mortgagee and at the petitioner's option, to obtain his net equity in said property. The Chief of the section shall advise the

petitioner or his attorney to confer with the U.S. attorney as to such terms and conditions.

(e) If the Chief of the section denies a petition, he shall cause appropriate notices of such action to be mailed to the petitioner or his attorney and to the appropriate U.S. attorney. Such notice shall specify the reason the petition was denied. The notice also shall advise the petitioner or his attorney that a request for reconsideration of the denial of the petition may be submitted to the Assistant Attorney General, Criminal Division, in accordance with paragraphs (j) through (m) of this section.

(f) A petition for restoration of the proceeds of sale or for value of forfeited property, if retained or delivered for official use of a Government agency, may be submitted in cases in which the petitioner: (1) Did not know of the seizure prior to the declaration or condemnation of forfeiture; and (2) was in such circumstances as prevented him from knowing thereof. Such a petition shall be submitted pursuant to paragraph (a) of this section and within 3 months from the date the property is sold or otherwise disposed of.

(g) The Assistant Attorney General shall not accept a petition in any case in which a similar petition has been administratively denied by the seizing agency prior to the referral of the case to the U.S. attorney for the institution of forfeiture proceedings.

(h) The Assistant Attorney General shall accept and the Chief of the section shall consider petitions submitted in judicial forfeiture proceedings under the Internal Revenue liquor laws only prior to the time a decree of forfeiture is entered. Thereafter, District Courts have exclusive jurisdiction over the res.

(i) In all other forfeiture cases, the Assistant Attorney General shall accept and the Chief of the section shall consider petitions until the property is sold or placed in official use or otherwise disposed of according to law.

(j) Within 20 days from the date of the notice of the denial of a petition for remission or mitigation, a request for reconsideration of the denial, based on evidence recently developed or not previously considered, may be submitted to the Assistant Attorney General, Criminal Division, for referral to the appropriate Section Chief. The applicant shall simultaneously submit a copy to the appropriate U.S. attorney.

(k) Upon receipt of a copy of a request for reconsideration of the denial of a petition the U.S. attorney shall withhold further action in the case pending advice from the Assistant Attorney General, Criminal Division, of the action taken on the request by the appropriate Section Chief.

(l) If the U.S. attorney does not receive a copy of a request for reconsideration within the prescribed period he shall proceed with the forfeiture.

(m) Only one request for reconsideration of a denial of a petition shall be considered.

§ 9.4 Procedure relating to administrative narcotic forfeitures.

(a) A petition for remission or mitigation of forfeiture of property seized for narcotic violations that is subject to administrative forfeiture (appraised value of \$2,500 or less) shall be addressed to the Administrator of the Drug Enforcement Administration (DEA). Such a petition shall be filed in triplicate with the regional administrator of DEA for the judicial district in which the seizure occurred.

(b) Upon receipt of a petition for property subject to administrative forfeiture the regional administrator of DEA shall have an investigation of the petition conducted. The completed petition investigation and the recommendation of the regional director on the petition will be forwarded to the Administrator of DEA.

(c) Upon the receipt of a petition and a report thereon by the Administrator of DEA, he shall assign it to the Office of Chief Counsel where a ruling shall be made, based on the petition and the report of investigation. No hearing shall be held. The ruling on the petition shall be made by the Chief Counsel or Deputy Chief Counsel of DEA.

(d) Notice of the granting or the denial of a petition for property subject to administrative forfeiture shall be mailed to the petitioner or his attorney. If the petition is granted, the conditions of relief and the procedure to be followed in order to obtain the release of the property shall be set forth. If the petition is denied, the petitioner shall be advised of the reasons for such denial.

(e) A request for consideration of the denial may be submitted within 10 days from the date of the letter denying the petition. Such request shall be addressed to the Administrator of DEA for referral to the Office of the Chief Counsel and

shall be based on evidence recently developed or not previously considered.

(f) Additional information concerning property subject to seizure for narcotic violations is contained in 21 CFR 316.71-316.81.

[Order No. 430-70, 35 F.R. 7013, May 21, 1970, as amended by Order No. 477-72, 37 F.R. 2768, Feb. 5, 1972; Order 520-73, 38 FR 18381, July 10, 1973]

§ 9.5 General administrative procedures.

(a) Petitions shall be sworn and shall include the following information in clear and concise terms:

(1) A complete description of the property, including serial numbers, if any, and the date and place of seizure.

(2) The interest of the petitioner in the property, as owner, mortgagee or otherwise, to be supported by bills of sale, contracts, mortgages, or other satisfactory documentary evidence.

(3) The facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify remission or mitigation.

(b) The Determining Official shall not consider whether the evidence is sufficient to support the forfeiture since the filing of a petition presumes a valid forfeiture. The determining official shall consider only whether the petitioner has satisfactorily established his good faith and his innocence and lack of knowledge of the violation which subjected the property to seizure and forfeiture, and whether there has been compliance with the standards hereinafter set forth.

(c) The determining official shall not remit or mitigate a forfeiture unless the petitioner:

(1) Establishes a valid, good faith interest in the seized property as owner or otherwise; and

(2) Establishes that he at no time had any knowledge or reason to believe that the property in which he claims an interest was being or would be used in a violation of the law.

(3) Establishes that he at no time had any knowledge or reason to believe that the owner had any record or reputation for violating laws of the United States or of any State for related crime.

[Order No. 430-70, 35 F.R. 7013, May 21, 1970, as amended by Order No. 477-72, 37 F.R. 2768, Feb. 5, 1972]

§ 9.6 Provisions applicable to particular situations.

(a) Mitigation: In addition to his discretionary authority to grant relief by

way of complete remission of forfeiture, the determining official may, in the exercise of his discretion, mitigate forfeitures of seized property. This authority may be exercised in those cases where the petitioner has not met the minimum conditions precedent to remission but where there are present other extenuating circumstances indicating that some relief should be granted to avoid extreme hardship. Mitigation may also be granted where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the determining official, complete relief is not warranted. Mitigation shall take the form of a money penalty imposed upon the petitioner in addition to any other sums chargeable as a condition to remission. This penalty is considered as an item of cost payable by the petitioner.

(b) Rival claimants: If the beneficial owner of property and the owner of a security interest in the same property each files a petition, and if both petitions are found to be meritorious, relief from a forfeiture shall be granted to the beneficial owner and the petition of the owner of the security interest shall be denied.

(c) Leasing agreements: (1) A person engaged in the business of renting property shall not be excused from establishing compliance with the requirements of § 9.5.

(2) A lessor who leases property on a long term basis with the right to sublease shall not be entitled to remission or mitigation of a forfeiture of such property unless his lessee would be entitled to such relief.

(d) Voluntary bailments: A petitioner who allows another to use his property without cost and who is not in the business of lending money secured by property or of renting property for profit, shall be granted remission or mitigation of forfeiture upon meeting the requirements of § 9.5.

(e) Straw purchase transactions: If a person purchases in his own name property for another who has a record or reputation for related crimes, and if a lienholder knows or has reason to believe that the purchaser of record is not the real purchaser, a petition filed by such a lienholder shall be denied unless the petitioner establishes compliance with the requirements of § 9.5 as to both the purchaser of record and the real purchaser. This rule shall also apply where money is borrowed on the security of

property held in the name of the purchaser of record for the real purchaser.

(f) Notwithstanding the fact that a petitioner has satisfactorily established compliance with the administrative conditions applicable to his particular situation, the Determining Official may deny relief if there are unusual circumstances present which in his judgment provide reasonable grounds for concluding that remission or mitigation of the forfeiture would be inimical to the interests of justice.

[Order No. 430-70, 35 F.R. 7013, May 21, 1970, as amended by Order No. 477-72, 37 F.R. 2768, Feb. 5, 1972]

§ 9.7 Terms and conditions of remission.

(a) The terms and conditions of remission or mitigation of forfeitures in cases subject to judicial forfeiture proceedings (property appraised over \$2,500 when seized or a claim and cost bond filed) shall, at a minimum, require that a petitioner pay the costs and expenses incident to the seizure of the property including any court costs and accrued storage charges. However, if the petitioner's interest in the property is derived from a lien thereon, the petitioner shall pay an amount equal to all costs and expenses incident to the seizure including any court costs and accrued storage charges or the amount by which the appraised value of the property exceeds the petitioner's net interest therein, whichever is greater. The appraised value at the time of seizure is used for the purposes of these rules.

(b) Where a complaint for forfeiture has been filed with the District Court, a lienholder shall also be required to furnish the U.S. attorney with: (1) An instrument executed by the registered owner and any other known claimant of an interest in the property, if they are not in default, releasing their interest in such property, or (2) if the registered owner or any other known claimant is in default, an agreement to save the Government, its agents and employees harmless from any and all claims which might result from the grant of remission.

(c) Alternatively, a lienholder may elect to permit the litigation to proceed to judgment. In that event, the court shall be advised that the Department has allowed the petition for remission of the forfeiture and shall be requested to order the property sold by the U.S. Marshal at public sale and the proceeds thereof to be distributed as follows:

(1) Payment to the petitioner of an amount equal to his net equity if the proceeds are sufficient or the net proceeds otherwise, after deducting from the petitioner's interest an amount equal to the Government's costs and expenses incident to the seizure, forfeiture and sale, including court costs and storage charges, if any;

(2) Payment of such costs and expenses;

(3) Payment of the balance remaining, if any, to the Government.

(d) If a complaint for forfeiture has not been filed, the petitioner, if he is a lienholder, in addition to paying an amount equal to all costs and expenses incident to the seizure, including any court costs and accrued storage charges, or an amount by which the appraised value of the property exceeds his net interest therein, whichever is greater, shall:

(1) Furnish an instrument executed by the registered owner and any other known claimant of an interest in the property releasing their interest in such property, or

(2) Furnish an agreement to hold the Government, its agents and employees harmless from any and all claims which might result from the grant of remission.

(e) The determining official may impose such other terms and conditions as may be appropriate.

(f) Upon compliance with the terms and conditions of remission or mitigation in cases subject to judicial forfeiture proceedings, the U.S. attorney shall take appropriate action to effect the release to the petitioner of the property involved and to dismiss the complaint if one has been filed or otherwise dispose of the matter by forfeiture, sale and distribution of the proceeds therefrom as set forth herein.

(g) In any case, if the owner of record or any other claimant wishes to contest the forfeiture, judicial condemnation of the property shall be consummated, the court shall be apprised of the granting and terms of the remission or mitigation by the Attorney General, and the court shall be requested to frame its decree of forfeiture accordingly.

(h) Where the owner of property elects not to comply with the conditions imposed upon the release of such property to said owner by way of relief, the custodian of such property may be authorized to sell it. From the proceeds of the sale the custodian shall deduct and

retain for the account of the Government all costs incident to the seizure and forfeiture plus the costs of sale, and shall pay said owner the balance, if any.

(1) Where remission or mitigation is allowed to a person holding a security interest who is thereby eligible to have the property released to such person upon compliance with the terms and conditions of remission or mitigation, the property may nevertheless be retained by the Government for official use by an appropriately designated Department or Agency thereof upon payment by it to such person of an amount equal to such person's net equity, less an amount equal to the Government's costs and expenses incident to the seizure and forfeiture including court costs and storage charges, if any, and upon payment by it to the U.S. Marshal of an amount equal to such costs and expenses.

[Order No. 430-70, 35 F.R. 7013, May 21, 1970, as amended by Order No. 477-72, 37 F.R. 2769, Feb. 5, 1972]

PART 9a—CONFISCATION OF PROPERTY, INCLUDING MONEY, USED IN AN ILLEGAL GAMBLING BUSINESS

Sec.

- 9a.1 Designation of officials having seizure authority.
- 9a.2 Designation of officials having custodial and disposition authority.
- 9a.3 Custody of seized property, inventory, and receipt.
- 9a.4 Appraisalment of property subject to forfeiture.
- 9a.5 Notice of seizure and sale when value does not exceed \$2,500; advertisement.
- 9a.6 Transfer of forfeited property to other districts for sale; destruction of forfeited property.
- 9a.7 Remission or mitigation of forfeitures.
- 9a.8 Compromise of claims.
- 9a.9 Award of compensation to informers.

AUTHORITY: The provisions of this Part 9a issued under 5 U.S.C. 301, 18 U.S.C. 1955(d), 28 U.S.C. 509, 510.

SOURCE: The provisions of this Part 9a contained in Order No. 453-71, 36 F.R. 3416, Feb. 24, 1971, unless otherwise noted.

§ 9a.1 Designation of officials having seizure authority.

The Director, Associate Director, Assistants to the Director, Assistant Directors, inspectors, and agents of the Federal Bureau of Investigation are authorized to exercise the power and authority vested in the Attorney General by section 1955(d) of title 18, United States Code, to make seizures of any

property, including money used in an illegal gambling business.

§ 9a.2 Designation of officials having custodial and disposition authority.

Except for the power and authority conferred by § 9a.1, the powers described in the last sentence of this section, or as otherwise expressly provided herein, U.S. Marshals are, in accordance with section 1955(d) of title 18, United States Code, authorized and designated as the officers to perform the various duties with respect to seizures and forfeitures of money and other property under section 1955(d) of title 18, United States Code, which are comparable to the duties performed by collectors of customs or other persons with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws. The Assistant Attorney General in charge of the Criminal Division is designated as the officer authorized to take final action under section 1955(d) of title 18, United States Code, on claims for award of compensation to informers, offers in compromise, and matters relating to bonds or other security.

§ 9a.3 Custody of seized property, inventory, and receipt.

All money and other property seized pursuant to section 1955(d) of title 18, United States Code, shall be held for or turned over to the U.S. Marshal for the district in which the seizure was made when not held as evidence. An inventory shall be prepared of the property seized and a receipt given for it at the time of seizure or as soon thereafter as practicable.

§ 9a.4 Appraisalment of property subject to forfeiture.

Seized property shall be appraised. The appraisalment shall be the function of the U.S. Marshal having custody of the property. The value of an article seized shall be the price at which it or a similar article is fairly offered for sale at the time and place of appraisalment.

§ 9a.5 Notice of seizure and sale when value does not exceed \$2,500; advertisement.

The notice required by section 607, Tariff Act of 1930, as amended (19 U.S.C. 1607), of seizure and intention to forfeit and sell or otherwise dispose of property not exceeding \$2,500 in value seized pursuant to section 1955(d) of title 18, United States Code, shall describe the

property seized; state the time, cause, and place of seizure; and state that any person desiring to claim the property must file with the U.S. Marshal within 20 days from the date of the first publication of the notice a claim to such property and a bond in the sum of \$250, in default of which the property will be disposed of in accordance with law. The notice shall be published once each week for at least 3 successive weeks in a newspaper of general circulation in the judicial district in which the property was seized.

§ 9a.6 Transfer of forfeited property to other districts for sale; destruction of forfeited property.

(a) If the laws of a State in which an article of forfeited property is located prohibit the sale of such property or if the U.S. Marshal having custody thereof is of the opinion that the sale of forfeited property may be made more advantageously in another district, the property shall be moved to and sold in such other district as the Director, U.S. Marshals Service, may direct.

(b) If, after the summary forfeiture of property is completed, it appears that the proceeds of sale will not be sufficient to pay the costs of sale, the U.S. Marshal may order the destruction of the prop-

erty. Similarly, property forfeited under a decree of any court may be destroyed if it is provided in the decree of forfeiture that the property shall be delivered to the Attorney General for disposition in accordance with section 611, Tariff Act of 1930 (19 U.S.C. 1611). Also if the sale or use of any article is prohibited under any law of the United States or of any State, the Director, U.S. Marshals Service, may order it destroyed or remanufactured into an article that is not prohibited.

§ 9a.7 Remission or mitigation of forfeitures.

(a) The provisions of Part 9 of this chapter are applicable, insofar as practicable and appropriate, to petitions for the remission or mitigation of forfeitures resulting from the application of section 1955(d) of title 18, United States Code.

(b) The duties imposed under § 9.4 of this chapter with respect to petitions for the remission or mitigation of administrative forfeiture of property of an appraised value of \$2,500 or less shall, with respect to petitions for the remission or mitigation of forfeitures resulting from the application of section 1955(d) of title 18, United States Code, be performed as follows:

Duties comparable to those of—
 Administrator of the Drug Enforcement Administration.
 Regional Administrator of the Drug Enforcement Administration.
 Office of the Chief Counsel, Drug Enforcement Administration.
 Chief Counsel or Deputy Chief Counsel, Drug Enforcement Administration.

Will be performed by—
 Assistant Attorney General in charge of the Criminal Division.
 U.S. Marshal in whose district the property was seized unless otherwise directed by the Director, U.S. Marshals Service.
 Special Litigation Section, Criminal Division, Department of Justice.
 Chief or Deputy Chief, Special Litigation Section, Criminal Division, Department of Justice.

The petition shall be addressed to the Assistant Attorney General in charge of the Criminal Division and be filed in triplicate with the U.S. Marshal in whose district the property was seized.

[Order No. 453-71, 36 FR 3416, Feb. 24, 1971, as amended by Order 520-73, 38 FR 18381, July 10, 1973; Order No. 585-74, 39 FR 43537, Dec. 18, 1974]

§ 9a.8 Compromise of claims.

No offer pursuant to section 617, Tariff Act of 1930, as amended (19 U.S.C. 1617), in which a specific sum of money is tendered in compromise of a Government claim arising under section 1955(d) of title 18, United States Code, will be con-

sidered by the Attorney General or his designee unless accompanied by a bank draft, certified check, or money order in the amount of the offer.

§ 9a.9 Award of compensation to informers.

A petition for the award of compensation to an informer under section 619, Tariff Act of 1930 (19 U.S.C. 1619), as amended, and section 1955(d) of title 18, United States Code, will be forwarded to the Attorney General for action by his designee. The petition should be filed with or by the agent or official to whom the information was furnished. The petition will clearly identify the transaction to

which it relates, contain evidence of the net amount recovered, and includes sufficient information and corroboration to permit a determination to be made concerning an award.

PART 10—REGISTRATION OF CERTAIN ORGANIZATIONS CARRYING ON ACTIVITIES WITHIN THE UNITED STATES

REGISTRATION STATEMENT

- Sec.
10.1 Form of registration statement.
10.2 Language of registration statement.
10.3 Effect of acceptance of registration statement.
10.4 Date of filing.
10.5 Incorporation of papers previously filed.
10.6 Necessity for further registration.
10.7 Cessation of activity.

SUPPLEMENTAL REGISTRATION STATEMENT

- 10.8 Information to be kept current.
10.9 Requirements for supplemental registration statement.

INSPECTION OF REGISTRATION STATEMENT

- 10.10 Public inspection.

AUTHORITY: The provisions of this Part 10 issued under Pub. Law 772, 80th Cong.; 18 U.S.C. 2386.

SOURCE: The provisions of this Part 10 appear at 6 F.R. 369, Jan. 15, 1941, unless otherwise noted.

CROSS REFERENCES: For regulations under the Foreign Agents Registration Act, see Part 5 of this Chapter.

For Organization Statement, Internal Security Section, see Subpart K of Part 0 of this chapter.

REGISTRATION STATEMENT

§ 10.1 Form of registration statement.

Every organization required to submit a registration statement¹ to the Attorney General for filing in compliance with the terms of section 2 of the act approved October 17, 1940, entitled, "An act to require the registration of certain organizations carrying on activities within the United States, and for other purposes" (Pub. Law 772, 80th Cong.; 18 U.S.C. 2386), and the rules and regulations issued pursuant thereto, shall submit such statement on such forms as are prescribed by the Attorney General. Every statement required to be filed with the Attorney General shall be subscribed

¹ Filed as a part of the original document. Copies may be obtained from the Department of Justice.

under oath by all of the officers of the organization registering.

§ 10.2 Language of registration statement.

Registration statements must be in English if possible. If in a foreign language they must be accompanied by an English translation certified under oath by the translator, before a notary public or other person authorized by law to administer oaths for general purposes as a true and adequate translation. The statements, with the exception of signature, must be typewritten if practicable but will be accepted if written legibly in ink.

§ 10.3 Effect of acceptance of registration statement.

Acceptance by the Attorney General of a registration statement submitted for filing shall not necessarily signify a full compliance with the said act on the part of the registrant, and such acceptance shall not preclude the Attorney General from seeking such additional information as he deems necessary under the requirements of the said act, and shall not preclude prosecution as provided for in the said act for a false statement of a material fact, or the willful omission of a material fact required to be stated therein, or necessary to make the statements made not misleading.

§ 10.4 Date of filing.

The date on which a registration statement properly executed is accepted by the Attorney General for filing shall be considered the date of the filing of such registration statement pursuant to the said act. All statements must be filed not later than thirty days after January 15, 1941.

§ 10.5 Incorporation of papers previously filed.

Papers and documents already filed with the Attorney General pursuant to the said act and regulations issued pursuant thereto may be incorporated by reference in any registration statement subsequently submitted to the Attorney General for filing, provided such papers and documents are adequately identified in the registration statement in which they are incorporated by reference.

§ 10.6 Necessity for further registration.

The filing of a registration statement with the Attorney General as required by

the act shall not operate to remove the necessity for filing a registration statement with the Attorney General as required by the act of June 8, 1938, as amended, entitled "An act to require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes" (52 Stat. 631, 56 Stat. 248; 22 U.S.C. 611), or for filing a notification statement with the Secretary of State as required by the act of June 15, 1917 (40 Stat. 226).

[13 FR 8292, Dec. 24, 1948]

§ 10.7 Cessation of activity.

The chief officer or other officer of the registrant organization must notify the Attorney General promptly upon the cessation of the activity of the organization, its branches, chapters, or affiliates by virtue of which registration has been required pursuant to the act.

SUPPLEMENTAL REGISTRATION STATEMENT

10.8 Information to be kept current.

A supplemental statement must be filed with the Attorney General within thirty days after the expiration of each period of six months succeeding the original filing of a registration statement. Each supplemental statement must contain information and documents as may be necessary to make information and documents previously filed accurate and current with respect to the preceding six months' period.

§ 10.9 Requirements for supplemental registration statement.

The rules and regulations in this part with respect to registration statements submitted to the Attorney General under section 2 of the said act shall apply with equal force and effect to supplemental registration statements required thereunder to be filed with the Attorney General.

INSPECTION OF REGISTRATION STATEMENT

§ 10.10 Public inspection.

Registration statements filed with the Attorney General pursuant to the said act shall be available for public inspection in the Department of Justice, Washington, D.C., from 10:00 a.m. to 4:00 p.m. on each official business day.

[13 F.R. 8292, Dec. 24, 1948]

PART 12—REGISTRATION OF CERTAIN PERSONS HAVING KNOWLEDGE OF FOREIGN ESPIONAGE, COUNTERESPIONAGE, OR SABOTAGE MATTERS UNDER THE ACT OF AUGUST 1, 1956

Sec.	
12.1	Definitions.
12.2	Administration of act.
12.3	Prior registration with the Foreign Agents Registration Section.
12.4	Inquiries concerning application of act.
12.20	Filing of registration statement.
12.21	Time within which registration statement must be filed.
12.22	Material contents of registration statement.
12.23	Deficient registration statement.
12.24	Forms.
12.25	Amended registration statement.
12.30	Burden of establishing availability of exemptions.
12.40	Public examination.
12.41	Photocopies.
12.70	Partial compliance not deemed compliance.

AUTHORITY: The provisions of this Part 12 issued under sec. 5, 70 Stat. 900; 50 U.S.C. 854.

SOURCE: The provisions of this Part 12 appear at 21 F.R. 5928, Aug. 8, 1956, unless otherwise noted.

CROSS REFERENCE: For Organization Statement, Internal Security Section, see Subpart K of Part 0 of this chapter.

§ 12.1 Definitions.

As used in this part, unless the context otherwise requires:

(a) The term "act" means the act of August 1, 1956, Public Law 893, 84th Congress, 2d Session, requiring the registration of certain persons who have knowledge of, or have received instruction or assignment in the espionage, counterespionage, or sabotage service or tactics of a foreign government or foreign political party.

(b) The term "Attorney General" means the Attorney General of the United States.

(c) The term "rules and regulations" refers to all rules, regulations, registration forms, and instruction to forms made and prescribed by the Attorney General pursuant to the act.

(d) The term "registration statement" means the registration required to be filed with the Attorney General under section 2 of the act.

(e) The term "registrant" means the person by whom a registration state-

ment is filed pursuant to the provisions of the act.

§ 12.2 Administration of act.

The administration of the act is assigned to the Registration Unit of the Internal Security Section, Criminal Division, Department of Justice. Communications with respect to the act shall be addressed to the Registration Unit Internal Security Section, Criminal Division, Department of Justice, Washington, D.C. 20530. Copies of the act, the regulations contained in this part, including the forms mentioned therein, may be obtained upon request without charge.

[Order No. 524-73, 38 FR 18235, July 9, 1973]

§ 12.3 Prior registration with the Foreign Agents Registration Section.

No person who has filed a registration statement under the terms of the Foreign Agents Registration Act of 1938, as amended by section 20 (a) of the Internal Security Act of 1950, shall be required to file a registration statement under the act, unless otherwise determined by the Chief, Registration Unit.

[21 FR 5928, Aug. 8, 1956; Order No. 524-73, 38 FR 18235, July 9, 1973]

§ 12.4 Inquiries concerning application of act.

Inquiries concerning the application of the act must be accompanied by a detailed statement of all facts necessary for a determination of the question submitted, including the identity of the person on whose behalf the inquiry is made, the facts which may bring such person within the registration provisions of the act, and the identity of the foreign government or foreign political party concerned.

§ 12.20 Filing of registration statement.

Registration statements shall be filed in duplicate with the Registration Unit, Internal Security Section, Criminal Division, Department of Justice, Washington, D.C. 20530. Filing may be made in person or by mail, and shall be deemed to have taken place upon the receipt thereof by the Registration Unit.

[Order No. 524-73, 38 FR 18235, July 9, 1973]

§ 12.21 Time within which registration statement must be filed.

Every person who is or becomes subject to the registration provisions of the act

after its effective date shall file a registration statement within fifteen days after the obligation to register arises.

§ 12.22 Material contents of registration statement.

The registration statement shall include the following, all of which shall be regarded as material for the purposes of the act:

(a) The registrant's name, principal business address, and all other business addresses in the United States or elsewhere, and all residence addresses.

(b) The registrant's citizenship status and how such status was acquired.

(c) A detailed statement setting forth the nature of the registrant's knowledge of the espionage, counterespionage, or sabotage service or tactics of a foreign government or foreign political party, and the manner in which, place where, and date when such knowledge was obtained.

(d) A detailed statement as to any instruction or training received by the registrant in the espionage, counterespionage, or sabotage service or tactics of a foreign government or foreign political party, including a description of the type of instruction or training received, a description of any courses taken, the dates when such courses commenced and when they ceased, and the name and official title of the instructor or instructors under whose supervision the courses were received as well as the name and location of schools and other institutions attended; the dates of such attendance, and the names of the directors of the schools and institutions attended.

(e) A detailed statement describing any assignment received in the espionage, counterespionage, or sabotage service or tactics of a foreign government or foreign political party, including the type of assignment, the date when each assignment began, the date of completion of each assignment, name and title of the person or persons under whose supervision the assignment was executed, and a complete description of the nature of the assignment and the execution thereof.

(f) A detailed statement of any relationship which may exist at the time of registration, other than through employment, between the registrant and any foreign government or foreign political party.

(g) Such other statements, information, or documents pertinent to the pur-

poses and objectives of the act as the Attorney General, having due regard for the national security and the public interest, may require by this part or amendments thereto.

§ 12.23 Deficient registration statement.

A registration statement which is determined to be incomplete, inaccurate, misleading, or false, by the Chief Registration Unit, may be returned by him to the registrant as being unacceptable for filing under the terms of the act.

[21 FR 5928, Aug. 8, 1956; Order No. 524-73, 38 FR 18235, July 9, 1973]

§ 12.24 Forms.

(a) Every person required to register under the act shall file a registration statement on Form GA-1, and such other forms as may from time to time be prescribed by the Attorney General.

(b) Matter contained in any part of the registration statement or other document may not be incorporated by reference as answer, or partial answer, to any other item in the registration statement required to be filed under the act.

(c) Except as specifically provided otherwise, if any item on the form is inapplicable, or the answer is "None," an express statement to such effect shall be made.

(d) Every statement, amendment, and every duplicate thereof, shall be executed under oath and shall be sworn to before a notary public or other officer authorized to administer oaths.

(e) A registration statement or amendment thereof required to be filed shall, if possible, be typewritten, but will be regarded as in substantial compliance with this regulation if written legibly in black ink.

(f) Riders shall not be used. If the space on the registration statement or other form is insufficient for any answer, reference shall be made in the appropriate space to a full insert page or pages on which the item number and item shall be restated and the complete answer given.

§ 12.25 Amended registration statement.

(a) An amended registration statement may be required by the Chief, Registration Unit, of any person subject to the registration provisions of the act whose original registration statement filed pursuant thereto is deemed to be incomplete, inaccurate, false, or misleading.

(b) Amendments shall conform in all respects to the regulations herein prescribed governing execution and filing of original registration statements.

(c) Amendments shall in every case make appropriate reference by number or otherwise to the items in original registration statements to which they relate.

(d) Amendments shall be deemed to have been filed upon the receipt thereof by the Registration Unit.

(e) Failure of the Chief, Registration Unit, to request any person described in section 2 of the act to file an amended registration statement shall not preclude prosecution of such person for a wilfully false statement of a material fact, the wilful omission of a material fact, or the wilful omission of a material fact necessary to make the statements therein not misleading, in an original registration statement.

[21 FR 5928, Aug. 8, 1956; Order No. 524-73, 38 FR 18235, July 9, 1973]

§ 12.30 Burden of establishing availability of exemptions.

In all matters pertaining to exemptions, the burden of establishing the availability of the exemption shall rest with the person for whose benefit the exemption is claimed.

§ 12.40 Public examination.

Registration statements shall be available for public examination at the offices of the Registration Unit, Department of Justice, Washington, D.C., from 10:00 a.m. to 4:00 p.m. on each official business day, except to the extent that the Attorney General having due regard for national security and public interest may withdraw such statements from public examination.

[Order No. 524-73, 38 FR 18235, July 9, 1973]

§ 12.41 Photocopies.

(a) Photocopies of registration statements filed in accordance with section 2 of the act are available to the public upon payment of fifty cents per photocopy of each page, whether several copies of a single original page or one or more copies of several original pages are ordered.

(b) Estimates as to prices for photocopies and the time required for their preparation will be furnished upon request addressed to the Registration Unit, Internal Security Section, Criminal Division, Department of Justice, Washington, D.C. 20530.

(c) Payment shall accompany the order for photocopies and shall be made in cash, or by United States money order, or by certified bank check payable to the Treasurer of the United States. Postage stamps will not be accepted.

[21 FR 5928, Aug. 8, 1956; Order No. 524-73, 38 FR 18235, July 9, 1973]

§ 12.70 Partial compliance not deemed compliance.

The fact that a registration statement has been filed shall not necessarily be deemed a full compliance with the act on the part of the registrant; nor shall it preclude prosecution, as provided for in the act, for willful failure to file a registration statement, or for a willfully false statement of a material fact therein, or for the willful omission of a material fact required to be stated therein.

PART 14—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

Sec.

- 14.1 Scope of regulations.
- 14.2 Administrative claim; when presented.
- 14.3 Administrative claim; who may file.
- 14.4 Administrative claims; evidence and information to be submitted.
- 14.5 Review by legal officers.
- 14.6 Limitation on agency authority.
- 14.7 Referral to Department of Justice.
- 14.8 Investigation and examination.
- 14.9 Final denial of claim.
- 14.10 Action on approved claims.
- 14.11 Supplementing regulations.

AUTHORITY: The provisions of this Part 14 issued under sec. 1, 80 Stat. 306; 28 U.S.C. 2672.

SOURCE: The provisions of this Part 14 contained in Order No. 371-66, 31 F.R. 16616, Dec. 29, 1966, unless otherwise noted.

§ 14.1 Scope of regulations.

These regulations shall apply only to claims asserted under the Federal Tort Claims Act, as amended, accruing on or after January 18, 1967. The terms "Federal agency" and "agency" as used in this part include the executive departments, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but do not include any contractor with the United States.

§ 14.2 Administrative claim; when presented.

(a) For purposes of the provisions of section 2672 of Title 28, United States

Code, a claim shall be deemed to have been presented when a Federal agency receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occurred by reason of the incident. If a claim is presented to the wrong Federal agency, that agency shall transfer it forthwith to the appropriate agency.

(b) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the agency shall have six months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675 (a) shall not accrue until six months after the filing of an amendment.

[Order No. 371-66, 31 F.R. 16616, Dec. 29, 1966, as amended by Order 422-69, 35 F.R. 314, Jan. 8, 1970]

§ 14.3 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent or legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed

by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 14.4 Administrative claims; evidence and information to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and

any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the agency or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that he has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to the agency any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amounts of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 14.5 Review by legal officers.

The authority to adjust, determine, compromise, and settle a claim under the

provisions of section 2672 of Title 28, United States Code, shall, if the amount of a proposed compromise, settlement, or award exceeds \$1,000, be exercised by the head of an agency or his designee only after review by a legal officer of the agency.

§ 14.6 Limitation on agency authority.

(a) An award, compromise, or settlement of a claim by an agency under the provisions of section 2672 of Title 28, United States Code, in excess of \$25,000 shall be effected only with the prior written approval of the Attorney General or his designee. For the purposes of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled by an agency under the provisions of section 2672 of Title 28, United States Code, only after consultation with the Department of Justice when, in the opinion of the agency:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and the agency is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed \$25,000.

(c) An administrative claim may be adjusted, determined, compromised, or settled by an agency under the provisions of section 2672 of Title 28, United States Code, only after consultation with the Department of Justice when the agency is informed or is otherwise aware that the United States or an employee, agent, or cost-plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 14.7 Referral to Department of Justice.

When Department of Justice approval or consultation is required under § 14.6, or the advice of the Department of Justice is otherwise to be requested, the referral or request of the Federal agency shall be directed to the Assistant Attorney General, Civil Division, Department of Justice, in writing and shall contain

(a) a short and concise statement of the facts and of the reasons for the referral or request, (b) copies of relevant portions of the agency's claim file, and (c) a statement of the recommendations or views of the agency. Such referrals or requests to the Department of Justice may be made at any time after presentment of a claim to the Federal agency.

§ 14.8 Investigation and examination.

A Federal agency may request any other Federal agency to investigate a claim filed under section 2672, Title 28, United States Code, or to conduct a physical examination of a claimant and provide a report of the physical examination. Compliance with such requests may be conditioned by a Federal agency upon reimbursement by the requesting agency of the expense of investigation or examination where reimbursement is authorized, as well as where it is required, by statute or regulation.

§ 14.9 Final denial of claim.

(a) Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the agency action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

(b) Prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C. 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the agency for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration the agency shall have 6 months from the date of filing in which to make a final disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of a request for reconsideration. Final agency action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a).

[Order No. 371-68, 31 F.R. 16616, Dec. 29, 1966, as amended by Order 422-68, 35 F.R. 315, Jan. 8, 1970]

§ 14.10 Action on approved claims.

(a) Any award, compromise, or settlement in an amount of \$2,500 or less made pursuant to the provisions of section 2672 of Title 28, United States Code, shall be paid by the head of the Federal agency concerned out of the appropriations available to that agency. Payment of an award, compromise, or settlement in excess of \$2,500 and not more than \$100,000 shall be obtained by the agency by forwarding Standard Form 1145 to the Claims Division, General Accounting Office. Payment of an award, compromise, or settlement in excess of \$100,000 shall be obtained by the agency by forwarding Standard Form 1145 to the Bureau of Accounts, Department of the Treasury, which will be responsible for transmitting the award, compromise, or settlement to the Bureau of the Budget for inclusion in a deficiency appropriation bill. When an award is in excess of \$25,000, Standard Form 1145 must be accompanied by evidence that the award, compromise, or settlement has been approved by the Attorney General or his designee. When the use of Standard Form 1145 is required, it shall be executed by the claimant or it shall be accompanied by either a claims settlement agreement or a Standard Form 95 executed by the claimant. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees; the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) Acceptance by the claimant, his agent, or legal representative, of any award, compromise or settlement made pursuant to the provisions of section 2672 or 2677 of Title 28, United States Code, shall be final and conclusive on the claimant, his agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

§ 14.11 Supplementing regulations.

Each agency is authorized to issue regulations and establish procedures consistent with the regulations in this part.

PART 15—DEFENSE OF CERTAIN SUITS AGAINST FEDERAL EMPLOYEES¹

Sec.

15.1 Expeditionary delivery of process and pleadings.

¹ Order No. 591-75, 40 FR 4910, Feb. 3, 1975.

Sec.

15.2 Providing data bearing upon scope of employment.

15.3 Removal and defense of suits.

AUTHORITY: The provisions of this Part 15 issued under 80 Stat 379; 5 U.S.C. 301, 38 U.S.C. 2879, Reorganization Plan No. 2 of 1950, 64 Stat. 1261; 3 CFR, 1949-1953 Comp.

SOURCE: The provisions of this Part 15 contained in Order No. 254-61, 26 F.R. 11420, Dec. 2, 1961, unless otherwise noted.

CROSS REFERENCE: For Organization Statement, Civil Division, see Subpart I of Part 0 of this Chapter.

§ 15.1 Expeditionary delivery of process and pleadings.

Any Federal employee against whom a civil action or proceeding is brought for damages to property, or for personal injury or death, on account of the employee's operation of a motor vehicle in the scope of his office or employment with the Federal Government or on account of the employee's performance of medical care, treatment, or investigation in the scope of his office or employment with the Public Health Service or the Veterans Administration Department of Medicine and Surgery (or his personal representative, if the action is brought against his estate) shall deliver all process and pleadings served upon him, or an attested true copy thereof, to his immediate superior or to whoever is designated by the head of his department or agency to receive such papers, forthwith. In addition, upon his receipt of such process or pleadings, or any prior information regarding the commencement of such a civil action or proceeding, he shall immediately so advise his superior or the designee thereof by telephone or telegraph. The superior or designee shall furnish the United States Attorney for the district embracing the place wherein the action or proceeding is brought and the Chief of the Torts Section, Civil Division, Department of Justice, information concerning the commencement of such action or proceeding, and copies of all process and pleadings therein, promptly upon receipt thereof. [Order No. 254-61, 26 FR 11420, Dec. 2, 1961, as amended by Order No. 591-75, 40 FR 4910, Feb. 3, 1975]

§ 15.2 Providing data bearing upon scope of employment.

The employee's employing Federal agency shall submit a report containing all data bearing upon the question

whether the employee was acting within the scope of his office or employment with the Federal Government, at the time of the incident out of which the suit arose, to the United States Attorney for the district embracing the place wherein the civil action or proceeding is brought, with a copy of the report to the Chief of the Torts Section, Civil Division, Department of Justice, at the earliest possible date, or within such time as shall be fixed by the United States Attorney upon request.

§ 15.3 Removal and defense of suits.

Authority is hereby delegated to the several United States Attorneys to make the certification provided for in 28 U.S.C. 2679(d), 38 U.S.C. 4116(c), and 42 U.S.C. 233(c) with respect to civil actions or proceedings brought against Federal employees in their respective districts. Such a certification may be withdrawn if a further evaluation of the relevant facts or the consideration of new or additional evidence calls for such action. The making, withholding, or withdrawing of certifications, and the removal and defense of, or the refusal to remove and defend, such civil actions or proceedings by the United States Attorneys shall be subject to the instructions and supervision of the Assistant Attorney General in charge of the Civil Division in accordance with section 507 of title 28 of the United States Code.

[Order No. 254-61, 26 FR 11420, Dec. 2, 1961, as amended by Order No. 591-75, 40 FR 4910, Feb. 3, 1975]

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

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- 16.77 [Reserved]

- Sec.
 16.78 Exemption of the Watergate Special Prosecution Force Systems—Limited access.
 16.79 Exemption of Pardon Attorney System.
 16.80 [Reserved]
 16.81 Exemption of United States Attorneys Systems—Limited access.
 16.82–16.83 [Reserved]
 16.84 Exemption of Board of Immigration Appeals System.
 16.85 Exemption of Board of Parole Systems—Limited access.
 16.86–16.87 [Reserved]
 16.88 Exemption of Antitrust Division Systems.
 16.89 [Reserved.]
 16.90 Exemption of Civil Rights Division Systems.
 16.91 Exemption of Criminal Division Systems—Limited access, as indicated.
 16.92 Exemption of Land and Natural Resources Division System.
 16.93 Exemption of Tax Division System—Limited access.
 16.94–16.95 [Reserved]
 16.96 Exemption of Federal Bureau of Investigation Systems—Limited access.
 16.97 Exemption of Bureau of Prisons Systems—Limited access.
 16.98 Exemption of Drug Enforcement Administration Systems.
 16.99 Exemption of Immigration and Naturalization Service System—Limited access.
 16.100 Exemption of Law Enforcement Assistance Administration System—Limited access.
 16.101 Exemption of U.S. Marshals Service Systems—Limited access, as indicated.

AUTHORITY: 28 U.S.C. 509, 510; 5 U.S.C. 301, 552; 31 U.S.C. 483a unless otherwise noted.

SOURCE: Order No. 502–73, 38 F.R. 4391, Feb. 14, 1973, unless otherwise noted.

Subpart A—Production or Disclosure Under 5 U.S.C. 552(a)

§ 16.1 Purpose and scope.

(a) This subpart contains the regulations of the Department of Justice implementing 5 U.S.C. 552. The regulations of this subpart provide information concerning the procedures by which records may be obtained from all divisions within the Department of Justice. Official records of the Department of Justice made available pursuant to the requirements of 5 U.S.C. 552 shall be furnished to members of the public as prescribed by this subpart. Officers and employees of the Department may continue to furnish

to the public, informally and without compliance with the procedures prescribed herein, information and records which prior to enactment of 5 U.S.C. 552 were furnished customarily in the regular performance of their duties. Persons seeking information or records of the Department of Justice may find it useful to consult with the Department's Office of Public Information before invoking the formal procedures set out below. To the extent permitted by other laws, the Department also will make available records which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the public interest.

(b) The Attorney General's Memorandum on the Public Information section of the Administrative Procedure Act, which was published in June 1967 and is available from the Superintendent of Documents, may be consulted in considering questions arising under 5 U.S.C. 552. The Office of Legal Counsel after appropriate coordination is authorized from time to time to undertake training activities for Department personnel to maintain and improve the quality of administration under 5 U.S.C. 552.

§ 16.2 Public reference facilities.

Each office listed below will maintain in a public reading room or public reading area, the materials relating to that office which are required by 5 U.S.C. 552 (a) (2) and 552(a) (4) to be made available for public inspection and copying:

U.S. Attorneys and U.S. Marshals—at the principal offices of the U.S. Attorneys listed in the U.S. Government Organization Manual;

Bureau of Prisons and U.S. Board of Parole—at the principal office of each of those agencies at 101 Indiana Avenue NW., Washington, D.C. 20537;

Community Relations Service—at 550 11th Street NW., Washington, D.C. 20530;

Internal Security Section, Criminal Division (for registrations of foreign agents and others pursuant to 28 CFR Part 5, 10, 11, and 12)—at Room 458, Federal Triangle Building, 315 Ninth Street, NW., Washington, DC 20530;

Board of Immigration Appeals—at Room 1138, 521 12th Street NW., Washington, DC 20530;

Immigration and Naturalization Service—see 8 CFR 103.9;

Law Enforcement Assistance Administration, 633 Indiana Avenue NW., Washington, DC 20530, and Regional Officer as listed in the U.S. Government Organization Manual;

All other Offices, Divisions, and Bureaus of the Department of Justice—at Room 6620, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530.

Each of these public reference facilities will maintain, make available for public inspection and copying, and publish quarterly (unless the applicable division determines by order published in the FEDERAL REGISTER that the publication would be unnecessary or impracticable), a current index of the materials available at that facility which are required to be indexed by 5 U.S.C. 552(a) (2).

[Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order No. 568-74, 39 FR 18646, May 29, 1974; Order No. 596-75, 40 FR 6496, Feb. 12, 1975]

§ 16.3 Requests for identifiable records and copies.

(a) *How made and addressed.* A request for a record of the Department which is not customarily made available and which is not available in a public reference facility as described in § 16.2, shall be made in writing, with the envelope and the letter clearly marked "FREEDOM OF INFORMATION REQUEST" or "INFORMATION REQUEST." All such requests shall be addressed to the Deputy Attorney General, Department of Justice, Washington, D.C. 20530, except that requests for records of the following divisions shall be addressed as follows:

Bureau of Prisons (including Federal Prison Industries)—Director, Bureau of Prisons, 320 First Street NW., Washington, D.C. 20534.

Board of Immigration Appeals—Chairman, Board of Immigration Appeals, Department of Justice, Washington, D.C. 20530.

Law Enforcement Assistance Administration—Administrator, Law Enforcement Assistance Administration, 633 Indiana Ave. NW., Washington, D.C. 20531.

Immigration and Naturalization Service—As set forth in 8 CFR Part 103.

Any request for information not marked and addressed as specified in this paragraph will be so marked by Department personnel as soon as it is properly identified, and forwarded immediately to the appropriate office as specified above. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in 5 U.S.C. 552(a) (5) (A) (i) until forwarding to the appropriate office has been effected, or until such forwarding would

have been effected with the exercise of due diligence by Department personnel. On receipt of an improperly addressed request forwarded as set forth above to the appropriate office, such office shall notify the requester of the date on which the time period commenced to run.

(b) *Request should reasonably describe the records sought.* A request for access to records should sufficiently identify the records requested to enable Department personnel to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester. If the request relates to a matter in pending litigation, the court and its location should be identified.

(c) *Form may be requested.* Where the information supplied by the requester is not sufficient to permit location of the records by Department personnel with a reasonable amount of effort, the requester may be sent and asked to fill out and return a Form D.J. 118, which is designed to elicit the necessary information.

(d) *Categorical Requests.*—(1) *Records must be reasonably described.* A request for all records falling within a reasonably specific category shall be regarded as conforming to the requirement that records be reasonably described if it enables the records requested to be identified by any process that is not unreasonably burdensome or disruptive of Department operations.

(2) *Assistance in reformulating non-conforming requests.* If it is determined that a request does not reasonably describe the records sought, as specified in paragraph (d) (1) of this section, the response denying the request on that ground shall specify the reasons why the request failed to meet the requirements of paragraph (d) (1) of this section and shall extend to the requester an opportunity to confer with Department personnel in order to attempt to reformulate the request in a manner which will meet the needs of the requester and the requirements of paragraph (d) (1) of this section.

[Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order No. 596-75, 40 FR 6496, Feb. 12, 1975]

§ 16.4 Requests referred to division primarily concerned.

(a) *Referral to responsible division.* The Deputy Attorney General shall, promptly upon receipt of a request for Department records, forward the request to the division of the Department which has primary concern with the records requested. As used in this subpart, the term "division" includes all divisions, bureaus, offices, services, administrations, and boards of the Department, the Pardon Attorney and Federal Prison Industries, except as otherwise expressly provided. As used in this subpart, the term "responsible division" means, with respect to a particular request, the division to which the Deputy Attorney General forwards the request pursuant to this paragraph or, if the request is not one which is to be addressed to the Deputy Attorney General under § 16.3(a), the division to which the request is properly addressed thereunder.

(b) *Deputy Attorney General shall assure timely response.* The Deputy Attorney General shall periodically review the practices of the divisions in meeting the time requirements set out in § 16.5, including the granting of extensions of time, and shall take such action to promote timely responses as he deems appropriate. Such action may include, but is not limited to, removal from a division of a request or class of requests or removal of the authority of a division to grant extensions, as specified in § 16.5(f).

(c) *Records to be kept by Deputy Attorney General.* The Deputy Attorney General shall retain or be furnished with a file copy of each request which is required to be addressed to him pursuant to § 16.3(a). With respect to such requests he shall maintain records to show the date of receipt by the Department (and, in the case of improperly addressed requests, the date of receipt by the appropriate office after forwarding pursuant to § 16.3(a)), the responsible division to which it was forwarded under this section, and the date of such forwarding. The Board of Immigration Appeals, the Bureau of Prisons, the Immigration and Naturalization Service and the Law Enforcement Assistance Administration, respectively, shall retain or be furnished with file copies of requests required to be addressed to them pursuant to § 16.3(a), and shall maintain records to show the date of receipt

by the Department (and, in the case of improperly addressed requests, the date of receipt by the appropriate office after forwarding pursuant to § 16.3(a)).

[Order No. 596-75, 40 FR 6496, Feb. 12, 1975]

§ 16.5 Prompt response by responsible division.

(a) *Response within ten days.* Within ten days (excluding Saturdays, Sundays and legal public holidays) of the receipt of a request by the Department (or, in the case of an improperly addressed request, of its receipt by the appropriate office after forwarding pursuant to § 16.3(a)) the responsible division shall determine whether to comply with or to deny such request and dispatch such determination to the requester unless an extension is made under paragraph (c) of this section.

(b) *Authority to deny request.* Unless otherwise specified by division regulation, only the head of a division may deny a request, and is the "person responsible for the denial" within the meaning of 5 U.S.C. 552(a). When a denial is made at the request of another agency or division, and out of regard for its primary interest or expertise, the person in that agency or division responsible for the request to deny may also be a "person responsible for the denial" if, before his final recommendation is accepted, he is advised that he will be so designated under § 16.6(b)(2).

(c) *Extension of time.* In unusual circumstances as specified in this paragraph, the head of a division may extend the time for initial determination on requests up to a total of ten days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be granted in increments of five days or less and shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph "unusual circumstances" means, but only to the extent necessary to the proper processing of the request—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request;

or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency or another division having substantial interest in the determination of the request, or the need for consultation among two or more components of the responsible division having substantial subject matter interest therein.

(d) *Treatment of delay as a denial.* If no determination has been dispatched at the end of the ten-day period, or the last extension thereof, the requester may deem his request denied, and exercise a right of appeal in accordance with § 16.7. When no determination can be dispatched within the applicable time limit, the responsible division shall nevertheless continue to process the request; on expiration of the time limit it shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and to appeal to the Attorney General in accordance with § 16.7; and it may ask the requester to forego appeal until a determination is made.

(e) *Copies of extension notices and delay advisories maintained by Deputy Attorney General.* Copies of all extension notices issued under paragraph (c) of this section and delay advisories issued under paragraph (d) of this section shall be supplied to and maintained by the Deputy Attorney General.

(f) *Removal by Deputy Attorney General.* The Deputy Attorney General may remove any request or class of requests from the division to which it is referable under this part. The Deputy Attorney General may remove from a division the authority to grant extensions of time under this section. In event of such action the Deputy Attorney General shall perform the functions of the head of that division with respect to the removed requests or authority.

[Order No. 596-75, 40 FR 6497, Feb. 12, 1975]

§ 16.6 Responses by divisions: form and content.

(a) *Form of grant.* When a requested record has been identified and is available, the responsible division shall notify the requester as to where and when the record is available for inspection or copies will be available. The notification shall also advise the requester of any applicable fees under § 16.9 hereof.

(b) *Form of denial.* A reply denying a written request for a record shall be in writing, signed by the head of the responsible division (or other person authorized by regulation to deny requests) and shall include:

(1) *Exemption category.* A reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record, a brief explanation of how the exemption applies to the record withheld, and, where relevant, a brief statement of why a discretionary release is not appropriate; and

(2) *Person responsible.* The name and title or position of the person or persons responsible for the denial under § 16.5 (b) *Provided*, That no person not an employee of the responsible division shall be so designated unless he has been advised that he will be so designated before his final recommendation is accepted; and

(3) *Administrative appeal and judicial review.* A statement that the denial may be appealed under § 16.7(a) within thirty days by writing to the Attorney General (Attention: Freedom of Information Appeals Unit), Department of Justice, Washington, D.C. 20530, that the envelope and letter should be clearly marked: "FREEDOM OF INFORMATION APPEAL" or "INFORMATION APPEAL," and that judicial review will thereafter be available in the district in which the requester resides or has his principal place of business or the district in which the agency records are situated or the District of Columbia. Provided, however, that a denial by the Office of the Watergate Special Prosecution Force shall instead of the foregoing describe any internal appeals procedure which it may establish or, in absence of such procedure, advise the requester that judicial review is available in the districts set forth above.

(c) *Record cannot be located or does not exist.* If a requested record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of, the requester shall be so notified.

(d) *Copy of response to Deputy Attorney General.* The Deputy Attorney General shall be provided and shall maintain a copy of each denial letter; each notification under paragraph (c) of this section; and each letter advising the requester of the determination to grant the request, except such grant letters issued

by the Board of Immigration Appeals, the Bureau of Prisons, the Immigration and Naturalization Service, and the Law Enforcement Assistance Administration. [Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order No. 596-75, 40 FR 6497, Feb. 12, 1975]

§ 16.7 Appeals to the Attorney General from initial denials.

(a) *Appeals to the Attorney General.* When a request for records has been denied in whole or in part by a head of a division or other person authorized to deny requests, the requester may, within thirty days of its receipt, appeal the denial to the Attorney General; except that no appeal to the Attorney General shall lie from a denial of a request for records of the Office of the Watergate Special Prosecution Force, which is hereby authorized to establish an internal appeals procedure. Appeal to the Attorney General shall be in writing, addressed to the Attorney General (Attention: Freedom of Information Appeals Unit), Department of Justice, Washington, D.C. 20530, and both the envelope and the letter shall be clearly marked: "FREEDOM OF INFORMATION APPEAL" or "INFORMATION APPEAL." An appeal not so addressed and marked will be so marked by Department personnel as soon as it is properly identified, and forwarded immediately to the Freedom of Information Appeals Unit. An appeal improperly addressed will not be deemed to have been received for purposes of the time period set forth in 5 U.S.C. 552(a) (6) (A) (ii) and for purposes of paragraph (b) of this section until the Appeals Unit receives the request or would have done so with the exercise of due diligence by Department personnel.

(b) *Action on Appeals by the Deputy Attorney General.* Unless the Attorney General otherwise directs, the Deputy Attorney General shall act on behalf of the Attorney General on all appeals under this section, except that (1) in the case of an initial denial by the Deputy Attorney General, the Attorney General or his designee shall act on the appeal, and (2) an initial denial by the Attorney General shall constitute the final action of the Department on the request.

(c) *Action within twenty working days.* The appeal will be acted upon within twenty days (excluding Saturdays, Sundays and legal public holidays)

of its receipt, unless an extension is made under paragraph (d) of this section.

(d) *Extension of time.* In unusual circumstances as specified in this paragraph, the time for action on an appeal may be extended up to ten days (excluding Saturdays, Sundays, and legal public holidays) minus any extension granted at the initial request level pursuant to § 16.5(c). Such extension shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph "unusual circumstances" means, but only to the extent necessary to the proper processing of the appeal—

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency or another division having substantial interest in the determination of the request or the need for consultation among two or more components of the responsible division having substantial subject matter interest therein.

(e) *Treatment of delay as a denial.* If no determination on the appeal has been dispatched at the end of the twenty-day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a) (4). When no determination can be dispatched within the applicable time limit, the appeal will nevertheless continue to be processed; on expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review in the United States district court in the district in which he resides or has his principal place of business, the district in which the Department records are situated or the District of Columbia. The requester may be asked to forego judicial review until determination of the appeal.

(f) *Form of action on appeal.* The determination on appeal shall be in writing. An affirmance in whole or in part of a denial on appeal shall include (1) a reference to the specific exemption or exemptions under the Freedom of Information Act authorizing the withholding of the record, a brief explanation of how the exemption applies to the record withheld, and, where relevant, a brief statement of why a discretionary release is not appropriate; and (2) a statement that judicial review of the denial is available in the district in which the requester resides or has his principal place of business, the district in which the agency records are situated or the District of Columbia.

(g) *Copies to Deputy Attorney General.* Copies of all appeals, all actions on appeal, all extension notices issued under paragraph (d) of this section, and all delay advisories issued under paragraph (e) of this section shall be maintained by and when necessary supplied to the Deputy Attorney General.

[Order No. 596-75, 40 FR 6497, Feb. 12, 1975, as amended by Order No. 615-75, 40 FR 33214, Aug. 7, 1975]

§ 16.8 Maintenance of files.

(a) *Complete files maintained by Deputy Attorney General.* The Deputy Attorney General shall maintain files containing all material required to be retained by or furnished to him under this subpart. The material shall be filed by individual request; and shall be indexed according to the exemptions asserted; and, to the extent feasible, according to the type of records requested.

(b) *Maintenance of file open to public.* The Deputy Attorney General shall also maintain a file, open to the public, which shall contain copies of all grants or denials of appeals. The material shall be indexed by the exemption asserted, and, to the extent feasible, according to the type of records requested.

(c) *Protection of privacy.* Where the release of the identity of a requester, or other identifying details related to a request, would constitute a clearly unwarranted invasion of personal privacy, the Deputy Attorney General shall delete identifying details from the copies of documents maintained in the public file established under paragraph (b) of this section.

[Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order No. 596-75, 40 FR 6498, Feb. 12, 1975; Order No. 615-75, 40 FR 33214, Aug. 7, 1975]

§ 16.9 Fees for provisions of records.

(a) *When charged.* Fees pursuant to 31 U.S.C. 483a and 5 U.S.C. 552 shall be charged according to the schedules contained in paragraph (b) of this section for services rendered in responding to requests for Justice Department records under this subpart unless the official of the Department making the initial or appeal decision determines that such charges, or a portion thereof, are not in the public interest because furnishing the information primarily benefits the general public. Such a determination shall ordinarily not be made unless the service to be performed will be of benefit primarily to the public as opposed to the requester, or unless the requester is an indigent individual. Fees shall not be charged where they would amount, in the aggregate, for a request or series of related requests, to less than \$3. Ordinarily, fees shall not be charged if the records requested are not found, or if all of the records located are withheld as exempt. However, if the time expended in processing the request is substantial, and if the requester has been notified of the estimated cost pursuant to paragraph (c) of this section and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees may be charged.

(b) *Services charged for, and amount charged.* For the services listed below expended in locating or making available records or copies thereof, the following charges shall be assessed:

(1) *Copies.* For copies of documents (maximum of 10 copies will be supplied) \$0.10 per copy of each page.

(2) *Clerical searches.* For each one quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and producing a requested record, \$1.00.

(3) [Reserved]

(4) *Certification.* For certification of true copies, each, \$1.

(5) *Attestation.* For attestation under the seal of the Department, \$3.

(6) *Nonroutine, nonclerical searches.* Where a search cannot be performed by clerical personnel, for example, where the task of determining which records fall within a request and collecting them requires the time of professional or managerial personnel, and where the amount of time that must be expended in the search and collection of the requested records by such higher level personnel is substantial, charges for the search may be made at a rate in excess of the clerical rate, namely for each one quarter hour spent in excess of the first quarter

hour by such higher level personnel in searching for a requested record, \$2.00.

(7) *Examination and related tasks in screening records.* No charge shall be made for time spent in resolving legal or policy issues affecting access to records of known contents. In addition, no charge shall be made for the time involved in examining records in connection with determining whether they are exempt from mandatory disclosure and should be withheld as a matter of sound policy.

(8) *Computerized Records.*

(i) *Computer time charges (includes personnel cost).*

1. Central processor charge per hour.....	\$188.00
2. Main storage charge per 1,000 bytes per hour.....	.50
3. Channel charges per hour.....	.74
4. Card reading per 1,000 cards.....	.20
5. Printing per 1,000 lines.....	.43
6. Card punching per 1,000 cards.....	10.76
7. Tape mount.....	.50
8. Specific device charges:	
a. IBM 2260 Cathode ray tube or equivalent per hour.....	4.20
b. IBM 3330 Disk storage or equivalent per hour.....	39.72
c. IBM 2314 Disk storage or equivalent per hour.....	39.72
d. IBM 3420 Tape Drive or equivalent per hour.....	44.59

(ii) *Material charges.*

1. One-part paper per 1,000.....	\$11.00
2. Two-part paper per 1,000.....	17.63
3. Three-part paper per 1,000.....	28.95
4. Four-part paper per 1,000.....	37.52
5. Five-part paper per 1,000.....	50.83
6. Stock Hollerith cards per 1,000.....	1.78
7. Magnetic tape per reel.....	9.50
8. Disk pack, each.....	775.00

(9) *Tape recordings and other audio records.*

(i) *Personnel charges.* Personnel charges in connection with the duplication of audio records shall be charged in accordance with paragraph (b) (2) or (b) (6) of this section, whichever is appropriate.

(ii) *Material charges.*

1. 45 minute cassette.....	\$0.56
2. 60 minute cassette.....	.60
3. 90 minute cassette.....	.77

(10) *Other charges.* When a response to a request requires services or materials other than the common ones described in paragraphs (b) (1) through (b) (9) of this section, the direct cost of such services or materials to the government may be charged, but only if the requester has been notified of such cost before it is incurred.

(c) *Notice of anticipated fees in excess of \$25.* Where it is anticipated that the fees chargeable under this section will amount to more than \$25, and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In such cases, a request will not be deemed to have been received until the requester is notified of the anticipated cost and agrees to bear it. Such a notification shall be transmitted as soon as possible, but in any event within five working days, giving the best estimate then available. The notification shall offer the requester the opportunity to confer with Department personnel with the object of reformulating the request so as to meet his needs at lower cost.

(d) *Form of payment.* Payment should be made by check or money order payable to the Treasury of the United States.

(e) *Advance deposit.* (1) Where the anticipated fee chargeable under this section exceeds \$25, an advance deposit of 25% of the anticipated fee or \$25, whichever is greater, may be required.

(2) Where a requester has previously failed to pay a fee under this section, an advance deposit of the full amount of the anticipated fee may be required.

(f) *Other services.* Nothing in this section shall be construed to entitle any person, as of right, to any services or materials to which such person is not entitled under 5 U.S.C. 552.

[Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order 502-73, 38 FR 9666, Apr. 19, 1973; Order No. 599-75, 40 FR 7265, Feb. 19, 1975]

§ 16.10 Exemptions.

(a) 5 U.S.C. 552 exempts from all of its publication and disclosure requirements nine categories of records which are described in subsection (b) of that section. These categories include such matters as national defense and foreign policy information; investigatory files; internal procedures and communications; materials exempted from disclosure by other statutes; information given in confidence; and matters involving personal privacy. The scope of the exemptions is discussed generally in the Attorney General's memorandum referred to in § 16.1.

(b) (1) In processing requests for information classified pursuant to Executive Order 11652, the responsible division shall review the information to determine whether it continues to warrant classification under the criteria of sections 1 and 5 (B), (C), (D), and (E) of the Executive Order. Information which no longer warrants classification under these criteria shall be declassified and shall not be withheld on the basis of 5 U.S.C. 552(b) (1). No record remaining classified after such review shall be withheld by a division on the basis of any exemption other than 5 U.S.C. 552(b) (1) unless in addition to such other exemption it is also asserted that the record is exempt under 5 U.S.C. 552(b) (1).

(2) The Freedom of Information Appeals Unit shall, upon receipt of any appeal from an initial denial based in whole or in part upon 5 U.S.C. 552(b) (1), refer to the Departmental Review Committee, established in Part 17 of this chapter, any portion of the request as to which that exemption was asserted at the initial level. Within ten days (excluding Saturdays, Sundays and legal public holidays) of receipt of such referral (unless such period is extended by the Deputy Attorney General), the Committee shall advise the Appeals Unit whether all or any portion of the material referred warrants continued classification under the criteria of Executive Order 11652.

(3) When a request for Department records encompasses information classified by another agency, or by a division of the Department other than the responsible division, the responsible division shall refer that portion of the request to the originating agency or division for determination as to all issues in accordance with the Freedom of Information Act. In the case of a referral to another agency under this paragraph, the requester shall be notified that such portion of his request has been so referred and that he may expect a determination from that agency. In the case of a referral to another division under this paragraph, the requester need not be notified, the original date of receipt of the request as established under this section shall continue to govern for purposes of all time limits, and the originating division shall advise the division receiving the request of its determination. [Order No. 502-73, 38 FR 4391, Feb. 14, 1973, as amended by Order No. 596-75, 40 FR 6498, Feb. 12, 1975]

Subpart B—Production or Disclosure in Response to Subpenas or Demands of Courts or Other Authorities

Source: Order No. 501-73, 38 FR. 1741, Jan. 18, 1973, unless otherwise noted.

§ 16.21 Purpose and scope.

(a) This subpart sets forth the procedures to be followed when a subpoena, order, or other demand (hereinafter referred to as a "demand") of a court or other authority is issued for the production or disclosure of (1) any material contained in the files of the Department, (2) any information relating to material contained in the files of the Department, or (3) any information or material acquired by any person while such person was an employee of the Department as a part of the performance of his official duties or because of his official status.

(b) For purposes of this subpart, the term "employee of the Department" includes all officers and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of, the Attorney General of the United States, including U.S. attorneys, U.S. marshals, and members of the staffs of those officials.

§ 16.22 Production or disclosure prohibited unless approved by appropriate Department official.

No employee or former employee of the Department of Justice shall, in response to a demand of a court or other authority, produce any material contained in the files of the Department or disclose any information relating to material contained in the files of the Department, or disclose any information or produce any material acquired as part of the performance of his official duties or because of his official status without prior approval of the appropriate Department official or the Attorney General in accordance with § 16.24.

§ 16.23 Procedure in the event of a demand for production or disclosure.

(a) Whenever a demand is made upon an employee or former employee of the Department for the production of material or the disclosure of information described in § 16.21(a), he shall immediately notify the U.S. attorney for the district where the issuing authority

is located. The U.S. attorney shall immediately request instructions from the appropriate Department official, as designated in paragraph (b) of this section.

(b) The Department officials authorized to approve production or disclosure under this subpart are:

(1) In the event that the case or other matter which gave rise to the demanded material or information is or, if closed, was within the cognizance of a division of the Department, the Assistant Attorney General in charge of that division. This authority may be redelegated to Deputy Assistant Attorneys General.

(2) In instances of demands that are not covered by paragraph (b) (1) of this section:

(i) The Director of the Federal Bureau of Investigation, if the demand is one made on an employee or former employee of that Bureau for information or if the demand calls for the production of material from the files of that Bureau,

(ii) The Director of the Bureau of Prisons, if the demand is one made on an employee or former employee of that Bureau for information or if the demand calls for the production of material from the files of that Bureau,

(iii) The Commissioner of the Immigration and Naturalization Service, if the demand is one made on an employee or former employee of the Service for information or if the demand calls for the production of material from the files of the Service, and

(iv) The Administrator of the Law Enforcement Assistance Administration, if the demand is one made on an employee or former employee of the Administration for information or if the demand calls for the production of material from the files of the Administration.

(3) In instances of demands that are not covered by paragraph (b) (1) or (2) of this section, the Deputy Attorney General.

(c) If oral testimony is sought by the demand, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or his attorney, setting forth a summary of the testimony desired, must be furnished for submission by the U.S. attorney to the appropriate Department official.

[Order No. 501-73, 38 F.R. 1741, Jan. 13, 1973, as amended by Order No. 503-73, 38 F.R. 4952, Feb. 23, 1973; Order No. 650-76, 41 F.R. 20183, May 17, 1976]

§ 16.24 Final action by the appropriate Department official or the Attorney General.

(a) If the appropriate Department official, as designated in § 16.23(b), approves a demand for the production of material or disclosure of information, he shall so notify the U.S. attorney and such other persons as circumstances may warrant.

(b) If the appropriate Department official, as designated in § 16.23(b), decides not to approve a demand for the production of material or disclosure of information, he shall immediately refer the demand to the Attorney General for decision. Upon such referral, the Attorney General shall make the final decision and give notice thereof to the U.S. attorney and such other persons as circumstances may warrant.

§ 16.25 Procedure where a Department decision concerning a demand is not made prior to the time a response to the demand is required.

If response to the demand is required before the instructions from the appropriate Department official or the Attorney General are received, the U.S. attorney or other Department attorney designated for the purpose shall appear with the employee or former employee of the Department upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate Department official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

§ 16.26 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 16.25 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, in accordance with § 16.24, the employee or former employee upon whom the demand has been made shall respectfully decline to comply with the demand. "United States ex rel Touhy v. Ragen," 340 U.S. 462.

Subpart C—Production of FBI Identification Records in Response to Written Requests by Subjects Thereof

SOURCE: Order 556-73, 38 FR 32806, Nov. 28, 1973, unless otherwise noted.

§ 16.30 Purpose and scope.

This subpart contains the regulations of the Federal Bureau of Investigation, hereafter referred to as the FBI, concerning procedures to be followed when the subject of an identification record requests production thereof. It also contains the procedures for obtaining any change, correction or updating of such record.

§ 16.31 Definition of identification record.

An FBI identification record, often referred to as a "rap sheet," is a listing of fingerprints submitted to and retained by the FBI in connection with arrests and, in certain instances, fingerprints submitted in connection with employment, naturalization or military service. The identification record includes the name of the agency or institution which submitted the fingerprints to the FBI. If the fingerprints submitted to the FBI concern a criminal offense, the identification record includes the date arrested or received, arrest charge information and disposition data concerning the arrest if known to the FBI. All such data included in an identification record are obtained from the contributing local, State and Federal agencies. The FBI Identification Division is not the source of such data reflected on an identification record.

§ 16.32 Procedure to obtain an identification record.

The subject of an identification record may obtain a copy thereof by submitting a written request via the United States mails directly to the FBI, Identification Division, Washington, D.C. 20537, or may present his written request in person during regular business hours to the FBI Identification Division, Second and D Streets SW., Washington, D.C. Such request must be accompanied by satisfactory proof of identity, which shall consist of name, date and place of birth and a set of rolled-in-inked fingerprint impressions taken upon fingerprint cards or forms commonly utilized for applicant or law enforcement purposes by law enforcement agencies.

§ 16.33 Fee for provision of identification record.

Each written request for production of an identification record must be accompanied by a fee of five dollars (\$5.00) in the form of a certified check or money order, payable to the Treasurer of the United States. This fee is established pursuant to the provisions of 31 U.S.C. 483a and is based upon the clerical time beyond the first quarter hour to be spent in searching, identifying and reproducing each identification record requested, at the rate of \$1.25 per quarter hour, as specified in § 16.9. Any request for waiver of fee shall accompany the original request for the identification record and shall include a claim and proof of indigency. Consideration will be given to waiving the fee in such cases.

§ 16.34 Procedure to obtain change, correction or updating of identification records.

If, after reviewing his identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, correction or updating of the alleged deficiency, he must make application directly to the contributor of the questioned information. Upon the receipt of an official communication directly from the agency which contributed the original information the FBI Identification Division will make any changes necessary in accordance with the information supplied by the agency.

Subpart D—Protection of Privacy of Individual Records

AUTHORITY: 5 U.S.C. 552a.

SOURCE: Order No. 627-75, 40 FR 50642, Oct. 30, 1975, unless otherwise noted.

§ 16.40 Purpose and scope.

(a) This subpart contains the regulations of the Department of Justice implementing the Privacy Act of 1974, Pub. L. 93-579. The regulations apply to all records contained in systems of records maintained by the Department of Justice which are retrieved by individual name or identifier, except that for personnel records, where there is a conflict between these regulations and those of the Commission, Civil Service Commission regulations shall prevail. The regulations set forth the procedures by which individuals may seek access to records pertaining to themselves in these systems of records and

request correction of them. The regulations also set forth the requirements applicable to Department of Justice employees maintaining, collecting, using or disseminating such records. These regulations are applicable to each Office, Division, Board, Bureau, Service and Administration of the Department (hereafter referred to as a "component").

(b) The Assistant Attorney General for Administration shall provide that the provisions of this subpart and any revisions thereof shall be brought to the attention of and made available to:

(1) Each employee at the time of issuance of this subpart and any amendment thereto; and

(2) Each new employee at the time of employment.

(c) The Assistant Attorney General for Administration shall be responsible for insuring that employees of the Department of Justice are trained in the obligations imposed by the Privacy Act of 1974 and by these regulations, but each component of the Department is authorized to undertake training for its own employees.

§ 16.41 Access by individuals to records maintained about them.

(a) *Access to available records.* An individual seeking access to records about himself in a system of records, which have not been exempted from access pursuant to the Privacy Act of 1974, may present his request in person or in writing to the manager of the particular system of records to which he seeks access or to such other person as may be specified. System managers and others to whom requests may be presented are identified in the "Notice of Records Systems" published by the National Archives and Records Service, General Services Administration. Access to Department of Justice records maintained in National Archives and Records Service Centers may be obtained in accordance with the regulations issued by the General Services Administration. Access to records in multiple systems of records should be addressed to each component maintaining one of the systems. If a requester seeks guidance in defining his request, he may write to the Information Systems Staff, Office of Management and Finance, Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

(b) *Verification of identity.* The following standards are applicable to any

individual who requests records concerning himself, unless other provisions for identity verification are specified in the published notice pertaining to the particular system of records.

(1) An individual seeking access to records about himself in person may establish his identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and address (such as a driver's license, or credit card).

(2) An individual seeking access to records about himself by mail shall establish his identity by a signature, address, date of birth, place of birth, employee identification number if any, and one other identifier such as a photocopy of an identifying document.

(3) An individual seeking access to records about himself by mail or in person who cannot provide the necessary documentation of identification may provide a notarized statement, swearing or affirming to his identity and to the fact that he understands the penalties for false statements pursuant to 18 U.S.C. 1001. Forms for such notarized statements may be obtained on request from the Information Systems Staff, Office of Management and Finance, U.S. Department of Justice, Washington, D.C. 20530.

(c) *Verification of guardianship.* The parent or guardian of a minor or a person judicially determined to be incompetent and seeking to act on behalf of such minor or incompetent shall, in addition to establishing his own identity, establish the identity of the minor or other person he represents as required in paragraph (b) of this section and establish his own parentage or guardianship of the subject of the record by furnishing either a copy of a birth certificate showing parentage or a court order establishing the guardianship.

(d) *Accompanying persons.* An individual seeking to review records about himself may be accompanied by another individual of his own choosing. Both the individual seeking access and the individual accompanying him shall be required to sign the required form indicating that the Department of Justice is authorized to discuss the contents of the subject record in the presence of both individuals.

(e) *Specification of records sought.* Requests for access to records, either in

person or by mail shall describe the nature of the records sought, the approximate dates covered by the record, the system or systems in which it is thought to be included as described in the "Notices of Records Systems" published by the General Services Administration, and the identity of the system manager or component of the Department having custody of the system of records. In addition, the published "Notice of Systems Records" for individual systems may include further requirements of specification where necessary to retrieve the individual record from the system.

§ 16.42 Records exempt in whole or in part

(a) When an individual requests records about himself which have been exempted from individual access pursuant to 5 U.S.C. 552a (j) or (k) (3) or (k) (4) or which have been compiled in reasonable anticipation of a civil action or proceeding either in a court or before an administrative tribunal, the Department of Justice will neither confirm nor deny the existence of the record but shall advise the individual only that there is no record which is available to him pursuant to the Privacy Act of 1974.

(b) Individual requests for access to records which have been exempted from access pursuant to 5 U.S.C. 552a (k) shall be processed as follows:

(1) Requests for information classified by the Department of Justice pursuant to Executive Order 11652 require the responsible component of the Department to review the information to determine whether it continues to warrant classification under the criteria of sections 1 and 5 (B), (C), (D), and (E) of the Executive Order. Information which no longer warrants classification under these criteria shall be declassified and made available to the individual if not otherwise exempt. If the information continues to warrant classification, the individual shall be advised that the information sought is classified, that it has been reviewed and continues to warrant classification, and that it has been exempted from access pursuant to 5 U.S.C. 552a (k) (1). Information which has been exempted pursuant to 5 U.S.C. 552a (j) and which is also classified shall be reviewed as required by this paragraph but the response to the individual shall be in the form prescribed by paragraph (a) of this section.

(2) Requests for information which has been exempted from disclosure pursuant to 5 U.S.C. 552a (k) (2) shall be responded to in the manner provided in paragraph (a) of this section unless a review of the information indicates that the information has been used or is being used to deny the individual any right, privilege or benefit for which he is eligible or to which he would otherwise be entitled under federal law. In that event, the individual shall be advised of the existence of the record and shall be provided the information except to the extent it would identify a confidential source. If and only if information identifying a confidential source can be deleted or the pertinent parts of the record summarized in a manner which protects the identity of the confidential source, the document with deletions made or the summary shall be furnished to the requester.

(3) Information compiled as part of an employee background investigation which has been exempted pursuant to 5 U.S.C. 552a (k) (5) shall be made available to an individual upon request except to the extent that it identifies a confidential source. If and only if information identifying a confidential source can be deleted or the pertinent parts of the record summarized in a manner which protects the identity of the confidential source, the document with deletions made or the summary shall be furnished to the requester.

(4) Testing or examination material which has been exempted pursuant to 5 U.S.C. 552a (k) (6) shall not be made available to an individual if disclosure would compromise the objectivity or fairness of the testing or examination process but shall be made available if no such compromise possibility exists.

§ 16.43 Special access procedures.

(a) *Records of other agencies.* When information sought from a system of records in the Department of Justice includes information:

(1) That has been classified pursuant to Executive Order 11652, the request shall be referred to the appropriate classifying authority pursuant to 28 CFR 17.61 and the individual requesting the record shall be so advised unless the record is also exempt from disclosure pursuant to 5 U.S.C. 552a (j) or (k);

(2) That has been furnished by another component of the Department, the request shall be referred to the com-

ponent originating the information for a decision as to access or correction;

(3) That has been furnished by another agency, the Department shall consult the other agency before granting access or making a correction and may refer the request to the other agency if referral will provide more expeditious access or correction, but the requester shall be notified of the referral.

(b) *Medical Records.* When an individual requests medical records concerning himself, which are not otherwise exempt from disclosure, the system manager shall, if deemed necessary, advise the individual that records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation, the system manager will permit the physician to review the records or to receive copies of the records by mail, upon proper verification of identity. The determination of which records should be made available directly to the individual and which records should not be disclosed because of possible harm to the individual shall be made by the physician.

§ 16.44 Requests for accounting of record disclosures.

At the time of his request for access or correction or at any other time, an individual may request an accounting of disclosures made of his record outside the Department of Justice. Requests for accounting shall be directed to the system manager or other person specified in the "Notices of Records Systems." Any available accounting, whether kept in accordance with the requirements of the Privacy Act or under procedures established prior to September 27, 1975 shall be made available to the individual except that an accounting need not be made available if it relates to: (a) records with respect to which no accounting need be kept (see § 16.50(c) *infra*); (b) a disclosure made to a law enforcement agency pursuant to 5 U.S.C. 552a(b) (7); (c) an accounting which has been exempted from disclosure pursuant to 5 U.S.C. 552a (j) or (k).

§ 16.45 Notice of access decisions; time limits.

(a) *Responsibility for notice.* The head of the component maintaining the system from which information is sought or his delegate has responsibility for determining whether access to records is

available under the Privacy Act and for notifying the individual of that determination in accordance with these regulations. If access is denied because of an exemption, the responsible person shall notify the individual that he may appeal that determination to the Deputy Attorney General within thirty working days of the receipt of the determination.

(b) *Time limits for access determinations.* The following time limits shall be applicable to requests for access to information pursuant to the Privacy Act of 1974:

(1) Any request concerning a single system of records all of which are maintained at the same location and none of which requires consultation with another component or agency shall be responded to within 20 working days unless the records requested exceed the equivalent of 100 pages.

(2) Any request concerning a single system of records some of which require consultation with another component or agency shall be responded to within 25 working days unless the records requested exceed the equivalent of 100 pages.

(3) Any request involving several systems of records or one or more systems maintained at different locations shall be responded to within 40 working days.

(4) Any request involving the equivalent of 100 pages or more, whether maintained in one system or several systems, shall be responded to within 40 working days.

(5) If a request under paragraphs (b) (2), (3) or (4) of this section presents unusual difficulties in determining whether the records involved are exempt from disclosure, the Deputy Attorney General, upon written request of the responsible person, may extend the time period established by these regulations for an additional 15 working days.

§ 16.46 Fees for copies of records.

(a) *When charged.* Fees pursuant to 31 U.S.C. 483a and 5 U.S.C. 552a(f) (5) shall be charged according to the schedules contained in paragraph (b) of this section for actual copies of records provided to individuals unless the responsible person determining access, in his discretion, waives the fee for good cause (such as the inability of the individual to pay) or a separate fee schedule is established for an exempt system. Fees shall not be charged where they would amount, in the aggregate, to less than \$3.

(b) *Fees charged.* Fees may only be assessed for actual copies of materials furnished pursuant to the Privacy Act in accordance with the following schedule:

(1) For copies of documents (maximum of 10 copies will be supplied), \$0.10 per page;

(2) For computer material charges:

(i) One-part paper per 1,000 pages....	\$11.00
(ii) Two-part paper per 1,000 pages....	22.80
(iii) Three-part paper per 1,000 pages....	36.17
(iv) Four-part paper per 1,000 pages....	48.32
(v) Five-part paper per 1,000 pages....	63.97
(vi) Stook Hollerith cards per 1,000....	1.98
(vii) Magnetic tape per reel.....	10.75
(viii) Disk pack, each.....	775.00

(3) For tape recordings and other audio records:

(i) 45 minute cassette.....	\$0.56
(ii) 60 minute cassette.....	.60
(iii) 90 minute cassette.....	.77

(4) For materials other than the common ones described in paragraphs (b) (1), (2) and (3) of this section, the direct costs of such materials to the government may be charged, but only if the requester has been notified of such cost before it is incurred.

(c) *Notice of anticipated charges.* Where it is anticipated that access fees chargeable under this section will amount to more than \$25, and the requester has not indicated in advance his willingness to pay fees as high as are anticipated, the requester shall be notified of the amount of the anticipated fees before copies are made. The notification shall offer the requester the opportunity to confer with Department personnel with the object of reformulating the request so as to meet his needs at lower cost.

(d) *Form of payment.* Payment should be made by check or money order payable to the Department of Justice. No employee of the Department of Justice is authorized to accept payment of fees in cash.

(e) *Advance deposit.* Where the anticipated fee chargeable under this section exceeds \$25, an advance deposit of part or all of the anticipated fee may be required.

§ 16.47 Appeals from denials of access.

An individual who has been denied access to records concerning him may appeal that decision to the Deputy Attorney General by filing a written appeal within 30 working days of the receipt of the denial. If the denial of access was made by a responsible person in the Of-

fice of the Deputy Attorney General, the appeal shall be to the Attorney General. The appeal shall be marked on its face and on the face of the envelope "Privacy Appeal—Denial of Access," and shall be addressed to the Office of the Deputy Attorney General, U.S. Department of Justice, Washington, D.C. 20530, or, if an appeal from a denial by the Deputy Attorney General, to the Assistant Attorney General, Office of Legal Counsel, at the same address. Appeals shall be determined in thirty working days unless the appropriate official, by notice to the individual, extends that period for an additional thirty working days because of the volume of records requested, the scattered location of records, the need to consult other agencies, or the difficulty of the legal issues involved, or other administrative difficulty.

§ 16.48 Requests for correction of records.

(a) *How Made.* Unless a record is exempted from correction, an individual may request amendment or correction of a record concerning him by addressing his request to the person responsible for the system in which the record is maintained either in person or by mail. The request must indicate the particular record involved, the nature of the correction sought, and the justification for the correction or amendment. Requests made by mail should be addressed to the person specified in the Notice of Systems of Records published by the General Services Administration and shall be clearly marked on the request and on the envelope "Privacy Correction Request." Where the individual believes that the same record appears in more than one system, he should address his request to each person responsible for a system of records which may contain the record he seeks to correct.

(b) *Initial determination.* Within 10 working days of the receipt of the request, the appropriate Department official shall advise the individual that his request has been received. If the record is to be amended or corrected, the system manager may so advise the individual but if correction is refused, in whole or in part, it must be done by the head of the component in which the record is located or his delegate. If a correction is to be made, the individual shall be advised of his right to obtain a copy of the corrected record upon request. If a correction or amendment is refused, in

whole or in part, the individual shall be so advised, shall be given reasons for the refusal, and shall be advised of his right to appeal the refusal to the Deputy Attorney General in accordance with the procedures set forth in this section.

(c) *Appeals.* A refusal, in whole or in part, to amend or correct a record may be appealed to the Deputy Attorney General within 30 days of the receipt of notice of the refusal. If the refusal to correct was made by the Office of the Deputy Attorney General, the appeal shall be to the Attorney General. Appeals shall be in writing, shall set forth the specific item of information sought to be corrected, and the individual's documentation justifying the correction. Appeals shall be addressed to the Office of the Deputy Attorney General, U.S. Department of Justice, Washington, D.C. 20530 or, if an appeal from a denial by the Deputy Attorney General, to the Assistant Attorney General, Office of Legal Counsel, at the same address. They shall be clearly marked on the appeal and on the envelope, "Privacy Correction Appeal." The appeal shall be decided within 30 working days unless the appropriate official shall extend the time for an additional 30 working days because of the need to obtain additional information, the volume of records involved, or the complexity of the issue, or other administrative difficulty. The requester shall be advised in advance of any such extension and shall be given the reasons therefor.

(d) *Appeal determinations.* If the Deputy Attorney General or Attorney General determines that an amendment or correction is not warranted on the facts, he shall advise the individual of his refusal to authorize correction or amendment of the record, in whole or in part, and shall advise the individual of his right to provide for the record a "Statement of Disagreement." The individual shall be advised also of his right to judicial review pursuant to the Privacy Act of 1974.

(e) *Statements of disagreement.* Statements of Disagreement may be furnished by the individual within 30 working days of the date of receipt of the notice of refusal of the Deputy Attorney General or Attorney General to authorize correction. They shall be addressed to the Office of the Deputy Attorney General, U.S. Department of Justice, Washington, D.C. 20530. Statements may not exceed one typed page per fact

disputed. Statements exceeding this limit will be returned to the requester for condensation. Upon receipt of a statement of disagreement in accordance with this section, the Deputy Attorney General shall take steps to insure that the statement is included in the system or systems of records in which the disputed item is maintained and that the original record is so marked as to indicate that there is a statement of disagreement and where, within the system of records, that statement may be found.

(f) *Notices of correction or disagreement.* When a record has been corrected the system manager shall, within thirty working days thereof, advise all prior recipients of the record whose identity can be determined pursuant to the accounting required by the Privacy Act or any other accounting previously made, of the correction. Any dissemination of a record after the filing of a statement of disagreement shall be accompanied by a copy of that statement. Any statement of the agency giving reasons for refusing to correct shall be included in the file.

[Order No. 627-75, 40 FR 50642, Oct. 30, 1975; 40 FR 52007, Nov. 7, 1975]

§ 16.49 Records not subject to correction.

The following records are not subject to correction or amendment by individuals:

- (a) Transcripts or written statements made under oath;
- (b) Transcripts of Grand Jury Proceedings, judicial or quasi-judicial proceedings which form the official record of those proceedings;
- (c) Pre-sentence reports comprising the property of the courts but maintained in agency files; and
- (d) Records duly exempted from correction by notice published in the FEDERAL REGISTER.

§ 16.50 Accounting for disclosures.

(a) As soon as possible, but not later than September 27, 1975, each system manager, with the approval of the head of his component, shall establish a system of accounting for all disclosures of records, either orally or in writing, made outside the Department of Justice. Accounting procedures may be established in the least expensive and most convenient form that will permit the system manager to advise individuals, promptly upon request, of the persons or agen-

cies to which records concerning them have been disclosed.

(b) Accounting records, at a minimum, shall include the identification of the particular record disclosed, the name and address of the person or agency to which disclosed, and the date of the disclosure. Accounting records shall be maintained until the record is destroyed or transferred to the Archives.

(c) Accounting is not required to be kept for disclosures made within the Department of Justice or disclosures made pursuant to the Freedom of Information Act.

§ 16.51 Notices of subpoenas and emergency disclosures.

(a) *Subpoenas.* When records concerning an individual are subpoenaed by a Grand Jury, Court, or quasi-judicial agency, the official served with the subpoena shall be responsible for assuring that notice of its issuance is provided to the individual. Notice shall be provided within 10 days of the service of the subpoena or, in the case of a Grand Jury subpoena, within 10 days of its becoming a matter of public record. Notice shall be mailed to the last known address of the individual and shall contain the following information: The date of the subpoena is returnable, the court in which it is returnable, the name and number of the case or proceeding, and the nature of the information sought. Notice of the issuance of subpoenas is not required if the system of records has been exempted from the notice requirement, pursuant to 5 U.S.C. 552a(j), by a Notice of Exemption published in the *FEDERAL REGISTER*.

(b) *Emergency disclosures.* If information concerning an individual has been disclosed to any person under compelling circumstances affecting health or safety the individual shall be notified at his last known address within 10 working days of the disclosure. Notification shall include the following information: the nature of the information disclosed, the person or agency to whom it was disclosed, the date of the disclosure, and the compelling circumstances justifying the disclosure. Notification shall be given by the officer who made or authorized the disclosure.

§ 16.52 Information forms.

(a) *Review of forms.* Except for forms developed and used by the Law Enforcement Assistance Administration, the

Drug Enforcement Administration, the Immigration and Naturalization Service, the Bureau of Prisons, the Federal Bureau of Investigation and the U.S. Marshals Service for the collection of information from individuals, the Office of Management and Finance shall be responsible for reviewing all forms developed and used by the Department of Justice to collect information from individuals. The Law Enforcement Assistance Administration, the Drug Enforcement Administration, the Immigration and Naturalization Service, the Bureau of Prisons, the Federal Bureau of Investigation and the U.S. Marshals Service shall each be responsible for the review of forms it uses to collect information from individuals.

(b) *Scope of review.* The responsible offices shall review each form for the purpose of eliminating any requirement for information that is not relevant and necessary to carry out an agency function and to accomplish the following objectives:

(1) To insure that no information concerning religion, political beliefs or activities, association memberships (other than those required for a professional license), or the exercise of other First Amendment rights is required to be disclosed unless such requirement of disclosure is expressly authorized by statute or is pertinent to and within the scope of an authorized law enforcement activity;

(2) To insure that the form or accompanying statement makes clear to the individual which information he is required by law to disclose and the authority for that requirement and which information is voluntary;

(3) To insure that the form or accompanying statement states clearly the principal purpose or purposes for which the information is being collected, and summarizes concisely the routine uses that will be made of the information;

(4) To insure that the form or accompanying statement clearly indicates to the individual the effect in terms of rights, benefits or privileges of not providing all or part of the requested information; and

(5) To insure that any form requesting disclosure of a Social Security Number, or an accompanying statement, clearly advises the individual of the statute or regulation requiring disclosure of the number or clearly advises the individual that disclosure is volun-

tary and that no consequence will flow from his refusal to disclose it, and the uses that will be made of the number whether disclosed mandatorily or voluntarily.

(c) *Revision of forms.* Any form which does not meet the objectives specified in the Privacy Act and in this section, shall be revised to conform thereto. If revision, printing and distribution cannot be accomplished prior to September 27, 1975, a separate statement shall be prepared to accompany each form advising the individual that the form is not in compliance with the Privacy Act and specifying the portions thereof which are not in compliance. The statement shall include all the information necessary to accomplish the objectives specified in the Privacy Act and this section.

§ 16.53 Contracting records systems.

(a) No component of the Department shall contract for the operation of a record system by or on behalf of the agency without the express approval of the Attorney General.

(b) Any contract which is approved shall contain the standard contract requirements promulgated by the General Services Administration to insure compliance with the requirements imposed by the Privacy Act of 1974. The contracting agency shall have responsibility for insuring that the contractor complies with the contract requirements relating to privacy.

§ 16.54 Security of records systems.

(a) The Assistant Attorney General for administration shall have responsibility for developing Department regulations governing the security of systems of records. Regulations relating to the security of automated systems shall be consistent with the guidelines developed by the National Bureau of Standards.

(b) Each system manager, with the approval of the head of his component, shall establish administrative and physical controls, consistent with Department regulations, to insure the protection of records systems from unauthorized access or disclosure and from physical damage or destruction. The controls instituted shall be proportional to the degree of sensitivity of the records but at a minimum must insure that the records are enclosed in a manner to protect them from public view, that the area in which

the records are stored is supervised during all business hours to prevent unauthorized personnel from entering the area or obtaining access to the records, and that the records are reasonably inaccessible to unauthorized persons outside of business hours.

(c) Each system manager, with the approval of the head of his component shall adopt access restrictions to insure that only those individuals within the agency who have a need to have access to the records for the performance of their duties have access to them. Procedures shall also be adopted to prevent accidental access to or dissemination of records.

§ 16.55 Use and collection of Social Security numbers.

(a) Each system manager of a system of records which utilizes the Social Security number as a method of identification without statutory authorization, or authorization by regulation adopted prior to January 1, 1975, shall take steps to revise the system to avoid future collection and use of the Social Security number.

(b) The head of each component of the Department shall take such measures as are necessary to insure that employees authorized to collect information from individuals are advised that individuals may not be required to furnish Social Security numbers without statutory or regulatory authorization and that individuals who are requested to provide Social Security numbers voluntarily must be advised that furnishing the number is not required and that no penalty or denial of benefits will flow from the refusal to provide it.

§ 16.56 Employee standards of conduct with regard to privacy.

(a) The head of each component of the Department shall be responsible for assuring that employees subject to his supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil liabilities provided therein, and that such employees are made aware of their responsibilities to protect the security of personal information, to assure its accuracy, relevance, timeliness and completeness, to avoid unauthorized disclosure either orally or in writing, and to insure that no system of records retrieved by individual identifier, no matter how small or specialized, is maintained without public notice.

(b) Except to the extent permitted pursuant to the Privacy Act, employees of the Department of Justice shall:

(1) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a function or carry out a responsibility of the Department;

(2) Collect from individuals only that information which is necessary to Department functions or responsibilities;

(3) Collect information, wherever practicable, directly from the individual to whom it relates;

(4) Inform individuals from whom information is collected of the authority for collection, the purposes thereof, the uses that will be made of the information, and the effects, both legal and practical, of not furnishing the information;

(5) Neither collect, maintain, use nor disseminate information concerning an individual's religious or political beliefs or activities or his membership in associations or organizations, unless (i) the individual has volunteered such information for his own benefit; (ii) the information is expressly authorized by statute to be collected, maintained, used or disseminated; or (iii) the activities involved are pertinent to and within the scope of an authorized investigation, adjudication or correctional activity;

(6) Advise their supervisors of the existence or contemplated development of any record system which retrieves information about individuals by individual identifier;

(7) Wherever required by the Act, maintain an accounting, in the prescribed form, of all dissemination of personal information outside the Department, whether made orally or in writing;

(8) Disseminate no information concerning individuals outside the Department except when authorized by 5 U.S.C. 552a, including pursuant to a routine use published in the FEDERAL REGISTER;

(9) Maintain and process information concerning individuals with care in order to insure that no inadvertent disclosure of the information is made either within or without the Department; and

(10) Call to the attention of the proper Department authorities any information in a system maintained by the Department which is not authorized to be maintained under the provisions of the Privacy Act of 1974, including information on First Amendment activities and in-

formation that is inaccurate, irrelevant or so incomplete as to risk unfairness to the individual concerned.

(c) Heads of components within the Department shall, at least annually, review the record systems subject to their supervision to insure compliance with the provisions of the Privacy Act of 1974.

§ 16.57 Relationship of Privacy Act and the Freedom of Information Act.

(a) Issuance of this section and actions considered or taken pursuant hereto are not to be deemed a waiver of the Government's position that the materials in question are subject to all of the exemptions contained in the Privacy Act. By providing for exemptions in the Act, Congress conferred upon each agency the option, at the discretion of the agency, to grant or deny access to exempt materials unless prohibited from doing so by any other provision of law. Releases of records under this section, beyond those mandated by the Privacy Act, are at the sole discretion of the Deputy Attorney General and of those persons to whom authority hereunder may be delegated. Authority to effect such discretionary releases of records and to deny requests for those records as an initial matter is hereby delegated to the appropriate system managers as per the Notices of Systems of Records published in 40 FEDERAL REGISTER 167, pages 38703-38801 (August 27, 1975).

(b) Any request by an individual for information pertaining to himself shall be processed solely pursuant to this Subpart D. To the extent that the individual seeks access to records from systems of records which have been exempted from the provisions of the Privacy Act, the individual shall receive, in addition to access to those records he is entitled to receive under the Privacy Act and as a matter of discretion as set forth in paragraph (a) of this section, access to all records within the scope of his request to which he would have been entitled under the Freedom of Information Act, 5 U.S.C. 552, but for the enactment of the Privacy Act and the exemption of the pertinent systems of records pursuant thereto. Only fees set forth in § 16.46 may be charged a requester as to any records to which access is granted pursuant to the provisions of this subsection.

(c) When an individual requests access to records pertaining to criminal, national security or civil investigative activities of the Federal Bureau of In-

vestigation which are contained in systems of records exempted under provisions of the Privacy Act, such requests shall be processed as follows:

(1) Where the investigative activities involved have been reported to F.B.I. Headquarters, records maintained in the F.B.I.'s Central files will be processed; and,

(2) Where the investigative activities involved have not been reported to F.B.I. Headquarters, records maintained in files of the Field Office identified by the requester will be processed.

Subpart E—Exemption of Records Systems Under the Privacy Act

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 41 FR 12640, Mar. 26, 1976, unless otherwise noted.

§ 16.70 [Reserved]

§ 16.71 Exemption of the Office of the Deputy Attorney General Systems.

(a) The following systems of records are exempt from 5 U.S.C. 552a (d) (1) and (e) (1):

(1) Appointed Assistant United States Attorneys Personnel System (JUSTICE/DAG-001).

(2) Assistant United States Attorneys Applicant Records System (JUSTICE/DAG-002).

(3) Presidential Appointee Candidate Records System (JUSTICE/DAG-009).

(4) Presidential Appointee Records System (JUSTICE/DAG-010).

(5) Special Candidates for Presidential Appointments Records System (JUSTICE/DAG-011).

(6) United States Judges Records System (JUSTICE/DAG-014).

These exemptions apply only to the extent that information in those systems is subject to exemption pursuant to 5 U.S.C. 552a(k) (5).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d) (1) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning a candidate for a judgeship or assistant U.S. Attorney position. Permitting access to the information supplied by persons after a promise of confidentiality has been given, could reveal the identity of the source of the information and constitute a breach of the promised confidentiality on the part of the Department

of Justice. Such breaches ultimately would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(2) From subsection (e) (1) because in the collection of information for investigation and evaluative purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may appear irrelevant, when combined with other apparently irrelevant information, can on occasion, provide a composite picture of a candidate for a position which assists in determining whether that candidate should be nominated for appointment.

§§ 16.72–16.75 [Reserved]

§ 16.76 Exemption of Office of Management and Finance Systems.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) Controlled Substances Act Nonpublic Records (JUSTICE/OMF-002).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 552 a.(j).

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Pub. L. 91-513 (Controlled Substances Act), Sec. 404(b) states that the nonpublic record "shall be retained by the Department of Justice solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection." It is therefore maintained that it is the intent of Congress that these nonpublic records, by definition, receive no further exposure.

(c) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) Security Clearance Information System (SCIS) (JUSTICE/OMF-008)—Limited access.

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 552a .(j) and (k).

(d) Exemption from subsection (d) is justified for the following reason:

(1) Access to records in the system would reveal the identity(ies) of the source(s) of information collected in the course of a background investigation. Such knowledge might be harmful to the source who provided the information as well as violate the explicit or implicit

promise of confidentiality made to the source during the investigation.

(e) Consistent with the legislative purpose of the Privacy Act of 1974, the Office of Management and Finance will grant access to nonexempt material in SCIS records which are maintained by the Security and Administrative Services Staff. Disclosure will be governed by the Department's Privacy Regulations, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from this system will be made on a case-by-case basis."

§ 16.77 [Reserved]

§ 16.78 Exemption of Watergate Special Prosecution Force Systems—Limited access.

(a) The following systems of records are exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G), (H) and (I), (e) (5), (f) and (g):

(1) Watergate Special Prosecution Force Investigative and Prosecutory File (JUSTICE/WSPF-001).

(2) Watergate Special Prosecution Force Automated Investigative File (JUSTICE/WSPF-002).

These exemptions apply to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a (j) and (k).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c) (3) because the release of the accounting of disclosures made under subsection (b) of the Act, including those disclosures permitted under the routine uses published for these systems of records would permit the subject of an investigation of an actual or potential criminal, civil or regulatory

violation to determine whether he is the subject of an investigation or to obtain valuable information concerning the nature of that investigation, material compiled during the investigation, and the identity of witnesses and informants. Disclosure of the accounting would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f) (1) is specifically exempted for these systems of records.

(2) From subsection (c) (4) because an exemption is being claimed for subsection (d) of the Act. This section is inapplicable to the extent that these systems of records are exempted from subsection (d).

(3) From subsection (d) because access to the records contained in these systems would inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4) From subsection (e) (1) because the notices for these systems of records published in the Federal Register set forth the basic statutory or related authority for maintenance of these systems. However, in the course of criminal or other law enforcement investigations, cases, and matters the Watergate Special Prosecution Force will occasionally obtain information concerning actual or potential violations of law that are not strictly within its statutory or other authority, or may compile information in the course of an investigation which may not be relevant to a specific prosecution. In the interests of effective law enforcement, it is necessary to retain such information in these systems of records since it can aid in establishing patterns of criminal activity and can provide valuable leads for federal and other law enforcement agencies.

(5) From subsection (e) (2) because in a criminal or other law enforcement investigation or prosecution, the requirement that the information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6) From subsection (e) (3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e) (3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7) From subsections (e) (4) (G) and (H) because an exemption is being claimed for subsections (d) and (f) of the Act. These subsections are inapplicable to the extent that these systems of records are exempted from subsections (d) and (f).

(8) From subsection (e) (4) (I) because the categories of sources of the records in these systems have been published in the Federal Register in broad generic terms in the belief that this is all that subsection (e) (4) (I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in these systems, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal and other law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(9) From subsection (e) (5) because in the collection of information for criminal or other law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can often only be determined in a court of law. The restrictions of subsection (e) (5) would restrict the ability of trained investigators, intelligence an-

alysts, and government attorneys to exercise their judgment in reporting on information and investigations and impede the development of criminal or other intelligence necessary for effective law enforcement.

(10) From subsection (f) because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or prosecution pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since an exemption is being claimed for subsection (d) of the Act, the rules required pursuant to this subsection are inapplicable.

(11) From subsection (g) because an exemption is being claimed for subsections (d) and (f).

(c) Consistent with the legislative purpose of the Privacy Act of 1974, the Watergate Special Prosecution Force will grant access to nonexempt material in records which are maintained by the Watergate Special Prosecution Force. Disclosure will be governed by the Department's Privacy Regulations, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal, civil or regulatory violation will not be altered to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems of records will be made on a case-by-case basis. *

§ 16.79 Exemption of Pardon Attorney System.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) Executive Clemency Files (JUSTICE/OPA-001).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j).

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Executive clemency files contain investigatory and evaluative reports relating to applicants for Executive clemency. Release of such information to the subject would jeopardize the integrity of the investigative process, invade the right of candid and confidential communications among officials concerned with recommending clemency decisions to the President, and disclose the identity of persons who furnished information to the Government under an express or implied promise that their identities would be held in confidence.

(2) The purpose of the creation and maintenance of these files is to enable the Pardon Attorney to prepare for the President's ultimate decisions on matters which are within the President's exclusive jurisdiction by virtue of Article II, section 2, clause 1 of the Constitution, which commits pardons to the exclusive discretion of the President."

§ 16.80 [Reserved]

§ 16.81 Exemption of United States Attorneys Systems—Limited access.

(a) The following systems of records are exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G) and (H), (e) (5) and (8), (f), (g) and (h):

(1) Citizen Complaint Files (JUSTICE/USA-003).

(2) Civil Case Files (JUSTICE/USA-005).

(3) Consumer Complaints (JUSTICE/USA-006).

(4) Criminal Case Files (JUSTICE/USA-007).

(5) Kline—District of Columbia and Maryland Stock and Land Interrelationship Filing System (JUSTICE/USA-010).

(6) Major Crimes Division Investigation Files (JUSTICE/USA-011).

(7) Prosecutor's Management Information System (PROMIS) (JUSTICE/USA-012).

(8) U.S. Attorney, District of Columbia Superior Court Division, Criminal Files (JUSTICE/USA-014).

These exemptions apply to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a (j) and (k).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c) (3) because the release of the disclosure accounting for disclosures pursuant to the routine uses published for these systems would permit the subject of a criminal investigation and/or civil case or matter under investigation, litigation, regulatory or administrative review or action, to obtain valuable information concerning the nature of that investigation, case or matter and present a serious impediment to law enforcement or civil legal activities.

(2) From subsection (c) (4) since an exemption is being claimed for subsection (d), this subsection will not be applicable.

(3) From subsection (d) because access to the records contained in these systems would inform the subject of criminal investigation and/or civil investigation, matter or case of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection, apprehension or legal obligations, and present a serious impediment to law enforcement and other civil remedies.

(4) From subsection (e) (1) because in the course of criminal investigations and/or civil investigations, cases or matters, the United States Attorneys often obtain information concerning the violation of laws or civil obligations other than those relating to an active case or matter. In the interests of effective law enforcement and civil litigation, it is necessary that the United States Attorneys retain this information since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought within the United States Attorneys' offices.

(5) From subsection (e) (2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection, apprehension or legal obligations and duties.

(6) From subsection (e) (3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e) (3) would constitute a serious im-

pediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(7) From subsections (e) (4) (G) and (H) because these systems of records are exempt from individual access pursuant to subsections (j) and (k) of the Privacy Act of 1974.

(8) From subsection (e) (5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e) (5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(9) From subsection (e) (8) because the individual notice requirements of subsection (e) (8) could present a serious impediment to law enforcement as this could interfere with the United States Attorneys' ability to issue subpoenas and could reveal investigative techniques and procedures.

(10) From subsection (f) because these systems of records have been exempted from the access provisions of subsection (d).

(11) From subsections (g) and (h) because these systems of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(c) Consistent with the legislative purpose of the Privacy Act of 1974, the Executive Office for United States Attorneys will grant access to nonexempt material in records which are maintained by the United States Attorneys. Disclosure will be governed by the Department's Privacy Regulations, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal, civil or regulatory violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered,

the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis."

§§ 16.82-16.83 [Reserved]

§ 16.84 Exemption of Board of Immigration Appeals System.

(a) The following system of records is exempt from 5 U.S.C. 552a (d) (2), (3) and (4):

(1) Decisions of the Board of Immigration Appeals (JUSTICE/BIA-001).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsections (d) (2), (3) and (4) because the decisions reflected constitute official records of opinions rendered in quasi-judicial proceedings. Administrative due process could not be achieved by the ex parte "correction" of such opinions by the subject of the opinion.

§ 16.85 Exemption of Board of Parole System—Limited access.

(a) The following systems of records are exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (2) and (3), (e) (4) (G) and (H), (e) (8), (f) and (g):

(1) Docket Scheduling and Control System (JUSTICE/BPR-001).

(2) Inmate and Supervision Files System (JUSTICE/BPR-003).

(3) Labor and Pension Case, Legal File, and General Correspondence System (JUSTICE/BPR-004).

(4) Statistical, Educational and Developmental System (JUSTICE/BPR-006).

(5) Workload Record, Decision Result, and Annual Report System (JUSTICE/BPR-007).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c) (3) because revealing disclosure of accountings to inmates and persons on supervision could compromise legitimate law enforcement activities and Board of Parole responsibilities.

(2) From subsection (c) (4) because the exemption from subsection (d) will make notification of disputes inapplicable.

(3) From subsection (d) because this is essential to protect internal processes by which Board personnel are able to formulate decisions and policies with regard to federal prisoners and persons under supervision, to prevent disclosures of information to federal inmates or persons on supervision that would jeopardize legitimate correctional interests of security, custody, supervision, or rehabilitation, to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices, to allow private citizens to express freely their opinions for or against parole, to allow relevant criminal history type information of co-defendants to be kept in files, to allow medical, psychiatric and sociological material to be available to professional staff, and to allow a candid process of fact selection, opinion formulation, evaluation and recommendation to be continued by professional staff. The legal files contain case development material and, in addition to other reasons, should be exempt under the attorney-client privilege. Each labor or pension applicant has had served upon him the material in his file which he did not prepare and may see his own file at any time.

(4) From subsection (e) (2) because primary collection of information directly from federal inmates or persons on supervision about criminal sentence, criminal records, institutional performance, readiness for release from custody, or need to be returned to custody is highly impractical and inappropriate.

(5) From subsection (e) (3) because application of this provision to the operations and collection of information by the Board, which is primarily from sources other than the individual, is inappropriate.

(6) From subsections (e) (4) (G) and (H) because exemption from the access

provisions of (d) makes publication of agency procedures under (d) inapplicable.

(7) From subsection (e) (8) because the nature of the Board's activities renders notice of compliance with compulsory legal process impractical.

(8) From subsection (f) because exemption from the provisions of subsection (d) will render compliance with provisions of this subsection inapplicable.

(9) From subsection (g) because exemption from the provisions of subsection (d) will render the provisions on suits to enforce (d) inapplicable.

(c) Consistent with the legislative purpose of the Privacy Act of 1974, the Board of Parole will initiate a procedure whereby present or former federal inmates in custody or persons under supervision may review copies of material in files relating to them which are maintained by the Board of Parole. Disclosure of the contents will be effected by providing copies of documents to requesters through the mails. Disclosure will be limited to the extent that investigative data, letters or memoranda containing facts selected from the whole fact picture, and items of opinion, conclusion and recommendation, items from exempt sources such as the courts, medical and psychiatric data harmful to continuation of therapy, data which would jeopardize privacy rights of others, and information furnished with a legitimate expectation of confidentiality will not be made available. The controlling principle behind the limited access is to allow disclosures except those which would impair the integrity of the Board's decision or policy making processes, the confidentiality of its sources, the effectiveness of the Department of Justice's investigative processes, and the privacy of third parties; or jeopardize the legitimate correctional interests of release from custody, supervision, control and rehabilitation and the decision and policy making processes connected therewith; the documentation of which is exemptable from the Privacy Act. The limitations on disclosure may be changed generally or in regard to certain documentation due to pending or future decisions and directions of the Department of Justice."

§§ 16.86-16.87 [Reserved]

§ 16.88 Exemption of Antitrust Division Systems.

(a) The following systems of records are exempt from 5 U.S.C. 552a (c) (3),

(d), (e) (1), (e) (4) (G) and (H), and (f):

(1) Computerized Document Retrieval System—"United States v. International Business Machines" ("CDRS—IBM") (JUSTICE/ATR-002).

(2) Computerized Document Retrieval System—"Tire cases" ("CDRS—Tire Cases") (JUSTICE/ATR-003).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k). It is noted however, that the provisions of 5 U.S.C. 552a are not applicable to these systems by virtue of 5 U.S.C. 552a(d) (5).

(b) Exemption from the particular subsections are justified for the following reasons:

(1) Exemption from subsection (c) (3) is justified because these systems are maintained only in aid of on-going antitrust enforcement proceedings (e.g., pre-trial/trial). Documents retrieved by using information ("key-words") stored electronically in these systems are, and will be required in the ordinary course of conducting all proceedings in "United States v. The Goodyear Tire & Rubber Company," Civil No. C-73-835 (N.D. Ohio), "United States v. The Firestone Tire & Rubber Company," Civil No. C-73-836 (N.D. Ohio), and "United States v. International Business Machines," Civil No. 69-Civ.-200 (S.D. N.Y.). Consequently, in the course of such protracted and complex antitrust proceedings, the presentation, production or other routine and necessary disclosure of documents retrieved from these systems will be required to be made before the courts and as otherwise required by order of court or pursuant to binding rules of procedure.

(2) 5 U.S.C. 552a(d) does not apply to these systems by virtue of 5 U.S.C. 552a(d) (5). In addition, exemptions from subsections (d), (e) (4) (G) and (H), and (f), all related to matters concerned with individual access to information in systems of records, are justified under 5 U.S.C. 552a(k) because access to the documents retrievable from these systems and compiled for law enforcement purposes could result in the invasion of the privacy of private persons named or otherwise identified in such documents as well as the unjustified disclosure of commercial and financial information of a confidential nature obtained from various firms connected with or involved in the referenced proceedings.

(3) Exemption from subsection (e) (1) is justified because the collection of documents prior to and during the judicial proceedings necessarily involves the assemblage, indexing and storage in these types of systems of information relative to individuals who are not ultimately required to appear or otherwise connected with actual litigation."

§ 16.89 [Reserved]

§ 16.90 Exemption of Civil Rights Division Systems.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission (JUSTICE/CRT-007).

This exemption applies to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d) because this system contains investigatory material compiled by the Equal Opportunity Commission pursuant to its authority under 42 U.S.C. 2000e-8, 42 U.S.C. 2000e-8(e) and 44 U.S.C. 3508 make it unlawful to make public in any manner whatsoever any information obtained by the Commission pursuant to the authority.

(c) The following systems of records are exempt from 5 U.S.C. 552a (c) (3) and (d):

(1) Records Obtained by Office of Special Litigation Concerning Residents of Certain State Institutions (JUSTICE/CRT-005).

(2) Files of Federal Programs Section, Civil Rights Division (JUSTICE/CRT-006).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c) (3) because the release of the disclosure accounting for disclosure pursuant to the routine uses published for this system may enable the subject of an investigation to gain valuable information concerning the nature and scope of the investigation and seriously hamper law enforcement efforts.

(2) From subsection (d) because freely permitting access to records in this system would compromise ongoing investigations and reveal investigatory techniques. In addition, these records may be subject to protective orders entered by federal courts to protect their confidentiality. Many of the records contained in these systems are copies of documents which are the property of state agencies and were obtained under express or implied promises to strictly protect their confidentiality.

(e) The following system of records is exempt from 5 U.S.C. 552a (c) (3), (d) and (g):

(1) Central Civil Rights Division Index File and Associated Records (JUSTICE/CRT-001).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j) and (k).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsections (c) (3) and (d) for the reasons listed in 16.90(d) (1) and (2) above.

(2) From subsection (g) because exemption from the provision of subsection (d) will render the provisions on suits to enforce (d) inapplicable."

§ 16.91 Exemption of Criminal Division Systems—Limited access, as indicated.

(a) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(j) (2) from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G), (H) and (I), (e) (5) and (8), (f) and (g) of 5 U.S.C. 552a; in addition, the following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a (k) (1) and (k) (2) from subsections (c) (3), (d), (e) (1), (e) (4) (G), (H), and (I), and (f) of 5 U.S.C. 552a:

(1) Central Criminal Division, Index File and Associated Records System of Records (JUSTICE/CRM-001)—Limited Access.

(2) General Crimes Section, Criminal Division, Central Index File and Associated Records System of Records (JUSTICE/CRM-004)—Limited Access.

These exemptions apply to the extent that information in those systems are subject to exemption pursuant to 5 U.S.C. 552a (j) (2), (k) (1) and (k) (2).

(b) The systems of records listed under paragraphs b(1) and (b) (2) of this section are exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1), (c) (3). The release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for these systems of records, would permit the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to determine whether he is the subject of investigation, or to obtain valuable information concerning the nature of that investigation, and the information obtained, or the identity of witnesses and informants and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f) (1) is specifically exempted for these systems of records.

(2), (c) (4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this subsection is inapplicable to the extent that these systems of records are exempted from subsection (d).

(3), (d). Access to the records contained in these systems would inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, or the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4), (e) (1). The notices of these systems of records published in the Federal Register set forth the basic statutory or related authority for maintenance of this system. However, in the course of criminal or other law enforcement investigations, cases, and matters, the Criminal Division or its components will occasionally obtain information concerning actual or potential violations of law that are not strictly within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific prosecution. In the interests of effective law enforcement, it is necessary to retain such information in these systems of records since it can aid in establishing patterns of criminal activity and can provide valuable leads for federal and other law enforcement agencies.

(5), (e) (2). In a criminal investigation or prosecution, the requirement that information be collected to the greatest extent prac-

licable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(6). (e) (3). The requirement that individuals supplying information be provided with a form stating the requirements of subsection (e) (3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(7). (e) (4) (G) and (H). Since an exemption is being claimed for subsections (f) (Agency Rules) and (d) (Access to Records) of the Act these subsections are inapplicable to the extent that these systems of records are exempted from subsections (f) and (d).

(8). (e) (4) (I). The categories of sources of the records in these systems have been published in the FEDERAL REGISTER in broad generic terms in the belief that this is all that subsection (e) (4) (I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in these systems, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal and other law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(9). (e) (5). In the collection of information for criminal law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can often only be determined in a court of law. The restrictions of subsection (e) (5) would restrict the ability of trained investigators, intelligence analysts, and government attorneys in exercising their judgment in reporting on information and investigations and impede the development of criminal or other intelligence necessary for effective law enforcement.

(10). (e) (8). The individual notice requirements of subsection (e) (8) could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(11). (f). Procedures for notice to an individual pursuant to subsection (f) (1) as to the existence of records pertaining to him dealing with an actual or potential criminal, civil, or regulatory investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an

investigation or prosecution pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules require pursuant to subsection (f) (2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(12). (g). Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that these systems of records are exempted from subsections (d) and (f).

(13). In addition, exemption is claimed for these systems of records from compliance with the following provisions of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to the provisions of 5 U.S.C. 552a(k)(1): subsections (c) (3), (d), (e) (1), (e) (4) (G), (H) and (I) and (f) to the extent that the records contained in these systems are specifically authorized to be kept secret in the interests of national defense and foreign policy.

(c) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsection (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G), (H) and (I), (e) (5) and (8), (f) and (g) of 5 U.S.C. 552a:

(1) Criminal Division Witness Security Program, File System of Records (JUSTICE/CRM-002).

(2) Narcotic and Dangerous Drug Witness Security, Program File System of Records (JUSTICE/CRM-009).

These exemptions apply to the extent that information in these systems are subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(d) The systems of records listed under paragraphs (c) (1) and (c) (2) of this section are exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). (c) (3) The release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for these systems of records, would permit the subject of an investigation of an actual or potential criminal violation, which may include those protected under the Witness Security Program, to determine whether he is the subject of a criminal investigation, to obtain valuable information concerning the nature of that investigation and the informa-

tion obtained, or the identity of witnesses and informants and the nature of their reports, and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f) (1) is specifically exempted for these systems of records. Moreover, disclosure of the disclosure accounting to an individual protected under the Witness Security Program could jeopardize the effectiveness and security of the Program by revealing the methods and techniques utilized in relocating witnesses and could therefore jeopardize the ability to obtain, and to protect the confidentiality of, information compiled for purposes of a criminal investigation.

(2). (c) (4) Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this section is inapplicable.

(3). (d) Access to the records contained in these systems would inform the subject of an investigation of an actual or potential criminal violation, which may include those protected under the Witness Security Program, of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, access to the records in these systems to an individual protected under the Witness Security Program could jeopardize the effectiveness and security of the Program by revealing the methods and techniques utilized in relocating witnesses and could therefore jeopardize the ability to obtain, and to protect the confidentiality of, information compiled for purposes of a criminal investigation.

(4). Exemption is claimed from subsection (e) (1) for the reasons stated in subsection (b) (4) of this section.

(5). (e) (2) In the course of preparing a Witness Security Program for an individual, much of the information is collected from the subject. However, the requirement that the information be collected to the greatest extent practicable from the subject individual would present a serious impediment to criminal law enforcement because the individual himself may be the subject of a criminal investigation or have been a participant in, or observer of, criminal activity. As a result, it is necessary to seek information from other sources. In addition, the failure to verify the information provided from the individual when necessary and to seek other information could jeopardize the

confidentiality of the Witness Security Program and lead to the obtaining and maintenance of incorrect and uninvestigated information on criminal matters.

(6). (e) (3) The requirement that individuals supplying information be provided with a form stating the requirements of subsection (e) (3) would constitute a serious impediment to law enforcement in that it could compromise or reveal the identity of witnesses and informants protected under the Witness Security Program.

(7). (e) (4) (G) and (H). Since an exemption is being claimed for subsections (f) (Agency Rules) and (d) (Access to Records) of the Act these subsections are inapplicable.

(8). (e) (4) (I). The categories of sources of the records in these systems have been published in the Federal Register in broad generic terms in the belief that this is all that subsection (e) (4) (I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in the system, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal law enforcement information and of witnesses and informants protected under the Witness Security Program.

(9). Exemption is claimed from subsections (e) (5) and (e) (8) for the reasons stated in subsection (b) (9) and (b) (10) of this section.

(10). Procedures for notice to an individual pursuant to subsection (f) (1) as to the existence of records contained in these systems pertaining to him would inform the subject of an investigation of an actual or potential criminal violation, which may include those protected under the Witness Security Program, of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful conduct and/or completion of an investigation pending or future, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, notices as to the existence of records contained in these systems to an individual protected under the Witness Security Program could jeopardize the effectiveness and security of the Program by revealing the methods and techniques utilized in relocating witnesses and could therefore jeopardize the ability to obtain, and to protect the confidentiality of, information compiled for purposes of a criminal investigation.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records)

the rules required pursuant to subsection (f) (2) through (5) are inapplicable.

(11). (g) Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable and is exempted for the reasons set forth for those subsections.

(e) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(j) (2) from subsections (c) (3) and (4), (d), (e) (4) (G), (H) and (I), (f), and (g) of 5 U.S.C. 552a:

(1) Organized Crime and Racketeering Section File Check Out System of Records (JUSTICE/CRM-011).

(2) Organized Crime and Racketeering Section, Intelligence and Special Services Unit, Information Request System of Records (JUSTICE/CRM-014).

These exemptions apply to the extent that information in those systems are subject to exemption pursuant to 5 U.S.C. 552a(j) (2).

(f) The systems of records listed under paragraphs (e) (1) and (e) (2) of this section are exempted for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). (c) (3). The release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for these systems of records, would permit the subject of an investigation of an actual or potential criminal violation to determine whether he is the subject of a criminal investigation and would therefore present a serious impediment to law enforcement. The records in these systems contain the names of the subjects of the files in question and the system is accessible by name of the person checking out the file and by name of the subject of the file. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f) (1) is specifically exempted for these systems of records.

(2). (c) (4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this section is inapplicable.

(3). (d). Access to the records contained in these systems would inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation. This would present a serious impediment to effective law enforcement because it could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4). Exemption is claimed from subsections (e) (4) (G), (H) and (I) for the rea-

sons stated in subsections (b) (7) and (b) (8) of this section.

(5). (f). These systems may be accessed by the name of the person who is the subject of the file and who may also be the subject of a criminal investigation. Procedures for notice to an individual pursuant to subsection (f) (1) as to the existence of records pertaining to him, which may deal with an actual or potential criminal investigation or prosecution, must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of the investigation or prosecution pending or future. In addition mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsection (f) (2) through (5) are inapplicable.

(6). (g). Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) of the Act this section is inapplicable and is exempted for the reasons set forth for those subsections.

(g) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j) (2) from subsections (c) (4), (d), (e) (4) (G), (H) and (I), (f) and (g) of 5 U.S.C. 552a.

File of Names Checked to Determine If Those Individuals Have Been the Subject of an Electronic Surveillance System of Records (JUSTICE/CRM-003).

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) (2).

(h) The system of records listed under paragraph (g) of this section is exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). (c) (4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this section is inapplicable to the extent that this system of records is exempted from subsection (d).

(2). (d). The records contained in this system of records generally consist of information filed with the court in response to the request and made available to the requestor. To the extent that these records have been so filed, no exemption is sought from the provisions of this subsection. Occasionally, the records contain pertinent logs of intercepted communications and other investigative reports not filed with the court. These records must be exempted because access to such records could inform the subject of an investigation and of the nature of the informa-

nal violation of the existence of that investigation and of the nature of the information and evidence obtained by the government. This would present a serious impediment to effective law enforcement because it could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(3). Exemption is claimed from subsections (e)(4) (G), (H) and (I) for the reasons stated in subsections (b)(7) and (b)(8) of this section.

(4). (f). The records contained in this system of records generally consist of information filed with the court and made available to the requester. To the extent that these records have been so filed, no exemption is sought from the provisions of this subsection. Occasionally, the records contain pertinent logs of intercepted communications and other investigative reports not filed with the court. These records must be exempted from a requirement of notification as to their existence because such notice to an individual would be detrimental to the successful conduct and/or completion of a criminal investigation or prosecution pending or future. In addition, mere notice of the existence of such logs or investigative reports could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsection (f) (2) through (5) are inapplicable to the extent that this system of records is exempted for subsection (d).

(6). (g). Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that this system of records is exempted from subsection (d) and (f).

(1) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G), (H) and (I), (e) (5) and (8), (f) and (g) of 5 U.S.C. 552a:

(1) Information File on Individuals and Commercial Entities Known or Suspected of Being Involved in Fraudulent Activities System of Records (JUSTICE/CRM-006).

(2) The Stocks and Bonds Intelligence Control Card File System of Records (JUSTICE/CRM-021).

These exemptions apply only to the extent that information in these systems

are subject to exemption pursuant to 5 U.S.C. 552a (j) (2).

(j) The systems of records listed in paragraphs (i)(1) and (i)(2) of this section are exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). (c)(3). The release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for these systems of records, would permit the subject of an investigation of an actual or potential criminal violation to determine whether he is the subject of a criminal investigation, to obtain valuable information concerning the nature of that investigation, and the information obtained, or the identity of witnesses and informants, and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f)(1) is specifically exempted for this system of records.

(2). (c)(4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this section is inapplicable to the extent that this systems of records is exempted from subsection (d).

(3). (d). Access to the records contained in these systems would inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful completion of the investigation, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4). Exemption is claimed from subsections (e) (1), (2) and (3), (e) (4) (G), (H) and (I), (e) (5) and (e) (8) for the reasons stated in subsections (b) (4), (b) (5), (b) (6), (b) (7), (b) (8), (b) (9) and (b) (10) of this section.

(5). (f). Procedures for notice to an individual pursuant to subsection (f)(1) as to the existence of records pertaining to him dealing with an actual or potential criminal investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or prosecution pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehen-

sion, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsection (f) (2) through (5) are inapplicable to these systems of records.

(6). (g). Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable and is exempted for the reasons set forth for those subsections.

(k) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j) (2) from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G), (H) and (I), (e) (5) and (8), (f) and (g) of section 5 U.S.C. 552a:

Organized Crime and Racketeering Information System of Records (JUSTICE/CRM-010).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) (2).

(l) The system of records listed in paragraph (k) of this section is exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). Exemption is claimed from subsections (c) (3), (c) (4) and (d) for the reasons stated in subsections (j) (1), (j) (2) and (j) (3) of this section.

(2). (e) (1) The notice for this system of records published in the Federal Register sets forth the basic statutory or related authority for maintenance of this system. However, in the course of organized crime investigations information will occasionally be obtained concerning actual or potential violations of law that are not strictly within statutory or other authority, or information may be compiled in the course of an investigation which may not be relevant to a specific prosecution. In the interests of effective law enforcement, it is necessary to retain such information in this system of records since it can aid in establishing patterns of criminal activity and can provide valuable leads for federal and other law enforcement agencies.

(3). Exemption is claimed from subsections (e) (2) and (3), (e) (4) (G), (H) and (I), (e) (5) and (8) for the reasons stated in subsections (b) (5), (b) (6), (b) (7), (b) (8), (b) (9) and (b) (10) of this section.

(4). Exemption is claimed from sections (f) and (g) for the reasons stated in subsections (j) (5) and (j) (6) of this section.

(m) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j) (2) from subsections (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G), (H) and (I), (e) (5) and (8), (f) and (g) of 5 U.S.C. 552a; in addition,

the following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(k) (1) from subsections (c) (3), (d), (e) (1), (e) (4) (G), (H) and (I) and (f) of 5 U.S.C. 552a:

Organized Crime and Racketeering Section, Criminal Division, General Index File and Associated Records System of Records (JUSTICE/CRM-012).

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j) (2) and (k) (1).

(n) The system of records listed under paragraph (m) of this section is exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1). Exemption is claimed from subsections (c) (3) and (4) and (d) for the reasons stated in subsections (j) (1), (j) (2) and (j) (3) of this section.

(2). (e) (1). The notice for this system of records published in the Federal Register sets forth the basic statutory or related authority for maintenance of this system. However, in the course of criminal investigations, cases, and matters, the Organized Crime and Racketeering Section will occasionally obtain information concerning actual or potential violations of law that are not strictly within its statutory or other authority, or may compile information in the course of an investigation which may not be relevant to a specific prosecution. In the interests of effective law enforcement, it is necessary to retain such information in this system of records since it can aid in establishing patterns of criminal activity and can provide valuable leads for federal and other law enforcement agencies.

(3). Exemption is claimed from subsections (e) (2) and (3), (e) (4) (G), (H) and (I), (e) (5) and (8), (f) and (g) for the reasons stated in subsections (b) (5), (b) (6), (b) (7), (b) (8), (b) (9), (b) (10), (b) (11) and (b) (12) of this section.

(4). In addition, exemption is claimed for this system of records from compliance with the following provisions of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to the provisions of 5 U.S.C. 552a(k) (1): subsections (c) (3), (d), (e) (1), (e) (4) (G), (H) and (I) and (f) to the extent that the records contained in this system are specifically authorized to be kept secret in the interests of national defense and foreign policy.

(o) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a(j) (2) from subsections (c) (3) and (4), (d), (e) (2) and (3), (e) (4) (G), (H) and (I), (e) (8), (f) and (g) of 5 U.S.C. 552a:

(1) Requests to the Attorney General For Approval of Applications to Federal

Judges for Electronic Interceptions System of Records (JUSTICE/CRM-019).

(2) Requests to the Attorney General For Approval of Applications to Federal Judges For Electronic Interceptions in Narcotics and Dangerous Drug Cases System of Records (JUSTICE/CRM-020).

These exemptions apply only to the extent that information in these systems are subject to exemption pursuant to 5 U.S.C. 552a(j) (2).

(p) The systems of records listed in paragraph (c) (1) and (c) (2) of this section are exempted for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1), (c) (3). The release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act, including those permitted under the routine uses published for these systems of records, would permit the subject of an electronic interception to obtain valuable information concerning the interception, including information as to whether he is the subject of a criminal investigation, by means other than those provided for by statute. Such information could interfere with the successful conduct and/or completion of a criminal investigation, and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record; such notice requirement under subsection (f) (1) is specifically exempted for these systems of records.

(2), (c) (4). Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this section is inapplicable.

(3), (d). Access to the records contained in these systems would inform the subject of an electronic interception of the existence of such surveillance including information as to whether he is the subject of a criminal investigation by means other than those provided for by statute. This could interfere with the successful conduct and/or completion of a criminal investigation and therefore present a serious impediment to law enforcement.

(4), (e) (2). In the context of an electronic interception, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the investigation and this would therefore destroy the efficacy of the interception.

(5), (e) (3). The requirement that individuals supplying information be provided with a form stating the requirements of subsection (e) (3) would constitute a serious impediment to law enforcement in that it

could compromise the existence of a confidential electronic interception or reveal the identity of witnesses or confidential informants.

(6), (e) (4) (G) and (H). Since an exemption is being claimed for subsections (f) (Agency Rules) and (d) (Access to Records) of the Act these subsections are inapplicable.

(7). Exemption is claimed from subsections (e) (4) (I) and (e) (8) for the reasons stated in subsections (b) (8) and (b) (10) of the Act.

(8), (f). Procedures for notice to an individual pursuant to subsection (f) (1) as to the existence of records pertaining to him dealing with an electronic interception other than pursuant to statute must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation pending or future. In addition, mere notice of the fact of an electronic interception could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

Since an exemption is being claimed for subsection (d) of the Act (Access to Records) the rules required pursuant to subsection (f) (2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(9), (g). Since an exemption is being claimed for subsection (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that these systems of records are exempted from subsection (d) and (f).

(q) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j) (2) from subsections (c) (3) and (4), (d), (e) (2) and (3), (e) (4) (G), (H), and (I), (e) (8), (f) and (g) of 5 U.S.C. 552a; in addition the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a (k) (1) and (k) (2) from subsections (c) (3), (d), (e) (4) (G), (H) and (I), and (f) of 5 U.S.C. 552a:

Witness Immunity Records System of Records (JUSTICE/CRM-022).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j) (2) and (k) (1) and (k) (2).

(r) The system of records listed under paragraph (q) of this section is exempted, for the reasons set forth, from the following provisions of 5 U.S.C. 552a:

(1), (c) (3) Release of the accounting of disclosures made pursuant to subsection (b) of the Act, including those permitted under

the routine uses published for this system of records, (a) as to a witness for whom immunity has been proposed, would inform the individual of the existence of the proposed immunity prematurely, thus creating a serious impediment to effective law enforcement in that the witness could flee, destroy evidence, or fabricate testimony; and (b) as to a witness to whom immunity has been granted, or for whom it has been denied, would reveal the nature and scope of the activities, if any, of the witness known to the government, which would also create a serious impediment to effective law enforcement.

(2). (c) (4) Since an exemption is being claimed for subsection (d) of the Act (Access to Records) this section is inapplicable to the extent that this system of records is exempted from subsection (d).

(3). (d) Access to the records contained in this system (a) as to a witness for whom immunity has been proposed, would inform the individual of the existence of the proposed immunity prematurely, thus presenting a serious impediment to effective law enforcement in that the witness could flee, destroy evidence, or fabricate testimony; and (b) as to a witness to whom immunity has been granted, or for whom it has been denied, would reveal the nature and scope of the activities, if any, of the witness known to the government, which would also create a serious impediment to effective law enforcement.

(4). (e) (2) In a witness immunity request matter, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the immunity request and often the subject of the underlying investigation or prosecution would be placed on notice as to the existence of the investigation and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(5). Exemption is claimed from subsections (e) (3), (e) (4) (G), (H) and (I), and (e) (8) for the reasons stated in subsections (b) (8), (b) (7), (b) (8) and (b) (10) of this section.

(6). (f). Procedures for notice to an individual pursuant to subsection (f) (1) as to the existence of records pertaining to him (a) as to a witness for whom immunity has been proposed, would inform the individual of the existence of the proposed immunity prematurely, thus presenting a serious impediment to effective law enforcement in that the witness could flee, destroy evidence, or fabricate testimony; and (b) as to a witness to whom immunity has been granted, or for whom it has been denied, would reveal the nature and scope of the activity, if any, of the witness known to the government, which would also create a serious impediment to effective law enforcement.

Since an exemption is being claimed for subsection (d) of the act (Access to Records) the rules required pursuant to subsection (f) (2) through (5) are inapplicable to this system of records to the extent that this system of records is exempted from subsection (d).

(7). (g) Since an exemption is being claimed for subsections (d) (Access to Records) and (f) (Agency Rules) this section is inapplicable, and is exempted for the reasons set forth for those subsections, to the extent that this system of records is exempted for subsections (d) and (f).

(8). In addition, exemption is claimed for this system of records from compliance with the following provisions of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to the provisions of 5 U.S.C. 552a(k) (1): subsections (c) (3), (d), (e) (1), (e) (4) (G), (H) and (I) and (f) to the extent that the records contained in this system are specifically authorized to be kept secret in the interests of national defense and foreign policy.

§ 16.92 Exemption of Land and Natural Resources Division System.

(a) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (d):

(1) Docket Card System (JUSTICE/LDN-003).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k) (2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c) (3) because that portion of the Docket Card System relating to enforcement of criminal provisions of the above statutes is being exempted from access and contest; the provisions for disclosure of accounting is not applicable.

(2) From subsection (d) because of the need to safeguard the identity of confidential informants and to facilitate the enforcement of the criminal provisions of the above statutes.

§ 16.93 Exemption of Tax Division System—Limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a (d), (e) (2) and (3):

(1) Tax Division Central Classification Cards, Index Docket Cards and Associated Records (JUSTICE/TAX-001).

These exemptions apply only to the extent that information in this system is

subject to exemption pursuant to 5 U.S.C. 552a (j) and (k).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d) because access to the records contained in this system would inform the subject of an investigation of the information and evidence obtained as to his activities, and of the identity of witnesses and informants. The knowledge gained from such access to these records would present a serious impediment to effective law enforcement because it could be used to prevent the successful prosecution of the case, endanger the physical safety of witnesses or informants, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) From subsection (e) (2) because in a criminal or other law enforcement investigation or prosecution, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

(3) From subsection (e) (3) because the requirement that individuals supplying information be provided with a form specifying the requirements of (e) (3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(c) Consistent with the legislative purpose of the Privacy Act of 1974, the Tax Division will grant access to non-exempt material in records which are maintained by the Tax Division. Disclosure will be governed by the Department's Privacy Regulations, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal, civil or regulatory violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be de-

leted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from this system will be made on a case-by-case basis.

§§ 16.94–16.95 [Reserved]

§ 16.96 Exemption of Federal Bureau of Investigation Systems—Limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (1), (2), and (3), (e) (4) (G) and (H), (e) (5) and (8), (f), (g) and (m):

(1) Central Records System (JUSTICE/FBI-002).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j) or (k).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c) (3) because the release of accounting disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement or background investigations which may involve law enforcement aspects or the compromising of classified material.

(2) From subsections (c) (4), (d), (e) (4) (G) and (H), (f) and (g) because these provisions concern individual access to records and such access might compromise ongoing investigations, reveal investigatory techniques and confidential informants, and invade the privacy of private citizens who provide information in connection with a particular investigation. In addition, exemption from subsections (d), (e) (4) (G) and (H) is necessary to protect the security of information classified in the interest of national defense and foreign policy.

(3) From subsection (e) (1) because information may be received in the course of a criminal, civil or background investigation which may involve a violation of law under the jurisdiction of another government agency but it is necessary to maintain this information in order to provide leads for appropriate law

enforcement and to establish patterns of activity which may relate to the jurisdiction of both the FBI and other agencies. In addition, classified information may be received which relates to the constitutional powers of the President or the jurisdiction of some other agency. Such information is not susceptible to segregation.

(4) From subsection (e) (2) because collecting information from the subject of criminal or national security investigations would thwart the investigation by placing the subject of the investigation on notice.

(5) From subsection (e) (3) because supplying an individual with a form containing the information specified would result in a substantial invasion of privacy of the subject of the investigation, would compromise the existence of a confidential investigation, and would inhibit private citizens from cooperating with the FBI.

(6) From (e) (8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

(7) From subsection (m) because if the system were ever operated by a contractor it would still be necessary to continue exemption from these same provisions.

(c) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G) and (H), (e) (5) and (8), (f), (g) and (m):

(1) Electronic Surveillance (Elsur) Indices (JUSTICE/FBI-006).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c) (3) because the release of accounting disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, resulting in a serious impediment to law enforcement.

(2) From subsections (c) (4), (d) (e) (4) (G) and (H), and (g) because these provisions concern an individual's access to records which concern him and such access to records in this system

would compromise ongoing investigations, reveal investigatory techniques and confidential informants, and invade the privacy of private citizens who provide information in connection with a particular investigation.

(3) From subsection (e) (1) because these indices must be maintained in order to provide the information as described in the "routine uses" of this particular system.

(4) From subsections (e) (2) and (3) because compliance is not feasible given the subject matter of the indices.

(5) From subsection (e) (5) because this provision is not applicable to the indices in view of the "routine uses" of the indices. For example, it is impossible to predict when it will be necessary to utilize information in the system and, accordingly it is not possible to determine when the records are timely.

(6) From subsection (e) (8) because the notice requirement could present a serious impediment to law enforcement by revealing investigative techniques, procedures and the existence of confidential investigations.

(7) From subsection (m) for the reasons stated in subsection (b) (7) of this section.

(e) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G) and (H), (e) (5) and (8), (f), (g) and (m):

(1) Identification Division Records System (JUSTICE/FBI-009).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c) (3) for the reasons stated in subsection (d) (1) of this section.

(2) From subsections (c) (4), (d), (e) (4) (G) and (H), (f) and (g) because these provisions concern an individual's access to records which concern him. Such access is directed at allowing the subject of a record to correct inaccuracies in it. Although an alternate system of access has been provided in 28 CFR 16.30 to 34 and 28 CFR 20.34, the vast majority of records in this system concern local arrests which it would be inappropriate for the FBI to undertake to correct.

(3) From subsection (e) (1) because it is impossible to state with any degree of certainty that all information on these records is relevant to accomplish a purpose of the FBI, even though acquisition of the records from state and local law enforcement agencies is based on a statutory requirement. In view of the number of records in the system it is impossible to review them for relevancy.

(4) From subsection (e) (2) because the records in the system are necessarily furnished by criminal justice agencies due to their very nature.

(5) From subsection (e) (3) because compliance is not feasible due to the nature of the records.

(6) From subsection (e) (5) because the vast majority of these records come from local criminal justice agencies and it is administratively impossible to ensure that the records comply with this provision. Submitting agencies are, however, urged on a continuing basis to ensure that their records are accurate and include all dispositions.

(7) From subsection (e) (8) because the FBI has no logical manner to ascertain whether process has been made public and compliance with this provision would, in any case, provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

(8) From subsection (m) for the reasons stated in subsection (b) (7) of this section.

(g) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G) and (H), (e) (8), (f), (g) and (m):

(1) National Crime Information Center (NCIC) (JUSTICE/FBI-001).

These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j).

(h) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c) (3) for the reasons stated in subsection (d) (1) of this section.

(2) From subsections (c) (4), (d), (e) (4) (G) and (H), and (g) for the reasons stated in subsection (d) (2) of this section. When records are properly subject to access by the individual, an alternate means of access is provided in subsection (i) of this section.

(3) From subsection (e) (1) because information contained in this system is primarily from state and local records, and it is for the official use of agencies outside the Federal Government in accordance with 28 U.S.C. 534.

(4) From subsections (e) (2) and (3) because it is not feasible to comply with these provisions given the nature of this system.

(5) From subsection (e) (8) for the reasons stated in subsection (d) (6) of this section.

(6) From subsection (m) for the reasons stated in subsection (b) (7) of this section.

(i) Access to computerized criminal history records in the National Crime Information Center is available to the individual who is the subject of the record pursuant to procedures and requirements specified in the Notice of Systems of Records compiled by the National Archives and Records Service and published under the designation:

National Crime Information Center (NOIC (JUSTICE/FBI-001)).

Information on access is also published in the Appendix to Part 20 of the Code of Federal Regulations in relation to 28 CFR 20.34.

§ 16.97 Exemption of Bureau of Prisons Systems—Limited access.

(a) The following systems of records are exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (2) and (3), (e) (4) (H), (e) (8), (f) and (g):

(1) Custodial and Security Record System (JUSTICE/BOP-001).

(2) Industrial Inmate Employment Record System (JUSTICE/BOP-003).

(3) Inmate Administrative Remedy Record System (JUSTICE/BOP-004).

(4) Inmate Central Record System (JUSTICE/BOP-005).

(5) Inmate Commissary Accounts Record System (JUSTICE/BOP-006).

(6) Inmate Physical and Mental Health Record System (JUSTICE/BOP-007).

(7) Inmate Safety and Accident Compensation Record System (JUSTICE/BOP-008).

(8) Federal Tax Claims Act Record System (JUSTICE/BOP-009).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because inmates will not be permitted to gain access or to contest contents of these record systems under the provisions of subsection (d) of 5 U.S.C. 552a. Revealing disclosure accountings can compromise legitimate law enforcement activities and Bureau of Prisons responsibilities.

(2) From subsection (c)(4) because exemption from provisions of subsection (d) will make notification of formal disputes inapplicable.

(3) From subsection (d) because exemption from this subsection is essential to protect internal processes by which Bureau personnel are able to formulate decisions and policies with regard to federal prisoners, to prevent disclosure of information to federal inmates that would jeopardize legitimate correctional interests of security, custody, or rehabilitation, and to permit receipt of relevant information from other federal agencies, state and local law enforcement agencies, and federal and state probation and judicial offices.

(4) From subsection (e)(2) because primary collection of information directly from federal inmates about criminal sentences or criminal records is highly impractical and inappropriate.

(5) From subsection (e)(3) because in view of the Bureau of Prisons' responsibilities, application of this provision to its operations and collection of information is inappropriate.

(6) From subsection (e)(4)(H) because exemption from provisions of subsection (d) will make publication of agency procedures under this subsection inapplicable.

(7) From subsection (e)(8) because the nature of Bureau of Prisons law enforcement activities renders notice of compliance with compulsory legal process impractical.

(8) From subsection (f) because exemption from provisions of subsection (d) will render compliance with provisions of this subsection inapplicable.

(9) From subsection (g) because exemption from provisions of subsection (d) will render provisions of this subsection inapplicable.

(c) Consistent with the legislative purpose of the Privacy Act of 1974 (Pub. L. 93-579) the Bureau of Prisons will

initiate a procedure whereby federal inmates in custody may gain access and review their individual prison files maintained at the institution of incarceration. Access to these files will be limited only to the extent that the disclosure of records to the inmate would jeopardize internal decision-making or policy determinations essential to the effective operation of the Bureau of Prisons; to the extent that disclosure of the records to the inmate would jeopardize privacy rights of others, or a legitimate correctional interest of security, custody, or rehabilitation; and to the extent information is furnished with a legitimate expectation of confidentiality. The Bureau of Prisons will continue to provide access to former inmates under existing regulations as is consistent with the interests listed above. Under present Bureau of Prisons regulations, inmates in federal institutions may file administrative complaints on any subject under the control of the Bureau. This would include complaints pertaining to information contained in these systems of records."

§ 16.98 Exemption of Drug Enforcement Administration Systems.

(a) The following systems of records are exempt from 5 U.S.C. 552a (c)(3), (d), (e)(4) (G) and (H), and (f):

(1) Automated Records and Consummated Orders System/Diversion Analysis and Detection System (ARCOS/DADS) (JUSTICE/DEA-004).

(2) Controlled Substances Act Registration Records (JUSTICE/DEA-006).

(3) Registration Status/Investigation Records (JUSTICE/DEA-016).

(4) Drug Theft Reporting System (JUSTICE/DEA-023).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the revealing of the disclosure accounting pursuant to the routine uses published for these systems would enable the subject of an investigation to gain valuable information concerning the nature and scope of the investigation and seriously hamper the regulatory functions of the Drug Enforcement Administration.

(2) From subsection (d) because access to records contained in these sys-

tems might provide the subject of an investigation information that could enable him to avoid compliance with the Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91-513).

(3) From subsections (e) (4) (G) and (H) because these systems or records are exempt from individual access pursuant to subsection (k) of the Act.

(4) From subsection (f) because these systems are exempt from the access provisions of subsection (d).

(c) The following systems of records are exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G) and (H), (e) (5) and (8), (f), (g) and (h):

(1) Addict/Abusers System (JUSTICE/DEA-001).

(2) Air Intelligence Program (JUSTICE/DEA-002).

(3) Automated Intelligence Records (Pathfinder I) (JUSTICE/DEA-003).

(4) DEA/FAA Trans-border Flight Plan Reporting System (JUSTICE/DEA-007).

(5) Defendant Data System (JUSTICE/DEA-008).

(6) Domestic Intelligence Data Base (JUSTICE/DEA-009).

(7) International Intelligence Data Base (JUSTICE/DEA-011).

(8) Investigative Reporting and Filing System (JUSTICE/DEA-012).

(9) Office of Internal Security Records (JUSTICE/DEA-014).

(10) Operations Files (JUSTICE/DEA-015).

(11) Security Files (JUSTICE/DEA-017).

(12) Source Registry Narcotics (SRN/1) (JUSTICE/DEA-018).

(13) System to Retrieve Information from Drug Evidence (STRIDE) (JUSTICE/DEA-019).

(14) Drug Enforcement Administration Semi-Automated Narcotic Trafficker Profiles (KISS) (JUSTICE/DEA-025).

(15) Drug Enforcement Administration Specialized Automated Intelligence Files (JUSTICE/DEA-026).

These exemptions apply only to the extent that information in these systems is subject to exemptions pursuant to 5 U.S.C. 552a (j) and (k).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From (c) (3) because the release of the disclosure accounting for disclosure pursuant to the routine uses published

for these systems would permit the subject of a criminal investigation to obtain valuable information concerning the nature of that investigation and present a serious impediment to law enforcement.

(2) From subsection (c) (4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(3) From subsection (d) because access to records contained in these systems would alert a subject to the existence of an investigation and thereby provide information to the subject which might enable him to avoid detection or apprehension, and present serious impediment to law enforcement.

(4) From subsection (e) (1) because in the course of criminal investigations, the Drug Enforcement Administration often detects violation of non-drug related laws. In the interests of effective law enforcement, it is necessary that DEA retain all information obtained in criminal investigations because it can aid in establishing patterns of criminal activity and assist other law enforcement agencies that are charged with enforcing other segments of criminal law.

(5) From subsection (e) (2) because information collected to the greatest extent possible from the subject individual of a criminal investigation would provide the subject with valuable information which might preclude detection or apprehension of the subject individual.

(6) From subsection (e) (3) because the requirement that individuals supplying information be provided a form stating the requirements of subsection (e) (3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life or physical safety of confidential informants.

(7) From subsections (e) (4) (G) and (H) because these systems of records are exempt from individual access pursuant to subsection (j) of the Privacy Act of 1974.

(8) From subsection (e) (5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information

can only be determined in a court of law. The restrictions imposed by subsection (e) (5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(9) From subsection (e) (8) because the individual notice requirements could present a serious impediment to law enforcement by interfering with the Drug Enforcement Administration's ability to issue administrative techniques and procedures.

(10) From subsection (f) because these systems have been exempted from the access provisions of subsection (d).

(11) From subsections (g) and (h) because these systems are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(e) The following systems of records are from 5 U.S.C. 552a (d) (1) and (e) (1).

(1) Grants of Confidentiality Files (GCF) (JUSTICE/DEA-022).

(2) DEA Applicant Investigations (JUSTICE/DEA-024).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k) (5).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d) (1) because many persons are contacted who, without an assurance of anonymity, refuse to provide information concerning an applicant for a grant of confidentiality with DEA. Permitting access to the information supplied by persons after a promise of confidentiality has been given could reveal the identity of the source of the information and constitute a breach of the promised confidentiality on the part of the Drug Enforcement Administration. Such breaches ultimately would restrict the free flow of information vital to a determination of an applicant's qualifications for a grant.

(2) From (e) (1) because in the collection of information for investigative and evaluative purposes, it is impossible to determine in advance what exact information may be of assistance in determining the qualifications and suitability of a candidate. Information which may appear irrelevant, when combined with

other apparently irrelevant information can on occasion, provide a composite picture of an applicant which assists in determining whether a grant of confidentiality is warranted.

§ 16.99 Exemption of Immigration and Naturalization Service System—Limited access.

(a) The following subsystems of the Immigration and Naturalization Service Index System are exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4) (G), (H) and (I), (e) (5) and (8), (f), (g), and (h):

(1) Agency Information Control Record Index.

(2) Alien Enemy Index.

(3) Centralized Index.

(4) Congressional Mail Unit Index.

(5) Air Detail Office Index.

(6) Anti-smuggling Index (general).

(7) Anti-smuggling Information Centers Systems for Canadian and Mexican Borders.

(8) Border Patrol Sectors General Index System.

(9) Contact Index.

(10) Criminal, Immoral, Narcotic, Racketeer and Subversive Indexes.

(11) Enforcement Correspondence Control Index System.

(12) Document Vendors and Alterers Index.

(13) Informant Index.

(14) Suspect Third Party Index.

(15) Examination Correspondence Control Index.

(16) Extension Training Enrollee Index.

(17) Intelligence Index.

(18) Naturalization and Citizenship Indexes.

(19) Personnel Investigations Unit Indexes.

(20) Service Look-Out Subsystem.

(21) White House and Attorney General Correspondence Control Index.

(22) Fraudulent Document Center Index.

(23) Emergency Reassignment Index.

These exemptions apply to the extent that information in these subsystems is subject to exemption pursuant to 5 U.S.C. 552a (j) and (k).

These exemptions apply to the extent that information in these subsystems is subject to exemption pursuant to 5 U.S.C. 552a (j) and (k).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c) (3) because the release of the disclosure accounting for disclosure pursuant to the routine uses published for these subsystems would permit the subject of a criminal or civil investigation to obtain valuable information concerning the nature of that investigation and present a serious impediment to law enforcement.

(2) From subsection (c) (4) since an exemption is being claimed for subsection (d), this subsection will not be applicable.

(3) From subsection (d) because access to the records contained in these subsystems would inform the subject of a criminal or civil investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and present a serious impediment to law enforcement.

(4) From subsection (e) (1) because in the course of criminal or civil investigations, the Immigration and Naturalization Service often obtains information concerning the violation of laws other than those relating to violations over which INS has investigative jurisdiction. In the interests of effective law enforcement, it is necessary that INS retain this information since it can aid in establishing patterns of criminal activity and provide valuable leads for those law enforcement agencies that are charged with enforcing other segments of the criminal law.

(5) From subsection (e) (2) because in a criminal or civil investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection or apprehension.

(6) From subsection (e) (3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e) (3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life or physical safety of confidential informants.

(7) From subsections (e) (4) (G) and (H) because these subsystems of records are exempt from individual access pur-

suant to subsection (j) of the Privacy Act of 1974.

(8) From subsection (e) (4) (I) because the Immigration and Naturalization Service maintains the confidentiality of sources of information in order to protect their privacy and physical safety and to maintain the confidentiality of their cooperation. The publication of categories of sources would constitute a breach of confidentiality on the part of INS and restrict the free flow of information essential to effective law enforcement.

(9) From subsection (e) (5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e) (5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(10) From subsection (e) (8) because the individual notice requirements of subsection (e) (8) could present a serious impediment to law enforcement as this could interfere with the Immigration and Naturalization Service's ability to issue administrative subpoenas and could reveal investigative techniques and procedures.

(11) From subsection (f) because these subsystems of records have been exempted from the access provisions of subsection (d).

(12) From subsection (g) because these subsystems of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(13) From subsection (h) because to permit the parent of any minor, or the legal guardian of an individual who has been legally declared incompetent to obtain access to a record which is exempt to the individual would be a serious impediment to law enforcement in that it would enable the individual by himself or through the aid of others, to avoid detection or apprehension.

(14) In addition, these subsystems of records are exempt from compliance with

the following provisions of the Privacy Act of 1974 (5 U.S.C. 552a), subsections (c) (3), (d), (e) (1), (e) (4) (G), (H) and (I), and (f) to the extent that the records contained in these subsystems are classified pursuant to Executive order.

(c) The Border Patrol Academy Index Subsystem is exempt from 5 U.S.C. 552a (d) and (f).

This exemption applies only to the extent that information in this subsystem is subject to exemption pursuant to 5 U.S.C. 552a(k).

(d) Exemptions for the particular subsections are justified for the following reasons.

(1) From subsection (d) because exemption is claimed only for those testing and examination materials used to determine an individual's qualifications for retention and promotion in the Immigration and Naturalization Service. This is necessary to protect the integrity of testing materials and to insure fair and uniform examinations.

(2) From subsection (f) because the subsystem of records has been exempted from the access provisions of subsection (d).

§ 16.100 Exemption of Law Enforcement Assistance Administration System—Limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a (d), (e) (4) (G) and (H), and (f):

(1) Investigative System (JUSTICE/LEAA-003).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (d) because access to the investigation records contained in this system would inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of witnesses and informants, or would provide information that could enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement because they could prevent the successful completion of the investigation.

(2) From subsections (e) (4) (G) and (H) because an exemption is being claimed from subsection (d).

(3) From subsection (f) because notice to an individual pursuant to this subsection as to the existence of records pertaining to him dealing with an actual or potential criminal investigation or prosecution must be exempt because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or prosecution, pending or future. Additionally, mere notice of the fact of an investigation could inform the subject, or others that their activities are under or may come under an investigation and could enable the subjects to avoid detection or apprehension, to destroy evidence, and to fabricate testimony.

(c) Consistent with the legislative purpose of the Privacy Act of 1974, the Law Enforcement Assistance Administration will grant access to nonexempt material in the Investigative System (JUSTICE/LEAA-003). Disclosure to subjects of records contained in this system will be governed by the Department's Privacy Regulations but will be limited to the extent that subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation, the physical safety of witnesses, and law enforcement personnel, the privacy of third parties will not be violated, and that the disclosure would not otherwise present an impediment to effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. Decisions to release information from this system will be made on a case-by-case basis.

§ 16.101 Exemption of U.S. Marshals Service Systems—Limited access, as indicated.

(a) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (2) and (3), (e) (4) (G) and (H), (e) (8), and (f) and (g):

(1) Warrant Information System (JUSTICE/USM-007).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c) (3) because the release of disclosure accounting for disclosure made pursuant to subsection (b) of the Act, including those permitted under routine uses published for this system of records would permit a person to determine whether he is the subject of a criminal investigation, and to determine whether a warrant has been issued against him, and therefore present a serious impediment to law enforcement.

(2) From subsection (c) (4) since an exemption is being claimed for subsection (d) of the Act, this section is inapplicable.

(3) From subsection (d) because access to records would inform a person for whom a federal warrant has been issued of the nature and scope of information obtained as to his activities, of the identity of informants, and afford the person sufficient information to enable the subject to avoid apprehension. These factors would present a serious impediment to law enforcement in that they would thwart the warrant process and endanger lives of informants etc.

(4) From subsection (e) (2) because the requirement that information be collected to the greatest extent practical from the subject individual would present a serious impediment to law enforcement because the subject of the investigation or prosecution would be placed on notice as to the existence of the warrant and would therefore be able to avoid detection or apprehension.

(5) From subsection (e) (3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e) (3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal identity of confidential informants.

(6) From subsections (e) (4) (G) and (H) since an exemption is being claimed for subsections (f) and (d) of the Act, these subsections are inapplicable.

(7) From subsection (e) (8) because the individual notice requirement of this subsection would present a serious impediment to law enforcement in that it would give persons sufficient warning to avoid warrants, subpoena, etc.

(8) From subsection (f) because procedures for notice to an individual pursuant to subsection (f) (1) as to existence of records pertaining to him dealing with warrants must be exempted because such notice to individuals would be detrimental

to the successful service of a warrant. Since an exemption is being claimed for subsection (d) of the Act the rules required pursuant to subsections (f) (2) through (5) are inapplicable to this system of records.

(9) from subsection (g) since an exemption is being claimed for subsection (d) and (f) this section is inapplicable and is exempted for the reasons set forth for these subsections.

(c) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (2) and (3), (e) (4) (G) and (H), (e) (8), (f) (2) and (g):

(1) Witness Security System (JUS-TICE/USM-008).

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j) (2).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c) (3) because the release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act including those permitted under routine uses published for this system of records would hamper the effective functioning of the Witness Security Program which by its very nature requires strict confidentiality vis-a-vis the records.

(2) From subsection (c) (4) for the reason stated in (b) (2) of this section.

(3) From subsection (d) because the United States Marshals Service Witness Security Program aids efforts of law enforcement officials to prevent, control or reduce crime. Access to records would present a serious impediment to effective law enforcement through revelation of confidential sources and through disclosure of operating procedures of the program, and through increased exposure of the program to the public.

(4) From subsection (e) (2) because in the Witness Security Program the requirement that information be collected to the greatest extent possible from the subject individual would constitute an impediment to the program, which is sometimes dependent on sources other than the subject witness for verification of information pertaining to the witness.

(5) From subsection (e) (3) for the reason stated in (b) (5) of this section.

(6) From subsections (e) (4) (G) and (H) for the reason stated in (b) (6) of this section.

(7) From subsection (e)(8) for the reason stated in (b)(7) of this section.

(8) From subsection (f)(2) since an exemption is being claimed for subsection (d) of the Act the rules required pursuant to subsection (f)(2) through (5) are inapplicable to this system of records.

(9) From subsection (g) for the reason stated in (b)(9) of this section.

(e) The following system of records is exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (2) and (3), (e) (4) (G) and (H), (f) and (g):

(1) Internal Inspection Information System (JUSTICE/USM-002)—Limited access.

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(5).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting for disclosures made pursuant to subsection (b) of the Act where disclosure of such record would reveal a source who furnished information to the government in confidence.

(2) From subsection (a)(4) for the reason stated in (b)(2) of this section.

(3) From subsection (d) because access to information in this system which was obtained from a confidential source would impede the effective investigation into employee conduct for purposes of determining suitability, eligibility, or qualifications for Federal employment in that it would inhibit furnishing of information by sources which desire to remain confidential.

(4) From subsection (e)(2) for the reason stated in (b)(4) of this section.

(5) From subsection (e)(3) for the reason stated in (b)(5) of this section.

(6) From subsections (e)(4) (G) and (H) for the reason stated in (b)(6) of this section.

(7) From subsection (f) for the reason stated in (b)(8) of this section.

(8) From subsection (g) for the reason stated in (b)(9) of this section.

(g) Consistent with the legislative purpose of the Privacy Act of 1974, the United States Marshals Service will grant access to nonexempt material in records which are maintained by the Service. Disclosure will be governed by the Department's Privacy Regulations,

but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal, civil or regulatory violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered; the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from this system will be made on a case-by-case basis.

PART 17—REGULATIONS RELATING TO THE CLASSIFICATION AND DECLASSIFICATION OF NATIONAL SECURITY INFORMATION AND MATERIAL PURSUANT TO EXECUTIVE ORDER NO. 11652

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AUTHORITY: Executive Order No. 11652 of March 8, 1972, sections 509 and 510 of title 28, United States Code.

SOURCE: Order No. 489-72, 37 F.B. 15645, Aug. 3, 1972, unless otherwise noted.

Subpart A—General Provisions**§ 17.1 Purpose and effect.**

(a) The purpose of these regulations is to insure that official information and materials originating in or coming under the control or jurisdiction of the Department which require classification or which are classified in the interest of national security, in accordance with provisions of the Executive order, are protected against unauthorized disclosure, but only to the extent and for such period as is necessary.

(b) No information or material originated within the Department shall be classified in the interest of national security except in accordance with these regulations, the order, directives issued pursuant to the order through the National Security Council (the "Direc-

tives"), or the Atomic Energy Act of 1954, as amended (the "Atomic Energy Act"). [Order No. 489-72, 37 FR 15845, Aug. 3, 1972, as amended by Order No. 534-73, 38 FR 22777, Aug. 24, 1973]

§ 17.2 Applicability.

(a) These regulations apply to classified information and material relating to national security as defined herein, and no information or material shall be classified hereunder unless it requires protective safeguarding in the interest of national security.

(b) The assignment of a classification under these regulations to information or material which does not require safeguarding in the interest of national security is hereby strictly prohibited.

(c) Information and material shall only be classified under these regulations in accordance with the tests for assigning a classification category set forth in Subpart C of this part. Under no circumstances shall information or material be classified under these regulations to conceal inefficiency or administrative error, to prevent embarrassment to an individual or the Department, to restrain competition or independent initiative or to prevent for any other reason the release of information or material which does not require protection in the interest of national security. Each person possessing classifying authority pursuant to Subpart E of this part, shall be held accountable for the propriety of the classifications attributable to him.

§ 17.3 Responsibility.

Responsibility for observance of the rules governing classification, declassification, and protection of national security information and material originating in or coming under the control or jurisdiction of the Department shall be the obligation and duty of each individual officer or employee of the Department having such information or knowledge thereof, no matter how that information or material was obtained; and in meeting that responsibility each officer or employee shall comply with the provisions of the Order, the directives, and these regulations. If an officer or employee holding classified information or material believes that the information or material is unnecessarily or improperly classified, or that the information or material is subject to declassification under the Order, the directives or these regulations, he shall so inform the classifying

authority who shall thereupon reexamine the classification.

§ 17.4 Orientation.

It shall be the duty of each officer and employee of the Department having knowledge of classified information or material relating to the national security no matter how such knowledge was obtained to familiarize himself with, and adhere to these regulations relating to the classification, declassification, and protection of national security information and material. It shall be the duty of the Security Office of the Department to establish an orientation program throughout the Department for the instruction and familiarization of employees with these regulations. Such program shall initially emphasize the changes in the rules governing classification, declassification, and protection of national security information and material resulting from the Order, the directives and these regulations. In addition, the Security Office shall establish a continuing program for the instruction of employees regarding national security information or material and the requirements of these regulations.

§ 17.5 Construction.

Nothing in these regulations shall be construed to authorize or permit the dissemination, handling, or transmission of classified information or material in a manner contrary to the provisions of any Federal statute, Executive order or directive.

§ 17.6 Interpretation.

The Attorney General, upon the request of the head of a Division made through the Security Office of the Department, shall, personally or through the Department Review Committee, render an interpretation of these regulations in connection with any problem arising out of the administration thereof.

§ 17.7 Penalties for violation and administrative action.

Any officer or employee who violates any provision of the order, of the directives, or of these regulations shall be subject to appropriate disciplinary action. The Department Review Committee established by § 17.38 hereof shall recommend to the Attorney General such prompt and stringent administrative action as it deems appropriate to be taken against any officer or employee determined to have been knowingly respon-

sible for any failure to classify, or release or disclosure of classified national security information or material except in the manner authorized by these regulations, or knowingly responsible for classification of information or material not related to the national security, or not meeting the tests for assigning a classification set forth in Subpart C of this part, or knowingly responsible for overclassifying information or material relating to the national security. Such action may include, but shall not be limited to, notifications by warning letter, formal reprimand, and to the extent permitted by law, suspension without pay and removal. In all cases, upon receipt of such recommendation, the Attorney General shall act promptly and advise the Department Review Committee of his action. Whenever a violation of criminal statutes may be involved in a deliberate unauthorized release or disclosure of classified national security information or material, criminal prosecution, in an appropriate case, shall also be instituted.

§ 17.8 The Atomic Energy Act: Restricted data; and intelligence and cryptography.

Nothing in these regulations shall supersede any requirements made by or under the Atomic Energy Act. "Restricted Data" and material designated as "Formerly Restricted Data" shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act and the regulations of the Atomic Energy Commission. Further, nothing in these regulations shall prohibit compliance with any special requirements that another department or agency may impose as to classified information or material relating to communications intelligence, cryptography, and related matters originated by that department or agency.

Subpart B—Definitions

§ 17.8a Definitions.

As used in these regulations the following terms shall have the meanings indicated:

(a) *Classification.* The determination that official information requires, in the interest of national security, a specific degree of protection against unauthorized disclosure, coupled with

the designation of the appropriate classification category.

(b) *Classification categories.* The "Top Secret," "Secret," and "Confidential" designations of classified information or material as defined herein.

(c) *Classified information.* Official information which has been determined to require, in the interest of national security, protection against unauthorized disclosure and to which an appropriate classification category has been applied.

(d) *Classifying authority.* Any officer or employee of the Department who is authorized in writing to assign a classification to information or material pursuant to Subpart E of this part, and, with respect to specific classified national security information or material, an officer or employee of the Department who assigned the classification thereto.

(e) *Compromise.* The known or suspected exposure of classified material to an unauthorized person.

(f) *Custodian.* An individual who has possession of or is otherwise charged with the responsibility for safeguarding and accounting for classified information or material.

(g) *Cryptographic system.* Any method or system employed to change information from plain language form into coded form, or from coded form into plain language form.

(h) *Declassification.* The determination that particular classified information or material no longer requires, in the interest of national security, protection against unauthorized disclosure, coupled with a removal or cancellation of the classification designation. Such determination and removal or cancellation shall be by specific action or automatically on a specified date, upon the occurrence of a specified event, under the General Declassification Schedule, or after 30 years. If such determination and removal or cancellation is by specific action the material shall be so marked.

(i) *Department.* The Department of Justice, including all Divisions, Bureaus, Services, Offices, Administrations and Boards of the Department, as well as the offices of the U.S. Attorneys and U.S. Marshals.

(j) *Division.* All Divisions, Bureaus, Services, Offices, Administrations and Boards of the Department, and includes

offices of the U.S. Attorneys and U.S. Marshals.

(k) *Document*. Any recorded official information regardless of its physical form or characteristics, including, without limitation, written or printed material; data processing cards and tapes; maps and charts; paintings; drawings; engravings; sketches; working notes and papers; reproductions of such things by any means or process; and sound, voice, or electronic recordings in any form.

(l) *Downgrading*. The determination that particular classified information or material requires a lower degree of protection against unauthorized disclosure than currently provided, coupled with a changing of the classification designation to reflect such lower degree. Such determination and changing shall be by specific action or automatically on a specified date, upon the occurrence of a specified event, under the General Declassification Schedule, or after 30 years. If such determination and changing is by specific action the information or material shall be so marked.

(m) *Formerly Restricted Data*. Information or material removed from the "Restricted Data" category upon determination jointly by the Atomic Energy Commission and Department of Defense that such information or material relates primarily to the military utilization of atomic weapons and that such information or material can be adequately safeguarded as classified national security information or material.

(n) *Information*. Knowledge which can be communicated by any means.

(o) *Material*. Any document, product or substance, on or in which information may be recorded or embodied.

(p) *National security*. Any matters relating to the national defense or the foreign relations of the United States.

(q) *Nonrecord material*. Extra copies and duplicates, and shall also include shorthand notes, preliminary drafts, used carbon paper, onetime typewriter ribbons, and other material of similar temporary nature.

(r) *Official information*. Information which is owned by, produced by, or subject to the control of the U.S. Government.

(s) *Record material*. All documentary material made or received by a department or agency of the Government in connection with transaction of public business and preserved as evidence of the organization, functions, policies, opera-

tions, decisions, procedures, or other activities of any department or agency of the Government, or because of the informational value of the data contained therein.

(t) *Restricted data*. All data, information, and material concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but not to include data declassified or removed from the "Restricted Data" category pursuant to section 142 of the Atomic Energy Act.

(u) *Sensitive intelligence information*. Such intelligence information, the unauthorized disclosure of which could lead to counteraction (1) jeopardizing the continued productivity of intelligence sources or methods which provide intelligence affecting the national security, or (2) offsetting the value of intelligence affecting the national security.

(v) *Upgrading*. The determination that particular classified information or material requires, in the interest of national security, a higher degree of protection against unauthorized disclosure than currently provided, coupled with a changing of the classification designation to reflect such higher degree. Such material shall be marked to reflect the change pursuant to the requirements of § 17.40.

Subpart C—Classification Categories

§ 17.9 Classification categories.

Official information or material which requires protection against unauthorized disclosure in the interest of national security shall be limited to three categories of classification, which, in descending order of importance, shall carry one of the following designations: "Top Secret," "Secret," or "Confidential."

§ 17.10 Scope of categories.

No other categories shall be used to classify official information or material as requiring protection in the interest of national security except as otherwise provided by statute or in these regulations. Additional warning notices as specified in § 17.44 or other limitations on access promulgated under § 17.63 hereof may be placed on any classified official information or material.

§ 17.11 Top Secret.

Except as may be otherwise expressly provided by statute, the use of the classi-

fication "Top Secret" shall be authorized by the appropriate classifying authority only for national security information or material which requires the highest degree of protection. The "Top Secret" classification shall be applied only to that information or material the national security aspect of which is paramount, and the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to the national security. Examples of "exceptionally grave damage" include, but are not limited to, disruption of foreign relations vitally affecting the national security; armed hostilities against the United States or its allies; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; or the disclosure of scientific or technological developments vital to the national security. This classification shall be used with utmost restraint.

§ 17.12 Secret.

Except as may be otherwise expressly provided by statute, the use of the classification "Secret" shall be authorized by the appropriate classifying authority only for national security information or material which requires a substantial degree of protection. The "Secret" classification shall be applied only to that information or material the unauthorized disclosure of which could reasonably be expected to cause serious damage to the national security. Examples of "serious damage" include, but are not limited to, disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plants or intelligence operations; or compromise of significant scientific or technological developments relating to national security. This classification shall be sparingly used.

§ 17.13 Confidential.

Except as may be otherwise expressly provided by statute, the use of the classification "Confidential" shall be authorized by the appropriate classifying authority only for national security information or material which requires protection. The "Confidential" classification shall be applied only to that information or material the unauthorized disclosure of which could reasonably be

expected to cause damage to the national security.

Subpart D—Classification Procedures

§ 17.14 Documents.

Each document or other material containing national security information requiring protection under the order shall be marked with its assigned classification at the time of origination. Documents shall be classified according to their own content and not merely according to their relationship to other documents or to a classified file. Information or material containing references to classified information or material, which references do not reveal classified national security information or material, shall not be classified.

§ 17.15 Unnecessary and overclassification.

Information or material shall be assigned to the lowest classification category consistent with its proper protection. Unnecessary classification and overclassification shall be scrupulously avoided in order to prevent depreciation of the importance of properly classified information or material, to eliminate unnecessary withholding from the public and to prevent unnecessary delay and expense in the handling, transmission, storage, and downgrading and declassification of documents and other material.

§ 17.16 Physically connected documents.

The classification of a file or group of physically connected documents shall be at least as high as that of the highest classified document therein. Documents separated from a file or group shall be handled in accordance with the individual classification.

§ 17.17 Multiple classification.

A document, product, or substance shall bear a classification at least as high as that of its highest classified component. The document, product, or substance shall bear only one overall classification, notwithstanding that pages, paragraphs, sections, or components thereof bear different classifications.

§ 17.18 Extracts and compilations.

When classified information or material from more than one source is incorporated into a new document or other material, the new document or material shall be classified at least as high as the most highly classified information or ma-

terial incorporated into such document or material. If an extract or paraphrase is based upon information or material in a classified document, and the information or material extracted or paraphrased was not in and of itself a basis for assigning a classification, such extract or paraphrase shall be classified only in accordance with its own content.

§ 17.19 Information originated by a foreign government or organization.

Classified information or material furnished to the United States by a foreign government or international organization shall either retain its original classification or be assigned an appropriate classification under Subpart C of this part. In either case the classification shall assure a degree of protection equivalent to that required by the foreign government or international organization which furnished the classified information or material.

§ 17.20 Observance of classification.

Whenever classified information or material is incorporated in another document or other material by any person other than the classifying authority, the previously assigned classification shall be reflected thereon together with the identity of the classifying authority and all other markings relevant to such incorporated information or material.

§ 17.21 Identification of classifying authority.

The highest level officer or employee authorizing a classification must be identified on the face of the information or material classified, unless the identity of such person might disclose sensitive intelligence information. In the latter instance, the Security Officer of the division shall establish procedures and maintain records by which the classifying authority can readily be identified.

§ 17.22 Resolution of doubts.

If the classifying authority has any substantial doubt as to which classification category is appropriate or as to whether the information or material should be classified at all, he should designate the less restrictive treatment.

Subpart E—Authority for Classification and Declassification

§ 17.23 Top Secret.

National security information or material may be classified "Top Secret" only

by the Attorney General and such other officials and employees of the Department as he has designated in writing pursuant to the provisions of section 2(A) of the order. Such designations shall be by title and shall also authorize "Top Secret" classification by an official or employee serving in an acting capacity in the designated office. The Attorney General shall designate the minimum number absolutely required for efficient conduct of the business of the Department.

§ 17.24 Secret and Confidential.

The Attorney General and those persons he has designated in writing pursuant to § 17.23 hereof are authorized to classify national security information or material in the "Secret" and "Confidential" categories. The Attorney General or the head of a division of the Department with "Top Secret" classification authority pursuant to § 17.23 hereof may designate in writing a minimum number of subordinates to have the authority to originally classify national security information or material in the "Secret" and "Confidential" categories or in the "Confidential" category. As in the case of "Top Secret" designations, these designations shall be by title and shall also authorize classification by an official serving in an acting capacity in the designated office. The designation of such positions shall be limited to the minimum number absolutely required for the efficient conduct of the business of the Department.

§ 17.25 Classifying authority: Personal and nondelegable.

Classifying authority of national security information or material vests in and may only be exercised by those persons authorized and designated in writing under §§ 17.23 and 17.24. Such persons may only classify information or material at the level authorized or below, and such authority may not be delegated.

§ 17.26 Authority to downgrade and declassify.

Classified national security information or material may be downgraded or declassified by the official authorizing the original classification, by a successor in the same capacity or by a supervisory official of either. In addition, national security information or material may be downgraded or declassified by any per-

son designated in writing for that purpose by the Attorney General or by the head of the originating division, and by the Department Review Committee.

§ 17.27 Authority to exempt.

Classified national security information or material may be exempted from downgrading and declassification within the time periods set by the General Declassification Schedule only by a person with "Top Secret" classifying authority as provided in § 17.23. Such person may exempt only classified information or material originated by him or under his supervision, and only if it falls within one of the categories specified in § 17.31. The use of the exemption authority shall be kept to the absolute minimum consistent with national security requirements.

§ 17.28 Procedure.

National security information or material shall be classified in the manner provided in Subpart H by the appropriate classifying authority. In extreme circumstances which require national security information or material to be classified immediately when an appropriate classifying authority is not available, an unauthorized officer or employee of the department may place a tentative classification thereon. Such tentatively classified information or material shall be safeguarded in accordance with these regulations. The tentative classifier thereof shall at the earliest possible time, and in no event later than 5 days, assure that the classification is reviewed, and confirmed or revised, by the appropriate classifying authority. When a document is marked with a classification only because it contains information or material which was previously classified within or outside the department, the classification of that document need not be submitted to a classifying authority for review.

Subpart F—Downgrading and Declassification

§ 17.29 Earlier downgrading and declassification.

Classified national security information and material shall be downgraded or declassified as soon as there are no longer any grounds for continued classification within the classification categories set forth in Subpart C hereof. At the time of classification, whenever pos-

sible, the classifying authority shall clearly mark on the information or material a specific date or event, earlier than that called for in the General Declassification Schedule set forth in § 17.30 hereof, upon which downgrading or declassification shall occur. Such dates or events shall be as early as is possible without causing damage to the national security.

§ 17.30 General declassification schedule.

Classified information and material, unless downgraded and declassified earlier under the provisions of § 17.29 or exempted from the General Declassification Schedule under § 17.31, shall be assigned a date or event on which downgrading and declassification shall occur within the prescribed limits outlined below:

(a) *Top Secret.* Information or material originally classified "Top Secret" shall become automatically downgraded to "Secret" at the end of the second full calendar year following the year in which it was originated, downgraded to "Confidential" at the end of the fourth full calendar year following the year in which it was originated, and declassified at the end of the 10th full calendar year following the year in which it was originated.

(b) *Secret.* Information and material originally classified "Secret" shall become automatically downgraded to "Confidential" at the end of the 2d full calendar year following the year in which it was originated, and declassified at the end of the 8th full calendar year following the year in which it was originated.

(c) *Confidential.* Information and material originally classified "Confidential" shall become automatically declassified at the end of the 6th full calendar year following the year in which it was originated.

The rules of this section apply to information or material classified before June 1, 1972, which is assigned to Group 4 under Executive Order No. 10501, as amended. Unless exempted, the application of the General Declassification Schedule to such information and material will commence beginning December 31, 1972. All other information or material classified before June 1, 1972, whether or not assigned to Groups 1, 2, or 3 under Executive Order No. 10501, as

amended, shall be excluded from the General Declassification Schedule.

§ 17.31 Exemptions from general declassification schedule.

Certain classified information or material may warrant some degree of protection for a period exceeding that provided in the General Declassification Schedule in § 17.30 above. An official authorized to classify information or material "Top Secret" may exempt from the General Declassification Schedule any level of classified information or material originated by him or under his supervision if it falls within one of the categories described below. In each case such official shall specify in writing on the material the exemption category being claimed and, unless impossible, a date or event for automatic declassification of the information or material involved. The use of the exemption authority shall be kept to the absolute minimum consistent with national security requirements and shall be strictly limited to information or material in the following categories:

(a) Classified information or material furnished by foreign governments or international organizations and held by the United States on the understanding that it be kept in confidence.

(b) Classified information or material specifically covered by statute, or pertaining to cryptography, or disclosing intelligence sources or methods.

(c) Classified information or material disclosing a system, plan, installation, project or specific foreign relations matter the continuing protection of which is essential to the national security.

(d) Classified information or material the disclosure of which would place a person in immediate jeopardy.

§ 17.32 Declassification of classified material after 10 years.

All classified information or material, whether classified before or after June 1, 1972, shall be subject to mandatory classification review pursuant to the provisions of Subpart G of this part at any time after the expiration of 10 years from the date of origin.

§ 17.33 Declassification of classified material after 30 years.

All classified information or material which is 30 years old or more, is subject to automatic declassification as follows:

(a) All information and material classified by the Department after June 1,

1972, shall become automatically declassified at the end of 30 full calendar years after the date of its original classification except for such specifically identified information or material as the Attorney General personally determines in writing at that time to require continued protection because such continued protection is essential to the national security, or when disclosure would place a person in immediate jeopardy. In either such case the Attorney General shall also specify the period of continuing classification.

(b) All information and material classified before June 1, 1972, and more than 30 years old shall be systematically reviewed for declassification by the Archivist of the United States by the end of the 30th full calendar year following the year it was originated. All such information and material shall be declassified except that specifically identified by the Attorney General for continued classification as set forth in paragraph (a) of this section.

§ 17.34 Notification of change in classification.

When classified information or material is downgraded or declassified in a manner other than that originally specified, the classifying authority shall, to the extent practicable, promptly notify all recipients of the classified information or material. In turn, the recipients shall notify any other known holders of the declassification or downgrading of the information or material.

Subpart G—Review of Classified Material

§ 17.35 Systematic reviews.

All information and material classified after June 1, 1972 by the Department, and evaluated under 44 U.S.C. 2101-2114 as being of sufficient historical or other value to warrant preservation, shall be systematically reviewed on a timely basis by the Department for the purpose of making such information and material publicly available in accord with the declassification determination made by the classifying authority. During each calendar year the Department shall segregate to the maximum extent reasonably possible all such information and material warranting preservation and becoming declassified at or prior to the end of such year. Promptly after the end of such year the Department, or the Archives of the United States, if trans-

ferred thereto, shall make the declassified information and material available to the public to the extent permitted by law.

§ 17.36 Mandatory review of material over 10 years old.

(a) All classified information and material specified in § 17.32 hereof shall be subject to a classification review provided:

(1) A department (any agency of the Government or other governmental unit) or a member of the public requests the review;

(2) The request is in writing and describes the classified information or material with sufficient particularity to enable the Department to identify it; and

(3) The classified information or material can be obtained with only a reasonable amount of effort.

(b) Deficient requests: When the description in a request is deficient the requester should be asked to provide as much additional identifying information as possible. Before denying a request on the ground that the information or material is not obtainable with a reasonable amount of effort, the requester should be asked to limit his request to information or material that is reasonably obtainable. If the requester then fails to describe the information or material he seeks with sufficient particularity, or it cannot be obtained with a reasonable amount of effort, the requester shall be notified of the reasons why no action will be taken and of his right to appeal the decision to the Department Review Committee.

(c) Procedure: (1) Requests for classification review under this section for documents originating within the Department of Justice should be directed to the Office of the Deputy Attorney General, Washington, D.C. 20530. The Office of the Deputy Attorney General shall assign the request to the appropriate division within the Department for action, and the latter shall immediately acknowledge receipt of the request to the requester in writing. If the requester is a member of the public and the request calls for the rendering of services requiring the charging of fees pursuant to 31 U.S.C. 483a (1970), the requester shall be so notified, and fees shall be charged in accordance with the schedule set forth in § 16.9 of this Chapter. The division shall thereafter make a deter-

mination within 30 days of receipt of the request by the Office of the Deputy Attorney General or shall give an explanation to the requester as to why further time is necessary, and provide a copy of the explanation to the Office of the Deputy Attorney General. If at the end of 60 days from receipt of the request for review no determination has been made, the requester may treat his request as having been denied as of that date and may appeal to the Department Review Committee for a determination in accordance with the procedures established by § 17.38.

(2) If the division determines that continued classification is required, the requester shall promptly be notified, and to the extent consistent with national security, provided with a brief statement as to why the requested information or material cannot be declassified. The notification shall also advise the requester that he has the right to appeal the determination and that if he wishes to exercise that right, he must submit his appeal to the Chairman, Department Review Committee, Department of Justice, Washington, D.C. 20530 within 30 days of the receipt by the requester of the determination. The procedures under which an appeal may be submitted are set forth in § 17.38(b).

(3) If the division determines that continued classification is not required, the information or material shall be declassified. If the requester is a member of the public, the division shall then determine whether the information or material is otherwise available for public release under the Freedom of Information Act (5 U.S.C. 552) and Subpart A of Part 16 of this Chapter ("Production or Disclosure Under 5 U.S.C. 552(a)").

(i) If the division determines that the information or material is not exempt from disclosure under the Freedom of Information Act or that, even though exempt, it should be made available as a matter of discretion, the requester shall be advised that it has been declassified and is available. If the request involves the furnishing of copies and a fee is to be assessed the requester shall be so advised pursuant to § 16.9(c) of Part 16 of this chapter and the schedule of fees in § 16.9(b) shall be controlling.

(ii) If the division determines that the information or material is exempt under the Freedom of Information Act and should not be disclosed, the requester shall be advised that it has been

declassified but that it will not be disclosed. The requester shall also be advised that he may appeal to the Attorney General the denial of his request pursuant to § 16.7 of the Freedom of Information Act procedure, Part 16 of this Chapter.

[Order No. 489-72, 37 FR 15645, Aug. 3, 1972, as amended by Order No. 534-73, 38 FR 22777, Aug. 24, 1973.]

§ 17.37 Mandatory review of material over 30 years old.

All classified information or material which is thirty (30) years old or more, shall be declassified in accordance with § 17.33 hereof. In addition, a department or agency of the Government or a member of the public may request a review of the classification of such information or material. Such requests should meet the conditions for requests set forth in § 17.36. Such requests shall be referred directly to the Archivist of the United States for processing. The Attorney General shall cooperate with the Archivist in the review of such request, and shall determine personally whether continued classification of such information or material is required, and specify the period of continued classification.

§ 17.38 Department Review Committee.

(a) *Purpose.* A Department Review Committee is hereby established. The Committee is responsible for the continuing review of the administration of these regulations with respect to classification and declassification of information or material originated within the Department. It shall have the authority and responsibility to—

(1) Review and act upon all appeals from denials of requests for declassification;

(2) Review all appeals of requests for information or material under the Freedom of Information Act, 5 U.S.C. 552, when the proposed denial is based on continued classification under the order;

(3) Overrule on behalf of the Attorney General classification determinations in whole or in part, when in its judgment, continued protection is not required;

(4) Recommend to the Attorney General appropriate administrative action to correct abuse or violation of any provision of the order, the directives or these regulations, including but not limited to notifications by warning letter,

formal reprimand, and to the extent permitted by law, suspension without pay or removal.

(b) *Procedure for appeal.* (1) When a division has determined that continued classification of information or material is necessary, the requester may, within 30 days of its receipt, appeal the determination to the Chairman, Department Review Committee, Department of Justice, Washington, D.C. 20530. The appeal shall be in writing, shall identify or describe the information or material for which declassification was requested, and, whenever possible, should state the reasons why the requester believes that it should be declassified.

(2) Upon receipt of an appeal, the Department Review Committee shall immediately acknowledge receipt and act on the matter within 30 days.

(3) If the Committee determines that continued classification is required it shall promptly so notify the requester and to the extent consistent with national security provide him with a brief statement as to why the requested information or material cannot be declassified. It shall also advise him that he may appeal the denial to the Interagency Classification Review Committee, Executive Office Building, Washington, D.C. 20506.

(4) If the Committee determines that continued classification is not required, it shall declassify the information or material and the requester shall be so notified. The Committee shall thereupon refer the request to the appropriate division within the Department to determine if the material is otherwise available for public release under the Freedom of Information Act (5 U.S.C. 552) and Part 16 of this Chapter ("Production or Disclosure of Material or Information") and the procedures set forth in § 17.36(c) (3) shall apply.

[Order No. 534-73, 38 FR 22773, Aug. 24, 1973, as amended by Order No. 568-74, 39 FR 18646, May 29, 1974]

§ 17.39 Burden of proof.

In making its determinations concerning requests for declassification of classified information or material the Department Review Committee shall impose for administrative purposes the burden of proof on the originating division to show that continued classification is warranted.

Subpart H—Marking Requirements**§ 17.40 Face markings.**

All classified documents, and insofar as practicable all other classified materials, shall show on the face thereof:

- (a) The overall classification assigned;
- (b) Whether the document is subject to or exempt from the General Declassification Schedule or subject to declassification at an earlier date or event;

(c) The office of origin;

(d) The date of preparation and classification, and if preparation and classification are distinct in time, the date of each should be shown; and

(e) The identity of the highest authority authorizing the classification; where the individual who signs or otherwise authenticates a document or item has also authorized the classification, no further annotation as to his identity is required.

§ 17.41 Security classification markings.

(a) *Overall and page marking of documents.* The overall classification of a document, whether or not permanently bound, or any copy or reproduction thereof, shall be conspicuously marked or stamped at the top and bottom of the outside of the front cover (if any), on the title page (if any), on the first page, on the back page, and on the outside of the back cover (if any). To the extent practicable each interior page of a document which is not permanently bound shall be conspicuously marked or stamped at the top and bottom according to its own content, including the designation "Unclassified" when appropriate.

(b) *Paragraph marking.* Whenever portions of a classified document require different levels of classification or a portion requires no classification, each section, part, or paragraph should be marked to the extent practicable to show its classification category or that it is unclassified.

(c) *Material other than documents.* If classified material cannot be marked, written notification of the information otherwise required in markings shall accompany such material.

(d) *Transmittal documents.* A transmittal document shall carry on it a prominent notation as to the highest classification of the information which is carried with it, and a legend showing

the classification, if any, of the transmittal document standing alone.

(e) *Wholly unclassified material not usually marked.* Normally, unclassified material shall not be marked or stamped "Unclassified" unless the purpose of the marking is to indicate that a decision has been made not to classify it.

§ 17.42 General declassification schedule markings.

(a) For marking documents which are subject to the General Declassification Schedule, the following stamp shall be used:

(Top Secret, Secret or Confidential)

Classified by _____ Subject to General Declassification Schedule of Executive Order 11652 Automatically Downgraded at 2-Year Intervals and Declassified on December 31, _____

(insert year)

(b) For marking documents which are to be automatically declassified on a given event or date earlier than the General Declassification Schedule the following stamp shall be used:

(Top Secret, Secret, or Confidential)

Classified by _____ Automatically Declassified on _____
(effective date or event)

(c) For marking documents which are exempt from the General Declassification Schedule the following stamp shall be used:

(Top Secret, Secret, or Confidential)

Classified by _____ Exempt From General Declassification Schedule of Executive Order 11652 Exemption Category (section 5B (1), (2), (3), or (4)) Automatically Declassified on _____
(effective date or event, if any)

Should the classifying authority inadvertently fail to mark a document with one of the foregoing stamps the document shall be deemed to be subject to the General Declassification Schedule. In the absence of a marking indicating otherwise, the officer or employee who signs or finally approves a document or other material containing classified information or material shall be deemed to be the classifying authority. If the classifying authority is other than such officer or employee he shall be identified on the stamps required in this section. The "Restricted Data and Formerly Restricted Data" stamps, below, are, in

themselves, evidence of exemption from the General Declassification Schedule.

§ 17.43 Downgrading, declassification, and upgrading markings.

(a) *Changes in markings.* Whenever a change is made in the original classification or in the date of downgrading or declassification of any classified information or material it shall be promptly and conspicuously marked to indicate the change, the authority for the action, the date of the action, and the identity of the person taking the action. In addition, all earlier classification markings shall be canceled, if practicable; in any event, those on the first page shall be canceled.

(b) *Limited use of posted notice for large quantities of material.* When the volume of information or material is such that prompt remarking of each classified item could not be accomplished without unduly interfering with operations, the custodian may attach downgrading, declassification, or upgrading notices to the storage unit in lieu of the remarking otherwise required. Each notice shall indicate the change, the authority for the action, the date of the action, the identity of the person taking the action and the storage units to which it applies. When individual documents or other materials are withdrawn from such storage units they shall be promptly remarked in accordance with the change, or if the documents have been declassified, the old markings shall be canceled.

(c) *Transfer of stored quantities covered by posted notice.* When information or material subject to a posted downgrading, upgrading, or declassification notice are withdrawn from one storage unit solely for transfer to another, or a storage unit containing such documents or other materials is transferred from one place to another, the transfer may be made without remarking if the notice is attached to or remains with each shipment.

§ 17.44 Additional warning notice markings.

In addition to the marking requirements set forth in §§ 17.40–17.43 warning notices shall be prominently displayed on classified documents or materials as prescribed in paragraphs (a), (b), (c), and (d) of this section. When display of these warning notices on the documents or other materials is not feasible, the

warnings shall be included in the written notification of the assigned classification.

(a) *Restricted Data.* For classified information or material containing "Restricted Data":

RESTRICTED DATA

This document contains Restricted Data as defined in the Atomic Energy Act of 1954. Its dissemination or disclosure to any unauthorized person is prohibited.

(b) *Formerly Restricted Data.* For classified information or material containing solely "Formerly Restricted Data":

FORMERLY RESTRICTED DATA

Unauthorized disclosure subject to Administrative and Criminal Sanctions, Handle as Restrictive Data in foreign dissemination. Section 144.b, Atomic Energy Act, 1954.

(c) *Information Other Than Restricted Data or Formerly Restricted Data.* For classified information or material furnished to persons outside the executive branch of Government other than as described in paragraphs (a) and (b) of this section:

NATIONAL SECURITY INFORMATION

Unauthorized disclosure subject to criminal sanctions.

(d) *Sensitive intelligence information.* For classified information or material relating to sensitive intelligence sources and methods, the following warning notice shall be used, in addition to and in conjunction with those prescribed in paragraph (a), (b), or (c) of this section, as appropriate:

Warning Notice—Sensitive Intelligence Sources and Methods Involved.

§ 17.45 Origin, date of preparation and classification.

If not otherwise clearly shown, the originator of a classified document shall add information to the face thereof reflecting the office originating the document and its date of preparation and classification.

§ 17.46 Uniform abbreviations.

Except in the case of face markings required under § 17.40 and the markings required by §§ 17.42 and 17.44 the following uniform abbreviations may be used:

(a) *GDS.* General Declassification Schedule.

(b) *XGDS 1, 2, 3, or 4*. Exempt from General Declassification Schedule (exemption number indicated).

(c) *ADS*. Accelerated Declassification Schedule, that is, information or material automatically declassified on a specified date or event earlier than the General Declassification Schedule.

(d) *RD*. Restricted Data.

(e) *FRD*. Formerly Restricted Data.

(f) *NSI*. National Security Information.

(g) *SIS*. Sensitive Intelligence Sources and Methods.

Subpart I—Custody and Safekeeping of Classified Information and Material

§ 17.47 General.

Classified national security information and material shall be used, held or stored only where there are facilities or under conditions adequate for secure storage or protection thereof, and which prevent unauthorized persons from gaining access thereto.

§ 17.48 Storage requirements.

Whenever classified information or material is not under the direct supervision of authorized persons, whether during or outside of working hours, the following means shall be taken to protect it:

(a) *Storage of Top Secret*. "Top Secret" information and material shall be stored in a safe or safe-type steel file container having a built-in, three-position, dial-type combination lock, vault, or vault-type room, or other storage facility which meets the standards for "Top Secret" established under the provisions of paragraph (c) of this section, and which minimizes the possibility of unauthorized access to, or the physical theft of, such information or material.

(b) *Storage of Secret or Confidential*. "Secret" and "Confidential" material may be stored in a manner authorized for "Top Secret" information and material, or in a container or vault which meets the standards for "Secret" or "Confidential," as the case may be, established under the provisions of paragraph (c) of this section.

(c) *Standards for security equipment*. The General Services Administration (GSA) shall, in coordination with departments or agencies originating classified information or material, establish and publish uniform standards, speci-

cations, and supply schedules for containers, vaults, alarm systems, and associated security devices suitable for the storage and protection of all categories of classified information and material. The Department may establish for its own use more stringent standards. Whenever new security equipment is procured by the Department, it shall be in conformance with the foregoing standards and specifications and shall, to the maximum extent practicable, be of the type designated on the Federal Supply Schedule, GSA. No other equipment to be used for the storage of classified national security information shall be procured without the prior approval of the Department Security Officer.

(d) *Exception to Standards for Security Equipment*. As an exception to paragraph (c) of this section "Secret" and "Confidential" material may also be stored in a steel filing cabinet having a built-in, three-position, dial-type combination lock, or a steel filing cabinet equipped with a steel lock bar, provided it is secured by a GSA approved changeable combination padlock.

§ 17.49 Changes of combinations.

Combinations to security equipment and devices shall be changed only by persons having appropriate security clearance, and shall be changed whenever such equipment is placed in use, whenever a person knowing the combination is transferred from the office to which the equipment is assigned, whenever a combination has been subjected to possible compromise, and at least once every year. Such changes shall be under the supervision of the Division Security Officer.

§ 17.50 Knowledge of combinations.

The knowledge of combinations shall be limited to the minimum number of persons necessary for operating purposes. The name, address, and telephone number of each person knowing the combination of a safe, vault, or cabinet and the combination shall be entered on a single list which shall be maintained by a Division Security Officer.

[Order No. 439-72, 37 FR 15645, Aug. 3, 1972, as amended by Order No. 534-73, 38 FR 22777, Aug. 24, 1973]

§ 17.51 Classification of combinations.

Records of combinations shall be classified no lower than the highest category

of classified material authorized for storage in the security equipment concerned and shall be handled and stored in accordance with the provisions of these regulations.

§ 17.52 Responsibilities of custodians.

Custodians of classified information or material shall be responsible for providing protection and accountability for such information or material at all times and particularly for locking classified information or material in approved security equipment whenever it is not in use or under direct supervision of authorized persons. Custodians shall follow procedures which insure that unauthorized persons do not gain access to classified information or material by sight or sound, and classified information or material shall not be discussed with or in the presence of unauthorized persons.

§ 17.53 Telecommunications conversations.

Classified information or material shall not be revealed in telecommunications conversations, except as may be authorized under these regulations.

§ 17.54 Inspections.

It shall be the duty of the Security Officer of the Department, the Security Officer of each Division and of each officer or employee charged with the custody of classified national security information to accomplish such periodic inspections as are necessary to insure that all procedural safeguards prescribed by these regulations are taken to protect such information at all times.

§ 17.55 Loss or compromise of classified information.

Any officer or employee of the Department who has knowledge of the loss or possible compromise of classified national security information or material shall promptly report and confirm in writing the circumstances to the Security Officer of his Division, who shall take appropriate action forthwith, including:

- (a) Notice to the originating office and any interested department or agency;
- (b) an assessment of the damage incurred; and
- (c) an inquiry to determine whether corrective measures and appropriate administrative, disciplinary or legal action should be taken. A copy of the report shall be furnished the Security Officer of the Department and the Department Review Committee.

§ 17.56 Removal of classified material.

Whenever it is absolutely necessary to remove classified information and material from the Department, including its field installations, the officer or employee removing such material shall obtain written permission in duplicate of the head of his Division or of such of his subordinates as he may designate in writing. One copy of such permission shall be forwarded to the Division Security Officer and the other copy to the Office of Records Operations and Management or other file custodians to be made a permanent part of the file. The officer or employee who removes classified material from the Department, including its field installations, shall assume full responsibility for the safekeeping of such material in conformity with the provisions of these regulations or shall keep it under his personal supervision at all times.

[Order No. 489-73, 37 FR 15645, Aug. 3, 1972, as amended by Order No. 534-73, 38 FR 22777, Aug. 24, 1973]

Subpart J—Dissemination

§ 17.57 Security clearance.

Except as hereinafter provided in § 17.60, no person shall be given access to any classified information or material originated by, in the custody or under the control of the Department unless such person has been determined to be trustworthy and unless access to such information or material is necessary in the performance of his duties.

§ 17.58 Determination of trustworthiness.

The trustworthiness determination of eligibility for access to classified information or material, referred to as a security clearance, shall be made by the Security Officer of the Department and shall be based on such investigation as the Department by regulation requires in accordance with the standards and criteria of Executive Order No. 10450, as amended. Current and valid clearances issued to persons by other departments and agencies may be accepted in appropriate cases in lieu of such clearance by the Security Officer but only for access purposes. No determination of trustworthiness shall be required by the Department Security Office as to any presidential appointee employed by the Department. Such appointees shall be considered to have a security clearance

at the level necessary by virtue of such appointment and effective as of the date of entrance on duty.

(a) Security clearances of employees of the Federal Bureau of Investigation (FBI) and the Immigration and Naturalization Service (Immigration) for access to classified information shall be made in the manner provided by the respective head of each such organization.

(b) Security clearances of employees of other Divisions for access to classified information shall be made by the Department Security Office upon the submission by heads of such Divisions of the names of the persons proposed for such clearance together with an indication of the category of classified information to which access is required.

(c) The Administrative Officer, or other officer serving in such capacity, of the Division concerned (except for those Divisions which maintain their own record files) shall immediately notify the Office of Records Operations and Management whenever an employee who has been cleared for access to classified information is separated, transferred, or suspended, or whenever the necessity for clearance has ceased to exist in order that the employee's name may be deleted from the list of those authorized to receive classified files.

(d) The Department Security Officer also shall be notified immediately by the Administrative Officer, or other officer serving in such capacity, of the Division concerned whenever an employee of a Division (other than the FBI or Immigration) who has been cleared for access to classified information is separated, transferred or suspended, or whenever the necessity for clearance otherwise has ceased to exist.

§ 17.59 Determination of need-to-know.

In addition to a security clearance, a person must have a need for access to particular classified information or material necessary to the performance of his official duties or contractual obligations. The determination of that need shall be made by the official or employee having responsibility for such classified information or material.

§ 17.60 Exception from need-to-know requirement for historical researchers and presidential appointees.

The requirement in § 17.57 that access to classified information or material be granted only to persons whose official

duties require such access shall not apply to persons outside the executive branch who are engaged in historical research projects or who have previously occupied policymaking positions to which they were appointed by the President with respect to those papers which the former official originated, reviewed, signed, or received while in public office; *Provided, however,* That in each case the Attorney General determines that granting access to such researchers and former appointees is clearly consistent with the interests of national security and assures that the classified information or material to which access is granted will not be published or disseminated to unauthorized persons, or otherwise compromised in any manner.

(a) Access by historical researchers.

(1) Prior to granting access to persons engaged in historical research projects, the Attorney General shall also determine that the information or material to which access is sought is reasonably accessible and is identified with such particularity as to be located and/or compiled with a reasonable amount of effort; that the researcher agrees to safeguard the information or material in a manner consistent with these regulations and to a review of his notes and subsequent manuscript or other writings prepared therefrom, if any, for the sole purpose of determining that no classified information is revealed by either.

(2) An authorization for access for historical research shall be made a matter of record in the Department Security Office. Such authorization shall be valid for the period required but in no event for a period longer than 2 years from date of issuance at which time it may be renewed under the same conditions and agreements as when initially granted.

(b) Access by former presidential appointees. (1) Persons who have previously occupied policy positions in the Department to which they were appointed by the President may be authorized access to classified information or material to the extent they originated, reviewed, signed, or received such information or material during their tenure.

(2) Former presidential appointees seeking such access shall be required to identify the information or material with sufficient particularity as to make it retrievable with reasonable time and effort and, if not otherwise apparent,

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of classified material authorized for storage in the security equipment concerned and shall be handled and stored in accordance with the provisions of these regulations.

§ 17.52 Responsibilities of custodians.

Custodians of classified information or material shall be responsible for providing protection and accountability for such information or material at all times and particularly for locking classified information or material in approved security equipment whenever it is not in use or under direct supervision of authorized persons. Custodians shall follow procedures which insure that unauthorized persons do not gain access to classified information or material by sight or sound, and classified information or material shall not be discussed with or in the presence of unauthorized persons.

§ 17.53 Telecommunications conversations.

Classified information or material shall not be revealed in telecommunications conversations, except as may be authorized under these regulations.

§ 17.54 Inspections.

It shall be the duty of the Security Officer of the Department, the Security Officer of each Division and of each officer or employee charged with the custody of classified national security information to accomplish such periodic inspections as are necessary to insure that all procedural safeguards prescribed by these regulations are taken to protect such information at all times.

§ 17.55 Loss or compromise of classified information.

Any officer or employee of the Department who has knowledge of the loss or possible compromise of classified national security information or material shall promptly report and confirm in writing the circumstances to the Security Officer of his Division, who shall take appropriate action forthwith, including: (a) Notice to the originating office and any interested department or agency; (b) an assessment of the damage incurred; and (c) an inquiry to determine whether corrective measures and appropriate administrative, disciplinary or legal action should be taken. A copy of the report shall be furnished the Security Officer of the Department and the Department Review Committee.

§ 17.56 Removal of classified material.

Whenever it is absolutely necessary to remove classified information and material from the Department, including its field installations, the officer or employee removing such material shall obtain written permission in duplicate of the head of his Division or of such of his subordinates as he may designate in writing. One copy of such permission shall be forwarded to the Division Security Officer and the other copy to the Office of Records Operations and Management or other file custodians to be made a permanent part of the file. The officer or employee who removes classified material from the Department, including its field installations, shall assume full responsibility for the safekeeping of such material in conformity with the provisions of these regulations or shall keep it under his personal supervision at all times.

[Order No. 489-72, 37 FR 15645, Aug. 3, 1972, as amended by Order No. 534-73, 38 FR 22777, Aug. 24, 1973]

Subpart J—Dissemination

§ 17.57 Security clearance.

Except as hereinafter provided in § 17.60, no person shall be given access to any classified information or material originated by, in the custody or under the control of the Department unless such person has been determined to be trustworthy and unless access to such information or material is necessary in the performance of his duties.

§ 17.58 Determination of trustworthiness.

The trustworthiness determination of eligibility for access to classified information or material, referred to as a security clearance, shall be made by the Security Officer of the Department and shall be based on such investigation as the Department by regulation requires in accordance with the standards and criteria of Executive Order No. 10450, as amended. Current and valid clearances issued to persons by other departments and agencies may be accepted in appropriate cases in lieu of such clearance by the Security Officer but only for access purposes. No determination of trustworthiness shall be required by the Department Security Office as to any presidential appointee employed by the Department. Such appointees shall be considered to have a security clearance

at the level necessary by virtue of such appointment and effective as of the date of entrance on duty.

(a) Security clearances of employees of the Federal Bureau of Investigation (FBI) and the Immigration and Naturalization Service (Immigration) for access to classified information shall be made in the manner provided by the respective head of each such organization.

(b) Security clearances of employees of other Divisions for access to classified information shall be made by the Department Security Office upon the submission by heads of such Divisions of the names of the persons proposed for such clearance together with an indication of the category of classified information to which access is required.

(c) The Administrative Officer, or other officer serving in such capacity, of the Division concerned (except for those Divisions which maintain their own record files) shall immediately notify the Office of Records Operations and Management whenever an employee who has been cleared for access to classified information is separated, transferred, or suspended, or whenever the necessity for clearance has ceased to exist in order that the employee's name may be deleted from the list of those authorized to receive classified files.

(d) The Department Security Officer also shall be notified immediately by the Administrative Officer, or other officer serving in such capacity, of the Division concerned whenever an employee of a Division (other than the FBI or Immigration) who has been cleared for access to classified information is separated, transferred or suspended, or whenever the necessity for clearance otherwise has ceased to exist.

§ 17.59 Determination of need-to-know.

In addition to a security clearance, a person must have a need for access to particular classified information or material necessary to the performance of his official duties or contractual obligations. The determination of that need shall be made by the official or employee having responsibility for such classified information or material.

§ 17.60 Exception from need-to-know requirement for historical researchers and presidential appointees.

The requirement in § 17.57 that access to classified information or material be granted only to persons whose official

duties require such access shall not apply to persons outside the executive branch who are engaged in historical research projects or who have previously occupied policymaking positions to which they were appointed by the President with respect to those papers which the former official originated, reviewed, signed, or received while in public office; *Provided, however,* That in each case the Attorney General determines that granting access to such researchers and former appointees is clearly consistent with the interests of national security and assures that the classified information or material to which access is granted will not be published or disseminated to unauthorized persons, or otherwise compromised in any manner.

(a) Access by historical researchers.

(1) Prior to granting access to persons engaged in historical research projects, the Attorney General shall also determine that the information or material to which access is sought is reasonably accessible and is identified with such particularity as to be located and/or compiled with a reasonable amount of effort; that the researcher agrees to safeguard the information or material in a manner consistent with these regulations and to a review of his notes and subsequent manuscript or other writings prepared therefrom, if any, for the sole purpose of determining that no classified information is revealed by either.

(2) An authorization for access for historical research shall be made a matter of record in the Department Security Office. Such authorization shall be valid for the period required but in no event for a period longer than 2 years from date of issuance at which time it may be renewed under the same conditions and agreements as when initially granted.

(b) Access by former presidential appointees.

(1) Persons who have previously occupied policy positions in the Department to which they were appointed by the President may be authorized access to classified information or material to the extent they originated, reviewed, signed, or received such information or material during their tenure.

(2) Former presidential appointees seeking such access shall be required to identify the information or material with sufficient particularity as to make it retrievable with reasonable time and effort and, if not otherwise apparent,

establish that they did in fact originate, review, sign, or receive such during their tenure. They shall also agree to the same conditions regarding the protection of such information or material as is required of historical researchers as set forth in paragraph (b) (1) of this section. An authorization for access granted a former presidential appointee shall be made a matter of record in the Department Security Office.

§ 17.61 Consent of originating department to dissemination by recipient.

Except as otherwise provided by section 102 of the National Security Act of 1947, 50 U.S.C. 403, classified information or material originating in one department or agency shall not be disseminated outside any other department or agency to which it has been made available without the consent of the originating department or agency.

§ 17.62 Dissemination of sensitive intelligence information.

Information or material bearing the notation "Warning Notice—Sensitive Intelligence Sources and Methods Involved" shall not be disseminated in any manner outside authorized channels without the permission of the originating department or agency and an assessment by the senior intelligence official in the disseminating department or agency as to the potential risk to the national security and to the intelligence sources and methods involved.

§ 17.63 Special departmental requirements.

As considered necessary with respect to classified information originated in the Department, special requirements, in addition to those set forth herein, may be established with respect to access, distribution, and protection of classified information and material, including any which presently relate to communications intelligence, intelligence sources, and methods and cryptography. Such special requirements may only be established upon the specific prior approval of the Attorney General.

§ 17.64 Dissemination outside the executive branch.

Classified information or material shall not be disseminated outside the executive branch except under conditions and through channels authorized or heretofore authorized by the Attorney

General, and assuring its proper protection.

Subpart K—Accountability

§ 17.65 Designation of Top Secret Control Officers.

The head of each Division shall designate a person or persons within his Division to serve as Top Secret Control Officer or Officers. A person so designated will be responsible for carrying out the procedure for the control of national security information classified "Top Secret" which is set forth below.

§ 17.66 Top Secret Control.

(a) All "Top Secret" material coming into the Department must be received initially and registered by the Top Secret Control Officer of the Office of Records Operations and Management except that Top Secret material addressed to the FBI, Immigration, Bureau of Prisons, Bureau of Narcotics and Dangerous Drugs ("BNDD"), Community Relations Service, and Law Enforcement Assistance Administration ("LEAA") shall be delivered to their respective Top Secret Control Officers. No other official or employee of the Department is authorized to receive "Top Secret" material before it is recorded except as authorized by the Department Security Officer. Any courier or messenger delivering "Top Secret" material shall be directed to the Top Secret Control Officer of the Office of Records Operations and Management. All copies of "Top Secret" material originating within the Department which material has been processed by the Records Administration Office shall immediately be submitted to the Top Secret Control Officer of the Office of Records Operations and Management for recording. All copies shall be identified by number, by means of a stamp reading "copy ---- of ---- copies." The record shall indicate the disposition of all copies of the material, including any which may be dispatched from the Department. In recording "Top Secret" documents only enough information to identify the document shall be recorded, and recording of the contents thereof shall be avoided.

(b) The Top Secret Control Officer of the Office of Records Operations and Management shall transmit all "Top Secret" material for a particular Division to the Top Secret Control Officer for that Division, who shall maintain a register and such other records as are

necessary to indicate the custody and location of such material at all times at which such material is in the custody of the Division.

(c) When "Top Secret" material received by the Department or originating within the Department is transmitted from one official of the Department to another or to other departments or agencies a receipt signed by the recipient shall be obtained. In the case of "Top Secret" material transferred between officials within a particular Division of the Department, strict accountability shall likewise be maintained through a similar system of receipts, or, with the specific consent of the Security Office, by comparable methods which are not inconsistent with the requirements of the Order. In all such cases the Top Secret Control Officer of the Division shall retain such receipts and make a record which will identify the material and the recipient thereof and which will indicate the disposition of all copies.

(d) In addition to the requirements in paragraph (c) of this section when a "Top Secret" departmental file is transferred from one Division to another, a transfer slip identifying the transferor the transferee, and the file, and indicating the date of transfer shall be sent by the Top Secret Control Officer of the transferring Division and to the Top Secret Control Officer of the Office of Records Operations and Management.

(e) The procedure set forth above is to apply to all Divisions of the Department except that the FBI, Immigration, Bureau of Prisons, BNDD, Community Relations Service, and LEAA shall establish independent control for the receiving, transmission and safekeeping of "Top Secret" material which shall be consistent with the provisions of the Order.

§ 17.67 Control of secret and confidential information and material.

The head of each Division shall prescribe such accountability procedures as are necessary to control effectively the dissemination of classified national security information in the category of "Secret". As a minimum, however, records shall be maintained which will identify the original and all copies of all "Secret" information and material received from other Divisions of the Department or other departments or agencies, the date of receipt and disposition; and the original and all copies of

all "Secret" information and material sent out of the Division.

[Order No. 489-72, 37 FR 15645, Aug. 3, 1972, as amended by Order No. 534-73, 38 FR 22777, Aug. 24, 1973]

§ 17.68 Physical inventory; restraint on reproduction and number of copies.

(a) A physical inventory of all "Top Secret" material shall be made at least annually. To the extent required, because of depositories storing large volumes of "Top Secret" material, development and maintenance of current inventory lists of such material or other finding aids shall be acceptable in lieu of all annual physical inventory.

(b) Documents or portions of documents containing "Top Secret" information shall not be reproduced without the consent of the originating office. All other classified material shall be reproduced sparingly and any stated prohibition against reproduction shall be strictly adhered to.

(c) The number of copies of documents containing classified information shall be kept to a minimum to decrease risk of compromise and reduce storage costs.

Subpart I—Transmission of Classified Information and Material

§ 17.69 Preparation and receipting.

Classified information and material shall be enclosed in opaque inner and outer covers before transmitting. The inner cover shall be a sealed wrapper or envelope plainly marked with the assigned classification and address. The outer cover shall be sealed and addressed with no indication of the classification of its contents. A receipt shall be attached to or enclosed in the inner cover, except that Confidential material shall require a receipt only if the sender deems it necessary. The receipt shall identify the sender, addressee, and the document, but shall contain no classified information. It shall be signed by the recipient and returned to the sender.

§ 17.70 Transmission of Top Secret.

The transmission of "Top Secret" information and material shall be effected preferably by oral discussions in person between the officials concerned. Otherwise the transmission of "Top Secret" information and material shall be by specifically designated personnel, by State Department diplomatic pouch, by a messenger-courier system especially

created for that purpose, over authorized communications circuits in encrypted form or by other means authorized by the National Security Council; except that in the case of information transmitted by the FBI, such means of transmission may be used as are approved by the Director of the FBI, unless express reservation to the contrary is made in exceptional cases by the originating department or agency.

§ 17.71 Transmission of Secret.

The transmission of "Secret" material shall be effected in the following manner:

(a) *The 50 States, District of Columbia, Puerto Rico.* "Secret" information and material may be transmitted within and between the 48 contiguous States and District of Columbia, or wholly within the State of Hawaii, the State of Alaska, or the Commonwealth of Puerto Rico by one of the means authorized for "Top Secret" information and material, the U.S. Postal Service registered mail and protective services provided by the U.S. air or surface commercial carriers under such conditions as may be prescribed by the head of the Department or agency concerned.

(b) *Other areas, vessels, military postal services, aircraft.* "Secret" information and material may be transmitted from or to or within areas other than those specified in paragraph (a) of this section, by one of the means established for "Top Secret" information and material, captains or masters of vessels of U.S. registry under contract to a department or agency of the executive branch, U.S. registered mail through Army, Navy, or Air Force Postal Service facilities provided that material does not at any time pass out of U.S. citizen control and does not pass through a foreign postal system, and commercial aircraft under charter to the United States and military or other government aircraft.

(c) *Canadian government installations.* "Secret" information and material may be transmitted between U.S. Government or Canadian Government installations, or both, in the 48 contiguous States, Alaska, the District of Columbia, and Canada by United States and Canadian registered mail with registered mail receipt.

(d) *Special cases.* The Department Security Office may authorize the use of the U.S. Postal Service registered mail outside the 49 contiguous States, the

District of Columbia, the State of Hawaii, the State of Alaska, and the Commonwealth of Puerto Rico if warranted by security conditions and essential operational requirements provided that the material does not at any time pass out of U.S. Government and U.S. citizen control and does not pass through a foreign postal system.

§ 17.72 Transmission of confidential.

"Confidential" information and material shall be transmitted within the 48 contiguous States and the District of Columbia, or wholly within Alaska, Hawaii, the Commonwealth of Puerto Rico, or a U.S. possession, by one of the means established for higher classifications, or by certified or first-class mail. Outside these areas, "Confidential" information and material shall be transmitted in the same manner as authorized for higher classifications.

§ 17.73 Transmission within the department.

When classified national security information is transmitted within the Department by direct personal contact between officers or employees who are required, and cleared, to know the contents thereof, no special preparation thereof for transmission shall be required. When transmittal is other than by such direct personal contact, classified national security information shall be prepared in the manner specified for transmission thereof outside the Department, except that it shall be covered by a receipt only when the accountability procedures prescribed in Part XI of these regulations so provide. In the case of information transmitted by the FBI, such means of transmission may be used as are currently approved by the Director of the FBI unless express reservation to the contrary is made in exceptional cases by the originating Department or agency.

Subpart M—Destruction of Classified Information and Materials

§ 17.74 Record material.

(a) Record material may be destroyed only in accordance with 44 U.S.C. 3301-3314.

(b) Classified record material may be destroyed, pursuant to the statutory authority mentioned in paragraph (a) of this section, only by written authorization of the Security Officer of the De-

partment, or a Security Officer of the Division involved.

§ 17.75 Nonrecord material.

Nonrecord material containing classified information (including shorthand notes, used carbon paper, one-time type-writer ribbons, preliminary drafts, type, plates, records and tapes, stencils, negatives, and the like, and wastage incidental thereto) shall be destroyed, in accordance with § 17.76 hereof, as soon as it has served its purpose.

[Order No. 489-72, 37 FR 15645, Aug. 3, 1972, as amended by Order No. 534-73, 38 FR 22777, Aug. 24, 1973]

§ 17.76 Method of destruction.

Material marked "Top Secret," or "Secret," or "Confidential" shall be destroyed by burning or preferably by equally complete methods of destruction. Such material shall not be destroyed except in the presence of an appropriate officer or employee specifically designated for such purpose by the Security Officer of the Department, or a Security Officer of the Division involved.

§ 17.77 Records of destruction.

Appropriate records of the destruction of record material classified as "Top Secret" or "Secret" shall be maintained by the Office of Records Operations and Management. Such records shall contain the nature of the document destroyed, the nature of the information therein contained, the method used, the time and place of destruction, the reason for such destruction, and the name of the witness, or witnesses, present.

Subpart N—Data Index System and Records

§ 17.78 Central data index system.

The Office of Records Operation and Management of the Department shall establish and maintain a central data index system for all "Top Secret," "Secret," and "Confidential" information classified after December 31, 1972, in categories specified to the Department by the Interagency Classification Review Committee. The index system shall contain the following data for each document indexed:

- (a) Identity of classifier.
- (b) Department of origin.
- (c) Addresses.
- (d) Date of classification.
- (e) Subject/area.
- (f) Classification category and appli-

cability of or exemption from General Declassification Schedule.

(g) If exempt from General Declassification Schedule, the exemption relied upon.

(h) Date or event set for declassification.

(i) File designation.

Each classifying authority in the Department shall, commencing January 1, 1973, immediately upon the original classification of any national security information or material, forward to the Top Secret Control Officer of the Office of Records Operations and Management a form containing all of the data specified above with respect to the classified information or material.

§ 17.79 Records.

(a) Each Division of the Department shall establish and maintain current listings by name of the officials who have been designated in writing to have "Top Secret," "Secret," and "Confidential" classification authority. The foregoing lists and records shall be updated by each Division on a quarterly basis commencing on September 20, 1972, and copies of such lists and records shall be forwarded to the Department Security Officer not later than 5 days after they must be updated.

(b) The office of Records Operations and Management shall maintain lists for submission to the Attorney General and the Department Review Committee identifying all classified materials classified before June 1, 1972, and more than 30 years old. Such lists shall contain the recommendations of the Office of Records Operations and Management with respect to continued classification or declassification of such material. In addition, with respect to all classified materials classified before June 1, 1972, and more than 30 years old which the Attorney General has determined in writing shall remain classified, the Office of Records Operations and Management shall maintain lists identifying the material, indicating the reason for continued classification, and specifying the date on which such material shall be declassified.

Subpart O—Security Officers

§ 17.80 Department Security Officer.

There shall be a Security Officer of the Department, and such assistants as he may designate, whose duty it shall be to supervise the administration of these

regulations. Except as otherwise provided in these regulations, the Department Security Officer shall also carry out the functions and exercise the authority of the Attorney General and Department Review Committee in the administration within the Department of the regulations.

§ 17.81 Division Security Officers.

(a) The head of each Division of the Department shall designate or appoint one or more Security Officers for his Division.

(b) It shall be the duty of each Division Security Officer, under the general direction of the Department Security Officer, and for the FBI, its Security Officer, to administer these regulations insofar as they pertain to his Division and to conduct such inspections and to make such reports as will enable the head of his Division, the Attorney General and the Department Review Committee to be fully and currently informed concerning the administration of these regulations.

PART 18—LEAA ADMINISTRATIVE REVIEW PROCEDURE

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AUTHORITY: Administrative Provisions, Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3701 et seq.

SOURCE: 38 F.R. 3566, Feb. 7, 1973, unless otherwise noted. Redesignated, 38 F.R. 8233, Mar. 30, 1973.

§ 18.1 Purpose and scope of the rules.

In order to accomplish the purposes of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, to promote and insure the appropriate distribution of all funds controlled by the Law Enforcement Assistance Administration, and to ensure compliance with the applicable laws and regulations, the rules and procedures set forth in this part shall be observed by all individuals and organizations applying for or receiving funds, either directly or through intermediate agencies, from the Law Enforcement Assistance Administration. The rules and procedures of this part govern all proceedings authorized under chapter 46 of title 42 of the United States Code.

§ 18.2 Definitions.

(a) *Administration.* The term "Administration" means the Law Enforcement Assistance Administration, as established under chapter 46 of title 42 of the United States Code, and includes every organizational instrumentality thereof.

(b) *Applicant.* The term "applicant" means any person who is authorized to apply directly to the Administration, under chapter 46 of title 42 of the United States Code, for a grant.

(c) *Grant.* The term "grant" means a direct award of funds between the Administration and the person to whom the funds have been allocated.

(d) *Grantee.* The term "grantee" means any person who is receiving a grant from the Administration.

(e) *Party.* The term "party" means any person authorized under chapter 46 of title 42 of the United States Code to participate in hearings or investigation proceedings.

(f) *Person.* The term "person" means any natural, corporate, or government entity.

(g) *Proceeding.* The term "proceeding" means either a hearing or an investigation.

(h) *Public hearing.* The term "public hearing" means a hearing in which any party may proffer evidence, and in which any person may be present and may testify with the permission of the hearing examiner.

(i) *Qualified counsel.* The term "qualified counsel" means any individual who is a member in good standing of the bar of the highest court of a State, which includes the Commonwealth of Puerto Rico, the District of Columbia, the territories of Guam, the Virgin Islands, and American Samoa.

(j) *Region.* The term "region" means any one of the ten (10) geographical divisions of the Administration.

(k) *State planning agency.* The term "State planning agency" means any organization established and operating under the authority of subchapters II and III of chapter 46 of title 42 of the United States Code.

(l) *Sub-grant.* The term "sub-grant" means a distribution of funds between a State planning agency and the person to whom the funds have been allocated.

(m) *Sub-grant applicant.* The term "sub-grant applicant" means any person who is authorized to apply to a State planning agency for a sub-grant according to the rules and procedures promulgated by such State planning agency under 42 U.S.C. section 3733.

(n) *Sub-grantee.* The term "sub-grantee" means any person who is receiving a sub-grant from a State planning agency.

AUTHORIZED PROCEEDINGS

§ 18.31 Administrative investigations.

(a) *Compliance investigation.* The responsible Administration official or his designee will make a prompt investigation under 42 U.S.C. 3757 whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with provisions of the "Act" and regulations promulgated by the administration or plan or application submitted under the "Act." The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance occurred, and other factors relevant to a determination as to whether the recipient has failed to comply.

(b) *Resolution of matters.* (1) If an investigation pursuant to paragraph (a) of

this section indicates a failure to comply, the responsible Administration official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided in § 18.32.

(2) If an investigation does not warrant action pursuant to § 17.32, the responsible Administration official or his designee will so inform the recipient and the complainant, if any, in writing.

(c) *Adjudicative investigation.* An investigation proceeding may be initiated by the Administration prior to the conduct of a hearing under the authority of 42 U.S.C. 3758(b) so the matter may be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means action will be taken as provided for in § 18.33.

(d) *Right to hearing.* No recipient of Federal financial assistance or applicant for such assistance shall be denied access to the hearing or appeal procedures set forth in §§ 18.32 and 18.33 for denial or discontinuance of a grant or withholding of payments thereunder resulting from the application of this subpart.

§ 18.32 Compliance hearing.

Every hearing held under the authority of 42 U.S.C. section 3757 shall be known as a "compliance hearing." Such hearing shall be initiated by the Administration if, within ten (10) days after serving a notice of noncompliance by registered mail upon an applicant or grantee, any notified applicant or grantee makes written request to the Administration for a hearing. Otherwise, the opportunity for hearing shall be deemed to have been waived. The Administration is authorized to serve a notice of noncompliance against any applicant or grantee in the following situations: Upon the written request of a subgrantee or subgrant applicant alleging an abuse of a State planning agency's approved hearing and appeal procedures, as promulgated under the provision of 42 U.S.C. section 3733(7); or, upon its own initiative, if it decides that there has been a substantial failure to comply with paragraph (a) or (b) of this section. The Administration shall withhold any payments made under chapter 46 of title 42 of the United States Code after a waiver of hearing by the applicant or grantee or after a compliance hearing on the

merits of the case, if the Administration determines that there has been a substantial failure on the part of the applicant or grantee to comply with and take affirmative action to comply with;

(a) The regulations of the Administration promulgated under chapter 46 of title 42 of the United States Code;

(b) Any plan or application submitted under the provisions of chapter 46 of title 42 of the United States Code.

Lesser sanctions available to the Administration include: Public disclosure of the failure to comply; injunctive action in the Federal courts; disallowance as a program or project cost of an expenditure that does not conform with LEAA standards; partial denial or cutoff of funds; imposition of additional requirements by special conditions; transfer of the grant to another grantee or other appropriate action. Compliance hearings shall be conducted according to the rules and procedures of this part.

§ 18.33 Adjudicative hearing.

Every hearing held under the authority of 42 U.S.C. section 3758(b) shall be known as an "adjudicative hearing." Such hearing may be initiated by an applicant or grantee at any time upon satisfaction of the rules and procedures of this part for the bringing of a claim. However, subgrantees or subgrant applicants may not initiate an adjudicative hearing. An applicant or grantee may initiate an adjudicative hearing only under the following circumstances:

(a) Rejection of an applicant's application; or

(b) Denial of any grant to grantee; or

(c) Reduction of a portion of a grant to a grantee; or

(d) Granting of a lesser amount than the applicant believes to be appropriate under chapter 46 of title 42 of the United States Code.

Adjudicative hearings shall be conducted according to the rules and procedures of this part.

§ 18.34 Rehearing.

Every hearing held under the authority of 42 U.S.C. section 3758(c) shall be known as a "rehearing." Such hearing may be initiated by an applicant or a grantee after final action under § 18.33 if he makes a written request for a rehearing within thirty (30) days after the issuance of the determinations and findings of fact by the Administration. Other-

wise, the right of the applicant or grantee to a rehearing shall be deemed to have been waived. The Administration shall order a rehearing if it finds that the applicant or grantee has presented newly arisen or newly discovered matter which is sufficient to require the conduct of further proceedings on the issue, or the applicant or grantee has shown some defect in the conduct of the initial hearing sufficient to cause substantial unfairness in reaching the result therein. New or modified findings of fact and determinations may be given by the Administration after a rehearing. All rehearsings shall be conducted under the rules and procedures of this part which govern adjudicative hearings.

§ 18.35 Hearing upon remand.

Every hearing held under the authority of 42 U.S.C. section 3759 shall be known as a "hearing upon remand." Such hearing will be initiated by the Administration upon remand from a court for further proceedings, concerning any final action of the Administration under §§ 18.32-18.34 or concerning an application or plan submitted under chapter 46 of title 42 of the United States Code. New or modified findings of fact and determinations may be given by the Administration after a hearing upon remand. All hearings upon remand shall be conducted under the rules and procedures which govern compliance hearings.

PLEADINGS

§ 18.41 Request for hearing.

(a) All hearings or rehearsings, except for compliance hearings and hearings upon remand shall be initiated by the filing of a request for a hearing with the Administration.

(b) The applicant's or grantee's request shall contain the following:

(1) Recital of the regulation under which the requestor is applying for review; and

(2) A clear and concise factual statement sufficient to inform the Administration with reasonable definiteness of the nature of petitioner's request and of the issues involved.

(3) Recital of relief requested.

§ 18.42 Complaints.

(a) All compliance hearings and all hearings upon remand will be initiated by the issuance and service of a complaint by the Administration upon the applicant or grantee:

(1) In a compliance hearing, the complaint will contain notice to the applicant or grantee of the action to be taken and of his opportunity to request a hearing on the matter and will recite the allegations which form the basis of the complaint;

(2) In a hearing upon remand, the complaint will contain notice to the applicant or grantee of the proposed taking of evidence and of his opportunity to file an answer and will recite allegations based up on the issues remanded by the court.

(b) The applicant or grantee will have thirty (30) days in which to file an answer to the complaint.

(1) *Content of the answer.* If the allegations of fact in the complaint are contested, the applicant or grantee will give a concise statement of the facts constituting each ground of defense, will specifically admit, deny, or explain each fact alleged in the complaint or, if the applicant or grantee is without knowledge thereof, will state that he is without knowledge of the particular fact.

(2) *Motion for a more definite statement.* Where a reasonable showing to the satisfaction of the hearing examiner is made by an applicant or grantee that he cannot frame a responsive answer based on the allegations contained in the complaint, he may move for a more definite statement of allegations by the Administration before he files an answer. Such a motion shall be filed within ten (10) days after service of the complaint and the applicant's or grantee's answer must be filed within ten (10) days after service of a more definite statement of allegations. If the motion for a more definite statement is denied, the applicant or grantee shall file his answer ten (10) days after service of the order of denial or thirty (30) days after service of complaint, whichever is later.

§ 18.43 Notice of hearing.

The filing of a claim by an applicant or grantee under § 18.41 shall constitute adequate and due notice to him under the rules and procedures of this part. The service of a complaint by registered mail on an applicant or grantee under § 18.42 shall constitute adequate and due notice to him under the rules and procedures of this part.

§ 18.44 Prehearing conference.

(a) *When permitted.* The hearing examiner, upon his own motion or upon

application of either party, may call upon the parties to appear before him to consider:

(1) Simplification or clarification of the issues;

(2) Stipulations, admissions, agreements on documents, or other understandings which will avoid unnecessary proof;

(3) Limitation of the number of expert witnesses and of other cumulative evidence;

(4) Settlement of all or part of the issues in dispute;

(5) Such other matters as may aid in the disposition of the case;

(b) *Conference record.* The results of the conference shall be reduced to writing by the hearing examiner within five (5) days after the close of the conference. Copies shall be duly served on the parties who may, within ten (10) days from receipt of the written record, file objection, comment, request for correction or other motion pertaining to that record of prehearing conference. The record of prehearing conference together with any objection comment, request for correction or other motion made by the parties shall become a part of the hearing record.

PROCEDURE FOR HEARINGS, REHEARINGS, AND HEARINGS UPON REMAND

§ 18.51 General rules.

(a) *Public hearings.* All hearings under this part shall be public unless otherwise ordered by the Administration. Prior to the holding of a public hearing, the Administration shall give notice of the hearing to all persons by notice in the FEDERAL REGISTER and by posting announcement of the hearing in a newspaper of general circulation for at least five (5) consecutive days immediately preceding the day of the hearing.

(b) *Initiation of hearings.*—(1) *Generally.* All compliance hearings, adjudicative hearings, or rehearings relating to the distribution of funds under subchapters II, III, or IV-A or section 3746 of chapter 46 of title 42 of the United States Code shall be initiated, under the provisions of § 18.4, in that regional office which exercises administrative control over the party's application or grant. All compliance hearings, adjudicative hearings, or rehearings relating to the distribution of funds under subchapter IV, exclusive of § 3746, of chapter 46 of title 42 of the United States Code shall be ini-

ated, under the provisions of § 18.4, at the Administration headquarters in Washington, D.C.

(2) *Hearings upon remand.* All hearings upon remand from judicial review under the provisions of 42 U.S.C. section 3759 shall be initiated, under the provisions of § 18.4, at the Administration headquarters in Washington, D.C.

(3) *Rehearings.* The initiation of rehearings will be governed by the provisions of § 18.51(b)(1), except that any rehearing may be initiated at the Administration headquarters in Washington, D.C., at the discretion of the applicant or grantee.

(c) *Place of hearings.*— (1) *Hearings initiated in regional offices.* A hearing which is initiated in a regional office may be held at any place within that region, at the discretion of the hearing examiner or the Administration.

(2) *Hearings initiated at the Administration headquarters.* A hearing which is initiated at the Administration headquarters in Washington, D.C., may be held at any place within any region, at the discretion of the hearing examiner or the Administration.

(d) *Expedition.* All hearings which are held under this part shall proceed in an expeditious manner. Such hearings shall be held in one place and shall continue without suspension until conclusion, except that a hearing examiner may call reasonable recesses, may order hearings to be held at more than one place when good cause for such action has been shown to the hearing examiner's satisfaction, and may order brief intervals to permit discovery under § 18.56. No other intervals shall be authorized for hearings except as directed by the Administration.

(e) *Rights of parties.* Any party participating in a hearing under this part shall be given reasonable notice and opportunity for hearing, shall be allowed to present evidence on his behalf, shall be able to be represented at every stage of the hearing procedures by qualified counsel.

(f) *Participation.* Any party or any interested person or his representative may be sworn as a witness and heard.

§ 18.52 Presiding officials.

(a) *Who presides.* Any duly qualified hearing examiner or any member of the Administration so authorized by the Administration may hold a hearing under this part. The term "hearing examiner"

as used in this part means and applies to any member of the Administration when so sitting.

(b) *How assigned.* The presiding hearing examiner shall be designated by the Administration, who shall notify the parties of the hearing examiner designated.

(c) *Powers and duties.* Every hearing examiner shall have all of the following powers and duties:

(1) The power to hold hearings and regulate the course of the hearings and the conduct of the parties and their counsel therein;

(2) The power to sign and issue subpoenas and other orders requiring access;

(3) The power to administer oaths and affirmations;

(4) The power to examine witnesses;

(5) The power to rule on offers of proof and to receive evidence;

(6) The power to take depositions or to cause depositions to be taken when the ends of justice are served;

(7) The power to hold conferences under § 18.44 for the settlement or simplification of the issues or for any other proper purpose;

(8) The power to consider and rule upon procedural requests and other motions, including motions for default;

(9) The duty to conduct fair and impartial hearings;

(10) The duty to maintain order;

(11) The duty to avoid unnecessary delay; and

(12) All powers and duties expressly or impliedly authorized by this part, by chapter 46 of title 42 of the United States Code and by the Administrative Procedures Act as restated and incorporated in title 5 of the United States Code.

(d) *Suspension of counsel by hearing examiner.* The hearing examiner shall have the authority, for good cause stated on the record, to suspend or bar from participation in a particular proceeding and counsel who shall refuse to comply with his directions, or who shall be guilty of disorderly, dilatory, obstructive, or contemptuous conduct, or contemptuous language in the course of such proceeding. Any counsel so suspended or barred shall have an immediate right of appeal to the Administration. Such appeals shall be in the form of a brief not to exceed thirty (30) pages in length and shall be filed within five (5) days after notice of the hearing examiner's action. Answer thereto may be filed

within five (5) days after service of the appeal brief. The appeal shall not operate to suspend the hearing unless otherwise ordered by the hearing examiner or the Administration; in the event the hearing is not suspended, the counsel may continue to participate therein pending disposition of the appeal.

(e) *Disqualification of hearing examiner.* (1) When a hearing examiner deems himself disqualified to preside in a particular proceeding, he shall withdraw therefrom by giving notice on the record and shall notify the Administration of such withdrawal.

(2) Whenever any party shall deem the hearing examiner for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, such party may file with the Administration a motion to disqualify and remove the hearing examiner, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. A copy of the motion shall be served by the Administration on the hearing examiner whose removal is sought, and the hearing examiner shall have ten (10) days from such service within which to reply. If the hearing examiner does not disqualify himself within the ten (10) days within which he may reply, then the Administration shall promptly determine the validity of the grounds alleged, either directly or on the report of another hearing examiner appointed to conduct a hearing for that purpose.

(f) *Failure to comply with a hearing examiner's directions.* Any party who refuses or fails to comply with a lawfully issued order or directive of a hearing examiner may be considered to be in contempt of the Administration. The circumstances of any such neglect, refusal, or failure, together with a recommendation for appropriate action, shall be promptly forwarded by the hearing examiner to the Administration. The Administration may take such action in regard thereto as it feels the circumstances may warrant.

§ 18.53 Evidence and record.

(a) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5-8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in

§ 18.43 of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Administration and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(b) Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

§ 18.54 Motions.

(a) *Presentation and dispositions:* During the time a proceeding is before a hearing examiner, all motions therein, except those filed under § 18.52(e) (2), shall be addressed to the hearing examiner and, if within his authority, shall be ruled upon by him. Any motion upon which the hearing examiner has no authority to rule shall be certified by him to the Administration with his recommendation. All written motions shall be filed with the office in which the proceeding was initiated and all motions addressed to the Administration shall be in writing.

(b) *Content:* All written motions shall state the particular order, ruling, or action desired and the grounds therefor.

(c) Within ten (10) days after service of any written motion, or within such longer or shorter time as may be designated by the hearing examiner or the Administration, the opposing party shall answer or shall be deemed to have consented to the granting of the relief asked for in the motion. The moving party shall have no right to reply, except as permitted by the hearing examiner or the Administration.

(d) *Rulings on motions:* All rulings on motions shall be made only after giving all parties a reasonable opportunity to make a statement on their behalf.

§ 18.55 *Discovery.*

(a) *Dispositions—(1) When justified.* At any time after the initiation of the proceeding, whether or not the issue has been joined, the hearing examiner, at his discretion, may order by subpoena the taking of a deposition and the production of documents by the deponent. Such order may be entered upon a showing that the deposition is necessary for discovery purposes, and that such discovery could not be accomplished by voluntary methods. Such an order may also be entered in extraordinary circumstances to preserve relevant evidence upon a showing that there is substantial reason to believe that such evidence could not be presented through a witness at the hearing. The decisive factors for a determination under this subsection, however, shall be fairness to all parties and the requirements of due process. Depositions may be taken orally or upon written questions before any person having power to administer oaths who may be designated by the hearing examiner.

(2) *Form of application.* Any party desiring to take a deposition shall make application in writing to the hearing examiner, setting forth the justification therefor, the time when, the place where, and the name and address of each proposed deponent and the subject matter concerning which each is expected to depose, and shall, at this time, request any subpoenas which are desired to effect the deposition. The hearing examiner shall then issue a notice of subpoena to the person to be deposed.

(3) *Ruling on the application.* Such order as the hearing examiner may issue for taking a deposition shall state the circumstances warranting its being taken and shall designate the time when, the place where, and the name and address of the officer before whom the deposition is desired. The time designated shall allow not less than five (5) days from the date of service of the order, when the deposition is to taken within the United States, and not less than fifteen (15) days, when the deposition is to be taken elsewhere.

(4) *Modification of ruling.* Upon a motion, within ten (10) days after service of the notice of subpoena, by any party or by the person to be deposed and after

a showing of good cause, the hearing examiner may order that the deposition shall not be taken, that certain matters not be inquired into, or may make any other order which justice requires to protect the party or deponent from the unnecessary disclosure or publication of information contrary to the public interest or beyond the requirements of justice in the particular proceeding.

(5) *Taking a deposition.* Each deponent shall be duly sworn, and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds of objections relied upon. The questions propounded and the answers thereto, together with all objections made (but not including argument or debate), shall be reduced to writing and certified by the officer before whom the deposition was taken. Thereafter, the officer shall forward the deposition and one (1) copy thereof to the party at whose instance the deposition was taken and shall forward one (1) copy thereof to the representative of each other party who was present or represented at the taking of the deposition.

(6) *Admissions.* A deposition or any part thereof may be admitted into evidence as against any party who was present or represented at the taking of the deposition or who had due notice thereof, if the hearing examiner finds: (i) That the deponent is dead; (ii) that the deponent is out of the United States or is located at such a distance that his attendance would be impractical, unless it appears that the absence of the deponent was procured by the party offering the deposition; (iii) that the deponent is unable to attend or testify because of age, sickness, infirmity, or imprisonment; (iv) that the party offering the deposition has been unable to procure the attendance of the deponent by subpoena; or (v) that there are good and sufficient reasons for such admission and that the admission of the evidence would be fair as to adverse parties and in accordance with elementary principles of due process for all parties. In all cases, the admission of such testimony shall occur only after adequate notice and opportunity for argument have been given to all parties.

(b) *Interrogatories to the parties—*

(1) *Availability.* Any party may serve upon any other party written interrogatories to be answered by the party served,

or by an authorized representative of the party if the party served is a corporate or governmental entity. The party served shall also furnish all information which is available to him. Interrogatories shall not be served until after the applicant's or grantee's claim or answer has been filed.

(2) *Form of interrogatories and responses.* The interrogatories shall be addressed to the party or to his authorized representative and may be served on the party, his authorized representative, or his attorney. Each interrogatory shall be answered separately and fully in writing under oath by the party addressed or by his authorized representative. Responses to the interrogatories must be filed with the Administration and a copy served upon the other party within ten (10) days after service of the interrogatories unless objection is made to such interrogatories. In the case of objections, the answering party shall have ten (10) days after service of the interrogatories or five (5) days after the issuance of the hearing examiner's ruling, whichever is later, to file the interrogatories. The answers are to be signed by the person making them.

(3) *Rulings.* Within ten (10) days after the service of the written interrogatories, the parties served must file objections with the hearing examiner to the interrogatories or waive any objection thereto. The hearing examiner may, after a showing of good cause, limit or refuse to allow the interrogatories, in whole or in part, if he finds that the information called for would be privileged, irrelevant, or otherwise improper or that the requirement of a response would result in the unnecessary disclosure or publication of information contrary to the public interest or beyond the requirements of justice in a particular proceeding.

(c) *Subpoenas*—(1) *Subpoenas ad testificandum.* Application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at a hearing, rehearing, or a hearing upon remand shall be made to the hearing examiner.

(2) *Subpoenas duces tecum.* (i) Application for issuance of a subpoena requiring a person to appear and depose or testify and to produce specified documents, papers, books, or other physical exhibits at the taking of a deposition, or at a prehearing conference, or at a hearing, rehearing, or hearing upon remand

shall be made in writing to the hearing examiner and shall specify as exactly as possible the material to be reproduced, showing the general relevancy of the material and the reasonableness of the scope of the subpoena.

(ii) Subpoenas duces tecum may be used by any party for purposes of discovery of nonprivileged documents, papers, books, or other physical exhibits relevant for use in evidence, or for obtaining copies of such materials, or for both purposes.

(iii) Upon receipt of an application for subpoena duces tecum, the hearing examiner shall issue a notice of subpoena to the party or person to be deposed. Within ten (10) days after service of the notice of subpoena, the persons or parties served must file objections with the hearing examiner to the subpoenas or waive any objections thereto. The hearing examiner may, after a showing of good cause, refuse to issue a subpoena if he finds that the information called for would be privileged, irrelevant, or otherwise improper or that the issuance of a subpoena would result in the unnecessary disclosure or publication of information contrary to the public interest or beyond the requirements of justice in a particular proceeding.

(d) *Appeals.* Appeals from rulings given by a hearing examiner under the provisions of this part will be entertained by the Administration only upon a showing that the ruling complained of involved substantial rights and will materially affect the final decision, and that a determination of its correctness before conclusion of the hearing is essential to serve the interests of justice. Such appeals shall be made on the record and shall be in the form of a brief not to exceed thirty (30) pages in length and shall be filed within five (5) days after notice of the ruling complained of. Answer to any such appeal may be filed within five (5) days after service of the appeal brief. The appeal shall not operate to suspend the hearing unless otherwise ordered by the hearing examiner or the Administration.

§ 18.56 Proposed findings, conclusions, and order.

At the close of the reception of evidence, or within a reasonable time thereafter, the hearing examiner will submit his proposed findings of fact, conclusions of law, and ruling or order, together with reasons therefor and briefs in support

thereof. Such proposals shall be in writing, shall be served upon all parties, shall contain adequate references to the record and authorities relied on, and shall constitute the hearing examiner's recommendations for the purposes of this part.

§ 18.57 Action by the Administration.

Upon receipt of the recommendations of the hearing examiner, the Administration will review the proceedings pursuant to § 18.7. Before a determination of finding of fact is made by the Administration, the parties shall be given an opportunity to submit, within thirty (30) days after the date of the submission of the hearing examiner's recommendations, for Administration consideration:

- (a) Proposed findings and determinations; or
- (b) Exceptions to the recommendations of the hearing examiner; and
- (c) Supporting reasons for the exceptions or proposed findings or determinations.

PROCEDURE FOR INVESTIGATIONS

§ 18.61 Generally.

An administrative investigation proceeding under § 17.31 may be held anywhere in the United States, at the discretion of the Administration.

§ 18.62 Conduct of proceedings.

The overriding requirement in the administrative investigation under § 18.31 will be fairness to all parties. The procedure will be informal, and all evidence which is not irrelevant, immaterial, or cumulative will be examined. The investigator shall have the power to use the provisions of § 18.55 to compel the presentation of information. An applicant or grantee may present written evidence and exhibits, at his discretion, but may not appear before the administrative investigation in person or by personal representative unless permitted by the investigator conducting the proceeding. The sole inquiry of the administrative investigation under § 18.31 will be whether or not to hold further administrative proceedings concerning the application or grant at issue.

DETERMINATIONS AND FINDINGS OF FACT

§ 18.71 Generally.

Any determination or finding of fact by the Administration shall constitute final action on the question. The recom-

mendations of a hearing examiner or an investigator shall become determinations and findings of fact upon written acceptance, rejection, or modification by the Administration after review under the Administration's rules and regulations. Determinations and findings of fact may not, however, modify or abridge a party's right to any proceeding authorized by this part or by chapter 46 of title 42 of the U.S. Code.

§ 18.72 Finality of the proceedings.

Determinations and findings of fact made by the Administration shall be final and conclusive, if supported by substantial evidence, upon all applicants or grantees in a compliance hearing under § 18.32 or in an adjudicative hearing under § 18.33 (except that a subsequent hearing shall constitute a trial de novo on the facts) in a rehearing under § 18.34, or in a hearing under a petition for judicial review, except that the Administration may make new or modified findings or determinations pursuant to 42 U.S.C. 3759(b) upon remand from a court. Such new or modified findings or determinations, when filed in the remanding court, shall likewise be final and conclusive, if supported by substantial evidence.

§ 18.73 Limitation of the hearing examiner's authority.

A hearing examiner may reopen a proceeding at any time prior to his submission of recommendations to the Administration. After submission of his recommendations, the hearing examiner's jurisdiction is terminated, except for the correction of clerical errors. However, the Administration, at its own discretion, may remand a proceeding to a hearing examiner for further inquiry after the presentation of recommendations and before the making of determinations and findings of fact.

§ 18.80 Effect on other regulations.

Nothing in this procedure shall be deemed to supersede any provisions of Subparts B, C, and D of Part 42 of this title or any other regulation or instruction issued by the Department of Justice pursuant to 42 U.S.C. 2000d. However, to the extent there is no conflict with said provisions this section may be used as an aid in the conduct of any hearing under Subparts B, C, and D of Part 42 of this title.

PART 19—REGULATIONS RELATING TO THE LEAA IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

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Subpart F—Final Determinations

- 19.15 Determination by the Administrator, LEAA.

AUTHORITY: NATIONAL ENVIRONMENTAL POLICY ACT, 42 U.S.C. 4321, et seq.

SOURCE: 39 FR 4736, Feb. 6, 1974, unless otherwise noted.

Subpart A—General Provisions

§ 19.1 Purpose.

The National Environmental Policy Act of 1969 (hereinafter NEPA) establishes national policy, goals and procedures for protecting and enhancing the environment.

(a) This statute governs all Federal departments and agencies and requires positive orientation of all existing administrative policies to support the new mandate. It requires that an explicit analysis of the environmental consequences of proposed "major Federal actions" which significantly affect the quality of the environment shall be made and publicly commented upon prior to agency decision and that this detailed environmental statement shall accompany the proposals for actions through the existing agency review and decision

processes. This environmental statement is to include an analysis of the physical, social and aesthetic dimensions of the environmental efforts to avoid or lessen adverse environmental consequences by means of modified approaches or alternatives.

(b) It is the purpose of this regulation to establish orderly environmental clearance processes within the Law Enforcement Assistance Administration (LEAA) to provide guidance in the preparation and utilization of environmental statements and comments.

§ 19.2 Scope.

This regulation applies to all "Federal actions" as defined in § 19.5. LEAA designated officials are responsible for assuring that decisions on all actions falling within the scope of these regulations are made in compliance with the National Environmental Policy Act of 1969 and for establishing procedures consistent with the requirements of this regulation.

§ 19.3 Authority.

(a) The National Environmental Policy Act, 42 U.S.C. 4321, et seq., establishes a broad national policy to promote efforts to improve the relationship between man and his environment and provides for the creation of a Council on Environmental Quality (CEQ) to oversee implementation of the policy. NEPA sets out certain policies and goals concerning the environment and requires that, to the fullest extent possible, the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with those policies and goals.

(b) Section 102(2) (C) of the National Environmental Policy Act of 1969 requires that all agencies of the Federal government include in every major Federal action significantly affecting the quality of the human environment a detailed statement on the environmental impact of such action.

(c) Guidelines from the President's Council on Environmental Quality (CEQ), dated August 1, 1973, 38 FR 20550, set forth procedures which must be followed by Federal agencies in implementing NEPA.

(d) Office of Management and Budget Circular A-95 details the requirements for State and local review of environmental statements required by section 102(2) (C) of NEPA.

(e) Executive Order 11514, 35 FR 4247, orders all Federal agencies to initiate

procedures needed to direct their policies, plans and programs so as to meet national environmental goals.

(f) Section 501 of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3751, as amended by Pub. L. No. 93-83, 87 Stat. 197, authorizes LEAA to establish such rules, regulations and procedures as are necessary to the exercise of its function and are consistent with the stated purpose of the Act.

§ 19.4 Policy.

(a) *General.* It is the policy of LEAA to implement NEPA and related Executive Branch Guidance documents on the environment as fully as statutory authority permits and to orient LEAA's administrative policies under the Act toward the broad national goal of preserving and enhancing the environment. In this goal, environmental quality factors are to be considered in the decision-making process at the earliest possible time. Adverse environmental effects should be avoided or minimized, and environmental quality previously lost should be restored to the fullest extent possible.

(b) *Implementation.* The implementation of this policy shall consist of an environmental review of all programs and projects determined by this agency to potentially affect the environment. Environmental statements shall be prepared on all major Federal actions significantly affecting the environment in accordance with the provisions of NEPA. The policies and goals set forth in the National Environmental Policy Act of 1969 are supplementary to those set forth in the existing authorization of the Law Enforcement Assistance Administration. The LEAA shall interpret the provisions of the NEPA Act as supplemental to its existing authority and as a mandate. It will view traditional policies and missions in the light of national environmental objectives.

(c) *Other statutes.* To the extent possible statements of finding concerning environmental impacts required by other statutes such as section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 1653(f), Fish and Wildlife Coordination Act, 16 U.S.C. 661, et seq., and the National Historic Preservation Act of 1966, 16 U.S.C. 470, et seq., will be incorporated into the preparation of Environmental Impact Statements to yield a single document.

(d) *Public notice and availability.* LEAA will insure timely public information and understanding of Federal plans and programs which may have a significant environmental impact in order to obtain the view of interested parties. A list of administrative actions for which environmental statements are being prepared and negative declarations filed will be maintained by Regional Offices and the Central Office. This list will be made available for public inspection and for submission to the Council on Environmental Quality.

Subpart B—Definitions

§ 19.5 Definitions.

(a) "The Act" means title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended by Pub. L. No. 93-83, 87 Stat. 197.

(b) "Environmental Evaluation" is a report to be completed by the applicant consisting of questions relating to the potential environmental impact of the proposed program or project. The purpose of this report is to determine the threshold question as to whether an Environmental Impact Statement should be prepared.

(c) "Environmental Assessment" is information submitted by the State Planning Agency or applicant to the responsible LEAA official when an Environmental Impact Statement is to be prepared.

(d) "Environmental Impact" is any alteration of environmental conditions or creation of a new set of environment conditions, adverse or beneficial, caused or induced by the action or set of actions under consideration.

(e) "Environmental Impact Statement" is a complete and fully comprehensive environmental assessment including formal review by other Federal, State and local agencies as prescribed by section 102(2)(C) of NEPA. The Environmental Impact Statement is comprised of two stages, draft and final.

(f) "Federal Actions" includes the entire range of activity undertaken by LEAA. Actions include:

- (1) LEAA grants, subgrants and contracts.
- (2) Research, development and demonstration projects.
- (3) Rule-making and regulations.
- (4) Legislative proposals.

(g) "LEAA Environmental Coordinator" is such individual as designated by the Administrator to carry out the delegated functions under this regulation.

(h) "Major Federal Action" is any Federal action which requires the substantial commitment of resources or triggers such a substantial commitment by another.

(i) "Negative Declaration" is a determination by the responsible LEAA official, after review of the applicant's environmental evaluation, that an Environmental Impact Statement is not necessary.

(j) "NEPA" means the National Environmental Policy Act of 1969.

(k) "Significantly Affecting the Environment" means a determination taking into consideration:

(1) The extent to which the action will cause adverse environmental effects in excess of those created by existing uses in the area affected by it, or the extent to which the action brings about changes to the environment and creates new impacts, and

(2) The absolute quantitative adverse environmental effects of the action itself, including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area.

(l) "Subgrant" is the distribution of funds between the State Planning Agency and the applicant to whom the funds have been allocated.

Subpart C—Identification of Major Federal Actions Significantly Affecting the Environment

§ 19.6 Programs and projects with a potential effect on the environment.

The following are the types of Federal actions which require the preparation of an Environmental Evaluation:

(a) New construction projects.

(b) The renovation or modification of a facility which leads to an increased occupancy of more than 25 persons.

(c) The implementation of programs involving the use of pesticides and other harmful chemicals.

(d) The implementation of programs involving microwaves or radiation.

(e) Research and technology whose anticipated or intended future application could be expected to have a potential effect on the environment.

(f) Other actions which require the substantial commitment of resources or

trigger such a substantial commitment by another as determined by the responsible LEAA official to possibly have a significant effect on the quality of the environment.

§ 19.7 Actions significantly affecting the human environment.

(a) Actions significantly affecting the human environment are not limited to, but include the following projects or programs which would:

(1) Lead to a significant increase in air pollution;

(2) Lead to a significant increase in water pollution;

(3) Lead to a significant increase in the ambient noise level for a substantial number of people;

(4) Lead to poor land use, soil erosion or soil pollution;

(5) Destroy or derogate from an important recreation area;

(6) Substantially alter the pattern of behavior of wildlife or interfere with important breeding, nesting or feeding grounds;

(7) Disturb the ecological balance of land or water area;

(8) Have a significant effect upon areas of historical significance, cultural significance, education, or scientific significance;

(9) Have an adverse aesthetic or visual effect; or

(10) Have a detrimental effect on the safety of the community.

(b) In determining if an action is a major Federal action significantly affecting the environment LEAA will consider the following:

(1) Actions which have become environmentally controversial;

(2) Projects or a complex of projects which are individually limited but cumulatively have an environmental impact;

(3) Actions which have both beneficial environmental effects and detrimental effects even if it is believed that on balance that the effect will be beneficial;

(4) Secondary or indirect effects generated through the implementation of an LEAA project or program in the form of private associated investments and changed patterns of social and economic activity;

(5) Actions that would have little impact in an urban area but may have a significant impact in a rural setting or vice versa.

Subpart D—Designation of Responsible Official

§ 19.8 Designation of responsible officials.

(a) The LEAA Environmental Coordinator, Office of Regional Operations shall be the liaison official for LEAA with the Council on Environmental Quality, the Environmental Protection Agency and the other departments and agencies concerning environmental matters. Duties of the Environmental Coordinator include:

(1) Responsibility to insure that the actions with respect to the fulfillment of NEPA are coordinated.

(2) Provide for procedural and substantive area of training on environmental issues, policy, procedures and clearance requirements.

(3) Provide guidance in the preparation and processing of Environmental Impact Statements.

(4) Participate in policy formulation, as necessary, in the application of the requirements of the National Environmental Policy Act of 1969.

(5) Prepare an annual report for submission to the Council on Environmental Quality consisting of a review of the year's activities in carrying out the responsibilities under the National Environmental Policy Act of 1969.

(6) Prepare a quarterly list of all Negative Declarations and Environmental Impact Statements for submission to CEQ.

(b) Each Regional Administrator shall designate, through written delegation, an official in the Regional Office with responsibility for administering and coordinating the region-wide aspects of the environmental policies and procedures with respect to the funding of block and discretionary grants (except National Scope programs). The official shall:

(1) Insure that Environmental Evaluations or Environmental Impact Statements are prepared on all required programs and projects;

(2) Prepare and execute a Negative Declaration where a major action will not have a significant effect on the environment;

(3) Provide for the issuance of Environmental Impact Statements;

(4) Be responsible for submitting to the Office of Regional Operations on a quarterly basis a list of all Negative Declarations and Environmental Impact Statements prepared in the region;

(5) Coordinate with the Environmental Coordinator, Office of Regional Operations on the subjects of environmental problems, environmental training and guidelines.

(c) There shall be designated in the National Institute of Law Enforcement and Criminal Justice an official who will be responsible for administering and coordinating environmental policies and procedures for Institute programs and projects. The official shall:

(1) Insure that Environmental Evaluations or Environmental Impact Statements are prepared on all required technology, research and development programs.

(2) Prepare and execute a Negative Declaration where a major action will not have a significant effect on the environment;

(3) Provide for the issuance of Environmental Impact Statements.

(4) Be responsible for submitting lists of Environmental Impact Statements and Negative Declarations prepared to the Environmental Coordinator, Office of Regional Operations on a quarterly basis.

(5) Coordinate with the Environmental Coordinator, Office of Regional Operations, on the subjects of environmental problems, environmental training and guidelines.

(d) There shall be designated in the National Priority Program Office, an official whose responsibility it will be to insure the implementation of these regulations with respect to National Scope Programs. The official shall:

(1) Insure that Environmental Evaluations or Environmental Impact Statements are prepared on all required National Scope Programs or projects.

(2) Prepare and execute a Negative Declaration where a major action will not have a significant effect on the environment.

(3) Provide for the issuance of Environmental Impact Statements.

(4) Submit to the Environmental Coordinator, Office of Regional Operations, lists of Negative Declarations and Environmental Impact Statements on a quarterly basis.

(5) Coordinate with the Environmental Coordinator, Office of Regional Operations, on the subjects of environmental problems, environmental training and guidelines.

Subpart E—Environmental Procedures

§ 19.9 Initial environmental review procedures.

(a) *General.* The purpose of environmental review procedures established by these regulations is to determine whether a proposed LEAA funded program or project is a "major Federal action significantly affecting the quality of the human environment." Each proposed action falling within the scope of § 19.6 must include an Environmental Evaluation. An Environmental Evaluation is a report submitted by an applicant identifying the characteristics of the proposal and its effect upon the environment. An Environmental Evaluation will include full documentation of the elements covered by § 19.7(a). A determination shall thereafter be made by the responsible Federal official as to whether the action will have a significant effect on the environment requiring the preparation of an Environmental Impact Statement or whether a Negative Declaration can be filed. No action can be taken by the applicant in the implementation of a project or program for which funds have been requested unless environmental procedures have been completed and the project approved.

(b) *Block grants allocated to the States.* (1) When a comprehensive State plan is submitted for LEAA approval before the selection of specific projects to implement programs in the plan, the plan will be approved with a grant condition that all individual projects subsequently selected to implement programs in the plan, involving major actions falling within the scope of § 19.6 must adhere to environmental review procedures.

(2) When a subgrant application is submitted to the State Planning Agency for a program or project falling within the scope of § 19.6 an Environmental Evaluation shall be prepared by the applicant and circulated with the application through the State and regional clearinghouses for review and comment. A copy of the application and Environmental Evaluation shall be forwarded concurrently to the LEAA Regional Office. If insufficient information is provided in the Environmental Evaluation, the document will be returned to the applicant for revision.

(3) The responsible designated official in the Regional Office shall allow 30 days for comment by the clearinghouses and

thereafter review the Environmental Evaluation in order to determine whether a Negative Declaration or an Environmental Impact Statement is to be prepared.

(4) If it is determined that there will be no significant effect on the environment the Regional Administrator shall approve a Negative Declaration which will indicate the review which has taken place and the determination that an Environmental Impact Statement is not necessary. He will forward a copy of the Declaration to the State Planning Agency and the applicant.

(5) Where a determination is made that the proposal will have a significant effect on the environment, the LEAA Regional Office and the State Planning Agency shall coordinate the preparation of the Environmental Impact Statement. The State Planning Agency will serve as the primary agency in the preliminary stages of preparing the Environmental Impact Statement. This will involve site-visits, gathering data, measuring environmental impacts and submitting information as required by the Regional Office.

(c) Direct grants or contracts by LEAA. An Environmental Evaluation must be submitted by an applicant for any program or project involving major actions falling within the scope of § 19.6. A determination shall be made by the head of the office responsible for the approval of the contract or grant whether to execute a Negative Declaration, or to prepare an Environmental Impact Statement.

§ 19.10 Preparation of Environmental Impact Statements.

(a) Upon a determination that a program or project may have a significant effect upon the environment, the responsible LEAA official shall prepare an Environmental Impact Statement. The impact statement is comprised of two stages: Draft and final. The draft statement must satisfy to the fullest extent possible, at the time the draft is prepared, the requirement established for final statements by section 102(2)(C) of NEPA.

(b) Prior to the preparation of a draft Environmental Impact Statement, an applicant may be required to supply additional information in the form of an Environmental Assessment. The Environmental Assessment will contain suffi-

cient information to enable the responsible LEAA official to begin preparation of a draft Environmental Impact Statement. The Administration will assist the applicant by outlining the types of information required. In some cases draft Environmental Impact Statements will be prepared by private consultants. In all cases LEAA will make its own evaluation of the environmental issues and take responsibility for the scope and content of draft and final Environmental Impact Statements.

(c) Impact statements for programs involving new technology or a broad application.

(1) The preparation of Environmental Impact Statements for (i) broad programs and (ii) broad application of new technology will require a slightly different approach than that of a single project or program. Careful attention shall be given to identifying and defining the purpose and scope of the action which would most appropriately serve as the subject of the statement. In many cases broad program statements will be required in order to assess the environmental effects of a number of individual but connected actions on a given geographical area or the environmental impact of individual actions that are generic or common to a series of agency actions. The appropriate time for preparation of Environmental Impact Statements on new technology with potential for significant environmental impact should be early enough in its development stages to include mitigation measures.

(2) Subsequent Environmental Impact Statements on major individual actions will be necessary where such actions have significant environmental impacts not adequately evaluated in the original broad program statement. Periodic evaluation to determine when a program statement is required for such programs should be conducted based on the size of Federal investment; likelihood of widespread application, and potential environmental impacts where continued investment will foreclose alternatives.

(3) An Environmental Impact Statement shall be prepared early enough to be part of the decision-making process.

(d) Notice of intent announcing the preparation of a draft impact statement shall be issued by the responsible official. The notice shall briefly describe the agency action, its location and the issues involved. Such a notice should be submitted as soon as it has been determined

that an Environmental Impact Statement will be prepared. Notice of intent should be sent to interested persons who might be interested in receiving a copy of an impact statement.

§ 19.11 Content of Environmental Impact Statements.

The following points are to be covered in both the draft and final statements:

(a) *Description of the proposed action.* A description of the proposed action, a statement of its purpose and a description of the present environment to be affected should be presented. Maps, diagrams, charts, drawings or other appropriate technical data should be of sufficient detail to permit an assessment of potential environmental impacts. A description of the proposed action should be in clear, concise layman's language. Site plans and general layout should be provided as appropriate. Highly technical and specialized analyses and data should be included as appendices if necessary. A statement of purpose should describe program goals, benefits and costs of the proposal. A description of the present environment should include other Federal activities in the area affected by the proposed action and which are related to the proposed action. In order to insure accurate descriptions and environmental assessments, site visits should be made where feasible. Population and growth characteristic of the area should be provided as well as the effect the proposal will create. In determining population growth, use should be made of the projections compiled for the Water Resources Council by the Bureau of Economic Analysis of the Department of Commerce and Economic Research Service of the Department of Agriculture (the OBERS projection). The following elements of the existing environment should be described: land use, density, geological elements, hydrological elements, climatic elements, botanical elements, zoological elements, archeological elements, transportation and community facilities.

(b) The relationship of the proposed action to land use plans, policies and controls for the affected area. This requires a discussion of how the proposed action may conform or conflict with the objectives and specific terms of approved or proposed Federal, State and local land use plans, policies and controls if any for

the area affected including those developed in response to the Clean Air Act, 42 U.S.C. 1857-1857i, 1858, 1858a, 49 U.S.C. 1421, 1430 or the Federal Water Pollution Control Act Amendments of 1972, 86 Stat. 816 (codified in scattered sections of 12, 15, 31 and 33 U.S.C.). Where a conflict or inconsistency exists, the statement should describe the extent to which the agency has reconciled its proposed action with the plan, policy or control and the agency has decided to proceed notwithstanding the absence of full reconciliation.

(c) The probable impact of the proposed action on the environment. This requires an assessment of the positive and negative effects of the proposed action. The attention given to different environmental factors will vary according to the nature, scale, and location of the proposed actions. Such secondary effects through their impacts on existing community facilities and activities, or through changes in natural conditions may often be even more substantial than the primary effects of the original action itself. An assessment should be made on the effects of any possible change in population patterns or growth upon the resource base, including land use, water and public service of the area in question. Factors to consider are: air quality, water quality, ambient noise level, solid waste, fish and wildlife habitat, flora and fauna, toxic materials, radiation, microwaves, pesticides, energy supply, stream modification, redevelopment and construction in built-up areas, density and congestion mitigation, neighborhood character and continuity, historical architectural and archeological preservation, outdoor recreation, low income population and adequacy of community facilities. Primary attention should be given in the statement to discussing those factors most evidently impacted by the proposed action. Secondary or indirect as well as primary or direct consequences for the environment should be included in the analysis. For example, the primary action of constructing a Justice Complex or a correctional institution may stimulate or induce secondary effects in the form of increased investment and development in adjacent areas.

(d) Alternatives to the proposed action. A rigorous exploration and objective evaluation of the environmental impacts of all reasonable alternative actions, particularly those that might en-

hance environmental quality or avoid some or all of the adverse environmental effects, is essential. Examples of such alternatives include the alternative of taking no action; that of postponing action pending further study of alternatives; requiring actions of significantly different nature which would provide similar benefits with different environmental impacts; alternatives related to different sites; or alternatives related to different designs. Alternatives to the proposed action should include where relevant even those alternatives which are not within the jurisdiction of LEAA.

(e) Probable adverse environmental effects which cannot be avoided should the proposal be implemented. The adverse impacts surfaced should be discussed further in this section. Adverse effects such as water or air pollution, undesirable land use patterns, damage to life systems, urban congestion, threats to health, or other consequences adverse to the environmental goals, set out in Section 101(B) of NEPA should be discussed. This should be a brief section summarizing in one place those adverse effects which are unavoidable. Measures taken to mitigate adverse effects should be described.

(f) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. This section should contain a brief discussion of the extent to which the proposed action involves tradeoffs between short-term environmental gains at the expense of long-term losses or vice versa and a discussion of the extent to which the proposed action forecloses future options. In this context short-term and long-terms do not refer to any fixed time periods but should be viewed in terms of the environmentally significant consequences of the proposed action. The cumulative and long-term effects of the proposed action which either significantly reduce or enhance the state of the environment for future generations should be examined. In particular, the desirability of the proposed actions shall be weighed to guard against short-sighted foreclosure of future options or needs. Special attention shall be given to effects which narrows the range of beneficial uses of the environment or pose long-term risks to health or safety. Who is paying the environmental costs versus who is gaining the benefits over a period of time shall be identified. In addition, the reasons the

proposed action is believed to be justified now, rather than reserving a long-term option for other alternatives, including no use, shall be explained.

(g) Irreversible and irretrievable commitments of resources which would be involved in the proposed action, should it be implemented. This requires the agency to identify from its survey of unavoidable impacts, the extent to which the action irreversibly curtails the range of potential uses of the environment. Resources not only including labor and materials but natural and cultural resources which may be lost or destroyed by the proposed action. Uses of renewable and nonrenewable resources during the initial and continued phases of the action should be specified.

(h) Other interest and consideration of Federal, State, and local government policy thought to offset the adverse environmental effects of the proposed action. This involves a discussion of general and specific goals and the trade-offs between such goals and environmental impacts. The statement should also indicate the extent to which these stated countervailing benefits could be realized by following reasonable alternatives to the proposed action that would avoid some or all of the adverse environmental effects.

§ 19.12 Circulation and review of Environmental Impact Statements.

(a) *Timing.* (1) Ten copies of the draft Environmental Impact Statement shall be filed with the Council on Environmental Quality and copies made available to appropriate agencies and to the public for a review period of forty-five (45) days subject to a possible extension of up to fifteen (15) days before filing of the final statement if no comments are received, or preparation of the final statement in light of the comments received. The draft must be on file at least ninety (90) days prior to the taking of any final administrative action with regard to the proposal. The ninety-day period begins upon the date when CEQ publishes the announcements in the FEDERAL REGISTER.

(2) The final Environmental Impact Statement shall be filed with the CEQ and made available to appropriate agencies and the public at least thirty (30) days prior to any final administrative action with regard to the proposal. The thirty-day period begins on the date of receipt of the final statement by CEQ.

After thirty days, and upon consideration of comments on the final statement, the Administrator shall make a final decision on the proposed action. The thirty-day period and the ninety-day period may run concurrently to the extent that they overlap. Exceptions to the 30 or 90-day time limits are permitted only under unusual circumstances.

(i) Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these guidelines concerning minimum periods for agency review and advance availability of environmental statements, LEAA will consult with the Council about alternative arrangements.

(ii) Similarly, where there are overriding considerations which need to be considered in order to avoid impairing program effectiveness, LEAA will consult with the Council concerning appropriate modifications of the minimum periods.

(b) Review of draft Environmental Impact Statements by Federal, State and local agencies and by the public.

(1) The draft Environmental Impact Statement shall be circulated for comment to Federal and State agencies with jurisdiction by law or special expertise with respect to any environmental impact involved. These Federal and State agencies and their relevant areas of expertise include those identified in Appendices II and III. All Environmental Impact Statements will be transmitted to the Environmental Protection Agency.

(2) *State and local review.* Comments will be solicited from State and local agencies through the A-95 review process in accordance with the Office of Management and Budget Circular No. A-95 (revised). Environmental Impact Statements will be circulated to State and areawide clearinghouses.

(3) *Public review.* LEAA will encourage public participation in the draft Environmental Impact Statement process.

(i) Upon the issuance of a draft Environmental Impact Statement, a notice will be published in the local newspaper indicating where statement can be acquired. Statements will be issued to private organizations and individuals requesting an opportunity to comment.

(ii) LEAA will announce in the FEDERAL REGISTER the availability of environmental statements.

(iii) Copies of the Environmental Impact Statement will be available in the reading rooms of the appropriate Regional Offices, State Planning Agency offices and in Central Offices in Washington. When a fee is charged it shall not be more than the actual cost of reproduction. If, however, demand is greater than anticipated and copies of statements are not available from the Agency's originating office, copies can be obtained from the National Technical Information Service, Department of Commerce, Springfield, Virginia 22151.

(c) *Comments on Environmental Impact Statements.* (1) Agencies and members of the public submitting comments on proposed actions, on the basis of draft environmental statements, should endeavor to make their comments as specific, substantive and factual as possible without undue attention to matters of form in the impact statement. Emphasis should be placed on the assessment of the environmental impacts of the proposed action, and the acceptability of those impacts on the quality of the environment particularly, as contrasted with the impacts of reasonable alternatives to the action. Commenting entities may recommend modifications to the proposed action and/or new alternatives that will enhance environmental quality and avoid or minimize adverse environmental impacts. Agencies and members of the public should indicate in their comments the nature of any monitoring of the environmental effects of the proposed project that appears particularly appropriate.

(2) A time limit of forty-five (45) days for reply is established, after which time it may be presumed, unless the agency or party consulted requests a specified extension of time, that the agency or party consulted has no comment to make. When it has been determined by LEAA that additional time for comment is necessary, an extension of time up to fifteen (15) days will be granted. In determining an appropriate period for comment, consideration will be given to the magnitude and complexity of the statement and the extent of citizen interest in the proposed action.

§ 19.13 Public hearings.

(a) Public hearings will not be part of the normal environmental review process. However, in appropriate cases informal public hearings may be held on draft Environmental Impact State-

ments. In deciding whether a public hearing is appropriate LEAA will consider:

(1) The magnitude of the proposal in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of the resources involved.

(2) The degree of interest in the proposal, as evidenced by requests from the public and from Federal, State and local authorities that a hearing be held.

(3) The complexity of the issue and the likelihood that information will be presented at the hearing which will be of assistance to LEAA in fulfilling its responsibilities under NEPA, and the extent to which public involvement already has been achieved through other means such as meetings with citizen representatives and/or written comments on the proposed action.

(b) When it is determined to hold a public hearing, it will be held at least fifteen (15) days after the issuance of the draft Environmental Impact Statement. The purpose of the hearing will be to enable LEAA to obtain all relevant data on the proposed action and to assure the community that its views are being considered. All comments on the draft Environmental Impact Statement will be in writing and submitted prior to the hearing. Comments will be specific, substantive and as factual as possible without undue attention to matters of form.

§ 19.14 Preparation and circulation of final environmental statements.

(a) All substantive comments received on the draft (or summaries thereof where response has been exceptionally voluminous) should be attached to the final statement, whether or not each such comment is thought to merit individual discussion by the LEAA in the text of the statement. Where opposing professional views and responsible opinion have been overlooked in the draft statement and are brought to the attention of LEAA through the commenting process, consideration will be given, and a meaningful response made in the final statement.

(b) Copies of final statements with comments attached shall be sent to all Federal, State and local agencies, individuals, and private organizations who made substantive comments on the draft statement.

(c) Where the number of comments on a draft statement is such that distribution of the final statement to all

commenting entities appears impracticable, LEAA shall consult with the Council concerning alternative arrangements for distribution of the statement.

(d) Five copies of all comments received from Federal, State and local agencies and the public, and ten copies of the final statement will be sent to the Council on Environmental Quality.

Subpart F—Final Determinations

§ 19.15 Determination by the Administrator, LEAA.

Environmental findings. Thirty (30) days after filing the final statement with the Council on Environmental Quality the Administrator, LEAA or his designee will articulate the reasons for whatever action is to be taken with specific cross-references to the administrative record. This shall include all relevant factors, environmental, economic, technical, and political, with a detailed reference to the administrative record. The Administrator shall consider the results of the environmental assessments along with the assessments of the net economic, technical and other benefits of the proposed actions and use all practicable means consistent with other essential consideration of national policy, to avoid or minimize undesirable consequences for the environment. It is at this time that a decision is made to approve or reject the project as it has been proposed. In the case where an Environmental Impact Statement reveals adverse impact which must be minimized, and a project or program is approved, the project or program shall be subject to an inspection by the LEAA in order to insure that the applicant has adhered to proposed steps to minimize adverse environmental impacts.

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

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Authority: Pub. L. 93-83, 87 Stat. 197, (42 U.S.C. 3701, et seq.; 28 U.S.C. 534), Pub. L. 92-544, 86 Stat. 1115.

Source: Order No. 801-75, 40 FR 22114, May 20, 1975, unless otherwise noted.

Subpart A—General Provisions

Source: 41 FR 11714, Mar. 19, 1976, unless otherwise noted.

§ 20.1 Purpose.

It is the purpose of these regulations to assure that criminal history record information wherever it appears is collected, stored, and disseminated in a manner to insure the completeness, integrity, accuracy and security of such information and to protect individual privacy.

§ 20.2 Authority.

These regulations are issued pursuant to sections 501 and 524(b) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Crime Control Act of 1973, Pub. L. 93-83, 87 Stat. 197, 42 USC 3701, et seq. (Act), 28 USC 534, and Pub. L. 92-544, 86 Stat. 1115.

§ 20.3 Definitions.

As used in these regulations:

(a) "Criminal history record information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation or dissemination of criminal history record information.

(b) "Criminal history record information" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional supervision, and release. The term

does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system.

(c) "Criminal justice agency" means:

(1) courts; (2) a government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

(d) The "administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

(e) "Disposition" means information disclosing that criminal proceedings have been concluded, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings and also disclosing the nature of the termination in the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions shall include, but not be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed—civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial—defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision.

(f) "Statute" means an Act of Congress or State legislature or a provision of the Constitution of the United States or of a State.

(g) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(h) An "executive order" means an order of the President of the United States or the Chief Executive of a State which has the force of law and which is published in a manner permitting regular public access thereto.

(i) "Act" means the Omnibus Crime Control and Safe Streets Act, 42 USC 3701, *et seq.*, as amended.

(j) "Department of Justice criminal history record information system" means the Identification Division and the Computerized Criminal History File systems operated by the Federal Bureau of Investigation.

(k) "Nonconviction data" means arrest information without disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals.

(l) "Direct access" means having the authority to access the criminal history record data base, whether by manual or automated methods.

Subpart B—State and Local Criminal History Record Information Systems

SOURCE: 41 FR 11715, Mar. 19, 1976, unless otherwise noted.

§ 20.20 Applicability.

(a) The regulations in this subpart apply to all State and local agencies and individuals collecting, storing, or disseminating criminal history record information processed by manual or automated operations where such collection, storage, or dissemination has been funded in whole or in part with funds made available by the Law Enforcement Assistance Administration subsequent to July 1, 1973, pursuant to Title I of the Act. Use of information obtained from the FBI Identification Division or the FBI/NCIC system shall also be subject to limitations contained in Subpart C.

(b) The regulations in this subpart shall not apply to criminal history record information contained in: (1) posters, announcements, or lists for identifying or apprehending fugitives or wanted per-

sons; (2) original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long standing custom to be made public, if such records are organized on a chronological basis; (3) court records of public judicial proceedings; (4) published court or administrative opinions or public judicial, administrative or legislative proceedings; (5) records of traffic offenses maintained by State departments of transportation, motor vehicles or the equivalent thereof for the purpose of regulating the issuance, suspension, revocation, or renewal of driver's, pilot's or other operators' licenses; (6) announcements of executive clemency.

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public criminal history record information related to the offense for which an individual is currently within the criminal justice system. Nor is a criminal justice agency prohibited from confirming prior criminal history record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted, or whether an information or other formal charge was filed, on a specified date, if the arrest record information or criminal record information disclosed is based on data excluded by paragraph (b) of this section. The regulations do not prohibit the dissemination of criminal history record information for purposes of international travel, such as issuing visas and granting of citizenship.

§ 20.21 Preparation and submission of a Criminal History Record Information Plan.

A plan shall be submitted to LEAA by each State on March 16, 1976, to set forth all operational procedures, except those portions relating to dissemination and security. A supplemental plan covering these portions shall be submitted no later than 90 days after promulgation of these amended regulations. The plan shall set forth operational procedures to—

(a) *Completeness and accuracy.* Insure that criminal history record information is complete and accurate.

(1) Complete records should be maintained at a central State repository. To be complete, a record maintained at a central State repository which contains information that an individual has been

arrested, and which is available for dissemination, must contain information of any dispositions occurring within the State within 90 days after the disposition has occurred. The above shall apply to all arrests occurring subsequent to the effective date of these regulations. Procedures shall be established for criminal justice agencies to query the central repository prior to dissemination of any criminal history record information to assure that the most up-to-date disposition data is being used. Inquiries of a central State repository shall be made prior to any dissemination except in those cases where time is of the essence and the repository is technically incapable of responding within the necessary time period.

(2) To be accurate means that no record containing criminal history record information shall contain erroneous information. To accomplish this end, criminal justice agencies shall institute a process of data collection, entry, storage, and systematic audit that will minimize the possibility of recording and storing inaccurate information and upon finding inaccurate information of a material nature, shall notify all criminal justice agencies known to have received such information.

(b) *Limitations on dissemination.* By December 31, 1977, insure that dissemination of nonconviction data has been limited, whether directly or through any intermediary only to:

(1) Criminal justice agencies, for purposes of the administration of criminal justice and criminal justice agency employment;

(2) Individuals and agencies for any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order, as construed by appropriate State or local officials or agencies;

(3) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. The agreement shall specifically authorize access to data, limit the use of data to purposes for which given, insure the security and confidentiality of the data consistent with these regulations, and provide sanctions for violation thereof;

(4) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency. The agreement shall specifically au-

thorize access to data, limit the use of data to research, evaluative, or statistical purposes, insure the confidentiality and security of the data consistent with these regulations and with section 524(a) of the Act and any regulations implementing section 524(a), and provide sanctions for the violation thereof. These dissemination limitations do not apply to conviction data.

(c) *General policies on use and dissemination.* (1) Use of criminal history record information disseminated to non-criminal justice agencies shall be limited to the purpose for which it was given.

(2) No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.

(3) Subsection (b) does not mandate dissemination of criminal history record information to any agency or individual. States and local governments will determine the purposes for which dissemination of criminal history record information is authorized by State law, executive order, local ordinance, court rule, decision or order.

(d) *Juvenile records.* Insure that dissemination of records concerning proceedings relating to the adjudication of a juvenile as delinquent or in need or supervision (or the equivalent) to non-criminal justice agencies is prohibited, unless a statute, court order, rule or court decision specifically authorizes dissemination of juvenile records, except to the same extent as criminal history records may be disseminated as provided in § 20.21(b) (3) and (4).

(e) *Audit.* Insure that annual audits of a representative sample of State and local criminal justice agencies chosen on a random basis shall be conducted by the State to verify adherence to these regulations and that appropriate records shall be retained to facilitate such audits. Such records shall include, but are not limited to, the names of all persons or agencies to whom information is disseminated and the date upon which such information is disseminated. The reporting of a criminal justice transaction to a State, local or Federal repository is not a dissemination of information.

(f) *Security.* Wherever criminal history record information is collected, stored, or disseminated, each State shall insure that the following requirements are satisfied by security standards established by State legislation, or in the ab-

sence of such legislation, by regulations approved or issued by the Governor of the State.

(1) Where computerized data processing is employed, effective and technologically advanced software and hardware designs are instituted to prevent unauthorized access to such information.

(2) Access to criminal history record information system facilities, systems operating environments, data file contents whether while in use or when stored in a media library, and system documentation is restricted to authorized organizations and personnel.

(3) (i) Computer operations, whether dedicated or shared, which support criminal justice information systems, operate in accordance with procedures developed or approved by the participating criminal justice agencies that assure that:

(a) Criminal history record information is stored by the computer in such manner that it cannot be modified, destroyed, accessed, changed, purged, or overlaid in any fashion by non-criminal justice terminals.

(b) Operation programs are used that will prohibit inquiry, record updates, or destruction of records, from any terminal other than criminal justice system terminals which are so designated.

(c) The destruction of records is limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information.

(d) Operational programs are used to detect and store for the output of designated criminal justice agency employees all unauthorized attempts to penetrate any criminal history record information system, program or file.

(e) The programs specified in paragraphs (f) (3) (i) (b) and (d) of this section are known only to criminal justice agency employees responsible for criminal history record information system control or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such programs and the program(s) are kept continuously under maximum security conditions.

(f) Procedures are instituted to assure that an individual or agency authorized direct access is responsible for A the physical security of criminal history record information under its control or in its custody and B the protection of

such information from unauthorized access, disclosure or dissemination.

(g) Procedures are instituted to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

(ii) A criminal justice agency shall have the right to audit, monitor and inspect procedures established above.

(4) The criminal justice agency will:

(i) Screen and have the right to reject for employment, based on good cause, all personnel to be authorized to have direct access to criminal history record information.

(ii) Have the right to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel authorized to have direct access to such information where such personnel violate the provisions of these regulations or other security requirements established for the collection, storage, or dissemination of criminal history record information.

(iii) Institute procedures, where computer processing is not utilized, to assure that an individual or agency authorized direct access is responsible for (a) the physical security of criminal history record information under its control or in its custody and (b) the protection of such information from unauthorized access, disclosure, or dissemination.

(iv) Institute procedures, where computer processing is not utilized, to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind, or other natural or manmade disasters.

(v) Provide that direct access to criminal history record information shall be available only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.

(5) Each employee working with or having access to criminal history record information shall be made familiar with the substance and intent of these regulations.

(g) *Access and review.* Insure the individual's right to access and review of criminal history information for purposes of accuracy and completeness by instituting procedures so that—

(1) Any individual shall, upon satisfactory verification of his identity, be entitled to review without undue burden to either the criminal justice agency or the individual, any criminal history record information maintained about the individual and obtain a copy thereof when necessary for the purpose of challenge or correction;

(2) Administrative review and necessary correction of any claim by the individual to whom the information relates that the information is inaccurate or incomplete is provided;

(3) The State shall establish and implement procedures for administrative appeal where a criminal justice agency refuses to correct challenged information to the satisfaction of the individual to whom the information relates;

(4) Upon request, an individual whose record has been corrected shall be given the names of all non-criminal justice agencies to whom the data has been given;

(5) The correcting agency shall notify all criminal justice recipients of corrected information; and

(6) The individual's right to access and review of criminal history record information shall not extend to data contained in intelligence, investigatory, or other related files and shall not be construed to include any other information than that defined by § 20.3(b).

§ 20.22 Certification of Compliance.

(a) Each State to which these regulations are applicable shall with the submission of its plan provide a certification that to the maximum extent feasible action has been taken to comply with the procedures set forth in the plan. Maximum extent feasible, in this subsection, means actions which can be taken to comply with the procedures set forth in the plan that do not require additional legislative authority or involve unreasonable cost or do not exceed existing technical ability.

(b) The certification shall include—

(1) An outline of the action which has been instituted. At a minimum, the requirements of access and review under § 20.21(g) must be completely operational;

(2) A description of any legislation or executive order, or attempts to obtain such authority that has been instituted to comply with these regulations;

(3) A description of the steps taken to overcome any fiscal, technical, and

administrative barriers to the development of complete and accurate criminal history record information;

(4) A description of existing system capability and steps being taken to upgrade such capability to meet the requirements of these regulations; and

(5) A listing setting forth categories of non-criminal justice dissemination. See § 20.21(b).

§ 20.23 Documentation: Approval by LEAA.

Within 90 days of the receipt of the plan, LEAA shall approve or disapprove the adequacy of the provisions of the plan and certification. Evaluation of the plan by LEAA will be based upon whether the procedures set forth will accomplish the required objectives. The evaluation of the certification(s) will be based upon whether a good faith effort has been shown to initiate and/or further compliance with the plan and regulations. All procedures in the approved plan must be fully operational and implemented by December 31, 1977. A final certification shall be submitted in December 1977.

§ 20.24 State laws on privacy and security.

Where a State originating criminal history record information provides for sealing or purging thereof, nothing in these regulations shall be construed to prevent any other State receiving such information, upon notification, from complying with the originating State's sealing or purging requirements.

§ 20.25 Penalties.

Any agency or individual violating subpart B of these regulations shall be subject to a fine not to exceed \$10,000. In addition, LEAA may initiate fund cut-off procedures against recipients of LEAA assistance.

Subpart C—Federal System and Interstate Exchange of Criminal History Record Information

§ 20.30 Applicability.

The provisions of this subpart of the regulations apply to any Department of Justice criminal history record information system that serves criminal justice agencies in two or more states and to Federal, state and local criminal justice agencies to the extent that they utilize the services of Department of Justice criminal history record information systems. These regulations are applicable to both manual and automated systems.

§ 20.31 Responsibilities.

(a) The Federal Bureau of Investigation (FBI) shall operate the National Crime Information Center (NCIC), the computerized information system which includes telecommunications lines and any message switching facilities which are authorized by law or regulation to link local, state and Federal criminal justice agencies for the purpose of exchanging NCIC-related information. Such information includes information in the Computerized Criminal History (CCH) File, a cooperative Federal-State program for the interstate exchange of criminal history record information. CCH shall provide a central repository and index of criminal history record information for the purpose of facilitating the interstate exchange of such information among criminal justice agencies.

(b) The FBI shall operate the Identification Division to perform identification and criminal history record information functions for Federal, state and local criminal justice agencies, and for noncriminal justice agencies and other entities where authorized by Federal statute, state statute pursuant to Public Law 92-544 (86 Stat. 1115), Presidential executive order, or regulation of the Attorney General of the United States.

(c) The FBI Identification Division shall maintain the master fingerprint files on all offenders included in the NCIC/CCH File for the purposes of determining first offender status and to identify those offenders who are unknown in states where they become criminally active but known in other states through prior criminal history records.

§ 20.32 Includable offenses.

(a) Criminal history record information maintained in any Department of Justice criminal history record information system shall include serious and/or significant offenses.

(b) Excluded from such a system are arrests and court actions limited only to nonserious charges, e.g., drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, non-specific charges of suspicion or investigation, traffic violations (except data will be included on arrests for manslaughter, driving under the influence of drugs or liquor, and hit and run). Offenses committed by juvenile offenders shall also be excluded unless a juvenile offender is tried in court as an adult.

(c) The exclusions enumerated above shall not apply to Federal manual criminal history record information collected, maintained and compiled by the FBI prior to the effective date of these Regulations.

§ 20.33 Dissemination of criminal history record information.

(a) Criminal history record information contained in any Department of Justice criminal history record information system will be made available:

(1) To criminal justice agencies for criminal justice purposes; and

(2) To Federal agencies authorized to receive it pursuant to Federal statute or Executive order.

(3) Pursuant to Public Law 92-544 (86 Stat. 115) for use in connection with licensing or local/state employment or for other uses only if such dissemination is authorized by Federal or state statutes and approved by the Attorney General of the United States. When no active prosecution of the charge is known to be pending arrest data more than one year old will not be disseminated pursuant to this subsection unless accompanied by information relating to the disposition of that arrest.

(4) For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses.

(b) The exchange of criminal history record information authorized by paragraph (a) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates.

§ 20.34 Individual's right to access criminal history record information.

(a) Any individual, upon request, upon satisfactory verification of his identity by fingerprint comparison and upon payment of any required processing fee, may review criminal history record information maintained about him in a Department of Justice criminal history record information system.

(b) If, after reviewing his identification record, the subject thereof believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, he must make application directly to the contributor of the questioned information. If the contributor corrects the record, it shall promptly notify the FBI and, upon receipt of such a notification, the FBI will make any changes necessary in accordance with the correction supplied by the contributor of the original information.

§ 20.35 National Crime Information Center Advisory Policy Board.

There is established an NCIC Advisory Policy Board whose purpose is to recommend to the Director, FBI, general policies with respect to the philosophy, concept and operational principles of NCIC, particularly its relationships with local and state systems relating to the collection, processing, storage, dissemination and use of criminal history record information contained in the CCH File.

(a) (1) The Board shall be composed of twenty-six members, twenty of whom are elected by the NCIC users from across the entire United States and six who are appointed by the Director of the FBI. The six appointed members, two each from the judicial, the corrections and the prosecutive sectors of the criminal justice community, shall serve for an indeterminate period of time. The twenty elected members shall serve for a term of two years commencing on January 5th of each odd numbered year.

(2) The Board shall be representative of the entire criminal justice community at the state and local levels and shall include representation from law enforcement, the courts and corrections segments of this community.

(b) The Board shall review and consider rules, regulations and procedures for the operation of the NCIC.

(c) The Board shall consider operational needs of criminal justice agencies in light of public policies, and local, state and Federal statutes and these Regulations.

(d) The Board shall review and consider security and privacy aspects of the NCIC system and shall have a standing Security and Confidentiality Committee to provide input and recommendations to the Board concerning security and privacy of the NCIC system on a continuing basis.

(e) The Board shall recommend standards for participation by criminal justice agencies in the NCIC system.

(f) The Board shall report directly to the Director of the FBI or his designated appointee.

(g) The Board shall operate within the purview of the Federal Advisory Committee Act, Public Law 92-463, 86 Stat. 770.

(h) The Director, FBI, shall not adopt recommendations of the Board which would be in violation of these Regulations.

§ 20.36 Participation in the Computerized Criminal History Program.

(a) For the purpose of acquiring and retaining direct access to CCH File each criminal justice agency shall execute a signed agreement with the Director, FBI, to abide by all present rules, policies and procedures of the NCIC, as well as any rules, policies and procedures hereinafter approved by the NCIC Advisory Policy Board and adopted by the NCIC.

(b) Entry of criminal history record information into the CCH File will be accepted only from an authorized state or Federal criminal justice control terminal. Terminal devices in other authorized criminal justice agencies will be limited to inquiries.

§ 20.37 Responsibility for accuracy, completeness, currency.

It shall be the responsibility of each criminal justice agency contributing data to any Department of Justice criminal history record information system to assure that information on individuals is kept complete, accurate and current so that all such records shall contain to the maximum extent feasible dispositions for all arrest data included therein. Dispositions should be submitted by criminal justice agencies within 120 days after the disposition has occurred.

§ 20.38 Sanction for noncompliance.

The services of Department of Justice criminal history record information systems are subject to cancellation in regard to any agency or entity which fails to comply with the provisions of Subpart C.

PART 21—WITNESS FEES

Sec.

21.1 Employees of the United States serving as witnesses.

21.2 [Reserved]

Sec.

21.3 Fees and allowances of witnesses in the District of Alaska.

21.4 Use of table of distances.

21.5 Certification of witness attendance.

§ 21.1 Employees of the United States serving as witnesses.

(a) *Applicability.* This section applies to employees of the United States as defined by 5 U.S.C. 2105, except those whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives.

(b) *Entitlement to travel expenses.*

(1) An employee is entitled to travel expenses in connection with any judicial or agency proceeding with respect to which he is summoned (and is authorized by his agency to respond to such summons), or is assigned by his agency: (i) To testify or produce official records on behalf of the United States, or (ii) to testify in his official capacity or produce official records on behalf of a party other than the United States.

(2) The term "judicial proceeding" as used in this section means any action, suit, or other judicial proceeding, including any condemnation, preliminary, informational, or other proceeding of a judicial nature. Examples of the latter include hearings and conferences before a committing court, magistrate, or commission, grand jury proceedings, and coroners' inquests. It also includes informational proceedings such as hearings and conferences conducted by a prosecuting attorney for the purpose of determining whether an information or charge should be made in a particular case. The judicial proceeding may be in the District of Columbia, a State, Territory, or possession of the United States including the Commonwealth of Puerto Rico, the Canal Zone, or the Trust Territory of the Pacific Islands.

(3) The term "agency proceeding" means an agency process as defined by paragraphs (5), (7), and (9) of 5 U.S.C. 551. The word "summoned" as used in this section means an official request, invitation, or call, evidenced by an official writing of the court, authority, or party responsible for the conduct of the proceeding.

(c) *Allowable travel expenses.* An employee qualifying for payment of travel expenses shall be paid at rates and in amounts allowable for other purposes under the provisions of 5 U.S.C. 5701-5708 and applicable regulations prescribed

thereunder by the Office of Management and Budget and the employing agency; except, however, to the extent that travel expenses are paid to the employee for his appearance by the court, authority, or party which caused him to be summoned as a witness on behalf of a party other than the United States.

(d) *Payment and reimbursement.* If the employee serves as a witness on behalf of the United States, and the case involves the activity in connection with which he is employed, the travel expenses are paid from the appropriation otherwise available for travel expenses of the employee under proper certification by a certifying official of the agency concerned. If the case does not involve its activity, the employing agency may advance or pay the travel expenses of the employee, and later obtain reimbursement from the agency properly chargeable with the travel expenses by submitting to the latter an appropriate bill together with a copy of the employee's approved travel voucher. If an employee serves as a witness to testify in his official capacity or produce official records on behalf of a party other than the United States, allowable travel expenses hereunder shall be paid by the employing agency from the appropriation otherwise available for travel expenses of the employee under proper certification by a certifying official.

[Order 465-71, 36 F.R. 15432, Aug. 14, 1971; 36 F.R. 17506, Sept. 1, 1971]

§ 21.2 [Reserved]

§ 21.3 Fees and allowances of witnesses in the District of Alaska.

The fees and allowances of witnesses in the District of Alaska shall be as follows:

(a) For attendance at the District Court or before any officer pursuant to law, including a commissioner acting in any capacity authorized by law, and for the time necessarily occupied in traveling from their place of residence to the place of trial or hearing and in returning therefrom, witnesses shall be entitled to \$24 a day.

(b) In addition to the fee fixed by paragraph (a) of this section, witnesses (other than salaried employees of the Government and detained witnesses) who attend court or attend before a commissioner at points so far removed from their place of residence that they are unable to return thereto each day shall

be entitled to a subsistence allowance of \$20 a day for each day of such attendance and for each day necessarily occupied in traveling to the place of such attendance and in returning to their place of residence.

(c) Witnesses shall be entitled to travel expenses on the basis of the means of travel actually employed and the distance actually and necessarily traveled, and in accordance with the following:

(1) If the travel is by common carrier, witnesses shall be entitled to the cost of the most economical accommodations available, including jet coach for travel in Alaska and outside Alaska in proceeding to or from Alaska. Receipts or other evidence of actual payment shall be furnished whenever practicable.

(2) If the travel is by privately-owned automobile or other private carrier, witnesses shall be entitled to 15 cents a mile for travel in Alaska; provided that whenever the use of a private airplane, dogteam, or boat is approved by the court, a commissioner, the United States Attorney, or an Assistant United States Attorney, witnesses may be paid the actual rental cost or reasonable estimate of necessary expense.

(3) If the travel is by privately-owned automobile or other private carrier, witnesses shall be entitled to 10 cents a mile for travel outside Alaska in proceeding to or from Alaska: *Provided*, That the total entitlement, including attendance fees and subsistence allowances, shall not exceed that which would have been payable had the most economical accommodations available via common carrier, including jet coach been used.

(4) In addition to the allowances to which they are entitled under paragraphs (b) (1), (2), and (3) of this section, witnesses shall be entitled to incidental travel expenses, such as taxicab fares between the place of lodging and the carrier terminal, and bridge, road, and tunnel tolls, and ferry fares.

(d) Witnesses detained in prison for want of security for their appearance shall not be entitled to attendance fees and subsistence allowances as prescribed in paragraphs (a) and (b) of this section, but shall be entitled to one dollar a day, in addition to the actual subsistence furnished by the Government, while thus detained.

(e) An employee of the United States summoned or assigned to testify or produce official records on behalf of the United States, or to testify in his official

capacity or produce official records on behalf of a party other than the United States, in any judicial or agency proceeding in Alaska shall be entitled to expenses as provided by § 21.1."

(f) Payment of witness fees, subsistence allowances, and travel expenses by the United States under this section shall be made upon the basis of a certificate signed by the United States Attorney, an Assistant United States Attorney, the attorney in charge of the case, or a commissioner. With respect to any witness who is allowed subsistence, the certificate shall state that the witness attended court, or attended before a commissioner, as the case may be, at a point so far removed from his place of residence that he was unable to return thereto each day. (Sec. 30, 31 Stat. 832, sec. 23, 73 Stat. 147; 48 U.S.C. 25, 28 U.S.C. 81A nt.) [Order 214-60, 25 F.R. 12290, Dec. 1, 1960 as amended by Order 408-69, 34 F.R. 436, Jan. 11, 1969; Order 465-71, 36 F.R. 15433, Aug. 14, 1971]

§ 21.4 Use of table of distances.

Regardless of the mode of travel actually employed, mileage payable to witnesses under section 1821 of Title 28 of the United States Code, as amended by the act of August 1, 1956, 70 Stat. 798, shall be computed on the basis of highway distances as stated in the Rand McNally Standard Highway Mileage Guide or in any other generally accepted highway mileage guide which contains a short-line nationwide table of distances and which is designated by the Assistant Attorney General for Administration for such purpose: *Provided*, That with respect to travel in areas for which no such highway mileage guide exists, mileage payable under the said section 1821 shall be computed on the basis (a) of the mode of travel actually employed, (b) of a usually-traveled route, and (c) of distances as generally accepted in the locality.

(Sec. 1, 62 Stat. 590, as amended, sec. 45, 68 Stat. 1242, as amended; 28 U.S.C. 1823, 1821) [Order No. 291-62, 27 F.R. 12619, Dec. 20, 1962; Order 327-64, 29 F.R. 15918, Nov. 28, 1964]

§ 21.5 Certification of witness attendance.

In any case wherein the United States or an officer or agency thereof is a party, the U.S. Marshal for the District shall pay all fees of witnesses on the certificate of the U.S. Attorney, an Assistant U.S. Attorney, or the Department of Justice attorney who actually conducts the

case, and in the proceedings before a U.S. Commissioner or Magistrate, on the certificate of such commissioner or magistrate.

[Order No. 437-70, 35 F.R. 11391, July 16, 1970]

PART 30—FINAL REGULATION RELATING TO THE LEAA IMPLEMENTATION OF THE OMB CIRCULAR NO. A-95 REVISED

Subpart A—General Provisions

Sec.

- 30.1 Purpose.
- 30.2 Authority.
- 30.3 Implementation.
- 30.4 Coverage, exceptions, and variations.
- 30.5 Clearinghouse functions.
- 30.6 Memorandum of agreement signatories.
- 30.7 Applicant for assistance to accomplish areawide planning.
- 30.8 SPA implementation of memorandum of agreement requirement.

Subparts B-E [Reserved]

Subpart F—Definitions

30.9 Definitions.

AUTHORITY: OMB Circ. No. A-95 Rev.; Sec. 501, Crime Control Act of 1973, as amended (42 USC 3701).

SOURCE: 41 FR 18653, May 6, 1976, unless otherwise noted.

Subpart A—General Provisions

§ 30.1 Purpose.

The purpose of this regulation is to implement OMB Circular A-95 Revised (41 Federal Register 2052 (January 13, 1976)) for the cooperation with the Law Enforcement Assistance Administration (LEAA) and State Planning Agencies (SPAs) in the evaluation, review, and coordination of LEAA assisted programs and projects.

§ 30.2 Authority.

This regulation is based upon and incorporates OMB Circular No. A-95 Revised, and is promulgated for the:

(a) Encouragement for the use of a project notification and review system to facilitate coordinated planning on an intergovernmental basis for certain Federal assistance programs in furtherance of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and Title IV of the Intergovernmental Cooperation Act of 1968.

(b) Coordination of direct Federal development programs and projects which State, areawide, and local planning and programs pursuant to Title IV of the Intergovernmental Cooperation Act of 1968.

(c) Securing the comments and views of State and local agencies which are authorized to develop and enforce environmental standards on certain Federal or federally assisted projects affecting the environment pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 and regulations of the Council on Environmental Quality.

(d) Furthering the objectives of Title VI of the Civil Rights Act of 1964; section 262(b) of the Juvenile Justice and Delinquency Prevention Act of 1974; and section 518(c) of the Crime Control Act of 1973.

§ 30.3 Implementation.

Full compliance with OMB Circular No. A-95 Revised is required by all applicants for funds under programs associated with section 205, section 306(a), section 455(a) and section 515(b) of the Crime Control Act of 1973, Pub. L. 93-83 as amended by Pub. L. 93-415, and section 222(a) and section 224(a) of the Juvenile Justice Delinquency Prevention Act of 1974, Pub. L. 93-415. This regulation and OMB Circular No. A-95 Revised will have applicability to all programs, projects, and activities (or significant substantive changes thereto) for which LEAA assistance is being sought as outlined below:

(a) This regulation and Part I of OMB Circular No. A-95 Revised cover the following programs:

(1) 16.500 Law Enforcement Assistance—Comprehensive Planning Grants.

(2) 16.501 Law Enforcement Assistance—Discretionary Grants.

(3) 16.502 Law Enforcement Assistance—Improving and Strengthening Law Enforcement and Criminal Justice.

(4) 16.515 Criminal Justice Systems Development.

(5) 16.516 Law Enforcement Assistance—Juvenile Justice and Delinquency Prevention—Formula Allocation to the States.

(6) 16.517 Law Enforcement Assistance—JJDP Special Emphasis Prevention and Treatment.

(b) Part II of OMB Circular No. A-95 Revised does not apply to LEAA assisted programs and projects.

(c) This regulation and Part III of OMB Circular No. A-95 Revised cover the following programs:

(1) 16.502 Law Enforcement Assistance—Improving and Strengthening Law Enforcement and Criminal Justice.

(2) 16.516 Law Enforcement Assistance—Juvenile Justice and Delinquency Prevention—Allocation to the States.

(d) This regulation and Part IV of OMB Circular No. A-95 Revised cover the same programs as listed in § 30.3(a).

§ 30.4 Coverage exceptions, and variations.

(a) LEAA may request an exemption from OMB for certain classes of projects or activities under programs otherwise covered as defined in paragraph 8c of OMB Circular No. A-95 Revised.

(b) LEAA may request procedural variations from normal review processes as defined in paragraph 8d of OMB Circular No. A-95 Revised.

(c) All requests from LEAA offices or SPAs through LEAA Regional Offices for exemptions or procedural variations should be routed through the Office of Regional Operations, LEAA, Washington, D.C. 20531.

§ 30.5 Clearinghouse functions.

In addition to clearinghouse functions specified in paragraph 3e of OMB Circular No. A-95 Revised, organizations such as State and local commissions on the status of women will be afforded an opportunity to comment on the proposed project's impact on women.

§ 30.6 Memorandum of agreement signatories.

The signatories to the memorandum of agreement are:

(a) The areawide comprehensive planning agency (usually the areawide A-95 clearinghouse) and

(b) The applicant for assistance to carry out areawide planning if other than in paragraph (a) of this section. (Not infrequently paragraphs (a) and (b) of this section are the same, in which case no memorandum of agreement is required.)

§ 30.7 Applicant for assistance to accomplish areawide planning.

The applicant referred to in § 30.6(b) will in most cases mean any Regional Planning Units which covers a multi-jurisdictional area comprising, encompassing or extending into more than one unit of general local government and which does not operate under the auspices of an areawide comprehensive planning agency.

§ 30.8 SPA implementation of memorandum of agreement requirement.

The SPA is required to assure that the memorandum of agreement requirement is followed. SPA procedures must reflect that requirement.

Subpart F—Definitions

§ 30.9 Definitions.

The following definitions provided in Part V of OMB Circular No. A-95 Revised are modified as follows for the purpose of applicability to LEAA assisted programs and projects:

(a) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(b) "Unit of general local government" means any city, county, township, town, borough, parish, village or other general purpose political subdivision of State, an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior, or, for the purpose of assistance eligibility, any agency of the District of Columbia government performing law enforcement functions in and for the District of Columbia.

(c) "Federal assistance, Federal financial assistance, Federal assistance program, or federally assisted program" means any LEAA program that provides assistance through grant or contractual arrangements. The term does not include any annual payment by the United States to the District of Columbia authorized by article VI of the District of Columbia Revenue Act of 1947 (D.C. Code sec. 47-2501a and 47-2501b).

(d) "Funding agency" is the Law Enforcement Assistance Administration (LEAA) or, in the case of block or formula grant programs, the State Planning Agency (SPA) which is responsible for final approval of applications for assistance.

PART 42—NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

Subpart A—Equal Employment Opportunity Within the Department of Justice

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Subpart B—Equal Employment Opportunity Under Government Contracts

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Subpart C—Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964

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Subpart A—Equal Employment Opportunity Within the Department of Justice

AUTHORITY: The provisions of this Subpart A issued under 5 U.S.C. 301, 28 U.S.C. 509, 510 E.O. 11248, 3 CFR, 1984-1985 Comp., E.O. 11375, 3 CFR, 1967 Comp.

SOURCE: The provisions of this Subpart A contained in Order 420-69, 34 F.R. 12281, July 25, 1969, unless otherwise noted.

§ 42.1 Policy.

In conformity with the policy expressed in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, I hereby declare it to be the policy of the Department of Justice to prohibit discrimination in employment because of race, color, religion, sex, or national origin and to provide equal employment opportunity in each organizational element of the Department. Management will seek out and eliminate any personnel management policy, procedure or practice which denies equality of opportunity to any group or individual on the basis of race, color, religion, sex, or national origin, and will take appropriate action to more fully utilize the abilities of all employees.

§ 42.2 Designation of Director of Equal Employment Opportunity and Complaint Adjudication Officer.

(a) In compliance with the regulations of the Civil Service Commission (5 CFR Part 713), the Assistant Attorney General for Administration is hereby designated as Director of Equal Employment Opportunity for the Department of Justice with responsibilities for administration of the Equal Employment Opportunity Program within the Department. The Director of Equal Employment Opportunity shall publish and implement the Department of Justice regulations, which shall include a positive action program to eliminate causes of discrimination and shall include procedures for processing complaints of discrimination within the Department.

(b) The Assistant Attorney General in charge of the Civil Rights Division shall appoint a Complaint Adjudication Officer, who shall render decisions for the Department of Justice on complaints from employees and applicants for employment within the Department which allege discrimination because of race, color, religion, sex, or national origin.

Subpart B—Equal Employment Opportunity Under Government Contracts

AUTHORITY: The provisions of this Subpart B issued under 80 Stat. 379; 5 U.S.C. 301, sec. 2, Reorganization Plan No. 2 of 1950, 64 Stat. 1261; 5 CFR, 1949-1953 Comp., E.O. 10925; 5 CFR, 1959-1963 Comp., E.O. 11114; 1959-1963 Comp.

SOURCE: The provisions of this Subpart B contained in Order No. 342-05, 30 F.R. 7387, June 4, 1965, unless otherwise noted.

CROSS REFERENCE: See regulations of the Office of Federal Contract Compliance, Equal Employment Opportunity, Department of Labor, 41 CFR Chapter 60.

§ 42.50 Purposes.

In order to accomplish the purposes of Part III of Executive Order No. 10925, as amended, Executive Order No. 11114, and the rules and regulations of the President's Committee on Equal Employment Opportunity (41 CFR Ch. 60), and to promote and insure equal employment opportunity for all qualified persons without regard to race, color, creed, or national origin, the policies and procedures set forth in this subpart shall be observed by all contracting officers of the Department of Justice.

§ 42.51 Applicability.

(a) Except as provided in paragraph (b) of this section, every contract or subcontract entered into by, or on behalf of, this Department shall contain the equal opportunity clause (sometimes referred to as the "Nondiscrimination Clause") prescribed by Executive Order No. 10925, as amended by Executive Order No. 11114, and by the rules and regulations of the President's Committee.

(b) The following-described classes of contracts and subcontracts are exempt from the requirement of paragraph (a) of this section—

(1) Contracts and subcontracts involving the expenditure of \$10,000 or less, other than Government bills of lading;

(2) Contracts and subcontracts involving expenditures of \$100,000 or less for standard commercial supplies or raw materials, subject to such exceptions as the Executive Vice Chairman of the President's Committee may specify;

(3) Contracts to be performed outside the United States if no recruitment of workers within the United States is involved;

(4) Contracts for the sale of Government real or personal property which involve no appreciable amount of work;

(5) Contracts and subcontracts which are to be effective for no more than 1 year and which involve an indefinite quantity if the expenditure thereunder is not reasonably expected to exceed (i) \$100,000 for standard commercial sup-

plies and raw materials, or (ii) \$10,000 in other cases; and

(6) Contracts specified by the Executive Vice Chairman of the President's Committee.

§ 42.52 Administration.

(a) The head of each organizational unit of this Department who, pursuant to Part 0 of Title 28 of this Code, has been assigned the function of handling contracts for his unit shall be responsible for obtaining compliance by contractors with the equal opportunity clause prescribed by § 42.51(a), and section 301 of Executive Order No. 10925, as amended.

(b) The nondiscrimination policies and procedures set forth in this subpart shall be publicized and brought to the attention of all prospective bidders and contractors.

(c) Contracting officers shall furnish each contractor with copies of nondiscrimination posters which the contractor shall post in conspicuous places available to employees and job applicants.

(d) The Assistant Attorney General for Administration serves as the Principal Compliance Officer pursuant to section 307 of Executive Order No. 10925, as amended, and is authorized to designate Deputy Compliance Officers (see 28 CFR 0.83).

§ 42.53 Compliance reports.

(a) Contracting officers shall require each nonexempt contractor having a contract subject to the provisions of section 301 of Executive Order No. 10925, as amended, to file, and shall require each nonexempt contractor to require each of his first-tier subcontractors not exempted under the provisions of § 42.51 to file, compliance reports in accordance with instructions attached to the official compliance report form (Standard Form 40 or Standard Form 41 (for construction contracts)). Subsequently reporting shall be accomplished as indicated in those instructions. Whenever a contractor or subcontractor is currently engaged in the performance of any part or all of another contract or subcontract subject to an equal opportunity clause with any Government agency, and has filed, within a current reporting period, a compliance report covering the plants, facilities, and activities that will be involved in the performance of the new contract, this requirement shall be sat-

isfied by the filing, with the contracting officer, of a certificate of submission of current compliance report (Standard Form 40A).

(b) Contracting officers shall furnish the contractor enough report forms (Standard Forms 40, 40A, or 41) to satisfy the requirements of paragraph (a) of this section.

(c) The designated time for filing compliance reports may be extended with the approval of the Executive Vice Chairman. Requests by contractors or subcontractors for such an extension should be directed to the contracting officer who shall forward them to the Executive Vice Chairman in accordance with the procedures set forth in this subpart.

(d) Contracting officers shall require bidders, prospective contractors, and their proposed subcontractors, to state as an initial part of the bid on, or negotiations of, any contract whether they have participated in any previous contract subject to the provisions of section 301 of Executive Order No. 10925, and, if so, whether they have filed with the President's Committee, or the agency involved, all compliance reports due under applicable instructions. In any case in which any such bidder, prospective contractor, or proposed subcontractor who shall have participated in the performance of a contract or subcontract that was subject to the provisions of Executive Order No. 10925 shall have failed to file a compliance report due under applicable instructions, he shall be required to submit a compliance report under this subpart prior to the award of the proposed contract or subcontract. In addition, if requested by the Executive Vice Chairman, the contracting officer shall require the submission of a compliance report by any bidder, prospective contractor, or proposed subcontractor prior to the award of a contract upon which the contractor has bid.

(e) Whenever requested by the Executive Vice Chairman or the head of the organizational unit concerned, the contracting officer shall, as a part of the bid on, or negotiation of, a contract, direct a bidder, prospective contractor, or proposed subcontractor to file a statement in writing (signed by an authorized officer or agent of any labor union or other workers' representative with which the bidder or prospective contractor or subcontractor deals or has reason to believe he will deal in connection

with performance of the proposed contract), together with supporting information, to the effect that the practices and policies of the labor union or other workers' representative do not discriminate on the grounds of race, color, creed, or national origin, and that the labor union or other workers' representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of the Executive orders, or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the Executive order. If the union or other workers' representative fails or refuses to execute such a statement, the bidder or proposed contractor or subcontractor shall so certify, and describe the efforts which have been made to obtain such a statement. Upon receipt of such a certification, the Executive Vice Chairman shall be notified in accordance with the procedures set forth in this subpart.

§ 42.54 Compliance reviews.

(a) Both routine and special compliance reviews shall be conducted to ascertain the extent to which contractors and subcontractors are complying with the provisions of the equal opportunity clause (§ 42.51(a)), and to furnish educational data in connection with this nondiscrimination program.

(b) A routine compliance review shall consist of a general review of the practices of the contractor or subcontractor to ascertain his compliance with the requirements of the clause. This type of review shall include a verification that notices are appropriately posted and that the clause is included in subcontracts whenever required. Routine compliance reviews shall be considered a normal part of contract administration.

(c) A special compliance review shall consist of a comprehensive review of the employment practices of the contractor or subcontractor with respect to the requirements of the clause. In addition to discussions with management, personnel conducting special compliance reviews should, whenever appropriate, obtain information concerning the contractor's or subcontractor's employment practices from employment sources, minority groups, and interested civic groups. Special compliance reviews shall

be conducted (1) from time to time, (2) whenever special circumstances (including receipt of complaints which are processed under § 42.55) warrant, and (3) whenever requested by proper authority. Results of special compliance reviews shall be reported to the Executive Vice Chairman in accordance with the procedures set forth in this subpart.

§ 42.55 Complaints.

(a) Complaints may be submitted in writing to the President's Committee, to the head of the organizational unit involved, or to the Attorney General. The head of the organizational unit concerned shall cause each complaint based upon alleged noncompliance with the provisions of the equal opportunity clause to be investigated promptly. Whenever a complaint is filed directly with the Department, it shall be forwarded to the Deputy Compliance Officer concerned, who shall transmit a copy of the complaint directly to the Executive Vice Chairman within 10 days after receipt thereof. The organizational unit shall proceed with a prompt investigation of the complaint: *Provided*, That the complaint is submitted within 90 days after the date of the alleged discrimination. The time for filing may be extended by the Department of the Executive Vice Chairman for good cause shown.

(b) Complaints shall be signed by the complainant and shall contain the following-listed information:

- (1) Name and address (including telephone number) of the complainant;
- (2) Name and address of the contractor or subcontractor who is alleged to have committed a discriminatory act cognizable under these regulations;
- (3) A description of the alleged discriminatory act or acts; and
- (4) Other pertinent information that will assist in the investigation and resolution of the complaint.

(c) Whenever a complaint contains incomplete or inadequate information, the organizational unit concerned shall request the complainant to provide the needed information. In the event such information is not furnished within 60 days of the date of such request, the case may be closed.

§ 42.56 Processing of complaints.

Complaints submitted or referred to an organizational unit and determined to involve a Government contract or sub-

contract, shall be processed in accordance with procedures that will assure—

(a) Prompt investigation of the statements and allegations contained in the complaint. Such investigation should include, whenever necessary, (1) a review of the pertinent personnel practice and policies of the contractor or subcontractor concerned, (2) the circumstances under which the discriminatory action is alleged to have taken place, and (3) other factors which may determine whether the contractor or subcontractor in the particular case complies with the provisions of the equal opportunity clause set forth in the contract or subcontract concerned.

(b) Resolution of complaints by conciliatory means whenever possible.

(c) The preparation and submission of the case record and a summary report to the Executive Vice Chairman in conformity with § 60-1.24(c) of the regulations of the President's Committee (41 CFR 60-1.24(c)).

(d) Prompt notification to the appropriate contractor, or subcontractor, of the closing of the case in those instances in which the investigative findings by the organizational unit concerned, upon review and concurrence by the Executive Vice Chairman, show no violation of the equal opportunity clause.

§ 42.57 Sanctions.

(a) In every case in which an investigation indicates the existence of an apparent violation of the provisions of the clause, the matter should be resolved by informal means whenever possible. This shall include, whenever appropriate, establishing a program for future compliance approved by the head of the organizational unit concerned. If a contractor or subcontractor, without a hearing, has complied with the recommendations or orders of an organizational unit and believes such orders or recommendations to be incorrect, he shall, upon request, be accorded a hearing and review of the alleged incorrect action.

(b) No contract or subcontract will be terminated in whole or in part for failure to comply with the provisions of the equal opportunity clause, without the approval of the head of the organizational unit concerned. Whenever it is proposed to terminate a contract or a subcontract, the contractor or subcontractor shall be notified in writing of such proposed action and given 10 days

(or such longer period as the head of the organizational unit, with the approval of the Executive Vice Chairman, may consider appropriate) from the receipt of that notice either to comply with the provisions of the contract or to submit a request for a hearing.

(c) No contractor or subcontractor shall be debarred or suspended from receiving departmental contracts for failure to comply with the provisions of the clause except upon the recommendation of the head of the organizational unit concerned and the approval of the Executive Vice Chairman. In every case in which debarment or suspension is being proposed, the contractor or subcontractor shall be notified by the head of the organizational unit concerned, in writing, of the proposed recommendation and given 10 days from the receipt of such notice in which to submit a request for a hearing.

(d) The head of an organizational unit, with the approval of the Executive Vice Chairman, may recommend to the Attorney General that, in cases in which there is substantial or material violation of the equal opportunity clause, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups which prevent, directly or indirectly, compliance with those provisions. No such case shall be so referred until 10 days shall have elapsed since a notice of such proposed referral by the unit head shall have been mailed to the contractor or subcontractor involved, affording him an opportunity to comply with the provisions of the equal opportunity clause.

(e) The head of an organizational unit may also recommend that criminal proceedings be brought for the furnishing of false information.

§ 42.53 Hearings.

Whenever informal means fail to resolve alleged violations and a hearing is requested pursuant to § 42.57, the Compliance Officer or the Deputy Compliance Officer for the organizational unit involved shall schedule a hearing and notify the contractor of the place, time, and date thereof. In addition, a hearing may be scheduled by the Compliance Officer or the Deputy Compliance Officer upon his own motion (41 CFR 60-1.24(h)(3)). Notice of the hearing shall be given in accordance with the require-

ments of § 60-1.27 of the regulations of the President's Committee (41 CFR 60-1.27) and such hearing shall be conducted in conformity with the requirements of that section. The hearing may be conducted by any officer or employee designated by the head of the organizational unit concerned and such hearing officer shall at the end thereof make written findings of fact and recommendations as to the action that should be taken, and submit them to the unit head. The unit head shall mail to the contractor a notice of the proposed Departmental action, but no contract shall be terminated during the 10 days following the mailing of such notice in order that the contractor may have an opportunity to comply with the provisions of Executive Orders Nos. 10925 and 11114, the regulations of the Committee, and the regulations prescribed in this subpart.

§ 42.59 General provisions.

(a) Each organizational unit shall be responsible for preparing and issuing to its contracting officers such additional instructions as may be necessary to carry out the purposes of this subpart.

(b) This subpart, and all instructions issued pursuant thereto, shall be construed as supplementing and incorporating by reference the provisions of Executive Orders Nos. 10925 and 11114 and the rules and regulations of the President's Committee on Equal Employment Opportunity as to Government contracts. Terms used in this subpart shall be deemed to have the same meaning as identical or comparable terms used in those Executive orders and those regulations unless the context indicates a contrary intent.

Subpart C—Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964¹

AUTHORITY: The provisions of this Subpart C issued under secs. 601-605, 78 Stat. 252, secs. 1-11, 79 Stat. 828, 80 Stat. 379; 42 U.S.C. 2000d-2000d-4, 18 U.S.C. Prec. 3001 note, 5 U.S.C. 301, sec. 2, Reorganization Plan No. 2 of 1950, 64 Stat. 1261; 3 CFR, 1949-1953 Comp.

SOURCE: The provisions of this Subpart C contained in Order No. 365-60, 31 F.R. 10265, July 29, 1966, unless otherwise noted.

¹ See also 28 CFR 50.3, Guidelines for enforcement of Title VI, Civil Rights Act.

§ 42.101 Purpose.

The purpose of this subpart is to implement the provisions of Title VI of the Civil Rights Act of 1964, 78 Stat. 252 (hereafter referred to as the "Act"), to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Justice.

§ 42.102 Definitions.

As used in this subpart—

(a) The term "responsible Department official" with respect to any program receiving Federal financial assistance means the Attorney General, or Deputy Attorney General, or such other official of the Department as has been assigned the principal responsibility within the Department for the administration of the law extending such assistance.

(b) The term "United States" includes the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and all other territories and possessions of the United States, and the term "State" includes any one of the foregoing.

(c) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, rehabilitation, or other services or disposition, whether provided through employees of the recipient of Federal financial assistance or

provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid, or other benefits to individuals. The disposition, services, financial aid, or benefits provided under a program receiving Federal financial assistance shall be deemed to include any disposition, services, financial aid, or benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any disposition, services, financial aid, or benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(e) The term "facility" includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration, or acquisition of facilities.

(f) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(g) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(h) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible Department official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

(i) The term "academic institution" includes any school, academy, college, university, institute, or other association,

organization, or agency conducting or administering any program, project, or facility designed to educate or train individuals.

(j) The term "disposition" means any treatment, handling, decision, sentencing, commitment, or other prescription of conduct.

(k) The term "governmental organization" means the political subdivision for a prescribed geographical area.

§ 42.103 Application of this subpart.

This subpart applies to any program for which Federal financial assistance is authorized under a law administered by the Department. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the date of this subpart pursuant to an application whether approved before or after such date. This subpart does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, or (b) employment practices except to the extent described in § 42.104(c).

[Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 519-73, 38 FR 17955, July 5, 1973]

§ 42.104 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this subpart applies.

(b) *Specific discriminatory actions prohibited.* (1) a recipient under any program to which this subpart applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any disposition, service, financial aid, or benefit provided under the program;

(ii) Provide any disposition, service, financial aid, or benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any disposition, service, financial aid, or benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any

disposition, service, financial aid, or benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function or benefit provided under the program; or

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the type of disposition, services, financial aid, benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this subpart applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this subpart.

(4) For the purposes of this section the disposition, services, financial aid, or benefits provided under a program receiving Federal financial assistance shall be deemed to include any portion of any

program or function or activity conducted by any recipient of Federal financial assistance which program, function, or activity is directly or indirectly improved, enhanced, enlarged, or benefited by such Federal financial assistance or which makes use of any facility, equipment or property provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and in paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6) (1) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(c) *Employment practices.* (1) Whenever a primary objective of the Federal financial assistance to a program to which this subpart applies, is to provide employment, a recipient of such assistance may not (directly or through contractual or other arrangements) subject any individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff, or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities). That prohibition also applies to programs as to which a primary objective of the Federal financial assistance is (i) to assist individuals, through employment, to meet expenses incident to the commencement or continuation of their education or training, or (ii) to provide work experience which contributes to the education or training of the individuals involved. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(2) In regard to Federal financial assistance which does not have providing employment as a primary objective, the

provisions of paragraph (c)(1) of this section apply to the employment practices of the recipient if discrimination on the ground of race, color, or national origin in such employment practices tends, on the ground of race, color, or national origin, to exclude persons from participation in, to deny them the benefits of or to subject them to discrimination under the program receiving Federal financial assistance. In any such case, the provisions of paragraph (c)(1) of this section shall apply to the extent necessary to assure equality of opportunity to and nondiscriminatory treatment of beneficiaries.

[Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 519-73, 38 FR 17265, July 5, 1973]

§ 42.105 Assurance required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which this subpart applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this subpart. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, such assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases, such assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible Department official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantees, contractors, and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interest therein, which was acquired through a program of Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved under a program of Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the responsible Department official, such a condition and right of reverter are appropriate to the program under which the real property is obtained and to the nature of the grant and the grantee.

(b) *Assurances from government agencies.* In the case of any application from any department, agency, or office of any State or local government for Federal financial assistance for any specified purpose, the assurance required by this section shall extend to any other department, agency, or office of the same governmental unit if the policies of such other department, agency, or office will substantially affect the project for which Federal financial assistance is requested. That requirement may be waived by the responsible Department official if the applicant establishes, to the satisfaction of the responsible Department official, that the practices in other agencies of parts or programs of the governmental unit will in no way affect (1) its practices in the program for which Federal financial assistance is sought, or (2) the beneficiaries of or participants in or persons affected by such program, or (3) full compliance with the subpart as respects such program.

(c) *Assurance from academic and other institutions.* (1) In the case of any application for Federal financial assist-

ance for any purpose to an academic institution, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an academic institution, detention or correctional facility, or any other institution or facility, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to such individuals, shall be applicable to the entire institution or facility unless the applicant establishes, to the satisfaction of the responsible Department official, that the practices in designated parts or programs of the institution or facility will in no way affect its practices in the program of the institution or facility for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If, in any such case, the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(d) *Continuing State programs.* Any State or State agency administering a program which receives continuing Federal financial assistance subject to this regulation shall as a condition for the extension of such assistance (1) provide a statement that the program is (or, in the case of a new program, will be) conducted in compliance with this regulation, and (2) provide for such methods of administration as are found by the responsible Department official to give reasonable assurance that the primary recipient and all other recipients of Federal financial assistance under such program will comply with this regulation. [Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 519-73, 38 FR 17955, July 5, 1973]

§ 42.106 Compliance information.

(a) *Cooperation and assistance.* Each responsible Department official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this subpart and shall provide assistance and guidance to recipients to help them comply voluntarily with this subpart.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this subpart. In general, recipients should have available for the Department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient or subcontracts with any other person or group, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this subpart.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with this subpart. Whenever any information required of a recipient is in the exclusive possession of any other agency, institution, or person and that agency, institution, or person fails or refuses to furnish that information, the recipient shall so certify in its report and set forth the efforts which it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this subpart and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this subpart.

[Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 519-73, 38 FR 17955, July 5, 1973]

§ 42.107 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this subpart.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this subpart may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this subpart. The investigation should include, whenever appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this subpart occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this subpart.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this subpart, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 42.108.

(2) If an investigation does not warrant action pursuant to subparagraph (1) of this paragraph, the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this subpart, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under

this subpart. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purpose of this subpart, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

[Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 519-73, 38 FR 17955, July 5, 1973]

§ 42.108 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this subpart and if the noncompliance or threatened noncompliance cannot be corrected by informal means, the responsible Department official may suspend or terminate, or refuse to grant or continue, Federal financial assistance, or use any other means authorized by law, to induce compliance with this subpart. Such other means include, but are not limited to, (1) appropriate proceedings brought by the Department to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with assurance requirement.* If an applicant or recipient fails or refuses to furnish an assurance required under § 42.105, or fails or refuses to comply with the provisions of the assurance it has furnished, or otherwise fails or refuses to comply with any requirement imposed by or pursuant to Title VI or this subpart, Federal financial assistance may be suspended, terminated, or refused in accordance with the procedures of Title VI and this subpart. The Department shall not be required to provide assistance in such a case during the pendency of administrative proceedings under this subpart, except that the Department will continue assistance during the pendency of such proceedings whenever such assistance is due and payable pursuant to a final commitment made or an application finally approved prior to the effective date of this subpart.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has

determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this subpart, (3) the action has been approved by the Attorney General pursuant to § 42.110, and (4) the expiration of 30 days after the Attorney General has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Attorney General, and (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance.

§ 42.109 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by § 42.108(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. That notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for that action. The notice shall (1) fix a date, not less than 20 days after the date of such notice, within which the applicant or recipient may request that the responsible Department official schedule the matter for hearing, or (2) advise the applicant or recipient that a hearing concerning the matter in question has been scheduled and advise the applicant or recipient of the place and time of that hearing. The time and place so fixed shall be reasonable and shall be subject

to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing afforded by section 602 of the Act and § 42.108(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the responsible Department official, unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the responsible Department official or, at his discretion, before a hearing examiner designated in accordance with 5 U.S.C. 3105 and 3344 (section 11 of the Administrative Procedure Act).

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act), and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied whenever reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence.

All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this subpart with respect to two or more programs to which this subpart applies, or noncompliance with this subpart and the regulations of one or more other Federal Departments or agencies issued under Title VI of the Act, the Attorney General may, by agreement with such other departments or agencies, whenever appropriate, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with this subpart. Final decisions in such cases, insofar as this subpart is concerned, shall be made in accordance with § 42.110.

[Order No. 365-66, 31 FR 10286, July 29, 1966, as amended by Order No. 519-73, 38 FR 17955, July 5, 1973]

§ 42.110 Decisions and notices.

(a) *Decisions by person other than the responsible Department official.* If the hearing is held by a hearing examiner, such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record, including his recommended findings and proposed decision, to the responsible Department official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Whenever the initial decision is made by the hearing examiner, the applicant or recipient may, within 30 days of the mailing of such notice of initial decision, file with the responsible Department official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible Department official may on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon filing of such exceptions, or of such notice of review, the responsible Department official shall review the initial decision and issue his own decision thereon

including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible Department official.

(b) *Decisions on the record or on review by the responsible Department official.* Whenever a record is certified to the responsible Department official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the responsible Department official conducts the hearing, the applicant or recipient shall be given a reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the responsible Department official shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on the record whenever a hearing is waived.* Whenever a hearing is waived pursuant to § 42.109(a), a decision shall be made by the responsible Department official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible Department official shall set forth his ruling on each findings, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this subpart with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Attorney General.* Any final decision of a responsible Department official (other than the Attorney General) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this subpart or the Act, shall promptly be transmitted to the Attorney General, who may approve such decision, vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue, Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with, and will effectuate the purposes of, the Act and this subpart, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such pro-

gram to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this subpart, or to have otherwise failed to comply with this subpart, unless and until, it corrects its noncompliance and satisfies the responsible Department official that it will fully comply with this subpart.

(g) *Post-termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this subpart and provides reasonable assurance that it will fully comply with this subpart.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the responsible Department official to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g) (1) of this section. If the responsible Department official denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure issued by the responsible Department official. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g) (1) of this section. While proceedings under this paragraph are pending, sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 519-73, 38 FR 17956, July 5, 1973]

§ 42.111 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§ 42.112 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* Nothing in this subpart shall be deemed to supersede any provision of Subpart A

or B of this part or Executive Order 11114 or 11246, as amended, or of any other regulation or instruction which prohibits discrimination on the ground of race, color, or national origin in any program or situation to which this subpart is inapplicable, or which prohibits discrimination on any other ground.

(b) *Forms and instructions.* Each responsible Department official, other than the Attorney General or Deputy Attorney General, shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this subpart as applied to programs to which this subpart applies and for which he is responsible.

(c) *Supervision and coordination.* The Attorney General may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government, with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this subpart (other than responsibility for final decision as provided in § 42.110(e)), including the achievement of the effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of Title VI of the Act and this subpart to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or agency acting pursuant to an assignment of responsibility under this subsection shall have the same effect as though such action had been taken by the Attorney General.

[Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 519-73, 38 FR 17956, July 5, 1973; Order No. 568-74, 39 FR 18646, May 29, 1974]

APPENDIX A—ASSISTANCE ADMINISTERED BY THE DEPARTMENT OF JUSTICE TO WHICH THIS SUBPART APPLIES

1. Assistance provided by the Law Enforcement Assistance Administration pursuant to the Law Enforcement Assistance Act of 1965, and title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Omnibus Crime Control Act of 1970, 42 U.S.C. 3711-3781.

2. Assistance provided by the Federal Bureau of Investigation through its National Academy and law enforcement

training activities pursuant to title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Omnibus Crime Control Act of 1970, 42 U.S.C. 3744.

3. Assistance provided by the Bureau of Narcotics and Dangerous Drugs pursuant to the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. 872.

[Order No. 519-73, 38 FR 17956, July 5, 1973]

Subpart D—Equal Employment Opportunity in Federally Assisted Programs and Activities

AUTHORITY: The provisions of this Subpart D issued under § U.S.C. 301; and sec. 501 of the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90-351, 82 Stat. 197, as amended.

SOURCE: 37 F.R. 18671, Aug. 18, 1972, unless otherwise noted.

§ 42.201 Purpose and application.

(a) The purpose of this subpart is to enforce the provisions of the 14th amendment to the Constitution by eliminating discrimination on the grounds of race, color, creed, sex, or national origin in the employment practices of State agencies or offices receiving financial assistance extended by this Department.

(b) The regulations in this subpart apply to the employment practices or planning agencies, law enforcement agencies and other agencies or offices of States or units of general local government administering, conducting, or participating in any program or activity receiving Federal financial assistance extended under title I of the Omnibus Crime Control and Safe Streets Act of 1968 (the Act). This subpart shall not apply to federally assisted construction contracts covered by Part III of Executive Order 11246, September 24, 1965; enforcement of nondiscriminatory employment practices under such contracts shall be effected pursuant to the Executive order.

§ 42.202 Definitions.

(a) The definitions set forth in § 42.102 of Subpart C, Part 42, Title 28, Code of Federal Regulations are, to the extent not inconsistent with this subpart, hereby made applicable to and incorporated in this subpart.

(b) As used in this subpart, the term "employment practices" means all terms and conditions of employment including

but not limited to all practices relating to the screening, recruitment, selection, appointment, promotion, demotion, and assignment of personnel, and includes advertising, hiring, assignments, classification, discipline, layoff and termination, upgrading, transfer, leave practices, rates of pay, fringe benefits, or other forms of pay or credit for services rendered and use of facilities.

(c) As used in this subpart, the terms "law enforcement," "State," and "unit of general local government" shall have the meanings set forth in section 601 of the Act.

§ 42.203 Discrimination prohibited.

No agency or office to which this subpart applies under § 42.201 shall discriminate in its employment practices against employees or applicants for employment because of race, color, creed, sex, or national origin. Nothing contained in this subpart shall be construed as requiring any such agency or office to adopt a percentage ratio, quota system, or other program to achieve racial balance or to eliminate racial imbalance. Notwithstanding any other provision of this subpart, it shall not be a discriminatory employment practice to hire or assign an individual on the basis of creed, sex, or national origin where the office or agency claiming an exception for an individual based on creed, sex, or national origin is able to demonstrate that the creed, sex, or national origin of the individual is essential to the performance of the job.

§ 42.204 Assurances required.

(a) (1) Every application for Federal financial assistance to carry out a program to which this regulation applies shall, as a condition of approval of such application and the extension of any Federal financial assistance pursuant to such application, contain or be accompanied by an assurance that the applicant will comply with the requirements of this subpart, and will obtain such assurances from its subgrantees, contractors, or subcontractors to which this subpart applies, as a condition of the extension of Federal financial assistance to them.

(2) The responsible Department officials shall specify the form of the foregoing assurances. Such assurances shall be effective for the period during which Federal financial assistance is extended to the applicant or for the period during

which a comprehensive law enforcement plan filed pursuant to the Act is in effect in the State, whichever period is longer, unless the form of the assurance as approved in writing by the responsible Department official specifies a different effective period.

(b) Assurances by States and units of general local government relating to employment practices of State and local law enforcement agencies and other agencies to which this subpart applies shall apply to the policies and practices of any other department, agency, or office of the same governmental unit to the extent that such policies or practices will substantially affect the employment practices of the recipient State or local planning unit, law enforcement agency, or other agency or office.

§ 42.205 Compliance information.

The provisions of § 42.106 are hereby made applicable to and incorporated in this subpart.

§ 42.206 Conduct of investigations, procedures for effecting compliance, hearings, decisions, and judicial review; forms, instruction, and effect on other regulations.

(a) Each responsible Department official shall take appropriate measures to effectuate and enforce the provisions of this subpart; and shall issue and promptly make available to interested persons forms, instructions, and procedures for effectuating this subpart as applied to programs for which he is responsible. Insofar as feasible and not inconsistent with this subpart, the conduct of investigations and the procedures for effecting compliance, holding hearings, rendering decisions and initiating judicial review of such decisions shall be consistent with those prescribed by §§ 42.107 through 42.111 of subpart C of this part; provided, that, where the responsible Department official determines that judicial proceedings (as contemplated by § 42.108(d)) are as likely or more likely to result in compliance than administrative proceedings (as contemplated by § 42.108(c)), he shall invoke the judicial remedy rather than the administrative remedy; and provided further, that no recipient of Federal financial assistance or applicant for such assistance shall be denied access to the hearing or appeal procedures set forth in sections 510 and 511 of the Act for denial or discontinuance of a grant or withholding of payments thereunder result-

ing from the application of this subpart.

(b) If it is determined, after opportunity for a hearing on the record, that a recipient has engaged or is engaging in employment practices which unlawfully discriminate on the ground of race, color, creed, sex, or national origin, the recipient will be required to cease such discriminatory practices and to take such action as may be appropriate to eliminate present discrimination, to correct the effects of past discrimination, and to prevent such discrimination in the future.

(c) Nothing in this subpart shall be deemed to supersede any provisions of Subparts A, B, and C of Part 42, Title 28, Code of Federal Regulations, or of any other regulation and instruction which prohibits discrimination on the ground of race, color, creed, sex, or national origin in any program or situation to which this subpart is inapplicable, or which prohibits discrimination on any other ground.

Subpart E—Equal Employment Opportunity Guidelines

AUTHORITY: Sec. 501 of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, 82 Stat. 197, as amended.

SOURCE: 38 FR 23516, Aug. 31, 1973, unless otherwise noted.

§ 42.301 Purpose.

(a) The experience of the Law Enforcement Assistance Administration in implementing its responsibilities under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, (Pub. L. 90-351, 82 Stat. 197; Pub. L. 91-644, 84 Stat. 1881) has demonstrated that the full and equal participation of women and minority individuals in employment opportunities in the criminal justice system is a necessary component to the Safe Streets Act's program to reduce crime and delinquency in the United States.

(b) Pursuant to the authority of the Safe Streets Act and the equal employment opportunity regulations of the LEAA relating to LEAA assisted programs and activities (28 CFR 42.201, et seq., Subpart D), the following Equal Employment Opportunity Guidelines are established.

§ 42.302 Application.

(a) As used in these guidelines "Recipient" means any state, political subdivision of any state, combination of such states or subdivisions, or any department, agency or instrumentality of any of the

foregoing receiving Federal financial assistance from LEAA, directly or through another recipient, or with respect to whom an assurance of civil rights compliance given as a condition of the earlier receipt of assistance is still in effect.

(b) The obligation of a recipient to formulate, implement, and maintain an equal employment opportunity program, in accordance with this Subpart, extends to state and local police agencies, correctional agencies, criminal court systems, probation and parole agencies, and similar agencies responsible for the reduction and control of crime and delinquency.

(c) Assignments of compliance responsibility for Title VI of the Civil Rights Act of 1964 have been made by the Department of Justice to the Department of Health, Education, and Welfare, covering educational institutions and general hospital or medical facilities. Similarly, the Department of Labor, in pursuance of its authority under Executive Orders 11246 and 11375, has assigned responsibility for monitoring equal employment opportunity under government contracts with medical and educational institutions, and non-profit organizations, to the Department of Health, Education, and Welfare. Accordingly, monitoring responsibility in compliance matters in agencies of the kind mentioned in this paragraph rests with the Department of Health, Education, and Welfare, and agencies of this kind are exempt from the provisions of this subpart, and are not responsible for the development of equal employment opportunity programs in accordance herewith.

(d) Each recipient of LEAA assistance within the criminal justice system which has 50 or more employees and which has received grants or subgrants of \$25,000 or more pursuant to and since the enactment of the Safe Streets Act of 1968, as amended, and which has a service population with a minority representation of 3 percent or more, is required to formulate, implement and maintain an Equal Employment Opportunity Program relating to employment practices affecting minority persons and women within 120 days after either the promulgation of these amended guidelines, or the initial application for assistance is approved, whichever is sooner. Where a recipient has 50 or more employees, and has received grants or subgrants of \$25,000 or more, and has a service population with a minority representation of less than 3

percent, such recipient is required to formulate, implement, and maintain an equal employment opportunity program relating to employment practices affecting women. For a definition of "employment practices" within the meaning of this paragraph, see § 42.202(b).

(e) "Minority persons" shall include persons who are Negro, Oriental, American-Indian, or Spanish-surnamed Americans. "Spanish-surnamed Americans" means those of Latin American, Cuban, Mexican, Puerto Rican or Spanish origin. In Alaska, Eskimos and Aleuts should be included as "American Indians."

(f) For the purpose of these guidelines, the relevant "service population" shall be determined as follows:

(1) For adult and juvenile correctional institutions, facilities and programs (including probation and parole programs), the "service population" shall be the inmate or client population served by the institution, facility, or program during the preceding fiscal year.

(2) For all other recipient agencies (e.g., police and courts), the "service population" shall be the State population for state agencies, the county population for county agencies, and the municipal population for municipal agencies.

(g) "Fiscal year" means the twelve calendar months beginning July 1, and ending June 30, of the following calendar year. A fiscal year is designated by the calendar year in which it ends.

§ 42.303 Evaluation of employment opportunities.

(a) A necessary prerequisite to the development and implementation of a satisfactory Equal Employment Opportunity Program is the identification and analysis of any problem areas inherent in the utilization or participation of minorities and women in all of the recipient's employment phases (e.g., recruitment, selection, and promotion) and the evaluation of employment opportunities for minorities and women.

(b) In many cases an effective Equal Employment Opportunity Program may only be accomplished where the program is coordinated by the recipient agency with the cognizant Civil Service Commission or similar agency responsible by law, in whole or in part, for the recruitment and selection of entrance candidates and selection of candidates for promotion

(c) In making the evaluation of employment opportunities, the recipient shall conduct such analysis separately for minorities and women. However, all racial and ethnic data collected to perform an evaluation pursuant to the requirements of this section should be cross classified by sex to ascertain the extent to which minority women or minority men may be underutilized. The evaluation should include but not necessarily be limited to, the following factors:

(1) An analysis of present representation of women and minority persons in all job categories;

(2) An analysis of all recruitment and employment selection procedures for the preceding fiscal year, including such things as position descriptions, application forms, recruitment methods and sources, interview procedures, test administration and test validity, educational prerequisites, referral procedures and final selection methods, to insure that equal employment opportunity is being afforded in all job categories;

(3) An analysis of seniority practices and provisions, upgrading and promotion procedures, transfer procedures (lateral or vertical), and formal and informal training programs during the preceding fiscal year, in order to insure that equal employment opportunity is being afforded;

(4) A reasonable assessment to determine whether minority employment is inhibited by external factors such as the lack of access to suitable housing in the geographical area served by a certain facility or the lack of suitable transportation (public or private) to the workplace.

§ 42.304 Written Equal Employment Opportunity Program.

Each recipient's Equal Employment Opportunity Program shall be in writing and shall include:

(a) A job classification table or chart which clearly indicates for each job classification or assignment the number of employees within each respective job category classified by race, sex and national origin (include for example Spanish-surnamed, Oriental and American Indian). Also, principal duties and rates of pay should be clearly indicated for each job classification. Where auxiliary duties are assigned or more than one rate of pay applies because of length of time in the job or other factors, a special notation should be made. Where the

recipient operates more than one shift or assigns employees within each shift to varying locations, as in law enforcement agencies, the number by race, sex and national origin on each shift and in each location should be identified. When relevant, the recipient should indicate the racial/ethnic mix of the geographic area of assignments by the inclusion of minority population and percentage statistics.

(b) The number of disciplinary actions taken against employees by race, sex, and national origin within the preceding fiscal year, the number and types of sanctions imposed (suspension indefinitely, suspension for a term, loss of pay, written reprimand, oral reprimand, other) against individuals by race, sex, and national origin.

(c) The number of individuals by race, sex and national origin (if available) applying for employment within the preceding fiscal year and the number by race, sex and national origin (if available) of those applicants who were offered employment and those who were actually hired. If such data is unavailable, the recipient should institute a system for the collection of such data.

(d) The number of employees in each job category by race, sex, and national origin who made application for promotion or transfer within the preceding fiscal year and the number in each job category by race, sex, and national origin who were promoted or transferred.

(e) The number of employees by race, sex, and national origin who were terminated within the preceding fiscal year, identifying by race, sex, and national origin which were voluntary and involuntary terminations.

(f) Available community and area labor characteristics within the relevant geographical area including total population, workforce and existing unemployment by race, sex and national origin. Such data may be obtained from the Bureau of Labor Statistics, Washington, D.C., state and local employment services, or other reliable sources. Recipient should identify the sources of the data used.

(g) A detailed narrative statement setting forth the recipient's existing employment policies and practices as defined in § 42.202(b). Thus, for example, where testing is used in the employment selection process, it is not sufficient for the recipient to simply note the fact. The recipient should identify the test, de-

scribe the procedures followed in administering and scoring the test, state what weight is given to test scores, how a cutoff score is established and whether the test has been validated to predict or measure job performance and, if so, a detailed description of the validation study. Similarly detailed responses are required with respect to other employment policies, procedures, and practices used by the applicant.

(1) The statement should include the recipient's detailed analysis of existing employment policies, procedures, and practices as they relate to employment of minorities and women, (see § 42.303) and, where improvements are necessary, the statement should set forth in detail the specific steps the recipient will take for the achievement of full and equal employment opportunity. For example, The Equal Employment Opportunity Commission, in carrying out its responsibilities in ensuring compliance with Title VII has published Guidelines on Employee Selection Procedures (29 CFR Part 1607) which, among other things, proscribes the use of employee selection practices, procedures and devices (such as tests, minimum educational levels, oral interviews and the like) which have not been shown by the user thereof to be related to job performance and where the use of such an unvalidated selection device tends to disqualify a disproportionate number of minority individuals or women for employment. The EEOC Guidelines set out appropriate procedures to assist in establishing and maintaining equal employment opportunities. Recipients of LEAA assistance using selection procedures which are not in conformity with the EEOC Guidelines shall set forth the specific areas of nonconformity, the reasons which may explain any such nonconformity, and if necessary, the steps the recipient agency will take to correct any existing deficiency.

(2) The recipient should also set forth a program for recruitment of minority persons based on an informed judgment of what is necessary to attract minority applications including, but not necessarily limited to, dissemination of posters, use of advertising media patronized by minorities, minority group contacts and community relations programs. As appropriate, recipients may wish to refer to recruitment techniques suggested in Revised Order No. 4 of the Office of Federal Contract Compliance, U.S. Depart-

ment of Labor, found at 41 CFR 60-2.24(e).

(h) Plan for dissemination of the applicant's Equal Employment Opportunity Program to all personnel, applicants and the general public. As appropriate, recipients may wish to refer to the recommendations for dissemination of policy suggested in Revised Order No. 4 of the Office of Federal Contract Compliance, U.S. Department of Labor, found at 41 CFR 60-2.21.

(i) Designation of specified personnel to implement and maintain adherence to the Equal Employment Opportunity Program and a description of their specific responsibilities suggested in Revised Order No. 4 of the Office of Federal Contract Compliance, U.S. Department of Labor, found at 41 CFR 60-2.22.

§ 42.305 Recordkeeping and certification.

The Equal Employment Opportunity Program and all records used in its preparation shall be kept on file and retained by each recipient covered by these guidelines for subsequent audit or review by responsible personnel of the cognizant state planning agency or the LEAA. Prior to the authorization to fund new or continuing programs under the Omnibus Crime Control and Safe Streets Act of 1968, the recipient shall file a certificate with the cognizant state planning agency or LEAA regional office stating that the equal employment opportunity program is on file with the recipient. This form of the certification shall be as follows:

I, _____ (person filing the application) certify that the _____ (criminal justice agency) has formulated an equal employment opportunity program in accordance with 28 CFR 42.301, et seq., Subpart E, and that it is on file in the Office of _____ (name), _____ (address), _____ (title), for review or audit by officials of the cognizant state planning agency or the Law Enforcement Assistance Administration as required by relevant laws and regulations.

The criminal justice agency created by the Governor to implement the Safe Streets Act within each state shall certify that it requires, as a condition of the receipt of block grant funds, that recipients from it have executed an Equal Employment Opportunity Program in accordance with this subpart, or that, in conformity with the terms and conditions of this regulation no equal employment opportunity programs are required to be filed by that jurisdiction.

§ 42.306 Guidelines.

(a) Recipient agencies are expected to conduct a continuing program of self-evaluation to ascertain whether any of their recruitment, employee selection or promotional policies (or lack thereof) directly or indirectly have the effect of denying equal employment opportunities to minority individuals and women.

(b) Post award compliance reviews of recipient agencies will be scheduled by LEAA, giving priority to any recipient agencies which have a significant disparity between the percentage of minority persons in the service population and the percentage of minority employees in the agency. Equal employment program modification may be suggested by LEAA whenever identifiable referral or selection procedures and policies suggest to LEAA the appropriates of improved selection procedures and policies. Accordingly, any recipient agencies falling within this category are encouraged to develop recruitment, hiring or promotional guidelines under their equal employment opportunity program which will correct, in a timely manner, any identifiable employment impediments which may have contributed to the existing disparities.

(c) A significant disparity between minority representation in the service population and the minority representation in the agency workforce may be deemed to exist if the percentage of a minority group in the employment of the agency is not at least seventy (70) percent of the percentage of that minority in the service population.

§ 42.307 Obligations of recipients.

The obligation of those recipients subject to these Guidelines for the maintenance of an Equal Employment Opportunity Program shall continue for the period during which the LEAA assistance is extended to a recipient or for the period during which a comprehensive law enforcement plan filed pursuant to the Safe Streets Act is in effect within the State, whichever is longer, unless the assurances of compliance, filed by a recipient in accordance with § 42.204(a) (2), specify a different period.

§ 42.308 Noncompliance.

Failure to implement and maintain an Equal Employment Opportunity Program as required by these Guidelines shall subject recipients of LEAA assistance to the sanctions prescribed by the

Safe Streets Act and the equal employment opportunity regulations of the Department of Justice. (See 42 U.S.C. 3757 and § 42.206).

PART 43—RECOVERY OF COST OF HOSPITAL AND MEDICAL CARE AND TREATMENT FURNISHED BY THE UNITED STATES

Sec.

43.1 Administrative determination and assertion of claims.

43.2 Obligations of persons receiving care and treatment.

43.3 Settlement and waiver of claims.

43.4 Annual reports.

AUTHORITY: The provisions of this Part 43 issued under sec. 2, 76 Stat. 593; 42 U.S.C. 2651-2653, E.O. 11069; 3 CFR, 1950-1963 Comp.

SOURCE: The provisions of this Part 43 contained in Order No. 289-62, 27 F.R. 11317. Nov. 16, 1962, unless otherwise noted.

CROSS REFERENCE: For establishment and determination of certain rates for use in connection with recovery from tortiously liable third persons, see F.R. Doc. 63-11387, Bureau of the Budget, 28 FR 11516, Oct. 29, 1963.

§ 43.1 Administrative determination and assertion of claims.

(a) The head of a Department or Agency of the United States responsible for the furnishing of hospital, medical, surgical or dental care and treatment (including prostheses and medical appliances), or his designee, shall determine whether such hospital, medical, surgical or dental care and treatment was or will be furnished for an injury or disease caused under circumstances entitling the United States to recovery under the Act of September 25, 1962 (Public Law 87-693); and, if it is so determined, shall, subject to the provisions of § 43.3, assert a claim against such third person for the reasonable value of such care and treatment. The Department of Justice, or a Department or Agency responsible for the furnishing of such care and treatment may request any other Department or Agency to investigate, determine, or assert a claim under the regulations in this part.

(b) Each Department or Agency is authorized to implement the regulations in this part to give full force and effect thereto.

(c) The provisions of the regulations in this part shall not apply with respect to hospital, medical, surgical, or dental care and treatment (including prostheses

and medical appliances) furnished by the Veterans Administration to an eligible veteran for a service-connected disability under the provisions of chapter 17 of title 38 of the United States Code.

§ 43.2 Obligations of persons receiving care and treatment.

(a) In the discretion of the Department or Agency concerned, any person furnished care and treatment under circumstances in which the regulations in this part may be applicable, his guardian, personal representative, estate, dependents or survivors may be required:

(1) To assign in writing to the United States his claim or cause of action against the third person to the extent of the reasonable value of the care and treatment furnished or to be furnished, or any portion thereof;

(2) To furnish such information as may be requested concerning the circumstances giving rise to the injury or disease for which care and treatment is being given and concerning any action instituted or to be instituted by or against a third person.

(3) To notify the Department or Agency concerned of a settlement with, or an offer of settlement from, a third person; and

(4) To cooperate in the prosecution of all claims and actions by the United States against such third person.

(b) Records as to medical history, diagnosis, findings or treatment may be withheld pending compliance with the provisions of this section.

§ 43.3 Settlement and waiver of claims.

(a) The head of the Department or Agency of the United States asserting such claim, or his designee, may (1) accept the full amount of a claim and execute a release therefor, (2) compromise or settle and execute a release of any claim, not in excess of \$20,000, which the United States has for the reasonable value of such care or treatment, or (3) waive and in this connection release any claim, not in excess of \$20,000, in whole or in part, either for the convenience of the Government, or if he determines that collection would result in undue hardship upon the person who suffered the injury or disease resulting in the care and treatment described in § 43.1.

(b) Claims in excess of \$20,000 may be compromised, settled, waived, and released only with the prior approval of the Department of Justice.

(c) The authority granted in this section shall not be exercised in any case in which (1) the claim of the United States for such care and treatment has been referred to the Department of Justice, or (2), a suit by the third party has been instituted against the United States or the individual who received or is receiving the care and treatment described above and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

(d) The Departments and Agencies concerned shall consult the Department of Justice in all cases involving (1) unusual circumstances, (2) a new point of law which may serve as a precedent, or (3) a policy question where there is or may be a difference of views between any of such Departments and Agencies.

[Order No. 373-87, 32 P.R. 713, Jan. 21, 1967]

§ 43.4 Annual reports.

The head of each Department or Agency concerned, or his designee, shall report annually to the Attorney General, by March 1, commencing in 1964, the number and dollar amount of claims asserted against, and the number and dollar amount of recoveries from, third persons.

PART 45—STANDARDS OF CONDUCT

Sec.	
45.735-1	Purpose and scope.
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Appendix.

AUTHORITY: The provisions of this Part 45 issued under 80 Stat. 379; 3 U.S.C. 301, Reorganization Plan No. 2 of 1950, 64 Stat. 1261; 3 CFR 1949-1953 Comp., E.O. 11222; 3 CFR, 1964-1965 Comp.; 3 CFR Part 735, unless otherwise noted.

SOURCE: The provisions of this Part 45 contained in Order No. 350-65, 30 F.R. 17202, Dec. 31, 1965, unless otherwise noted.

CROSS REFERENCE: For Attorney General's "Memorandum Regarding the Conflict of Interest Provisions of Public Law 87-849", see appendix to this chapter.

§ 45.735-1 Purpose and scope.

(a) In conformity with sections 201 through 209 of title 18 of the United States Code (as enacted by Pub. Law No. 87-849) and other statutes of the United States, and in conformity with Executive Order No. 11222 of May 8, 1965, and Title 5, Chapter I, Part 735, of the Code of Federal Regulations, relating to conflicts of interest and ethical standards of behavior, this part prescribes policies, standards and instructions with regard to the conduct and behavior of employees and former employees (as defined in § 45.735-3 (b) and (d) respectively) of the Department of Justice.

(b) This part, among other things, reflects prohibitions and requirements imposed by the criminal and civil laws of the United States. However, the paraphrased restatements of criminal and civil statutes contained in this part are designed for informational purposes only and in no way constitute and interpretation or construction thereof that is binding upon the Department of Justice or the Federal Government. Moreover, this part does not purport to paraphrase or enumerate all restrictions or requirements imposed by statutes, Executive orders, regulations or otherwise upon Federal employees and former Federal employees. The omission of a refer-

ence to any such restriction or requirement in no way alters the legal effect of that restriction or requirement and any such restriction or requirement, as the case may be, continues to be applicable to employees and former employees in accordance with its own terms. Furthermore, attorneys employed by the Department are subject to the canons of professional ethics of the American Bar Association.

(c) Any violation of any provision of this part shall make the employee involved subject to appropriate disciplinary action which shall be in addition to any penalty which might be prescribed by statute or regulation.

§ 45.735-2 Basic policy.

Employees shall:

(a) Conduct themselves in a manner that creates and maintains respect for the Department of Justice and the U.S. Government. In all their activities, personal and official, they should always be mindful of the high standards of behavior expected of them;

(b) Not give or in any way appear to give favored treatment or advantage to any member of the public, including former employees, who appear before the Department on their own behalf or on behalf of a nongovernmental person; and

(c) Avoid any action which might result in, or create the appearance of—

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

(d) Be guided in all their actions by the Code of Ethics for Government Service adopted by House Concurrent Resolution No. 175 of the 85th Congress (Appendix).

(e) Employees should discuss with their immediate superiors any problems arising in connection with matters within the scope of this part. Supervisors should ascertain all pertinent information bearing upon any such problem coming to their attention and shall take prompt action to see that problems that cannot be readily resolved are sub-

mitted to the Department counselor or deputy counselors referred to in § 45.735-26(b) to provide guidance and assistance with respect to the interpretation of this part.

§ 45.735-3 Definitions.

(a) *Division*. "Division" means a principal component of the Department of Justice, including a division, bureau, service, office or board.

(b) *Employee*. "Employee" means an officer or employee of the Department of Justice and includes a special Government employee (as defined in paragraph (c) of this section) in the absence of contrary indication. Presidential appointees shall be deemed employees for the purposes of this part. In situations in which this part requires an employee to report information to, or seek approval for certain activities from, the head of a division, an employee who is the head of a division or who is an appointee of the Attorney General not assigned to a division, shall report to, or seek approval from, the Deputy Attorney General, and the Deputy Attorney General shall report to, or seek approval from, the Attorney General.

(c) *Special Government employee*. "Special Government employee" means an officer or employee of the Department of Justice who is retained, designated, appointed, or employed to perform, with or without compensation, for not more than 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis.

(d) *Former employee*. "Former employee" means a former Department of Justice employee or former special Government employee, as defined in paragraph (c) of this section.

(e) *Person*. "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

§ 45.735-4 Conflicts of interest.

(a) A conflict of interest exists whenever the performance of the duties of an employee has or appears to have a direct and predictable effect upon a financial interest of such employee or of his spouse, minor child, partner, or person or organization with which he is associated or is negotiating for future employment.

(b) A conflict of interest exists even though there is no reason to suppose that

the employee will, in fact, resolve the conflict to his own personal advantage rather than, to that of the Government.

(c) An employee shall not have a direct or indirect financial interest that conflicts, or appears to conflict, with his Government duties and responsibilities.

(d) This section does not preclude an employee from having a financial interest or engaging in a financial transaction to the same extent as a private citizen not employed by the Government so long as it is not prohibited by statute, Executive Order 11222, this section or § 45.735-11.

§ 45.735-5 Disqualification arising from private financial interests.

(a) No employee shall participate personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, unless authorized to do so in accordance with the following described procedure:

(1) The employee shall inform the head of his division of the nature and circumstances of the matter and of the financial interest involved and shall request a determination as to the propriety of his participation in the matter.

(2) The head of the division, after examining the information submitted, may relieve the employee from participation in the matter, or he may submit the matter to the Deputy Attorney General with recommendations for appropriate action. In cases so referred to him, the Deputy Attorney General may relieve the employee from participation in the matter or may approve the employee's participation in the matter upon determining in writing that the interest involved is not so substantial as to be likely to affect the integrity of the services which the Government may expect from such employee.

(b) The financial interests described below are hereby exempted from the pro-

hibition of 18 U.S.C. 208(a) as being too remote or too inconsequential to affect the integrity of an employee's services in a matter:

The stock, bond, or policy holdings of an employee in a mutual fund, investment company, bank or insurance company which owns an interest in an entity involved in the matter, provided that in the case of a mutual fund, investment company or bank the fair value of such stock or bond holding does not exceed 1 percent of the value of the reported assets of the mutual fund, investment company, or bank.
(18 U.S.C. 208)

§ 45.735-6 Activities and compensation of employees in claims against and other matters affecting the Government.

(a) No employee, otherwise than in the proper discharge of his official duties, shall—

(1) Act as agent or attorney for prosecuting any claim against the United States, or receive any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim;

(2) Act as agent or attorney for anyone before any department, agency, court, court-martial, office, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest or other particular matter in which the United States is a party or has a direct and substantial interest; or

(3) Directly or indirectly receive or agree to receive, or ask, demand, solicit or seek, any compensation for any services rendered or to be rendered either by himself or another, before any department, agency, court, court-martial, officer, or any civil, military, or naval commission, in relation to any matter enumerated and described in subparagraph (2) of this paragraph.

(b) A special Government employee shall be subject to paragraph (a) of this section only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or (2) which is pending in the Justice Department: *Provided*, That paragraph (b)(2) of this sec-

tion shall not apply in the case of a special Government employee who has served in the Justice Department no more than 60 days during the immediately preceding period of 365 consecutive days.

(c) Nothing in this part shall be deemed to prohibit an employee, if it is not otherwise inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person in a disciplinary, loyalty, or other Federal personnel administration proceeding involving such person.

(d) Nothing in this part shall be deemed to prohibit an employee from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, as defined in section 202(b) of title 18 of the United States Code, provided that the head of his division approves.

(e) Nothing in this part shall be deemed to prohibit an employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.
(18 U.S.C. 203, 205)

§ 45.735-7 Disqualification of former employees in matters connected with former duties or official responsibilities; disqualification of partners.

(a) No individual who has been an employee shall, after his employment has ceased, knowingly act as agent or attorney for anyone other than the United States, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, or other particular matter involving a specific party or parties in which the United States is a party or has a direct or substantial interest and in which he participated personally and substantially as an employee, through decision, approval, disapproval, recommendation, the rendering of advice,

investigation, or otherwise, while so employed.

(b) No individual who has been an employee shall, within 1 year after his employment has ceased, appear personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any matter enumerated and described in paragraph (a) of this section, which was under his official responsibility as an employee of the Government at any time within a period of 1 year prior to the termination of such responsibility.

(c) No partner of an employee shall act as agent or attorney for anyone other than the United States in connection with any matter enumerated and described in paragraph (a) of this section in which such Government employee is participating or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility.

(18 U.S.C. 207)

§ 45.735-8 Salary of employees payable only by United States.

(a) No employee, other than a special Government employee or an employee serving without compensation, shall receive any salary, or any contribution to or supplement of salary, as compensation for his services as an employee of the Department of Justice, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality.

(b) Nothing in this part shall be deemed to prohibit an employee from continuing to participate in a bona fide pension, retirement, group life, health, or accident insurance, profit-sharing, stock bonus, or other employee, welfare, or benefit plan maintained by a former employer.

(18 U.S.C. 209)

§ 45.735-9 Private professional practice and outside employment.

(a) No professional employee shall engage in the private practice of his profession, including the practice of law, except as may be authorized by or under paragraph (c) or (e) of this section. Acceptance of a forwarding fee shall be deemed to be within the foregoing prohibition.

(b) Paragraph (a) of this section shall not be applicable to special Government employees.

(c) The Deputy Attorney General may make specific exceptions to paragraph (a) of this section in unusual circumstances. Application for exceptions must be made in writing stating the reasons therefor, and directed to the Deputy Attorney General through the applicant's superior. Action taken by the Deputy Attorney General with respect to any such application shall be made in writing and shall be directed to the applicant.

(d) No employee shall engage in any employment outside his official hours of duty or while on leave status if such employment will:

(1) In any manner interfere with the proper and effective performance of the duties of his position;

(2) Create or appear to create a conflict of interest, or

(3) Reflect adversely upon the Department of Justice.

(e) A professional employee may, in off-duty hours and consistent with his official responsibilities, participate, without compensation for his services, in a program to provide legal assistance and representation to poor persons. Such participation by professional employees of this Department shall not include representation or assistance in any criminal matter or proceeding, whether Federal, State, or local, or in any other matter or proceeding in which the United States (including the District of Columbia Government) is a party or has a direct and substantial interest. Notice of intention to participate in such a program shall be given by the employee in writing to the head of his division or (in the case of an Assistant U.S. Attorney) to the U.S. Attorney in such detail as that official shall require.

[Order No. 350-65, 30 F.R. 17202, Dec. 31, 1965, as amended by Order No. 379-67, 32 F.R. 9066, June 27, 1967]

§ 45.735-10 Improper use of official information.

No employee shall use for financial gain for himself or for another person, or make any other improper use of, whether by direct action on his part or by counsel, recommendation, or suggestion to another person, information which comes to the employee by reason of his status as a Department of Justice employee and which has not become part of the body of public information.

§ 45.735-11 Investments.

No employee shall make investments (a) in enterprises which it is reasonable to believe will be involved in decisions to be made by him, (b) on the basis of information which comes to him by reason of his status as a Department of Justice employee and which has not become part of the body of public information or (c) which are reasonably likely to create any conflict in the proper discharge of his official duties.

§ 45.735-12 Speeches, lectures, and publications.

(a) No employee shall accept a fee from an outside source on account of a public appearance, speech, lecture, or publication if the public appearance or the preparation of the speech, lecture, or publication was a part of the official duties of the employee.

(b) No employee shall receive compensation or anything of monetary value for any consultation, lecture, teaching, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs or operations of the Department, or which draws substantially on official data or ideas which have not become part of the body of public information.

(c) No employee shall engage, whether with or without compensation, in teaching, lecturing or writing that is dependent on information obtained as a result of his Government employment except when that information has been made available to the general public or when the Deputy Attorney General gives written authorization for the use of non-public information on the basis that the use is in the public interest.

§ 45.735-13 Misuse of official position and coercion.

(a) No employee shall use his Government employment (1) for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, or (2) to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person.

(b) No employee shall accept free transportation for official or unofficial purposes from persons doing business with the Department of Justice when the offer of such transportation might reasonably be interpreted as an attempt to affect the impartiality of the employee.

§ 45.735-14 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (c) of this section, an employee other than a special Government employee shall not solicit or accept, for himself or another person, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Department;

(2) Conducts operations or activities that are regulated by the Department;

(3) Is engaged, either as principal or attorney, in proceedings before the Departmental or in court proceedings in which the United States is an adverse party; or

(4) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) Except as provided in paragraph (c) of this section, a special Government employee shall be subject to the prohibition set forth in paragraph (a) (1) of this section.

(c) Paragraphs (a) and (b) of this section shall not be construed to prohibit:

(1) Solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child or other close relative when the circumstances make it clear that the motivation for the action is a personal or family relationship.

(2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting.

(3) Acceptance of loans from banks or other financial institutions on customary terms of finance for proper and usual activities of employees, such as home mortgage loans.

(4) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal intrinsic value.

(5) Receipts of bona fide reimbursement, unless prohibited by law, for actual expenses for travel and such other necessary subsistence as is compatible with other restrictions set forth in this part and for which no Government payment or reimbursement is made. However, an employee may not be reimbursed, and payment may not be made on his behalf, for excessive personal living expenses,

gifts, entertainment, or other personal benefits, nor may an employee be reimbursed by a person for travel on official business under Department orders.

(6) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal or nonprofit educational, recreational, public service or civic organization.

(d) No employee shall accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution (Art. I, sec. 9, cl. 8) and in Public Law 89-673, 80 Stat. 952.

(e) No employee shall solicit a contribution from another employee for a gift to an official superior, nor make a donation as a gift to an official superior, nor accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(5 U.S.C. 7351) [Order No. 350-65, 30 F.R. 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 F.R. 13217, Sept. 19, 1967]

§ 45.735-15 Employee indebtedness.

The Department of Justice considers the indebtedness of its employees to be essentially a matter of their own concern. The Department of Justice will not be placed in the position of acting as a collection agency or of determining the validity or amount of contested debts. Nevertheless, failure on the part of an employee without good reason and in a proper and timely manner to honor debts acknowledged by him to be valid or reduced to judgment by a court or to make or to adhere to satisfactory arrangements for the settlement thereof may be the cause for disciplinary action. In this connection each employee is expected to meet his responsibilities for payment of Federal, State, and local taxes.

§ 45.735-16 Misuse of Federal property.

No employees may use Federal property for other than officially approved activities. Each employee is responsible for protecting and conserving Federal property, including equipment and supplies.

§ 45.735-17 Gambling, betting, and lotteries.

No employee shall participate, while on Government property or while on

duty for the Government, in the operation of gambling devices, in conducting an organized lottery or pool, in games for money or property, or in selling or purchasing numbers tickets.

§ 45.735-18 Conduct prejudicial to the Government.

No employee shall engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to the Government.

§ 45.735-19 Partisan political activities.

(a) While certain political activities are prohibited by the criminal statutes of the U.S. (see 18 U.S.C., Ch. 29), the basic restrictions on political activity of employees are set forth in Subchapter III, Chapter 73, title 5, U.S.C. Code. An explanation of the restrictions are set forth in U.S. Civil Service Commission Pamphlet No. 20 and in the Federal Personnel Manual.

(b) Most employees are subject to both statutory and Civil Service restrictions upon partisan political activities although employees of the Federal Government in some geographical areas may take part in certain local political activities. Employees have the right to vote as they choose and to express opinions on political subjects and candidates. Detailed information may be obtained through administrative and personnel offices.

[Order No. 350-65, 30 F.R. 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 F.R. 13217, Sept. 19, 1967]

§ 45.735-21 Miscellaneous statutory provisions.

Each employee should be aware of the following statutory prohibitions against:

(a) Lobbying with appropriated funds (18 U.S.C. 1913).

(b) Disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(c) Employment of a member of a Communist organization (50 U.S.C. 784).

(d) (1) Disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) disclosure of confidential information (18 U.S.C. 1905).

(e) Habitual use of intoxicants to excess (5 U.S.C. 7352).

(f) Misuse of a Government vehicle (31 U.S.C. 638a).

(g) Misuse of the franking privilege (18 U.S.C. 1719).

(h) Use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(i) Fraud or false statements in a Government matter (18 U.S.C. 1001).

(j) Multilating or destroying a public record (18 U.S.C. 2071).

(k) Counterfeiting and forging transportation requests (18 U.S.C. 508).

(l) (1) Embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(m) Unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(n) Acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219). [Order No. 350-65, 30 F.R. 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 F.R. 13217, Sept. 19, 1967]

§ 45.735-22 Reporting of outside interests by persons other than special Government employees.

(a) Each employee occupying a position designated in paragraph (c) of this section shall submit to the head of his division a statement on a form made available through the appropriate division administrative officer, setting forth the following information:

(1) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions with or in which he, his spouse, minor child or other member of his immediate household has—

(i) Any connection as an employee, officer, owner, director, member, trustee, partner, adviser or consultant; or

(ii) Any continuing financial interest, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or

(iii) Any financial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts, except those financial interests described in § 45.735-5(b).

(2) A list of the names of his creditors and the creditors of his spouse, minor child or other member of his immediate household, other than those creditors to whom any such person may be indebted by reason of a mortgage on property which he occupies as a personal residence or to whom such person may be indebted

for current and ordinary household and living expenses such as those incurred for household furnishings, an automobile, education, vacations or the like. .

(3) A list of his interests and those of his spouse, minor child or other member of his immediate household in real property or rights in lands, other than property which he occupies as a personal residence.

For the purpose of this section "member of his immediate household" means a resident of the employee's household who is related to him by blood.

(b) Each employee designated in paragraph (c) of this section who enters upon duty after the date of this order shall submit such statement not later than 30 days after the date of his entrance on duty or 90 days after the effective date of this order, whichever is later.

(c) Statements of employment and financial interests are required of the following:

(1) Employees paid at a level of the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code.

(2) Employees occupying the following positions:

(i) Office of the Attorney General

Administrative Assistant to the Attorney General

Assistant to the Attorney General

Director of Public Information

Assistant Directors of Public Information

(ii) Office of the Deputy Attorney General

Associate Deputy Attorneys General

Director, Office of Justice Policy and Planning

Executive Assistant

Director, Executive Office for U.S. Attorneys
U.S. Attorneys

(iii) Office of the Solicitor General

Deputy Solicitors General

(iv) Office of Legal Counsel

Deputy Assistant Attorneys General

(v) Office of Legislative Affairs

Deputy Assistant Attorneys General

Chief, Legislative and Legal Section

(vi) Office of Management and Finance

Deputy Assistant Attorney General

Staff Directors

Director, Justice Data Center

Director, Department Publication Services
Facility

(vii) Office of Watergate Special Prosecution Force

Deputy Special Prosecutor
Counsel to the Special Prosecutor
Public Information Officer
Chiefs of Task Forces
Information Systems Manager

(viii) Antitrust Division

Deputy Assistant Attorneys General
Director of Economics
Director of Operations
Deputy Director of Operations
Director, Office of Planning and Budget
Section Chiefs

(ix) Civil Division

Deputy Assistant Attorneys General
Section Chiefs

(x) Civil Rights Division

Deputy Assistant Attorneys General
Special Assistants
Executive Officer
Section Chiefs

(xi) Criminal Division

Deputy Assistant Attorneys General
Section Chiefs

(xii) Land and Natural Resources Division

Deputy Assistant Attorneys General
Section Chiefs

(xiii) Tax Division

Deputy Assistant Attorneys General
Executive Assistant
Deputy for Refund Litigation
Section Chiefs

(xvi) U.S. Marshals Service

Director
Deputy Director
U.S. Marshals

(xv) Community Relations Service

Deputy Director
Associate Director
Chief Counsel
Regional Directors

(xvi) Board of Parole

All members

(xvii) Drug Enforcement Administration

Assistant Administrators
Directors
Chief Counsel
Chief Inspector
Controller
Chief Chemists
Regional Administrators
Chief, Administrative Services Division
Contract and Procurement Officer
Contract Specialist, GS-13 and above

Chief, Compliance Division
Section Chiefs, Compliance Division
Project Officers, GS-13 and above

(xviii) Federal Bureau of Investigation

Assistant Director, Administrative Division

(xix) Federal Prison Industries, Inc.
Associate Commissioner

(xx) Immigration and Naturalization Service:

Deputy Commissioner
Associate Commissioner, Management
Assistant Commissioner, Administration
Regional Commissioners for Northeast, Southeast, Northwest, and Southwest Regions

Deputy Regional Commissioners for Northeast, Southeast, Northwest, and Southwest Regions

Associate Deputy Regional Commissioners, Management, for Northwest, Southeast, Northeast, and Southwest Regions

(xxi) Law Enforcement Assistance Administration

Special Assistants to the Administrator and the Deputy Administrators

Director, Executive Secretariat
General Counsel

Director, National Institute of Law Enforcement and Criminal Justice

Director, National Criminal Justice Information and Statistics Service

Director, Office of Regional Operations

Inspector General

Comptroller

Director, National Scope Programs

Director, Office of Public Information and Congressional Liaison

Director, Operations Support

Director, Planning and Management

Regional Administrators

Director, Office of Civil Rights Compliance

Director, Office of Equal Employment Opportunity

All Deputy Directors of the above offices

Employees classified at GS-13 or above who are in positions involving: (1) Contracting or procurement or (2) administering, auditing or monitoring grants and contracts

(d) Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a viola-

tion of the conflict-of-interest provisions set forth in this part.

(e) If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

(f) Paragraph (a) of this section does not require an employee to submit any information relating to his connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

(g) The Department shall hold each statement of employment and financial interests in confidence, and each statement shall be maintained in confidential files in the immediate office of the division head. Each division head shall designate which employees are authorized to review and retain the statements and shall limit such designation to those employees who are his immediate assistants. Employees so designated are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. The Department may not disclose information from a statement except as the Civil Service Commission or the Deputy Attorney General may determine for good cause. Upon termination of the employment in the Department of any person subject to this section, statements which he has submitted in accordance with paragraph (a) of this section shall be disposed of in accordance with established Department procedures applicable to confidential records. In the event an employee subject to this section is transferred within the Department, statements which he has filed pursuant to paragraph (a) of this section shall be transferred to the head of the division to which the employee is reassigned.

(h) The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order or regulation. The submission of a statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

(i) Any employee who believes that his position has been improperly determined to be subject to the reporting requirements of § 45.735-22 may obtain review of such determination through the grievance procedure set forth in 28 CFR Part 46.

(28 U.S.C. 509, 510) [Order No. 350-65, 30 F.R. 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 F.R. 13217, Sept. 19, 1967; Order No. 412-69, 34 FR 5726, Mar. 27, 1969; Order No. 567-74, 39 FR 16444, May 9, 1974; Order No. 572-74, 39 FR 26023, July 16, 1974; Order No. 576-74, 39 FR 31527, Aug. 29, 1974]

§ 45.735-23 Reporting of outside interests by special Government employees.

(a) A special Government employee shall submit to the head of his division a statement of employment and financial interests which reports (1) all other employment, and (2) those financial interests which the head of his division determines are relevant in the light of the duties he is to perform.

(b) A statement required under this section shall be submitted at the time of employment and shall be kept current throughout the period of employment by the filing of supplementary statements in accordance with the requirements of § 45.735-22(d). Statements shall be on forms made available through division administrative officers.

(c) This section shall not be construed as requiring the submission of information referred to in § 45.735-22(f).

(d) Paragraphs (g) and (h) of § 45.735-22 shall be applicable with respect to statements required by this section.

[Order No. 350-65, 30 F.R. 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 FR 13218, Sept. 19, 1967]

§ 45.735-24 Reviewing statements of financial interests.

(a) The head of each division shall review financial statements required of

any of his subordinates by §§ 45.735-22 and 45.735-23 to determine whether there exists a conflict, or possibility of conflict, between the interests of a subordinate and the performance of his service for the Government. If the head of the division determines that such a conflict or possibility of conflict exists, he shall consult with the subordinate. If he concludes that remedial action should be taken, he shall refer the statement to the Deputy Attorney General, through the Department Counselor, with his recommendation for such action. The Deputy Attorney General, after such investigation as he deems necessary, shall direct appropriate remedial action if he deems it necessary.

(b) Remedial action may include, but is not limited to:

- (1) Changes in assigned duties.
- (2) Divestment by the employee of his conflicting interest.
- (3) Disqualification for a particular action.
- (4) Exemption pursuant to § 45.735-5.
- (5) Disciplinary action.

§ 45.735-25 Supplemental regulations.

The heads of divisions may issue supplemental and implementing regulations not inconsistent with this part.

§ 45.735-26 Publication and interpretation.

(a) The Assistant Attorney General for Administration shall provide that the provisions of this part and all revisions thereof shall be brought to the attention of and made available to:

- (1) Each employee at the time of issuance and at least annually thereafter; and
- (2) Each new employee at the time of employment.

(b) The Assistant Attorney General in charge of the Office of Legal Counsel, designated as Department Counselor in accordance with § 735.105 of Title 5 of the Code of Federal Regulations, and, subject to his supervision, such deputy counselors as may be designated to assist him in accordance with the aforesaid regulation, shall provide legal advice, guidance and assistance with respect to the interpretation of this part and in matters relating to ethical conduct, particularly matters subject to the provisions of the conflict of interest laws and Executive Order No. 11222 of May 8, 1965.

Appendix

[H. Con. Res. No. 175, 85th Cong.]

CODE OF ETHICS FOR GOVERNMENT SERVICE

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including officeholders:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.
7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.
8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.
9. Expose corruption whenever discovered.
10. Uphold these principles, ever conscious that public office is a public trust.

Passed July 11, 1958.

PART 48—NEWSPAPER PRESERVATION ACT

- | | |
|-------|---|
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Sec.

- 48.11 Intervention in hearings.
- 48.12 Ex parte communications.
- 48.13 Record for decision.
- 48.14 Decision by the Attorney General.
- 48.15 Temporary approval.
- 48.16 Procedure for filing of terms of a renewal or amendment to an existing joint newspaper operating arrangement.

AUTHORITY: (28 U.S.C. 509, 510); (5 U.S.C. 301); Newspaper Preservation Act, 84 Stat. 466 (15 U.S.C. 1801 et seq.).

SOURCE: Order No. 558-73, 39 FR 7, Jan. 2, 1974, unless otherwise noted.

§ 48.1 Purpose.

These regulations set forth the procedure by which application may be made to the Attorney General for his approval of joint newspaper operating arrangements entered into after July 24, 1970, and for the filing with the Department of Justice of the terms of a renewal or amendment of existing joint newspaper operating arrangements, as required by the Newspaper Preservation Act, Public Law 91-353, 84 Stat. 466, 15 U.S.C. 1801 et seq. The Newspaper Preservation Act does not require that all joint newspaper operating arrangements obtain the prior written consent of the Attorney General. The Act and these regulations provide a method for newspapers to obtain the benefit of a limited exemption from the antitrust laws if they desire to do so. Joint newspaper operating arrangements that are put into effect without the prior written consent of the Attorney General remain fully subject to the antitrust laws.

§ 48.2 Definitions.

(a) The term "Attorney General" means the Attorney General of the United States or his delegate, other than the Assistant Attorney General in charge of the Antitrust Division or other employee in the Antitrust Division.

(b) The term "Assistant Attorney General in charge of the Antitrust Division" means the Assistant Attorney General in charge of the Antitrust Division or his delegate.

(c) The term "Assistant Attorney General for Administration" means the Assistant Attorney General for Administration or his delegate.

(d) The term "existing arrangement" means any joint newspaper operating arrangement entered into before July 24, 1970.

(e) The term "joint newspaper operating arrangement" means any contract, agreement, joint venture (whether or not incorporated), or other arrangement entered into between two or more newspaper owners for the publication of two or more newspaper publications, pursuant to which joint or common production facilities are established or operated and joint or unified action is taken or agreed to be taken with respect to any of the following: Printing; time, method, and field of publication; allocation of production facilities; distribution; advertising solicitation; circulation solicitation; business department; establishment of advertising rates; establishment of circulation rates and revenue distribution: *Provided*, That there is no merger, combination, or amalgamation of editorial or reportorial staffs, and that editorial policies be independently determined.

(f) The term "newspaper" means a publication produced on newsprint paper which is published in one or more issues weekly (including as one publication any daily newspaper and any Sunday newspaper published by the same owner in the same city, community, or metropolitan area), and in which a substantial portion of the content is devoted to the dissemination of news and editorial opinion.

(g) The term "party" means any individual, and any partnership, corporation, association, or other legal entity.

(h) The term "person" means any individual, and any partnership, corporation, association, or other legal entity.

§ 48.3 Procedure for filing all documents.

All filings required by these regulations shall be accomplished by:

(a) Mailing or delivering five copies of each document (two copies in the case of documents filed by the Assistant Attorney General in charge of the Antitrust Division) to the Assistant Attorney General for Administration, Department of Justice, Washington, D.C. 20530. He shall place one copy in a numbered public docket; one copy in a duplicate of this file for the use of officials with decisional responsibility; and (except in the case of documents filed by the Assistant Attorney General in charge of the Antitrust Division) shall forward three copies to the Assistant Attorney General in charge of the Antitrust Division; except that documents subject to nondisclosure

orders under § 48.5 shall be held under seal and disclosed only in accordance with the provisions of that section; and

(b) Mailing or delivering one copy of each document filed after a hearing has been ordered to each party to the proceedings, along with the name and address of the party filing the document or its counsel, and filing in the manner provided in paragraph (a) of this section a certificate that service has been made in accordance herewith.

§ 48.4 Application for approval of joint newspaper operating arrangement entered into after July 24, 1970.

(a) Persons desiring to obtain the approval of the Attorney General of a joint newspaper operating arrangement after July 24, 1970, shall file an application in writing setting forth a short, plain statement of the reasons why the applicants believe that approval should be granted.

(b) With the request, the applicants shall also file copies of the following:

(1) The proposed joint newspaper operating agreement;

(2) Any prior, existing or proposed agreement between any of the newspapers involved, or a statement of any such agreements as have not been reduced to writing;

(3) With respect to each newspaper, for the 5-year period prior to the date of the application,

(i) Annual statements of profit and loss;

(ii) Annual statements of assets and liabilities;

(iii) Reports of the Audit Bureau of Circulation, or statements containing equivalent information;

(iv) Annual advertising lineage records;

(v) Rate cards;

(4) If any amount stated in paragraph (b) (3) (i) or (ii) of this section represents an allocation of revenues, expenses, assets or liabilities between the newspaper and any parent, subsidiary, division or affiliate, the financial statements shall be accompanied by a full explanation of the method by which each such amount has been allocated.

(5) If any of the newspapers involved purchased or sold goods or services from or to any parent, subsidiary, division or affiliate at any time during the five years preceding the date of application, a statement shall be submitted identifying such products or services, the entity from

which they were purchased or to which they were sold, and the amount paid for each product or service during each of the five years.

(6) Any other information which the applicants believe relevant to their request for approval.

(c) A copy of the application and supporting data shall be open to public inspection during normal business hours at the main office of each of the newspapers involved in the arrangement, except to the extent permitted by nondisclosure orders under § 48.5; except that materials for which nondisclosure has been requested under § 48.5 need not be made available for inspection before the request has been decided.

§ 48.5 Requests that information not be made public.

(a) Any applicant may file a request that commercial or financial data required to be filed and made public under these regulations, which is privileged and confidential within the meaning of 5 U.S.C. 552(b), be withheld from public disclosure. Each such request shall be accompanied by a statement of the reasons why nondisclosure is required. The request shall be determined by the Attorney General who shall consider the extent to which (1) disclosure may cause substantial harm to the applicant submitting the information, and (2) nondisclosure may impair the ability of persons who may be adversely affected by the proposed arrangement to present their views in proceedings under these regulations. Information relevant to the financial conditions of the newspaper or newspapers represented to be failing ordinarily shall not be ordered withheld from public disclosure.

(b) Upon ordering that any documents be withheld from public disclosure, the Attorney General shall file a statement setting forth the subject matter of the documents withheld. Any person desiring to inspect the documents may file a request for inspection, identifying with as much particularity as possible the materials to be inspected and setting forth the reasons for inspection and the facts in support thereof. The request for disclosure shall be considered by the Attorney General, who shall give the applicant that submitted the documents an opportunity to be heard in opposition to disclosure. Orders granting inspection shall specify the terms and conditions

thereof, including restrictions on disclosure to third parties.

(c) Documents ordered withheld from public disclosure shall be made available to the Assistant Attorney General in charge of the Antitrust Division. If a hearing is held, the documents may be offered as evidence by any party to whom they have been disclosed. The administrative law judge may restrict further disclosure as he deems appropriate, taking into account the considerations set forth in paragraph (a) of this section.

(d) Requests for access to materials within the scope of this section that may be filed after the conclusion of proceedings under these regulations shall be processed in accordance with the Department's regulations under 5 U.S.C. 552 (Part 16 of this chapter).

§ 48.6 Public notice.

(a) Upon the filing of the documents required by § 48.4, the applicants shall file, and publish on the front pages of each of the newspapers for which application is made, daily and Sunday (if a Sunday edition is published) for a period of one week:

(1) Notice that a request for approval of a joint newspaper operating arrangement has been filed with the Attorney General;

(2) Notice that copies of the proposed arrangement, as well as all other documents submitted pursuant to § 48.4, are available for public inspection at the Department of Justice and at the main offices of the newspapers involved; and

(3) Notice that any person may file written comments or a request for a hearing with the Department of Justice, in accordance with the requirements of § 48.3.

(b) Upon the filing of the notice required in paragraph (a) of this section, the Assistant Attorney General for Administration shall cause notice to be published in the FEDERAL REGISTER, and shall cause to be issued a press release setting forth the information contained therein.

(c) If a hearing is scheduled pursuant to § 48.10, the applicants shall publish the time, date, place and purpose of such hearing on their respective front pages at least three times within the 2-week period after the hearing has been scheduled (two times if the applicants are weekly newspapers), and for the 3 days preceding such hearing (one day during the week preceding the hearing if the applicants are weekly newspapers).

(d) The applicants shall file copies of each day's newspaper in which the notice required in paragraph (a) or paragraph (c) of this section has appeared.

§ 48.7 Report of the Assistant Attorney General in Charge of the Antitrust Division.

(a) The Assistant Attorney General in charge of the Antitrust Division shall, not later than 30 days from the publication in the FEDERAL REGISTER of the notice required by § 48.6, submit to the Attorney General a report on any application filed pursuant to § 48.4. In preparing such report he may require submission by the applicants of any further information which may be relevant to a determination of whether approval of the proposed arrangement is warranted under the Act.

(b) In his report he may state (1) that the proposed arrangement should be approved or disapproved without a hearing; or (2) that a hearing should be held to resolve material issues of fact.

(c) The report shall be filed, and a copy shall be sent to the applicants. Upon the filing of the report, the Assistant Attorney General for Administration shall cause to be issued a press release setting forth the substance thereof.

(d) Any person may, within 30 days after filing of the report, file a reply to the report for the consideration of the Attorney General.

§ 48.8 Written comments and requests for a hearing.

(a) Any person who believes that the Attorney General should or should not approve a proposed arrangement, may at any time after filing of the application until 30 days after publication in the FEDERAL REGISTER of the notice required in § 48.6,

(1) File written comments stating the reasons why approval should or should not be granted, and/or

(2) File a request that a hearing be held on the application. A request for a hearing shall set forth the issues of fact to be determined and the reasons that a hearing is required to determine them.

(b) Any person may within 30 days after the filing of any comment or request pursuant to paragraph (a) of this section, file a reply for the consideration of the Attorney General.

(c) After the expiration of the time for filing of replies in accordance with §§ 48.7 and 48.8 the Attorney General

shall either approve or deny approval of the arrangement, in accordance with § 48.14, or shall order that a hearing be held.

§ 48.9 Extensions of time.

Any of the time periods established by these Regulations may be extended for good cause, upon timely application to the Attorney General, or to the administrative law judge if one has been appointed.

§ 48.10 Hearings.

(a) Upon the issuance by the Attorney General of an order for a hearing, the Assistant Attorney General for Administration shall appoint an administrative law judge in accordance with section 11 of the Administrative Procedure Act, 5 U.S.C. 3105. The administrative law judge shall:

(1) Set a date, time and place for the hearing convenient for all parties involved. The date set shall be as soon as practicable, allowing time for publication of the notice required in § 48.6 and for a reasonable period of discovery as provided in this section. In setting a place for the hearing, preference shall be given to the community in which the applicants' newspapers operate.

(2) Mail notice of the hearing to the parties, to each person who filed written comments or a request for a hearing, and to any other person he believes may have an interest in the proceeding.

(3) Permit discovery by any party, as provided in the Federal Rules of Civil Procedure; except that he may place such limits as he deems reasonable on the time and manner of taking discovery in order to avoid unnecessary delays in the proceedings.

(4) Conduct a hearing in accordance with section 7 of the Administrative Procedure Act, 5 U.S.C. 556. At such hearing, the burden of proving that the proposed arrangement meets the requirements of the Newspaper Preservation Act will be on the proponents of the arrangement. The rules of evidence which govern civil proceedings in matters not involving trial by jury in the courts of the United States shall apply, but these rules may be relaxed if the ends of justice will be better served in so doing: Provided, that the introduction of irrelevant, immaterial, or unduly repetitious evidence is avoided. Only parties to the pro-

ceedings may present evidence, or cross-examine witnesses.

(b) The applicants and the Assistant Attorney General in charge of the Antitrust Division shall be parties in any hearing held hereunder. Other persons may intervene as parties as provided in § 48.11.

(c) The Assistant Attorney General for Administration shall procure the services of a stenographic reporter. One copy of the transcript produced shall be placed in the public docket. Additional copies may be purchased from the reporter or, if the arrangement with the reporter permits, from the Department of Justice at its cost.

(d) Following the hearing the administrative law judge shall render to the Attorney General his recommendation that the proposed arrangement be approved or denied approval in accordance with the standards of the Act. The recommendation shall be in writing, shall be based solely on the hearing record, and shall include a statement of the administrative law judge's findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion presented on the record. Copies of the recommendation shall be filed and sent to each party.

(e) Within 30 days of the date the administrative law judge files his recommendation, any party may file written exceptions to the recommendation for consideration by the Attorney General. Parties shall then have a further 15 days in which to file responses to any such exceptions.

§ 48.11 Intervention in hearings.

(a) Any person may intervene as a party in a hearing held under these regulations if (1) he has an interest which may be affected by the Attorney General's decision, and (2) it appears that his interest may not be adequately represented by existing parties.

(b) Application for intervention shall be made by filing in accordance with § 48.3(a) and (b), within 20 days after a hearing has been ordered, a statement of the nature of the applicant's interest, the way in which it may be affected, the facts and reasons in support thereof and the reasons why the applicant's interest may not be adequately represented by existing parties.

(c) Existing parties may file a statement in opposition to or in support of an application to intervene within 10 days of the filing of the application.

(d) Applications for intervention shall be decided by the Attorney General.

(e) Intervenors shall have the same rights as existing parties in connection with any hearing held under these regulations.

§ 48.12 Ex parte communications.

No person shall communicate on any matter related to these proceedings with the administrative law judge, the Attorney General or anyone having decisional responsibility, except as provided in these regulations.

§ 48.13 Record for decision.

(a) The record on which the Attorney General shall base his decision in the event a hearing is not held shall be comprised of all material filed in accordance with these regulations, including any material that has been ordered withheld from public disclosure.

(b) If a hearing is held, the record on which the Attorney General shall base his decision shall consist exclusively of the hearing record, the examiner's recommendation and any exceptions and responses filed with respect thereto.

§ 48.14 Decision by the Attorney General.

(a) The Attorney General shall decide, on the basis of the record as constituted in accordance with § 48.13, whether approval is warranted under the Act. In rendering his decision, the Attorney General shall file therewith a statement of his findings and conclusions and the reasons therefor, or where a hearing has been held, he may adopt the findings and conclusions of the administrative law judge.

(b) Approval of a proposed arrangement by the Attorney General shall not become effective until the tenth day after the filing of the Attorney General's decision as provided in this section.

§ 48.15 Temporary approval.

(a) If the Attorney General concludes that one or more of the newspapers involved would otherwise fail before the procedures under these regulations can be completed, he may grant temporary approval of whatever form of joint or unified action would be lawful under the

Act if performed as part of an approved joint newspaper operating arrangement, and that he concludes is: (1) Essential to the survival of the newspaper or newspapers; and (2) most likely capable of being terminated without impairment to the ability of both newspapers to resume independent operation should final approval eventually be denied.

(b) Upon the filing of a request for temporary approval, the applicants shall publish notice of such application on the front pages of their respective newspapers for a period of three consecutive days in the case of daily newspapers or in the next issue in the case of weekly newspapers. The notice shall state (1) that a request for temporary approval of a joint operating arrangement or other joint or unified action has been made to the Attorney General; and (2) that anyone wishing to protest the application for temporary approval may do so by delivering a statement of protest or telephoning his views to an employee of the Department of Justice, whose name, address and telephone number shall be designated by the Department upon receipt of the application for temporary approval, and that such protests must be received by the Department within five days of the first publication of notice in accordance with paragraph (a) hereof.

(c) The notice required by this section shall be in addition to the notice required by § 48.6.

(d) Such temporary approval may be granted without hearing at any time following the expiration of the period provided for protests, but shall create no presumption that final approval will be granted.

§ 48.16 Procedure for filing of terms of a renewal or amendment to an existing joint newspaper operating arrangement.

Within 30 days after a renewal of or an amendment to the terms of an existing arrangement, the parties to said renewal or amendment shall file five copies of the agreement of renewal or amendment. In the case of an amendment, the parties shall also file copies of the amended portion of the original agreement.

[Order No. 558-73, 39 FR 7, Jan. 2, 1974, as amended by Order No. 568-74, 39 FR 18646, May 29, 1974]

PART 49—ANTITRUST CIVIL PROCESS ACT

Sec.

- 49.1 Purpose.
- 49.2 Duties of Custodian.
- 49.3 Examination of material.
- 49.4 Deputy Custodians.

AUTHORITY: The provisions of this Part 49 issued under sec. 4, 76 Stat. 550; 15 U.S.C. 1313.

SOURCE: The provisions of this Part 49 contained in Order No. 298-63, 28 F.R. 7395, July 19, 1963 unless otherwise noted.

§ 49.1 Purpose.

These regulations are issued in compliance with the requirements imposed by the provisions of section 4(c) of the Antitrust Civil Process Act, P.L. 87-664, 76 Stat. 550, 15 U.S.C. 1313(c). The terms used in this part shall be deemed to have the same meaning as similar terms used in that Act.

§ 49.2 Duties of Custodian.

(a) Upon taking physical possession of material delivered pursuant to a Civil Investigation Demand issued under section 3(a) of the Act, the Antitrust Document Custodian designated pursuant to section 4(a) of the Act (subject to the general supervision of the Assistant Attorney General in charge of the Antitrust Division), shall, unless otherwise directed by a court of competent jurisdiction, select, from time to time, from among such material, the material the copying of which he deems necessary or appropriate for the official use of the Department of Justice, and he shall determine, from time to time, the number of copies of any such material that are to be reproduced pursuant to the Act.

(b) Copies of material in the physical possession of the Custodian pursuant to a Civil Investigation Demand may be reproduced by or under the authority of an officer or employee of the Department of Justice designated by the Custodian. Material for which a Civil Investigation Demand has been issued but which is still in the physical possession of the person upon whom the Demand has been served, may, by agreement between such person and the Custodian, be reproduced by such person, in which case the Custodian may require that the copies so produced be duly certified as true copies of the original of the material involved.

§ 49.3 Examination of material.

Material produced pursuant to the Act, while in the custody of the Custodian, shall be for the official use of

officers and employees of the Department of Justice in accordance with the Act, but such material shall, upon reasonable notice to the Custodian, be made available for examination by the person who produced such material or his duly authorized representative during regular office hours established for the Department of Justice. Examination of such material at other times may be authorized by the Assistant Attorney General or the Custodian.

§ 49.4 Deputy Custodians.

Deputy Custodians may perform such of the duties assigned to the Custodian as may be authorized or required by the Assistant Attorney General.

PART 50—STATEMENTS OF POLICY

Sec.

- 50.1 Consent judgment policy.
- 50.2 Release of information by personnel of the Department of Justice relating to criminal and civil proceedings.
- 50.3 Guidelines for the enforcement of Title VI, Civil Rights Act of 1964.
- 50.4 Policy with regard to inventions resulting from grants under the Law Enforcement Assistance Act of 1965.
- 50.5 Notification of Consular Officers upon the arrest of foreign nationals.
- 50.6 Antitrust Division business review procedure.
- 50.7 Consent judgments in actions to enjoin discharges of pollutants.
- 50.8 Policy with regard to criteria for discretionary access to investigatory records of historical interest.
- 50.9 The Freedom of Information Committee.
- 50.10 Policy with regard to the issuance of subpoenas to, and the interrogation, indictment, or arrest of, members of the news media.
- 50.11 Policy with regard to designation of United States Magistrates as special masters.
- 50.12 Exchange of FBI identification records.
- 50.13 Procedures for receipt and consideration of written comments submitted under subsection 2(b) of the Antitrust Procedures and Penalties Act.

§ 50.1 Consent judgment policy.

(a) It is hereby established as the policy of the Department of Justice to consent to a proposed judgment in an action to prevent or restrain violations of the antitrust laws only after or on condition that an opportunity is afforded persons (natural or corporate) who may be affected by such judgment and who are not named as parties to the action to state comments, views or relevant allegations prior to the entry of such proposed judgment by the court.

(b) Pursuant to this policy, each proposed consent judgment shall be filed in court or otherwise made available upon request to interested persons as early as feasible but at least 30 days prior to entry by the court. Prior to entry of the judgment, or some earlier specified date, the Department of Justice will receive and consider any written comments, views or relevant allegations relating to the proposed judgment, which the Department may, in its discretion, disclose to the other parties to the action. The Department of Justice shall reserve the right (1) to withdraw or withhold its consent to the proposed judgment if the comments, views or allegations submitted disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper or inadequate and (2) to object to intervention by any party not named as a party by the Government.

(c) The Assistant Attorney General in charge of the Antitrust Division may establish procedures for implementing this policy. The Attorney General may permit an exception to this policy in a specific case where extraordinary circumstances require some shorter period than 30 days or some other procedure than that stated herein, and where it is clear that the public interest in the policy hereby established is not compromised. [26 F.R. 6026, July 6, 1961]

§ 50.2 Release of information by personnel of the Department of Justice relating to criminal and civil proceedings.

(a) *General.* (1) The availability to news media of information in criminal and civil cases is a matter which has become increasingly a subject of concern in the administration of justice. The purpose of this statement is to formulate specific guidelines for the release of such information by personnel of the Department of Justice.

(2) While the release of information for the purpose of influencing a trial is, of course, always improper, there are valid reasons for making available to the public information about the administration of the law. The task of striking a fair balance between the protection of individuals accused of crime or involved in civil proceedings with the Government and public understandings of the problems of controlling crime and administering government depends largely on the exercise of sound judgment

by those responsible for administering the law and by representatives of the press and other media.

(3) Inasmuch as the Department of Justice has generally fulfilled its responsibilities with awareness and understanding of the competing needs in this area, this statement, to a considerable extent, reflects and formalizes the standards to which representatives of the Department have adhered in the past. Nonetheless, it will be helpful in ensuring uniformity of practice to set forth the following guidelines for all personnel of the Department of Justice.

(4) Because of the difficulty and importance of the questions they raise, it is felt that some portions of the matters covered by this statement, such as the authorization to make available Federal conviction records and a description of items seized at the time of arrest, should be the subject of continuing review and consideration by the Department on the basis of experience and suggestions from those within and outside the Department.

(b) Guidelines to criminal actions.

(1) These guidelines shall apply to the release of information to news media from the time a person is the subject of a criminal investigation until any proceeding resulting from such an investigation has been terminated by trial or otherwise.

(2) At no time shall personnel of the Department of Justice furnish any statement or information for the purpose of influencing the outcome of a defendant's trial, nor shall personnel of the Department furnish any statement or information, which could reasonably be expected to be disseminated by means of public communication, if such a statement or information may reasonably be expected to influence the outcome of a pending or future trial.

(3) Personnel of the Department of Justice, subject to specific limitations imposed by law or court rule or order, may make public the following information:

(i) The defendant's name, age, residence, employment, marital status, and similar background information.

(ii) The substance or text of the charge, such as a complaint, indictment, or information.

(iii) The identity of the investigating and/or arresting agency and the length or scope of an investigation.

(iv) The circumstances immediately surrounding an arrest, including the

time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest.

Disclosures should include only incontrovertible, factual matters, and should not include subjective observations. In addition, where background information or information relating to the circumstances of an arrest or investigation would be highly prejudicial or where the release thereof would serve no law enforcement function, such information should not be made public.

(4) Personnel of the Department shall not disseminate any information concerning a defendant's prior criminal record.

(5) Because of the particular danger of prejudice resulting from statements in the period approaching and during trial, they ought strenuously to be avoided during that period. Any such statement or release shall be made only on the infrequent occasion when circumstances absolutely demand a disclosure of information and shall include only information which is clearly not prejudicial.

(6) The release of certain types of information generally tends to create dangers of prejudice without serving a significant law enforcement function. Therefore, personnel of the Department should refrain from making available the following:

(i) Observations about a defendant's character.

(ii) Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement.

(iii) Reference to investigative procedures such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests, or to the refusal by the defendant to submit to such tests or examinations.

(iv) Statements concerning the identity, testimony, or credibility of prospective witnesses.

(v) Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial.

(vi) Any opinion as to the accused's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea to a lesser offense.

(7) Personnel of the Department of Justice should take no action to encour-

age or assist news media in photographing or televising a defendant or accused person being held or transported in Federal custody. Departmental representatives should not make available photographs of a defendant unless a law enforcement function is served thereby.

(8) This statement of policy is not intended to restrict the release of information concerning a defendant who is a fugitive from justice.

(9) Since the purpose of this statement is to set forth generally applicable guidelines, there will, of course, be situations in which it will limit the release of information which would not be prejudicial under the particular circumstances. If a representative of the Department believes that in the interest of the fair administration of justice and the law enforcement process information beyond these guidelines should be released, in a particular case, he shall request the permission of the Attorney General or the Deputy Attorney General to do so.

(c) *Guidelines to civil actions.* Personnel of the Department of Justice associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal records of a party, witness, or prospective witness.

(3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) An opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.

(5) Any other matter reasonably likely to interfere with a fair trial of the action.

[Order 470-71, 36 FR 21028, Nov. 3, 1971, as amended by Order No. 602-75, 40 FR 22119, May 20, 1975]

§ 50.3 Guidelines for the enforcement of Title VI, Civil Rights Act of 1964.

(a) Where the heads of agencies having responsibilities under Title VI of the Civil Rights Act of 1964 conclude there

is noncompliance with regulations issued under that title, several alternative courses of action are open. In each case, the objective should be to secure prompt and full compliance so that needed Federal assistance may commence or continue.

(b) Primary responsibility for prompt and vigorous enforcement of Title VI rests with the head of each department and agency administering programs of Federal financial assistance. Title VI itself and relevant Presidential directives preserve in each agency the authority and the duty to select, from among the available sanctions, the methods best designed to secure compliance in individual cases. The decision to terminate or refuse assistance is to be made by the agency head or his designated representative.

(c) This statement is intended to provide procedural guidance to the responsible department and agency officials in exercising their statutory discretion and in selecting, for each noncompliance situation, a course of action that fully conforms to the letter and spirit of section 602 of the Act and to the implementing regulations promulgated thereunder.

I. ALTERNATIVE COURSES OF ACTION

A. ULTIMATE SANCTIONS

The ultimate sanctions under Title VI are the refusal to grant an application for assistance and the termination of assistance being rendered. Before these sanctions may be invoked, the Act requires completion of the procedures called for by section 602. That section requires the department or agency concerned (1) to determine that compliance cannot be secured by voluntary means, (2) to consider alternative courses of action consistent with achievement of the objectives of the statutes authorizing the particular financial assistance, (3) to afford the applicant an opportunity for a hearing, and (4) to complete the other procedural steps outlined in section 602, including notification to the appropriate committees of the Congress.

In some instances, as outlined below, it is legally permissible temporarily to defer action on an application for assistance, pending initiation and completion of section 602 procedures—including attempts to secure voluntary compliance with Title VI. Normally, this course of action is appropriate only with respect to applications for noncontinuing assistance or initial applications for programs of continuing assistance. It is not available where Federal financial assistance is due and payable pursuant to a previously approved application.

Whenever action upon an application is deferred pending the outcome of a hearing and subsequent section 602 procedures, the efforts to secure voluntary compliance and the hearing and such subsequent procedures, if found necessary, should be conducted without delay and completed as soon as possible.

B. AVAILABLE ALTERNATIVES

1. Court Enforcement

Compliance with the nondiscrimination mandate of Title VI may often be obtained more promptly by appropriate court action than by hearings and termination of assistance. Possibilities of judicial enforcement include (1) a suit to obtain specific enforcement of assurances, covenants running with federally provided property, statements or compliance or desegregation plans filed pursuant to agency regulations, (2) a suit to enforce compliance with other titles of the 1964 Act, other Civil Rights Acts, or constitutional or statutory provisions requiring nondiscrimination, and (3) initiation of, or intervention or other participation in, a suit for other relief designed to secure compliance.

The possibility of court enforcement should not be rejected without consulting the Department of Justice. Once litigation has been begun, the affected agency should consult with the Department of Justice before taking any further action with respect to the noncomplying party.

2. Administrative Action

A number of effective alternative courses not involving litigation may also be available in many cases. These possibilities include (1) consulting with or seeking assistance from other Federal agencies (such as the Contract Compliance Division of the Department of Labor) having authority to enforce nondiscrimination requirements; (2) consulting with or seeking assistance from State or local agencies having such authority; (3) bypassing a recalcitrant central agency applicant in order to obtain assurances from, or to grant assistance to complying local agencies; and (4) bypassing all recalcitrant non-Federal agencies and providing assistance directly to the complying ultimate beneficiaries. The possibility of utilizing such administrative alternatives should be considered at all stages of enforcement and used as appropriate or feasible.

C. INDUCING VOLUNTARY COMPLIANCE

Title VI requires that a concerted effort be made to persuade any noncomplying applicant or recipient voluntarily to comply with Title VI. Efforts to secure voluntary compliance should be undertaken at the outset in every noncompliance situation and should be pursued through each stage of enforcement action. Similarly, where an applicant fails to file an adequate assurance or apparently breaches its terms, notice should be promptly given of the nature of the noncom-

pliance problem and of the possible consequences thereof, and an immediate effort made to secure voluntary compliance.

II. PROCEDURES

A. NEW APPLICATIONS

The following procedures are designed to apply in cases of noncompliance involving applications for one-time or noncontinuing assistance and initial applications for new or existing programs of continuing assistance.

1. *Where the Requisite Assurance Has Not Been Filed or is Inadequate on its Face.*

Where the assurance, statement of compliance or plan of desegregation required by agency regulations has not been filed or where, in the judgment of the head of the agency in question, the filed assurance falls on its face to satisfy the regulations, the agency head should defer action on the application pending prompt initiation and completion of section 602 procedures. The applicant should be notified immediately and attempts made to secure voluntary compliance. If such efforts fail, the applicant should promptly be offered a hearing for the purpose of determining whether an adequate assurance has in fact been filed.

If it is found that an adequate assurance has not been filed, and if administrative alternatives are ineffective or inappropriate, and court enforcement is not feasible, section 602 procedures may be completed and assistance finally refused.

2. *Where it Appears that the Filed Assurance Is Untrue or Is Not Being Honored*

Where an otherwise adequate assurance, statement of compliance, or plan has been filed in connection with an application for assistance, but prior to completion of action on the application the head of the agency in question has reasonable grounds, based on a substantiated complaint, the agency's own investigation, or otherwise, to believe that the representations as to compliance are in some material respect untrue or are not being honored, the agency head may defer action on the application pending prompt initiation and completion of section 602 procedures. The applicant should be notified immediately and attempts made to secure voluntary compliance. If such efforts fail and court enforcement is determined to be ineffective or inadequate, a hearing should be promptly initiated to determine whether, in fact, there is noncompliance.

If noncompliance is found, and if administrative alternatives are ineffective or inappropriate and court enforcement is still not feasible, section 602 procedures may be completed and assistance finally refused.

The above-described deferral and related compliance procedures would normally be appropriate in cases of an application for noncontinuing assistance. In the case of an initial application for a new or existing program of continuing assistance, deferral would often be less appropriate because of the opportunity

to secure full compliance during the life of the assistance program. In those cases in which the agency does not defer action on the application, the applicant should be given prompt notice of the asserted noncompliance; funds should be paid out for short periods only, with no long-term commitment of assistance given; and the applicant advised that acceptance of the funds carries an enforceable obligation of nondiscrimination and the risk of invocation of severe sanctions, if noncompliance in fact is found.

B. REQUESTS FOR CONTINUATION OR RENEWAL OF ASSISTANCE

The following procedures are designed to apply in cases of noncompliance involving all submissions seeking continuation or renewal under programs of continuing assistance.

In cases in which commitments for Federal financial assistance have been made prior to the effective date of Title VI regulations and funds have not been fully disbursed, or in which there is provision for future periodic payments to continue the program or activity for which a present recipient has previously applied and qualified, or in which assistance is given without formal application pursuant to statutory direction or authorization, the responsible agency may nonetheless require an assurance, statement of compliance, or plan in connection with disbursement or further funds. However, once a particular program grant or loan has been made or an application for a certain type of assistance for a specific or indefinite period has been approved, no funds due and payable pursuant to that grant, loan, or application, may normally be deferred or withheld without first completing the procedures prescribed in section 602.

Accordingly, where the assurance, statement of compliance, or plan required by agency regulations has not been filed or where, in the judgment of the head of the agency in question, the filed assurance falls on its face to satisfy the regulations, or there is reasonable cause to believe it untrue or not being honored, the agency head should, if efforts to secure voluntary compliance are unsuccessful, promptly institute a hearing to determine whether an adequate assurance has in fact been filed, or whether, in fact, there is noncompliance, as the case may be. There should ordinarily be no deferral of action on the submission or withholding of funds in this class of cases, although the limitation of the payout of funds to short periods may appropriately be ordered. If noncompliance is found, and if administrative alternatives are ineffective or inappropriate and court enforcement is not feasible, section 602 procedures may be completed and assistance terminated.

C. SHORT-TERM PROGRAMS

Special procedures may sometimes be required where there is noncompliance with Title VI regulations in connection with a

program of such short total duration that all assistance funds will have to be paid out before the agency's usual administrative procedures can be completed and where deferral in accordance with these guidelines would be tantamount to a final refusal to grant assistance.

In such a case, the agency head may, although otherwise following these guidelines, suspend normal agency procedures and institute expedited administrative proceedings to determine whether the regulations have been violated. He should simultaneously refer the matter to the Department of Justice for consideration of possible court enforcement, including interim injunctive relief. Deferral of action on an application is appropriate, in accordance with these guidelines, for a reasonable period of time, provided such action is consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with the action taken. As in other cases, where noncompliance is found in the hearing proceeding, and if administrative alternatives are ineffective or inappropriate and court enforcement is not feasible, section 603 procedures may be completed and assistance finally refused.

III. PROCEDURES IN CASES OF SUBGRANTEES

In situations in which applications for Federal assistance are approved by some agency other than the Federal granting agency, the same rules and procedures would apply. Thus, the Federal agency should instruct the approving agency—typically a State agency—to defer approval or refuse to grant funds, in individual cases in which such action would be taken by the original granting agency itself under the above procedures. Provision should be made for appropriate notice of such action to the Federal agency which retains responsibility for compliance with section 603 procedures.

IV. EXCEPTIONAL CIRCUMSTANCES

The Attorney General should be consulted in individual cases in which the head of an agency believes that the objectives of Title VI will be best achieved by proceeding other than as provided in these guidelines.

V. COORDINATION

While primary responsibility for enforcement of Title VI rests directly with the head of each agency, in order to assure coordination of Title VI enforcement and consistency among agencies, the Department of Justice should be notified in advance of applications on which action is to be deferred, hearings to be scheduled, and refusals and terminations of assistance or other enforcement actions or procedures to be undertaken. The Department also should be kept advised of the progress and results of hearings and other enforcement actions.

(E.O. 11247, 30 F.R. 12327, 3 CFR 1965 Supp., p. 177) [31 F.R. 5292, Apr. 2, 1966]

§ 50.4 Policy with regard to inventions resulting from grants under the Law Enforcement Assistance Act of 1965.

(a) The Department of Justice expends substantial sums each year in the form of grants under the Law Enforcement Assistance Act of 1965 (79 Stat. 828), as amended (80 Stat. 1506), for projects designed to develop or demonstrate effective methods for increasing the security of persons and property and controlling the incidence of lawlessness, and to promote respect for law. The scientific and technological research attributable in varying degree to this expenditure of public funds may in some cases result in patentable inventions.

(b) The Department of Justice normally reserves the right to determine the disposition of the title to and rights in inventions made in the course of, or under, its law enforcement grants. However, in some cases the Department may waive that right of disposition by means of an express provision in the grant.

(c) Determinations with regard to the disposition of inventions developed under grants when there are no waivers are made by the Director of the Office of Law Enforcement Assistance of the Department of Justice.

(d) In all cases in which an invention is made in the course of or under a grant, the grantee is required to make a report thereof to the Director. In those cases in which there is no waiver, the Director has the responsibility for determining, and notifying the grantee, whether the Government will seek patent protection and how any rights in the reported invention, including any patent rights, will be administered and disposed of.

(e) The determinations of the Director and other actions of the Department, of Justice with respect to the administration and disposition of title to and rights in inventions and patents thereon, including waiver of the right of disposition, are governed by the instructions in the Statement of Government Patent Policy issued by the President on October 10, 1963, 28 F.R. 10943. (28 U.S.C. 508, 509, 510) [Order No. 373-67, 32 F.R. 713, Jan. 21, 1967]

§ 50.5 Notification of Consular Officers upon the arrest of foreign nationals.

(a) This statement is designed to establish a uniform procedure for consular notification where nationals of foreign countries are arrested by officers of this Department on charges of criminal vio-

lations. It conforms to practice under international law and in particular implements obligations undertaken by the United States pursuant to treaties with respect to the arrest and detention of foreign nationals. Some of the treaties obligate the United States to notify the consular officer only upon the demand or request of the arrested foreign national. On the other hand, some of the treaties require notifying the consul of the arrest of a foreign national whether or not the arrested person requests such notification.

(1) In every case in which a foreign national is arrested the arresting officer shall inform the foreign national that his consul will be advised of his arrest unless he does not wish such notification to be given. If the foreign national does not wish to have his consul notified, the arresting officer shall also inform him that in the event there is a treaty in force between the United States and his country which requires such notification, his consul must be notified regardless of his wishes and, if such is the case, he will be advised of such notification by the U.S. Attorney.

(2) In all cases (including those where the foreign national has stated that he does not wish his consul to be notified) the local office of the Federal Bureau of Investigation or the local Marshal's office, as the case may be, shall inform the nearest U.S. Attorney of the arrest and of the arrested person's wishes regarding consular notification.

(3) The U.S. Attorney shall then notify the appropriate consul except where he has been informed that the foreign national does not desire such notification to be made. However, if there is a treaty provision in effect which requires notification of consul, without reference to a demand or request of the arrested national, the consul shall be notified even if the arrested person has asked that he not be notified. In such case, the U.S. Attorney shall advise the foreign national that his consul has been notified and inform him that notification was necessary because of the treaty obligation.

(b) The procedure prescribed by this statement shall not apply to cases involving arrests made by the Immigration and Naturalization Service in administrative expulsion or exclusion proceedings, since that Service has heretofore established procedures for the direct notification of the appropriate consular

officer upon such arrest. With respect to arrests made by the Service for violations of the criminal provisions of the immigration laws, the U.S. Marshal, upon delivery of the foreign national into his custody, shall be responsible for informing the U.S. Attorney of the arrest in accordance with numbered paragraph 2 of this statement.

(28 U.S.C. 508, 509, 510) [Order No. 375-87. 32 F.R. 1040, Jan. 28, 1967]

§ 50.6 Antitrust Division business review procedure.

Although the Department of Justice is not authorized to give advisory opinions to private parties, for several decades the Antitrust Division has been willing in certain circumstances to review proposed business conduct and state its enforcement intentions. This originated with a "railroad release" procedure under which the Division would forego the initiation of criminal antitrust proceedings. The procedure was subsequently expanded to encompass a "merger clearance" procedure under which the Division would state its present enforcement intention with respect to a merger or acquisition; and the Department issued a written statement entitled "Business Review Procedure." This is a revision of that statement:

1. A request for a business review letter must be submitted in writing to the Assistant Attorney General, Antitrust Division, Department of Justice, Washington, D.C. 20530.

2. The Division will consider only requests with respect to proposed business conduct, which may involve either domestic or foreign commerce.

3. A business review letter shall have no application to any party which does not join in the request therefor.

4. The requesting parties are under an affirmative obligation to make full and true disclosure with respect to the business conduct for which review is requested. Each request must be accompanied by all relevant data including background information, complete copies of all operative documents and detailed statements of all collateral oral understandings, if any. All parties requesting the review letter must provide the Division with whatever additional information or documents the Division may thereafter request in order to review the matter. Such additional information, if furnished orally, shall be promptly confirmed in writing. In connection with any request for review the Division will also conduct whatever independent investigation it believes is appropriate.

5. No oral clearance, release or other statement purporting to bind the enforcement discretion of the Division may be given.

The requesting party may rely upon only a written business review letter signed by the Attorney General, Deputy Attorney General, or Assistant Attorney General in charge of the Antitrust Division.

6. If the business conduct for which review is requested is subject to approval by a regulatory agency, a review request may be considered before agency approval has been obtained (except in the case of bank mergers or acquisitions) where it appears that exceptional and unnecessary burdens might otherwise be imposed on the party or parties requesting review, or where the agency specifically requests that a party or parties request review. However, any business review letter issued in these as in any other circumstances will state only the Department's present enforcement intentions under the antitrust laws. It shall in no way be taken to indicate the Department's views on the legal or factual issues that may be raised before the regulatory agency, or in an appeal from the regulatory agency's decision. In particular, the issuance of such a letter is not to be represented to mean that the Division believes that there are no anticompetitive consequences warranting agency consideration.

7. After review of a request submitted hereunder the Division may: state its present enforcement intention with respect to the proposed business conduct; decline to pass on the request; or take such other position or action as it considers appropriate. Ordinarily, however, the Division will state a present intention not to bring a civil action only with respect to mergers, acquisitions or similar arrangements.

8. A business review letter states only the enforcement intention of the Division as of the date of the letter, and the Division remains completely free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest. As to a stated present intention not to bring an action, however, the Division has never exercised its right to bring a criminal action where there has been full and true disclosure at the time of presenting the request.

9. (a) Thirty days after the date upon which the Division takes any action as described in paragraph 7, the business review request, the information supplied to support it, and the Division's letter in response will be indexed and placed in a file available to the public upon request.

(b) Prior to the time the information described in subparagraph (a) is indexed and made publicly available in accordance with the terms of that subparagraph, the requesting party may ask the Division to delay making public some or all of such information. However, the requesting party must: (1) Specify precisely the documents or parts thereof that he asks not be made public; (2) state the minimum period of time during which non-disclosure is considered necessary; and (3) justify the request for non-disclosure, both as to content and time, by showing good

cause therefor, including a showing that disclosure would have a detrimental effect upon the requesting party's operations or relationships with actual or potential customers, employees, suppliers (including suppliers of credit), stockholders, or competitors. The Department of Justice, in its discretion, will make the final determination as to whether good cause for non-disclosure has been shown.

(c) Nothing contained in subparagraphs (a) and (b) shall limit the Division's right, in its discretion, to issue a press release describing generally the identity of the requesting party or parties and the nature of action taken by the Division upon the request.

(d) This paragraph reflects a policy determination by the Justice Department and is subject to any limitations on public disclosure arising from statutory restrictions, Executive order, or the national interest.

10. Any requesting party may withdraw a request for review at any time. The Division remains free, however, to submit such comments to such requesting party as it deems appropriate. Failure to take action after receipt of documents or information whether submitted pursuant to this procedure or otherwise, does not in any way limit or estop the Division from taking such action at such time thereafter as it deems appropriate. The Division reserves the right to retain documents submitted to it under this procedure or otherwise and to use them for all purposes of antitrust enforcement.

[Antitrust Div. Dir. No. 2-68, 33 F.R. 2442, Feb. 1, 1968, as amended by Antitrust Div. Dir. 14-73, 38 FR 34804, Dec. 19, 1973]

§ 50.7 Consent judgments in actions to enjoin discharges of pollutants.

(a) It is hereby established as the policy of the Department of Justice to consent to a proposed judgment in an action to enjoin discharges of pollutants into the environment only after or on condition that an opportunity is afforded persons (natural or corporate) who are not named as parties to the action to comment on the proposed judgment prior to its entry by the court.

(b) To effectuate this policy, each proposed judgment which is within the scope of Paragraph (a) of this section shall be lodged with the court as early as feasible but at least 30 days before the judgment is entered by the court. Prior to entry of the judgment, or some earlier specified date, the Department of Justice will receive and consider, and file with the court, any written comments, views or allegations relating to the proposed judgment. The Department shall reserve the right (1) to withdraw or withhold its consent to the proposed judgment if the comments, views and allegations con-

cerning the judgment disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper or inadequate and (2) to oppose an attempt by any person to intervene in the action.

(c) The Assistant Attorney General in charge of the Land and Natural Resources Division may establish procedures for implementing this policy. Where it is clear that the public interest in the policy hereby established is not compromised, the Assistant Attorney General may permit an exception to this policy in a specific case where extraordinary circumstances require a period shorter than 30 days or a procedure other than stated herein.

[Order No. 529-73, 38 FR 19029, July 17, 1973]

§ 50.8 Policy with regard to criteria for discretionary access to investigatory records of historical interest.

(a) In response to the increased demand for access to investigatory files of historical interest that were compiled by the Department of Justice for law enforcement purposes and are thus exempted from compulsory disclosure under the Freedom of Information Act, the Department has decided to modify to the extent hereinafter indicated its general practice regarding their discretionary release. Issuance of this section and actions considered or taken pursuant hereto are not to be deemed a waiver of the Government's position that the materials in question are exempted under the Act. By providing for exemptions in the Act, Congress conferred upon agencies the option, at the discretion of the agency, to grant or deny access to exempt materials unless prohibited by other law. Possible releases that may be considered under this section are at the sole discretion of the Attorney General and of those persons to whom authority hereunder may be delegated.

(b) Persons outside the Executive Branch engaged in historical research projects will be accorded access to information or material of historical interest contained within this Department's investigatory files compiled for law enforcement purposes that are more than fifteen years old and are no longer substantially related to current investigative or law enforcement activities, subject to deletions to the minimum extent deemed necessary to protect law enforcement efficiency and the privacy, confidences, or other legitimate interests of any person

named or identified in such files. Access may be requested pursuant to the Department's regulations in 28 CFR Part 16A, as revised February 14, 1973, which set forth procedures and fees for processing such requests.

(c) The deletions referred to above will generally be as follows:

(1) Names or other identifying information as to informants;

(2) Names or other identifying information as to law enforcement personnel, where the disclosure of such information would jeopardize the safety of the employee or his family, or would disclose information about an employee's assignments that would impair his ability to work effectively;

(3) Unsubstantiated charges, defamatory material, matter involving an unwarranted invasion of privacy, or other matter which may be used adversely to affect private persons;

(4) Investigatory techniques and procedures; and

(5) Information the release of which would deprive an individual of a right to a fair trial or impartial adjudication, or would interfere with law enforcement functions designed directly to protect individuals against violations of law.

(d) This policy for the exercise of administrative discretion is designed to further the public's knowledge of matters of historical interest and, at the same time, to preserve this Department's law enforcement efficiency and protect the legitimate interests of private persons.

[Order No. 528-73, 38 FR 19029, July 17, 1973]

§ 50.9 The Freedom of Information Committee.

(a) A Freedom of Information Committee is established within the Department of Justice to encourage compliance with the Freedom of Information Act, 5 U.S.C. 552, throughout the Executive Branch. The Committee consists of attorneys designated by the Assistant Attorney General, Office of Legal Counsel, one of whom shall be designated chairman, and attorneys designated by the Assistant Attorney General, Civil Division. The Committee shall coordinate the annual report of the Attorney General required by 5 U.S.C. 552(d) and shall provide assistance and encouragement to Federal agencies in complying with the letter and spirit of the Freedom of Information Act through training of Federal personnel and consultation with

agencies on particular matters arising under the Freedom of Information Act. In consulting with agencies proposing to issue final denials under the Act, the Committee shall, in addition to advising the agency with respect to legal issues, invite the attention of the agency to the range of public policies reflected in the Act, including the central policy of fullest responsible disclosure. The Committee may also undertake studies and make recommendations to carry out the intent of this subsection.

(b) All Federal agencies which intend to deny requests for records under the Freedom of Information Act should consult with the Freedom of Information Committee, to the fullest extent practicable, before litigation ensues. After litigation begins, all contacts regarding the matter should be with the Civil Division or other component of the Department of Justice responsible for defense of the suit.

[Order No. 643-76, 41 FR 10222, Mar. 10, 1976]

§ 50.10 Policy with regard to the issuance of subpoenas to, and the interrogation, indictment, or arrest of, members of the news media.

Because freedom of the press can be no broader than the freedom of reporters to investigate and report the news, the prosecutorial power of the government should not be used in such a way that it impairs a reporter's responsibility to cover as broadly as possible controversial public issues. In balancing the concern that the Department of Justice has for the work of the news media and the Department's obligation to the fair administration of justice, the following guidelines shall be adhered to by all members of the Department:

(a) In determining whether to request issuance of a subpoena to the news media, the approach in every case must be to strike the proper balance between the public's interest in the free dissemination of ideas and information and the public's interest in effective law enforcement and the fair administration of justice.

(b) All reasonable attempts should be made to obtain information from non-media sources before there is any consideration of subpoenaing a representative of the news media.

(c) Negotiations with the media shall be pursued in all cases in which a subpoena is contemplated. These negotiations should attempt to accommodate the

interests of the trial or grand jury with the interests of the media. Where the nature of the investigation permits, the government should make clear what its needs are in a particular case as well as its willingness to respond to particular problems of the media.

(d) If negotiations fail, no Justice Department official shall request, or make arrangements for, a subpoena to any member of the news media without the express authorization of the Attorney General. If a subpoena is obtained without authorization, the Department will—as a matter of course—move to quash the subpoena without prejudice to its rights subsequently to request the subpoena upon the proper authorization.

(e) In requesting the Attorney General's authorization for a subpoena, the following principles will apply:

(1) There should be reasonable ground based on information obtained from nonmedia sources that a crime has occurred.

(2) There should be reasonable ground to believe that the information sought is essential to a successful investigation—particularly with reference to directly establishing guilt or innocence. The subpoena should not be used to obtain peripheral, nonessential or speculative information.

(3) The government should have unsuccessfully attempted to obtain the information from alternative nonmedia sources.

(4) The use of subpoenas to members of the news media should, except under exigent circumstances, be limited to the verification of published information and to such surrounding circumstances as relate to the accuracy of the published information.

(5) Even subpoena authorization requests for publicly disclosed information should be treated with care to avoid claims of harassment.

(6) Subpoenas should, wherever possible, be directed at material information regarding a limited subject matter, should cover a reasonably limited period of time, and should avoid requiring production of a large volume of unpublished material. They should give reasonable and timely notice of the demand for documents.

(f) No member of the Department shall subject a member of the news media to questioning as to any offense which he is suspected of having committed in the course of, or arising out of,

the coverage or investigation of a news story, or while engaged in the performance of his official duties as a member of the news media, without the express authority of the Attorney General: *Provided, however*, That where exigent circumstances preclude prior approval, the requirements of paragraph (j) of this section shall be observed.

(g) A member of the Department shall secure the express authority of the Attorney General before a warrant for an arrest is sought, and whenever possible before an arrest not requiring a warrant, of a member of the news media for any offense which he is suspected of having committed in the course of, or arising out of, the coverage or investigation of a news story, or while engaged in the performance of his official duties as a member of the news media.

(h) No member of the Department shall present information to a grand jury seeking a bill of indictment, or file an information, against a member of the news media for any offense which he is suspected of having committed in the course of, or arising out of, the coverage or investigation of a news story, or while engaged in the performance of his official duties as a member of the news media, without the express authority of the Attorney General.

(i) In requesting the Attorney General's authorization to question, to arrest or to seek an arrest warrant for, or to present information to a grand jury seeking a bill of indictment or to file an information against, a member of the news media for an offense which he is suspected of having committed during the course of, or arising out of, the coverage or investigation of a news story, or committed while engaged in the performance of his official duties as a member of the news media, a member of the Department shall state all facts necessary for determination of the issues by the Attorney General. A copy of the request will be sent to the Director of Public Information.

(j) When an arrest or questioning of a member of the news media is necessary before prior authorization of the Attorney General can be obtained, notification of the arrest or questioning, the circumstances demonstrating that an exception to the requirement of prior authorization existed, and a statement containing the information that would have been given in requesting prior authorization, shall be communicated im-

mediately to the Attorney General and to the Director of Public Information.

(k) Failure to obtain the prior approval of the Attorney General may constitute grounds for an administrative reprimand or other appropriate disciplinary action.

[Order No. 644-73, 33 FR 29588, Oct. 26, 1973]

§ 50.11 Policy with regard to designation of United States Magistrates as special masters.

(a) Many of the United States District Courts, either by rule or by specific designation, have delegated to United States Magistrates the supervision of discovery proceedings and the conduct of pretrial hearings in civil cases. Some of the District Courts, in addition, have, in the same fashion, designated Magistrates to sit as special masters and to conduct the trial of civil nonjury cases with instructions to report to the Court thereon. This is frequently accomplished also by urging the parties to agree to such a procedure.

(b) While section 636(b) of Title 28 authorizes Magistrates to assist in the conduct of pretrial and discovery proceedings, and to serve as special masters, Rule 53(b) of the Federal Rules of Civil Procedure provides that cases shall not be referred to a special master except in matters of account or of difficult computation of damages, or if some exceptional condition requires it. The Supreme Court has narrowly restricted the circumstances supporting a finding of an exceptional condition within the meaning of Rule 53(b). Neither calendar congestion nor complexity of the issues involved justifies reference of the case to a special master. It has held that references, in the absence of some exceptional condition, are not appropriate save in matters of account and the computation of damages and has approved enforcement of this rule when necessary by issuance of a writ of mandamus. *Labuy v. Howes Leather Co.*, 352 U.S. 249; *McCullough v. Cosgrave*, 309 U.S. 634; and *Los Angeles Brush Corp. v. James*, 272 U.S. 701. More recently the Court of Appeals for the Sixth Circuit has held that Section 636 does not authorize reference to a special master of cases involving review of determinations of the Secretary of Health, Education, and Welfare. *Ingram v. Richardson*, 471 F.2d 1268. Likewise, the Seventh Circuit by writ of mandamus has prevented a district judge from assigning a motion to dismiss under Section 636(b) to a Magistrate for ruling as being

in violation of Article III of the Constitution because an assignment of that nature constitutes an abdication of judicial decision-making powers. *TPO, Incorporated v. McMillen*, 460 F.2d 348.

(c) It appears that there is an increasing use by district judges of special masters for purposes involving the abdication of judicial decision-making authority forbidden by the Constitution or in contravention of Rule 53(b). The Department of Justice should take a firm position in opposition to this practice. I therefore direct the legal Divisions of the Department not to agree to the designation of a Magistrate as a special master whenever they conclude that such designation would be in contravention of the Constitution or Rule 53(b). In appropriate cases and in accordance with Departmental procedures, those Divisions should seek relief from appellate courts by application for a writ of mandamus or otherwise.

[Order 557-73, 38 FR 34203, Dec. 12, 1973]

§ 50.12 Exchange of FBI Identification Records.

(a) The Federal Bureau of Investigation, hereinafter referred to as the FBI, is authorized to expend funds for the exchange of identification records with officials of federally chartered or insured banking institutions and with officials of state and local governments for purposes of employment and licensing, pursuant to section 201 of Pub. L. 92-544 (86 Stat. 1115). Heretofore, the FBI has disseminated identification records containing arrest information maintained by the FBI Identification Division, with and without dispositional information, pertaining to particular individuals upon requests of institutions and agencies authorized to receive such data under provisions of Pub. L. 92-544 (86 Stat. 1115).

(b) The Director of the FBI is authorized by 28 CFR 0.85(j) to approve procedures relating to the exchange of identification records to federally chartered or insured banking institutions and to officials of state and local governments for purposes of employment and licensing. Under this authority, effective July 1, 1974, the FBI Identification Division will not include arrest data more than one year old not accompanied by dispositions in identification records exchanged with banking institutions and state and local agencies for employment

and licensing purposes. The one-year provision will provide the time necessary for the adjudication of most offenses. This procedural change in policy is being placed in effect to reduce possible denials of employment opportunities or licensing privileges to individuals as a result of the dissemination of identification records not containing final dispositional data concerning criminal charges brought against such individuals.

(c) There will be no change in FBI Identification Division procedures for dissemination of all arrest information, with and without dispositional data, for law enforcement purposes and to agencies of the Federal Government as currently authorized by 28 U.S.C. 534.

[39 FR 23057, June 26, 1974]

§ 50.13 Procedures for receipt and consideration of written comments submitted under subsection 2(b) of the Antitrust Procedures and Penalties Act.

The following procedures shall be followed in receiving and considering written comments relating to proposals for consent judgments in antitrust cases prior to their entry by the Court.

(a) Comments shall be directed to the chief of the litigating section or field office of the Antitrust Division to which the case is assigned.

(b) The response to comments shall be prepared by the trial staff under the immediate supervision of the chief of the section or office to which the case is assigned.

(c) Proposed responses shall be reviewed and approved by the Judgments and Judgment Enforcement Section of the Antitrust Division prior to being issued.

(d) Any response to a comment which brings into serious question the wisdom of a proposed relief provision or raises policy issues not previously considered should be forwarded for review to the Assistant Attorney General for the Antitrust Division through the Office of Operations.

[Directive 7-75, 40 FR 34114, Aug. 14, 1975]

PART 51—PROCEDURES FOR THE ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965

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AUTHORITY: The provisions of this Part 51 issued under sec. 5, 84 Stat. 315; 5 U.S.C. 301, 28 U.S.C. 509, 510, 42 U.S.C. 1973c.

SOURCE: The provisions of this Part 51 contained in Order 467-71, 36 F.R. 18186, Sept. 10, 1971, unless otherwise noted.

Subpart A—General Provisions

§ 51.1 Purpose.

Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, prohibits the enforcement in any jurisdiction covered by section 4(a) of the Act, 42 U.S.C. 1973b, of any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting dif-

ferent from that in force or effect on the date used to determine coverage, until the authority proposing enforcement either (a) obtains from the U.S. District Court for the District of Columbia a declaratory judgment that the plan does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or (b) the plan has been submitted to the Attorney General and he has interposed no objection within a 60-day period following submission. In order to carry out his responsibilities under this section of the Voting Rights Act and to make clear his interpretation of the responsibilities imposed on other individuals and entities thereunder, the procedures in this part shall govern the administration of section 5.

§ 51.2 Definitions.

(a) The terms "vote" and "voting" are used herein as defined in the Voting Rights Act of 1965, to include all action necessary to make a vote effective in any primary, special, or general election, including but not limited to, registration, listing pursuant to the Voting Rights Act of 1965, or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election.

(b) The term "change affecting voting," as used herein, shall mean any voting qualification, prerequisite to voting, standard, practice, or procedure different from that in force or effect on the date used to determine coverage by section 4(a) (November 1, 1964 or November 1, 1968, as the case may be) and shall include, but not be limited to, the examples given in § 51.4(c).

(c) The term "submission" as used herein shall mean presentation to the Attorney General by an appropriate official of any change affecting voting and an explanation of the difference between the change and the existing law or practice and such appropriate supporting materials as are included to demonstrate that the voting qualification, prerequisite to voting, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

(d) "Attorney General" shall mean the Attorney General of the United States or his delegate.

(e) The term "submitting authority" shall mean the party responsible for submitting a voting change on behalf of a State or political subdivision under § 51.8 or any other person or persons empowered to represent or act on behalf of a State or political subdivision with respect to a submission under section 5.

§ 51.3 Computation of time.

(a) The Attorney General shall have 60 days in which to interpose an objection to a submitted change affecting voting.

(b) The 60-day period shall commence upon receipt by the Department of Justice of a submission from an appropriate official, which submission satisfies the requirements of § 51.10(a). Procedures for requesting additional material and for determining the commencement of the 60-day period when a submission is inadequate are described in § 51.18.

(c) The 60-day period shall mean 60 calendar days, provided that if the final day of the period should fall on a Saturday, Sunday, or national holiday the Attorney General shall have until the close of the next full business day in which to interpose an objection. The date of the Attorney General's response shall be the date on which it is mailed to the submitting authority.

(d) When the Attorney General objects to a submitted change affecting voting, and the submitting authority seeking reconsideration of the objection brings additional information to the attention of the Attorney General, the Attorney General shall decide within 60 days of receipt of a request for reconsideration (provided that he shall have at least 15 days following a conference held at the submitting authority's request) whether to withdraw or to continue his objection.

§ 51.4 Requirement of action for declaratory judgment or submission to Attorney General.

Section 5 requires that, prior to enforcement of any change affecting voting, the State or political subdivision which has enacted or seeks to administer the change affecting voting must obtain either a judicial or an executive determination that denial or abridgment of the right to vote on account of race or color is not the purpose and will not be the effect of the change. It is illegal to

enforce a change affecting voting without complying with section 5. The obligation to obtain such judicial or executive review is not relieved by illegal enforcement.

The Attorney General may bring suit or take other appropriate action to prevent or redress any denial of the right to vote on account of race or color. See 42 U.S.C. 1973j.

(a) All changes affecting voting, even though the change appears to be minor or indirect, to expand voting rights or to remove the elements which caused objection by the Attorney General to a prior submission, must either be submitted to the Attorney General or be made the subject of an action for declaratory judgment in the U.S. District Court for the District of Columbia.

(b) A submission to the Attorney General does not affect the right of the submitting authority to bring a suit in the U.S. District Court for the District of Columbia at any time, seeking a declaratory judgment that the change affecting voting does not have a racially discriminatory purpose or effect.

(c) Legislation and administrative actions constituting changes affecting voting covered by section 5 include, but are not limited to, the following examples:

(1) Any change in qualifications or eligibility for voting;

(2) Any change in procedures concerning registration, balloting, or informing or assisting citizens to register and vote;

(3) Any change in the constituency of an official or the boundaries of a voting unit (e.g., through redistricting, annexation, or reapportionment), the location of a polling place, change to at-large elections from district elections or to district elections from at-large elections;

(4) Any alteration affecting the eligibility of persons to become or remain candidates or obtain a position on the ballot in primary or general elections or to become or remain officeholders or affecting the necessity of or methods for offering issues and propositions for approval by voting in an election;

(5) Any change in the eligibility and qualification procedures for independent candidates;

(6) Any action extending or shortening the term of an official or changing the method of selecting an official (e.g., a change from election to appointment);

(7) Any alteration in methods of counting votes.

Subpart B—Procedures for Submission to the Attorney General

§ 51.5 Form of submissions.

Submissions may be made in letter or any other written form, as long as the change affecting voting that is being submitted is clearly set forth in compliance with § 51.10(a) and the name and title of the individual and the State or political subdivision which he represents are disclosed. Submissions should be made in duplicate.

§ 51.6 Time of submissions.

Changes affecting voting should be submitted as soon as possible after the enactment or administrative decision is made and are required by law to be submitted prior to enforcement.

§ 51.7 Premature submissions returned.

The Attorney General will return without decision on the merits any proposal for a change affecting voting which has been submitted prior to final enactment or final administrative decision, provided that regarding a change as to which approval by referendum or by a court is required (e.g., an amendment to a State constitution or a reapportionment plan), the Attorney General may consider and issue a decision concerning the change prior to the referendum or the action of the court if all other action necessary for adoption has been taken.

§ 51.8 Party responsible for submitting.

Changes affecting voting shall be submitted by the chief legal officer or other appropriate official of the State or political subdivision in which the change is proposed to be effective. When one or more counties within a State will be affected, the State may submit a change affecting voting on behalf of the covered county or counties.

§ 51.9 Address for submissions.

Changes affecting voting shall be delivered or mailed to: Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The envelope and first page of any submission shall be clearly marked: Submission under section 5, Voting Rights Act.

§ 51.10 Contents of submissions.

- (a) Each submission shall include:
- (1) A copy of any legislative or ad-

ministrative enactment or order embodying a change affecting voting, certified by an appropriate officer of the submitting authority to be a true copy.

(2) The date of final adoption of the change affecting voting.

(3) Identification of the authority responsible for the change and the mode of decision (e.g., act of State legislature, ordinance of city council, redistricting by election officials).

(4) An explanation of the difference between the submitted change affecting voting and the existing law or practice, or explanatory materials adequate to disclose to the Attorney General the difference between the existing and proposed situation with respect to voting. When the change will affect less than the whole State or subdivision, such explanation should include a description of which subdivisions or parts thereof will be affected and how each will be affected.

(5) A statement certifying that the change affecting voting has not yet been enforced or administered, or an explanation of why such a statement cannot be made.

(6) With respect to redistricting, annexation, and other complex changes, other information which the Attorney General determines is required to enable him to evaluate the purpose or effect of the change. Such other information may include items listed under paragraph (b) of this section. When such other information is required, the Attorney General shall notify the submitting authority in the manner provided in § 51.18(a).

(b) In addition to the requirements listed in paragraph (a) of this section, each submission may include appropriate supporting materials to assist the Attorney General in his consideration. The Attorney General strongly urges the submitting authority to include the following information insofar as it is available and relevant to the specific change submitted for consideration:

(1) A statement of the reasons for the change affecting voting.

(2) A statement of the anticipated effect of the change affecting voting.

(3) A statement identifying any past or pending litigation concerning the change affecting voting or related prior voting practices.

(4) A copy of any other changes in law or administration relating to the subject matter of the submitted change affecting voting which have been put into

effect since the time when coverage under section 4 of the Voting Rights Act began and the reasons for such prior changes. If such changes have already been submitted the submitting authority may refer to the date of prior submission and identify the previously submitted changes.

(5) Where any change is made that revises the constituency which elects any office or affects the boundaries of any geographic unit or units defined or employed for voting purposes (e.g., redistricting, annexation, change from district to at-large elections) or changes the location of a polling place or place of registration, a map of the area to be affected showing the following:

(i) The existing boundaries of the voting unit or units sought to be changed.

(ii) The boundaries of the voting unit or units sought by the change.

(iii) Any other changes in the voting unit boundaries or in the geographical makeup of the constituency since the time that coverage under section 4 began. If such changes have already been submitted the submitting authority may refer to the date of the prior submission and identify the previously submitted changes.

(iv) Population distribution by race within the existing units.

(v) Population distribution by race within the proposed units.

(vi) Any natural boundaries or geographical features which influenced the selection of boundaries of any unit defined or proposed for the new voting units.

(vii) Location of polling places.

(6) Population information: (i) Population before and after the change, by race, of the area or areas to be affected by the change. If such information is contained in the publications of the U.S. Bureau of the Census, a statement to that effect may be included.

(ii) Voting-age population and the number of registered voters before and after the change, by race, for the area to be affected by the change. If such information is contained in the publications of the U.S. Bureau of the Census, a statement to that effect may be included.

(iii) Copies of any population estimates, by race, made in connection with adoption of the proposed change, preparation of the submission or in support thereof and the basis for such estimates.

(iv) Where a particular office or particular offices are involved, a history of the number of candidates, by race, who have run for such office in the last two elections and the results of such elections.

(7) Evidence of public notice or opportunity for the public to be heard. In examining submissions, consideration may be given, where appropriate, to evidence of public notice and opportunity for interested parties to participate in the decision to adopt or implement the proposed change and to indications that such participation in fact took place, or to evidence of notice to the public that a submission has been made soliciting comment by the public to the Department of Justice. Examples of materials demonstrating public notice or participation include:

(i) Copies of newspaper articles discussing the proposed change.

(ii) Copies of public notices (and statements regarding where they appeared, e.g., newspaper, radio, or television, posted in public buildings, sent to identified individuals or groups) which describe the proposed change and invite public comment or participation in hearings, or which announce submission to the Attorney General and invite comments for his consideration.

(iii) Minutes or accounts of public hearings concerning the proposed changes.

(iv) Statements, speeches, and other public communications concerning the proposed changes.

(v) Copies of comments from the general public.

(vi) Excerpts from legislative journals containing discussion of a submitted enactment, or other materials revealing its legislative purpose.

(8) Where information requested herein is relevant but not known and not believed to be available, submissions should so state.

(9) Where information furnished reflects an estimation, submissions should identify the individual and state his qualifications to make the estimate.

(10) Submissions should identify in general the source of any information they supply.

(11) When a submitting authority desires the Attorney General to consider any information which has been supplied in connection with an earlier submission, incorporation by reference may be ac-

completed by stating the date and subject matter of the earlier submission and identifying the relevant information therein.

§ 51.11 Request for notification concerning voting litigation.

When a State or political subdivision subject to section 5 becomes involved in any litigation concerning voting, it is requested that prompt notification be sent to the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530. Such notification will not be considered to be a submission under section 5.

Support C—Communications From Individuals or Groups

§ 51.12 Communications concerning voting changes.

Any individual or group may send to the Attorney General information concerning a change affecting voting in an area to which section 5 of the Voting Rights Act applies.

(a) Communication may be in the form of a letter stating the name and address of the individual or group, describing the alleged change affecting voting and setting forth evidence regarding whether the change has or does not have a discriminatory purpose or effect or simply stating a desire that the change be called to the attention of the Attorney General. Two copies of each communication should be mailed to the Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530. The envelope and the first page of each communication should be marked: Comment, section 5, Voting Rights Act.

(b) Comments by individuals or groups concerning any change affecting voting may be submitted at any time; however, they should be submitted as soon as possible after the change affecting voting is brought to the attention of the individual or group.

(c) Department of Justice officials and employees shall comply with the request of any individual that his identity not be disclosed to any person outside the Department. In addition, whenever it appears to the Attorney General that disclosure of the identity of an individual who provided information regarding a change affecting voting could jeopardize the personal safety, employment, or economic standing of the individual, the identity of the individual shall not be

disclosed to any person outside the Department of Justice.

(d) When an individual or group desires the Attorney General to consider information which has been supplied in connection with an earlier submission, incorporation by reference may be accomplished by identifying the earlier submission by date and subject matter and identifying the relevant information or related communication.

§ 51.13 Establishment and maintenance of registry of interested individuals and groups.

The Attorney General shall establish and maintain a Registry of Interested Individuals and Groups. Such registry shall contain the name, address, and telephone number of any individual or group that requests inclusion therein for purposes of receiving notice of section 5 submissions. Each registrant shall specify the area or areas with respect to which notification is requested.

§ 51.14 Communications concerning voting suits.

Individuals and groups are urged to notify the Assistant Attorney General, Civil Rights Division, of litigation concerning voting in areas subject to section 5.

§ 51.15 Action on communications from individuals or groups.

(a) If the person or entity responsible for submitting the change affecting voting has submitted the change to the Attorney General, any evidence from individuals or groups shall be considered along with the materials submitted and materials resulting from any investigation.

(b) If no submission (as defined in § 51.2(c)) has been made, the Attorney General shall advise the person or entity responsible for the alleged change of the duty to seek a declaratory judgment or to make a submission to the Attorney General before enforcement.

(c) Where no submission has been made and no declaratory judgment has been sought and a change affecting voting is enforced or is about to be enforced in a covered jurisdiction, the Attorney General may bring suit or take other appropriate action to enforce compliance with section 5 and to prevent or redress any denial or abridgment of the right to vote on account of race or color. See 42 U.S.C. 1973j.

Subpart D—Processing of Submissions

§ 51.16 Notice to registrants concerning submission.

When the Attorney General receives a section 5 submission, prompt notice thereof shall be given to the individuals and groups who have registered for this purpose in accordance with § 51.13. Such notice shall be sent to each such registrant who has requested notification concerning the area or areas affected by the submitted change.

§ 51.17 Return of inappropriate submissions.

The only changes authorized by section 5 to be submitted to and passed upon by the Attorney General are those affecting voting rights. The Attorney General shall therefore examine and make a response on the merits to only those submissions affecting voting. All others shall be returned to the submitting party without comment on their merits.

§ 51.18 Obtaining information regarding submissions.

(a) If the submission does not satisfy the requirements of § 51.10(a), the Attorney General shall request such further information as is necessary from the submitting authority and advise the submitting authority that the 60-day period will not commence until such information is received by the Department of Justice. The request shall be made as promptly as possible after receipt of the original inadequate submission.

(b) After receipt of a submission which satisfies the requirements of § 51.10(a), the Attorney General may at any time during the 60-day period:

(1) Request additional information from the submitting authority,

(2) Request information from other local authorities or interested individuals or groups,

(3) Conduct such investigation or inquiry as he deems appropriate.

(c) If the submission does not contain adequate evidence of notice to the public, and the Attorney General believes that racial purpose or effect is possible, he may take steps to provide public notice sufficient to invite interested citizens to provide evidence as to the presence or absence of racially discriminatory purpose or effect. The authority responsible for the submission shall be advised when any such steps are taken by the Attorney General.

§ 51.19 Standard for decision concerning submissions.

Section 5, in providing for submission to the Attorney General as an alternative to seeking a declaratory judgment from the U.S. District Court for the District of Columbia, imposes on the Attorney General what is essentially a judicial function. Therefore, the burden of proof on the submitting authority is the same in submitting changes to the Attorney General as it would be in submitting changes to the District Court for the District of Columbia. The Attorney General shall base his decision on a review of material presented by the submitting authority, relevant information provided by individuals or groups, and the results of any investigation conducted by the Department of Justice. If the Attorney General is satisfied that the submitted change does not have a racially discriminatory purpose or effect, he will not object to the change and will so notify the submitting authority. If the Attorney General determines that the submitted change has a racially discriminatory purpose or effect, he will enter an objection and will so notify the submitting authority. If the evidence as to the purpose or effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the 60-day period, he shall, consistent with the above-described burden of proof applicable in the District Court, enter an objection and so notify the submitting authority.

§ 51.20 Notification of decision not to object.

(a) If the Attorney General decides to interpose no objection to a submitted change affecting voting, the submitting authority shall be notified to that effect.

(b) The notification shall state that the failure of the Attorney General to object does not bar subsequent litigation to enjoin enforcement of the change.

(c) A copy of the notification shall be sent to any party who has commented on the submission or has requested notice of the Attorney General's action thereon.

§ 51.21 Notification of decision to object.

(a) When the Attorney General decides to interpose an objection, the submitting authority shall be notified within the 60-day period allowed. The reasons for the decision shall be stated.

(b) The submitting authority shall be advised that the Attorney General will

reconsider his objection upon a request by the submitting authority within 10 days of such objection, for an opportunity to present further substantiating or explanatory information which was not previously available to the submitting authority. In appropriate cases, the Attorney General may request that local public notice of the request for reconsideration be given by the submitting authority.

(c) The submitting authority shall be advised further that it may request a conference with a representative of the Department of Justice to reconsider an objection when such new information has become available.

(d) A copy of the notification shall be sent to any party that has commented on the submission or has requested notice of the Attorney General's action thereon.

§ 51.22 Expedited consideration.

When a submitting authority demonstrates good cause for special expedited consideration to permit enforcement of a change affecting voting within the 60-day period following submission (good cause will, in general, only be found to exist with respect to changes made necessary by circumstances beyond the control of the enacting or submitting authorities), the Attorney General may consider the submission on an expedited basis. Prompt notice of the request for expedited consideration will be given to interested parties registered in accordance with § 51.13. When a decision not to object is made within the 60-day period following receipt of a submission which satisfies the requirements of § 51.10(a), the Attorney General may reexamine the submission if additional information comes to his attention during the remainder of the 60-day period which would require objection in accordance with § 51.19.

§ 51.23 Reconsideration on request.

(a) If a submitting authority requests a conference to produce information not previously available to it in support of reconsideration of an objection by the Attorney General, a meeting shall be held at a location determined by the Attorney General.

(b) When a submitting authority requests that a conference be held concerning a change affecting voting to which the Attorney General has objected, individuals or groups that commented on

the change prior to the Attorney General's objection or that seek to participate in response to any public or other notice of a request for reconsideration shall be notified and given the opportunity to confer.

(c) Such a conference shall be conducted by the Assistant Attorney General, Civil Rights Division, or his designee in an informal manner. Those present will be permitted to present facts in support of their positions.

(d) The Assistant Attorney General or the person he has designated to conduct the conference may, in his discretion, choose to hold separate meetings to confer with the submitting authority and interested groups or individuals.

§ 51.24 Decision after reconsideration.

An objection shall be withdrawn if the submitting authority can produce information not previously available to it which satisfies the Attorney General that the change does not have a racially discriminatory purpose or effect. The Attorney General shall notify the submitting authority within 60 days of the request for reconsideration (provided that the Attorney General shall have at least 15 days following any conference that is held in which to decide) of his decision to continue or withdraw an objection, giving the reasons for his decision. A copy of the notification shall be sent to any party that has commented on the submission or has requested notice of the Attorney General's action thereon.

§ 51.25 Withdrawal of objection.

Where there has been a substantial change in fact or law, the Attorney General may, if he deems it appropriate, withdraw an objection on his own motion if he determines that the objection is not in accord with the standard for decision in § 51.19. Notification of the withdrawal of an objection shall be sent to the submitting authority and to any party that commented on the submission or has requested notice of the Attorney General's action thereon.

§ 51.26 Records concerning submissions.

(a) Section 5 files: The Attorney General shall maintain a section 5 file for each submission, containing the submission, related written materials, correspondence notations concerning conferences with the submitting authority or any interested individual or group and a copy of any letters from the Attorney

General concerning his decision whether to object to a submission. Communications from individuals who have requested confidentiality or with respect to whom the Attorney General has determined that confidentiality is appropriate under § 51.12(c) shall not be included in the section 5 file. Investigative reports and internal memoranda shall not be included in the section 5 file.

(b) Chronological file: Brief summaries regarding each submission and the Department of Justice investigation and decision concerning it will be prepared when the decision whether to interpose an objection has been made. A chronological file of these summaries, arranged by the date upon which such decision is made, will be maintained.

(c) The contents of the above-described section 5 and chronological files will be available for inspection and copying by the public during normal business hours at the Civil Rights Division, Department of Justice, Washington, D.C. Consistent with the Department of Justice regulation implementing the Public Information Section of the Administrative Procedure Act, 28 CFR 16.4, the fees for copying the contents of these files will be 50 cents for the first page and 25 cents for each additional page.

(d) The Attorney General may, at his discretion, call to the attention of the submitting authority or an interested individual or group information or comments related to a submission.

Subpart E—Petition To Change Procedures

§ 51.27 Petitioning party.

Any interested individual or group may petition to have these procedures amended by new provisions.

§ 51.28 Form of petition.

A petition under this subpart may be made by informal letter and shall state the name and address of the petitioner, the change requested and the reasons for requesting the change.

§ 51.29 Disposition of petition.

The Attorney General will consider a petition under this section and make a disposition thereof. Prompt notice, accompanied by a simple statement of the reasons, shall be given to the petitioner if the petition is denied in whole or in part.

PART 52—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

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AUTHORITY: The provisions of this Part 52 issued under sec. 213, 84 Stat. 1894, 1900; 42 U.S.C. 4633.

SOURCE: The provisions of this Part 52 contained in 474-71, 36 F.R. 24931, Dec. 29, 1971, unless otherwise noted.

Subpart A—General Provisions

§ 52.11 Purpose.

The purpose of the regulations in this part is to implement the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 42 U.S.C. 4601, et seq., to ensure fair and equitable acquisition practices and uniform, fair, and equitable treatment of persons displaced by Federal and federally assisted programs and to safeguard against abuse of any of

the underlying purposes, provisions, and policies of the Act.

§ 52.12 Effective date.

The Act and the amendments made by the Act became effective on January 2, 1971, except as provided below:

(a) Until July 1, 1972, sections 210 and 305 of the Act are applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1972, such sections will be completely applicable to all States.

(b) The repeals made by paragraphs (4), (5), (6), (8), (9), (10), (11), and (12) of section 220(a) and section 306 of the Act do not apply to any State so long as sections 210 and 305 of the Act are not applicable in such State.

§ 52.13 Definitions.

The terms used in the regulations are defined as follows:

(a) "Act"—the Act of January 2, 1971 (84 Stat. 1894, 42 U.S.C. 4601 et seq.)

(b) "Federal Agency"—any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency) and the Architect of the Capitol, the Federal Reserve banks and branches thereof, but not including the National Park Foundation which although federally chartered is a private entity.

(c) "State"—any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territory of the Pacific Islands, and any political subdivision thereof.

(d) "Bureau"—The following components of the Department of Justice:

(1) Immigration and Naturalization Service;

(2) Bureau of Prisons;

(3) Law Enforcement Assistance Administration.

(e) "Head of Bureau"—the head of any Bureau listed in paragraph (d) of this section, or his designee.

(f) "Initiation of negotiations"—the date the Bureau makes the first personal or letter contact with the owner or his representative where price is discussed.

(g) "Dwelling"—includes a single family building; a one-family unit in a multifamily building; a unit of a condominium, or cooperative housing project; any other residential unit, including a

mobile home which is either considered to be real property under State law, or cannot be moved without substantial damage or unreasonable cost. For purposes of sections 203 and 204 of the Act the term "dwelling" shall mean the place of permanent abode of a person and does not include seasonable or part-time dwelling units; such as beach houses, mountain, or other vacation cabins.

(h) "State Agency"—the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or a political subdivision of a State, or any department, agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States.

(i) "Federal financial assistance"—a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia.

(j) "Person"—any individual, partnership, corporation, or association.

(k) "Displaced person"—any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by any Bureau of the Department of Justice or with Federal financial assistance; and solely for the purposes of sections 202(a) and (b) and 205 of the Act, as a result of the acquisition of or as the result of the written order of the acquiring Bureau to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

(l) "Business"—any lawful activity, excepting a farm operation, conducted primarily:

(1) For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(2) For the sale of services to the public;

(3) By a nonprofit organization; or

(4) Solely for the purposes of section 202(a) of the Act (see § 52.2) for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and

maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(m) "Farm operation"—any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(n) "Mortgage"—such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(o) "Owner"—a person who holds fee title, a life estate, a 99-year lease, or has an interest in a cooperative housing project which includes the right of occupancy of a dwelling unit, or is the contract purchaser of any such estates or interests. In the case of one who has succeeded to any of the foregoing interests by devise, bequest, inheritance, or operation of law, the tenure of ownership, not occupancy, of the succeeding owner shall include the tenure of the preceding owner.

(p) "Financial Means"—for the purpose of determining financial means of families and individuals in accordance with section 205(c)(3) of the Act, a financial means test (ability to pay) must be made to satisfy the requirement set forth in § 52.4. In order to meet a financial means test a determination should be made as to the displaced person's ability to afford the replacement dwelling. In making this determination the average monthly rental or housing cost (e.g., monthly mortgage payments, insurance for the dwelling unit, property taxes, and other reasonable recurring related expenses) which the displaced person will be required to pay, in general, should not exceed 25 percent of the monthly gross income or the present ratio of housing payment to the income of the displaced family or individual, including supplemental payments made by public agencies.

§ 52.14 Qualifications.

In order to qualify for benefits under the Act as a displaced person, the following conditions must be fulfilled:

(a) The person must have received a written notice served personally or by first-class mail to vacate which notice may be given before or after initiation of negotiations for acquisition of the property as prescribed by regulations; or

(b) The subject real property must in fact have been acquired, and the person must have moved as a result of its acquisition (except in those instances covered by sections 217 and 219 of the Act).

(c) Applications for benefits under the Act are to be made within 18 months from the date of displacement. The head of a Bureau may extend this period upon a proper showing of good cause.

§ 52.15 Multiple occupancy.

Multiple occupancy shall be treated as single occupancy in the case of individuals, not families, in dealing with benefits for replacement housing.

§ 52.16 Effects upon property acquisition.

The provisions of section 301 of the Act create no rights or liabilities and shall not affect the validity of any real property acquisition.

(a) For real property acquisition under Federal law, contracts on options to purchase real property shall not incorporate payments for relocation costs and related items in title II of the Act. Appraisers shall not give consideration to or include in their appraisals any allowances for the benefits provided by title II of the Act. In the event of condemnation with a declaration of taking the estimated compensation should be determined solely on the basis of the appraised value of the real property with no consideration being given to or reference contained therein to the payments to be made under title II of the Act.

(b) Nothing in these regulations shall be construed as creating in any condemnation proceeding brought under the power of eminent domain, any element of value or of damage not in existence immediately prior to the date of the enactment of the Act.

(c) Determination by the heads of Bureaus as to payments under the Act, shall be final. However, in the event of dissatisfaction by any displaced person the following rights of review will be followed:

(1) Any dispute concerning a question of fact arising under the Act which is not disposed of by agreement shall be decided by the head of the Bureau who

shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the displaced person. This decision shall be final and conclusive unless, within 30 days from the date of receipt of such copy the displaced person mails or otherwise furnishes a written appeal addressed to the Attorney General.

(2) The decision of the Attorney General or his duly authorized representative for the determination of such appeals shall be final and conclusive. In connection with any appeal proceeding under this condition, the displaced person shall be afforded an opportunity to be heard and to offer evidence in support of his appeal.

Subpart B—Moving Expenses

§ 52.20 Moving and related expenses.

Whenever the acquisition of real property for a program or project will result in the displacement of any person on or after the effective date of the Act, the head of the Bureau shall make a payment to any displaced person upon application as approved by such official for the following, or the "in lieu" payments authorized by Subpart C of this part.

(a) Actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property:

(b) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the Bureau; and

(c) Actual reasonable expenses in searching for a replacement business or farm operation. Payment for search cost in connection with locating replacement housing is not authorized under the Act.

§ 52.21 Actual reasonable expenses in moving

(a) *Allowable expenses.* Actual reasonable expenses in moving may be allowed as follows:

(1) Transportation of individuals, families, and property from acquired site, to the replacement site, not to exceed a distance of 50 miles, except where the head of the Bureau determines that relocation beyond the 50-mile area is justified.

(2) Packing and crating of personal property.

(3) Advertising for packing, crating and transportation when the head of the Bureau determines that it is desirable.

(4) Storage of personal property for a period generally not to exceed 6 months when the head of the Bureau determines that storage is necessary in connection with relocation.

(5) Insurance premiums covering loss and damage of personal property while in storage or transit.

(6) Removal and reinstallation, and reestablishment of machinery, equipment, appliances, and other items, not acquired as real property, including reconnection of utilities, which do not constitute an improvement (except when required by law) to the replacement site, and which were not acquired by the displacing Bureau. Prior to payment of any expenses for removal and reinstallation of such property, the displaced person shall be required to agree in writing that the property is personal and that the displacing Bureau is released from any payment for the property.

(7) Property lost, stolen, or damaged (not caused by the fault or neglect of the displaced person, his agent or employees) in the process of moving, where insurance to cover such loss or damage is not available.

(8) Such other reasonable expenses as determined by the head of the Bureau.

(b) *Limitations.* (1) When the displaced person accomplishes the move himself, the amount of payment shall not exceed the estimated cost of moving commercially.

(2) When an item of personal property which is used in connection with any business or farm operation is not moved but sold and promptly replaced with a comparable item, reimbursement shall not exceed the replacement cost, minus the proceeds received from the sale, or the cost of moving, whichever is less.

(3) When personal property which is used in connection with any business or farm operation to be moved is of low value and high bulk, and the cost of moving would be disproportionate in relation to the value, in the judgment of the head of the Bureau, the allowable reimbursement for the expense of moving the personal property shall not exceed the difference between the amount which would have been received for such item on liquidation and the cost of replacing the same with a comparable item available on the market. This provision will be applicable in the case of moving of junk yards,

stockpiled sand, gravel, minerals, metals, and similar type items of personal property.

(4) If the cost of moving or relocating an outdoor advertising display or displays is determined to be equal to or in excess of the in-place value of the display, consideration should be given to acquiring such display or displays as a part of the real property, unless such acquisition is prohibited by State law.

§ 52.22 Actual direct losses by business or farm operation.

Whenever the acquisition of real property used for a business or farm operation causes any person to move from other real property used for his dwelling, or to move his personal property from such other real property, on or after the effective date of the Act, such person may receive payments for moving and related expenses and relocation advisory assistance under the provisions of the Act.

(a) When the displaced person does not move personal property he shall be required to make a bona fide effort to sell it.

(b) When personal property is sold and the business or farm operation reestablished, the displaced person is entitled to payment provided in § 52.21(b) (2).

(c) When the business or farm operation is discontinued, the displaced person is entitled to the difference between the in-place value of the personal property and the sale proceeds, or the cost of moving, whichever is less.

(d) When the personal property is abandoned, the displaced person is entitled to payment for the difference between the in-place value and the amount which would have been received from the sale of the item, or the cost of moving, whichever is less.

§ 52.23 Exclusions from moving expenses and losses.

The following items are excluded from moving expenses and losses:

(a) Additional expenses incurred because of living in a new location.

(b) Cost of moving structures, improvements or other real property in which the displaced person reserved ownership.

(c) Improvements to the replacement site, except when required by law.

(d) Interest on loans to cover moving expenses.

(e) Loss of good will.

(f) Loss of profits.

- (g) Loss of trained employees.
- (h) Personal injury.
- (i) Cost of preparing the application for moving and related expenses.
- (j) Modification of personal property to adapt it to replacement site, except when required by law.
- (k) Such other items as the head of the Bureau determines should be excluded.

§ 52.24 Expenses in searching for replacement business or farm.

(a) Subject to the limitation in paragraph (b) of this section, the following items are allowed:

- (1) Travel costs.
- (2) Reasonable costs for meals and lodging.
- (3) Time spent in searching at the rate of the displaced person's salary or earnings, but not to exceed \$10 per hour.
- (4) Broker or realtor fee to locate a replacement business or farm operation with the advance approval of the head of the Bureau.

(b) Limitation: The total amount which a displaced person may be paid for searching expenses shall not exceed \$500, unless the head of the Bureau determines that a greater amount is justified based on the circumstances involved.

Subpart C—Payments in Lieu of Moving and Related Expenses

§ 52.31 Schedules.

Any displaced person eligible for payments under § 52.20 who is displaced from a dwelling and who elects to accept the payments authorized by this section in lieu of the payments authorized by § 52.20 may receive a moving expense allowance, determined in accordance with a schedule established by the head of the Bureau, not to exceed \$300, and a dislocation allowance of \$200. These schedules should be based on moving allowance schedules maintained by the respective State highway departments.

(a) Any displaced person eligible for payments under § 52.20 and this Subpart C who is displaced from his place of business or from his farm operation and who elects to accept the payment authorized by this section in lieu of the payment authorized by § 52.20 and this Subpart C may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than \$2,500 nor more than \$10,000. In the case of a business no pay-

ment shall be made unless the head of the Bureau is satisfied that the business: (1) cannot be relocated without a substantial loss of its existing patronage, and (2) is not a part of a commercial enterprise having at least one other establishment not being acquired by the United States, which is engaged in the same or similar business. The term "average annual net earnings" means one-half of the sum of the net earnings of the business or farm operation, before Federal, State, and local income taxes, during the 2 taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the head of the Bureau determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.

§ 52.32 Business eligibility.

In order to be eligible for the payment authorized in § 52.31, the business must contribute materially to the income of the displaced owner. This standard eliminates those part-time family occupations such as newspaper routes, part-time typing, etc., unless they contribute materially to a displaced person's income.

§ 52.33 Loss of existing patronage to a business.

The loss of existing patronage shall be determined by the head of the Bureau only after consideration of all pertinent circumstances, including the following factors:

- (a) The type of business conducted by the displaced concern.
- (b) The nature of the clientele of the displaced concern.
- (c) The relative importance of the present and proposed location to the displaced business.

§ 52.34 Farms—partial taking.

In the case where an entire farm operation is not acquired, the payment provided by § 52.30 shall be made only if the head of the Bureau determines that the farm meets the definition of a farm operation prior to the acquisition and that the real property remaining after the acquisition is no longer an economic unit.

§ 52.35 Nonprofit organizations.

(a) Where a nonprofit organization is displaced, no payment shall be made un-

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der section 202(c) of the Act until after the head of the Bureau determines:

(1) That the nonprofit organization cannot be relocated without a substantial loss of its existing patronage. The term "existing patronage" as used in connection with nonprofit organizations includes the persons, community or clientele served or affected by the activities of the nonprofit organization.

(2) That the nonprofit organization's activities will be substantially reduced because of the displacement.

(3) That the nonprofit organization is not part of an organization having at least one other establishment not being acquired which is engaged in the same or similar activity.

(b) Any in lieu payment made under section 202(c) of the Act to an eligible nonprofit organization shall be in the amount of \$2,500.

Subpart D—Replacement Housing— Homeowner

§ 52.40 Replacement housing for homeowner.

(a) In addition to payments otherwise authorized, the head of the Bureau shall make an additional payment not in excess of \$15,000 to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(1) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the Bureau, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market.

(2) The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the Bureau was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt

service costs of the amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(3) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(b) The additional payment authorized by this § 52.4 shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the 1-year period beginning on the date on which he receives from the Bureau final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

(c) Section 203(b) is not applicable to the Department of Justice as the Department does not administer any laws under which Federal insurance mortgages are available.

(d) Whenever a displaced person is eligible for a payment but has not yet purchased a replacement dwelling, the head of the Bureau shall at the request of the displaced person provide a written statement to any interested person, financial institution or lending agency as to such person's eligibility for a payment and the requirements that must be satisfied before such payment can be made.

§ 52.41 Eligibility.

(a) A displaced owner-occupant is eligible for a replacement housing payment if he:

(1) Actually owned and occupied the acquired dwelling for not less than 180 days immediately prior to the initiation of negotiations for the property and,

(2) Meets the eligibility requirements of § 52.4(b).

(b) A displaced owner-occupant of a dwelling who is determined to be ineligible under this section may be eligible for a replacement housing payment under § 52.5.

§ 52.42 Suitable replacement dwelling.

A suitable replacement dwelling is one which when compared with the dwelling being taken is:

- (a) Decent, safe and sanitary.
- (b) Functionally equivalent and substantially the same with respect to:
 - (1) Number of rooms.
 - (2) Area of living space.
 - (3) Age.
 - (4) State of repair.
- (c) Open to all persons regardless of race, color, religion, sex, or national origin and consistent with the requirements of title VIII of the Civil Rights Act of 1968.
- (d) In areas not generally less desirable than the dwelling to be acquired in regard to:
 - (1) Public utilities.
 - (2) Public and commercial facilities.
 - (3) Reasonably accessible to the relocatee's place of employment.
 - (4) Adequate to accommodate the relocatee.
 - (5) In an equal or better neighborhood.
 - (6) Available on the market.
 - (7) Within the financial means of the displaced family or individual.

§ 52.43 Computation of replacement housing payment.

(a) *Differential payment for replacement housing.* The head of the Bureau may determine the amount necessary to purchase a suitable replacement dwelling by either establishing a schedule or by using a comparative method.

(1) *Schedule method.* Bureaus may establish a schedule of reasonable acquisition cost for suitable replacement dwellings in the various types of dwellings required and available on the private market. The schedule should be based on a current analysis of the market to determine an amount for each type of dwelling required. When more than one Federal agency is causing the displacement in a community or an area, Bureaus shall cooperate with such other agencies on the method for computing the Replacement Housing Payment and shall use the uniform schedules of sale housing in the community or areas.

(2) *Comparative method.* Bureaus may determine the price of a suitable replacement dwelling by selecting a dwelling or dwellings representative of the dwelling unit acquired, which are available on the private market and meet the definition of suitable replacement

dwelling. Asking prices are to be adjusted to reflect the market sale experience. A single dwelling shall only be used when additional comparable dwellings are not available.

(3) *Limitations.* The amount established as the differential payment for the replacement housing sets the upper limit of this payment.

(i) If the displaced person, of his own volition, purchases and occupies a decent, safe, and sanitary dwelling at a price less than the differential payment, the replacement housing payment will be reduced to that amount required to pay the difference between the acquisition price of the acquired dwelling and the actual purchase price of the replacement dwelling.

(ii) If the displaced person, of his own volition, purchases and occupies a decent, safe, and sanitary dwelling at a price less than the acquisition price of the acquired dwelling, no differential payment shall be made.

(b) *Interest payment.* The interest payment shall be based on present value of the reasonable cost of the interest differential including points paid by the purchaser on the amount refinanced not to exceed the amount of the unpaid debt for its remaining term at the time of acquisition of the real property.

(c) *Incidental expenses.* (1) The incidental expense payment is the amount necessary to compensate the homeowner for costs incident to the purchase of the replacement dwelling such as:

(i) Legal, closing, and related costs including title search, preparing conveyance contracts, notary fees, surveys, preparing drawings of plats, and charges incident to recordation.

(ii) Lenders, Federal Housing Administration, or Veterans Administration appraisal fees.

(iii) Federal Housing Administration application fee.

(iv) Certification of structural soundness when required by lender, Federal Housing Administration, or Veterans Administration.

(v) Credit Report.

(vi) Title policies or abstracts of title.

(vii) Escrow agent's fee.

(viii) State revenue stamps, or sale or transfer taxes.

(2) No fee, cost, charge, or expenses is reimbursable which is determined to be a part of the finance charge under title I of the Truth in Lending Act, 82 Stat. 146, 15 U.S.C. 1601, and regulation

Z issued pursuant thereto by the Board of Governors of the Federal Reserve System.

Subpart E—Replacement Housing for Tenants and Certain Others

§ 52.51 Eligibility.

(a) A displaced tenant or owner-occupant of less than 180 days is eligible for a replacement housing payment if he actually occupied the dwelling for not less than 90 days immediately prior to the initiation of negotiations for acquisition of the property, and meets the other eligibility requirements of this section.

(b) In addition to amounts otherwise authorized, the head of the Bureau shall make a payment to or for any displaced person from any dwelling not eligible to receive a payment under Subpart D of this part which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days prior to the initiation of negotiations for acquisition of such dwelling. The Bureau shall notify the tenant or other occupant of the property in writing of the actual date of initiation of negotiations.

(c) Payment under this section shall be either:

(1) The amount necessary to enable such displaced person to lease or rent for a period not to exceed 4 years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed \$4,000, or

(2) The amount necessary to enable such person to make a downpayment, including incidental expenses described in § 52.43(c), on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and commercial and public facilities, but not to exceed \$4,000, except that if such amount exceeds \$2,000, such person must equally match any such amount in excess of \$2,000, in making the downpayment.

(d) An owner-occupant otherwise eligible for a payment under § 52.40(a) but who rents instead of purchases a replacement dwelling is eligible for replacement housing as a tenant.

Subpart F—Computation of Replacement Housing Payment for Displaced Tenants

§ 52.61 Rental replacement housing payment.

The head of the Bureau may establish the amount necessary to rent a suitable replacement dwelling by either establishing a schedule or by using a comparative method.

(a) *Schedule method.* Bureaus may establish a rental schedule for suitable replacement dwellings as described in § 52.42 for the various types of dwellings required and available on the private market. The payment should be computed by determining the amount necessary to rent a suitable replacement dwelling for 4 years (the average monthly cost from the schedule) and subtracting from such amount 48 times the average month's rent paid by the displaced tenant in the last 3 months prior to initiation of negotiations if such rent is reasonable, or if not reasonable, 48 times the monthly economic rent for the dwelling unit as established by the displacing Bureau. For purposes of these regulations, economic rent is defined as the amount of rent the displaced tenant would have had to pay for a similar dwelling unit in areas not generally less desirable than the dwelling unit to be acquired. The schedule should be based on a current analysis of the market to determine an amount for each type of dwelling required. When more than one Federal agency is causing the displacement in a community or an area, Bureaus shall cooperate with such other Federal agencies on the method for computing the replacement housing payment and shall use the uniform schedules of average rental housing in the community or areas.

(b) *Comparative method.* Bureaus may determine the average month's rent by selecting one or more dwellings representative of the dwelling unit acquired, available on the private market which meets the definition of a suitable replacement dwelling as described in § 52.42. The payment should be computed by determining the amount necessary to rent for 4 years a suitable replacement dwelling and subtracting from the amount so determined the lesser of 48 times the average month's rent paid by the displaced tenant in the last 3 months prior to initiation of negotia-

tions or if not reasonable, 48 times the monthly economic rent for the dwelling unit established by the displacing Bureau.

(c) *Exceptions.* The head of the Bureau may establish the average month's rent by using more than 3 months, if he deems it advisable. If rent is being paid to the displacing Bureau, economic rent shall be used in determining the amount of the payment to which the displaced tenant is entitled.

(d) *Disbursement of rental replacement housing payment.* All rental replacement housing payments in excess of \$1,000 will be made in four equal installments on an annual basis. Before making each installment payment, the displacing Bureau must verify that the tenant is in decent, safe, and sanitary housing.

§ 52.62 Purchase—replacement housing payment.

If the tenant elects to purchase instead of rent, the payment shall be computed by determining the amount necessary to enable him to make a downpayment and to cover incidental expenses on the purchase of replacement housing.

(a) The downpayment shall be the amount necessary to make a downpayment on a suitable replacement dwelling. Determination of the amount "necessary" for such downpayment shall be based on the amount of downpayment that would be required for a conventional loan.

(b) Incidental expenses of closing the transaction are those as described in § 52.43(c).

(c) The full amount of the downpayment must be applied to the purchase price and such downpayment and incidental costs shown on the closing statement.

(d) If the displaced person cannot be paid or if payment cannot be computed under § 52.62, payment should be computed as provided under § 52.63.

§ 52.63 Computation of replacement housing payments for certain others.

(a) A displaced owner-occupant not eligible under § 52.40 because he elects not to purchase a replacement dwelling, but wishes to rent may receive a rental replacement housing payment not to exceed \$4,000. The payment shall be computed in the same manner as shown in § 52.61 with the following additional criteria:

(1) The present rental rate for the acquired dwelling shall be economic rent as determined by market data, and

(2) The payment may not exceed the amount which the displaced owner-occupant would have received had he elected to receive a replacement housing payment under Subpart D.

(b) A displaced owner-occupant who does not qualify for a replacement housing payment under Subpart D of these regulations because of the 180-day occupancy requirement and elects to rent is eligible for rental replacement housing payment not to exceed \$4,000. The payment will be computed in the same manner as shown in this section, except that the present rental rate for the acquired dwelling shall be economic rent as determined by market data.

(c) A displaced owner-occupant who does not qualify for a replacement housing payment under Subpart D because of the 180-day occupancy requirement and elects to purchase a replacement dwelling is eligible for a replacement housing downpayment and closing cost not to exceed \$4,000. The payment will be computed in the same manner as shown in this section.

Subpart G—Relocation Assistance Advisory Services

§ 52.71 Coordination.

(a) Whenever the acquisition of real property for a program or project undertaken by a Bureau in any State will result in the displacement of any person on or after the effective date of the Act, the Bureau shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in paragraph (c) of this section. If the head of the Bureau determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

(b) Bureaus administering programs covered by this Act shall cooperate to the maximum extent feasible with other Federal or State agencies to assure that displaced persons receive the maximum assistance available to them.

(c) Each relocation assistance advisors program required by paragraph (a) of this section, shall include such measures, facilities, or services as may be necessary or appropriate in order to:

(1) Determine the need, if any, of displaced persons, for relocation assistance;

(2) Provide current and continuing information on the availability, prices, and rentals of comparable decent, safe, sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(3) Assure, that within a reasonable period of time, prior to displacement, replacement dwellings will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by these regulations. The dwellings shall be available to, and equal in number to, the number of such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the head of the Bureau may waive such assurance (see § 52.82).

(4) Assist a person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) Supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons; and

(6) Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) Land owners and tenants within the project area must be fully informed at the earliest possible time of the relocation program and such matters as the payments and assistance available, the specific plans and procedures for assuring that suitable replacement housing will be available for homeowners and tenants in advance of displacement, the eligibility requirements and procedures for obtaining such payments and assistance, and the right to appeal to the Attorney General, and the procedure for appealing.

(e) The head of the Bureau shall coordinate relocation activities with project work, and other planned or proposed Governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

Subpart H—Duties of Bureaus

§ 52.80 Determination availability.

Bureaus may not proceed with any phase of any project which will cause the displacement of any person until it has determined, or received satisfactory assurance that, within a reasonable period of time prior to displacement, there will be available on a basis consistent with the requirements of title VI of the Civil Rights Act of 1964 and title VIII of the Civil Rights Act of 1968, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means (including supplements provided by law) of the families and individuals displaced, decent, safe, and sanitary dwellings, as described in § 52.83, equal in number to the number of, available to, such displaced persons who require such dwellings and reasonably accessible to their places of employment.

§ 52.81 Support.

The determination or assurance under § 52.80 shall be based on a current survey and analysis of available replacement housing by the Bureau. Surveys to determine availability of replacement housing should be undertaken during the planning phase for each area wherein provisions of the Act may be applicable. These surveys should include sufficient data to provide assurances that replacement dwellings are available and meet requirements of the Act and criteria described herein. These surveys will list housing currently available. Information needed to develop and maintain the survey will be available from the Veterans Administration, Federal Housing Administration, Department of Housing and Urban Development, and Real Estate Associations.

§ 52.82 Waiver.

Pursuant to § 52.71(c)(3) the head of the Bureau may waive the requirement for suitable replacement housing only on the basis of an emergency or other extraordinary situations where immediate possession of real property is of crucial importance. Each waiver of assurance of replacement housing shall be supported by appropriate findings and a determination of the necessity for the waiver. Determinations so made shall be included in the annual report required by § 52.150.

§ 52.83 Decent, safe, and sanitary housing.

A decent, safe, and sanitary dwelling is one which is found to be in sound and weathertight condition, and which meets local housing codes. The head of the Bureau shall consider the following criteria in determining if a dwelling unit is decent, safe, and sanitary. Adjustments may only be made in the cases of unusual or unique geographical areas.

(a) *Housekeeping unit.* A housekeeping unit must include a kitchen with fully usable sink; a stove, or connections for same; a separate complete bathroom; hot and cold running water in both the bath and the kitchen; an adequate and safe wiring system for lighting and other electrical services; and heating as required by climatic conditions and local codes.

(b) *Nonhousekeeping unit.* A non-housekeeping unit is one which meets local code standards for boarding houses, hotels, or other congregate living. If local codes do not include requirements relating to space and sanitary facilities, standards will be subject to the approval of the head of the Bureau causing the displacement.

(c) *Occupancy standards.* Occupancy standards for replacement housing shall comply with Bureau approved occupancy requirements or comply with local codes.

(d) *Facilities.* A dwelling unit meeting the physical and occupancy standards stated above, shall only be considered as suitable replacement housing when it is reasonably convenient to such community facilities as schools, stores, and public transportation.

§ 52.84 Absence of local standards.

In those instances where there is no local housing code or a local housing code does not contain certain minimum standards or the standards are inadequate, the head of the Bureau will establish the standards.

Subpart I—Housing Replacement**§ 52.90 Housing replacement by Federal agency as last resort.**

(a) If a project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Bureau determines that such housing cannot otherwise be made available, he may take such action as is necessary or ap-

propriate to provide such housing by use of funds authorized for such project in conformance with criteria, guidelines and procedures to be issued by the Secretary of Housing and Urban Development. A State agency taking such action will comply with the requirements and procedures of the Department and Bureau providing the Federal financial assistance.

(b) No person shall be required to move from his dwelling on or after the effective date of the Act, on account of any project, unless the head of the Bureau is satisfied that replacement housing is available to such person.

Subpart J—Requirements for Relocation Payments and Assistance of Federally Assisted Programs**§ 52.111 Assurances.**

Notwithstanding any other law, the head of any Bureau shall not approve any grant to, contract or agreement with, a State agency, under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of the Act, unless he receives satisfactory assurances from such State agency that:

(a) Fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under Subparts B, D, and E of this part.

(b) Relocation assistance programs offering the services described in § 52.70 shall be provided to such displaced persons;

(c) Within a reasonable period of time prior to displacement, decent, safe, and sanitary replacement dwellings will be available to displaced persons in accordance with § 52.71(c).

(d) The affected persons will be adequately informed of the available benefits and the policies and procedures relating to the payment of these benefits.

§ 52.112 Inability to provide assurances prior to July 1, 1972.

A State agency's assurances shall be accompanied by a statement in which it specifies any provision of the assurances required by sections 210 and 305 of the Act which it is unable to provide in whole or in part, under its laws. In the event

a State agency maintains that it is legally unable to provide all or any part of the required assurances, its statement shall be supported by an opinion of the chief legal official of the State agency. The opinion shall contain a full discussion of the issues involved, and shall cite legal authority in support of the conclusion of legal inability to provide any part of the required assurances.

§ 52.113 Inability to provide assurances for programs or projects causing displacement on or after July 1, 1972.

If a State agency is unable to provide the assurances required by sections 210 and 305 on or after July 1, 1972, with regard to any program or project that will result in the displacement of any person, the head of the Bureau shall not approve any grant to, or contract or agreement with such State agency under which Federal financial assistance will be available to pay all or part of the cost of such program or project, until such time as assurances, applicable to all persons to be displaced are provided.

§ 52.114 State submissions.

The head of a Bureau may not approve or authorize any action by a State agency unless the State agency has either provided the assurances required by section 210 or 305, or if it is unable to provide all or part of such assurances, the submission described in § 52.112.

§ 52.115 Compliance with sections 301 and 302.

A State agency, as part of the assurances required by section 305, shall provide a statement indicating the extent to which it can comply with the provisions of sections 301 and 302. If the State agency indicates that it is unable to comply fully with any of such policies, its statement shall be supported by an opinion of the chief legal officer of the State agency. The opinion shall contain a full discussion of the issues involved, and shall cite legal authority in support of the conclusion of legal inability to comply with any of the provisions set forth in sections 301 and 302. State agencies must comply with sections 301 and 302 if, under State law, compliance is legally possible.

§ 52.116 Monitoring assurances.

Heads of Bureaus shall take continuing action to insure that State agencies are acting in accordance with the assurances they have provided.

Subpart K—Costs

§ 52.120 Federal share of costs.

(a) The cost of a State agency of providing payments and assistance pursuant to §§ 52.90, 52.110, and 52.170, shall be included as part of the cost of a program or project for which Federal financial assistance is available to such State agency, and such State agency shall be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other project or program costs, except that, notwithstanding any other law in the case where the Federal financial assistance is by grant or contribution, the Federal agency shall pay the first \$25,000 of the cost to a State agency of providing payments and assistance for a displaced person under §§ 52.90, 52.110, and 52.170 on account of any acquisition or displacement occurring prior to July 1, 1972.

(b) No payment or assistance under §§ 52.110 and 52.170 shall be required or included as a program or project cost under this section, if the displaced person received a payment required by the State law of eminent domain which is determined by the head of the Bureau to have substantially the same purpose and effect as such payment under this section, and to be part of the cost of the program or project for which Federal financial assistance is available.

(c) Any grant to, contract, or agreement with, a State agency executed before the effective date of the Act, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after the effective date of the Act, shall be amended to include the cost of providing payments and services under §§ 52.110 and 52.170. If the head of the Bureau determines that it is necessary for the expeditious completion of a program or project, he may advance to the State agency the Federal share of the cost of any payments or assistance by such State agency pursuant to §§ 52.90, 52.110, and 52.170.

Subpart L—Administration—Programs Receiving Federal Financial Assistance

§ 51.130 Relocation assistance.

In order to prevent unnecessary expenses and duplications of functions,

and to promote uniform and effective administration of relocation assistance programs for displaced persons under §§ 52.90, 52.110, and 52.170, a State agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under the Act through any Federal or State governmental agency or instrumentality having an established organization for conducting relocation assistance programs. Such State agency shall, in carrying out the relocation assistance activities described in § 52.90, whenever practicable, utilize the services of State or local housing agencies, or other agencies having experience in the administration of similar housing assistance activities.

§ 52.131 Approval.

If a State agency elects to contract for services pursuant to § 52.130, it shall enter into a written contract which shall be consistent with regulations of the Bureau administering the project or program causing the displacement. Such Bureau shall take necessary action to assure that the contract will assist in providing a uniform and effective relocation program consistent with these regulations.

§ 52.132 Contents.

Any such contract shall include, but shall not be limited to, provisions providing:

(a) That payments or services shall be provided in accordance with those regulations implemented by Bureau procedures,

(b) That records required by Bureau regulations will be retained for a period of at least 3 years and shall be available for inspection by representatives of the Department, and

(c) Clauses required by regulations implementing title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d.

Subpart M—Bureau Regulations

§ 52.140 Implementing procedures.

(a) In order to promote uniform and effective administration of relocation assistance and land acquisition of State or local housing agencies having programs or projects by Federal agencies or programs or projects by State agencies receiving Federal financial assistance, the heads of Bureaus shall consult

with each other and with other Federal agencies on the establishment of procedures for the implementation of such programs.

(b) The head of each Bureau is authorized to establish such procedures as he may determine to be necessary to assure that:

(1) The payments and assistance authorized by the Act shall be administered in a manner which is fair and reasonable, and as uniform as practicable;

(2) A displaced person who makes application for payment authorized by these regulations shall be paid promptly after a move or, in hardship cases, be paid in advance; and

(3) Any person aggrieved by a determination as to eligibility for a payment authorized by the Act, or the amount of a payment, may have his application reviewed by the head of the Bureau having authority over the applicable program or project, or in the case of a program or project receiving Federal financial assistance, by the head of the State agency.

Subpart N—Annual Report

§ 52.151 Preparation.

Each Bureau shall prepare and submit an annual report to the Assistant Attorney General for Administration with respect to the administration of the programs and policies established or authorized by the Act. This report shall contain such information as may be required by the Assistant Attorney General for Administration.

§ 52.152 Statistical data.

Bureaus shall also provide statistical data with the annual reports. Bureaus shall furnish data separately for each Federal program and each federally assisted program, together with a summary for the whole Bureau.

Subpart O—Other Duties of Bureaus

§ 52.160 Payments not to be considered as income.

(a) Heads of Bureaus shall make every effort to pay promptly any displaced person who makes application for payments authorized by these regulations after a move, or in hardship cases, advance payments may be authorized.

(b) Bureaus shall advise all displaced persons that no payment received under title II of the Act shall be considered as income for the purposes of the Internal Revenue Code of 1954; or for the pur-

poses of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal Law.

Subpart P—Uniform Real Property Acquisition Policy

§ 52.171 Owners.

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the many Federal programs, and to promote public confidence in Federal land acquisition practices, the head of the Bureau to the greatest extent practicable shall:

(a) Make every reasonable effort to acquire expeditiously real property by negotiation.

(b) Appraise real property before the initiation of negotiations, and give the owner or his designated representative an opportunity to accompany the appraiser during his inspection of the property.

(c) Before the initiation of negotiations for real property, establish an amount which he believes to be just compensation therefor and make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the approved appraisal of the estimated fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, will be disregarded in determining the compensation for the property. The head of the Bureau concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

§ 52.172 Summary statement of just compensation.

The summary statement of the basis for the determination of just compensation should include the following:

(a) Identification of the real property and the estate or interest therein to be acquired.

(b) Identification of the buildings, structures, and other improvements considered to be part of the real property for which the offer of just compensation is made.

(c) A statement that the Bureau's determination of just compensation is based on the estimated fair market value of the property to be acquired. If only part of the property is to be acquired or the interest to be acquired in the property is less than the full interest of the owner, the statement should explain the basis for the determination of just compensation.

(d) A statement that the Bureau's determination of just compensation is not less than its approved appraisal of the property.

(e) A statement, unless impracticable under applicable State law, that any decrease or increase in the fair market value of the real property prior to the date of valuation caused by the public improvement or project for which the property is to be acquired, or by the likelihood that the property would be acquired for such improvement or project, other than that due to physical deterioration within the reasonable control of the owner, has been disregarded by the Bureau in making its determination of just compensation for the property.

§ 52.173 Interest in acquisition of real property.

(a) If the head of the Bureau acquires any interest in real property he shall acquire at least an equal interest in all buildings, structures or other improvements located upon the real property so acquired and which he requires to be removed from such real property or which he determines will be adversely affected by the use to which such real property will be put. If any buildings, structures, or other improvements comprising part of the real property are the property of a tenant who has the right or obligation to remove them at the expiration of his term, the total just compensation for the real property, including the property of the tenant, shall be apportioned to the landowner and the tenant, so that the amount attributable to the tenant's improvements will be the greater of:

(1) The estimated fair market value of the tenant's leasehold estate in the property, or

(2) The contributive value of the tenant's improvements to the value of the entirety, which value shall not be less than the value of his improvements for removal from the property.

(b) Payment under this section shall not be a duplication of any payment otherwise authorized by law. No such payment shall be made unless the landowner disclaims all interests in the tenant's improvements. The tenant in consideration for such payment shall assign, transfer, and release to the Government all his rights, title, and interest in and to such improvements. The tenant may reject payment under this section and obtain payment in accordance with other applicable laws.

§ 52.174 Appraisal.

As a general rule, only one appraisal will be obtained on each tract, unless the head of the Bureau determines that circumstances require an additional appraisal or appraisals. The Bureau land acquisition records will show that the landowner or his designated representative has been given an opportunity to accompany the appraiser during the inspection of the property.

§ 52.175 Payments.

No owner or tenant who will become a displaced person will be required to surrender possession of his property before payment is made to him or deposited in the registry of the court. Only in those instances where actual displacement of persons, businesses or farms occurs, a written notice to vacate shall be given by the head of the Bureau at least 90 days prior to the date by which such move is required. If permitted by the head of the Bureau to remain in possession for a short period of time after acquisition, the rental charged for this occupancy will not be more than the fair rental value of the property to a short-term occupier.

§ 52.176 Condemnation.

Condemnation, where required, will be instituted by the Government. The Government shall not intentionally make it necessary for an owner to institute proceedings to prove the fact of the taking of his property. Where the acquisition of a part of a property will leave its owner with an uneconomical remnant,

the head of the Bureau will offer to acquire the entire property.

§ 52.177 Expenses incidental to transfer of title to United States.

The head of the Bureau shall amend all land purchase contract forms to provide for reimbursement to the vendor in an amount deemed by the head of the Bureau to be fair and reasonable for the following expenses:

(a) Recording fees, transfer taxes, and similar expenses incidental to conveying the real property;

(b) Penalty cost for prepayment of any preexisting recorded mortgage entered into in good faith encumbering said real property; and

(c) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier.

§ 52.178 Litigation expenses.

The head of the Bureau in project planning shall take into consideration the possible liability for the payment of litigation expenses of a condemnee provided in section 304 of the Act.

§ 52.179 States.

(a) *Provision of assurances.* Notwithstanding any other law, the head of a Bureau shall not approve any program or project or any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be available to pay all or part of the cost of any program or project which will result in the acquisition of real property on and after the effective date of the Act, unless he receives satisfactory assurances from such State agency that:

(1) In acquiring real property, State agencies will be guided, to the greatest extent practicable under State law, by the land acquisition policies of these regulations;

(2) Property owners will be paid or reimbursed for necessary expenses as specified in § 52.17; and

(3) The affected persons will be adequately informed of the available benefits, and the policies and procedures relating to the payment of these benefits.

(b) *Inability to provide assurances.* A State agency's assurances shall be accompanied by a statement in which it

specifies any provision of the assurances which it is unable to provide in whole or in part, under its laws. In the event a State agency maintains that it is legally unable to provide all or any part of the required assurances, its statement shall be supported by an opinion of the chief legal official of the State agency. The opinion shall contain a full discussion of the issues involved, and shall cite legal authority in support of the conclusion of legal inability to provide any part of the required assurances.

APPENDIX—MEMORANDUM RE THE CONFLICT OF INTEREST PROVISIONS OF PUBLIC LAW 87-849, 76 STAT. 1119, APPROVED OCTOBER 23, 1962

MEMORANDUM RE THE CONFLICT OF INTEREST PROVISIONS OF PUBLIC LAW 87-849, 76 STAT. 1119, APPROVED OCTOBER 23, 1962.¹

INTRODUCTION

Public Law 87-849, which came into force January 21, 1963, affected seven statutes which applied to officers and employees of the Government and were generally spoken of as the "conflict of interest" laws. These included six sections of the criminal code, 18 U.S.C. 216, 281, 283, 284, 434 and 1914, and a statute containing no penalties, section 190 of the Revised Statutes (5 U.S.C. 99). Public Law 87-849 (sometimes referred to herein after as "the Act") repealed section 190 and one of the criminal statutes, 18 U.S.C. 216, without replacing them.² In addition it re-

¹ See also President's Memorandum of May 2, 1963, 28 F.R. 4539, 3 CFR, 1959-1963 Comp. p. 834.

² Section 190 of the Revised Statutes (5 U.S.C. 99), which was repealed by section 3 of Public Law 87-849, applied to a former officer or employee of the Government who had served in a department of the executive branch. It prohibited him, for a period of two years after his employment had ceased, from representing anyone in the prosecution of a claim against the United States which was pending in that or any other executive department during his period of employment. The subject of postemployment activities of former Government officers and employees was also dealt with in another statute which was repealed, 18 U.S.C. 284. Public Law 87-849 covers the subject in a single section enacted as the new 18 U.S.C. 207.

18 U.S.C. 216, which was repealed by section 1(c) of Public Law 87-849, prohibited the payment to or acceptance by a Member of Congress or officer or employee of the Government of any money or thing of value for giving or procuring a Government contract. Since this offense is within the scope

pealed and supplanted the other five criminal statutes. It is the purpose of this memorandum to summarize the new law and to describe the principal differences between it and the legislation it has replaced.

The Act accomplished its revisions by enacting new sections 203, 205, 207, 208 and 209 of title 18 of the United States Code and providing that they supplant the above-mentioned sections 281, 283, 284, 434 and 1914 of title 18 respectively.³ It will be convenient, therefore, after summarizing the principal provisions of the new sections, to examine each section separately, comparing it with its precursor before passing to the next. First of all, however, it is necessary to describe the background and provisions of the new 18 U.S.C. 202(a), which has no counterpart among the statutes formerly in effect.

SPECIAL GOVERNMENT EMPLOYEES— NEW 18 U.S.C. 202(A)

In the main the prior conflict of interest laws imposed the same restrictions on individuals who serve the Government intermittently or for a short period of time as on those who serve full-time. The consequences of this generalized treatment were pointed out in the following paragraph of the Senate Judiciary Committee report on the bill which became Public Law 87-849: *

In considering the application of present law in relation to the Government's utilization of temporary or intermittent consultants and advisers, it must be emphasized that most of the existing conflict-of-interest statutes were enacted in the 19th century—that is, at a time when persons outside the Government rarely served it in this way. The laws were therefore directed at activities of regular Government employees, and their present impact on the occasionally needed experts—those whose main work is performed outside the Government—is unduly severe. This harsh impact constitutes an appreciable deterrent to the Government's obtaining needed part-time services.

The recruiting problem noted by the Committee generated a major part of the impetus for the enactment of Public Law 87-849. The Act dealt with the problem by creating a category of Government employees termed "special Government employees" and by excepting persons in this category from certain of the prohibitions imposed on ordinary employees. The new 18 U.S.C. 202(a) defines the term "special Government employee" to

of the newly enacted 18 U.S.C. 201 and 18 U.S.C. 203, relating to bribery and conflicts of interest, respectively, section 216 is no longer necessary.

³ See section 2 of Public Law 87-849. 18 U.S.C. 281 and 18 U.S.C. 283 were not completely set aside by section 2 but remain in effect to the extent that they apply to retired officers of the Armed Forces (see "Retired Officers of the Armed Forces." *infra*).

⁴ S. Rept. 2213, 87th Cong., 2d sess., p. 6.

include, among others, officers and employees of the department and agencies who are appointed or employed to serve, with or without compensation, for not more than 180 days during any period of 365 consecutive days either on a full-time or intermittent basis.

SUMMARY OF THE MAIN CONFLICT OF INTEREST PROVISIONS OF PUBLIC LAW 87-540

A regular officer or employee of the Government—that is, one appointed or employed to serve more than 180 days in any period of 365 days—is in general subject to the following major prohibitions (the citations are to the new sections of title 18):

1. He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 203 and 205).

2. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

3. He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility⁴ during the last year of his Government service (18 U.S.C. 207(b)). This temporary restraint of course gives way to the permanent restraint described in paragraph 3 if the matter is one in which he participated personally and substantially.

5. He may not receive any salary, or supplementation of his Government salary, from a private source as compensation for his services to the Government (18 U.S.C. 209).

A special Government employee is in general subject only to the following major prohibitions:

1. (a) He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party

⁴ The term "official responsibility" is defined by the new 18 U.S.C. 202(b) to mean "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."

or has an interest and in which he has at any time participated personally and substantially for the Government (18 U.S.C. 203 and 205).

(b) He may not, except in the discharge of his official duties, represent anyone else in a matter pending before the agency he serves unless he has served there no more than 60 days during the past 365 (18 U.S.C. 203 and 205). He is bound by this restraint despite the fact that the matter is not one in which he has ever participated personally and substantially.

The restrictions described in subparagraphs (a) and (b) apply to both paid and unpaid representation of another. These restrictions in combination are, of course, less extensive than the one described in the corresponding paragraph 1 in the list set forth above with regard to regular employees.

3. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

3. He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service (18 U.S.C. 207(b)). This temporary restraint of course gives way to the permanent restriction described in paragraph 3 if the matter is one in which he participated personally and substantially.

It will be seen that paragraphs 2, 3 and 4 for special Government employees are the same as the corresponding paragraphs for regular employees. Paragraph 5 for the latter, describing the bar against the receipt of salary for Government work from a private source does not apply to special Government employees.

As appears below, there are a number of exceptions to the prohibitions summarized in the two lists.

COMPARISON OF OLD AND NEW CONFLICT OF INTEREST SECTIONS OF TITLE 18, UNITED STATES CODE

New 18 U.S.C. 203. Subsection (a) of this section in general prohibits a Member of Congress and an officer or employee of the United States in any branch or agency of the Government from soliciting or receiving compensation for services rendered on behalf of another person before a Government department or agency in relation to any particular matter in which the United States is a party or has a direct and substantial in-

terest. The subsection does not preclude compensation for services rendered on behalf of another in court.

Subsection (a) is essentially a rewrite of the repealed portion of 18 U.S.C. 281. However, subsections (b) and (c) have no counterparts in the previous statutes.

Subsection (b) makes it unlawful for anyone to offer or pay compensation the solicitation or receipt of which is barred by subsection (a).

Subsection (c) narrows the application of subsection (a) in the case of a person serving as a special Government employee to two, and only two, situations. First, subsection (c) bars him from rendering services before the Government on behalf of others, for compensation, in relation to a matter involving a specific party or parties in which he has participated personally and substantially in the course of his Government duties. And second, it bars him from such activities in relation to a matter involving a specific party or parties, even though he has not participated in the matter personally and substantially, if it is pending in his department or agency and he has served therein more than 60 days in the immediately preceding period of a year.

New 18 U.S.C. 205. This section contains two major prohibitions. The first prevents an officer or employee of the United States in any branch or agency of the Government from acting as agent or attorney for prosecuting any claim against the United States, including a claim in court, whether for compensation or not. It also prevents him from receiving a gratuity, or a share or interest in any such claim, for assistance in the prosecution thereof. This portion of section 205 is similar to the repealed portion of 18 U.S.C. 283, which dealt only with claims against the United States, but it omits a bar contained in the latter—i.e., a bar against rendering uncompensated aid or assistance in the prosecution or support of a claim against the United States.

The second main prohibition of section 205 is concerned with more than claims. It precludes an officer or employee of the Government from acting as agent or attorney for anyone else before a department, agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

Section 205 provides for the same limited application to a special Government employee as section 203. In short, it precludes him from acting as agent or attorney only (1) in a matter involving a specific party or parties in which he has participated personally and substantially in his governmental capacity, and (2) in a matter involving a specific party or parties which is before his department or agency, if he has served therein more than 60 days in the year past.

Since new sections 203 and 205 extend to activities in the same range of matters, they

overlap to a greater extent than did their predecessor sections 281 and 283. The following are the few important differences between sections 203 and 205:

1. Section 203 applies to Members of Congress as well as officers and employees of the Government; section 205 applies only to the latter.

2. Section 203 bars services rendered for compensation solicited or received, but not those rendered without such compensation; section 205 bars both kinds of services.

3. Section 203 bars services rendered before the departments and agencies but not services rendered in court; section 205 bars both.

It will be seen that while section 203 is controlling as to Members of Congress, for all practical purposes section 205 completely overshadows section 203 in respect of officers and employees of the Government.

Section 205 permits a Government officer or employee to represent another person, without compensation, in a disciplinary, loyalty or other personnel matter. Another provision declares that the section does not prevent an officer or employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.⁶

Section 205 also authorizes a limited waiver of its restrictions and those of section 203 for the benefit of an officer or employee, including a special Government employee, who represents his own parents, spouse or child, or a person or estate he serves as a fiduciary. The waiver is available to the officer or employee, whether acting for any such person with or without compensation, but only if approved by the official making appointments to his position. And in no event does the waiver extend to his representation of any such person in matters in which he has participated personally and substantially or which, even in the absence of such participation, are the subject of his official responsibility.

Finally, section 205 gives the head of a department or agency the power, notwithstanding any applicable restrictions in its provisions or those of section 203, to allow a special Government employee to represent his regular employer or other outside organization in the performance of work under a Government grant or contract. However, this action is open to the department or

⁶ These two provisions of section 205 refer to an "officer or employee" and not, as do certain of the other provisions of the Act, to an "officer or employee, including a special Government employee." However, it is plain from the definition in section 202(a) that a special Government employee is embraced within the comprehensive term "officer or employee." There would seem to be little doubt, therefore, that the instance provisions of section 205 apply to special Government employees even in the absence of an explicit reference to them.

agency head only upon his certification, published in the *Federal Register*, that the national interest requires it.

New 18 U.S.C. 207. Subsections (a) and (b) of this section contain postemployment prohibitions applicable to persons who have ended service as officers or employees of the executive branch, the independent agencies or the District of Columbia.⁶ The prohibitions for persons who have served as special Government employees are the same as for persons who have performed regular duties.

The restraint of subsection (a) is against a former officer or employee's acting as agent or attorney for anyone other than the United States in connection with certain matters, whether pending in the courts or elsewhere. The matters are those involving a specific party or parties in which the United States is one of the parties or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while holding a Government position.

Subsection (b) sets forth a 1-year post-employment prohibition in respect of those matters which were within the area of official responsibility of a former officer or employee at any time during the last year of his service but which do not come within subsection (a) because he did not participate in them personally and substantially. More particularly, the prohibition of subsection (b) prevents his personal appearance in such matters before a court or a department or agency of the Government as agent or attorney for anyone other than the United States.⁷ Where, in the year prior to the end of his service, a former officer or employee has changed areas of responsibility by transferring from one agency to another, the period of his postemployment ineligibility as to matters in a particular area ends

⁶ The prohibitions of the two subsections apply to persons ending service in these areas whether they leave the Government entirely or move to the legislative or judicial branch. As a practical matter, however, the prohibitions would rarely be significant in the latter situation because officers and employees of the legislative and judicial branches are covered by sections 205 and 205.

⁷ Neither section 203 nor section 205 prevents a special Government employee, during his period of affiliation with the Government, from representing another person before the Government in a particular matter only because it is within his official responsibility. Therefore the inclusion of a former special Government employee within the 1-year postemployment ban of subsection (b) may subject him to a temporary restraint from which he was free prior to the end of his Government service. However, since special Government employees usually do not have "official responsibility," as that term is defined in section 202(b), their inclusion within the 1-year ban will not have a widespread effect.

1 year after his responsibility for that area ends. For example, if an individual transfers from a supervisory position in the Internal Revenue Service to a supervisory position in the Post Office Department and leaves that department for private employment 9 months later, he will be free of the restriction of subsection (b) in 3 months insofar as Internal Revenue matters are concerned. He will of course be bound by it for a year in respect of Post Office Department matters.

The proviso following subsections (a) and (b) authorizes an agency head, notwithstanding anything to the contrary in their provisions, to permit a former officer or employee with outstanding scientific qualifications to act as attorney or agent or appear personally before the agency for another in a matter in a scientific field. This authority may be exercised by the agency head upon a "national interest" certification published in the *Federal Register*.

Subsections (a) and (b) describe the activities they forbid as being in connection with "particular matter[s] involving a specific party or parties" in which the former officer or employee had participated. The quoted language does not include general rulemaking, the formulation of general policy or standards, or other similar matters. Thus, past participation in or official responsibility for a matter of this kind on behalf of the Government does not disqualify a former employee from representing another person in a proceeding which is governed by the rule or other result of such matter.

Subsection (a) bars permanently a greater variety of actions than subsection (b) bars temporarily. The conduct made unlawful by the former is *any action as agent or attorney*, while that made unlawful by the latter is a *personal appearance as agent or attorney*. However, neither subsection precludes postemployment activities which may fairly be characterized as no more than aiding or assisting another.⁸ An individual who has left an agency to accept private employment may, for example, immediately perform technical work in his company's plant in relation to a contract for which he had official responsibility—or, for that matter, in relation to one he helped the agency negotiate. On the other hand, he is forbidden for a year, in the first case to appear personally before the agency as the agent or

⁸ Subsection (a), as it first appeared in H.R. 8140, the bill which became Public Law 87-849, made it unlawful for a former officer or employee to act as agent or attorney for, or aid or assist, anyone in a matter in which he had participated. The House Judiciary Committee struck the underlined words, and the bill became law without them. It should be noted also that the repealed provisions of 18 U.S.C. 283 made the distinction between one's acting as agent or attorney for another and his aiding or assisting another.

attorney of his company in connection with a dispute over the terms of the contract. And he may at no time appear personally before the agency or otherwise act as agent or attorney for his company in such dispute if he helped negotiate the contract.

Comparing subsection (a) with the antecedent 18 U.S.C. 284 discloses that it follows the latter in limiting disqualification to cases where a former officer or employee actually participated in a matter for the Government. However, subsection (a) covers all matters in which the United States is a party or has a direct and substantial interest and not merely the "claims against the United States" covered by 18 U.S.C. 284. Subsection (a) also goes further than the latter in imposing a lifetime instead of a 2-year bar. Subsection (b) has no parallel in 18 U.S.C. 284 or any other provision of the former conflict in interest statutes.

It will be seen that subsections (a) and (b) in combination are less restrictive in some respects, and more restrictive in others, than the combination of the prior 18 U.S.C. 284 and 5 U.S.C. 99. Thus, former officers or employees who were outside the Government when the Act came into force on January 21, 1963, will in certain situations be enabled to carry on activities before the Government which were previously barred. For example the repeal of 5 U.S.C. 99 permits an attorney who left an executive department for private practice a year before to take certain cases against the Government immediately which would be subject to the bar of 5 U.S.C. 99 for another year. On the other hand, former officers or employees became precluded on and after January 21, 1963 from engaging or continuing to engage in certain activities which were permissible until that date. This result follows from the replacement of the 2-year bar of 18 U.S.C. 284 with the lifetime bar of subsection (a) in comparable situations, from the increase in the variety of matters covered by subsection (a) as compared with 18 U.S.C. 284 and from the introduction of the 1-year bar of subsection (b).

Subsection (c) of section 207 pertains to an individual outside the Government who is in a business or professional partnership with someone serving in the executive branch, an independent agency or the District of Columbia. The subsection prevents such individual from acting as attorney or agent for anyone other than the United States in any matters, including those in court, in which his partner in the Government is participating or has participated or which are the subject of his partner's official responsibility. Although included in a section dealing largely with postemployment activities, this provision is not directed to the postemployment situation.

The paragraph at the end of section 207 also pertains to individuals in a partnership but sets forth no prohibition. This para-

graph, which is of importance mainly to lawyers in private practice, rules out the possibility that an individual will be deemed subject to section 203, 205, 207(a) or 207(b) solely because he has a partner who serves or has served in the Government either as a regular or a special Government employee.

New 18 U.S.C. 208. This section forbids certain actions by an officer or employee of the Government in his role as a servant or representative of the Government. Its thrust is therefore to be distinguished from that of sections 203 and 205 which forbid certain actions in his capacity as a representative of persons outside the Government.

Subsection (a) in substance requires an officer or employee of the executive branch, an independent agency or the District of Columbia, including a special Government employee, to refrain from participating as such in any matter in which, to his knowledge, he, his spouse, minor child or partner has a financial interest. He must also remove himself from a matter in which a business or nonprofit organization with which he is connected or is seeking employment has a financial interest.

Subsection (b) permits the agency of an officer or employee to grant him an *ad hoc* exemption from subsection (a) if the outside financial interest in a matter is deemed not substantial enough to have an effect on the integrity of his services. Financial interests of this kind may also be made non-disqualifying by a general regulation published in the Federal Register.

Section 208 is similar in purpose to the former 18 U.S.C. 434 but prohibits a greater variety of conduct than the "transaction of business with . . . [a] business entity" to which the prohibition of section 434 was limited. In addition, the provision in section 208 including the interests of a spouse and others is new, as is the provision authorizing exemptions for insignificant interests.

New 18 U.S.C. 209. Subsection (a) prevents an officer or employee of the executive branch, an independent agency or the District of Columbia from receiving, and anyone from paying him, any salary or supplementation of salary from a private source as compensation for his services to the Government. This provision uses much of the language of the former 18 U.S.C. 1914 and does not vary from that statute in substance. The remainder of section 209 is new.

Subsection (b) specifically authorizes an officer or employee covered by subsection (a) to continue his participation in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer.

Subsection (c) provides that section 209 does not apply to a special Government employee or to anyone serving the Government without compensation, whether or not he is a special Government employee.

Subsection (d) provides that the section does not prohibit the payment of acceptance

of contributions, awards or other expenses under the terms of the Government Employees Training Act (72 Stat. 327, 5 U.S.C. 2301-2319).

STATUTORY EXEMPTIONS FROM CONFLICT OF INTEREST LAWS

Congress has in the past enacted statutes exempting persons in certain positions—usually advisory in nature—from the provisions of some or all of the former conflict of interest laws. Section 2 of the Act grants corresponding exemptions from the new laws with respect to legislative and judicial positions carrying such past exemptions. However, section 2 excludes positions in the executive branch, an independent agency and the District of Columbia from this grant. As a consequence, all statutory exemptions for persons serving in these sectors of the Government ended on January 21, 1963.

RETIRED OFFICERS OF THE ARMED FORCES

Public Law 87-849 enacted a new 18 U.S.C. 206 which provides in general that the new sections 203 and 205, replacing 18 U.S.C. 281 and 283, do not apply to retired officers of the armed forces and other uniformed services. However, 18 U.S.C. 281 and 283 contain special restrictions applicable to retired officers of the armed forces which are left in force by the partial repealer of those statutes set forth in section 2 of the Act.

The former 18 U.S.C. 284, which contained a 2-year disqualification against postemployment activities in connection with claims against the United States, applied by its terms to persons who had served as commissioned officers and whose active service had ceased either by reason of retirement or complete separation. Its replacement, the broader 18 U.S.C. 207, also applies to persons in those circumstances. Section 207, therefore applies to retired officers of the armed forces and overlaps the continuing provisions of 18 U.S.C. 281 and 283 applicable to such officers although to a different extent than did 18 U.S.C. 284.

VOIDING TRANSACTIONS IN VIOLATION OF THE CONFLICT OF INTERESTS OR BRIBERY LAWS

Public Law 87-849 enacted a new section, 18 U.S.C. 218, which did not supplant a pre-existing section of the criminal code. However, it was modeled on the last sentence of the former 18 U.S.C. 216 authorizing the President to declare a Government contract void which was entered into in violation of that section. It will be recalled that section 216 was one of the two statutes repealed without replacement.

The new 18 U.S.C. 218 grants the President and under presidential regulations, an agency head the power to void and rescind any transaction or matter in relation to which there has been a "final conviction" for a violation of the conflict of interest or bribery laws. The section also authorizes

the Government's recovery, in addition to any penalty prescribed by law or in a contract, of the amount expended or thing transferred on behalf of the Government.

Section 218 specifically provides that the powers its grants are "in addition to any other remedies provided by law." Accordingly, it would not seem to override the decision in *United States v. Mississippi Valley General Co.*, 364 U.S. 520 (1961), a case in which there was no "final conviction."

BIBLIOGRAPHY

Set forth below are the citations to the legislative history of Public Law 87-849 and a list of recent material which is pertinent to a study of the Act. The listed 1960 report of the Association of the Bar of the City of New York is particularly valuable. For a comprehensive bibliography of earlier material relating to the conflict of interest laws, see 13 Record of the Association of the Bar of the City of New York 323 (May 1958).

LEGISLATIVE HISTORY OF PUBLIC LAW 87-849 (H.R. 8140, 87TH CONG.)

1. Hearings of June 1 and 2, 1961, before the Antitrust Subcommittee (Subcommittee No. 5) of the House Judiciary Committee, 87th Cong., 1st sess., ser. 3, on *Federal Conflict of Interest Legislation*.
2. H. Rept. 748, 87th Cong., 1st sess.
3. 107 Cong. Rec. 14774.
4. Hearing of June 21, 1962, before the Senate Judiciary Committee, 87th Cong., 2d sess., on *Conflicts of Interest*.
5. S. Rept. 2213, 87th Cong., 2d sess.
6. 108 Cong. Rec. 20805 and 21130 (daily ed., October 3 and 4, 1962).

OTHER MATERIAL

1. President's special message to Congress, April 27, 1961, and attached draft bill, 107 Cong. Rec. 8835.
 2. President's Memorandum of February 9, 1962, to the heads of executive departments and agencies entitled *Preventing Conflicts of Interest on the Part of Advisers and Consultants to the Government*, 27 F.R. 1341.
 3. 42 Op. A.G. No. 6, January 31, 1962.
 4. Memorandum of December 10, 1958, for the Attorney General from the Office of Legal Counsel re conflict of interest statutes, Hearings before the Antitrust Subcommittee (Subcommittee No. 5) of House Judiciary Committee, 86th Cong., 2d sess., ser. 17, pt. 2, p. 619.
 5. Staff report of Antitrust Subcommittee (Subcommittee No. 5) of House Judiciary Committee, 85th Cong., 2d sess., *Federal Conflict of Interest Legislation* (Comm. Print 1958).
 6. Report of the Association of the Bar of the City of New York, *Conflict of Interest and Federal Service* (Harvard Univ. Press 1960).
- [28 F.R. 985, Feb. 1, 1963]

PART 55—IMPLEMENTATION OF THE PROVISIONS OF THE VOTING RIGHTS ACT REGARDING LANGUAGE MINORITY GROUPS

Subpart A—General Provisions

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- 55.18 Enforcement by the Attorney General.

Subpart G—Comment on This Part

- 55.19 Procedure.

AUTHORITY: 5 U.S.C. 301, Pub. L. 94-73.

SOURCE: Order No. 625-75, 40 FR 46080, Oct. 3, 1975, unless otherwise noted.

Subpart A—General Provisions

§ 55.1 Purpose.

(a) The purpose of this part is to set forth the Attorney General's interpretation of the provisions of the Voting Rights Act, as amended by Public Law 94-73 (1975), which require certain States and political subdivisions to conduct elections in the language of certain "language minority groups" in addition to English.

(b) The requirements set forth in this part should be regarded as minimum standards and are not intended to prevent affected jurisdictions from taking additional steps to further the policy of the Act. By virtue of the Supremacy Clause of Art. VI of the Constitution, the provisions of the Act override any inconsistent State laws.

§ 55.2 Definitions.

For purposes of this part—

(a) "Act" means the Voting Rights Act of 1965, 79 Stat. 437, as amended by the Voting Rights Act Amendments of 1970, 84 Stat. 314, and the Voting Rights Act Amendments of 1975, Pub. L. 94-73, 42 U.S.C. 1973 et seq.

(b) "Attorney General" means the Attorney General of the United States.

(c) "Language minority" or "language minority group" means persons who are American Indian, Asian American, Alaskan Natives, or of Spanish heritage. Sections 14(c) (3), 203(c). As used in this part, "applicable language minority group" refers to the group or groups listed in the determinations as to coverage published in the FEDERAL REGISTER.

(d) "Political subdivision" means: " * * * any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting." Section 14(c) (2).

§ 55.3 Statutory provisions.

The Act's requirements concerning the conduct of elections in languages in addition to English are contained in section 4(f) (4) and section 203(c).

(a) *Section 4(f) (4) of the Act.* (1) Section 4(f) (4) states that whenever a jurisdiction subject to its terms "provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in * * * English * * *."

(2) The States and political subdivisions to which section 4(f) (4) applies are determined, under the terms of the Act, by reference to other portions of the statute.¹ Read together with these other portions, section 4(f) (4) applies to any State or political subdivision in which (i) over five percent of the voting-age citizens were, on November 1, 1972, members of a particular language minority, (ii) registration and election materials were provided only in English on November 1, 1972, and (iii) less than 50 percent

¹The other portions of the Act referred to above are Sections 4(a) (second sentence), 4(b) (third sentence), and 4(c).

of the voting-age citizens were registered to vote or voted in the 1972 Presidential election. All three conditions must be satisfied before coverage lies under section 4(f) (4).

(3) Coverage under section 4(f) (4) may be terminated (via section 4(a)) by obtaining from the U.S. District Court for the District of Columbia a declaratory judgment that there has been no discriminatory use of English-only voting materials (a "test or device" under section 4(f) (3)) for a period of ten years. When an entire State is covered in this regard, only the State, and not individual counties within the State, may bring an action to terminate coverage.

(4) *Section 203(c) of the Act.* (1) Section 203(c) states that whenever a jurisdiction subject to its terms "provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable language minority group as well as in * * * English. * * *

(2) Section 203(c) applies (by reference to section 203(b)) to any State or political subdivision where over five percent of the voting age citizens are members of a particular language minority group and the illiteracy rate of such persons is higher than the national illiteracy rate of voting-age citizens. It is the language of this minority group that is required on registration and election materials.

(3) Although an entire State may be covered under this formula (set out in section 203(b)), the requirements of section 203(c) would not apply in any of the State's political subdivisions within which the applicable language minority group accounts for less than five percent of the voting-age citizens. For example, if ten percent of the voting-age citizens of a State are persons of Spanish heritage (and such persons have an illiteracy rate that is above the national rate), a county in which less than five percent of voting-age citizens are persons of Spanish heritage would not be prohibited by section 203(c) from conducting elections solely in English.

(4) The requirements of section 203(c) apply until August 6, 1985. A covered State or political subdivision may terminate such coverage if it can prove, in a declaratory judgment action before a United States district court, that the

illiteracy rate of the applicable language minority group has become equal to or less than the national illiteracy rate.

(5) Unlike jurisdiction subject to the requirements of section 4(f) (4), jurisdictions subject only to the requirements of section 203(c) are not also subject to the Act's special provisions, such as section 5 (regarding preclearance of changes in voting laws) and section 6 (regarding Federal examiners).

(c) *The relation between section 4(f) (4) and section 203(c).* (1) The statutory requirements of section 4(f) (4) and section 203(c) regarding minority language material and assistance are essentially identical.

(2) Although the coverage formulas applicable to section 4(f) (4) and section 203(c) are different, a State or a political subdivision may be included within both of the coverage formulas. Under these circumstances, a judgment terminating coverage of the jurisdiction under one provision would not in itself authorize the conduct of elections only in English; the jurisdiction would not be able to conduct elections solely in English until it had also succeeded in terminating coverage under the other applicable provisions. Such judgments are authorized under sections 4(a) and 203(d) of the Act.

§ 55.4 Effective date; interim nature of this Part.

(a) *Effective date of the 1975 amendments.* (1) The 1975 Amendments took effect upon the date of their enactment, August 6, 1975. (i) The requirements of section 4(f) (4) take effect upon publication in the FEDERAL REGISTER of the requisite determinations of the Director of the Census and the Attorney General. See section 4(b). Such determinations are not reviewable in any court.

(ii) The requirements of Section 203 (c) take effect upon publication in the FEDERAL REGISTER of the requisite determinations of the Director of the Census. See section 203(b). Such determinations are not reviewable in any court.

(2) (i) The lack of any delay in the effectiveness of the requirements of "bilingual" (or "multi-lingual") elections may create practical difficulties for covered jurisdictions, particularly those with elections scheduled shortly after the time that coverage commences. One way of lessening such difficulties is for juris-

dictions which are likely to be covered to take steps, in advance of the formal determinations of coverage, toward compliance with the Act's requirements. (See also § 55.13(e).)

(ii) The requirements concerning bilingual material and assistance are prospective in effect. For example, if a county which becomes subject to coverage on October 15 has an election scheduled for November 1 and the time for registering for that election expired on October 1, the county would not be required to reopen the registration period in order to permit registration in the pertinent minority language, but would be required to publish all election materials utilized after October 15, including instructions to voters and ballots, in the pertinent minority language. See § 55.13(d) and § 55.13(e).

(3) Jurisdictions which are subject to section 4(f)(4) are also subject to the preclearance requirements of section 5. Procedures published September 10, 1971, for the administration of section 5 are set forth in 28 CFR Part 51. In some respects, modification of those procedures may be necessary in order to implement the 1975 Amendments. Generally, however, the procedures set forth in 28 CFR Part 51 will remain unchanged.

(b) *Effective date of this part; interim nature.* (1) This Part takes effect October 3, 1975.

(2) This part represents the Department of Justice's initial interpretation of provisions of the 1975 Amendments to the Act, and therefore should be considered interim guidelines. On the basis of comments submitted by interested parties and the Department's experience, the provisions of this Part may be modified.

Subpart B—Nature of Coverage

§ 55.5 Coverage under section 4(f)(4).

(a) *General.* As noted in § 55.3(a), coverage may be determined with regard to section 4(f)(4) on a State or political subdivision basis.

(b) *State-based coverage.* (1) Whenever the determination is made that the bilingual requirements of section 4(f)(4) are applicable to an entire State, these requirements apply to each of the State's political subdivisions as well as to the State. In other words, each political subdivision within a covered State is subject to the same requirements as is the State.

(2) Since actions taken by States and political subdivisions after November 1, 1972, in this regard are changes affecting voting within the meaning of section 5, 42 U.S.C. 1973c, compliance with section 5 is necessary with regard to such changes, and the changes will be reviewed according to the provisions of section 5 and the section 5 guidelines (published at 28 CFR Part 51).

(c) *Political subdivision-based coverage.* (1) Coverage of a political subdivision under section 4(f)(4) may result either from a coverage determination made with regard to the State (see § 55.5(b)) or, where an entire State is not covered, with regard to the political subdivision itself.

(2) Since actions taken by political subdivisions after November 1, 1972, in this regard are changes affecting voting within the meaning of section 5, compliance with section 5 is necessary with regard to such changes, and the changes will be reviewed according to the provisions of section 5 and the section 5 guidelines (published at 28 CFR Part 51).

§ 55.6 Coverage under section 203(c).

(a) *General.* As noted in § 55.3(b), coverage may be determined with regard to section 203(c) on a State or a political subdivision basis.

(b) *State-based coverage.* Whenever section 203(c) applies to a State, the bilingual requirements of section 203(c) apply only in the State's political subdivisions where five percent or more of the voting-age citizens are members of the applicable minority language group. For example, it might be determined that six percent of a State's voting-age citizens are Chinese American and six percent are persons of Spanish heritage, and that the illiteracy rate of each of the minority language groups in the State exceeds the national rate. With regard to one of the State's counties where ten percent of the voting-age citizens are persons of Spanish heritage and one percent are Chinese Americans, section 203(c) would require that the county provide written material and assistance in Spanish, but not in Chinese.

(c) *Political subdivision-based coverage.* A political subdivision may become subject to section 203(c) on the basis of a determination (under section 203(b)) regarding the State, or regarding the political subdivision itself.

§ 55.7 Coverage of political units within a county.

Where a political subdivision (e.g., a county) is determined to be subject to section 4(f)(4) or section 203(c), all political units which hold elections within that political subdivision (e.g., cities, school districts) are subject to the same requirements as the political subdivision for providing registration and election materials and assistance.

§ 55.8 Types of elections covered.

(a) *General.* The pertinent provisions of the Act apply to registration for and voting in any type of election, whether it is a primary, general or special election. Section 14(c)(1). This includes elections of officers as well as elections regarding such matters as bond issues, constitutional amendments and referendums. Federal, State and local elections are covered as are elections of special districts, such as school districts and water districts.

(b) *Elections for statewide office.* If an election conducted by a county relates to Federal or State offices as well as county offices, a county subject to the bilingual requirements must insure compliance with those requirements with respect to all aspects of the election, i.e., the minority language material must deal with the Federal and State offices or issues as well as county offices or issues.

(c) *Multi-county districts.* Regarding elections for an office representing more than one county, e.g., State legislative districts and special districts which include portions of two or more counties, the bilingual requirements are applicable on a county-by-county basis. Thus, minority language material and assistance need not be provided by the government in counties not subject to the bilingual requirements of the Act.

Subpart C—Determining the Exact Language**§ 55.9 General.**

A jurisdiction subject to the requirements of section 4(f)(4) or section 203(c) is obligated to conduct its elections in the language of one or more language minority groups, as well as in English. The groups in question are indicated in the determinations of the Attorney General or the Director of the Census. This Subpart relates to the matter of determining precisely what language is to be employed.

§ 55.10 Language used for written material.

(a) *Languages with more than one written form.* Some languages may have more than one written form. A jurisdiction required to provide election material in such a language need not provide more than one version. The particular version of the language which is used should be the one most widely used by the jurisdiction's voting-age citizens who are members of the language minority group.

(b) *Unwritten languages.* The language of certain of the language minority groups, such as some American Indian tribes and Alaskan Natives, is unwritten. With respect to any such language, only oral assistance is required. Further, only oral assistance is required for such language as those of certain Alaskan Natives and American Indian tribes which are "historically unwritten," even though the languages have been put into written form by scholars.

§ 55.11 Language used for oral assistance.

Certain of the pertinent languages may have several dialects. Where this is the case, the jurisdiction's obligation is to ascertain the dialect (or dialects) which will be most effective and to make a reasonable effort to provide oral assistance in such dialects. In addition, if a jurisdiction is covered because of an American Indian population consisting of several tribes which speak different languages, the jurisdiction's obligation is to ascertain the American Indian languages which are used most widely and to make a reasonable effort to provide oral assistance in such languages. See also § 55.14.

Subpart D—Minority Language Material and Assistance**§ 55.12 Stages of the electoral process.**

The requirements of sections 4(f)(4) and 203(c) apply with regard to the provision of "any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots." These requirements are designed to allow members of applicable language minority groups to be informed of and participate in voting connected activities as effectively as English speaking persons are informed of and participate in such activities. Accordingly, the quoted language should be broadly construed to

apply to all stages of the electoral process, from voter registration through activities related to conducting elections, including the issuance, at any time during the year, of notifications or announcements that bear upon the electoral process.

§ 55.13 Written material.

(a) *Printing of materials.* In order to comply with the requirements of section 4(f) (4) or section 203(c), jurisdictions should print all pertinent material (either on the same document as the English version or on a separate document) in the language of the applicable language minority group.

(b) *Accuracy, completeness.* It is essential that material provided in the language of a language minority group be clear, complete and accurate. Each covered jurisdiction shall take appropriate steps to insure compliance with this requirement. The objective is to ensure that members of language minority groups are able to participate effectively in the electoral process.

(c) *Publicity.* Each covered jurisdiction shall take appropriate steps to publicize the availability of written material and assistance in the minority language. Such steps shall include the display of appropriate notices, in the minority language, at voter registration offices, polling places, etc.

(d) *Distribution of materials.* One method of complying with the Act when distribution of written material (e.g., voter information handbooks) is required is to provide all such material in bilingual form (either on the same document or separate documents) to all recipients of such material. A jurisdiction subject to the minority language requirements of the Act should make such a completely bilingual distribution unless it is prepared to demonstrate that it has developed an alternative means of distribution which, although it is not completely bilingual, ensures that all language minority group voters who wish to receive minority language materials can do so as readily as English speaking voters can receive English materials. For example, a system which effectively targets language minority group voters and identifies them for receipt of minority language materials would be acceptable if the system were guaranteed to reach persons who would desire such materials. A jurisdiction should be aware that should it choose to use such an alterna-

tive method of distribution, the system elected must ensure that language minority group members have the opportunity to cast effective ballots.

(e) *Impossibility.* When determinations as to coverage have been published in the FEDERAL REGISTER, the jurisdictions subject to the minority language requirements are under an immediate obligation to provide minority language materials. In some cases this may result in an inability to comply fully with the requirements of the Act. For example, if determinations as to coverage were published on October 20, and a covered jurisdiction were scheduled to conduct an election on October 21, it might prove impossible to print all election materials in the minority language. In such situations, jurisdictions should take all reasonable steps, given time limitations, to provide the maximum minority language assistance. Such jurisdictions should be prepared to demonstrate that time limitations have precluded the complete implementation of the Act. Where voting machines are used which cannot mechanically accommodate a minority language ballot, it is sufficient to provide sample ballots for use in the polling booths. The sample ballot should be a complete and accurate translation of the English ballot, and should contain or be accompanied by instructions in the minority language explaining the operation of the voting machine. If possible, the sample ballot should be hung so that it is clearly visible and at the same level as the machine ballot on the inside of the polling booth. To the extent practicable, the sample ballot should be identical in layout to the machine ballot, and its size and typeface should be the same as that appearing on the machine ballot. Where space limitations preclude affixing the translated sample ballots to the polling booths, language minority group voters should be allowed to carry sample ballots into the voting booths.

§ 55.14 Oral assistance.

(a) As noted in § 55.12, whenever a jurisdiction is subject to any of the bilingual requirements of Section 4(f) (4) or 203, the duty to provide oral minority language assistance applies to all stages of the electoral process, including voter registration and voting.

(b) Regarding assistance at polling places, a covered jurisdiction must first determine the type of oral assistance

which must be provided. This matter is discussed in § 55.11.

(c) As with the distribution of written materials (see § 55.13(d)), one method of complying with the Act would be to provide oral minority language assistance within each of the precincts of a covered jurisdiction. A jurisdiction should provide such oral assistance at all precincts unless it is prepared to demonstrate that it has developed an alternative means of providing such assistance which ensures that voters who wish such assistance may readily obtain it. For example, a jurisdiction could target precincts in which a need for minority language assistance exists and provide it only in such precincts. Should a jurisdiction choose to use such an alternative method for the provision of oral assistance, the system chosen must ensure that language minority group members have the opportunity to cast effective ballots.

(d) It will also be necessary to determine the number of helpers (i.e., persons to provide oral assistance in the minority language) which must be provided. This matter depends upon such factors as the total number of election workers, the number of the precinct's registered voters who are members of the applicable language minority group and the number of such persons who are unable to use English. The basic standard is one of effectiveness.

(e) Another pertinent consideration is the ability of a voter to be assisted by a person of his own choice. Where this is permitted or required by State law, the obligation of the jurisdiction to provide minority language helpers may be reduced. However, adequate provision must be made for voters who are unable or unwilling to have their own helper.

§ 55.15 Multilingual elections.

Some jurisdictions may be under an obligation to provide written materials and oral assistance in two or more languages, other than English. It is recognized that for such jurisdictions, problems of time limitations and mechanical infeasibility (see § 55.13(e)) may be compounded. The basic standards for compliance with the Act are equally applicable to such jurisdictions: (1) That materials and assistance should be provided in a way designed to allow members of applicable language minority groups to be informed of and participate in voting connected activities as effec-

tively as English speaking persons are informed of and participate in such activities; and (2) that the jurisdiction should take all reasonable steps to achieve that goal. Such a jurisdiction should provide, and make appropriate distribution of all materials multilingually. See § 55.13(d).

Subpart E—State Plan; Record Keeping

§ 55.16 State plan.

(a) *Section 4(f)(4)*. (1) Each jurisdiction subject to section 4(f)(4) is also subject to the preclearance requirements of Section 5. For many such jurisdictions, changes in voting laws and practices will be necessary in order to comply with section 4(f)(4). Such changes are subject to the section 5 preclearance process and therefore must either be submitted to the Attorney General or be made the subject of a declaratory judgment action in the United States District Court for the District of Columbia. With respect to a jurisdiction not previously subject to Section 5, preclearance is required with regard to any voting law or practice which was not in effect or administered on November 1, 1972.

(2) The Attorney General suggests, but does not require, that States and political subdivisions subject to Section 4(f)(4) adopt and submit plans for compliance with the bilingual requirements of that section. Where a State is covered as a whole by section 4(f)(4), one plan, applicable statewide, could be submitted. Where several political subdivisions within a State are covered, they may wish to submit a unified plan for compliance. Such plans would generally provide for application of the Act and this Part within the State or its political subdivisions in light of the State's election laws. In States which have laws regarding bilingual elections, such a plan would take the form of a submission of the State law, together with a description of the methods used to implement it, and a description of any procedures to be employed in addition to those required by the State law in order to implement section 4(f)(4) and this Part. Any such plan should be made available to the public, in English and in the language of any applicable language minority group. Comments received from the public will assist the Attorney General in evaluating the plan under section 5.

(b) *Section 203*. A jurisdiction covered by section 203(c) only is not subject to the preclearance requirements of section

5. Nonetheless, the Attorney General suggests, but does not require, that States and political subdivisions which are covered by section 203(c) prepare plans regarding compliance with the bilingual requirements, as described in § 55.16(a). If such a plan is adopted, a copy should be sent to: Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530.

§ 55.17 Record keeping.

In order to facilitate implementation of the Act's provisions concerning language minority groups, the Attorney General suggests, but does not require, that each covered jurisdiction maintain such records and data as will document its actions under those provisions, including, for example, records on such matters as alternatives considered prior to taking such actions, and the reasons for choosing the actions finally taken.

Subpart F—Sanctions

§ 55.18 Enforcement by the Attorney General.

(a) The Attorney General is authorized to bring civil actions for appropriate relief against violations of the Act's provisions, including section 4 and section 203. See sections 12(d) and 204.

(b) Also, certain violations may be subject to criminal sanctions. See section 11(a)–(c) and section 205.

Subpart G—Comment on This Part

§ 55.19 Procedure.

In light of the interim nature of these guidelines the Attorney General invites public comments and suggestions during the interim period. Any party who wishes to make such suggestions or comments may do so by sending them to: Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, D.C. 20530.

PART 57—INVESTIGATION OF DISCRIMINATION IN THE SUPPLY OF PETROLEUM TO THE ARMED FORCES

Sec.

57.1 Responsibility for the Conduct of Litigation.

57.2 Responsibility for the Conduct of Investigations.

57.3 Scope and Purpose of Investigation; Other Sources of Information.

57.4 Expiration Date.

AUTHORITY: Sec. 816(b) (2), Pub. L. 94-106; 89 Stat. 531.

SOURCE: Order No. 644-76, 41 FR 12302, Mar. 25, 1976, unless otherwise noted.

§ 57.1 Responsibility for the Conduct of Litigation.

(a) In accord with 28 CFR 0.45(h), civil litigation under sec. 816 of the Department of Defense Appropriation Authorization Act, 1976, 10 U.S.C.A. 2304 note (hereafter the "Act"), shall be conducted under the supervision of the Assistant Attorney General in charge of the Civil Division.

(b) In accord with 28 CFR 0.55(a), prosecution, under section 816(f) of the Act, of criminal violations shall be conducted under the supervision of the Assistant Attorney General in charge of the Criminal Division.

§ 57.2 Responsibility for the Conduct of Investigations.

(a) When an instance of alleged "discrimination" in violation of section 816

(b) (1) of the Act is referred to the Department of Justice by the Department of Defense, the matter shall be assigned initially to the Civil Division.

(b) (1) If the information provided by the Department of Defense indicates that a non-criminal violation may have occurred and further investigation is warranted, such investigation shall be conducted under the supervision of the Assistant Attorney General in charge of the Civil Division.

(2) If the information provided by the Department of Defense indicates that a criminal violation under section 816(f) of the Act may have occurred, the Civil Division shall refer the matter to the Criminal Division. If it is determined that further investigation of a possible criminal violation is warranted, such investigation shall be conducted under the supervision of the Assistant Attorney General in charge of the Criminal Division.

(3) If a referral from the Department of Defense is such that both civil and criminal proceedings may be warranted, responsibility for any further investigation may be determined by the Deputy Attorney General.

§ 57.3 Scope and Purpose of Investigation; Other Sources of Information.

(a) The authority granted the Attorney General by section 816(d) (1) of the Act (e.g., authority to inspect books and records) shall not be utilized until an appropriate official has defined, in an appropriate internal memorandum, the

scope and purpose of the particular investigation.

(b) There shall be no use, with respect to particular information, of the authority granted by section 816(d) (1) of the Act until an appropriate official has determined that the information in question is not available to the Department of Justice from any other Federal agency or other responsible agency (e.g., a State agency).

(c) For purposes of this section, "appropriate official" means the Assistant Attorney General in charge of the division conducting the investigation, or his delegate.

§ 57.4 Expiration Date.

This Part shall remain in effect until expiration, pursuant to section 816(h) of the Act, of the Attorney General's authority under section 816 of the Act.

CHAPTER III—FEDERAL PRISON INDUSTRIES, DEPARTMENT OF JUSTICE

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PART 301—INMATE ACCIDENT COMPENSATION

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AUTHORITY: 18 U.S.C. 4126, 28 CFR 0.99 and by Board of Directors of Federal Prison Industries, Inc.

SOURCE: 37 F.R. 139, Jan. 6, 1972, unless otherwise noted.

§ 301.1 Purpose and scope.

The following procedures are prescribed to insure complete reports covering all work-related injuries and full information to permit prompt action on claims submitted. They carry out the intent of Congress in authorizing the payment of accident compensation to inmates or their dependents for injuries sustained while employed by Federal Prison Industries, Inc. They also include any work activity in connection with

the maintenance or operation of the institution where confined.

§ 301.2 Medical attention.

Whenever an inmate worker is injured while in the performance of assigned duty, regardless of how trivial the hurt may appear, he shall immediately report the injury to his official superior. The employee will take whatever action is necessary to secure for the injured such first aid, medical, or hospital treatment as may be necessary for the proper treatment of the injury. Medical, surgical, and hospital service will be furnished by the medical officers of the institution. Refusal by an inmate worker to accept such medical, surgical, hospital, or first aid treatment may cause forfeiture of any claim for accident compensation for disability resulting therefrom.

§ 301.3 Record of injury and initial claim.

After initiating necessary action for medical attention the work detail supervisor shall immediately secure a record of the cause, nature and exact extent of the injury, and shall see that the injured inmate submits within 48 hours Administrative Form 19, Report of Injury (Inmate). The names and testimony of all witnesses shall be secured. If the injury resulted from the operation of mechanical equipment, an identifying description of the machine or instrument causing the injury shall be given.

§ 301.4 Report of injury.

(a) All injuries resulting in disability of the injured shall be reported by the inmate's work detail supervisor on Ad-

ministrative Form 19, Report of Injury (Inmate). After review by the institution safety officer, or his appointed representative, for completeness, the report shall be delivered to the warden or superintendent of the institution; and then forwarded promptly to the Safety Administrator in the Washington office. All questions on Form 19 shall be answered in complete detail. The physician's statement must be secured on Administrative Form 19 whenever the injury is such as to require the attention of a physician.

(b) In the case of injury to an inmate sustained while employed in any work activity in connection with the maintenance or operation of the institution where confined, the reports and treatment of such injured inmate shall be made under the regulations in effect at the time of such injury. The reports as to treatment and the cause, nature, and extent of the injury shall be made to comply as nearly as possible with the requirements of §§ 301.2, 301.3, and this § 301.4.

§ 301.5 Prerelease claim for compensation.

(a) As soon as release date is determined, but not in advance of 30 days prior to release date, each inmate injured in Industries or on an institutional work assignment during his confinement, who has a residual impairment from a work-related accident, shall be given FPI Form 43 Revised, and advised of his rights to make out his claim for compensation. Every assistance will be given him to properly prepare the claim if he wishes to file. Claims must be made within 60 days following release from the institution when circumstances preclude submission prior to release. However, a claim for disability may be allowed within 1 year after release from Federal custody, for reasonable cause shown. In each case a physical examination shall be given and a definite statement made as to the effect of the alleged injury on the inmate's work capacity after release. Failure to submit to a final physical examination before release shall result in the forfeiture of all rights to compensation and future medical treatment. In each case of visible impairment, disfigurement, or loss of member, photographs shall be taken to show actual condition and shall be transmitted with FPI Form 43.

(b) The claim, after preparation and execution by the inmate, shall be com-

pleted by the physician making the final examination. It shall be forwarded promptly to the office of General Counsel and Review, Federal Bureau of Prisons, in Washington, D.C., accompanied by, or with reference made to, Form 19, Report of Institutional Injury (Inmate).

§ 301.6 Report of death.

If a work-related injury results in death, an FPI Form 43, an Administrative Form 19, and the findings of the local Board of Inquiry will be promptly forwarded to the office of General Counsel and Review in the Washington office.

§ 301.7 Report of repetitions accidents.

If an inmate worker is injured more than once in a comparatively short time and the circumstances of the injury indicates awkwardness or ineptitude that in the opinion of his work supervisor implies a danger of further accidents in the tasks assigned, the inmate shall be relieved of the performance of the task, and assigned another task.

§ 301.8 Inmate work assignments.

The classification committee of each institution, which normally designates inmate work assignments, or whoever makes institutional work assignments will review appropriate medical records, presentence reports, admission summaries, and the like in order to preclude the assignment of individuals to work tasks not compatible with their physical condition at the time of admission. A careful review of all records available is also imperative when inmate workers are reassigned to new and different tasks during their incarceration.

§ 301.9 Noncompensable injuries.

Injuries sustained by inmate workers willfully or with intent to injure someone else, or injuries suffered in any activity not directly related to their work assignment are not compensable, and no claim for compensation for such injuries will be considered. Any injury resulting from willful violation of rules and regulations may prevent award of compensation.

§ 301.10 Compensation for lost time.

No accident compensation will be paid for compensable injuries while the injured inmate remains in custody. However, inmates assigned to Industries will be paid wages for the number of regular work hours in excess of three consecu-

tive inmate mandays they are absent from work because of injuries suffered while in the performance of their work assignments. The rate of pay shall be 66% percent of the standard hourly rate for the grade if the injured is not helping to support dependents, and 75 percent of the standard hourly rate if the injured is helping to support dependents. No claim for compensation will be considered if full recovery occurs while the injured is in custody and no significant disability remains after release.

§ 301.11 Compensation awards.

The amount of accident compensation shall be determined at the time of release regardless of when during the periods of incarceration of the applicant the injury was sustained or of any payment made in lieu of regular earnings or any medical or surgical services furnished prior to such release.

§ 301.12 Establishing the amount of the award.

In determining the amount of accident compensation to be paid consideration will be given to the permanency and severity of the injury and its resulting effect on the work capacity of the inmate in connection with employment after release. The provisions of the Federal Employees' Compensation Act shall be followed when applicable. The minimum wage prescribed by the Fair Labor Standards Act applicable at the time of release shall be used as the wage basis in determining the amount of such compensation. In no event shall compensation be paid in greater amount than that provided in the Federal Employees' Compensation Act. (Title 18, United States Code 4126.)

§ 301.13 Time and method of payment of compensation claim.

(a) Upon determination of the amount of compensation to be paid, a copy of the award will be furnished the claimant and monthly payments will usually begin about the 10th day of the first month following the month in which the award is effective. Payments shall normally be made through the office of the U.S. Probation Officer of the district in which the claimant resides. When the amount of the award exceeds \$500, lump sum payments will rarely be made, and only in exceptional cases where it is clearly shown to be benefi-

cial and necessary for the support of the claimant or dependents.

(b) When requested by the claimant and approved by the Corporation, accident compensation may be paid to dependents of the claimant. In all cases claimant must indicate in detail those persons who are dependent on him, their relationship, and any other relevant facts, including residence and income, so that the Corporation will be able to determine to what extent they are dependent on the claimant. In the event of death, compensation may be paid to dependents under the provisions of the Federal Employees' Compensation Act, if it is determined that the death was causally related to the work-related injury.

§ 301.14 Compensation suspended by misconduct.

Awarded compensation shall be paid only so long as the claimant conducts himself or herself in a lawful manner and shall be immediately suspended upon conviction and incarceration in any jail, correctional, or penal institution. However, the Corporation may pay such compensation or any part of it to the inmate or any dependents of such inmate where and as long as it is deemed to be in the public interest.

§ 301.15 Medical treatment required following discharge.

If medical or hospital treatment is required subsequent to discharge from the institution, for an injury sustained while employed by Federal Prison Industries, Inc., or on an institutional work assignment, claimant should advise the Commissioner of Industries and if the cost of such treatment is allowed by the Corporation, advice to this effect and instructions for obtaining such services will be forwarded. The Corporation will under no circumstances pay the cost of medical, hospital treatment, or any related expense not previously authorized by it.

§ 301.16 Civilian compensation laws distinguished.

Compensation awarded hereunder differs from awards made under civilian workmen's compensation laws in that hospitalization is usually completed prior to the inmate's release from the institution and, except for a 3-day waiting period, the inmate receives wages while absent from work. Other factors necessarily must be considered that do not

enter into the administration of civilian workman's compensation laws. As in the case of Federal employees who allege they have sustained work-related injuries, the burden of proof lies with the claimant to establish that his claimed disability is causally related to his assigned institution employment.

§ 301.17 Employment of attorneys.

It is not necessary that claimants employ attorneys or others to assert the

claim or effect collection of their claim, and under no circumstances will the assignment of any claim be recognized.

§ 301.18 Exclusive remedy.

Inmates who are protected by these accident compensation laws are barred from recovering under the Federal Tort Claims Act. Recovery under the compensation law was declared by the U.S. Supreme Court to be the exclusive remedy in the case of "U.S. v. Demko," 385 U.S. 149, in December of 1966.

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