28

Judicial Administration

Revised as of July 1, 1978

Code of Federal Regulations

28

Judicial Administration

Revised as of July 1, 1978

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF JULY 1, 1978

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 : 1978

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402
Subscription Price: $400 per year; $100 additional for foreign mailing.
Single copies vary in price. This issue $4.50

Table of Contents

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).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

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 3, 1978) the following two lists must be consulted: the "List of CFR Sections Affected (LSA)" 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.

EFFECTIVE DATES

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.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1964, the user should consult the "List of Sections Affected, 1949-1963" published in a separate volume. For the period beginning January 1, 1964, a "List of CFR Sections Affected" is published at the end of each CFR volume.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations which is revised annually as of July 1, is contained in a separate volume entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts, an alphabetical list of CFR subtitles and chapters, and lists of current and superseded CFR volumes are also included in this volume.

An index to the text of Presidential documents appears at the end of each compilation of Title 3, The President.

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

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

INQUIRIES AND SALES

Inquiries concerning technical aspects of the Code should be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-5240). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

FRED J. EMERY,
Director,
Office of the Federal Register.

July 3, 1978.

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, 1978.

The *Code of Federal Regulations* is published under the editorial direction of Robert E. Lewis, assisted by Pearl Einhorn. For this volume, Kathryn McGrant-English was Chief Editor and Laurence L. Davey, Associate Editor.

AN INVITATION TO USERS OF THIS VOLUME

The Office of the Federal Register, as publisher of the *Code of Federal Regulations,* is working with agencies to improve the regulations they issue.

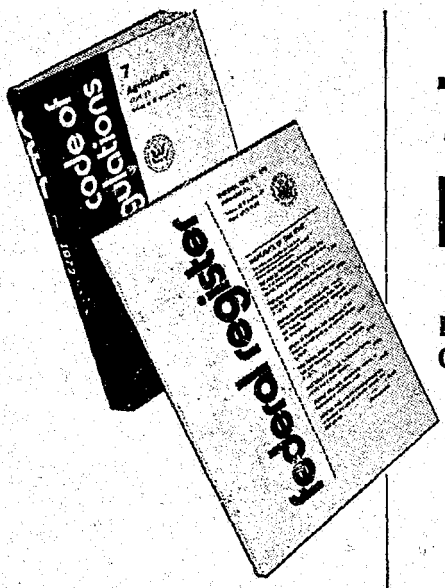
We invite you to help us in this effort by furnishing the following information:

1. Identify those regulations that you find hard to understand. (List Title, Part number and/or section number.)

2. Identify those regulations that you consider well written and easy to understand. (List Title, Part number and/or section number.)

Include any other pertinent comments or suggestions. Send to:

Director of the Federal Register
National Archives and Records Service, GSA
Washington, D.C. 20408



The Federal Register

DAILY SUPPLEMENT TO THE CODE OF FEDERAL REGULATIONS . . .

publishes daily the full text of

- ☐ Presidential proclamations
- ☐ Executive orders
- ☐ Reorganization plans
- ☐ Federal regulations that affect every American

It is through *Federal Register* publication that the public is given the opportunity to participate in Federal rulemaking activities such as motor vehicle safety standards, environmental regulations and many other items of interest to the average consumer. Each issue now contains a "Highlight" listing which gives a brief description of the major items of general interest in that issue.

FEDERAL REGISTER
Subscription Price: $50 a year; $5.00 a month

CODE OF FEDERAL REGULATIONS
Subscription Price: $400.00 a year (Individual volumes separately priced)

THE CODE OF FEDERAL REGULATIONS is a *codification* of the general and permanent Federal regulations. Regulatory material published in the *Federal Register* is keyed to the *Code of Federal Regulations*, which is published under 50 titles, pursuant to 44 U.S.C. 1510.

Mail order form to:
Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

There is enclosed $_____ for _____ subscription(s) to the publications checked below:

..... **FEDERAL REGISTER $50.00 domestic; $95.00 foreign ($5.00 monthly)**

..... **CODE OF FEDERAL REGULATIONS $400.00 domestic; $500.00 foreign**

Name_____

Street Address_____

City_____ State_____ Zip_____

Make check payable to the Superintendent of Documents

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

CROSS REFERENCES: Customs Service, Department of the Treasury: See Customs Duties, 19 CFR Chapter I.
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—.*

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

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

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

30-071 O - 78 - 2

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 revoked: *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 Associate Attorney General
Office of the Deputy Attorney General
Office of the Solicitor General
Office of Legal Counsel
Office of Legislative Affairs
Office for Improvements in the Administration of Justice
Office of Public Information
Office of Management and Finance
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

BOARDS

Board of Immigration Appeals
Board of Parole

[Order No. 565-74, 39 FR 15875, May 6, 1974, as amended by Order No. 635-75, 40 FR 58643, Dec. 18, 1975; Order No. 699-77, 42 FR 15314, Mar. 21, 1977; Order No. 732-

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

77, 42 FR 35970, July 13, 1977; Order No. 755-77, 42 FR 59384, Nov. 17, 1977]

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 for Improvements in the Administration of Justice.

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 for Improvements in the Administration of Justice:

(a) Initiation and design of proposals for improvements in the administration of justice relating to;

(1) Substantive civil and criminal laws;

(2) Procedures in civil and criminal cases;

(3) Organization and jurisdiction of courts and their personnel; and

(4) Effectiveness and fairness in crime control and criminal justice administration.

(b) Assistance in formulating and reviewing legislation related to improvements in the administration of justice.

(c) Assistance in the implementation of measures for improvements in the administration of justice.

(d) Initiation and promotion of cooperation among Federal, State, and local agencies and nongovernmental organizations, groups, and individuals concerned with the administration of justice, to the end that their concerns and efforts may be coordinated in actions to improve the quality of civil and criminal justice.

(e) Administration of the Federal Justice Research Program, a Departmental program for the conduct, by contract or otherwise, of research relating to civil and criminal justice in the United States.

(f) Assistance in the planning of educational and training programs for the professional personnel in the Federal justice system.

(g) Undertaking such other assignments relating to the promotion of justice as may be designated from time to time by the Attorney General.

[Order No. 684-77, 42 FR 8140, Feb. 9, 1977]

§§ 0.7–0.9 [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]

§ 0.13 Legal proceedings.

(a) Each Assistant Attorney General and Deputy Assistant Attorney General is authorized to exercise the authority of the Attorney General under 28 U.S.C. 515(a), in cases assigned to, conducted, handled, or supervised by such official, to designate Department attorneys to conduct any legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which United States attorneys are authorized by law to conduct, whether or not

the designated attorney is a resident of the district in which the proceedings is brought.

(b) Each Assistant Attorney General is authorized to redelegate to Section Chiefs the authority delegated by paragraph (a) of this section, except that such redelegation shall not apply to the designation of attorneys to conduct grand jury proceedings.

[Order No. 725-77, 42 FR 26205, May 23, 1977]

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 of 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 advise and assist the Attorney General in formulating and implementing Department policies and programs and in providing overall supervision and direction of certain organizational units of the Department, as provided in this chapter, and shall:

(1) Develop and supervise implementation of all policies relating to criminal prosecutions and investigations.

(2) Assist the Attorney General in exercising general authority, policy direction, and general control over the Law Enforcement Assistance Administration (42 U.S.C. 3711).

(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 organizational units subject to his supervision or direction, 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) 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.

(5) Establish and direct the implementation of policy relating to the participation of the United States in the International Criminal Police Organization (22 U.S.C. 263(a)).

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

(7) 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 redelegate the authority provided in paragraph (b)(3) of this section to take final action in matters pertaining to the employment, separation and general administration of attorneys in grade GS-15 and below to a Deputy Associate Attorney General.

[Order No. 790-78, 43 FR 26002, June 16, 1978]

§ 0.16 Executive Office for U.S. Attorneys.

The Executive Office for U.S. Attorneys, shall be under the direction of a Director. Under the supervision of the Deputy Attorney General, the Director shall:

(a) Provide general executive assistance and supervision to the offices of the U.S. Attorneys and coordinate and direct the relationship of other organizational units of the Department with such offices.

(b) Publish and maintain, subject to the general supervision of the Attorney General and under the direction of the Deputy Attorney General, a U.S. Attorneys' Manual for the internal guidance of the U.S. Attorneys' Offices and those other organizational units of the Department concerned with litigation.

(c) Supervise the operation of the Attorney General's Advocacy Institute, which shall develop, conduct and authorize professional training for U.S. Attorneys and their Assistants.

[Order No. 665-76, 41 FR 46598, Oct. 22, 1976]

§ 0.17 Office of Public Information.

The Office of Public Information is headed by a Director of Public Information. Subject to the general supervision of the Attorney General, and under the direction of the Deputy 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.

[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. Redesignated and amended by Order No. 790-78, 43 FR 26002, June 16, 1978]

§ 0.18 Office of Privacy and Information Appeals.

The Office of Privacy and Information Appeals is established in the Office of the Deputy Attorney General, under the supervision of the Deputy Attorney General, to assist in acting on Privacy and Freedom of Information appeals under §§ 16.47 and 16.7, respectively, of this chapter, except that in the case of appeals from initial decisions in which the Deputy Attorney General participated this assistance shall be provided by the Office of Legal Counsel. The Office of Privacy and Information Appeals shall provide staff support to the Department Review Committee, established by § 17.38 of this chapter.

[Order No. 674-76, 41 FR 55179, Dec. 17, 1976]

Subpart C-1—Office of the Associate Attorney General

§ 0.19 Associate Attorney General.

(a) The Associate Attorney General shall advise and assist the Attorney General in formulating and implementing Departmental policies and programs, shall provide overall supervision and direction of certain organizational units of the Department, as provided in this chapter, and shall:

(1) Prepare, for the consideration of the Attorney General, recommendations for Presidential appointments to judicial positions and positions within the Department, including United States Attorneys and United States Marshals.

(2) Except as assigned to the Deputy Attorney General by § 0.15(b)(3), exercise the power and authority vested in the Attorney General to take final action in matters pertaining to 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.

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

(4) Coordinate Departmental liaison with the White House Staff and the Executive Office of the President.

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

(b) The Associate Attorney General may redelegate the authority provided in paragraph (a)(2) of this section to take final action in matters pertaining to the employment, separation and general administration of attorneys in grade GS-15 and below to a Deputy Associate Attorney General.

[Order No. 790-78, 43 FR 26002, June 16, 1978]

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 as-

signed 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, the Associate 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; Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

§ 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 National 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, the Associate 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; Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

Subpart E-1—Office of Legislative Affairs

§ 0.27 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 Legislative Affairs:

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

(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, the Associate Attorney General, or the Deputy Attorney General.

[Order No. 504-73, 38 FR 6893, 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; Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

Subpart F—Community Relations Service

§ 0.30 General functions.

Subject to the general supervision of the Attorney General, and under the direction of the Associate 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; Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

§ 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 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-2—Office of Professional Responsibility

SOURCE: Order No. 635-74, 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 inap-

propriate, 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 for criminal matters and the Associate Attorney General for all other matters, the following functions 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, 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 functioning 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 competition and restrictive business practices in international trade.

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

[Order No. 615-75, 40 FR 36118, Aug. 19, 1975, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 725-77, 42 FR 26205, May 23, 1977; Order No. 790-78, 43 FR 26002, June 16, 1978]

§ 0.41 Special functions.

Subject to the general supervision of the Attorney General, and under the direction of the Deputy Attorney General for criminal matters and the Associate Attorney General for all other matters, the following functions 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, Sec. 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 paragraphs (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 Stafety 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 Caustic 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).

(i) Acting on behalf of the Attorney General with respect to sections 252 and 254 of the Energy Policy and Conservation Act, 42 U.S.C. 6272, 6274, including acting on behalf of the Attorney General with respect to voluntary agreements or plans of action established pursuant to section 252 of that Act.

[Order No. 615-75, 40 FR 36118, Aug. 19, 1975, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 769-78, 43 FR 8256, Mar. 1, 1978; Order No. 790-78, 43 FR 26002, June 16, 1978]

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 Associate 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 reappraisement 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 Pub. L. 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, civil proceedings seeking exclusively equitable relief assigned to the Criminal Division by §§ 0.55(i) and 0.61(d), 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 subpenas 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. 423-69, 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. 673-76, 41 FR 54176, Dec. 13, 1976; Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

§ 0.45a Litigation involving Environmental Protection Agency.

With respect to any matter assigned to the Civil Division in which the Environmental Protection Agency is a party, the Assistant Attorney General in charge of the Civil Division, and such members of his staff as he may specifically designate in writing, are authorized to exercise the functions and responsibilities undertaken by the Attorney General in the Memorandum of Understanding between the Department of Justice and the Environmental Protection Agency (42 FR 48942), except that Subpart Y of this part shall continue to govern as authority to compromise and close civil claims in such matters.

[Order No. 764-78, 43 FR 3115, Jan. 23, 1978]

§ 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 FR 16318, 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 intercustodial 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 American 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 Pub. L. 91-271, June 2, 1970, 84 Stat. 275, 279).

[Order No. 437-70, 35 FR 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 for criminal matters and the Associate Attorney General for all other matters, the following functions 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 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 FR 20388, Dec. 31, 1969, as amended by Order 484-72, 37 FR 11317, June 7, 1972; Order 540-73, 38 FR 26910, Sept. 27, 1973; Order No. 543-73, 38 FR 29584, Oct. 26, 1973; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 725-77, 42 FR 26205, May 23, 1977; Order No. 790-78, 43 FR 26002, June 16, 1978]

§ 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 re-

search 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 FR 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 Associate Attorney General for civil matters and the Deputy Attorney General for all other matters, the following functions 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 forfeit-

30-071 O - 78 - 3

ures, offers in compromise and related proceedings) under the Federal Aviation Act, Contraband Transportation Act, Copyrights Act, customs laws, Export Control Act, Federal Alcohol Administration 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) Civil proceedings seeking exclusively equitable relief against investigations, prosecutions, convictions or other criminal justice activities (including without limitation applications for writs of habeas corpus and coram nobis) except that any such proceeding may be conducted, handled, or supervised by another division by agreement between the head of such division 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 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). (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 Bail Reform Act of 1966 (28 U.S.C. 3041-3143, 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 FR 20388, Dec. 31, 1970, as amended by Order No. 446-70, 35 FR 19666, Dec. 29, 1970; Order No. 458-71, 36 FR 10862, June 4, 1971; Order 481-72, 37 FR 9214, May 6, 1972; Order 511-73, 38 FR 8152, March 29, 1973; Order No. 520-73, 38 FR 18380, July 10, 1973; Order No. 543-73, 38 FR 29585, Oct. 26, 1973; Order No. 669-76, 41 FR 52454, Nov. 30, 1976; Order No. 673-76, 41 FR 54176, Dec. 13, 1977; Order No. 766-78, 42 FR 6228, Feb. 14, 1978; Order No. 790-78, 43 FR 26002, June 16, 1978]

§ 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 FR 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, 36 FR 2601, Feb. 9, 1971; Order 511-73, 38 FR 8152, March 29, 1973]

§ 0.60 [Reserved]

§ 0.61 Functions relating to internal security.

Subject to the general supervision of the Attorney General, and under the direction of the Associate Attorney General for civil matters and the Deputy Attorney General for all other matters, the following functions 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) Civil proceedings seeking exclusively equitable relief against laws, investigations or administrative actions designed to protect the national security (including without limitation personnel security programs and the foreign assets control program).

(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) Libels 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; Order 673-76, 41 FR 54176, Dec. 13, 1976; Order No. 790-78, 43 FR 26002, June 16, 1978]

§ 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 of 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]

§ 0.64-1 Central authority under treaty on mutual assistance in criminal matters.

The Assistant Attorney General in charge of the Criminal Division shall have the authority and perform the functions of the "Central Authority" under the Treaty Between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters, which entered into force January 23, 1977.

[Order No. 694-77, 42 FR 12853, Mar. 7, 1977]

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 for criminal matters and the Associate Attorney General for all other matters, the following functions 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 impaired 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 paragraphs (a) (1) and (2) of this section, 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) Civil and criminal suits and matters involving air, water, noise, and other types of pollution, the regulation of solid wastes, toxic substances, pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act, and the control of the environmental impacts of surface coal mining.

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

(f) Civil and criminal suits and matters arising under the Atomic Energy Act of 1954 (42 U.S.C. 2011, et seq.) insofar as it relates to the prosecution of violations committed by a company in matters involving the licensing and operations of nuclear power plants.

(g) Civil and criminal suits and matters relating to the natural and biological resources of the coastal and marine environments, the outer continental shelf, the fishery conservation zone and, where permitted by law, the high seas.

[Order No. 423-69, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 457-71, 36 FR 10862, June 4, 1971; Order 485-72, 37 FR 11724, June 13, 1972; Order 540-73, 38 FR 26910, Sept. 27, 1973; Order No. 543-73, 38 FR 29585, Oct. 26, 1973; Order No. 669-76, 41 FR 52454 Nov. 30, 1976; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 764-78, 43 FR 3115, Jan. 23, 1978; Order No. 790-78, 43 FR 26002, June 16, 1978]

§ 0.65a Litigation involving Environmental Protection Agency.

With respect to any matter assigned to the Land and natural Resources Division in which the Environmental Protection Agency is a party, 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 functions and responsibilities undertaken by the Attorney General in the Memorandum of Understanding between the Department of Justice and

the Environmental Protection Agency (42 FR 48942), except that Subpart Y of this part shall continue to govern as authority to compromise and close civil claims in such matters.

[Order No. 764-78, 43 FR 3115, Jan. 23, 1978]

§ 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 Pub. L. 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 FR 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 FR 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]

§ 0.69 Delegation of Authority to make determinations and grants.

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 exercise the power and authority vested in the Attorney General by Pub. L. 87-852, approved October 23, 1962 (40 U.S.C. 319), with respect to making the determinations and grants necessary in carrying out the purposes of that Act, 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. 736-77, 42 FR 38177, July 27, 1977]

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 for criminal matters and the Associate Attorney General for all other matters, the following functions 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; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 790-78, 43 FR 26002, June 16, 1978]

§ 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 29585, 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 Associate 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 non-personal 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 interagency 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.

(5 U.S.C. 301, 22 U.S.C. 263a, and 28 U.S.C. 509 and 510)

[Order No. 543-73, 38 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; Order 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 722-77, 42 FR 25499, May 18, 1977; Order No. 728-77, 42 FR 32537, June 27, 1977; Order No. 790-78, 43 FR 26003, June 16, 1978]

§ 0.76 Specific functions.

Subject to the general supervision of the Attorney General, and under the direction of the Associate 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, 82d) and deciding questions involving the payment of $25 or less (Comp. Gen. B-161457, July 14, 1976).

(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 101-43.4, 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 Associate 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.

(w) Taking final action, including making all required determinations and findings, in connection with the acquisition of real property for use by the Department of Justice.

[Order No. 543-73, 38 FR 29585, Oct. 26, 1973, as amended by Order No. 565-74, 39 FR 15876, May 6, 1974; Order No. 583-74, 39 FR 41977, Dec. 4, 1974; Order No. 634-75, 40 FR 58644, Dec. 18, 1975; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 722-77, 42 FR 25499, May 18, 1977; Order No. 740-77, 42 FR 40433, Aug. 10, 1977; Order No. 744-77, 42 FR 41407, Aug. 17, 1977; Order No. 790-78, 43 FR 26003, June 16, 1978]

§ 0.77 Operational functions.

Subject to the general supervision of the Attorney General, and under the direction of the Associate 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 ser-

vices 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. 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; as amended by Order 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 722-77, 42 FR 25499, May 18, 1977; Order No. 790-78, 43 FR 26003, June 16, 1978]

§ 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 and, when authorized by the Attorney General, the Deputy 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, 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 connec-

tion 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, Pub. L. 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, 34 FR 20388, Dec. 31, 1969, as amended by Order No. 498-12, 37 FR 25917, Dec. 6, 1972; Order No. 565-74, 39 FR 15876, May 6, 1974; Order No. 623-75, 40 FR 42746, Sept. 16, 1975; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 770-78, 43 FR 8137, Feb. 28, 1978; Order No. 790-78, 43 FR 26003, June 16, 1978]

§ 0.85a Criminal justice policy coordination.

The Federal Bureau of Investigation shall report through the Deputy Attorney General on all its activities, other than intelligence activities. The Bureau shall report all intelligence activities directly to the Attorney General.

[Order No. 790-78, 43 FR 26003, June 16, 1978]

§ 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 FR 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).

(t) Promulgating rules governing the control and management of Federal penal and correctional institutions and providing for the classification, government, discipline, treatment, care, rehabilitation, and reformation of inmates confined therein.

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

41 FR 19220, May 11, 1976; Order No. 675-76, 41 FR 56802, Dec. 30, 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 FR 12212, June 29, 1971]

§ 0.96b Exchange of prisoners.

The Director of the Bureau of Prisons and officers of the Bureau of Prisons designated by him are authorized to receive custody of offenders and to transfer offenders to and from the United States of America under a treaty as referred to in Pub. L. 95-144; to make arrangements with the States and to receive offenders from the States for transfer to a foreign country; to act as an agent of the United States to receive the delivery from a foreign government of any person being transferred to the United States under such a treaty; to render to foreign countries and to receive from them certifications and reports required under a treaty; and to receive custody and carry out the sentence of imprisonment of such a transferred offender as required by that statute and any such treaty.

[Order No. 758-77, 42 FR 63139, Dec. 15, 1977]

§ 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 represent-

30-071 O - 78 - 4

ative 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) The authority conferred by subsection (a) shall not include any extension of the limits of confinement for any prisoner serving a sentence for a crime of violence and not participating in a furlough program as of December 22, 1976, unless such prisoner has served at least twelve months, has not been denied parole, without recommendation for furlough, at his most recent parole hearing (whether such hearing was held before or after extension of the limits of his confinement was granted), and

(1) Is within twelve months of the expiration of his maximum sentence, without reduction, or

(2) Is within twelve months of a date on which he will be eligible for parole from confinement, or

(3) Has served at least ninety percent of his minimum sentence, without reduction.

By October 15 of each year, there shall be submitted to the Deputy Attorney General a report concerning each prisoner serving a sentence for a crime of violence whose limits of confinement have been extended during the twelve-month period ending the preceding September 30, indicating the offense and term for which, and the court by which, the prisoner was sentenced with respect to his present confinement; all other criminal offenses of which the prisoner has been convicted; the date, duration and purpose of each extension of the limits of his confinement; all parole board actions with respect to the prisoner; and all infractions of the terms of extension, violations of prison rules, or criminal offenses with which the prisoner has been officially charged since the beginning of his confinement.

(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, assault with intent to rob or extortion involving the threat or use of violence to person.

[Order No. 636-76, 41 FR 3289, Jan. 26, 1976, as amended by Order No. 676-76, 41 FR 56802, Dec. 30, 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 18330, 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 recognized 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 Redelegation 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 R.

Appendix to Subpart R

[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 channeled 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. 1613 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 transhipments 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 speci-

fied 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 transhipment 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.

(d) The Administrative Law Judge is authorized to sign and issue subpoenas to compel the attendance of witnesses and the production of documents and materials to the extent necessary to conduct administrative hearings pending before him.

[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; 42 FR 57457, Nov. 3, 1977]

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 Associate 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 petitions 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.C. 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 addition 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; Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

§ 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. 11300, 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 Pub. L. 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 priscners 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.

(o) Contracting with the proper authorities of any State, Territory or political subdivision thereof, for the imprisonment, subsistence and care of Federal prisioners under the custody of the U.S. Marshals including contracting for such physical improvements as may be required.

[Order No. 516-73, 38 FR 12917, May 17, 1973, as amended by Order No. 543-73, 38 FR 29586, Oct. 26, 1973; Order No. 777-78, 43 FR 20006, May 10, 1978]

§ 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 Redelegation 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 Associate Attorney General, 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; Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

§ 0.116 Decisions subject to review by Attorney General.

The Board, through the Associate 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; Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

§ 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—United States Parole Commission

AUTHORITY: 28 USC 509 and 510; 5 USC 301; E.O. 11919, June 9, 1976; 18 USC 4201 et seq.

SOURCE: Order No. 663-76, 41 FR 35184, Aug. 20, 1976. unless otherwise noted.

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

§ 0.125 Chairman of U.S. Parole Commission.

The Chairman of the United States Parole Commission shall make any temporary assignment of a Commissioner to act as Vice Chairman, National Appeals Board member, or Regional Commissioner in the case of an absence or vacancy in the position, without the concurrence of the Attorney General.

§ 0.126 Administrative support.

The Department of Justice shall furnish administrative support to the Commission.

§ 0.127 Indigent prisoners.

The United States Parole Commission is authorized to exercise the authority vested in the Attorney General by section 3569 of Title 18, 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.

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 reallot funds allotted by the Assistant Attorney General for Administration and to redelegate to persons within his organizational unit authority and responsibility for the reallotment of such funds and control of obligations and expenditures within reallotments.

(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 absence, disability or vacancy.

(a) In case of vacancy in the office of Attorney General, or of his absence or disability, the Deputy Attorney General shall, pursuant to 28 U.S.C. 508(a) perform the functions and duties of and act as Attorney General. When by reason of absence, disability, or vacancy in office, neither the Attorney General nor the Deputy Attorney General is available to exercise the duties of the office of Attorney General, the Associate Attorney General shall, pursuant to 28 U.S.C. 508(b), perform the functions and duties of and act as Attorney General. In the event of vacancy, absence, or disability in each of these offices, 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) In the event of a vacancy in the office of Associate Attorney General, a Deputy Associate Attorney General designated by the Attorney General shall perform the functions and duties of and act as Associate Attorney General.

(d) In the event of a vacancy in the office of head of any other organizational unit, the ranking deputy (or an equivalent official) 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.

(e) The head of each organizational unit of the Department is authorized, in case of absence from office or disability, to designate the ranking deputy (or an equivalent official) in the unit who is available to act as head. If there is no deputy available to

act, any other official in such unit may be so designated.

[Order No. 755-77, 42 FR 59384, Nov. 17, 1977]

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 Pub. 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. 423-69, 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]

§ 0.138 Bureau of Prisons, Federal Prison Industries, Immigration and Naturalization Service, Drug Enforcement Administration, Executive Office for U.S. Attorneys, 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, the Administrator of the Drug Enforcement Administration, and the Director of the Executive Office for U.S. Attorneys 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, but excluding therefrom all attorney 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. 747-77, 42 FR 43392, Aug. 29, 1977]

§ 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 Department 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 Services 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 Administration, 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 Natural-

ization, 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 authority of the Attorney General to take final action in the following matters, except for the authority to approve use of first-class air accommodations.

(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 Administrator of General Services 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 Administrator of General Services 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 Administrator of General Services 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 accommodations 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; Order No. 787-78, 43 FR 22969, May 30, 1978]

§ 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, the Director of the Executive Office for U.S. Attorneys, 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 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; Order No. 772-78, 43 FR 14009, Apr. 4, 1978]

§ 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 officers 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 certification 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 Administra-

tion, the Administrator; for the Law Enforcement Assistance Administration, the Administrators; for the United States Marshals Service, the Director; and for all other organizational 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, the Director of the Executive Office for U.S. Attorneys, 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 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; Order No. 772-78, 43 FR 14009, Apr. 4, 1978]

§ 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 employees 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 As-

sistant 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 or 10 percent of the original claim, whichever is greater, 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 Associate 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; Order No. 699-77, 42 FR 15315, Mar. 22, 1977; Order No. 781-78, 43 FR 20793, May 15, 1978]

§ 0.161 Recommendations to Associate 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 Associate 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; Order No. 699-77, 42 FR 15315, Mar. 22, 1977]

§ 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 origi-

nal 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 Associate 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; Order No. 699-77, 42 FR 15315, Mar. 22, 1977]

§ 0.165 Recommendations to Associate 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 Associate Attorney General for review and final action. Such report shall be in such form as the Associate 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; Order No. 699-77, 42 FR 15315, Mar. 22, 1977]

§ 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 Associate 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 Associate Attorney General under preceding sections of this Subpart Y, the Director of the Office of Alien Property, shall submit to the Associate 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, pursuit 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 Associate At-

301-671 O - 78 - 5

torney 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; Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

§ 0.168 Redelegation by Assistant Attorneys General.

(a) The Assistant Attorneys General are authorized to redelegate to subordinate division officials and U.S. Attorneys any of the authority delegated by §§ 0.160, 0.162, 0.164, and 0.172, except that when a disagreement between a U.S. Attorney or other Department attorney and a client agency over the terms of a proposed settlement cannot be resolved below the Assistant Attorney General level, the settlement must be presented to the appropriate Assistant Attorney General for approval.

(b) Redelegations under this section shall be in writing and shall be approved by the Associate 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. 543-73, 38 FR 29587, Oct. 26, 1973; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 781-73, 43 FR 20793, May 15, 1978]

§ 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, or the Associate 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; Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

§ 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, compromise, 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 6, 1974]

APPENDIX

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 §§ 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 calims 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 Government 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 FR 7422, June 9, 1964, as amended by Memo No. 415, 30 FR 7819, June 17, 1965; Memo No. 374, 36 FR 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.

[29 FR 7383, June 6, 1964]

[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.

[29 FR 7423, June 9, 1964]

LAND AND NATURAL RESOURCES DIVISION

[Memo. No. 388]

NOTE: Land and Natural Resources Division, Memo No. 388, was superseded by Tax Division, Directive No. 7-76, appearing at 41 FR 53660, Dec. 8, 1976.

TAX DIVISION

[Tax Division Directive No. 29]

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:

Sec. 1. 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 $40,000. 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.

Sec. 2. This Directive supersedes Tax Division Memo. No. 391, approved October 7, 1964.

[41 FR 53005, Dec. 3, 1976]

NOTE: Tax Division, Memo No. 391 was superseded by Tax Division Directive No. 29.

[Tax Division Directive No. 27]

NOTE: Tax Division, Directive No. 27, was superseded by Tax Division, Directive No. 28, appearing at 41 FR 53005, Dec. 3, 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 compromise, 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 exist:

(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(l) 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 FR 15431, Aug. 14, 1971]

LAND AND NATURAL RESOURCES DIVISION

[Directive No. 4-72]

NOTE: Land and Natural Resources Division, Directive No. 4-72, was superseded by Tax Division Directive No. 7-76, appearing at 41 FR 53660, Dec. 8, 1976.

[Directive No. 5-72]

NOTE: Land and Natural Resources Division, Directive No. 5-72, was superseded by Tax Division, Directive No. 7-76, appearing at 41 FR 53660, Dec. 8, 1976.

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 0 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]

TAX DIVISION

[Directive No. 28]

REDELEGATION OF AUTHORITY TO COMPROMISE, SETTLE, AND CLOSE CLAIMS

By virtue of the authority vested in me by Part O 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:

Section 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 action is not opposed by the agency or agencies involved.

Section 2. Subject to the conditions and limitations set forth in Section 6 hereof, the Chiefs of the Civil Trial Sections and Courts 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 $35,000, provided that such action is not opposed by the agency or agencies involved.

Section 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 amount,

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.

Section 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) and (B) shall be $200,000 if the case is subject to reference to the Joint Committee on Taxation.

Section 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 of 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, and provided further that the limiting amount of (A) and (B) shall be $200,000 if the case is subject to reference to the Joint Committee on Taxation.

Section 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 0 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 authority delegated by this Directive as it relates to any particular case or category of cases, or to any part thereof.

Section 7. This Directive supersedes Tax Division Directive No. 27, approved May 31, 1976.

Section 8. This Directive shall become effective December 3, 1976.

[41 FR 53005, Dec. 3, 1976]

LAND AND NATURAL RESOURCES DIVISION

[Directive No. 7-76]

REDELEGATION OF AUTHORITY TO INITIATE AND TO COMPROMISE LAND AND NATURAL RESOURCES DIVISION CASES

This directive supersedes Land and Natural Resources Memorandum No. 388 (appendix to Subpart Y) and Directives Nos. 4-72 and 5-72. By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations, and particularly §§ 0.65, 0.160, 0.162, 0.164, 0.166, and 0.168 thereof, I hereby redelegate to the Deputy Assistant Attorney General, certain Section Chiefs, and to the United States Attorneys, the following authority to act in connection with, and to compromise, Land and Natural Resources Division cases:

SECTION I—AUTHORITY TO INITIATE CASES

A. *Delegation to United States Attorneys*—1. *Land Cases.* United States 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 authorized field officer of the department or agency concerned, without prior authorization from the Land and Natural Resources Division, in the following-described cases:

(a) Actions to recover possession of property from tenants, squatters, trespassers, or others, and actions to enjoin trespasses on Federal property;

(b) Actions to recover damages resulting from trespasses when the amount of the claim for actual damage based upon an innocent trespass does not exceed $40,000 (The United States Attorneys may seek recovery of amounts exceeding $40,000 (i) if the actual damages are $40,000 or less and State statutes permit the recovery of multiple damages, e.g., double or treble, for either a willful or an innocent trespass; or (ii) if the actual damages are $40,000 or less, but the action is for conversion to obtain recovery of the enhanced value of property severed and removed in the trespass);

(c) Actions to collect delinquent rentals or damages for use and occupancy of not more than $40,000;

(d) Actions to collect costs of forest fire suppression and other damages resulting from such fires if the total claim does not exceed $40,000;

(e) Actions to collect delinquent operation and maintenance charges accruing on Indian irrigation projects and federal reclamation projects of not more than $40,000; and

(f) 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.

2. *Environmental Cases.* United States Attorneys are hereby authorized to act, without prior authorization from the Land and Natural Resources Division, on behalf of any other department or agency in re-

sponse to a direct request in writing from an authorized field officer of the department or agency concerned, in the following environmental cases:

(a) Civil or criminal actions involving the filling of, the deposit of dredged or fill material upon, or the alteration of the channels of, the waters of the United States, in violation either of section 10 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 403), or of Sections 301, 309 and 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1311, 1319 and 1344, respectively), or of both statutes;

(b) Any other civil or criminal actions to enforce the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.); and

(c) Civil or criminal actions involving the discharge of refuse into the navigable waters of the United States and, in certain cases, their tributaries, in violation of section 13 of the Act of March 3, 1899 (33 U.S.C. 407), except for

(i) In rem actions against vessels, which actions shall continue to be handled in the manner set forth in Departmental Memorandums 374 and 376, dated June 3, 1964, and shall continue to be under the jurisdiction of the Civil Division; and

(ii) Criminal actions involving the discharge either of oil or of hazardous substances, for which discharge a government agency either has imposed a civil penalty pursuant to section 311(b)(6) of the Federal Water Pollution Control Act Amendment of 1972 (33 U.S.C. 1321(b)(6)), or has under consideration the imposition of such a penalty.

3. *Notification to Division of Direct Referral.* In each case referred to the United States Attorneys pursuant to the authority set forth in Subparagraphs 1 and 2 above, the United States Attorney shall, prior to taking action, assure that a copy of the authorized field officer's written request has been forwarded to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C., 20530.

SECTION II—AUTHORITY TO COMPROMISE, DISMISS, OR CLOSE CASES

A. *Delegation to Deputy Assistant Attorney General.* Subject to the limitations imposed by Paragraph D of this Section, 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.

B. *Delegation to Section Chiefs.* Subject to the limitations imposed by Paragraph D of this Section, the Chiefs of the Land Acquisition, Indian Claims, Pollution Control, Indian Resources, and General Litigation Sections 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 $75,000, and of claims in behalf of the United States in which the gross amount of the original claim does not exceed $75,000.

C. *Delegations to United States Attorneys—1. Compromise of Land Cases.* Subject to the limitations imposed by Paragraph D of this section, United States Attorneys are authorized, without the prior approval of the Land and Natural Resources Division, to accept or reject offers in compromise in the direct referral land cases listed in Subparagraph A-1 of Section I, if the authorized field officer of the interested agency concurs in writing, except that a United States 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. *Compromise of Environmental Cases.* Subject to the limitations imposed in Paragraph D of this Section, United States Attorneys are hereby authorized, without the prior approval

of the Land and Natural Resources Division, to accept or reject offers in compromise in actions to collect civil penalties assessed pursuant to section 311(b)(6) of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1321(b)(6)). With this one exception, *none of the direct referral cases listed in Subparagraph A-2 of Section I may be settled or compromised by a United States Attorney without the prior approval of the Assistant Attorney General of the Land and Natural Resources Division.*

3. *Compromise of Condemnation Cases.* (a) Subject to the limitations imposed in Paragraph D of this section, United States Attorneys are hereby authorized, without the prior approval of the Land and Natural Resources Division, to accept or reject offers in compromise of claims against the United States for just compensation in condemnation proceedings in any case in which

(i) The gross amount of the proposed settlement does not exceed $40,000; and

(ii) The settlement is approved in writing (the written approval to be retained in the file of the United States 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

(iii) 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; and

(iv) The case does not involve the revestment 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(b). When a United States Attorney has settled a condemnation proceeding under the authority conferred upon him by the foregoing subparagraph, he shall promptly secure the entry of judgment and distribution of the award, and shall take all other steps necessary to dispose of the matter completely. The United States Attorney concerned shall also immediately forward to the Department a report, in the form of a letter or memorandum, bearing his signature or showing his personal approval, stating the action taken and containing 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.

4. *Closing or Dismissal of Matters and Cases.* Subject to the limitations imposed in Paragraph D of this section, a direct referral matter described in Section I may be closed without action by the United States 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. Except for claims on behalf of Indians or Indian tribes, the United States 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. With respect to claims asserted by the United States on behalf of individual Indians or Indian tribes, the United States 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 that the claim is uncollectable; claims on behalf of Indian individuals and tribes may not be closed merely because the cost of collection might exceed the amount of the claim.

D. *Limitations on delegations.* The authority to compromise, close or dismiss cases delegated by Paragraphs A, B and C of this section may not be exercised when,

(a) For any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims to-

taling more than the respective amounts designated above;

(b) 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

(c) The agency or agencies involved are opposed to the proposed closing or dismissal of a case, or acceptance or rejection of the offer in compromise.

If any of the conditions listed above exist, the matter shall be submitted for resolution to the Assistant Attorney General in charge of the Land and Natural Resources Division.

Effective date of this directive. This Directive shall be effective on December 8, 1976.

[41 FR 53660, Dec. 8, 1976]

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 FR 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.

§ 0.177a Antitrust Civil Investigative Demands.

The Assistant Attorney General in charge of the Antitrust Division is authorized to issue orders pursuant to section 6004 of title 18, United States Code, to compel testimony in response to antitrust civil investigative demands for oral testimony. Issuance of such orders shall be subject to the concurrence of the Assistant Attorney General in charge of the Criminal Division.

[Order No. 753-77, 42 FR 56730, Oct. 28, 1977]

§ 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 Attorney Generals to be exercised solely during the absence of such Assistant Attorney 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: 28 U.S.C. 509, 510; 5 U.S.C. 301.

SOURCE: 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 Associate Attorney General. Final authority to implement the proposed change is contingent

30-071 O - 78 - 6

upon the approval of the Attorney General.

[Order No. 565-74, 39 FR 15877, May 6, 1974, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

§ 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.

AUTHORITY: U.S. Const., Art. II, sec. 2, and authority of the President as Chief Executive.

SOURCE: Order No. 288-62, 27 FR 11002, Nov. 10, 1962, unless otherwise noted.

CROSS REFERENCE: For Organization Statement, Office of the Pardon Attorney, see Subpart G of Part O 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 courtmartial 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.

AUTHORITY: 28 CFR Chapter 1, Part 0, Subpart I (18 U.S.C. 3655, 4164, 4201–4218, 4254–6 and 5005–5041).

SOURCE: 42 FR 39809, Aug. 5, 1977, unless otherwise indicated.

§ 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 other National Commissioners who are assigned in the headquarters office of the Commission in Washington, D.C. The Vice Chairman shall be the Chairman of the National Appeals Board. In the absence or vacancy of the Vice Chairman, the Chairman of the Commission functions as the Chairman of the National Appeals Board. In the absence or vacancy of a member the Chairman of the Commission functions as a 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. The Vice Chairman of the Commission shall be the presiding officer of the National Commissioners. In the absence or vacancy of the Vice Chairman, the Chairman of the Commission shall be presiding officer of the National Commissioners.

(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 ineligibile 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) The term "effective date of parole" refers to a parole date that has been approved following an in-person hearing held within six months of such date, or following a pre-release record review.

(i) 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.

[42 FR 39809, Aug. 5, 1977, as amended at 43 FR 22707, May 26, 1978]

§ 2.2 Eligibility for parole; adult sentences.

(a) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205 (a) [or pursuant to former 18 U.S.C. 4202] may be released on parole in the discretion of the Commission after completion of one-third of such term or terms, or after completion of ten years of a life sentence or of a sentence of over thirty years.

(b) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205 (b)(1) [or pursuant to former 18 U.S.C. 4208(a)(1)] may be released on parole in the discretion of the Commissioner after completion of the court-designated minimum term, which may be less than but not more than one-third of the maximum sentence imposed.

(c) A Federal prisoner serving a maximum term or terms of more than one year imposed pursuant to 18 U.S.C. 4205 (b)(2) [or pursuant to former 18 U.S.C. 4208(a)(2)] may be released on parole at any time in the discretion of the Commission.

(d) If the Court has imposed a maximum term or terms of more than one year pursuant to 18 U.S.C. 924(a) or 26

U.S.C. 5871 [violation of Federal gun control laws], a Federal prisoner serving such term or terms may be released at any time in the discretion of the Commission as if sentenced pursuant to 18 U.S.C. 4205(b)(2).

(e) A Federal prisoner serving a maximum term or terms of one year or less is not eligible for parole consideration by the Commission, except that a Federal prisoner sentenced prior to May 14, 1976, to a maximum term or terms of at least six months but not more than one year is eligible for parole consideration after service of one-third of such term or terms.

[42 FR 41408, Aug. 17, 1977]

§ 2.3 Same; Narcotic Addict Rehabilitation Act.

A Federal prisoner committed under the Narcotic Addict Rehabilitation Act may not be released on parole prior to completion of at least 6 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 reparole consideration is not required unless the revocation of parole was based on drug-related violations. (18 U.S.C. 4254.)

[42 FR 63774, Dec. 20, 1977]

§ 2.4 Same; juvenile delinquents.

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. Magistrate shall find that retention by the prisoner or 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 of 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 or psychological 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 Prison's 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) The imposition of a sentence of imprisonment for civil contempt shall interrupt the running of any sentence of imprisonment being served at the time the sentence of civil contempt is imposed, and the sentence or sen-

tences so interrupted shall not commence to run again until the sentence of civil contempt is lifted.

(c) Service of the sentence of a committed youth offender or a person committed under the Narcotic Addict Rehabilitation Act commences to run from the date of conviction and is interrupted only when such prisoner or parolee (1) is on bail pending appeal; (2) is in escape status; (3) has absconded from parole supervision; or (4) comes within the provisions of paragraph (b) of this section.

[42 FR 39809, Aug. 5, 1977, as amended at 42 FR 52399, Sept. 30, 1977]

§ 2.11 Application for parole; notice of hearing.

(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 each prisoner who is eligible for an initial parole hearing pursuant to § 2.12. 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.

(e) At least thirty days prior to the initial hearing (and prior to any hearing conducted pursuant to § 2.14), the prisoner shall 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 now 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.

§ 2.12 Initial hearings: Setting presumptive release dates.

(a) An initial hearing shall be conducted within 120 days of a prisoner's arrival at a federal institution, or as soon thereafter as practicable, in the following cases:

(1) A prisoner with no minimum term of imprisonment; and

(2) A prisoner with a minimum term of imprisonment and a maximum term or terms of less than seven years.

(b) In the case of prisoner with a minimum term of imprisonment and maximum term or terms of seven years or more, an initial hearing shall be conducted at least thirty days prior to the completion of the minimum term of imprisonment, or as soon thereafter as practicable.

(c) Following initial hearing: (1) The Commission shall set a presumptive release date (either by parole or by mandatory release), or set an effective date of parole, in the case of every prisoner with a maximum term or terms of less than seven years.

(2) In the case of prisoner with a maximum term or terms of seven years or more, the Commission shall either set a presumptive release date, if such date falls within four years of the initial hearing, or continue the prisoner to a four-year reconsideration hearing pursuant to § 2.14(c), or set an effective date of parole.

(d) Notwithstanding the above paragraph, a prisoner may not be paroled

earlier than the completion of any judicially set minimum term of imprisonment or other period of parole ineligibility fixed by law.

(e) A presumptive parole date shall be contingent upon a continued record of good conduct and the establishment of a suitable release plan, and shall be subject to the provisions of §§ 2.14 and 2.34. In the case of a prisoner sentenced under the Narcotic Addict Rehabilitation Act, 18 U.S.C. 4254, a presumptive parole date shall also be contingent upon certification by the Surgeon General pursuant to § 2.3 of these rules.

§ 2.13 Initial hearing; procedure.

(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.

(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 conclusions 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) 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. Written notice of the official decision, or 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. If parole is denied, or a release date is set in excess of six months from the date of the hearing, the prisoner shall also receive in writing the reasons therefor.

(d) 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.

(e) 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.

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 proceedings.

(a) *Interim proceedings.* The purpose of an interim proceeding required by 18 U.S.C. 4208(h) shall be to consider any significant developments or changes in the prisoner's status that may have occurred subsequent to the initial hearing.

(1) Notwithstanding a previously ordered presumptive release date or four-year reconsideration hearing, interim hearings shall be conducted by an examiner panel pursuant to the procedures of § 2.13 (b), (c), (e), and (f) at the following intervals from the date of the last hearing:

(i) In the case of a prisoner with a maximum term or terms of less than seven years, every eighteen months (until released).

(ii) In the case of a prisoner with a maximum term or terms of seven years or more, every twenty-four months (until released).

(2) However, in the case of a prisoner with an unsatisfied minimum term, the first interim hearing shall be deferred until the docket of hearings immediately preceding completion of the minimum term.

(3) Following an interim hearing, the Commission may:

(i) Order no change in the previous decision;

(ii) Advance a presumptive release date, or the date of a four-year reconsideration hearing. However, it shall be the policy of the Commission that once set, a presumptive release date or the date of a four-year reconsideration hearing shall not be advanced except under clearly exceptional circumstances;

(iii) Retard or rescind a presumptive parole date for reason of disciplinary infractions. In a case in which disciplinary infractions have ocurred, the interim hearing shall be conducted in accordance with the procedures of § 2.34(a).

(b) *Pre-release reviews.* The purpose of a pre-release review shall be to determine whether the conditions of a presumptive release date by parole have been satisfied.

(1) At least sixty days prior to a presumptive parole date, an examiner panel shall review the case on the record, including a current institutional progress report.

(2) Following review and recommendation, the Regional Commissioner may:

(i) Approve the parole date;

(ii) Advance or retard the parole date as provided by § 2.29(c);

(iii) Retard the parole date or commence recission proceedings as provided by § 2.34.

(3) A pre-release review pursuant to this section shall not be required if an inperson hearing has been held within six months of the parole date.

(c) *Four-year reconsideration hearings.* A four-year reconsideration hearing shall be a full reassessment of the case pursuant to the procedures of § 2.13 to determine whether the setting of a presumptive release date would be appropriate at that time.

(1) A four-year reconsideration hearing shall be ordered following initial hearing in any case in which a release date is not set.

(2) Following a four-year reconsideration hearing, the Commission may:

(i) Set a presumptive release date, if such date falls within four years of the hearing; or

(ii) Continue the prisoner to a further four-year reconsideration hearing if no presumptive release date is set.

[42 FR 39809, Aug. 5, 1977, as amended at 42 FR 44234, Sept. 2, 1977]

§ 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 for 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 recommittal 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 provided hearings at such facilities or may be transferred by the Bureau of Prisons to Federal Institutions for hearings by examiner panels 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: (i) Involved an unusual degree of sophistication or planning or (ii) 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.

(c)(1) Any case designated for the original jurisdiction of the Commission shall remain an original jurisdiction case unless designation is removed pursuant to this subsection.

(2) A case found to be inappropriately designated for the Commission's original jurisdiction, or to no longer warrant such designation, may be removed from original jurisdiction under the procedures specified in paragraph (a) of this section following a regularly scheduled hearing or the reopening of the case pursuant to § 2.28. Removal from original jurisdiction may also occur by majority vote of the Commission considering an appeal pursuant to § 2.27. Where the circumstances warrant, a case may be redesignated as original jurisdiction pursuant to the provisions of paragraphs (a) and (b) of this section.

[42 FR 39809, Aug. 5, 1977; 42 FR 44234, Sept. 2, 1977]

§ 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 depreciate 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) Pre-sentence 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 U.S. 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.

Guidelines for decisionmaking

[Customary total time to be served before release (including jail time in months)]

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)
ADULT				
Low				
Escape (open institution or program (e.g., CTC, work release)—absent less than 7 d. Marihuana or soft drugs, simple possession (small quantity for own use). Property offenses (theft or simple possession of stolen property) less than $1,000.	6-10	8-12	10-14	12-18
Low moderate				
Alcohol law violations. Counterfeit currency (passing/possession less than $1,000). Immigration law violations. Income tax evasion (less than $10,000). Property offenses (forgery/fraud/theft from mail/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property with intent to resell) less than $1,000. Selective Service Act violations.	8-12	12-16	16-20	20-28

Guidelines for decisionmaking

(Customary total time to be served before release (including jail time in months))

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)
ADULT				
Moderate				
Bribery of a public official (offering or accepting)				
Counterfeit currency (passing/possession $1,000 to $19,999).				
Drugs:				
Marihuana, possession with intent to distribute/sale (small scale (e.g., less than 50 lb)).				
"Soft drugs", possession with intent to distribute/sale (less than $500).				
Escape (secure program or institution, or absent 7 d or more—no fear or threat used).	12–16	16–20	20–24	24–32
Firearms Act, possession/purchase/sale (single weapon: not sawed-off shotgun or machine gun).				
Income tax evasion ($10,000 to $50,000)				
Mailing threatening communication(s)				
Misprision of felony				
Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property) $1,000 to $19,999.				
Smuggling/transporting of alien(s)				
Theft of motor vehicle (not multiple theft or for resale).				
High				
Counterfeit currency (passing/possession $20,000 to $100,000).				
Counterfeiting (manufacturing)				
Drugs:				
Marihuana, possession with intent to distribute/sale (medium scale (e.g., 50 to 1,999 lb).				
"Soft drugs", possession with intent to distribute/sale ($500 to $5,000).	16–20	20–26	26–34	34–44
Explosives, possession/transportation				
High				
Firearms Act possession/purchase/sale (sawed-off shotgun(s), machine gun(s), or multiple weapons).				
Mann Act (no force—commercial purposes)				
Theft of motor vehicle for resale				
Property offenses [theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property) $20,000 to $100,000.				
Very high				
Robbery (weapon or threat)				
Breaking and entering (bank or post office-entry or attempted entry to vault).				
Drugs:				
Marihuana, possession with intent to distribute/sale (large scale (e.g., 2,000 lb or more)).				
"Soft drugs", possession with intent to distribute/sale (over $5,000).	26–36	36–48	48–60	60–72
"Hard drugs", possession with intent to distribute/sale (not exceeding $100,000).				
Extortion				
Mann Act (force)				
Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property) over $100,000 but not exceeding $500,000.				

CONTINUED

1 OF 5

Guidelines for decisionmaking

[Customary total time to be served before release (including jail time in months)]

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)
ADULT				
Greatest I: Aggravated felony (e.g., robbery: Weapon fired—no serious injury); explosive detonation (involving potential risk of physical injury to person(s)—no serious injury occurred); robbery (multiple instances (2-3)). Hard drugs (possession with intent to distribute/sale—large scale (e.g., over $100,000)); sexual act—force (e.g., forcible rape).	40-55	55-70	70-85	85-110.
Greatest II: Aggravated felony—serious injury (e.g., injury involving substantial risk of death, or protracted disability, or disfigurement); aircraft hijacking; espionage; kidnaping; homicide (intentional or committed during other crime).	Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variation possible within the category.			
Same as above, except that the suggested ranges are as follows:				
Greatest I	30-40	40-50	50-60	60-78
Greatest II	Greater than above—however, specific ranges are not given due to the limited number of cases and the extreme variation possible within the category.			
YOUTH/NARA				
Low				
Escape (open institution or program (e.g., CTC, work release)—absent less than 7 d).				
Marihuana or soft drugs, simple possession (small quantity for own use).	6-10	8-12	10-14	12-18
Property offenses (theft or simple possession of stolen property) less than $1,000.				
Low moderate				
Alcohol law violations				
Counterfeit currency (passing/possession less than $1,000).				
Immigration law violations				
Income tax evasion (less than $10,000)	8-12	12-16	16-20	20-26
Property offenses (forgery/fraud/theft from mail/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property with intent to resell) less than $1,000.				
Selective Service Act violations				
Moderate				
Bribery of a public official (offering or accepting)				
Counterfeit currency (passing/possession $1,000 to $19,999).				
Drugs:				
Marihuana, possession with intent to distribute/sale (small scale (e.g., less than 50 lb.))				
"Soft drugs," possession with intent to distribute/sale (less than $500).				
Escape (secure program or institution, or absent 7 d or more—no fear or threat used).				
Firearms Act, possession/purchase/sale (single weapon: not sawed-off shotgun or machine gun).	9-13	13-17	17-21	21-28
Income tax evasion ($10,000 to $50,000)				
Mailing threatening communication(s)				
Misprision of felony				

Guidelines for decisionmaking

[Customary total time to be served before release (including jail time in months)]

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)
Adult				
Moderate				
Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property) $1,000 to $19,999.				
Smuggling/transporting of alien(s)				
Theft of motor vehicle (not multiple theft or for resale).				
High				
Counterfeit currency (passing/possession $20,000 to $100,000).				
Counterfeiting (manufacturing)				
Drugs:				
Marihuana, possession with intent to distribute/sale (medium scale (e.g., 50 to 1,999 lb)).				
"Soft drugs", possession with intent to distribute/sale ($500 to $5,000).				
Explosives possession/transportation	12-16	16-20	20-26	26-32
Firearms Acts, possession/purchase/sale (sawed-off shotgun(s), machine gun(s), or multiple weapons).				
Mann Act (no force—commercial purposes)				
Theft of motor vehicle for resale				
Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property) $20,000 to $100,000.				
Very high				
Robbery (weapon or threat)				
Breaking and entering (bank or post office-entry or attempted entry to vault).				
Drugs:				
Marihuana, possession with intent to distribute/sale (large scale (e.g., 2,000 lbs or more)).				
"Soft drugs", possession with intent to distribute/sale (over $5,000).				
"Hard drugs", possession with intent to distribute/sale (not exceeding $100,000).	2-27	27-34	34-41	41-48
Extortion				
Mann Act (force)				
Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property) over $100,000 but not exceeding $500,000.				

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, and hashish.

7. Conspiracy shall be rated for guidelines purposes according to the underlying offense behavior if such behavior was consummated. If the offense is unconsummated, the conspiracy will be rated one step below the consummated offense.

SALIENT FACTOR SCORE

Case name ..... Register No .....

Item A .....

No prior convictions (adult or juvenile)=3.
1 prior conviction=2.
2 or 3 prior convictions=1.
4 or more prior convictions=0.

Item B ..... □
No prior incarcerations (adult or juvenile)=2.
1 or 2 prior incarcerations=1.
3 or more prior incarcerations=0.
Item C ..... □
Age at first commitment (adult or juvenile):
26 or older=2.
18 to 25=1.
17 or younger=0.
Item D ..... □
Commitment offense did not involve auto theft or check(s) (forgery/larceny)=1.
Commitment offense involved auto theft or check(s)=0.
Item E ..... □
Never had parole revoked or been committed for a new offense while on parole, and not a probation violator this time=1.
Has had parole revoked or been committed for a new offense while on parole, or is a probation violator this time=0.
Item F ..... □
No history of heroin or opiate dependence=1.
Otherwise=0.
Item G ..... □
Verifed employment (or full-time school attendance) for a total of at least 6 mo during the last 2 yr in the community=1.
Otherwise=0.
Total score ..... □

[42 FR 39809, Aug. 5, 1977, 42 FR 44234, Sept. 2, 1977, as amended at 42 FR 52399, Sept. 30, 1977]

§ 2.21 Reparole consideration guidelines.

(a) If revocation is based upon administrative violation(s) only [i.e., violations others than new criminal conduct] the following guidelines shall apply.

Positive supervision history (examples)	*Customary time to be served before rerelease (months)*
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
a. Serious alcohol/drug abuse (e.g. readdiction 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	8-16

(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 a 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 counted as time in custody. This does not affect the computation of the total violator term as provided by §§ 2.47 (b) and (c) and 2.52 (c) and (d).

(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. Minor 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 office setting forth the nature of the information to be discussed. Such interview may be conducted by a Commissioner or assigned staff, and a written summary of each such interview shall be prepared and placed in the prisoner's file.

[43 FR 22707, May 28, 1978]

§ 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 §§ 2.43 and 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.

[42 FR 39809, Aug. 5, 1977; 42 FR 44234, Sept. 2, 1977]

§ 2.24 Review of panel recommendation by the Regional Commissioners.

(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 provisions of paragraph (a) of this section, a Regional Commissioner may:

(1) On the motion of the Administrative Hearing Examiner, modify or reverse the recommendation of a hearing examiner panel that is outside the guidelines to bring the decision closer to (or to) the nearer limit of the appropriate guideline range; or

(2) On his own motion, modify the recommendation of a hearing examiner panel to bring the decision to a date not to exceed six months from the date recommended by the examiner panel.

§ 2.25 Regional appeal.

(a) A prisoner or parolee may submit to the responsible Regional Commissioner a written appeal of a decision to grant, rescind, deny, or revoke parole, except that an 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, at-

20-071 O - 78 - 7

torneys, 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 on the following grounds:

(1) That the guidelines were incorrectly applied as to any or all of the following:

(i) Severity rating;

(ii) Salient factor score;

(iii) Time in custody;

(2) That a decision outside the guidelines was not supported by the reasons or facts as stated;

(3) That especially mitigating circumstances (for example, facts relating to the severity of the offense or the prisoner's probability of success on parole) justify a different decision;

(4) That a decision was based on erroneous information, and the actual facts justify a different decision;

(5) That the Commission did not follow correct procedure in deciding the case, and a different decision would have resulted if the error had not occurred;

(6) There was significant information in existence but not known at the time of the hearing;

(7) There are compelling reasons why a more lenient decision should be rendered on grounds of compassion.

§ 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 date of the decision on a form provided for this purpose. Appeals will be reviewed at the next regularly scheduled meeting of the Commission provided they are received thirty days in advance of such meeting. Appeals received in the office of the Commission's National Appeals Board in Washington, D.C., less than thirty days in advance of the next regularly scheduled meeting will be reviewed at the next following regularly scheduled meeting. A quorum of five Commissioners shall be required and all decisions shall be by majority vote. This appellate decision shall be final.

(b) 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 NW., Washington, D.C. 20537. Written material should be submitted at least two weeks in advance of the meeting at which the appeal will be heard, in order to permit consideration thereof by the Commission.

[43 FR 4978, Feb. 7, 1978]

§ 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 operative until a certificate of parole has been delivered to the prisoner.

(b) An effective date of parole shall not be set for a date more than six months from the date of the hearing. Residence in a Community Treatment Center as part of a parole release plan generally shall not exceed one hundred and twenty days.

(c) When an effective date of parole has been set by the Commission, release on that date shall be conditioned upon 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 an effective parole date. An effective parole grant may be retarded for up to one hundred and twenty days without a hearing for development and approval of release plans.

(d) When an effective date of parole falls on a Saturday, Sunday, or legal holiday, the warden of the appropriate institution shall be authorized to release the prisoner on the first working day preceding such date.

§ 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 officals, 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, provid-

ing 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 advisor shall serve under the direction of and in cooperation with the probation officer to whom the parolee is assigned.

[42 FR 39809, Aug. 5, 1977; 42 FR 44234, Sept. 2, 1977]

§ 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 Commission'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 retard 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 recission 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 miconduct 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) Consideration of disciplinary infractions in cases with presumptive parole dates may be deferred until the commencement of the next in-person hearing or the prerelease record review required by § 2.14(b). While prisoners are encouraged to earn the restoration of forfeited or withheld good time, the Commission will consider the prisoner's overall institutional record in determining whether the

conditions of a presumptive parole date have been satisfied.

(4) 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 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. Insofar 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.

Name 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 parole 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 within two days 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 within two days with his probation officer or 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 within two days 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 phis 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 or 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 section 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 § 4255 for all or part of the period of parole.

(e) A parolee may petition the Commission on his own behalf for a modification of conditions pursuant to this section.

(f) The notice provisions of paragraph (b) of this section shall not apply to modification of parole or mandatory release conditions pursu-

ant 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 outside 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, the concurrence of two out of three Commissioners shall be required to grant such permission.

(c) 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 release 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 parole to determine the need for continued supervision. In calculating such two-year prior 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. Such hearing may be conducted by a hearing examiner or other official designated by the Regional Commissioner.

(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) of this section 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 Commissior 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:

(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 institutional 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.

§ 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 § 2.48(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 § 2.52 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 in-

terview 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, reinstatement 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 of parole or mandatory release shall constitute probable cause for the purposes of this section and no preliminary interview shall be conducted unless otherwise ordered by the regional Commissioner.

(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.

(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. However, the Regional Commissioner may, on his own motion, designate a case for a local revocation hearing.

(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. Adverse witnesses will not be requested to appear at institutional revocation hearings.

(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 Commis-

sion to appear, the regional Commissioner may issue a subpoena for the appearance of such witness. 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 paragraph (a) of this section 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 commended 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 of parole, which is punishable by a term of imprisonment, forfeiture of the time from the date of such release to the date of execution of the warrant shall be ordered, 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 that trial court to impose any term of confinement or imprisonment in any penal facility. If such conviction occurs subsequent to a revocation hearing (i) which the Commission makes an independent finding of violation of conditions of parole,

the Commission may reopen the case and schedule a further hearing relative to time forfeiture and such further disposition as may be appropriate. 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) and (c).

(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 Deliquency 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), which ever 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 of statutory good time shall be deemed in itself to indicate that the prisoner has frequently or seriously violated the rules of the institution or institutions in which he has been confined.

(b) When feasible, 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. 4215.

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 Boared 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.

[42 FR 39821, Aug. 5, 1977, as amended at 43 FR 17470, Apr. 25, 1978]

§ 2.55 Disclosure of Records.

(a) 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 pursuant to its regulations 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) of this section to determine whether or not to apply any of the exceptions to disclose set forth in paragraph (b) of this section. 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) of this section, 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) of this section 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 releases, 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 competition 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) of this section. 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 reparoled 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 Prior orders.

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.

PART 3—GAMBLING DEVICES

Sec.

AUTHORITY: 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: Order No. 331-65, 30 FR 2316, Feb. 20, 1965, unless otherwise noted.

CROSS REFERENCE: For Organization Statement, Federal Bureau of Investigation, see Subpart P of Part O 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 Attorney 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.

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 O 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, a 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 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 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 informa-

30-071 O - 78 - 8

tion 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 disbarring 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.

§ 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.

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 O 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 Re-

tirement 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 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.

§ 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 disbarring 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 conclusions of law (unless waived by the parties); tran-

script 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.

Sec.

AUTHORITY: Sec. 1, 56 Stat. 248, 257; 22 U.S.C. 620.

SOURCE: 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(b) 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. 376-67, 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 contributions, 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. 376-67, 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 re-

quire 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 6332, 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 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 section 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. 376-67, 32 FR 6362, Apr. 22, 1967, as amended by Order No. 463-71, 36 FR 12212, 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 FR 6362, Apr. 22, 1967, as amended by Order No. 463-71, 36 FR 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 accompanied 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. 523-73, 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. L. 772, 80th Cong.; 18 U.S.C. 1791)

[13 FR 5660, 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: 5 U.S.C. 301; 18 U.S.C. 3059.

SOURCE: 25 FR 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 proceeding 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: 28 U.S.C. 509, 510; 5 U.S.C. 301; 18 U.S.C. 2513.

SOURCE: Order 409-69, 34 FR 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

[Rev. 11-78-9]

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 customs 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: 28 U.S.C. 509, 510; 5 U.S.C. 501, Reorganization Plan No. 1 of 1968.

SOURCE: Order 430-70, 35 FR 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 "violator" 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 FR 7013, May 21, 1970, as amended by Order No. 477-72, 37 FR 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 FR 7013, May 21, 1970, as amended by Order No. 477-72, 37 FR 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 forefeiture 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 FR 7013, May 21, 1970, as amended by Order No. 477-72, 37 FR 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 FR 7013, May 21, 1970, as amended by Order No. 477-72, 37 FR 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 expense 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.

(i) 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 FR 7013, May 21, 1970, as amended by Order No. 477-72, 37 FR 2769, Feb. 5, 1972]

PART 9a—CONFISCATION OF PROPERTY, INCLUDING MONEY, USED IN AN ILLEGAL GAMBLING BUSINESS

Sec.

AUTHORITY: 5 U.S.C. 301, 18 U.S.C. 1955(d), 28 U.S.C. 509, 510.

SOURCE: Order No. 453-71, 36 FR 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 Appraisement of property subject to forfeiture.

Seized property shall be appraised. The appraisement 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 appraisement.

§ 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 property. 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—	*Will be performed by—*
Administrator of the Drug Enforcement Administration.	Assistant Attorney General in charge of the Criminal Division.
Regional Administrator of the Drug Enforcement Administration.	U.S. Marshal in whose district the property was seized unless otherwise directed by the Director, U.S. Marshals Service.
Office of the Chief Counsel, Drug Enforcement Administration.	Special Litigation Section, Criminal Division, Department of Justice.
Chief Counsel or Deputy Chief Counsel, Drug Enforcement Administration.	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. 16, 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 considered 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

AUTHORITY: Pub. L. 772, 80th Cong.; 18 U.S.C. 2386.

SOURCE: 6 FR 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 O of this chapter.

REGISTRATION STATEMENT

§ 10.1 Form of registration statement.

Every organization required to submit a registration statement[1] 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. L. 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 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

[1] Filed as a part of the original document. Copies may be obtained from the Department of Justice.

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 Jus-

tice, Washington, D.C., from 10 a.m. to 4 p.m. on each official business day.

[13 FR 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: Sec. 5, 70 Stat. 900; 50 US.C. 854.

SOURCE: 21 FR 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 statement 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 purposes 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 fail-

ure 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.

AUTHORITY: Sec. 1, 80 Stat. 306; 28 U.S.C. 2672.

SOURCE: Order No. 371-66, 31 FR 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 FR 16616, Dec. 29, 1966, as amended by Order 422-69, 35 FR 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 decendent'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 $2,500, be exercised by the head of an agency or his designee only after review by a legal officer of the agency.

[Order No. 371-66, 31 FR 16616, Dec. 29, 1966, as amended by Order No. 757-77, 42 FR 62001, Dec. 8, 1977]

§ 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. 371-66, 31 FR 16616, Dec. 29, 1966, as amended by Order 422-69, 35 FR 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 EMPLOYEES, AND CERTIFICATION AND DEFENSE OF CERTAIN SUITS AGAINST PROGRAM PARTICIPANTS UNDER THE NATIONAL SWINE FLU IMMUNIZATION PROGRAM OF 1976

Sec.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 1089, 22 U.S.C. 817, 28 U.S.C. 509, 510 and 2679, 38 U.S.C. 4116, and 42 U.S.C. 233, 247b and 2458a.

CROSS REFERENCE: For Organization Statement, Civil Division, see Subpart I of Part O of this Chapter.

30-071 O - 78 - 10

§ 15.1 Expeditious delivery of process and pleadings.

(a) 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, the Department of State (including the Agency for International Development), the Armed Forces, the Department of Defense, the Central Intelligence Agency, or the National Aeronautics and Space Administration shall promptly deliver all process and pleadings served upon the employee, or an attested true copy thereof, to the employee's immediate superior or to whoever is designated by the head of the employee's department or agency to receive such papers. If the action is brought against an employee's estate this procedure shall apply to the employee's personal representative. In addition, upon the employee's 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.

(b) Any program participant as that term is defined in 42 U.S.C. 247b (k) (2) (B) against whom a civil action or proceeding is brought for damages for personal injury or wrongful death on account of the administration of swine flu vaccine under the National Swine Flu Immunization Program of 1976 (or the personal representative or successor of such program participant, if the action is brought against the estate or successor of such program participant) shall promptly deliver all process and pleadings served upon such program participant, or an attested true copy thereof, to the Assistant Section Chief for Swine Flu Litigation, Torts Section, Civil Division, U.S. Department of Justice, Washington, D.C. 20530, and to the Department Claims Officer, Office of the General Counsel, Department of Health, Education and Welfare, Washington, D.C. 20201. The Assistant Section Chief for Swine Flu Litigation shall promptly furnish copies of the papers to the United States attorney for the district embracing the place wherein the action or proceeding is brought.

[42 FR 15409, Mar. 22, 1977; 42 FR 17111, Mar. 31, 1977]

§ 15.2 Providing data bearing upon scope of employment or program participant status.

(a) 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.

(b) A program participant as that term is defined in 42 U.S.C. 247b (k) (2) (B) shall deliver all information in the participant's possession or reasonably available to the participant concerning the participant's status as a program participant to the Assistant Section Chief for Swine Flu Litigation, Torts Section, Civil Division, U.S. Department of Justice, Washington, D.C. 20530, upon request and within such time as shall be fixed.

[Order No. 254-61, 26 FR 11420, Dec. 2, 1961, as amended at 42 FR 15410, Mar. 22, 1977]

§ 15.3 Removal and defense of suits.

(a) The United States Attorneys are authorized to make the certifications provided for in 10 U.S.C. 1089(c), 22 U.S.C. 817(c), 28 U.S.C. 2679(d), 38 U.S.C. 4116(c), and 42 U.S.C. 233(c) and 2458a(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.

(b) The Assistant Attorney General in charge of the Civil Division is authorized: (1) To make the certification provided for in 42 U.S.C. 247b (k) (5) with respect to civil actions or proceedings brought against program participants in various courts of law; (2) to withdraw that certification if further evaluation of the relevant facts or the consideration of new or additional evidence calls for such action; (3) to move to revoke such certification pursuant to 42 U.S.C. 247b (k) (6) should the facts warrant; and (4) to redelegate to subordinate division officials the authority delegated by this paragraph, provided that such redelegation shall be in writing and shall be approved by the Associate Attorney General before becoming effective.

[42 FR 15410, Mar. 22, 1977]

APPENDIX—DELEGATION OF AUTHORITY TO CERTIFY STATUS OF PROGRAM PARTICIPANTS UNDER THE NATIONAL SWINE FLU IMMUNIZATION PROGRAM OF 1976.

CIVIL DIVISION

[Directive No. 90-77]

1. By virtue of the authority vested in me by Part 15 of Title 28 of the Code of Federal Regulations, particularly § 15.3(b), it is hereby ordered as follows:

2. The authority delegated to the Assistant Attorney General in charge of the Civil Division to certify the status of program participants under the National Swine Flu Immunization Program of 1976, as that term is defined in 42 U.S.C. 247b(k)(2)(B), and as required under 42 U.S.C. 247b(k)(4)-(5), is hereby delegated to any Deputy Assistant Attorney General of the Civil Division, to the Chief of the Tort Section and to the Assistant Chief of the Tort Section in charge of Swine Flu Litigation, and any one of whom may individually exercise the authority in any given instance. This delegation also includes the authority to withdraw the certification and file appropriate motions as set forth in § 15.3(b) of Title 28 of the Code of Federal Regulations.

[42 FR 32770, June 28, 1977]

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Subpart A—Production or Disclosure Under 5 U.S.C. 552(a)

Sec.

Subpart B—Production or Disclosure in Response to Subpenas or Demands of Courts or Other Authorities

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 FR 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)(6)(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 nonconforming 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 ad-

vised 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]

APPENDIX—DELEGATION OF AUTHORITY

1. By virtue of the authority vested in me by Section 16.5(b) of Title 28 of the Code of Federal Regulations, the authority to deny requests under the Freedom of Information Act is delegated to the occupant of the position of Chief, Freedom of Information/Privacy Acts Branch, Records Management Division, Federal Bureau of Investigation. This same authority is delegated to the occupant of the position of Special Agent In Charge of each of the field offices of the Federal Bureau of Investigation for records in their custody and control.

2. This directive is effective March 17, 1977.

[42 FR 54285, Oct. 5, 1977]

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 subpena, 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,

(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,

(v) The Chairman of the United States Parole Commission, if the demand is one made on an employee or former employee of the Commission for information or if the demand calls for the production of material from the files of the Commission and

(vi) The Director of the United States Marshals 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.

(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 FR 1741, Jan. 18, 1973, as amended by Order No. 503-73, 38 FR 4952, Feb. 23, 1973; Order No. 650-76, 41 FR 20163, May 17, 1976; Order No. 690-77, 42 FR 10846, Feb. 24, 1977; Order No. 780-78, 43 FR 19849, May 9, 1978]

§ 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 Deputy Attorney General for decision. Upon such referral, the Deputy Attorney General shall make the final decision and give notice thereof to the U.S. attorney and such other persons as circumstances may warrant.

[Order No. 501-73, 38 FR 1741, Jan. 18, 1973, as amended by Order No. 693-77, 42 FR 12045, Mar. 2, 1977]

§ 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.

Appendix to Subpart B—Redelegation of Authority to Deputy Assistant Attorneys General to Authorize Production or Disclosure of Material or Information

1. By virtue of the authority vested in me by § 16.23(b)(1) of Title 28 of the Code of Federal Regulations, the authority delegated to me by that section to approve production of material and disclose of information, described in § 16.21(a) of that title, is hereby redelegated to each of the Deputy Assistant Attorneys General of the Criminal Division.

2. This directive is effective March 31, 1977.

[Directive No. 52-77, 42 FR 19145, Apr. 12, 1977]

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 S.W., 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-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.

(d) The head of a "component" (as defined in paragraph (a)) or his designee is authorized to make written requests under 5 U.S.C. 552a(b)(7), for records maintained by other agencies, if the records are necessary to carry out an authorized law enforcement activity of the component. These duties may be redelegated to other officials within the component, but not below the level of section chief or a comparable position.

[Order No. 627-75, 40 FR 50642, Oct. 30, 1975, as amended by Order No. 735-77, 42 FR 37975, July 26, 1975]

§ 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

[illegible] O - 78 - 11

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 component 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) Stock 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 Office 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 agencies 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 voluntary 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 re-

trieved 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 information 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 re-

ceive, 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 Investigation 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.

APPENDIX—DELEGATION OF AUTHORITY

1. By virtue of the authority vested in me by Section 16.45 of Title 28 of the Code of Federal Regulations, the authority to deny requests under the Privacy Act of 1974 is delegated to the occupant of the position of Chief, Freedom of Information/Privacy Acts Branch, Records Management Division, Federal Bureau of Investigation. This same authority is delegated to the occupant of the position of Special Agent In Charge of each of the field offices of the Federal Bureau of Investigation for records in their custody and control.

2. This directive is effective March 17, 1977.

[42 FR 54285, Oct. 5, 1977]

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 Presidental 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 ap-

parently 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."

(f) The following system of records is exempt from 5 U.S.C. 552a(d);

(1) Freedom of Information/Privacy Act Records System (JUSTICE/OMF-019).

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).

(g) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because that portion of the Freedom of Information/Privacy Act Records System that consists of investigatory materials compiled for law enforcement purposes is being exempted from access and contest; the provision for disclosure of accounting is not applicable.

(2) From subsection (d) because of the need to safeguard the identity of confidential informants and avoid interference with ongoing investigations or law enforcement activities by preventing premature disclosure of information relating to those efforts.

[41 FR 12640, Mar. 26, 1976, as amended by Order No. 688-77, 42 FR 9999, Feb. 18, 1977]

§§ 16.77–16.78 [Reserved]

§ 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).

(9) Pre-Trial Diversion Program Files (JUSTICE/USA-015).

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 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 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 complied 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.

(d) 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 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) (1), (e) (4)

(G), (H) and (I), and (f) of 5 U.S.C. 552a:

Freedom of Information/Privacy Act Records (JUSTICE/USA-009).

These exemptions apply only to the extent that the records contained in this system have been obtained from other systems of records maintained by the U.S. Attorneys Offices for which exemptions from one or more of the foregoing provisions of the Privacy Act of 1974 have been promulgated. The exemption claimed for this system of records applies only to records obtained from such other U.S. Attorneys Offices systems and only to the same extent as the records contained in such other systems have been exempted.

(e) The system of records listed under paragraph (d) of this section is exempted for the following reasons:

(1) In the course of processing requests for records pursuant to the Freedom of Information Act (5 U.S.C. 522) or for access or correction of records pursuant to the Privacy Act (5 U.S.C. 552a), it is frequently necessary to search for records in systems of records for which exemptions have been claimed pursuant to 5 U.S.C. 552a (j) or (k). When records are located in said systems, it is frequently necessary to prepare copies for the purpose of consulting with agency personnel or with other agencies, either with regard to determining whether or to what extent the records should be disclosed, or access provided, or correction made or denied or for review in the event of administrative appeal or judicial review.

(2) If records otherwise exempt pursuant to published rules should lose their exempt character when taken from such exempt systems for the purpose of compliance with the Freedom of Information Act and the Privacy Act in reviewing such records and making a determination with regard to disclosure, access, and the Department of Justice in claiming correction, the purpose of the Privacy Act in providing such exemptions and such exemptions would be defeated and nullified. The proper, efficient, and timely processing of citizens' requests pursuant to said Acts would be hindered and impeded.

[41 FR 12640, Mar. 26, 1976, as amended by Order No. 688-77, 42 FR 9999, Feb. 18, 1977; Order No. 716-77, 42 FR 23506, May 9, 1977; Order 738-77, 42 FR 38177, July 27, 1977]

§§ 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., pretrial/trial). Documents retrieved by using information ("keywords") 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."

(c) The following system of records is exempt from 5 U.S.C. 552a (c) (3), (d), (e)(4) (G) and (H), and (f).

(1) Antitrust Caseload Evaluation System (ACES)—Monthly Report. (Justice/ATR-009)

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(k)(2). 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).

(d) Exemption from the particular subsections are justified for the following reasons:

(1) Exemption from subsection (c) (3) is justified because these systems are maintained in aid of ongoing antitrust enforcement investigations and proceedings. The release of the accounting of disclosures made under subsection (b) of the Act would permit the subject of an investigation of an actual or potential criminal or civil violation to determine whether he is the subject of an investigation. Disclosure of the accounting would therefore present a serious impediment to antitrust law enforcement efforts.

(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)(2) because access to the information retrievable from this system and compiled for law enforcement purposes could result in the premature disclosure of the identity of the subject of an investigation of an actual or potential criminal or civil violation and information concerning the nature of that investigation. This information could enable the subject to avoid detection or apprehension. This would present a serious impediment to effective law enforcement since the subject could hinder or prevent the successful completion of the investigation.

[41 FR 12640, Mar. 26, 1976, as amended by Order No. 688-77, 42 FR 10000, Feb. 18, 1977]

§ 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 where 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."

(g) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3), (d), 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)(2) from subsections (c)(3), and (d) of 5 U.S.C. 552a: Freedom of Information/Privacy Act Records (JUSTICE/CRT-010).

These exemptions apply only to the extent that the records contained in this system have been obtained from other systems of records maintained by the Civil Rights Division for which exemptions from one or more of the foregoing provisions of the Privacy Act of 1974 have been promulgated. The exemptions claimed for this system of records apply only to records obtained from such other Civil Rights Division systems and only to the same extent as the records contained in such other systems have been exempted.

(h) The system of records listed under paragraph (g) of this section is exempted for the following reasons:

(1) In the course of processing requests for records pursuant to the Freedom of Information Act (5 U.S.C. 552) or for access or correction of records pursuant to the Privacy Act (5 U.S.C. 552a), it is frequently necessary to search for records in systems of records for which exemptions have been claimed pursuant to 5 U.S.C. 552a (j) or (k). When records are located in said systems, it is frequently necessary to prepare copies for the purpose of consulting with agency personnel or with other agencies, either with regard to determining whether or to what extent the records should be disclosed, or access provided, or correction made or denied, or for review in the event of administrative appeal or judicial review.

(2) If records otherwise exempt pursuant to published rules should lose their exempt character when taken from such exempt systems for the purpose of compliance with the Freedom of Information Act and the Privacy Act in reviewing such records and making determination with regard to disclosure, access, and correction, the purpose of the Privacy Act in providing such exemptions, and of the Department of Justice in claiming such exemptions would be defeated and nullified. The proper, efficient, and timely processing of citizens' requests pursuant to said Acts would be hindered and impeded.

[41 FR 12640, Mar. 26, 1976, as amended by Order No. 688-77, 42 FR 10000, Feb. 18, 1977]

§ 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

30-071 O - 78 - 12

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 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). (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 information 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 com-

pletion 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 reasons 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 of an actual or potential criminal 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 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 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 subsections (d) and (f).

(i) 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 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.

(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 au-

thority 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 (o)(1) and (o)(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 pro-

vided 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 this section.

(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)(6), (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.

(s) 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 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)(1), (e)(4) (G), (H) and (I), and (f) of 5 U.S.C. 552a:

(1) Freedom of Information/Privacy Act Records (JUSTICE/CRM-024).

(2) These exemptions apply only to the extent that the records contained in this system have been obtained from other systems of records maintained by the Criminal Division for which exemptions from one or more of the foregoing provisions of the Privacy Act of 1974 have been promulgated. The exemption claimed for this system of records applies only to records obtained from such other Criminal Division systems and only to the same extent as the records contained in such other systems have been exempted.

(t) The system of records listed under paragraph (s) of this section is exempted for the following reasons:

(1) In the course of processing requests for records pursuant to the Freedom of Information Act (5 U.S.C. 552) or for access or correction of records pursuant to the Privacy Act (5 U.S.C. 552a), it is frequently necessary to search for records in systems of records for which exemptions have been claimed pursuant to 5 U.S.C. 552a (j) or (k). When records are located in said systems, it is frequently necessary to prepare copies for the purpose of consulting with agency personnel or with other agencies, either with regard to determining whether or to what extent the records should be disclosed, or access provided, or correction made or denied, or for review in the event of administrative appeal or judicial review.

(2) If records otherwise exempt pursuant to published rules should lose their exempt character when taken from such exempt systems for the purpose of compliance with the Freedom of Information Act and the Privacy Act in reviewing such records and making determination with regard to disclosure, access, and correction, the purpose of the Privacy Act in providing such exemptions, and of the Department of Justice in claiming such exemptions would be defeated and nullified. The proper, efficient, and timely processing of citizens' requests pursuant to said Acts would be hindered and impeded.

[41 FR 12640, Mar. 26, 1976, as amended by Order No. 659-76, 41 FR 32423, Aug. 3, 1976]

§ 16.92 Exemption of Land and Natural Resources Division System—Limited access, as indicated.

(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 Refuse Act of 1899 (33 U.S.C. 407), Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403), Section 5 of the Outer Continental Shelf Act (43 U.S.C. 1151 et seq.), the Clean Air Act (42 U.S.C. 1857 et seq.) and the Noise Control Act of 1972 (42 U.S.C. 4901), 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.

(c) The following system of records is exempt from 5 U.S.C. 552a (c)(3) and (d):

(1) Freedom of Information/Privacy Act Records System. (Justice/LDN-005).

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).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c) (3) because that portion of the Freedom of Information/Privacy Act Records System that consists of investigatory materials compiled for law enforcement purposes is being exempted from access and contest; the provision for disclosure of accounting is not applicable.

(2) From subsection (d) because of the need to safeguard the identity of confidential informants and avoid interference with ongoing investigations or law enforcement activities by preventing premature disclosure of information relating to those efforts.

[Order No. 688-77, 42 FR 10000, Feb. 18, 1977]

§ 16.93 Exemption of Tax Division Systems—limited access.

(a) The following systems of records are exempted pursuant to the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of 5 U.S.C. 552a:

(1) Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Criminal Tax Cases (JUSTICE/TAX-001)—Limited Access.

(2) Tax Division Special Projects Files (JUSTICE/TAX-005)—Limited Access.

These exemptions apply to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) The systems of records listed under paragraphs (a)(1) and (a)(2) of this section are exempted for the reasons set forth below, 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 those systems of records, would enable the subject of an investigation of an actual or potential criminal tax case to determine whether he or she is the subject of investigation, to obtain valuable information concerning the nature of that investigation and the information obtained, and to determine the identity of witnesses or informants. Such access to investigative information would, accordingly, present a serious impediment to law enforcement. In addition, disclosure of the accounting would constitute notice to the individual of the existence of a record even though 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)(1); (d)(2); (d)(3); (d)(4). Access to the records contained in these systems would inform the subject of an actual or potential criminal tax investigation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities, and of the identity of witnesses or informants. Such access would, accordingly, provide information that could enable the subject to avoid detection, apprehension and prosecution. This result, therefore, would constitute a serious impediment to effective law enforcement not only because it would prevent the successful completion of the investigation but also because it could endanger the physical safety of witnesses or informants, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(4)(e)(1). 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 tax and related law enforcement investigations, cases, and matters, the Tax Division will occasionally obtain information concerning actual or potential violations of law that may not be technically 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 some or all of 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 tax investigation or prosecution, 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 would therefore be able to avoid detection or apprehension, influence witnesses improperly, destroy evidence, or 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 subsection (f) and (d).

(8)(e)(4)(I). The categories of sources of the records in the sytems 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 tax and related law enforcement information. Such exemption is further necessary to pro-

tect the privacy and physical safety of witnesses and informants.

(9)(e)(5). In the collection of information for criminal tax 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. Furthermore, 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 government attorneys in exercising their judgment in reporting on information and investigations and impede the development of criminal tax information and related data 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 tax, civil tax, or regulatory investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion or 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 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).

(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).

(c) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G, (e)(4)(H, (e)(4)(I) and (f) of 5 U.S.C. 552a:

(1) Tax Division Central Classification Cards, Index Docket Cards, and Associated Records—Civil Tax Cases (JUSTICE/TAX-002)—Limited Access.

These exemptions apply to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(d) The system of records listed under paragraph (c)(1) is exempted for the reasons set forth below, 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 this system of records, would enable the subject of an investigation of an actual or potential civil tax case to determine whether he or she is the subject of investigation, to obtain valuable information concerning the nature of that investigation and the information obtained, and to determine the identity of witnesses or informants. Such access to investigative information would, accordingly, present a serious impediment to law enforcement. In addition, disclosure of the accounting would constitute notice to the individual of the existence of a record even though such notice requirement under subsection (f)(1) is specifically exempted for this system of records.

(2) (d)(1); (d)(2); (d)(3); (d)(4). Access to the records contained in this system would inform the subject of an actual or potential civil tax investigation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities and of the identity of

witnesses or informants. Such access would, accordingly, provide information that could enable the subject to avoid detection. This result, therefore, would constitute a serious impediment to effective law enforcement not only because it would prevent the successful completion of the investigation but also because it could endanger the physical safety of witnesses or informants, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(3)(e)(1). The notices for this system 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 civil tax and related law enforcement investigations, cases and matters, the Tax Division will occasionally obtain information concerning actual or potential violations of law that are not strictly or technically within its statutory or other authority or may compile information in the course of an investigation which may not be relevant to a specific case. In the interests of effective law enforcement, it is necessary to retain some or all of such information in this system of records since it can aid in establishing patterns of tax compliance and can provide valuable leads for Federal and other law enforcement agencies.

(4)(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 this system of records is exempted from subsection (f) and (d).

(5)(e)(4)(I). The categories of sources of the records in this system 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 this system, exemption from this provision is necessary in order to protect the confidentiality of the sources of civil tax and related law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(6)(f). Procedures for notice to an individual pursuant to subsection (f)(1) as to existence of records pertaining to the individual dealing with an actual or potential criminal tax, civil tax, or regulatory investigation or presecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or case, 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, 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 this system of records to the extent that this system of records is exempted from subsection (d).

(e) The following system of records is exempted pursuant to the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (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)(2) from subsections (c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) of 5 U.S.C. 552a:

(1) Tax Division Freedom of Information—Privacy Act Request Files (JUSTICE/TAX-004).

(2) These exemptions apply only to the extent that the records contained in this system have been obtained from other systems of records maintained by the Tax Division for which exemptions from one or more of the foregoing provisions of the Privacy Act of 1974 have been promulgated. The exemption claimed for this system of records applies only to records obtained from such other Tax Division systems and only to the same extent as the records contained in

CONTINUED

2 OF 5

such other systems have been exempted.

(f) The system of records listed under paragraph (e)(1) of this section is exempted for the following reasons:

(1) In the course of processing requests for records pursuant to the Freedom of Information Act (5 U.S.C. 552) or for access or correction of records pursuant to the Privacy Act (5 U.S.C. 552a), it is frequently necessary to search for records in systems of records for which exemptions have been claimed pursuant to 5 U.S.C. 552a (j) or (k). When records are located in said systems, it is frequently necessary to prepare copies for the purpose of consulting with agency personnel or with other agencies, either with regard to determining whether or to what extent the records should be disclosed, or access provided, or correction made or denied, or with regard to review in the event of administrative appeal or judicial review.

(2) If records otherwise exempt pursuant to published rules should lose their exempt character when taken from such exempt systems for the purpose of compliance with the Freedom of Information Act and the Privacy Act in reviewing such records and making determination with regard to disclosure, access, and correction, the purpose of the Privacy Act in providing such exemptions, and of the Department of Justice in claiming such exemptions would be defeated and nullified. The proper, efficient, and timely processing of citizens' requests pursuant to said Acts would be hindered and impeded.

[Order No. 742-77, 42 FR 44066, Aug. 12, 1977]

§§ 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)(2) 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 (h)(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 (e)(4), (d), (e)(4) (G) and (H), and (g) for the reasons stated in subsection (c)(3) of this section. Where records are properly subject to access by the individual, an alternate means of access is provided in subsection (f) 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 (h)(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 (NCIC (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-002).

(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 sys-

tems 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 (e)(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 (e)(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 Communications Orders System/Diversion Analysis and Detection System (ARCOS/DADS) (JUSTICE/DEA-004).

(2) Controlled Substances Act Registration Records (JUSTICE/DEA-005).

(3) Registration Status/Investigatory Records (JUSTICE/DEA-012).

(4) Drug Theft Reporting System (JUSTICE/DEA-002).

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 (e)(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 systems 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/Activity 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 (KIDS) (JUSTICE/DEA-020).

(15) Drug Enforcement Administration Specialized Automated Intelligence Files (JUSTICE/DEA-023).

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 (e)(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 (e)(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 (k)(1) and (c)(3):

(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.

(g) 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 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)(1), (e)(4) (G), (H) and (I), and (f) of 5 U.S.C. 552a:

Freedom of Information/Privacy Act Records (JUSTICE/DEA-010).

These exemptions apply only to the extent that the records contained in

this system have been obtained from other systems of records maintained by the Drug Enforcement Administration for which exemptions from one or more of the foregoing provisions of the Privacy Act of 1974 have been promulgated. The exemption claimed for this system of records applies only to records obtained from such other Drug Enforcement Administration systems and only to the same extent as the records contained in such other systems have been exempted.

(h) The system of records listed under paragraph (G) of this section is exempted for the following reasons:

(1) In the course of processing requests for records pursuant to the Freedom of Information Act (5 U.S.C. 552) or for access or correction of records pursuant to the Privacy Act (5 U.S.C. 552a), it is frequently necessary to search for records in systems of records for which exemptions have been claimed pursuant to 5 U.S.C. 552a (j) or (k). When records are located in said systems, it is frequently necessary to prepare copies for the purpose of consulting with agency personnel or with other agencies, either with regard to determining whether or to what extent the records should be disclosed, or access provided, or correction made or denied, or for review in the event of administrative appeal or judicial review.

(2) If records otherwise exempt pursuant to published rules should lose their exempt character when taken from such exempt systems for the purpose of compliance with the Freedom of Information Act and the Privacy Act in reviewing such records and making determination with regard to disclosure, access, and the Department of Justice in claiming correction, the purpose of the Privacy Act in providing such exemptions, and such exemptions would be defeated and nullified. The proper, efficient, and timely processing of citizens' requests pursuant to said Acts would be hindered and impeded.

[41 FR 12640, Mar. 26, 1976, as amended by Order No. 688-77, 42 FR 54691, Feb. 10, 1977]

§ 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 Border.

(8) Border Patrol Sector 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) Extention Training Officer Index.

(17) Investigator Index.

(18) Naturalization and Citizenship Index.

(19) Personnel Investigation Unit Index.

(20) Service Look-Out Subsystem.

(21) White House and Attorney General Correspondence Control Index.

(22) Travel Document Center Index.

(23) Emergency Reassignment Index.

(24) Alien Documentation, Identification, and Telecommunication (ADIT) System.

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 account-

ing 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 (e)(4) since an exemption is being claimed for subsection (d), this subsection will not be applicable.

(3) From subsection (c) 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 pursuant 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 systems 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 (e)(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).

[41 FR 12640, Mar. 26, 1976, as amended by Order No. 668-77, 42 FR 14091, Feb. 15, 1977]

§ 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 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.

§ 16.97 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, subpoenas, 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 those 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 (JUSTICE/USMS-006).

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 (e)(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 (e)(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)(5) 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 (e)(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 (e)(4) for the reason stated in (b)(2) of this section.

(3) From subsection (d) because access to information in that 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 par-

ties 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.

§ 16.102 Exemption of Drug Enforcement Administration and Immigration and Naturalization Service Joint System of Records.

(a) The following system of records is exempted pursuant to 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), (g), and (h) of 5 U.S.C. 552a. In addition the following system of records is exempted pursuant to the provisions of 5 U.S.C. 552 (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) Automated Intelligence Record System (Pathfinder), JUSTICE/DEA-INS-111. These exemptions apply to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1) and (k)(2).

(b) The system of records listed under paragraph (a) of this section is exempted, for the reasons set forth from the following provisions of 5 U.S.C. 552a.

(1)(e)(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)(e)(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, 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)(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 Immigration and Naturalization Service or the Drug Enforcement Administration 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 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)(e)(2). 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 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).

(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)(h). 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 subsections (d) and (f).

(14) 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.

[Order No. 742-77, 42 FR 40907, Aug. 12, 1977]

Subpart F—Public Observation of Parole Commission Meetings

AUTHORITY: 18 U.S.C. 4203(a)(1), 5 U.S.C. 552b(g).

SOURCE: 42 FR 14713, Mar. 16, 1977, unless otherwise noted.

§ 16.200 Definitions.

As used in this part: (a) The term Commission means the United States Parole Commission and any subdivision thereof authorized to act on its behalf.

(b) The term meeting refers to the deliberations of at least the number of Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(c) Specifically included in the term meeting are:

(1) Meetings of the Commission required to be held by 18 U.S.C. 4203(a)(1);

(2) Special meetings of the Commission called pursuant to 18 U.S.C. 4203(a)(1);

(3) Meetings of the National Commissioners in original jurisdiction cases pursuant to 28 CFR 2.17(a);

(4) Meetings of the entire Commission to determine original jurisdiction appeal cases pursuant to 28 CFR 2.27; and

(5) Meetings of the National Appeals Board pursuant to 28 CFR 2.26.

(6) Meetings of the Commission to conduct a hearing on the record in conjunction with applications for certificates of exemption under section 506(c) of the Labor-Management Reporting and Disclosure Act of 1959, and section 411 of the Employee Retirement Income Security Act of 1974 (29 CFR 4.1-17 and 29 CFR 4a.1-17).

(d) Specifically excluded from the term meeting are:

(1) Determination made through independent voting of the Commissioners without the joint deliberation of the number of Commissioners required to take such action, pursuant to § 16.201;

(2) Original jurisdiction cases determined by sequential vote pursuant to 28 CFR 2.17;

(3) Cases determined by sequential vote pursuant to 28 CFR 2.24 and 2.25;

(4) National Appeals Board cases determined by sequential vote pursuant to 28 CFR 2.26;

(5) Meetings of special committees of Commissioners not constituting a quorum of the Commission, which may be established by the Chairman to report and make recommendations to the Commission or the Chairman on any matter.

(6) Determinations required or permitted by these regulations to open or close a meeting, or to withhold or disclose documents or information pertaining to a meeting.

(e) All other terms used in this part shall be deemed to have the same meaning as identical terms used in Chapter I, Part 2, of Title 28, of the Code of Federal Regulations.

[42 FR 14713, Mar. 16, 1977, as amended at 43 FR 4978, Feb. 7, 1978]

§ 16.201 Voting by the Commissioners without joint deliberation.

(a) Whenever the Commission's Chairman so directs, any matter which (1) does not appear to require joint deliberation among the members of the Commission, or (2) by reason of its urgency, cannot be scheduled for consideration at a Commission meeting, may be disposed of by presentation of the matter separately to each of the members of the Commission. After consideration of the matter each Commission member shall report his vote to the Chairman.

(b) Whenever any member of the Commission so requests, any matter presented to the Commissioners for

disposition pursuant to paragraph (a) of this section shall be withdrawn and scheduled instead for consideration at a Commission meeting.

(c) The provisions of § 16.206(a) of these rules shall apply in the case of any Commission determination made pursuant to this section.

§ 16.202 Open meetings.

(a) Every portion of every meeting of the Commission shall be open to public observation unless closed to the public pursuant to the provisions of § 16.203 (Formal Procedure) or § 16.205 (Informal Procedure).

(b) The attendance of any member of the public is conditioned upon the orderly demeanor of such person during the conduct of Commission business. The public shall be permitted to observe and to take notes, but unless prior permission is granted by the Commission, shall not be permitted to record or photograph by means of any mechanical or electronic device any portion of meetings which are open to the public.

(c) The Commission shall be responsible for arranging a suitable site for each open Commission meeting so that ample seating, visibility, and acoustics are provided to the public and ample security measures are employed for the protection of Commissioners and Staff. The Commission shall be responsible for recording or developing the minutes of Commission meetings.

(d) Public notice of open meetings shall be given as prescribed in § 16.204(a), and a record of votes kept pursuant to § 16.206(a).

§ 16.203 Closed meetings—formal procedure.

(a) The Commission, by majority vote, may close to public observation any meeting or portion thereof, and withhold from the public announcement concerning such meeting any information, if public observation or the furnishing of such information is likely to:

(1) Disclose matters (i) specifically authorized under criteria established by an executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission or any agency of the Government of the United States;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552, or the Federal Rules of Criminal Procedure): *Provided*, That such statute or rule (i) requires that the matters be withheld in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld, including exempted material under the Privacy Act of 1974 or the Commission's Alternate Means of Access under the Privacy Act of 1974, as set forth at 28 CFR 16.85;

(4) Disclose a trade secret or commercial or financial information obtained from any person, corporation, business, labor or pension organization, which is privileged or obtained upon a promise of confidentiality, including information concerning the financial condition or funding of labor or pension organizations, or the financial condition of any individual, in conjunction with applications for exemption under 29 U.S.C. 504 and 1111, and information concerning income, assets and liabilities of inmates, and persons on supervision;

(5) Involve accusing any person of a crime or formally censuring any person;

(6) Disclose information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose an investigatory record compiled for law enforcement purposes, or information derived from such a record, which describes the criminal history or associations of any person under the Commission's jurisdiction or which describes the involvement of any person in the commission of a crime, but only to the extent that the production of such records or information would

(i) Interfere with enforcement proceedings;

(iii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed Commission action except where

(i) The Commission has already publicly disclosed the content or nature of its proposed action or

(ii) The Commission is required by law to make such disclosure on its own initiative prior to taking final Commission action on such proposal;

(9) Specifically concern the Commission's issuance of subpoena or participation in a civil action or proceeding; or

(10) Specifically concern the initiation, conduct, or disposition of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554, or of any case involving a determination on the record after opportunity for a hearing. Included under the above terms are:

(A) Record review hearings following opportunity for an in-person hearing pursuant to the procedures of 28 CFR 4.1-17 and 28 CFR 4a.1-17 (governing applications for certificates of exemption under the Labor-Management Reporting and Disclosure Act of 1959 and the Employee Retirement Income Security Act of 1974, and

(B) The initiation, conduct, or disposition by the Commission of any matter pursuant to the procedures of 28 CFR 2.1-58 (parole, release, supervision, and recommitment of prisoners, youth offenders, and juvenile delinquents).

(b) *Public interest provision.* Notwithstanding the exemptions at paragraph (a) (1)-(10) of this section, the Commission may conduct a meeting or portion of a meeting in public when the Commission determines, in its discretion, that the public interest in an open meeting clearly outweighs the need for confidentiality.

(c) *Nonpublic matter in announcement.* The Commission may delete from any announcement or notice required by these regulations information the disclosure of which would be likely to have any of the consequences described in paragraphs (a) (1)-(10) of this section, including the name of any individual considered by the Commission in any case of formal or informal adjudication.

(d) *Voting and certification.* (1) A separate recorded vote of the Commission shall be taken with respect to each meeting or portion thereof which is proposed to be closed, and with respect to any information which is proposed to be withheld pursuant to this section. Voting by proxy shall not be permitted. In the alternative, the Commission may, by a single majority vote, close to public observation a series of meetings, or portion(s) thereof or withhold information concerning such series of meetings, provided that:

(i) Each meeting in such series involves the same particular matters, and

(ii) Each meeting is scheduled to be held no more than thirty days after the initial meeting in the series.

(2) Upon the request of any Commissioner, the Commission shall make a determination as to closure pursuant to this subsection if any person whose interests may be directly affected by a portion of a meeting requests the Commission to close such portion or portions to the public observation for any of the grounds specified in paragraph (a) (5), (8) or (9) of this section.

(3) The determination to close any meeting to public observation pursuant to this section shall be made at least one week prior to the meeting or the first of a series of meetings as the case may be. If a majority of the Commissioners' determination by recorded vote that agency business requires that

meeting to take place at any earlier date, the closure determination and announcement thereof shall be made at the earliest practicable time. Within one day of any vote taken on whether to close a meeting under this section, the Commission shall make available to the public a written record reflecting the vote of each Commissioner on the question, including a full written explanation of his action in closing the meeting, portion(s) thereof, or series of meetings, together with a list of all persons expected to attend the meeting(s) or portion(s) thereof and their affiliation, subject to the provisions of paragraph (c) of this section.

(4) For every meeting or series of meetings closed pursuant to this section, the General Counsel of the Parole Commission shall publicly certify that, in Counsel's opinion, the meeting may be closed to the public and shall state each relevant exemptive provision.

§ 16.204 Public notice.

(a) *Requirements.* Every open meeting and meeting closed pursuant to § 16.203 shall be preceded by a public announcement posted before the main entrance to the Chairman's Office at the Commission's headquarters, 320 First Street, Northwest, Washington, D.C., and, in the case of a meeting held elsewhere, in a prominent place at the location in which the meeting will be held. Such announcement shall be transmitted to the FEDERAL REGISTER for publication and, in addition, may be issued through the Department of Justice, Office of Public Information, as a press release, or by such other means as the Commission shall deem reasonable and appropriate. The announcement shall furnish:

(1) A brief description of the subject matter to be discussed;

(2) The date, place, and approximate time of the meeting;

(3) Whether the meeting will be open or closed to public observation; and

(4) The name and telephone number of the official designated to respond to requests for information concerning the meeting. See § 16.204(d) for the notice requirement applicable to meetings closed pursuant to that section.

(b) *Time of notice.* The announcement required by this section shall be released to the public at least one week prior to the meeting announced therein except where a majority of the members of the Commission determines by a recorded vote that Commission business requires earlier consideration. In the event of such a determination, the announcement shall be made at the earliest practicable time.

(c) *Amendments to notice.* The time or place of a meeting may be changed following the announcement only if the Commission publicly announces such change at the earliest practicable time. The subject matter of a meeting, or determination of the Commission to open or close a meeting, or portion of a meeting, to the public may be changed following the announcement only if:

(1) A majority of the entire membership of the Commission determines by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and

(2) The Commission publicly announces such change and the vote of each member upon such change at the earliest practicable time: *Provided,* That individual items which have been announced for Commission consideration at a closed meeting may be deleted without notice.

§ 16.205 Closed meetings—Informal procedures.

(a) *Finding.* Based upon a review of the meetings of the U.S. Parole Commission since the effective date of the Parole Commission and Reorganization Act (May 14, 1976), the regulations issued pursuant thereto (28 CFR Part 2) the experience of the U.S. Board of Parole, and the regulations pertaining to the Commission's authority under 39 U.S.C. 504 and 39 U.S.C. 1111 (28 CFR Parts 4 and 4a), the Commission finds that the majority of its meetings may properly be closed to the public pursuant to 5 U.S.C. 552 (d)(4) and (c)(10). The major part of normal Commission

business lies in the adjudication of individual parole cases, all of which proceedings commence with an initial parole or revocation hearing and are determined on the record thereof.

Original jurisdiction cases are decided at bi-monthly meetings of the National Commissioners (28 CFR 2.17) and by the entire Commission in conjunction with each business meeting of the Commission (held at least quarterly) (28 CFR 2.27).

The National Appeals Board normally decides cases by sequential vote on a daily basis, but may meet from time to time for joint deliberations. In the period from October, 1975 through September, 1976, the National Appeals Board made 2,972 Appellate decisions.

Finally, over the last two years the Commission determined eleven cases under the Labor and Pension Acts, which are proceedings pursuant to 5 U.S.C. 554. The only meetings of the Commission not of an adjudicative nature involving the most sensitive inquiry into the personal background and behavior of the individual concerned, or involving sensitive financial information concerning the parties before the Commission, are the normal business meetings of the Commission, which are held at least quarterly.

(b) *Meetings to which applicable.* The following types of meetings may be closed in the event that a majority of the Commissioners present at the meeting, and authorized to act on behalf of the Commission, votes by recorded vote at the beginning of each meeting or portion thereof, to close the meeting or portions thereof:

(1) Original jurisdiction initial and appellate case deliberations conducted pursuant to 28 CFR 2.17 and 2.27.

(2) National Appeals Board deliberations pursuant to 28 CFR 2.26;

(3) Meetings of the Commission to conduct a hearing on the record regarding applications for certification of exemption pursuant to the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 504, and the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1111 (28 CFR 4.1-17 and 29 CFR 4a.1-17).

(c) *Written record of action to close meeting.* In the case of a meeting or portion of a meeting closed pursuant to this section, the Commission shall make available to the public as soon as practicable:

(1) A written record reflecting the vote of each member of the Commission to close the meeting; and

(2) A certification by the Commission's General Counsel to the effect that in Counsel's opinion, the meeting may be closed to the public, which certification shall state each relevant exemptive provision.

(d) *Public notice.* In the case of meetings closed pursuant to this section the Commission shall make a public announcement of the subject matter to be considered, and the date, place, and time of the meeting. The announcement described herein shall be released to the public at the earliest practicable time.

§ 16.206 Transcripts, minutes, and miscellaneous documents concerning Commission meetings.

(a) In the case of any Commission meeting, whether open or closed, the Commission shall maintain and make available for public inspection a record of the final vote of each member on rules, statements of policy, and interpretations adopted by it; 18 U.S.C. 4203(d).

(b) The Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public pursuant to § 16.205. In the case of a meeting, or portion of a meeting, closed to the public pursuant to § 16.205 of these regulations, the Commission may maintain either the transcript or recording described above, or a set of minutes unless a recording is required by Title 18, U.S.C. 4208(f). The minutes required by this section shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll-call vote (reflecting the vote of each Commissioner on the

question). All documents considered in connection with any action shall be identified in such minutes.

(c) The Commission shall retain a copy of every certification executed by the General Counsel's Office pursuant to these regulations, together with a statement from the presiding officer of the meeting, or portion of a meeting to which the certification applies, setting forth the time and place of the meeting, and the persons present.

(d) Nothing herein shall affect any other provision in Commission procedures or regulations requiring the preparation and maintenance of a record of all official actions of the Commission.

§ 16.307 Public access to nonexempt transcripts and minutes of closed Commission meetings—documents used at meetings—record retention.

(a) *Public access to records.* Within a reasonable time after any closed meeting, the Commission shall make available to the public, in the Commission's Public Reading Room located at 320 First Street Northwest, Washington, D.C., the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at such meeting, maintained hereunder, except for such item or items of such discussion or testimony which contain information exempt under any provision of the Government in the Sunshine Act (Pub. L. 94-409), or of any amendment thereto. Copies of nonexempt transcripts, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(b) Access to documents identified or discussed in any Commission meeting, open or closed, shall be governed by Department of Justice regulations at this Part 16, Subparts (C) and (D). The Commission reserves the right to invoke statutory exemptions to disclosure of such documents under 5 U.S.C. 552 and 552b, and applicable regulations. The exemptions provided in 5 U.S.C. 552b(c) shall apply to any request made pursuant to 5 U.S.C. 552 or 552a to copy and inspect any transcripts, recordings or minutes prepared or maintained pursuant hereto.

(c) *Retention of records.* The Commission shall maintain a complete verbatim copy of the transcript, or a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Commission proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

§ 16.308 Annual report.

The Commission shall report annually to Congress regarding its compliance with Sunshine Act requirements, including a tabulation of the total number of meetings open to the public, the total number of meetings closed to the public, the reasons for closing such meetings, and a description of any litigation brought against the Commission under this section, including any costs assessed against the Commission in such litigation and whether or not paid.

PART 17—REGULATIONS RELATING TO THE CLASSIFICATION AND DECLASSIFICATION OF NATIONAL SECURITY INFORMATION AND MATERIAL PURSUANT TO EXECUTIVE ORDER NO. 11652

Subpart A—General Provisions

Subpart B—Definitions

Subpart C—Classification Categories

Authority: Executive Order No. 11652 of March 8, 1972, sections 5(B) and 5(D) of [illegible] 28, United States Code

Source: Order No. 449-72, 37 FR 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 "Directives"), or the Atomic Energy Act of 1954, as amended (the "Atomic Energy Act").

[Order No. 449-72, 37 FR 15645, Aug. 3, 1972, as amended by Order No. 534-73, 38 FR 32717, 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.

§ 1. 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 § 17.26 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 responsible 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, notification 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 in-

formation 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) *Divisions.* 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, spent 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, operations, 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) affecting 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 classification "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" in

clude, 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 plans 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 B—Classification Procedures

§ 17.11 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, transmittal, storage, and ultimate grading 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 material 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 3(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 person 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 possible, 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 Ex-

erwise 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 transferred 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 determination 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 § 17.35(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. 469-72, 37 FR 15640, Aug. 3, 1972, as amended by Order No. 534-73, 38 FR 32177, 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. 20504.

(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 32778, Nov. 28, 1973, as amended by Order No. 548-74, 39 FR 18644, May 28, 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 stamps 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 notices and markings.

In addition to the marking requirements set forth in §§ 17.40-17.42 warning notices shall be prominently dis-

played 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 Restricted 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.

§ 17.43 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.

§ 17.44 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, specifications, 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. 469-72, 37 FR 15648, Aug. 3, 1972, as amended by Order No. 504-73, 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.

§ 17.56 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.

§ 17.57 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 like 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. 480-72, 37 FR 15648, Aug. 3, 1972, as amended by Order No. 534-73, 38 FR 22777, Aug. 24, 1973]

Subpart J—Dissemination

§ 17.67 Security clearance.

Except as hereinafter provided in § 17.68, 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.

§ 17.68 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 policy-making 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 infor-

mation 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 or the Assistant Attorney General for Administration.

[Order No. 469-72, 37 FR 13446, Aug. 2, 1972, as amended by Order No. 730-77, 42 FR 39213, Aug. 3, 1977]

§ 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 hereinafter authorized by the Attorney General or the Assistant Attorney General for Administration, and assuring its proper protection.

[Order No. 469-72, 37 FR 13446, Aug. 2, 1972, as amended by Order No. 730-77, 42 FR 39213, Aug. 3, 1977]

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 in 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.

§ 17.47 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. 458-72, 37 FR 15645, Aug. 3, 1972, as amended by Order No. 534-73, 38 FR 22777, Aug. 24, 1973]

§ 17.48 Physical inventory; restrictions 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 depositaries 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 L—Transmission of Classified Information and Material

§ 17.80 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 48 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 Subpart K 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.

[Order No. 449-72, 37 FR 15443, Aug. 3, 1972, 41 FR 20947, June 8, 1976]

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 Department, or a Security Officer of the Division involved.

§ 17.75 Nonrecord material.

Nonrecord material containing classified information (including shorthand notes, used carbon paper, ourtume typewriter 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. 449-72, 37 FR 15443, 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 in 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) Addressee.
(d) Date of classification.
(e) Subject/area.

(f) Classification category and applicability 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 28, 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

PROCEDURE FOR HEARINGS, RULEMAKING, AND HEARINGS UPON RULES

PROCEDURE FOR INVESTIGATIONS

DETERMINATIONS AND FINDINGS OF FACT

AUTHORITY: Administrative Provisions, Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3701 et seq.

SOURCE: 38 FR 3566, Feb. 7, 1973, unless otherwise noted. Redesignated, 38 FR 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. Otherwise, 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 rehearings 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 3760 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 §§ 18.33-18.34 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 rehearings, 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 requester 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 upon 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 controverted, 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 conferences.*

(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 objections, 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) *General.* All compliance hearings, adjudicative hearings, or rehearings relating to the distribution of funds under subchapters II, III or IV-A or section 3748 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 § 3748, of chapter 46 of title 42 of the United States Code shall be initiated, 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 3750 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 Procedure 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, obstructionist, or contumacious 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 disposition: 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) *Depositions*—(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 of 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 in-

vestigation 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 recommendations 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. 3758(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. 3000d. 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

Subpart A—General Provisions

Subpart B—Definitions

Subpart C—Identification of Major Federal Actions Significantly Affecting the Environment

Subpart D—Designation of Responsible Official

Subpart E—Environmental Procedures

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 implementation 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 effects 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) and 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 these 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 intended 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 decisionmaking 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. 92-83, 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 ... 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.

[39 FR 4736, Feb. 6, 1974, as amended at 41 FR 50822, Nov. 18, 1976]

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.

(5) 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 sufficient 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. Ordinarily, with programs or projects funded under Parts C and E block grant awards, draft Environmental Impact Statements will be prepared by a State agency or official. For programs or projects which are funded by discretionary grant awards, the State agency or official may be requested by LEAA to prepare the draft environmental impact statement. Such State agency or official should have statewide jurisdiction and responsibility for the program or project. In such cases the responsible LEAA official will furnish guidance, participate in the preparation of the statement, and will independently evaluate the statement prior to its approval and adoption. On statements prepared after January 1, 1978, the responsible LEAA official will provide early notification to, and solicit the views of, any other State or any Federal land management entity of any program or project which may have a significant impact upon such State or affected Federal land management entity. If there is any disagreement on the impact of the program or project, the responsible LEAA official will prepare a written assessment of such impact and views for incorporation into the final statement. In all cases LEAA will make its own evaluation of the environmental issues and take responsibility for the scope, objectivity, and content of the 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.

[39 FR 4734, Feb. 6, 1974, as amended at 41 FR 56822, Nov. 15, 1976]

§ 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. 1857-1857l, 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 institu-

tion 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 enhance 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 tradeoffs 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 State-

ment 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 envi-

ronmental 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 Statements. 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

Subpart A—General Provisions

Sec.
20.1 Purpose.
20.2 Authority.
20.3 Definitions.

Subpart B—State and Local Criminal History Record Information Systems

20.20 Applicability.
20.21 Preparation and submission of a Criminal History Record Information Plan.
20.22 Certification of Compliance.
20.23 Documentation: Approval by LEAA.
20.24 State laws on privacy and security.
20.25 Penalties.

Subpart C—Federal System and Interstate Exchange of Criminal History Record Information

Sec.
20.30 Applicability.
20.31 Responsibilities.
20.32 Includable offenses.
20.33 Dissemination of criminal history record information.
20.34 Individual's right to access criminal history record information.
20.35 National Crime Information Center Advisory Policy Board.
20.36 Participation in the Computerized Criminal History Program.
20.37 Responsibility for accuracy, completeness, currency.
20.38 Sanction for noncompliance.

Appendix—Commentary on selected sections of the regulations on criminal history record information systems

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. 601-75, 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 organiza-

tions 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 persons; (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 unless it can be assured 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.* 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 authorize 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 noncriminal 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 of supervision (or the equivalent) to noncriminal 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 absence 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, system 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 man-made 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 man-made 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 fa-

miliar 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).

[41 FR 11715, Mar. 19, 1976, as amended at 42 FR 61596, Dec. 6, 1977]

§ 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 March 1, 1978. A final certification shall be submitted in March 1, 1978.

Where a State finds it is unable to provide final certification that all required procedures as set forth in § 20.21 will be operational by March 1, 1978, a further extension of the deadline will be granted by LEAA upon a showing that the State has made a good faith effort to implement these regulations to the maximum extent feasible. Documentation justifying the request for the extension including a proposed timetable for full compliance

must be submitted to LEAA by March 1, 1978. Where a State submits a request for an extension, the implementation date will be extended an additional 90 days while LEAA reviews the documentation for approval or disapproval. To be approved, such revised schedule must be consistent with the timetable and procedures set out below:

(a) July 31, 1978—Submission of certificate of compliance with:

(1) Individual access, challenge, and review requirements;

(2) Administrative security;

(3) Physical security to the maximum extent feasible.

(b) Thirty days after the end of a State's next legislative session—Submission to LEAA of a description of State policy on dissemination of criminal history record information.

(c) Six months after the end of a State's legislative session—Submission to LEAA of a brief and concise description of standards and operating procedures to be followed by all criminal justice agencies covered by LEAA regulations in complying with the State policy on dissemination.

(d) Eighteen months after the end of a State's legislative session—Submission to LEAA of a certificate attesting to the conduct of an audit of the State central repository and of a random number of other criminal justice agencies in compliance with LEAA regulations.

[41 FR 11715, Mar 19, 1976, as amended at 42 FR 61596, Dec. 6, 1977]

§ 20.21 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.

§ 20.22 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 Pub. L. 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 Pub. L. 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 philos-

ophy, 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, Pub. L. 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.

Appendix—Commentary on Selected Sections of the Regulations on Criminal History Record Information Systems

Subpart A—§ 20.3(b). The definition of criminal history record information is intended to include the basic offender-based transaction statistics/computerized criminal history (OBTS/CCH) data elements. If notations of an arrest, disposition, or other formal criminal justice transactions occur in records other than the traditional "rap sheet" such as arrest reports, any criminal history record information contained in such reports comes under the definition of this subsection.

The definition, however, does not extend to other information contained in criminal justice agency reports. Intelligence or investigative information (e.g., suspected criminal activity, associates, hangouts, financial information, ownership of property and vehicles) is not included in the definition of criminal history information.

§ 20.3(c). The definitions of criminal justice agency and administration of criminal justice of § 20.3(c) must be considered together. Included as criminal justice agencies would be traditional police, courts, and corrections agencies as well as subunits of noncriminal justice agencies performing a function of the administration of criminal justice pursuant to Federal or State statute or executive order. The above subunits of noncriminal justice agencies would include for example, the Office of Investigation of the U.S. Department of Agriculture which has as its principal function the collection of evidence for criminal prosecutions of fraud. Also included under the definition of criminal justice agency are umbrella-type administrative agencies supplying criminal history information services such as New York's Division of Criminal Justice Services.

§ 20.3(e). Disposition is a key concept in section 524(b) of the Act and in § 20.21(a)(1) and § 20.21(b). It, therefore is defined in some detail. The specific dispositions listed in this subsection are examples only and are not to be construed as excluding other unspecified transactions concluding criminal proceedings within a particular agency.

§ 20.3(k). The different kinds of acquittals and dismissals delineated in § 20.3(e) are all considered examples of nonconviction data.

Subpart B—§ 20.20(a). These regulations apply to criminal justice agencies receiving funds under the Omnibus Crime Control and Safe Streets Act for manual or automated systems subsequent to July 1, 1973. In the hearings on the regulations, a number of those testifying challenged LEAA's authority to promulgate regulations for manual systems by contending that section 524(b) of the Act governs criminal history information contained in automated systems.

The intent of section 524(b), however, would be subverted by only regulating automated systems. Any agency that wished to circumvent the regulations would be able to create duplicate manual files for purposes contrary to the letter and spirit of the regulations.

Regulation of manual systems, therefore, is authorized by section 524(b) when coupled with section 501 of the Act which authorizes the Administration to establish rules and regulations "necessary to the exercise of its functions * * *."

The Act clearly applies to all criminal history record information collected, stored, or disseminated with LEAA support subsequent to July 1, 1973.

Limitations as contained in Subpart C also apply to information obtained from the FBI Identification Division or the FBI/NCIC System.

§ 20.20 (b) and (c). Section 20.20 (b) and (c) exempts from regulations certain types of records vital to the apprehension of fugitives, freedom of the press, and the public's right to know. Court records of public judicial proceedings are also exempt from the provisions of the regulations.

Section 20.20(b)(2) attempts to deal with the problem of computerized police blotters. In some local jurisdictions, it is apparently possible for private individuals and/or newsmen upon submission of a specific name to obtain through a computer search of the blotter a history of a person's arrests. Such files create a partial criminal history data bank potentially damaging to individual privacy, especially since they do not contain final dispositions. By requiring that such records be accessed solely on a chronological basis, the regulations limit inquiries to specific time periods and discourage general fishing expeditions into a person's private life.

Subsection 20.20(c) recognizes that announcements of ongoing developments in the criminal justice process should not be precluded from public disclosure. Thus, announcements of arrest, convictions, new developments in the course of an investigation may be made. It is also permissible for a criminal justice agency to confirm certain matters of public record information upon specific inquiry. Thus, if a question is raised: "Was X arrested by your agency on January 3, 1975" and this can be confirmed or denied by looking at one of the records enumerated in subsection (b) above, then the criminal justice agency may respond to the inquiry. Conviction data as stated in § 20.21(b) may be disseminated without limitation.

§ 20.21. The regulations deliberately refrain from specifying who within a State should be responsible for preparing the plan. This specific determination should be made by the Governor. The State has 90 days from the publication of these revised regulations to submit the portion of the plan covering §§ 20.21(b) and 20.21(f).

§ 20.21(a)(1). Section 524(b) of the Act requires that LEAA insure criminal history information be current and that, to the maximum extent feasible, it contain disposition as well as current data.

It is, however, economically and administratively impractical to maintain complete criminal histories at the local level. Arrangements for local police departments to keep track of dispositions by agencies out-

side of the local jurisdictions generally do not exist. It would, moreover, be bad public policy to encourage such arrangements since it would result in an expensive duplication of files.

The alternatives to locally kept criminal histories are records maintained by a central State repository. A central State repository is a State agency having the function pursuant to a statute or executive order of maintaining comprehensive statewide criminal history record information files. Ultimately, through automatic data processing the State level will have the capability to handle all requests for in-State criminal history information.

Section 20.20(a)(1) is written with a centralized State criminal history repository in mind. The first sentence of the subsection states that complete records should be retained at a central State repository. The word "should" is permissive; it suggests but does not mandate a central State repository.

The regulations do require that States establish procedures for State and local criminal justice agencies to query central State repositories wherever they exist. Such procedures are intended to insure that the most current criminal justice information is used.

As a minimum, criminal justice agencies subject to these regulations must make inquiries of central State repositories whenever the repository is capable of meeting the user's request within a reasonable time. Presently, comprehensive records of an individual's transactions within a State are maintained in manual files at the State level, if at all. It is probably unrealistic to expect manual systems to be able immediately to meet many rapid-access needs of police and prosecutors. On the other hand, queries of the State central repository for most noncriminal justice purposes probably can and should be made prior to dissemination of criminal history record information.

§ 20.21(b). The limitations on dissemination in this subsection are essential to fulfill the mandate of section 524(b) of the Act which requires the Administration to assure that the "privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes." The categories for dissemination established in this section reflect suggestions by hearing witnesses and respondents submitting written commentary.

The regulations distinguish between conviction and nonconviction information insofar as dissemination is concerned. Conviction information is currently made available without limitation in many jurisdictions. Under these regulations, conviction data and pending charges could continue to be disseminated routinely. No statute, ordinance, executive order, or court rule is necessary in order to authorize dissemination of conviction data. However, nothing in the regulations shall be construed to negate a State law limiting such dissemination.

After December 31, 1977, dissemination of nonconviction data would be allowed, if authorized by a statute, ordinance, executive order, or court rule, decision, or order. The December 31, 1977, deadline allows the States time to review and determine the kinds of dissemination for non-criminal justice purposes to be authorized. When a State enacts comprehensive legislation in this area, such legislation will govern dissemination by local jurisdictions within the State. It is possible for a public record law which has been construed by the State to authorize access to the public of all State records, including criminal history record information, to be considered as statutory authority under this subsection. Federal legislation and executive orders can also authorize dissemination and would be relevant authority.

For example, Civil Service suitability investigations are conducted under Executive Order 10450. This is the authority for most investigations conducted by the Commission. Section 3(a) of 10450 prescribes the minimum scope of investigation and requires a check of FBI fingerprint files and written inquiries to appropriate law enforcement agencies.

§ 20.21(b)(3). This subsection would permit private agencies such as the Vera Institute to receive criminal histories where they perform a necessary administration of justice function such as pretrial release. Private consulting firms which commonly assist criminal justice agencies in information systems development would also be included here.

§ 20.21(b)(4). Under this subsection, any good faith researchers including private individuals would be permitted to use criminal history record information for research purposes. As with the agencies designated in § 20.21(b)(3) researchers would be bound by an agreement with the disseminating criminal justice agency and would, of course, be subject to the sanctions of the Act.

The drafters of the regulations expressly rejected a suggestion which would have limited access for research purposes to certified research organizations. Specifically "certification" criteria would have been extremely difficult to draft and would have inevitably led to unnecessary restrictions on legitimate research.

Section 524(a) of the Act which forms part of the requirements of this section states:

"Except as provided by Federal law other than this title, no officer or employee of the Federal Government, nor any recipient of

assistance under the provisions of this title shall use or reveal any research or statistical information furnished under this title by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this title. Copies of such information shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding."

LEAA anticipates issuing regulations, pursuant to Section 524(a) as soon as possible.

§ 20.21(c)(2). Presently some employers are circumventing State and local dissemination restrictions by requesting applicants to obtain an official certification of no criminal record. An employer's request under the above circumstances gives the applicant the unenviable choice of invasion of his privacy or loss of possible job opportunities. Under this subsection routine certifications of no record would no longer be permitted. In extraordinary circumstances, however, an individual could obtain a court order permitting such a certification.

§ 20.21(c)(3). The language of this subsection leaves to the States the question of who among the agencies and individuals listed in § 20.21(b) shall actually receive criminal records. Under these regulations a State could place a total ban on dissemination if it so wished. The State could, on the other hand, enact laws authorizing any member of the private sector to have access to non-conviction data.

§ 20.21(d). Non-criminal justice agencies will not be able to receive records of juveniles unless the language of a statute or court order, rule, or court decision specifies that juvenile records shall be available for dissemination. Perhaps the most controversial part of this subsection is that it denies access to records of juveniles by Federal agencies conducting background investigations for eligibility to classified information under existing legal authority.

§ 20.21(e) Since it would be too costly to audit each criminal justice agency in most States (Wisconsin, for example, has 1075 criminal justice agencies) random audits of a "representative sample" of agencies are the next best alternative. The term "representative sample" is used to insure that audits do not simply focus on certain types of agencies. Although this subsection requires that there be records kept with the names of all persons or agencies to whom information is disseminated, criminal justice agencies are not required to maintain dissemination logs for "no record" responses.

§ 20.21(f). Requirements are set forth which the States must meet in order to assure that criminal history record information is adequately protected. Automated systems may operate in shared environments and the regulations require certain minimum assurances.

§ 20.21(g)(1). A "challenge" under this section is an oral or written contention by an individual that his record is inaccurate or incomplete; it would require him to give a correct version of his record and explain why he believes his version to be correct. While an individual should have access to his record for review, a copy of the record should ordinarily only be given when it is clearly established that it is necessary for the purpose of challenge.

The drafters of the subsection expressly rejected a suggestion that could have called for a satisfactory verification of identity by fingerprint comparison. It was felt that States ought to be free to determine other means of identity verification.

§ 20.21(g)(5). Not every agency will have done this in the past, but henceforth adequate records including those required under 20.21(e) must be kept so that notification can be made.

§ 20.21(g)(3). This section emphasizes that the right to access and review extends only to criminal history record information and does not include other information such as intelligence or treatment data.

§ 20.22(a). The purpose for the certification requirement is to indicate the extent of compliance with these regulations. The term "maximum extent feasible" acknowledges that there are some areas such as the completeness requirement which create complex legislative and financial problems.

NOTE: In preparing the plans required by these regulations, States should look for guidance to the following documents: National Advisory Commission on Criminal Justice Standards and Goals, Report on the Criminal Justice System; Project SEARCH: Security and Privacy Considerations in Criminal History Information Systems, Technical Report No. 2 and No. 13; Project SEARCH: A Model State Act for Criminal Offender Record Information, Technical Memorandum No. 3; and Project SEARCH: Model Administrative Regulations for Criminal Offender Record Information, Technical Memorandum No. 4.

Subpart C—§ 20.31. Defines the criminal history record information system operated by the Federal Bureau of Investigation. Each state having a record in the Computerized Criminal History (CCH) file must have a fingerprint card on file in the FBI Identification Division to support the CCH record concerning the individual.

Paragraph (b) is not intended to limit the identification services presently performed

by the FBI for Federal, state and local agencies.

§ 20.32. The grandfather clause contained in the third paragraph of this Section is designed, from a practical standpoint, to eliminate the necessity of deleting from the FBI's massive files the non-includable offenses which were stored prior to February, 1973.

In the event a person is charged in court with a serious or significant offense arising out of an arrest involving a non-includable offense, the non-includable offense will appear in the arrest segment of the CCH record.

§ 20.33. Incorporates the provisions of a regulation issued by the FBI on June 26, 1974, limiting dissemination of arrest information not accompanied by disposition information outside the Federal government for non-criminal justice purposes. This regulation is cited in 28 CFR 50.12.

§ 20.34. The procedures by which an individual may obtain a copy of his manual identification record are particularized in 28 CFR 16.30-34.

The procedures by which an individual may obtain a copy of his Computerized Criminal History record are as follows:

If an individual has a criminal record supported by fingerprints and that record has been entered in the NCIC CCH File, it is available to that individual for review, upon presentation of appropriate identification, and in accordance with applicable state and Federal administrative and statutory regulations.

Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be. The record on file will then be verified as his through comparison of fingerprints.

Procedure. 1. All requests for review must be made by the subject of his record through a law enforcement agency which has access to the NCIC CCH File. That agency within statutory or regulatory limits can require additional identification to assist in securing a positive identification.

2. If the cooperating law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI identification number of the individual's record is available to that agency, it can make an on-line inquiry of NCIC to obtain his record on-line or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Washington, D.C., by mail. The individual will then be afforded the opportunity to see that record.

3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate his prints to an existing record by having his identification prints compared with those already on file in the FBI, or, possibly, in the State's central identification agency.

4. The subject of the requested record shall request the appropriate arresting agency, court, or correctional agency to initiate action necessary to correct any stated inaccuracy in his record or provide the information needed to make the record complete.

§ 20.36. This section refers to the requirements for obtaining direct access to the CCH file.

§ 20.37. The 120-day requirement in this section allows 30 days more than the similar provision in Subpart B in order to allow for processing time which may be needed by the states before forwarding the disposition to the FBI.

[Order No. 662-76, 41 FR 34949, Aug. 18, 1976]

PART 21—WITNESS FEES

Sec.
21.1 Employees of the United States serving as witnesses.
21.2 [Reserved]
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.

AUTHORITY: 28 U.S.C. 1821, et seq., unless otherwise noted.

§ 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 pro-

ceeding of a judicial nature. Examples of the latter include hearings and conferences before a committing court, magistrate, or commissioner, 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 466-71, 36 FR 15432, Aug. 14, 1971, 36 FR 17546, 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 pay-

ment 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, dog-team, 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. 332, sec. 23, 73 Stat. 147; 48 U.S.C. 25, 28 U.S.C. 81A nt.)

[Order 214-60, 25 FR 12279, Dec. 1, 1960 as amended by Order 466-69, 34 FR 436, Jan. 11, 1969; Order 485-71, 36 FR 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. 782, 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. 1821, 1821)

[Order No. 281-62, 27 FR 13619, Dec. 29, 1962; Order 327-64, 29 FR 15018, 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. Commission-

er or Magistrate, on the certificate of such commissioner or magistrate.

[Order No. 437-70, 35 FR 11301, Jul. 16, 1970]

PART 22—CONFIDENTIALITY OF IDENTIFIABLE RESEARCH AND STATISTICAL INFORMATION

Sec
22.1 Purpose.
22.2 Definitions.
22.20 Applicability.
22.21 Use of identifiable data.
22.22 Revelation of identifiable data.
22.23 Privacy certification.
22.24 Information transfer agreement.
22.25 Final disposition of identifiable materials.
22.26 Requests for transfer of information.
22.27 Notification.
22.28 Use of data identifiable to a private person for judicial or administrative purposes.
22.29 Sanctions.

AUTHORITY: Secs. 501, 524(a), Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701, et seq.), as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, and Pub. L. 94-503).

SOURCE: 41 FR 54846, Dec. 15, 1976, unless otherwise noted.

§ 22.1 Purpose.

The purpose of these regulations is to:

(a) Protect privacy of individuals by requiring that information identifiable to a private person obtained in a research or statistical program may only be used and/or revealed for the purpose for which obtained;

(b) Insure that copies of such information shall not, without the consent of the person to whom the information pertains, be admitted as evidence or used for any purpose in any judicial or administrative proceedings;

(c) Increase the credibility and reliability of federally-supported research and statistical findings by minimizing subject concern over subsequent uses of identifiable information;

(d) Provide needed guidance to persons engaged in research and statistical activities by clarifying the purposes for which identifiable information may be used or revealed; and

(e) Insure appropriate balance between individual privacy and essential needs of the research community for data to advance the state of knowledge in the area of criminal justice.

§ 22.2 Definitions.

(a) *Person*—means any individual, partnership, corporation, association, public or private organization or governmental entity, or combination thereof.

(b) *Private person*—means any person defined in § 22.2(a) other than an agency, or department of Federal, State, or local government, or any component or combination thereof. Included as a private person is an individual acting in his official capacity.

(c) *Research or statistical project*—means any program, project, or component thereof which is supported in whole or in part with funds appropriated under the Act and whose purpose is to develop, measure, evaluate, or otherwise advance the state of knowledge in a particular area. The term does not include "intelligence" or other information-gathering activities in which information pertaining to specific individuals is obtained for purposes directly related to enforcement of the criminal laws.

(d) *Research or statistical information*—means any information which is collected during the conduct of a research or statistical project and which is intended to be utilized for research or statistical purposes. The term includes information which is collected directly from the individual or obtained from any agency or individual having possession, knowledge, or control thereof.

(e) *Information identifiable to a private person*—means information which either—

(1) Is labelled by name or other personal identifiers, or

(2) Can, by virtue of sample size or other factors, be reasonably interpreted as referring to a particular private person.

(f) *Recipient of assistance*—means any recipient of a grant, contract, interagency agreement, subgrant, or subcontract under the Act and any person, including subcontractors, em-

ployed by such recipient in connection with performances of the grant, contract, or interagency agreement.

(g) Officer or employee of the Federal Government—means any person employed as a regular or special employee of the U.S. (including experts, consultants, and advisory board members) as of July 1, 1973, or at any time thereafter.

(h) The act—means the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

(i) Applicant—means any person who applies for a grant, contract, or subgrant to be funded pursuant to the Act.

(j) The Juvenile Justice Act—means the "Juvenile Justice and Delinquency Prevention Act of 1974, as amended."

[41 FR 54846, Dec. 15, 1976, as amended at 43 FR 16974, Apr. 21, 1978]

§ 22.20 Applicability.

(a) These regulations govern use and revelation of research and statistical information obtained, collected, or produced either directly by LEAA or under any interagency agreement, grant, contract, or subgrant awarded under the Crime Control Act and Juvenile Justice Act.

(b) The regulations do not apply to any records from which identifiable research or statistical information was originally obtained; or to any records which are designated under existing statutes as public; or to any information extracted from any records designated as public.

(c) The regulations do not apply to information gained regarding future criminal conduct.

[41 FR 54846, Dec. 15, 1976, as amended at 43 FR 16974, Apr. 21, 1978]

§ 22.21 Use of identifiable data.

Research or statistical information identifiable to a private person may be used only for research or statistical purposes.

§ 22.22 Revelation of identifiable data.

(a) Except as noted in paragraph (b), of this section, research and statistical information relating to a private person may be revealed in identifiable form on a need-to-know basis only to—

(1) Officers, employees, and subcontractors of the recipient of assistance;

(2) Such individuals as needed to implement sections 303(a)(12), 402(c), 515(b), 518, and 521 of the Crime Control Act and sections 223(a)(12)(A), 223(a)(14) and 243 of the Juvenile Justice Act.

(3) Persons or organizations for research or statistical purposes. Information may only be transferred for such purposes upon a clear demonstration that the standards of § 22.26 have been met and that, except where information is transferred under paragraphs (a) (1) and (2) of this section, such transfers shall be conditioned on compliance with a § 22.24 agreement.

(b) Information may be revealed in identifiable form where prior consent is obtained from an individual or where the individual has agreed to participate in a project with knowledge that the findings cannot, by virtue of sample size, or uniqueness of subject, be expected to totally conceal subject identity.

[41 FR 54846, Dec. 15, 1976, as amended at 43 FR 16974, Apr. 21, 1978]

§ 22.23 Privacy certification.

(a) Each applicant for LEAA support either directly or under a State plan shall submit a Privacy Certificate as a condition of approval of a grant application or contract proposal which has a research or statistical project component under which information identifiable to a private person will be collected.

(b) The Privacy Certificate shall briefly describe the project and shall contain assurance by the applicant that:

(1) Data identifiable to a private person will not be used or revealed, except as authorized under §§ 22.21, 22.22.

(2) Access to data will be limited to those employees having a need therefore and that such persons shall be advised of and agree in writing to comply with these regulations.

(3) All subcontracts which require access to identifiable data will contain

conditions meeting the requirements of § 22.24.

(4) To the extent required by § 22.27 any private persons from whom identifiable data are collected or obtained, either orally or by means of written questionnaire, shall be advised that the data will only be used or revealed for research or statistical purposes and that compliance with requests for information is not mandatory. Where the notification requirement is to be waived, pursuant to § 22.27(c), a justification must be included in the Privacy Certificate.

(5) Adequate precautions will be taken to insure administrative and physical security of identifiable data.

(6) A log will be maintained indicating that identifiable data have been transmitted to persons other than LEAA or grantee/contractor staff or subcontractors, that such data have been returned, or that alternative arrangements have been agreed upon for future maintenance of such data.

(7) Project plans will be designed to preserve anonymity of private persons to whom information relates, including, where appropriate, name-stripping, coding of data, or other similar procedures.

(8) Project findings and reports prepared for dissemination will not contain information which can reasonably be expected to be identifiable to a private person except as authorized under § 22.22.

(c) The applicant shall attach to the Privacy Certification a description of physical and/or administrative procedures to be followed to insure the security of the data to meet the requirements of § 22.25.

§ 22.24 Information transfer agreement.

Prior to the transfer of any identifiable information to persons other than LEAA or project staff, an agreement shall be entered into which shall provide, as a minimum, that the recipient of data agrees that:

(a) Information identifiable to a private person will be used only for research and statistical purposes.

(b) Information identifiable to a private person will not be revealed to any person for any purpose except where the information has already been included in research findings (and/or data bases) and is revealed on a need-to-know basis for research or statistical purposes, provided that such transfer is approved by the person providing information under the agreement, or authorized under § 22.24(e).

(c) Knowingly and willfully using or disseminating information contrary to the provisions of the agreement shall constitute a violation of these regulations, punishable in accordance with the Act.

(d) Adequate administrative and physical precautions will be taken to assure security of information obtained for such purpose.

(e) Access to information will be limited to those employees or subcontractors having a need therefore in connection with performance of the activity for which obtained, and that such persons shall be advised of, and agree to comply with, these regulations.

(f) Project plans will be designed to preserve anonymity of private persons to whom information relates, including, where appropriate, required name-stripping and/or coding of data or other similar procedures.

(g) Project findings and reports prepared for dissemination will not contain information which can reasonably be expected to be identifiable to a private person.

(h) Information identifiable to a private person (obtained in accordance with this agreement) will, unless otherwise agreed upon, be returned upon completion of the project for which obtained and no copies of that information retained.

§ 22.25 Final disposition of identifiable materials.

Upon completion of a research or statistical project the security of identifiable research or statistical information shall be protected by:

(a) Complete physical destruction of all copies of the materials or the identifiable portion of such materials after a three-year required recipient retention period or as soon as authorized by law, or

(b) Removal of identifiers from data and separate maintenance of a name-code index in a secure location.

The Privacy Certificate shall indicate the procedures to be followed and shall, in the case of paragraph (b) of this section, describe procedures to secure the name index.

§ 22.25 Requests for transfer of information.

(a) Requests for transfer of information identifiable to an individual shall be submitted to the person submitting the Privacy Certificate pursuant to § 22.23.

(b) Except where information is requested by LEAA, the request shall describe the general objectives of the project for which information is requested, and specifically justify the need for such information in identifiable form. The request shall also indicate, and provide justification for the conclusion that conduct of the project will not, either directly or indirectly, cause legal, economic, physical, or social harm to individuals whose identification is revealed in the transfer of information.

(c) Data may not be transferred pursuant to this section where a clear showing of the criteria set forth above is not made by the person requesting the data.

§ 22.27 Notification.

(a) Any person from whom information identifiable to a private person is to be obtained directly, either orally, by questionnaire, or other written documents, shall be advised:

(1) That the information will only be used or revealed for research or statistical purposes; and

(2) That compliance with the request for information is entirely voluntary and may be terminated at any time.

(b) Except as noted in paragraph (c) of this section, where information is to be obtained through observation of individual activity or performance, such individuals shall be advised:

(1) Of the particular types of information to be collected;

(2) That the data will only be utilized or revealed for research or statistical purposes; and

(3) That participation in the project in question is voluntary and may be terminated at any time.

(c) Notification, as described in paragraph (b) of this section, may be eliminated where information is obtained through field observation of individual activity or performance and in the judgment of the researcher such notification is impractical or may seriously impede the progress of the research.

(d) Where findings in a project cannot, by virtue of sample size, or uniqueness of subject, be expected to totally conceal subject identity, an individual shall be so advised.

§ 22.29 Use of data identifiable to a private person for judicial or administrative purposes.

(a) Copies of research or statistical information identifiable to a private person shall be immune from legal process and shall only be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding with the written consent of the individual to whom the data pertains.

(b) Where consent is obtained, such consent shall:

(1) Be obtained at the time that information is sought for use in judicial or administrative proceedings;

(2) Set out specific purposes in connection with which information will be used;

(3) Limit, where appropriate, the scope of the information subject to such consent.

§ 22.29 Sanctions.

Where LEAA believes that a violation has occurred of section 524(a), these regulations, or any grant or contract conditions entered into thereunder, it may initiate administrative actions leading to termination of a grant or contract, commence appropriate personnel and/or other procedures in cases involving Federal employees, and/or initiate appropriate legal actions leading to imposition of a fine of not to exceed $10,000 against any person responsible for such violations.

PART 25—RECOMMENDATIONS TO THE PRESIDENT ON CIVIL AERONAUTICS BOARD DECISIONS

Sec.
25.1 Purpose.
25.2 Submission of comments.
25.3 Exclusions.
25.4 Public dockets.

AUTHORITY: 28 U.S.C. 509, 510 and 5 U.S.C. 301. Sec. 5 of E.O. 11930, June 16, 1976.

SOURCE: 41 FR 31532, July 29, 1976, unless otherwise noted.

§ 25.1 Purpose.

The purpose of this Part is to set forth procedures of the Department of Justice for receiving comments from private parties on possible recommendations by the Department to the President on decisions of the Civil Aeronautics Board submitted for Presidential approval under section 801 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1461), relating to overseas and international air transportation.

§ 25.2 Submission of comments.

(a) It is the policy of the Department that communications described in § 25.1 shall be made in writing whenever possible. All such written communications shall be submitted in duplicate. The officer or employee receiving such a written communication shall immediately send it or a copy of it to the Legal Procedure Unit of the Antitrust Division for docketing in accordance with § 25.4.

(b) Each oral communication described in §25.1 shall be summarized by the person receiving the communication in a memorandum setting forth the date, time, place, participants, matter discussed, length and substance of the conversation. The memorandum shall be forwarded to the Legal Procedure Unit for docketing in accordance with § 25.4.

§ 25.3 Exclusions.

The requirements of this Part shall not apply to communications requiring confidential treatment for defense or foreign policy reasons under appropriate legal standards, nor to written communications which are publicly available at the Civil Aeronautics Board.

§ 25.4 Public dockets.

(a) A public docket shall be created in the Legal Procedure Unit, Antitrust Division (Room 3306, Main Justice Building, telephone: 202-739-2481), upon receipt by the Unit of a written communication, or memorandum of oral communication, required by this Part to be docketed. Those public dockets shall be identified by the number and title of the CAB docket dealing with the same proceeding or matter, if such a CAB docket has been established. Until a CAB docket has been established regarding the matter, a description sufficient to permit public identification of the matter shall be used.

(b) All comments submitted and docketed under this Part are available for public inspection and copying, and responsive comment, at the address specified in paragraph (a) of this section, between the hours of 9 a.m. and 5:30 p.m. weekdays.

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.

Subpart B—Project Notification Procedures

30.4 Notification of intent.
30.5 Application submission.
30.6 Indian tribes.
30.7 Clearinghouse review.
30.8 SPA responsibilities.
30.9 Funding agency responsibilities.
30.10 Requests for exemptions and procedural variations.
30.11 Joint funding.

Subpart C—Direct Federal Development

30.12 Non-applicability.

Subpart D—State Plans

30.13 General.
30.14 Governor's comments.

Subpart E—Coordination of Planning in Multijurisdictional Areas

Subpart F—Definitions

AUTHORITY: OMB Circ. No. A-95 Rev., Sec. 501, Omnibus Crime Control and Safe Streets Act of 1968, as amended 42 U.S.C. 3701, et seq.

SOURCE: 42 FR 5316, Jan. 27, 1977 unless otherwise noted.

Subpart A—General Provisions

§ 30.1 Purpose.

The purpose of this regulation is to implement OMB Circular A-95 Revised (41 FR 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) 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.

(c) 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 Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3701, et seq.

§ 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 Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3701, et seq., 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) Subpart B of 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) Subpart D of 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) Subpart E of this regulation and Part IV of OMB Circular No. A-95 Revised cover the following programs:

(1) 16.500 Law Enforcement Assistance—Comprehensive Planning Grants.

Subpart B—Project Notification Procedures

§ 30.4 Notification of intent.

(a) Any applicant undertaking to apply to LEAA or an SPA for assistance for a project or program or major substantive modification thereto under an LEAA assisted project or program covered by this Subpart and Part II of OMB Circular No. A-95 Revised is required to notify both the State and areawide planning and development clearinghouses in the jurisdiction in which the project is to be located of the applicant's intent to apply for assistance at such time as the applicant determines to develop an application. The applicant may notify either the State or areawide planning and development clearinghouses where such clearinghouses have agreed on a single entry point into the review system in that State.

(b) In the case of the applications for projects involving land or water use and development or construction in the National Capital (as defined in section 1(b) of the National Capital Planning Act of 1952, as amended) a copy of the notification is to be sent to the National Capital Planning Commission (NCPC) in addition to the State and areawide clearinghouses.

(c) In the case of an application in any State for an activity that is statewide or broader in nature and does not have specific applicability to areawide or local planning and programs, the notification is to be sent only to the State clearinghouse unless otherwise required by the State clearinghouse.

(d) Notifications shall include a summary description of the proposed project. The summary description shall contain the following information:

(1) Identity of the applicant.

(2) The geographical location of the proposed project. A map should be provided, if appropriate.

(3) A brief description of the proposed project by type, purpose, general size or scale, estimated cost, beneficiaries, or other characteristics which will enable the clearinghouses to identify agencies of State or local government having plans, programs, or projects that may be affected by the proposed project.

(4) A statement as to whether the applicant will be required by the funding agency to submit environmental impact information for the proposed project.

(5) The LEAA program title and number under which assistance will be sought as provided in § 30.3.

(6) The estimated date the applicant expects to formally file an application.

(e) Applicants are encouraged to contact the clearinghouse to which the notification will be sent to obtain notification forms and instructions and to submit the notification containing the preliminary information indicated above to the clearinghouse at the earliest possible time to expedite clearinghouse review.

(f) Notifications of all projects affecting a unit of general local government may be requested by the chief executive of such unit to be sent by the areawide clearinghouse to such chief executive or to such central agency as the chief executive may designate for review and reference to appropriate agencies of such unit.

§ 30.5 Application submission.

(a) All applications for assistance under programs covered by this Subpart must be submitted to appropriate clearinghouses for review prior to their submission to the funding

agency. However, concurrent submission of an application to the clearinghouses and the funding agency is permissible only if the applicant, clearinghouses, and funding agency agree to concurrent submission.

(b) Where review by clearinghouse has been completed prior to completion of an application, the applicant is not required to submit a completed application to the clearinghouses prior to submission to the funding agency. However, the applicant may be requested by the clearinghouses to supply an information copy of the completed application when the application is submitted to the funding agency.

(c) Applicants will include with the completed application as submitted to the funding agency:

(1) All comments and recommendations made by or through clearinghouses, along with a statement that such comments have been considered prior to submission of the application;

(2) Where no comments have been received from a clearinghouse a statement that the procedures outlined in this section have been followed and that no comments or recommendations have been received; or

(3) Statements from the applicant and clearinghouses agreeing to concurrent review of the application by the clearinghouses and funding agency.

(d) Applications for annual renewal or continuation grants are subject to review upon request of the clearinghouse, and applications not submitted to or acted upon by the funding agency within one year after completion of the clearinghouse review are subject to re-review upon the request of the clearinghouse.

(e) Applications submitted to clearinghouses for review from nongovernmental applicants are not required to include confidential information concerning the financial status or structure or the personnel of the applicant organization, even though the funding agency may require such information to be sent to the funding agency as part of the application.

§ 30.6 Indian tribes.

(a) Applications from federally recognized Indian tribes are not subject to the requirements of this Subpart or Part I of OMB Circular No. A-95 Revised. However, Indian tribes may voluntarily comply with this Subpart and are encouraged to do so.

(b) The funding agency shall notify the appropriate State and areawide clearinghouses of any applications submitted by federally recognized Indian tribes upon receipt. SF 424 may be used for such notification.

(c) Where a federally recognized Tribal Government has established a mechanism for coordinating the activities of Tribal departments, divisions, enterprises, and entities, such Tribal Government may require upon obtaining approval from LEAA that applications for assistance under programs covered by this Subpart from such Tribal departments, divisions, enterprises, and entities shall be subject to review by such Tribal coordinating mechanism as though it were a State or areawide clearinghouse. Upon receiving such request for approval, LEAA shall transmit the request to the Office of Management and Budget for comment.

§ 30.7 Clearinghouse review.

(a) Comments and recommendations made by or through clearinghouses with respect to any project are for the purpose of assuring maximum consistency of such projects with State, areawide, and local comprehensive plans.

(b) An applicant may generally expect that State and areawide clearinghouses will complete review of a project notification within 30 days after receipt by the clearinghouses of the notification. However, clearinghouses may request an additional 30 days to review the completed application. Where the applicant has not received a response to the applicant's notification from the clearinghouse within the initial 30-day period, the applicant may consider the clearinghouse to have waived its opportunity to review and comment on the proposed project.

(c) If an applicant submits a completed application to State and areawide clearinghouses during the 30 day notification review period, the applicant may expect that the clearinghouses will complete review within 30 days plus the number of days remaining in the 30 day notification period. If an applicant submits to the clearinghouses a completed application without a project notification, the applicant may expect that the clearinghouses will complete review of the application within 60 days. In all other cases, the applicant may expect that the clearinghouses will complete review of a completed application within 30 days. If clearinghouse review of an application is not completed within these time periods, the applicant may consider that the application has been favorably reviewed and may submit the application to the funding agency for consideration.

§ 30.8 SPA responsibilities.

SPA's shall provide procedures:

(a) For the submission of applications for programs or projects covered by this Subpart to the appropriate clearinghouses.

(b) To insure that all applications contain a State Application Identifier (SAI) number. This is mandatory for use in notifying clearinghouses of action taken on the application.

(c) To insure that all comments have been considered and made a part of the application.

§ 30.9 Funding agency responsibilities.

(a) A funding agency that receives an application that does not carry evidence that appropriate clearinghouses have been given an opportunity to review the application shall return the application to the applicant with instructions to fulfill the requirements of this Subpart. However, if the application is accompanied with statements from the applicant and clearinghouses agreeing to concurrent review by the clearinghouses and the funding agency, the funding agency may, within its discretion, receive the application.

(b) The funding agency must notify appropriate clearinghouses within seven working days of any major action taken on any application that has been reviewed by such clearinghouses. Major actions will include awards, rejections, returns for amendment, deferrals, or withdrawals. The standard multipurpose form, SF 424, as prescribed by Treasury Circular TC 1082 (as revised, October 1975) will be used for this purpose.

(c) Where a clearinghouse has recommended against approval or approval only with specific and major substantive changes and the funding agency approves the application substantially as submitted, the funding agency will provide the clearinghouse with, along with the action notice, an explanation therefor.

(d) Where a clearinghouse has recommended against approval of a project because it conflicts with or duplicates another Federal or federally assisted project, the funding agency will consult with the agency assisting the referenced project prior to acting if it plans to approve the application.

§ 30.10 Requests for exemptions and procedural variations.

(a) LEAA may request an exemption from OMB for certain classes of projects or activities under programs otherwise covered which:

(1) Meet any of the following characteristics: (i) Assistance to organizations and institutions for the provision of education or training not designed to meet the needs of specific individual States or localities.

(ii) Research, not involving capital construction, which is national in scope or is not designed to meet the needs or to address problems of a particular State, area, or locality (except in the case of demonstration or pilot research programs where projects may have an impact on the community or area in which they are being conducted).

(iii) Assistance to education, medical, or similar service institutions or agencies for internal staff development or management improvement purposes.

(iv) Assistance to education institutions or activities that are part of a school's regular academic program and are not related to local programs of

health, welfare, employment, or other social services.

(v) Assistance for construction involving only routine maintenance, repair, or minor construction which does not change the use or the scale or intensity of use of the structure or facility.

(vi) Assistance for law enforcement projects involving confidential law enforcement investigative information, techniques, or procedures.

(2) Are of small scale or size or are highly localized as to impact; or

(3) Display other characteristics which might make review impractical.

(b) LEAA may request procedural variations from normal review processes:

(1) On a temporary basis for programs with time constraints brought about because of startup requirements or other unusual circumstances beyond the control of the funding agency.

NOTE.—Delay in fund availability is not normally an acceptable reason for a variation. When a delay is anticipated, applicants should be instructed to have their applications reviewed by clearinghouses in readiness for submission when funds become available.

(2) For programs where statutory or related procedural limitations make the normal review processes impracticable.

(c) All requests from LEAA offices or SPA's through LEAA Regional Offices for exemptions or procedural variations should be routed through the Office of Regional Operations, LEAA, Washington, D.C. 20531.

(d) Individual clearinghouses may exempt certain types of projects from review for reasons indicated above or for other reasons appropriate to the State or area.

(e) Applicants should be aware that in various States State law requires review of applications for Federal assistance under various programs not covered by this Subpart. Implementation of such law is enforced through State rules and regulations, and applications are urged to ascertain the existence of such laws and to acquaint themselves with applicable State procedures.

§ 30.11 Joint funding.

Applications for assistance to activities under the Joint Funding Simplification Act (Pub. L. 93-510) or any other joint funding authority, which involves activities funded under one or more of the programs covered under this Subpart, will be subject to the requirements of this Subpart.

Subpart C—Direct Federal Development

§ 30.12 Non-applicability.

Part II of the OMB Circular No. A-95 Revised does not apply to LEAA.

Subpart D—State Plans

§ 30.13 General.

The purpose of this Subpart and Part III of OMB Circular No. A-95 Revised is to provide information about the relationship to State or areawide comprehensive planning of the Annual Comprehensive State Plan.

§ 30.14 Governor's comments.

(a) The Governor, or the agency the Governor has designated to perform reviews under Part III of OMB Circular No. A-95 Revised, must be given an opportunity to comment (up to 45 days) on the relationship of the Annual Comprehensive State Plan to comprehensive and other State plans and programs and to those of affected local or areawide jurisdictions. The Governor is urged to involve areawide clearinghouses in the review of State plans, particularly where such plans have specific applicability to or affect areawide or local plans and programs.

(b) A period of 45 days must be provided the Governor or the designated agency to make such comments. Unless otherwise provided for by the Governor or the designated agency, the 45-day period must be afforded prior to submission of the Annual Comprehensive State Plan to LEAA. Any comments made by the Governor or the designated agency must be submitted with the Annual Comprehensive State Plan.

(c) A "State plan" under this Subpart is defined to include any required

supporting planning reports or documentation that indicate the programs, projects, and activities for which Federal funds will be utilized. Such reports or documentation will also be submitted for review at the request of the Governor or the agency he has designated to perform reviews under Part III of OMB Circular No. A-95 Revised.

Subpart E—Coordination of Planning in Multijurisdictional Areas

§ 30.15 Planning and development districts or regions.

The States are encouraged to:

(a) Exercise leadership in delineating and establishing a system of planning and development districts or regions in each State, which can provide a consistent geographic base for the planning and coordination of Federal, State, and local development programs.

(b) Use agencies that have been designated to perform areawide comprehensive planning, planning and development districts or regions established pursuant to paragraph (a) of this section (generally, areawide clearinghouses designated pursuant to Part I of OMB Circular No. A-95 Revised) to carry out or coordinate planning. In the case of interstate metropolitan areas, agencies designated as metropolitan areawide clearinghouses should be utilized to the extent possible to carry out or coordinate LEAA assisted or required areawide planning.

§ 30.16 Governor's review and comment.

Prior to the designation or redesignation (or the approval thereof) of any planning and development district or region under the LEAA programs, the Governor(s) of the State(s) in which the district or region will be located must be allowed a period of 30 days to review the boundaries thereof and comment on its relationship to planning and development districts or regions established by the State. Where the State has established such planning and development districts, the boundaries of areas designated under LEAA programs will conform to them unless there is clear justification for not doing so.

§ 30.17 Consultation in review boundaries.

Where the State has not established planning and development districts or regions which provide a basis for evaluation of the boundaries of the area proposed for designation, major units of general local government and the appropriate Federal Regional Council (FRC) will also be consulted prior to designation of the area to assure consistency with districts established under interlocal agreements and under related Federal programs.

§ 30.18 Justification for variance.

The Office of Management and Budget will be notified through the appropriate FRC by LEAA of any proposed designation and will be informed of such designation when it is made, including such justifications as may be required under § 30.16.

§ 30.19 Common and consistent planning bases and coordination of related activities in multijurisdictional areas.

(a) Each SPA will develop procedures and requirements for applications for multijurisdictional planning and development assistance under appropriate programs to assure the fullest consistency and coordination with planning and development being carried on by the areawide comprehensive planning agency or clearinghouse designated under Part I of the OMB Circular No. A-95 Revised. These procedures shall include provision for submission to the funding agency by any applicant for multijurisdictional planning assistance, if the applicant is other than an areawide comprehensive planning agency, of a memorandum of agreement between the applicant and such areawide comprehensive planning agency covering the means by which their planning activities will be coordinated. The agreement will cover but need not be limited to the following matters:

(1) Identification of relationships between the planning proposed by the applicant and that of the areawide comprehensive planning agency and of

similar or related activities that will require coordination;

(2) The organizational and procedural arrangements for coordinating such activities, such as: Overlapping board membership, procedures for joint review of project activities and policies, information exchange, etc.;

(3) Cooperative arrangements for sharing planning resources (funds, personnel, facilities, and services); and

(4) Agreed upon base data, statistics and projections (social, economic, demographic) on the basis of which planning in the area will proceed.

(b) Each SPA must provide to LEAA a description of:

(1) The extent to which law enforcement and criminal justice planning regions are consistent with State established planning and development districts or regions together with reasons for any inconsistency.

(2) Procedural arrangements to assure maximum coordination with related planning under other Federal programs citing existing or planned memoranda of agreement and specific Regional Planning Units and/or State agencies which must execute memoranda of agreement.

§ 30.20 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.)

§ 30.21 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 multijurisdictional 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.

§ 30.22 SPA implementation of memorandum of agreement requirement.

The SPA is required to implement procedures to assure that the memorandum of agreement required is followed.

§ 30.23 Inability to effectuate a memorandum of agreement.

Where an applicant has been unable to effectuate a memorandum of agreement, the applicant will submit a statement indicating the efforts which were made to secure an agreement and the issues that have prevented it. In such case, the SPA in consultation with the FRC, LEAA, and the designated State clearinghouse, will undertake, within a 30-day period after receipt of the application, resolution of the issue before approving the application, if it is otherwise in good order.

Subpart F—Definitions

§ 30.24 Definitions.

(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 a 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) "Special purpose unit of local government" is any special district, public purpose corporation, or other strictly limited purpose political subdivision of a State.

(d) "LEAA assistance, LEAA financial assistance, LEAA assistance program, or LEAA assisted programs" are programs that provide assistance through LEAA grant or contractual arrangements; these also include technical assistance programs or programs providing assistance in the form of

loans. 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).

(e) "Funding agency" is the Law Enforcement Assistance Administration or, in the case of block or formula grant programs, the State Planning Agency which is responsible for final approval of applications for assistance.

(f) "State planning agency" is the agency created or designated by the chief executive of the State or by State law pursuant to section 203(a)(1) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-439, and Pub. L. 94-503).

(g) "Metropolitan area" is a standard metropolitan statistical area as established by the Office of Management and Budget, subject, however, to such modifications and extensions as the Office of Management and Budget may determine to be appropriate for the purpose of section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, and the OMB Circular No. A-95 Revised.

(h) "Areawide" means comprising, in metropolitan areas, the whole of contiguous urban and urbanizing areas; and in non-metropolitan areas, contiguous counties or other multijurisdictional areas having common or related social, economic, or physical characteristics indicating a community of developmental interests; or, in either, the area included in a sub-State district designated pursuant to paragraph 1d, Part IV, Attachment A of the OMB Circular No. A-95 Revised.

(i) "Planning and development clearinghouse or clearinghouses" includes:

(1) "State Clearinghouse" which is an agency of the State government designated by the Governor or by State law to carry out the requirements of paragraph 3, Part I, Attachment A of the OMB Circular No. A-95 Revised.

(2) "Areawide clearinghouse" means:

(i) In non-metropolitan areas a comprehensive planning agency designated by the Governor (or Governors in the case of regions extending into more than one State) or by State law to carry out requirements of OMB Circular No. A-95 Revised.

(ii) In metropolitan areas an areawide agency that has been recognized by the Office of Management and Budget as an appropriate agency to perform review functions under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, Title IV of the Intergovernmental Cooperation Act of 1968, and OMB Circular No. A-95 Revised.

(j) "Multijurisdictional area" means any geographical area comprising, encompassing, or extending into more than one unit of general local government.

(k) "Planning and developmental district or region" means a multijurisdictional area that has been formally designated or recognized as an appropriate area for planning under State law or Federal program requirements.

(l) "Direct Federal development" means planning and construction of public works, physical facilities, and installations or land and real property development (including the acquisition, use, and disposal of real property) undertaken by or for the use of the Federal Government or any of its agencies; or the leasing of real property for Federal use where the use or intensity of use of such property will be substantially altered.

(m) "Days" means calendar days.

PART 32—PUBLIC SAFETY OFFICERS' DEATH BENEFITS

Subpart A—Introduction

Subpart B—Officers Covered

Subpart C—Beneficiaries

Subpart D—Interim and Reduced Payments

Subpart E—Filing and Processing of Claims

Subpart F—Determination, Hearing, and Review

AUTHORITY: Secs. 501 and 704(a) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3761, et seq., as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, and Pub. L. 94-503).

SOURCE: 42 FR 23255, May 6, 1977, unless otherwise noted.

Subpart A—Introduction

§ 32.1 Purpose.

The purpose of this regulation is to implement the Public Safety Officers' Benefits Act of 1976 which authorizes the Law Enforcement Assistance Administration to pay a benefit of $50,000 to specified survivors of State and local public safety officers found to have died as the direct and proximate result of a personal injury sustained in the line of duty. The Act is Part J of 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. 93-83, Pub. L. 93-415, Pub. L. 94-430 and Pub. L. 94-503).

§ 32.2 Definitions.

(a) "The Act" means the Public Safety Officers' Benefits Act of 1976, 42 U.S.C. 3796, et seq., Pub. L. 94-430, 90 Stat. 1346 (September 29, 1976).

(b) "Administration" means the Law Enforcement Assistance Administration.

(c) "Line of duty" means any action which an officer whose primary function is crime control or reduction, enforcement of the criminal law, or suppression of fires is obligated or authorized by rule, regulation, condition of employment or service, or law to perform, including those social, ceremonial, or athletic functions to which he is assigned, or for which he is compensated, by the public agency he serves. For other officers, "line of duty" means any action the officer is so obligated or authorized to perform in the course of controlling or reducing crime, enforcing the criminal law, or suppressing fires.

(d) "Direct and proximate" or "proximate" means that the antecedent event is a substantial factor in the result.

(e) "Personal injury" means any traumatic injury, as well as diseases which are caused by or result from such an injury, but not occupational diseases.

(f) "Traumatic injury" means a wound or other condition of the body caused by external force, including injuries inflicted by bullets, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain.

(g) "Occupational disease" means a disease which routinely constitutes a special hazard in, or is commonly regarded as a concomitant of the officer's occupation.

(h) "Public safety officer" means any person serving a public agency in an official capacity, with or without compensation, as a law enforcement officer or firefighter.

(i) "Law enforcement officer" means any person involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws, including but not limited to police, corrections, probation, parole, and judicial officers, and officials engaged in programs relating to narcotics addic-

tion, such as those responsible for screening arrestees or prisoners for possible diversion into drug treatment programs, who are exposed, on a regular basis, to criminal offenders.

(j) "Firefighter" includes all fire service personnel authorized to engage in the suppression of fires, including any individual serving as an officially-recognized or designated member of a legally-organized volunteer fire department.

(k) "Child" means any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the public safety officer's death, is:

(1) Eighteen years of age or under;

(2) Over eighteen years of age and a student; or

(3) Over eighteen years of age and incapable of self-support because of physical or mental disability.

(l) "Stepchild" means a child of the officer's spouse who was living with, dependent for support on, or otherwise in a parent-child relationship, as set forth in § 32.13(b) of the regulations, with the officer at the time of his death. The relationship of stepchild is not terminated by the divorce, remarriage, or death of the stepchild's natural or adoptive parent.

(m) "Student" means an individual under 23 years of age who has not completed four years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(1) A school or college or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof;

(2) A school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body;

(3) A school or college or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited; or

(4) An additional type of educational or training institution as defined by the Secretary of Labor.

Such an individual is deemed not to have ceased to be a student during an interim between school years if the interim is not more than four months and if he shows to the satisfaction of the Administration that he has a bona fide intention of continuing to pursue a full-time course of study or training during the semester or other enrollment period immediately after the interim or during periods of reasonable duration during which, in the judgment of the Administration, he is prevented by factors beyond his control from pursuing his education. A student whose 23rd birthday occurs during a semester or other enrollment period is deemed a student until the end of the semester or other enrollment period.

(n) "Spouse" means the husband or wife of the deceased officer at the time of the officer's death, and includes a spouse living apart from the officer at the time of the officer's death for any reason.

(o) "Dependent" means a person who was substantially reliant for support upon the income of the deceased public safety officer.

(p) "Intoxication" means a disturbance of mental or physical faculties resulting from the introduction of alcohol, drugs, or other substances into the body.

(q) "Public agency" 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, or any unit of local government, combination of such States, or units, or any department, agency, or instrumentality of any of the foregoing.

(r) "Support" means food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for maintenance of the person supported.

Subpart B—Officers Covered

§ 32.3 Coverage.

In any case in which the Administration determines, pursuant to these reg-

ulations, that a public safety officer, as defined in § 32.2(h), has died as the direct and proximate result of a personal injury sustained in the line of duty, the Administration shall pay a benefit of $50,000 in the order specified in § 32.10, subject to the conditions set forth in § 32.6.

§ 32.4 Reasonable doubt of coverage.

The Administration shall resolve any reasonable doubt arising from the circumstances of the officer's death in favor of payment of the death benefit.

§ 32.5 Findings of State and local agencies.

The Administration will give substantial weight to the evidence and findings of fact presented by State and local administrative and investigative agencies. The Administration will request additional assistance or conduct its own investigation when it believes that the existing evidence does not provide the Administration a rational basis for a decision on a material element of eligibility.

§ 32.6 Conditions on payment.

(a) No benefit shall be paid: (1) If the death was caused by:

(i) The intentional misconduct of the public safety officer; or

(ii) The officer's intention to bring about his death;

(2) If voluntary intoxication of the public safety officer was the proximate cause of death; or

(3) To any person whose actions were a substantial contributing factor to the death of the officer.

(b) The Act applies only to deaths occurring from injuries sustained on or after September 29, 1976.

§ 32.7 Intentional misconduct of the officer.

The Administration will consider at least the following factors in determining whether death was caused by the intentional misconduct of the officer:

(a) Whether the conduct was in violation of rules and regulations of the employer, or ordinances and laws; and

(i) Whether the officer knew the conduct was prohibited and understood its import;

(2) Whether there was a reasonable excuse for the violation; or

(3) Whether the rule violated is habitually observed and enforced;

(b) Whether the officer had previously engaged in similar misconduct;

(c) Whether the officer's intentional misconduct was a substantial factor in the officer's death; and

(d) The existence of an intervening force which would have independently caused the officer's death and which would not otherwise prohibit payment of a death benefit pursuant to these regulations.

§ 32.8 Intention to bring about death.

The Administration will consider at least the following factors in determining whether the officer intended to bring about his own death:

(a) Whether the death was caused by insanity, through an uncontrollable impulse or without conscious volition to produce death;

(b) Whether the officer had a prior history of attempted suicide;

(c) Whether the officer's intent to bring about his death was a substantial factor in the officer's death; and

(d) The existence of an intervening force or action which would have independently caused the officer's death and which would not otherwise prohibit payment of a death benefit pursuant to these regulations.

§ 32.9 Voluntary intoxication.

The Administration will consider at least the following factors in determining whether voluntary intoxication was the proximate cause of the officer's death:

(a) The evidence of intoxication at the time the injury from which death resulted was sustained;

(b) Whether, and to what extent, the officer had a prior history of voluntary intoxication while in the line of duty;

(c) Whether and to what degree the officer had previously used the intoxicant in question;

(d) Whether the intoxicant was prescribed medically and was taken within the prescribed dosage;

(e) Whether the voluntary intoxication was a substantial factor in the officer's death; and

(f) The existence of an intervening force or action which would have independently caused the officer's death and which would not otherwise prohibit payment of a death benefit pursuant to these regulations.

Subpart C—Beneficiaries

§ 32.10 Order of priority.

(a) When the Administration has determined that a benefit may be paid according to the provisions of Subpart B and § 32.11 of Subpart C, a benefit of $50,000 shall be paid in the following order of precedence:

(1) If there is no surviving child of the deceased officer, to the spouse of such officer;

(2) If there is no spouse, to the child or children, in equal shares;

(3) If there are both a spouse and one or more children, one-half to the spouse and one-half to the child or children, in equal shares; and

(4) If there is no survivor in the above classes, to the dependent parent or parents, in equal shares.

(b) If no one qualifies as provided in paragraph (a), no benefit shall be paid.

§ 32.11 Contributing factor to death.

(a) No benefit shall be paid to any person who would otherwise be entitled to a benefit under this part if such person's intentional actions were a substantial contributing factor to the death of the public safety officer.

(b) When a potential beneficiary is denied benefits under subsection (a), the benefits shall be paid to the remaining eligible survivors, if any, of the officer as if the potential beneficiary denied benefits did not survive the officer.

§ 32.12 Determination of relationship of spouse.

(a) Marriage should be established by one (or more) of the following types of evidence in the following order of preference:

(1) Copy of the public record of marriage, certified or attested, or by an abstract of the public record, containing sufficient data to identify the parties, the date and place of the marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage;

(2) Official report from a public agency as to a marriage which occured while the officer was employed with such agency;

(3) The affidavit of the clergyman or magistrate who officiated;

(4) The original certificate of marriage accompanied by proof of its genuineness and the authority of the person to perform the marriage;

(5) The affidavits or sworn statements of two or more eyewitnesses to the ceremony;

(6) In jurisdictions where "common law" marriages are recognized, the affidavits or certified statements of the spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, the period of cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife, and whether they were generally accepted as such in the communities in which they lived; or

(7) Any other evidence which would reasonably support a belief by the Administration that a valid marriage actually existed.

(b) LEAA will not recognize a claimant as a "common law" spouse under § 32.12(a)(6) unless the State of domi-

cile recognizes him or her as the spouse of the officer.

(c) If applicable, certified copies of divorce decrees of previous marriages or death certificates of the former spouses of either party must be submitted.

§ 32.13 Determination of relationship of child.

(a) *In general.* A claimant is the child of a public safety officer if his birth certificate shows the officer as his parent.

(b) *Alternative.* If the birth certificate does not show the public safety officer as the claimant's parent, the sufficiency of the evidence will be determined in accordance with the facts of a particular case. Proof of the relationship may consist of—

(1) An acknowledgement in writing signed by the public safety officer; or

(2) Evidence that the officer has been identified as the child's parent by a judicial decree ordering him to contribute to the child's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as—

(i) A certified copy of the public record of birth or a religious record showing that the officer was the informant and was named as the parent of the child; or

(ii) Affidavits or sworn statements of persons who know that the officer accepted the child as his; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with his knowledge the officer was named as the parent of the child.

(c) *Adopted child.* Except as may be provided in subsection (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where the release of such documents or information is prohibited, a revised birth certificate will be sufficient to establish the fact of adoption.

(d) *Stepchild.* The relationship of a stepchild to the deceased officer shall be demonstrated by—

(1) Evidence of birth to the spouse of the officer as required by paragraphs (a) and (b) above; or

(2) If adopted by the spouse, evidence of adoption as required by paragraph (c) above; or

(3) Other evidence, such as that specified in § 32.13(b), which reasonably supports the existence of a parent-child relationship between the child and the spouse;

(4) Evidence that the stepchild was either—

(i) Living with;

(ii) Dependent for support, as set forth in § 32.15, on; or

(iii) In a parent-child relationship, as set forth in § 32.13(b), with the officer at the time of his death; and

(5) Evidence of the marriage of the officer and the spouse, as required by § 32.12.

§ 32.14 Determination of relationship of parent.

(a) *In general.* A claimant is the parent of a public safety officer if the officer's birth certificate shows the claimant as his parent.

(b) *Alternative.* If the birth certificate does not show the claimant as the officer's parent, proof of the relationship may be shown by—

(1) An acknowledgement in writing signed by the claimant before the officer's death; or

(2) Evidence that the claimant has been identified as the officer's parent by judicial decreee ordering him to contribute to the officer's support or for other purposes; or

(3) Any other evidence which reasonably supports a finding of a parent-child relationship, such as:

(i) A certified copy of the public record of birth or a religious record showing that the claimant was the informant and was named as the parent of the officer; or

(ii) Affidavits or sworn statements of persons who know the claimant had accepted the officer as his child, or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which

shows that with his knowledge the claimant had been named as the parent of the child.

(c) *Adoptive Parent.* Except as provided in paragraph (b) of this section, evidence of relationship must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where release of such documents or information is prohibited, a revised birth certificate showing the claimant as the officer's parent will suffice.

(d) *Step-parent.* The relationship of a step-parent to the deceased officer shall be demonstrated by—

(1) (i) Evidence of the officer's birth to the spouse of the step-parent as required by § 32.13 (a) and (b); or

(ii) If adopted by the spouse of the step-parent, proof of adoption as required by § 32.13(c); or

(iii) Other evidence, such as that specified in paragraph (b), which reasonably supports a parent-child relationship between the spouse and the officer; and

(2) Evidence of the marriage of the spouse and the step-parent, as required by § 32.12.

§ 32.17 Determination of dependency.

(a) To be eligible for a death benefit under the Act, a parent or a stepchild not living with the deceased officer at the time of the officer's death shall demonstrate that he or she was substantially reliant for support upon the income of the officer.

(b) The claimant parent or stepchild shall demonstrate that he or she was dependent upon the decedent at either the time of the officer's death or of the personal injury that was a substantial factor in the officer's death.

(c) The claimant parent or stepchild shall demonstrate dependency by submitting a signed statement of dependency a signed statement of dependency within a year of the officer's death. This statement shall include the following information—

(1) A list of all sources of income or support for the twelve months preceding the officer's injury or death;

(2) The amount of income or value of support derived from each source listed; and

(3) The nature of support provided by each source.

(d) Generally, the Administration will consider a parent or stepchild "dependent" if he or she was reliant on the income of the deceased officer for over one-third of his or her support.

Subpart D—Interim and Reduced Payments

§ 32.16 Interim payment in general.

Whenever the Administration determines, upon a showing of need and prior to taking final action, that a death of a public safety officer is one with respect to which a benefit will probably be paid, the Administration may make an interim benefit payment not exceeding $3,000, to a person entitled to receive a benefit under Subpart C of this part.

§ 32.17 Repayment and waiver of repayment.

Where there is no final benefit paid, the recipient of any interim benefit paid under § 32.16 shall be liable for repayment of such amount. The Administration may waive all or part of such repayment and shall consider for this purpose the hardship which would result from repayment.

§ 32.18 Reduction of payment.

(a) The Benefit payable under this part shall be in addition to any other benefits that may be due from any other source, but shall be reduced by—

(1) Payments authorized by section 8191 of Title 5, United States Code, providing compensation for law enforcement officers not employed by the United States killed in connection with the commission of a crime against the United States;

(2) Payments authorized by Section 12(k) of the Act of September 1, 1916, as amended (§ 4-531(1) of the District of Columbia Code); and

(3) The amount of the interim benefit payment made to the claimant pursuant to § 32.16.

(b) No benefit paid under this part shall be subject to execution or attachment.

Subpart E—Filing and Processing of Claims

§ 32.19 Persons executing claims.

(a) The Administration shall determine who is the proper party to execute a claim in accordance with the following rules—

(1) The claim shall be executed by the claimant or his legally designated representative if the claimant is mentally competent and physically able to execute the claim.

(2) If the claimant is mentally incompetent or physically unable to execute the claim; and

(i) Has a legally appointed guardian, committee, or other representative, the claim may be executed by such guardian, committee, or other representative, or

(ii) Is in the care of an institution, the claim may be executed by the manager or principal officer of such institution.

(3) For good cause shown, such as the age or prolonged absence of the claimant, the Administration may accept a claim executed by a person other than one described in paragraphs (a) (1) and (2) of this section.

(b) Where the claim is executed by a person other than the claimant, such person shall, at the time of filing the claim or within a reasonable time thereafter, file evidence of his authority to execute the claim on behalf of such claimant in accordance with the following rules—

(1) If the person executing the claim is the legally-appointed guardian, committee, or other legally-designated representative of such claimant, the evidence shall be a certificate executed by the proper official of the court of appointment.

(2) If the person executing the claim is not such such a legally-designated representative, the evidence shall be a statement describing his relationship to the claimant or the extent to which he has the care of such claimant or his position as an officer of the institution of which the claimant is an inmate or patient. The Administration may, at any time, require additional evidence to establish the authority of any such person to file or withdraw a claim.

§ 32.20 Claims.

(a) Claimants are encouraged to submit their claims on LEAA Form 3650/1, which can be obtained from: Public Safety Officers' Benefits Program, Law Enforcement Assistance Administration, Washington, D.C. 20531.

(b) Where an individual files Form 3650/3 or other written statement with the Administration which indicates an intention to claim benefits, the filing of such written statement shall be considered to be the filing of a claim for benefits.

(c) A claim by or on behalf of a survivor of a public safety officer shall be filed within one year after the date of death unless the time for filing is extended by the Administrator for good cause shown.

(d) Except as otherwise provided in this part, the withdrawal of a claim, the cancellation of a request for such withdrawal, or any notice provided for pursuant to the regulations in this part, shall be in writing and shall be signed by the claimant or the person legally designated to execute a claim under § 32.19.

§ 32.21 Evidence.

(a) A claimant for any benefit or fee under the Act and the regulations shall submit such evidence of eligibility or other material facts as is specified by these regulations. The Administration may at any time require additional evidence to be submitted with regard to entitlement, the right to receive payment, the amount to be paid, or any other material issue.

(b) Whenever a claimant for any benefit or fee under the Act and the Regulations has submitted no evidence or insufficient evidence of any material issue or fact, the Administration shall inform the claimant what evidence is necessary for a determination as to such issue or fact and shall request him to submit such evidence within a reasonable specified time. The claimant's failure to submit evi-

CONTINUED

3 OF 5

dence on a material issue or fact, as requested by the Administration, shall be a basis for determining that the claimant fails to satisfy the conditions required to award a benefit or fee or any part thereof.

(c) In cases where a copy of a record, document, or other evidence, or an excerpt of information therefrom, is acceptable as evidence in lieu of the original, such copy or excerpt shall, except as may otherwise clearly be indicated thereon, be certified as a true and exact copy or excerpt by the official custodian of such record, or other public official authorized to certify the copy.

§ 32.22 Representation.

(a) A claimant may be represented in any proceeding before the Administration by an attorney or other person authorized to act on behalf of the claimant pursuant to § 32.19.

(b) No contract for a stipulated fee or for a fee on a contingent basis will be recognized. Any agreement between a representative and a claimant in violation of this subsection is void.

(c) Any individual who desires to charge or receive a fee for services rendered for an individual in any application or proceeding before the Administration must file a written petition therefore in accordance with paragraph (e) of this section. The amount of the fee he may charge or receive, if any, shall be determined by the Administration on the basis of the factors described in paragraphs (e) and (g) of this section.

(d) Written notice of a fee determination made under this section shall be mailed to the representative and the claimant at their last known addresses. Such notice shall inform the parties of the amount of the fee authorized, the basis of the determination, and the fact that the Administration assumes no responsibility for payment.

(e) To obtain approval of a fee for services performed before the Administration, a representative, upon completion of the proceedings in which he rendered services, must file with the Administration a written petition containing the following information—

(1) The dates his services began and ended;

(2) An itemization of services rendered with the amount of time spent in hours, or parts thereof;

(3) The amount of the fee he desires to charge for services performed;

(4) The amount of fee requested or charged for services rendered on behalf of the claimant in connection with other claims or causes of action arising from the officer's death before any State or Federal court or agency;

(5) The amount and itemization of expenses incurred for which reimbursement has been made or is expected;

(6) The special qualifications which enabled him to render valuable services to the claimant (this requirement does not apply where the representative is an attorney); and

(7) A statement showing that a copy of the petition was sent to the claimant and that the claimant was advised of his opportunity to submit his comments on the petition to LEAA within 20 days.

(f) No fee determination will be made by the Administration until 20 days after the date the petition was sent to the claimant. The Administration encourages the claimant to submit comments on the petition to the Administration during the 20-day period.

(g) In evaluating a request for approval of a fee, the purpose of the public safety officers' benefits program—to provide a measure of economic security for the beneficiaries thereof—will be considered, together with the following factors—

(1) The services performed (including type of service);

(2) The complexity of the case;

(3) The level of skill and competence required in rendition of the services;

(4) The amount of time spent on the case;

(5) The results achieved;

(6) The level of administrative review to which the claim was carried within the Administration and the level of such review at which the representative entered the proceedings;

(7) The amount of the fee requested for services rendered, excluding the

amount of any expenses incurred, but including any amount previously authorized or requested;

(8) The customary fee for this kind of service; and

(9) Other awards in similar cases.

(h) In determining the fee, the Administration shall consider and add thereto the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. No amount of reimbursement shall be permitted for expenses incurred in obtaining medical or documentary evidence in support of the claim which has previously been obtained by the Administration, and no reimbursement shall be allowed for expenses incurred by him in establishing or pursuing his application for approval of his fee.

Subpart F—Determination, Hearing, and Review

§ 32.23 Finding of eligibility or ineligibility.

Upon making a finding of eligibility, the Administration shall notify each claimant of its disposition of his or her claim. In those cases where the Administration has found the claimant to be ineligible for a death benefit, the Administration shall specify the reasons for the finding. The finding shall set forth the findings of fact, and conclusions of law supporting the decision. A copy of the decision, together with information as to the right to a hearing and review shall be mailed to the claimant at his or her last known address.

§ 32.24 Request for a hearing.

(a) A claimant may, within thirty (30) days after notification of ineligibility by the Administration, request the Administration to reconsider its finding of ineligibility. The Administration shall provide the claimant the opportunity for an oral hearing which shall be held within sixty (60) days of the request for reconsideration. The claimant may waive the oral hearing, and present written evidence to the Administration within sixty (60) days of the request. The request for hearing shall be made to the Director, Public Safety Officers' Benefits Program, Office of the Comptroller, Law Enforcement Assistance Administration, Washington, D.C. 20531.

(b) If requested, the oral hearing shall be conducted in the LEAA Regional Office most convenient to the claimant, or other mutually agreeable location, before a representative of the Administration authorized to conduct the hearing pursuant to 42 U.S.C. 3754.

(c) In conducting the hearing, the Administration representative shall not be bound by common law or statutory rules of evidence, by technical or formal rules of procedure, or by Chapter 5 of the Administrative Procedure Act, but must conduct the hearing in such manner as to best ascertain the rights of the claimant. For this purpose the representative shall receive such relevant evidence as may be introduced by the claimant and shall, in addition, receive such other evidence as such representative may determine to be necessary or useful in evaluating the claim. Evidence may be presented orally or in the form of written statements and exhibits. The hearing shall be recorded, and the original of the complete transcript shall be made a part of the claims record.

(d) Pursuant to 42 U.S.C. 3754, the Administration representative may, whenever necessary: (1) Sign and issue subpoenas; (2) Administer oaths; (3) Examine witnesses; and (4) Receive evidence at any place in the United States he may designate.

(e) If the representative believes that there is relevant and material evidence available which has not been presented at the hearing, he may adjourn the hearing or, at any time prior to the mailing of notice of the decision, reopen the hearing for the receipt of such evidence.

(f) A claimant may withdraw his or her request for a hearing at any time prior to the mailing of the decision by written notice to the Administration representative so stating, or by orally so stating at the hearing. A claimant shall be deemed to have abandoned his or her request for a hearing if he or she fails to appear at the time and place set for the hearing and does not within 10 days after the time set for

the hearing, show good cause for such failure to appear.

(g) The representative shall, within thirty (30) days after the hearing, make a determination of eligibility and notify the claimant of his determination. The notice of determination shall set forth the findings of fact and conclusions of law supporting the determination.

(h) The Administrator may, on his own motion, review an award or denial made by the representative. The Administrator, in accordance with the facts found on review, may order an award paid or deny an award ordered to be paid by the representative. The Administrator's determination shall be the final agency determination.

(i) A claimant determined ineligible may, within thirty (30) days after notification of the representative's determination, request the Administrator to review the record and the determination made by the Administration representative. The Administrator shall make the final agency determination of eligibility within thirty (30) days after receipt of the request. The notice of final determination shall set forth the findings of fact and conclusions of law supporting the determination.

(j) No payment of any portion of a death benefit shall be made until all hearings and reviews which may affect that payment have been completed.

[42 FR 23255, May 6, 1977, as amended at 42 FR 39386, Aug. 4, 1977]

PART 42—NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

Subpart A—Equal Employment Opportunity Within the Department of Justice

Subpart B—Equal Employment Opportunity Under Government Contracts

Subpart C—Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964

Subpart D—Nondiscrimination in Federally Assisted Programs—Implementation of Section 518(c) of the Crime Control Act of 1976 and Section 262(b) of the Juvenile Justice and Delinquency Prevention Act of 1974

Subpart E—Equal Employment Opportunity Guidelines

Subpart A—Equal Employment Opportunity Within the Department of Justice

AUTHORITY: 5 U.S.C. 301, 28 U.S.C. 509, 510 E.O. 11246, 3 CFR, 1964-1965 Comp., E.O. 11375, 3 CFR, 1967 Comp.

SOURCE: Order 420-69, 34 FR 12231, July 25, 1969, unless otherwise noted.

§ 42.1 Policy.

It is the policy of the Department of Justice to seek to eliminate discrimination on the basis of race, color, religion, sex, national origin or age in employment within the Department and to assure equal employment opportunity for all employees and applicants for employment in the Department, in conformity with the policies and requirements of Executive Order No. 11478 of August 8, 1969, relating to equal employment opportunity in the Federal Government, section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16), section 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C 633a), and the regulations of the United States Civil Service Commission relating to equal employment opportunity (5 CFR Part 713).

[Order No. 721-77, 42 FR 25724, May 19, 1977]

§ 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 final decisions for the Department of Justice on complaints of discrimination filed by employees and applicants for employment in the Department pursuant to the Department's Equal Employment Opportunity Regulations. In rendering decisions, the Complaint Adjudication Officer shall order such remedial action as may be appropriate, whether or not there is a finding of discrimination, but in cases where no discrimination is found any remedial action ordered shall have the prior approval of the Assistant Attorney General in charge of the Civil Rights Division, who shall consult with the Associate Attorney General on the matter.

[Order No. 420-69, 34 FR 12281, July 25, 1969, as amended by Order No. 721-77, 42 FR 25725, May 19, 1977; Order No. 731-77, 42 FR 35646, July 11, 1977]

Subpart B—Equal Employment Opportunity Under Government Contracts

AUTHORITY: 80 Stat. 379; 5 U.S.C. 301, sec. 2, Reorganization Plan No. 2 of 1950, 64 Stat. 1261; 3 CFR, 1949-1953 Comp., E.O. 10925; 3 CFR, 1959-1963 Comp., E.O. 11114; 1959-1963 Comp.

28-071 O - 78 - 19

SOURCE: Order No. 342-65, 30 FR 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 Presidents' 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 supplies 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 satisfied 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 subcontract, 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.

§ 42.58 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(b) (3)). Notice of the hearing shall be given in accordance with the requirements 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 1964[1]

AUTHORITY: 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: Order No. 365-66, 31 FR 10265, July 29, 1966, unless otherwise noted.

§ 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 Associate 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,

[1] See also 28 CFR 50.3, Guidelines for enforcement of Title VI, Civil Rights Act.

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, confinement, or other prescription of conduct.

(k) The term "governmental organization" means the political subdivision for a prescribed geographical area.

[Order No. 365-66, 31 FR 10265, July 29, 1966, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

§ 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)(i) 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 pro-

vide 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 17955, 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 a 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 convenant 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 assistance 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 paragraph (d)(1) of this section, 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. 355-66, 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 con-

duct 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 10265, 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 program 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—Nondiscrimination in Federally Assisted Programs—Implementation of Section 518(c) of the Crime Central Act of 1976 and Section 262(b) of the Juvenile Justice and Delinquency Prevention Act of 1974

AUTHORITY: Secs. 501, 518(c), and 521(d) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, et seq., as amended (Pub. L. 30-351, as amended by Pub. L. 93-83, Pub. L. 94-415, and Pub. L. 94-503 (October 15, 1976)) and sec. 262 of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415, 88 Stat. 1109).

SOURCE: 42 FR 9497, Feb. 16, 1977, unless otherwise noted.

§ 42.201 Purpose and application.

(a) The purpose of this subpart is to implement the provisions of section 518(c) of the Crime Control Act of 1976, Pub. L. 94-503, 90 Stat. 2407, and section 262(b) of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, 88 Stat. 1109, to the end that no person in any State shall on the ground of race, color, national origin, sex, or religion be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity funded in whole or in part with funds made available by LEAA under either Act.

(b) The regulations in this subpart apply to the delivery of services by, and employment practices of recipients administering, participating in, or substantially benefiting from any program or activity receiving Federal financial assistance extended under Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, or the Juvenile Justice and Delinquency Prevention Act of 1974.

(c) Where a private recipient which receives such assistance through a unit of government is engaged in prohibited discrimination, the Administration will invoke the enforcement procedures of this subpart (§ 42.210, et seq.) against the appropriate unit of government for failure to enforce the assurances of nondiscrimination given it by the private recipient pursuant to § 42.204(a). Where a private recipient receives assistance either directly from LEAA, or through another private entity which receives funds directly from LEAA, the Administration will enforce compliance pursuant to section 509 of the Crime Control Act.

§ 42.202 Definitions.

(a) "Law enforcement," "State," and "unit of general local government" shall have the meanings set forth in section 601 of the Crime Control Act.

(b) "Crime Control Act" means Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

(c) "Employment practices" means all terms and conditions of employment including but not limited to all practices relating to the screening, recruitment, referral, selection, training, 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.

(d) "Investigation" includes fact-finding efforts and, pursuant to § 42.205(c)(3), attempts to secure the voluntary resolution of complaints.

(e) "Juvenile Justice Act" means Titles I and II of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, 88 Stat. 1109.

(f) "Noncompliance" means the failure of a recipient to comply with section 518(c)(1) of the Crime Control Act, section 262(b) of the Juvenile Justice Act, or this subpart.

(g) "Program or activity" means the operations of the agency or organizational unit of government receiving or substantially benefiting from the financial assistance awarded, e.g., a

police department or department of corrections.

(h) "Pattern or practice" means any procedure, custom, or act, affecting, or potentially affecting more than a single individual, in a single or isolated instance.

(i) "Recipient" means any State or local unit of government or agency thereof, and any private entity, institution, or organization, to which Federal financial assistance is extended directly, or through such government or agency, but such term does not include any ultimate beneficiary of such assistance.

(j) "Religion" or "creed" includes all aspects of religious observance and practice as well as belief.

(k) "State planning agency" or "SPA" means the criminal justice State planning agency created to implement the Crime Control Act and, where authorized by State law, the Juvenile Justice Act within each State.

(l) "Compliance review" means a review of a recipient's selected employment practices or delivery of services for compliance with the provisions of section 518(c)(1) of the Crime Control Act, section 262(b) of the Juvenile Justice Act, and this subpart.

§ 42.203 Discrimination prohibited.

(a) No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity funded in whole or in part with funds made available under the Crime Control Act or the Juvenile Justice Act.

(b) A recipient may not, directly or through contractual or other arrangements, on the grounds set forth in paragraph (a) of this section:

(1) Deny an individual any disposition, service, financial aid, or benefit provided under the program;

(2) 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;

(3) 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;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any disposition, service, or financial aid or benefit under the program;

(5) 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;

(6) 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;

(7) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program;

(8) Subject any individual to discrimination in its employment practices in connection with any specific program or activity funded in whole or in part with funds made available under the Crime Control Act or the Juvenile Justice Act;

(9) Use any selection device in a manner which is inconsistent with the Department of Justice Guidelines on Employee Selection Procedures, 28 CFR Part 50.

(c) In matters involving employment discrimination, section 518(c)(1) of the Crime Control Act and section 262(b) of the Juvenile Justice Act shall be interpreted by the Administration consistently with Title VII of the Civil Rights Act of 1964, Pub. L. 88-352, 79 Stat. 253, as amended by the Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 87 Stat. 103.

(d) The use of a minimum height or weight requirement which operates to disproportionately exclude women and persons of certain national origins, such as persons of Hispanic or Asian descent, is a violation of this subpart, unless the recipient is able to demonstrate convincingly, through use of

30-071 O - 78 - 20

supportive factual data, that the requirement has been validated as set forth in the Department of Justice Guidelines on Employee Selection Guidelines, 28 CFR Part 50.

(e) 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, may not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination under section 518(c)(1) of the Crime Control Act or section 262(b) of the Juvenile Justice Act, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, sex, national origin, or religion.

(f) 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, subjecting them to discrimination under, or denying them employment in connection with any program to which this subpart applies; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Crime Control Act, the Juvenile Justice Act, or this subpart.

(g) 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.

(h) The enumeration of specific forms of prohibited discrimination in paragraphs (b) through (g) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(i) (1) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, religion, national origin, or sex, the recipient must take affirmative action to overcome the effects of prior discrimination.

(2) 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, religion, national origin, or sex.

(j) Nothing contained in this subpart shall be construed as requiring any recipient to adopt a percentage ratio, quota system, or other program to achieve racial balance or to eliminate racial imbalance. The use of goals and timetables is not use of a quota prohibited by this section.

§ 42.204 Assurances required.

(a) Every application for Federal financial assistance to which this subpart 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 all applicable nondiscrimination requirements 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.

(b) Every application for Federal financial assistance from a State or local unit of government or agency thereof shall contain an assurance that in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination on the ground of race, color, religion, national origin, or sex against the recipient State or local government unit or agency thereof, the recipient will forward a copy of the finding to the cognizant State planning agency and to LEAA.

§ 42.205 Complaint investigation.

(a) The Administration shall investigate complaints that allege a violation of:

(1) Section 518(c)(1) of the Crime Control Act;

(2) Section 262(b) of the Juvenile Justice Act; or

(3) This subpart.

(b) No complaint will be investigated if it is received more than one year after the date of the alleged discrimination, unless the time for filing is extended by the Administrator for good cause shown.

(c) The Administration shall conduct investigations of complaints as follows:

(1) Within 21 days of receipt of a complaint, the Administration shall:

(i) Ascertain whether it has jurisdiction under paragraphs (a) and (b) of this section;

(ii) If jurisdiction is found, notify the recipient alleged to be discriminating of its receipt of the complaint; and

(iii) Initiate the investigation.

(2) The investigation will ordinarily be initiated by a letter requesting data pertinent to the complaint and advising the recipient of:

(i) The nature of the complaint, and, with the written consent of the complainant, the identity of the complainant;

(ii) The programs or activities affected by the complaint;

(iii) The opportunity to make, at any time prior to receipt of the Administration's findings, a documentary submission, responding to, rebutting, or denying the allegations made in the complaint; and

(iv) The schedule under which the complaint will be investigated and a determination of compliance or noncompliance made.

Copies of this letter will also be sent to the chief executive of the appropriate unit(s) of government, and to the appropriate SPA.

(3) Within 150 days or, where an onsite investigation is required, within 175 days after the initiation of the investigation, the Administration shall advise the complainant, the recipient, the chief executive(s) of the appropriate unit(s) of government, and the appropriate SPA, of:

(i) Its preliminary findings;

(ii) Where appropriate, its recommendations for compliance, and

(iii) If it is likely that satisfactory resolution of the complaint can be obtained, the opportunity to request the Administration to engage in voluntary compliance negotiations prior to the Administrator's determination of compliance or noncompliance.

(4) If, within 30 days, the Administration's recommendations for compliance are not met, or voluntary compliance is not secured, the matter will be forwarded to the Administrator for a determination of compliance or noncompliance. The determination shall be made no later than 14 days after the conclusion of the 30-day period. If the Administrator makes a determination of noncompliance with section 518(c) of the Crime Control Act, or section 262(b) of the Juvenile Justice Act, the Administration shall institute administrative proceedings pursuant to § 42.210, et seq.

(5) If the complainant or another party, other than the Attorney General, has filed suit in Federal or State court alleging the same discrimination alleged in a complaint to LEAA, and, during LEAA's investigation, the trial of that suit would be in progress, LEAA will suspend its investigation and monitor the litigation through the court docket and contacts with the complainant. Upon receipt of notice that the court has made a finding of discrimination within the meaning of § 42.210, the Administration will institute administrative proceedings pursuant to § 42.210, et seq.

(6) The time limits listed in paragraphs (c)(1) through (c)(5) of this section shall be appropriately adjusted where LEAA requests another Federal agency or another branch of the Department of Justice to act on the complaint. LEAA will monitor the progress of the matter through liaison with the other agency. Where the request to act does not result in timely resolution of the matter, LEAA will institute appropriate proceedings pursuant to this section.

§ 42.206 Compliance reviews.

(a) The Administration shall periodically conduct compliance reviews of selected recipients of LEAA assistance.

(b) The Administration shall seek to review those recipients which appear to have the most serious equal employment opportunity problems, or the greatest disparity in the delivery of services to the white and non-white, or male and female communities they serve. Selection for review shall be made on the basis of:

(1) The relative disparity between the percentage of minorities, or women, in the relevant labor market, and the percentage of minorities, or women employed by the recipient;

(2) The percentage of women and minorities in the population receiving project benefits;

(3) The number and nature of discrimination complaints filed against a recipient with LEAA or other Federal agencies;

(4) The scope of the problems revealed by an investigation commenced on the basis of a complaint filed with the Administration against a recipient; and

(5) The amount of assistance provided to the recipient.

(c) Within 15 days after selection of a recipient for review, the Administration shall inform the recipient that it has been selected and will initiate the review. The review will ordinarily be initiated by a letter requesting data pertinent to the review and advising the recipient of:

(1) The practices to be reviewed;

(2) The programs or activities affected by the review;

(3) The opportunity to make, at any time prior to receipt of the Administration's findings, a documentary submission responding to the Administration, explaining, validating, or otherwise addressing the practices under review; and

(4) The schedule under which the review will be conducted and a determination of compliance or non-compliance made.

Copies of this letter will also be sent to the chief executive of the appropriate unit(s) of government, and to the appropriate SPA.

(d) Within 150 days or, where an onsite investigation is required, within 175 days after the initiation of the review, the Administration shall advise the recipient, the chief executive(s) of the appropriate unit(s) of government, and the appropriate SPA, of:

(1) Its preliminary findings;

(2) Where appropriate, its recommendations for compliance; and

(3) The opportunity to request the Administration to engage in voluntary compliance negotiations prior to the Administrator's determination of compliance or non-compliance.

(e) If, within 30 days, the Administration's recommendations for compliance are not met, or voluntary compliance is not secured, the matter will be forwarded to the Administrator for a determination of compliance or non-compliance. The determination shall be made no later than 14 days after the conclusion of the 30-day negotiation period. If the Administrator makes a determination of non-compliance with section 518(c) of the Crime Control Act, or section 262(b) of the Juvenile Justice Act, the Administration shall institute administrative proceedings pursuant to § 42.210, et seq.

§ 42.207 Compliance information.

(a) The provisions of § 42.106, addressing the maintenance, availability, and submission of compliance information are hereby incorporated in this subpart. A refusal to provide requested information shall be enforced pursuant to the provisions of section 509 of the Crime Control Act.

(b) Each recipient receiving a grant or subgrant of $250,000 or more shall provide the Administration with a copy of its current Equal Employment Opportunity Program and any subsequent revisions or supplements. The Administration shall maintain a file of these plans, which shall be available for inspection.

§§ 42.208–42.209 [Reserved]

§ 42.210 Notice of non-compliance.

(a) Whenever the Administration has:

(1) Received notice of a finding, after notice and opportunity for a hearing by:

(i) A Federal court (other than in an action brought by the Attorney General under Section 518(c)(3) of the Crime Control Act);

(ii) A State court; or

(iii) A Federal or State administrative agency (other than the Administration under paragraph (a)(2) of this section); to the effect that there has been a pattern or practice of discrimination in violation of section 518(c)(1) of the Crime Control Act; or

(2) Made a determination after an investigation by the Administration pursuant to § 42.205 or § 42.206 that a State government or unit of general local government is not in compliance with this subpart, section 518(c)(1) of the Crime Control Act, or section 262(b) of the Juvenile Justice Act;

the Administration shall, within 10 days after such occurrence, notify the chief executive of the affected State and, if the action involves a unit of general local government, the chief executive of such unit of general local governent, that such program or activity has been so found or determined not to be in compliance with this subpart or section 518(c)(1) of the Crime Control Act or section 262(b) of the Juvenile Justice Act and shall request each chief executive notified under this section with respect to such violation to secure compliance.

(b) For the purposes of this section, notice means:

(1) Publication in:

(i) Employment Practices Decisions, Commerce Clearinghouse, Inc.;

(ii) Fair Employment Practices, Bureau of National Affairs, Inc.;

(iii) The United States Law Week, Bureau of National Affairs, Inc.;

(iv) Federal Supplement, Federal Reporter, or Supreme Court Reporter, West Publishing Company; or

(v) National Reporter System, West Publishing Company; or

(2) Receipt by the Administration of a reliable copy of a finding from any source.

(c) When the Administration receives a finding which has been made more than 120 days prior to receipt, the Administration will not be considered to be in receipt of notice of such finding until it is determined that the finding is currently applicable.

(1) In determining the current applicability of the finding, the Administration will contact the clerk of the court and the office of the deciding judge (or the approriate agency official) to determine whether any subsequent orders have been entered.

(2) If the information is unavailable through the clerk or the office of the judge (or the appropriate agency official), the Administration will contact the attorneys of record for both the plaintiff and defendant to determine whether any subsequent orders have been entered, or if the recipient is in compliance.

(3) If, within 10 days of receipt of notice, it is not determined through the procedures set forth in paragraphs (c) (1) and (2) of this section that the recipient is in full compliance with a final order of the court (or agency) within the meaning of § 42.213(b), the Administration will notify the governor of the recipient's noncompliance as provided in § 42.210(a).

(d) For purposes of paragraph (a)(1)(iii) of this section a finding by a Federal or State administrative agency shall be deemed rendered after notice and opportunity for a hearing if it is rendered pursuant to procedures consistent with the provisions of subchapter II of Chapter 5, Title 5, United States Code (the Administrative Procedures Act).

(e) The procedures of a Federal or State administrative agency shall be deemed to be consistent with the Administrative Procedure Act (APA) if:

(1) The agency gives all interested parties opportunity for:

(i) The submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(ii) Hearing and decision on notice by an individual not having participated in the investigation or prosecution of the matter.

(2) A party is entitled to be represented by counsel or other qualified

representative, to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination, as may be required for a full and true disclosure of the facts; and

(3) The record shows the ruling on each finding, conclusion, or exception presented. All decisions including initial recommended, and tentative decisions, shall be a part of the record and shall include a statement of:

(i) Findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(ii) The appropriate rule, order, sanction, relief, or denial thereof.

(f) If within 10 days of receipt of notice the Administration cannot determine whether the finding was rendered pursuant to procedures consistent with the APA, it shall presume the APA procedures were applied, and send notification under § 42.210(a) to the appropriate chief executive(s).

(g) Each notification under § 42.210 (a) shall advise the appropriate chief executive of:

(1) The program or activity determined to be in noncompliance;

(2) The general legal and factual basis for its determination;

(3) The Administration's request to secure compliance;

(4) The action to be taken and the provisions of law under which the proposed action is to be taken should the chief executive fail to secure compliance; and

(5) The right of the recipient to request a preliminary hearing, pursuant to § 42.214, if the determination is of noncompliance with section 518(c)(1), and a full hearing, pursuant to § 42.215.

§ 42.211 Compliance secured.

(a) In the event a chief executive secures compliance after notice pursuant to § 42.210, the terms and conditions with which the affected State Government or unit of general local government agrees to comply shall be set forth in writing and signed by the chief executive of the State, by the chief executive of such unit (in the event of a violation by a unit of general local government) and by the Administrator.

(b) Prior to the effective date of the agreement, the Administration shall send a copy of the agreement to each complainant, if any, with respect to such violation, and to the appropriate SPA.

(c) The chief executive of the State, or the chief executive of the unit (in the event of a violation by a unit of general local government) shall file semi-annual reports with the Administration detailing the steps taken to comply with the agreement.

(d) Within 15 days of receipt of such reports, the Administration shall send a copy to each complainant, if any.

(e) The Administrator shall also determine a recipient to be in compliance if it complies fully with the final order or judgement of a Federal or State court, pursuant to § 42.213(a)(2) and § 42.213(b), or is found by such court to be in compliance with section 518(c)(1).

§ 42.212 Compliance not secured.

(a) If, at the conclusion of 90 days after notification of noncompliance with section 518(c)(1):

(1) Compliance has not been secured by the chief executive of that State or the chief executive of that unit of general local government and

(2) An administrative law judge has not made a determination under § 42.214 that it is likely the State government or unit of local government will prevail on the merits;

the Administration shall notify the Attorney General that compliance has not been secured and suspend further payment of any funds under the Crime Control Act to the specific program or activity in which the noncompliance has been found.

(b) If a hearing is requested pursuant to § 42.215, suspension of funds made available under the Crime Control Act shall be effective for a period of not more than 30 days after the conclusion of the hearing, or in the absence of a hearing under § 42.215, funds shall be suspended for not more than 120 days, unless there has been an express finding by the Administrator after notice and opportunity for

such a hearing, that the recipient is not in compliance with this subpart or section 518(c)(1) of the Crime Control Act.

(c) Paragraphs (a) and (b) of this section do not apply to funds made available under the Juvenile Justice Act. If compliance is not secured within 90 days after notification of noncompliance with section 262(b), the Administrator may suspend approval of new applications for assistance to the program or activity determined to be in noncompliance for a period of up to 90 days pending a hearing under § 42.215.

§ 42.213 Resumption of suspended funds.

(a) Payment of suspended funds made available under the Crime Control Act shall resume only if:

(1) Such State government or unit of general local government enters into a compliance agreement signed by the Administrator in accordance with § 42.211;

(2) Such State government or unit of general local government:

(i) Complies fully with the final order or judgment of a Federal or State court, if that order or judgement covers all matters raised by the Administrator in the notice pursuant to § 42.210, or

(ii) Is found to be in compliance with section 518(c)(1) of the Crime Control Act by such court;

(3) After a hearing, the Administrator pursuant to § 42.215 finds that noncompliance has not been demonstrated; or

(4) An administrative law judge has determined, under § 42.214, that it is likely that the State government or unit of local government will prevail on the merits.

(b) Full compliance with a court order, for the purposes of paragraph (a)(2) of this section, includes the securing of an agreement to comply over a period of time, particularly in complex cases or where compliance would require an extended period of time for implementation.

§ 42.214 Preliminary hearing.

(a) Prior to the suspension of funds under § 42.212(a), but within the 90-day period after notification under § 42.210, the State government or unit of local government may request an expedited preliminary hearing by an administrative law judge (ALJ) in order to determine whether it is likely that the State government or unit of local government would, at a full hearing under § 42.215, prevail on the merits on the issue of the alleged noncompliance.

(b) The preliminary hearing shall be initiated within 30 days of request. The ALJ shall make his finding within 15 days after the conclusion of the preliminary hearing.

§ 42.215 Full hearing.

(a) At any time after notification of non-compliance with section 518(c)(1) under § 42.210, but before the conclusion of the 120-day suspension period referred to in § 42.212, or within 30 days after notification of non-compliance with section 262(b), a State government or unit of general local government may request a full hearing to consider the findings or determination of non-compliance made under § 42.210. The Administration shall initiate the hearing within 60 days of request.

(b) Within 30 days after the conclusion of the hearing, or, in the absence of a hearing, at the conclusion of the 120-day period referred to in § 42.212, the Administrator shall make a finding of compliance or non-compliance.

(1) If the Administrator makes a finding of non-compliance, the Administrator shall:

(i) Notify the Attorney General in order that the Attorney General may institute a civil action under section 518(c)(3) of the Crime Control Act;

(ii) Terminate the payment of funds under the Crime Control Act and/or the Juvenile Justice Act; and

(iii) If appropriate, seek repayment of funds.

(2) No order of the Administrator terminating, or refusing to grant or continue, assistance to a recipient for non-compliance with section 262(b) of the Juvenile Justice Act shall be effective until the expiration of 30 days after the Administration has filed with the committee of the House and

the committee of the Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action.

(3) If the Administrator makes a finding of compliance, payment of the suspended funds and reconsideration of applications shall resume.

§ 42.216 Judicial review.

Any State government or unit of general local government aggrieved by a final determination of the Administration under § 42.215 may appeal such determination as provided in section 511 of the Crime Control Act, in the case of funds made available under that Act, or in accordance with the procedures set forth in section 603 of the Civil Rights Act of 1964, as amended, in the case of funds made available under the Juvenile Justice Act.

§ 42.217 Other actions authorized under the Crime Control Act.

(a) The Administrator may, at any time, request the Attorney General to file suit to enforce compliance with section 518(c)(1) or section 262(b). LEAA will monitor the litigation through the court docket and liaison with the Civil Rights Division of the Department of Justice. Where the litigation does not result in timely resolution of the matter, and funds have not been suspended pursuant to § 42.217(b), LEAA will institute administrative proceedings unless enjoined from doing so by the court.

(b)(1) Whenever the Attorney General files a civil action alleging a pattern or practice of discriminatory conduct on the basis of race, color, religion, national origin, or sex in any program or activity of a State government or unit of local government which State government or unit of local government receives funds made available under the Crime Control Act and the conduct allegedly violates or would violate the provisions of this subpart or section 518(c)(1) of the Crime Control Act and neither party within 45 days after such filing has been granted such preliminary relief with regard to the suspension or payment of funds as may otherwise be available by law, the Administrator shall suspend further payment of any funds under the Crime Control Act to that specific program or activity alleged by the Attorney General to be in violation of the provisions of section 518(c)(1) of the Crime Control Act until such time as the court orders resumption of payment.

(2) The Administration expects that preliminary relief authorized by this subsection will not be granted unless the party making application for such relief meets the standards for a preliminary injunction.

(c)(1) Whenever a State government or unit of local government or any officer or employee thereof acting in an official capacity, has engaged or is engaging in any act or practice prohibited by section 518(c)(1) of the Crime Control Act, a civil action may be instituted after exhaustion of administrative remedies by the person aggrieved in an appropriate United States district court or in a State court of general jurisdiction.

(2) Administrative remedies shall be deemed to be exhausted upon the expiration of 60 days after the date the administrative complaint was filed with the Administration, or any other administrative enforcement agency, unless within such period there has been a determination by the Administration or the agency on the merits of the complaint, in which case such remedies shall be deemed exhausted at the time the determination becomes final.

(3) The Attorney General, or a specifically designated assistant for or in the name of the United States may intervene upon timely application in any civil action brought to enforce compliance with section 518(c)(1) if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

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) [Reserved]

(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.

[38 FR 23516, Aug. 31, 1973, as amended at 42 FR 9493, Feb. 16, 1977]

§ 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, describe 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 contracts 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. Department of Labor, found at 41 CFR 60-2.24(e).

(h) Plan for dissemination of the applicant's Equal Employment Opportu-

nity 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) 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.

[38 FR 23516, Aug. 31, 1973, as amended at 42 FR 9493, Feb. 16, 1977]

§ 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).

Subpart F—Coordination of Enforcement of Non-discrimination in Federally Assisted Programs

AUTHORITY: Executive Order 11764 (39 FR 2575).

SOURCE: Order No. 670-76, 41 FR 52669, Dec. 1, 1976, unless otherwise noted.

§ 42.401 Purpose and application.

The purpose of this subpart is to insure that federal agencies which extend financial assistance properly enforce Title VI of the Civil Rights Act of 1964 and similar provisions in federal grant statutes. Enforcement of the latter statutes is covered by this subpart to the extent that they relate to prohibiting discrimination on the ground of race, color or national origin in programs receiving federal financial assistance of the type subject to Title VI. Responsibility for enforcing Title VI rests with the federal agencies which extend financial assistance. In accord with the authority granted the Attorney General under Executive Order 11764, this subpart shall govern the respective obligations of federal agencies regarding enforcement of Title VI. This subpart is to be used in conjunction with the 1965 Attorney General Guidelines for Enforcement of Title VI, 28 CFR 50.3.

§ 42.402 Definitions.

For purpose of this subpart:

(a) "Title VI" refers to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4. Where appropriate, this term also refers to the civil rights provisions of other federal statutes to the extent that they prohibit discrimination on the ground of race, color or national origin in programs receiving federal financial assistance of the type subject to Title VI itself.

(b) "Agency" or "federal agency" refers to any federal department or agency which extends federal financial assistance of the type subject to Title VI.

(c) "Program" refers to programs and activities receiving federal financial assistance of the type subject to Title VI.

(d) "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(e) Where designation of persons by race, color or national origin is required, the following designations shall be used:

(1) *Black, not of Hispanic Origin.* A person having origins in any of the black racial groups of Africa.

(2) *Hispanic.* A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.

(3) *Asian or Pacific Islander.* A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(4) *American Indian or Alaskan Native.* A person having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

(5) *White, not of Hispanic Origin.* A person having origins in any of the original people of Europe, North Africa, or the Middle East. Additional sub-categories based on national origin or primary language spoken may be used where appropriate, on either a national or a regional basis. Paragraphs (e) (1) through (5), inclusive, set forth in this section are in conformity with the OMB Ad Hoc Committee on Race/Ethnic Categories' recommendations. To the extent that said designations are modified by the OMB Ad Hoc Committee, paragraphs (e) (1) through (5), inclusive, set forth in this section shall be interpreted to conform with those modifications.

(f) "Covered employment" means employment practices covered by Title VI. Such practices are those which (1) exist in a program where a primary objective of the federal financial assistance is to provide employment, or (2) cause discrimination on the basis of race, color or national origin with respect to beneficiaries or potential beneficiaries of the assisted program.

§ 42.403 Agency regulations.

(a) Any federal agency subject to Title VI which has not issued a regulation implementing Title VI shall do so as promptly as possible and, no later than the effective date of this subpart, shall submit a proposed regulation to the Assistant Attorney General pursuant to paragraph (c) of this section.

(b) Any federal agency which becomes subject to Title VI after the effective date of this subpart shall, within 60 days of the date it becomes subject to Title VI, submit a proposed regulation to the Assistant Attorney General pursuant to paragraph (c) of this section.

(c) Regarding issuance or amendment of its regulation implementing Title VI, a federal agency shall take the following steps:

(1) Before publishing a proposed regulation of amendment in the FEDERAL REGISTER, submit it to the Assistant Attorney General, Civil Rights Division;

(2) After receiving the approval of the Assistant Attorney General, publish the proposed regulation or amendment in the FEDERAL REGISTER for comment;

(3) After final agency approval, submit the regulation or amendment, through the Assistant Attorney General, to the Attorney General for final approval. (Executive Order 11764 delegates to the Attorney General the function, vested in the President by section 602 of Title VI, 42 U.S.C. 2000d-1, of approving Title VI regulations and amendments to them.)

(d) The Title VI regulation of each federal agency shall be supplemented with an appendix listing the types of federal financial assistance, i.e., the statutes authorizing such assistance, to which the regulation applies. Each such appendix shall be kept up-to-date by amendments published, at appropriate intervals, in the FEDERAL REGISTER. In issuing or amending such an appendix, the agency need not follow the procedure set forth in paragraph (c) of this section.

§ 42.404 Guidelines.

(a) Federal agencies shall publish Title VI guidelines for each type of program to which they extend financial assistance, where such guidelines would be appropriate to provide detailed information on the requirements of Title VI. Such guidelines shall be published within three months of the effective date of this subpart or of the effective date of any subsequent statute authorizing federal financial assistance to a new type of program. The guidelines shall describe the nature of Title VI coverage, methods of enforcement, examples of prohibited practices in the context of the particular type of program, required or suggested remedial action, and the nature of requirements relating to covered employment, data collection, complaints and public information.

(b) Where a federal agency determines that Title VI guidelines are not appropriate for any type of program to which it provides financial assistance, the reasons for the determination shall be stated in writing and made available to the public upon request.

§ 42.405 Public dissemination of Title VI information.

(a) Federal agencies shall make available and, where appropriate, distribute their Title VI regulations and guidelines for use by federal employees, applicants for federal assistance, recipients, beneficiaries and other interested persons.

(b) State agency compliance programs (see § 42.410) shall be made available to the public.

(c) Federal agencies shall require recipients, where feasible, to display prominently in reasonable numbers and places posters which state that the recipients operate programs subject to the nondiscrimination requirements of Title VI, summarize those re-

quirements, note the availability of Title VI information from recipients and the federal agencies, and explain briefly the procedures for filing complaints. Federal agencies and recipients shall also include information on Title VI requirements, complaint procedures and the rights of beneficiaries in handbooks, manuals, pamphlets and other material which are ordinarily distributed to the public to describe the federally assisted programs and the requirements for participation by recipients and beneficiairies. To the extent that recipients are required by law or regulation to publish or broadcast program information in the news media, federal agencies and recipients shall insure that such publications and broadcasts state that the program in question is an equal opportunity program or otherwise indicate that discrimination in the program is prohibited by federal law.

(d)(1) Where a significant number or proportion of the population eligible to be served or likely to be directly affected by a federally assisted program (e.g., affected by relocation) needs service or information in a language other than English in order effectively to be informed of or to participate in the program, the recipient shall take reasonable steps, considering the scope of the program and the size and concentration of such population, to provide information in appropriate languages to such persons. This requirement applies with regard to written material of the type which is ordinarily distributed to the public.

(2) Federal agencies shall also take reasonable steps to provide, in languages other than English, information regarding programs subject to Title VI.

§ 42.406 Data and information collection.

(a) Except as determined to be inappropriate in accordance with paragraph (f) of this section or § 42.404(b), federal agencies, as a part of the guidelines required by § 42.404, shall in regard to each assisted program provide for the collection of data and information from applicants for and recipients of federal assistance sufficient to permit effective enforcement of Title VI.

(b) Pursuant to paragraph (a) of this section, in conjunction with new applications for federal assistance (see 28 CFR 50.3(c) II A) and in any applications for approval of specific projects or significant changes in applications for continuation or renewal of assistance (see 28 CFR 50.3(c) II B), and at other times as appropriate, federal agencies shall require applicants and recipients to provide relevant and current Title VI information. Examples of data and information which, to the extent necessary and appropriate for determining compliance with Title VI, should be required by agency guidelines are as follows:

(1) The manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination;

(2) The population eligible to be served by race, color and national origin;

(3) Data regarding covered employment, including use or planned use of bilingual public-contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English;

(4) The location of existing or proposed facilities connected with the program, and related information adequate for determing whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination;

(5) The present or proposed membership, by race, color and national origin, in any planning or advisory body which is an integral part of the program;

(6) Where relocation is involved, the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color or national origin

(c) Where additional data, such as demographic maps, the racial composition of affected neighborhoods or census data, is necessary or appropriate, for understanding information re-

quired in paragraph (b) of this section, federal agencies shall specify, in their guidelines or in other directives, the need to submit such data. Such additional data should be required, however, only to the extent that it is readily available or can be compiled with reasonable effort.

(d) Pursuant to paragraphs (a) and (b) of this section, in all cases, federal agencies shall require:

(1) That each applicant or recipier t promptly notify the agency upon its request of any lawsuit filed against the applicant or recipient alleging discrimination on the basis of race, color or national origin, and that each recipient notify the agency upon its request of any complaints filed against the recipient alleging such discrimination;

(2) A brief description of any applicant's or recipient's pending applications to other federal agencies for assistance, and of federal asssistance being provided at the time of the application or requested report;

(3) A statement by any applicant describing any civil rights compliance reviews regarding the applicant conducted during the two-year period before the application, and information concerning the agency or organization performing the review; and periodic statements by any recipient regarding such reviews;

(4) A written assurance by any applicant or recipient that it will compile and maintain records required, pursuant to paragraphs (a) and (b) of this section, by the agency's guidelines or other directives.

(e) Federal agencies should inquire whether any agency listed by the applicant or recipient pursuant to paragraph (d)(2) of this section has found the applicant or recipient to be in noncompliance with any relevant civil rights requirement.

(f) Where a federal agency determines that any of the requirements of this section are inapplicable or inappropriate in regard to any program, the basis for this conclusion shall be set forth in writing and made available to the public upon request.

§ 42.407 Procedures to determine compliance.

(a) *Agency staff determination responsibility.* All federal agency staff determinations of Title VI compliance shall be made by, or be subject to the review of, the agency's civil rights office. Where federal agency responsibility for approving applications or specific projects has been assigned to regional or area offices, the agency shall include personnel having Title VI review responsibility on the staffs of such offices and such personnel shall perform the functions described in paragraphs (b) and (c) of this section.

(b) *Application review.* Prior to approval of federal financial assistance, the federal agency shall make written determination as to whether the applicant is in compliance with Title VI (see 28 CFR 50.3(c) II A). The basis for such a determination under "the agency's own investigation" provision (see 28 CFR 50.3(c) II A(2)), shall be submission of an assurance of compliance and a review of the data submitted by the applicant. Where a determination cannot be made from this data, the agency shall require the submission of necessary additional information and shall take other steps necessary for making the determination. Such other steps may include, for example, communicating with local government officials or minority group organizations and field reviews. Where the requested assistance is for construction, a pre-approval review should determine whether the location and design of the project will provide service on a nondiscriminatory basis and whether persons will be displaced or relocated on a nondiscriminatory basis.

(c) *Post-approval review.* (1) Federal agencies shall establish and maintain an effective program of post-approval compliance reviews regarding approved new applications (see 28 CFR 50.3(c) II A), applications for continuation or renewal of assistance (28 CFR 50.3(c) II B) and all other federally assisted programs. Such reviews are to include periodic submission of compliance reports by recipients to the agencies and, where appropriate, field reviews of a representative number of

major recipients. In carrying out this program, agency personnel shall follow agency manuals which establish appropriate review procedures and standards of evaluation. Additionally, agencies should consider incorporating a Title VI component into general program reviews and audits.

(2) The results of post-approval reviews shall be committed to writing and shall include specific findings of fact and recommendations. A determination of the compliance status of the recipient reviewed shall be made as promptly as possible.

(d) *Notice to assistant attorney general.* Federal agencies shall promptly notify the Assistant Attorney General of instances of probable noncompliance determined as the result of application reviews or post-approval compliance reviews.

§ 42.408 Complaint procedures.

(a) Federal agencies shall establish and publish in their guidelines procedures for the prompt processing and disposition of complaints. The complaint procedures shall provide for notification in writing to the complainant and the applicant or recipient as to the disposition of the complaint. Federal agencies should investigate complaints having apparent merit. Where such complaints are not investigated, good cause must exist and must be stated in the notification of disposition. In such cases, the agency shall ascertain the feasibility of referring the complaint to the primary recipient, such as a State agency, for investigation.

(b) Where a federal agency lacks jurisdiction over a complaint, the agency shall, wherever possible, refer the complaint to another federal agency or advise the complainant.

(c) Where a federal agency requires or permits recipient to process Title VI complaints, the agency shall ascertain whether the recipients' procedures for processing complaints are adequate. The federal agency shall obtain a written report of each such complaint and investigation and shall retain a review responsibility over the investigation and disposition of each complaint.

(d) Each federal agency shall maintain a log of Title VI complaints filed with it, and with its recipients, identifying each complainant by race, color, or national origin; the recipient; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of disposition; and other pertinent information. Each recipient processing Title VI complaints shall be required to maintain a similar log. Federal agencies shall report to the Assistant Attorney General on January 1, 1977, and each six months thereafter, the receipt, nature and disposition of all such Title VI complaints.

§ 42.409 Employment practices.

Enforcement of Title VI compliance with respect to covered employment practices shall not be superseded by state and local merit systems relating to the employment practices of the same recipient.

§ 42.410 Continuing state programs.

Each state agency administering a continuing program which receives federal financial assistance shall be required to establish a Title VI compliance program for itself and other recipients which obtain federal assistance through it. The federal agencies shall require that such state compliance programs provide for the assignment of Title VI responsibilities to designated state personnel and comply with the minimum standards established in this subpart for federal agencies, including the maintenance of records necessary to permit federal officials to determine the Title VI compliance of the state agencies and the subrecipient.

§ 42.411 Methods of resolving noncompliance.

(a) Effective enforcement of Title VI requires that agencies take prompt action to achieve voluntary compliance in all instances in which noncompliance is found. Where such efforts have not been successful within a reasonable period of time, the agency shall initiate appropriate enforcement procedures as set forth in the 1965 Attorney General Guidelines, 28 CFR

28-171 O - 78 - 21

50.3. Each agency shall establish internal controls to avoid unnecessary delay in resolving noncompliance, and shall promptly notify the Assistant Attorney General of any case in which negotiations have continued for more than sixty days after the making of the determination of probable noncompliance and shall state the reasons for the length of the negotiations.

(b) Agreement on the part of a noncomplying recipient to take remedial steps to achieve compliance with Title VI shall be set forth in writing by the recipient and the federal agency. The remedial plan shall specify the action necessary for the correction of Title VI deficiencies and shall be available to the public.

§ 42.412 Coordination.

(a) The Attorney General's authority under Executive Order 11764 is hereby delegated to the Assistant Attorney General, Civil Rights Division. In exercising that authority, the Assistant Attorney General shall be subject to the general supervision of the Attorney General and under the direction of the Associate Attorney General.

(b) Consistent with this subpart and the 1965 Attorney General Guidelines, 28 CFR 50.3, the Assistant Attorney General may issue such directives and take such other action as he deems necessary to insure that federal agencies carry out their responsibilities under Title VI. In addition, the Assistant Attorney General will routinely provide to the Director of the Office of Management and Budget copies of all inter-agency survey reports and related materials prepared by the Civil Rights Division that evaluate the effectiveness of an agency's Title VI compliance efforts. Where cases or matters are referred to the Assistant Attorney General for investigation, litigation or other appropriate action, the federal agencies shall, upon request, provide appropriate resources to the Assistant Attorney General to assist in carrying out such action.

[Order No. 670-76, 41 FR 52669, Dec. 1, 1976, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

§ 42.413 Interagency cooperation and delegations.

(a) Where each of a substantial number of recipients is receiving assistance for similar or related purposes from two or more federal agencies, or where two or more federal agencies cooperate in administering assistance for a given class of recipients, the federal agencies shall:

(1) Jointly coordinate compliance with Title VI in the assisted programs, to the extent consistent with the federal statutes under which the assistance is provided; and

(2) Designate one of the federal agencies as the lead agency for Title VI compliance purposes. This shall be done by a written delegation agreement, a copy of which shall be provided to the Assistant Attorney General and shall be published in the FEDERAL REGISTER.

(b) Where such designations or delegations of functions have been made, the agencies shall adopt adequate written procedures to assure that the same standards of compliance with Title VI are utilized at the operational levels by each of the agencies. This may include notification to agency personnel in handbooks, or instructions on any forms used regarding the compliance procedures.

(c) Any agency conducting a compliance review or investigating a complaint of an alleged Title VI violation shall notify any other affected agency upon discovery of its jurisdiction and shall subsequently inform it of the findings made. Such reviews or investigations may be made on a joint basis.

(d) Where a compliance review or complaint investigation under Title VI reveals a possible violation of Executive Order 11246, Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), or any other federal law, the appropriate agency shall be notified.

§ 42.414 Federal agency staff.

Sufficient personnel shall be assigned by a federal agency to its Title VI compliance program to ensure effective enforcement of Title VI.

§ 42.415 Federal agency Title VI enforcement plan.

Each federal agency subject to Title VI shall develop a written plan for enforcement which sets out its priorities and procedures. This plan shall be available to the public and shall address matters such as the method for selecting recipients for compliance reviews, the establishment of timetables and controls for such reviews, the procedure for handling complaints, the allocation of its staff to different compliance functions, the development of guidelines, the determination as to when guidelines are not appropriate, and the provision of civil rights training for its staff.

PART 43—RECOVERY OF COST OF HOSPITAL AND MEDICAL CARE AND TREATMENT FURNISHED BY THE UNITED STATES

Sec.

AUTHORITY: Sec. 2, 76 Stat. 593; 42 U.S.C. 2651-2653, E.O. 11060; 3 CFR, 1959-1963 Comp.

SOURCE: Order No. 289-62, 27 FR 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 FR 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 (Pub. L. 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 $40,000, 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 $40,000, 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 $40,000 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. 373-67, 32 FR 713, Jan. 21, 1967, as amended by Order No. 763-77, 43 FR 1066, Jan. 6, 1978]

§ 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

AUTHORITY: 80 Stat. 379; 5 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: Order No. 350-65, 30 FR 17202, Dec. 31, 1965, unless otherwise noted.

CROSS REFERENCE: For Attorney General's "Memorandum Regarding the Conflict of Interest Provisions of Pub. L. 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. L. 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 an 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 reference 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 submitted 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. Presiden-

tial 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 Associate Attorney General, and the Associate 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.

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

§ 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 Associate Attorney General with recommendations for appropriate action. In cases so referred to him, the Associate 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 prohibition 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)

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

§ 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 paragraph (a)(2) of this section.

(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 section 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 Associate 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 Associate Attorney General through the applicant's superior. Action taken by the Associate 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 FR 17202, Dec. 31, 1965, as amended by Order No. 379-67, 32 FR 9066, June 27, 1967; Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

§ 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 Associate Attorney General gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(d) (1) The Attorney General, Deputy Attorney General, Associate Attorney General, and the heads of divisions shall not make speeches or otherwise lend their names or support in a prominent fashion to a fundraising drive or a fundraising event or similar event intended for the benefit of any person. No Department of Justice employee or special Government employee shall engage in any of these activities if the invitation was extended primarily because of his official position with the Department or if the fact of his official position with the Department has been or will be used in the promotion of the event to any significant degree.

(2) For purposes of this subsection, an event wil be regarded as a fundraising event if any portion of the ticket or other cost of admission is designated as a charitable contribution for tax purposes, if one of its purposes is to produce net proceeds for the benefit of any person, or if it is a "kickoff" dinner or similar occasion that is part of a broader fundraising effort.

(3) Nothing in this subsection shall apply to the Combined Federal Campaign or any other authorized fundraising drive directed primarily at Federal employees.

(4) Nothing in this subsection shall apply to a meeting, seminar, or conference sponsored by a professional or other appropriate organization where a tuition or other fee is charged for attendance if such tuition or fee is reasonable under the circumstances.

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 699-77, 42

FR 15315, Mar. 21, 1977; Order 769-77, 42 FR 64119, Dec. 22, 1977]

§ 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 Pub. L. 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 FR 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 FR 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 FR 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 FR 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 FR 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 FR 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.

Counselor to the Attorney General.
Special Assistants.
Director of Public Information.
Assistant Directors of Public Information.
Director of Policy and Planning.

(ii) Office of the Deputy Attorney General

Associate Deputy Attorneys General
Executive Assistant
Director, Executive Office for U.S. Attorneys
U.S. Attorneys

(iii) Office of the Solicitor General

Deputy Solicitors General
Tax Assistant

(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 Attorneys General
Staff Directors
Administrative Counsel
Director, Justice Data Center
Director, Department Publication Services Facility

(vii) Office of Professional Responsibility.

Counsel on Professional Responsibility
Deputy Counsel
Assistant Counsels

(viii) [Reserved]

(ix) Community Relations Service

Deputy Director
Associate Director
Chief Counsel
Regional Directors

(x) Antitrust Division

Deputy Assistant Attorneys General
Director of Economics
Director of Operations
Deputy Director of Operations
Director, Policy Planning Office
Section Chiefs
Field Office Chiefs

(xi) Civil Division

Deputy Assistant Attorneys General
Section Chiefs

(xii) Civil Rights Division

Deputy Assistant Attorneys General
Special Assistants
Executive Officer
Section Chiefs
Director of Offices

(xiii) Criminal Division

Deputy Assistant Attorneys General
Section Chiefs

(xiv) Land and Natural Resources Division

Deputy Assistant Attorneys General
Legislative Assistant
Section Chiefs

(xv) Tax Division

Deputy Assistant Attorneys General
Director, Civil Litigation
Section Chiefs

(xvi) Federal Bureau of Investigation

Assistant Director, Administrative Division

(xvii) National Institute of Corrections (Bureau of Prisons) Director, National Institute of Corrections

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

(xviii) Drug Enforcement Administration

Assistant Administrators
Office Directors
Chief Counsel
Chief Inspector
Controller
Laboratory Directors
Regional Directors
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

(xix) Immigration and Naturalization Service:

Deputy Commissioner
Associate Commissioner, Management
Assistant Commissioner, Administration
Regional Commissioners for Northern, Southern, Eastern, and Western Regions
Deputy Regional Commissioners for Northern, Southern, Eastern, and Western Regions
Associate Deputy Regional Commissioners, Management, for Northern, Southern, Eastern, and Western Regions

(xx) Law Enforcement Assistance Administration

Special Assistants to the Administrator and the Deputy Administrators
Director, Executive Secretariat
General Counsel
Inspector General
Director, Office of Civil Rights Compliance
Director, Office of Public Information
Director, Office of Congressional Liaison
Director, Office of Equal Employment Opportunity
Comptroller
Assistant Administrator, Office of Regional Operations
Assistant Administrator, National Criminal Justice Information and Statistics Service
Director, National Institute of Law Enforcement and Criminal Justice
Assistant Administrator, Office of Planning and Management
Director, Office of Criminal Justice Education and Training

Assistant Administrator, Office of Operations Support
Assistant Administrator, Office of Juvenile Justice and Delinquency Prevention
Director, National Institute for Juvenile Justice and Delinquency Prevention
Regional Administrators
All Deputy Assistant Administrators, Deputy Directors, or Deputy Regional Administrators 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

(xxi) U.S. Marshals Service

Director
Deputy Director
U.S. Marshals

(xxii) U.S. Parole Commission

All Commissioners

(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 violation 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 Associate 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 FR 17202, Dec. 31, 1965, as amended by Order No. 383-67, 32 FR 13217, Sept. 19, 1967; Order No. 412-69, 34 FR 5726, Mar. 27, 1969; Order No. 573-74, 39 FR 26023, July 16, 1974; Order No. 576-74, 39 FR 31527, Aug. 29, 1974; Order No. 653-76, 41 FR 27317, July 2, 1976; Order No. 699-77, 42 FR 15315, Mar. 21, 1977; Order No. 732-77, 42 FR 35970, July 13, 1977]

§ 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 FR 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 Associate Attorney General, through the Department Counselor, with his recommendation for such action. The Associate 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.

[Order No. 350-65, 30 FR 17202, Dec. 31, 1965, as amended by Order No. 699-77, 42 FR 15315, Mar. 21, 1977]

§ 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.

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 hereinafter as "the Act") repealed section 190 and one of the criminal statutes, 18 U.S.C. 216, without replacing them.[1a] In addition it repealed 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

[1a] 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 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.

1914 of title 18 respectively.[2] 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:[3]

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 include, among others, officers and employees of the departments and agencies who are appointed or employed to serve, with or without compensation, for not more than 130 days during any period of 365 consecutive days either on a full-time or intermittent basis.

SUMMARY OF THE MAIN COMFLICT OF INTEREST PROVISIONS OF PUBLIC LAW 87-849

A regular officer or employee of the Government—that is, one appointed or employed to serve more than 130 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 responsibility[4] 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 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).

[2] 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*).

[3] S. Rept. 2213, 87th Cong., 2d sess., p. 6.

[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."

30-071 O - 78 - 22

(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.

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 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 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 it 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 interest. 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 compenation, 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.[5]

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 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 portion. 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 emloyee 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 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 postemployment 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

[5]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.

[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 203 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

Footnotes continued on next page

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 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 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).

Footnotes continued from last page
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.

[8] Subsection (a), as it first appeared in H.R. 8140, the bill which became Public Law 87-49, 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.

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 paragraph, 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 nondisqualifying 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, is in the provisions 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 or 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 preexisting 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 Generating 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 *Conflict 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. 6835.

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, 1956, 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 48—NEWSPAPER PRESERVATION ACT

Sec.

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, Pub. L. 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 proceedings 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 accord-

ance 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) of this section.

(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: Sec. 4, 76 Stat. 550; 15 U.S.C. 1313.

SOURCE: Order No. 298-63, 28 FR 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, Pub. 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 persons 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.

(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 FR 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 crea e 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 encourage 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 require 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 appli-

cant fails to file an adequate assurance or apparently breaches its terms, notice should be promptly given of the nature of the noncompliance 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 fails 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 Field 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 fails 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

30-071 O - 78 - 23

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 602 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 602 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 FR 12327, 3 CFR 1965 Supp., p. 177)

[31 FR 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 FR 10943.

(28 U.S.C. 508, 509, 510)

[Order No. 372-67, 32 FR 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 violations. 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. 375-67, 32 FR 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." That statement has been revised several times.

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. The Division may, in its discretion, refuse to consider a request.

4. A business review letter shall have no application to any party which does not join in the request therefor.

5. 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.

6. 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 Assistant Attorney General in charge of the Antitrust Division or his delegate.

7. (a) 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 only 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.

(b) The submission of a request for a business review, or its pendency, shall in no way alter any responsibility of any party to comply with the Premerger Notification provisions of the Antitrust Improvements Act of 1976, 15 U.S.C. 18A, and the regulations promulgated thereunder, 16 CFR, Part 801.

8. 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.

9. 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.

10. (a) Simultaneously upon notifying the requesting party of and Division action described in paragraph 8, the business review request, and the Division's letter in response shall be indexed and placed in a file available to the public upon request.

(b) On that date or within thirty days after the date upon which the Division takes any action as described in paragraph 8, the information supplied to support the business review request and any other information supplied by the requesting party in connection with the transaction that is the subject of the business review request, shall be indexed and placed in a file with the request and the Division's letter, available to the public upon request. This file shall remain open for one year, after which time it shall be closed and the documents either returned to the requesting party or otherwise disposed of, at the discretion of the Antitrust Division.

(c) Prior to the time the information described in subparagraphs (a) and (b) is indexed and made publicly available in accordance with the terms of that subpara-

graph, 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 nondisclosure 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, shall make the final determination as to whether good cause for non-disclosure has been shown.

(d) Nothing contained in subparagraphs (a), (b) and (c) 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.

(e) 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.

11. 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 stop 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 governmental purposes.

[42 FR 11831, Mar. 1, 1977]

§ 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 concerning 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 nonmedia 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 when-

ever 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 immediately 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. 544-73, 38 FR 29588, Oct. 26, 1973]

§ 50.11 Designation of United States Magistrates as special masters and referrals to magistrates.

(a) United States magistrates are subordinate judicial officers of the district courts who act under the jurisdiction of those courts and subject to their direction and control. The Supreme Court, in the recent case of *Mathews* v. *Weber*, 423 U.S. 261 (1976), has ruled that a district court practice of referring all Social Security benefit cases to magistrates for hearing and preparation of a recommended decision is a proper exercise of the court's authority, and that a magistrate so acting does so in the capacity of magistrate, not as a special master under Rule 53(b) of the Federal Rules of Civil Procedure, id., at 273-275. As a consequence, such referrals are not subject to the "exceptional circumstances" test for appointment of special masters as interpreted in *LaBuy* v. *Howes Leather Co.*, 352 U.S. 249 (1957), decided 10 years before establishment of the magistracy.

(b) In Pub. L. 94-577, 90 Stat. 2729, the Congress adopted and endorsed this view of its original intent in the Federal Magistrates Act by amending section 636(b) of title 28, United States Code, to provide that a judge of the district court may designate a magistrate to hear and determine any pretrial matter pending before the court, except for eight named classes of case-dispositive motions, in which the magistrate may hear and recommend decision to the judge, 28 U.S.C. 636(b)(1)(A), (B). The same amendments also provide that a judge may designate a magistrate to serve as special master in an civil case, upon consent of the parties, without regard to the provisions of Rule 53(b), and that a magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States, 28 U.S.C. 636(b)(2), (3).

(c) In view of these actions of the Supreme Court and the Congress, it is clear that magistrates may be desig-

nated to act as special masters even though the "exceptional circumstances" contemplated by Rule 53(b) may be absent, and that magistrates acting under revised 636(b)(1) (A) and (B) to hear and determine or to hear and recommend decision on pretrial matters are not acting as special masters under the rule. It is the policy of the Department of Justice to encourage, in appropriate cases, the use of magistrates to assist the district courts in resolving litigation. In conformity with this policy, the legal divisions of the Department of Justice are encouraged to accede to a district court referral to a magistrate, or to consent to designation of a magistrate as special master, if the attorney in charge of the matter for the Department determines that such a referral or designation is in the interest of the United States with respect to the litigation involved. In making this determination, all relevant factors should be considered, including the complexity of the matter, the relief sought, the amount involved, the importance and nature of the issues raised, and the likelihood that the referral to or designation of the magistrate will expedite resolution of the litigation.

[Order No. 751-77, 42 FR 55470, Oct. 17, 1977]

§ 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]

§ 50.14 Guidelines on employee selection procedures.

The guidelines set forth below are intended as a statement of policy of the Department of Justice and will be applied by the Department in exercising its responsibilities under Federal law relating to equal employment opportunity.

PART I—GENERAL PRINCIPLES

§ 1 Statement of Purpose

These guidelines are intended to be a set of principles which will assist employers, labor organizations, employment agencies, and licensing and certification boards in complying with equal employment opportunity requirements of Federal law with respect to race, color, religion, sex and national origin. They are designed to provide a framework for determining the proper use of tests and other selection procedures consistent with Federal law. These guidelines do not require a user to conduct validity studies of selection procedures where no adverse impact results. However, all users are encouraged to use selection procedures which are valid, especially users operating under merit principles. Nothing in these guidelines is intended or should be interpreted as discouraging the use of procedures which have been properly validated in accordance with these guidelines for the purpose of determining qualifications or selecting on the basis of relative qualifications. Nothing in these guidelines is intended to apply to persons not subject to the requirements of Title VII, Executive Order 11246, or other equal employment opportunity requirements of Federal law. These guidelines are not intended to apply to any responsibilities an employer, employment agency labor organization may have under the Age Discrimination Act of 1975 not to discriminate on the basis of age, or under section 504 of the Rehabilitation Act of 1973 not to discriminate on the basis of handicap. Nothing contained in these guidelines is intended to interfere with any obligation imposed or right granted by Federal law to users to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation.

§ 2 Scope

a. These guidelines will be applied by the Department of Labor to contractors and subcontractors subject to Executive Order 11246 as amended by Executive Order 11375 (hereinafter "Executive Order 11246"); and by the Civil Service Commission to federal agencies subject to Sec. 717 of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (hereinafter "the Civil Rights Act of 1964") and to its responsibilities toward state and local governments under Section 208(b)(1) of the Intergovernmental Personnel Act; by the Department of Justice in exercising its responsibilities under Federal law; and by any other Federal agency which adopts them.

b. These guidelines apply to selection procedures which are used as a basis for any employment decision. Employment decisions include but are not limited to hire, promotion, demotion, membership (for example in a labor organization), referral, retention, licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law. Selection for training is also considered an employment decision if it leads to any of the decisions listed above.

c. These guidelines do not apply to the use of a bona fide seniority system within the meaning of Title VII of the Civil Rights Act of 1964, as amended, as defined by Federal appellate court decisions, for any employment decision. These guidelines do not call for

the validation of such a seniority system used as a basis for such employment decision, and the use of such a seniority system as a basis for such employment decisions is consistent with these guidelines.

d. These guidelines do not apply to the entire range of Federal equal employment opportunity law, but only to selection procedures which are used as a basis for making employment decisions. For example, the use of recruiting procedures designed to attract racial, ethnic or sex groups which were previously denied employment opportunities or which are presently underutilized may be necessary to bring an employer into compliance with Federal law, and is frequently an essential element to any effective affirmative action program; but the subject of recruitment practices is not addressed by these guidelines because that subject concerns procedures other than selection procedures.

§ 3 Relationship Between Use of Selection Procedures and Discrimination

a. The use of any selection procedure which has an adverse impact on the members of any racial, ethnic or sex group with respect to any employment decision will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure is validated in accordance with the principles contained in these guidelines or unless use of the procedure is warranted under § 3b.

b. There are circumstances in which it is not feasible or not appropriate to utilize the validation techniques contemplated by these guidelines. In such circumstances, the user should utilize selection procedures which are as job related as possible and which will minimize or eliminate adverse impact. (1) When an unstandardized, informal or unscored selection procedure which has an adverse impact is utilized, the user should seek insofar as possible to eliminate the adverse impact, or, if feasible, to modify the procedure to one which is a formal, scored or qualified measure or combination of measures and then to validate the procedure in accord with these guidelines, or otherwise to justify continued use of the procedure in accord with Federal law. (2) When a standardized, formal or scored selection procedure is used for which it is not feasible or not appropriate to utilize the validation techniques contemplated by these guidelines, the user should either modify the procedure to eliminate the adverse impact or otherwise justify continued use of the procedure in accord with Federal law.

c. Generally where alternative selection procedures are available which have been shown to be equally valid for a given purpose, the user should use the procedure which has been demonstrated to have the lesser adverse impact. Accordingly, whenever a validity study is called for by these guidelines, the user should make a reasonable effort to investigate suitable alternative selection procedures which have as little adverse impact as possible, for the purpose of determining the appropriateness of using or validating them in accord with these guidelines. If a user has made a reasonable effort to become aware of such alternative procedures and a validity study for a job or group of jobs has been made in accord with these guidelines, the use of the selection procedure may continue until such time as it should reasonably be reviewed for currency. Whenever the user is shown a suitable alternative selection procedure with evidence of at least equal validity and less adverse impact, the user should investigate if for the purpose of determining the appropriateness of using or validating it in accord with these guidelines. This subsection is not intended to preclude the combination of procedures into a significantly more valid procedure, if such a combination has been properly validated.

§ 4 Information on Impact

a. Each user should have available for inspection records or other information which will disclose the impact which its selection procedures have upon employment opportunities of persons by identifiable racial, ethnic or sex groups in order to determine compliance with the provisions of § 3

above. Where there are large numbers of applicants and procedures are administered frequently, such information may be retained on a sample basis provided that the sample is appropriate in terms of the applicant population and adequate in size. The records called for by this section are to be maintained by sex, and by racial and ethnic groups as follows: blacks (Negroes), American Indians (including Alaskan Natives), Asians (including Pacific islanders), Hispanic (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race), whites (Caucasians) other than Hispanic and totals. The classifications called for by this section are intended to be consistent with the Employer Imformation (EEO-1 et seq.) series of reports. The user should adopt safeguards to insure that records of race, color, religion, sex, or national origin are used for appropriate purposes such as determining adverse impact, or (where required) for developing and monitoring affirmative action programs, and that such records are not used for making employment decisions.

b. The information called for by this section should be examined for possible diverse impact. If the records called for by this section indicate that the total selection process for a job has no adverse impact, the individual components of the selection process need not be evaluated separately for adverse impact. If a total selection process does have adverse impact, the individual components of the selection process should be evaluated for diverse impact.

A selection rate for any racial, ethnic or sex group which is less than four-fifths (⅘) (or eighty percent) of the rate for the group with the highest rate will generally be regarded as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded as evidence of adverse impact. Smaller differences in selection rate may nevertheless be considered to constitute diverse impact, where they are significant in both statistical and practical terms. Greater differences in selection rate would not necessarily be regarded as constituting adverse impact where the differences are based on small numbers and are not statistically significant, or where special recruiting or other programs cause the pool of minority or female candidates to be atypical of the normal pool of applicants from that group.

c. Federal agencies which adopt these guidelines for purposes of the enforcement of the equal employment opportunty laws or which have responsibility for securing compliance with them (hereafter referred to as enforcement agencies will consider in carrying out their obligations the general posture of the user with respect to equal employment opportunity for the job classification or group of classifications in question. Where a user has adopted an affirmative action program, the Federal enforcement agencies will consider the provisions of that program, including the goals and timetables which the employer has adopted and the progress which the employer has made in carrying out that program and in meeting the goals and timetables. These guidelines recognize that a user is prohibited by Federal law from the making of employment decisions on the basis of race and color and (except for bona fide occupational qualifications) on the basis of sex, religion and national origin; and nothing in this subsection or in the guidelines is intended to encourage or permit the granting of preferential treatment to any individual or to any group because of the race, color, religion, sex or national origin of such individual or group.

§ 5 General Standards for Validity Studies

a. For the purposes of satisfying these guidelines users may rely upon criterion related validity studies, content validity studies or construct validity studies, in accordance with the standards set forth in Part II of these guidelines, § 12 infra.

b. These guidelines are intended to be consistent with generally accepted professional standards for evaluating standardized tests and other assessment techniques, such as those de-

scribed in the Standards for Educational and Psychological Tests prepared by a joint committee of the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education (American Psychological Association, Washington, D.C. 1974) (hereinafter "APA Standards"), and standard text books and journals in the field of personnel selection.

c. For any selection procedure which has an adverse impact each user should maintain and have available such documentation as is described in Part III of these guidelines, § 13 infra.

d. Selection procedures subject to validity studies under § 3a above should be administered and scored under standardized conditions.

e. In general, users should avoid making employment decisions on the basis of measures of knowledges, skills or abilities which are normally learned in a brief orientation period, and which have an adverse impact.

f. Where cut off scores are used, they should normally be set so as to be reasonable and consistent with normal expectations of acceptable proficiency within the work force. Where other factors are used in determining cut off scores, such as the relationship between the number of vacancies and the number of applicants, the degree of adverse impact should be considered.

g. Selection procedures may be used to predict the performance of candidates for a job which is at a higher level than the job for which the person is initially being selected if a majority of the individuals who remain employed will progress to the higher level within a reasonable period of time. A "reasonable period of time" will vary for different jobs and employment situations but will seldom be more than five years. Examining for a higher level job would not be appropriate (1) if the majority of those remaining employed do not progress to the higher level job, (2) if there is a reason to doubt that the higher level job will continue to require essentially similar skills during the progression period, or (3) if knowledges, skills or abilities required for advancement would be expected to develop principally from the training or experience on the job.

h. Users may continue the use of a selection procedure which is not at the moment fully supported by the required evidence of validity, provided: (1) the user can cite substantial evidence of validity in accord with these guidelines and (2) the user has in progress when technically feasible, studies which are designed to produce the additional data required within a reasonable time.

If the additional studies do not produce the data required to demonstrate validity, the user is not relieved of or protected against any obligations arising under federal law.

i. Whenever a validity study has been made in accord with these guidelines for the use of a particular selection procedure for a job or group of jobs, additional studies need not be performed until such time as the validity study is subject to review as provided in § 3c above. There are no absolutes in the area of determining the currency of a validity study. All circumstances concerning the study, including the validation strategy used, and changes in the relevant labor market and the job should be considered in the determination of when a validity study is outdated.

§ 6 Cooperative Validity Studies and Use of Other Validity Studies

a. It is the intent of the agencies issuing these guidelines to encourage and facilitate cooperative development and validation efforts by employers, labor organizations and employment agencies to achieve selection procedures which are consistent with these guidelines.

b. Criterion-related validity studies conducted by one test user, or described in test manuals and the professional literature, will be considered acceptable for use by another user when: (1) the weight of the evidence from studies meeting the standards of § 12b below shows that the selection procedure is valid; (2) the studies pertain to a job which has substantially the same major job duties as shown by appro-

priate job analyses and (3) the studies include a study of test fairness for those racial, ethnic and sex subgroups which constitute significant factors in the borrowing user's relevant labor market for the job or jobs in question. If the studies relied upon satisfy (1) and (2) above but do not contain an investigation of test fairness, and it is not technically feasible for the borrowing user to conduct an internal study of test fairness, the borrowing user may utilize the study until studies conducted elsewhere show test unfairness, or until such time as it becomes technically feasible to conduct an internal study of test fairness and the results of that study can be acted upon.

If it is technically feasible for a borrowing user to conduct an internal validity study, and there are variables in the other studies which are likely to affect validity or fairness significantly, the user may rely upon such studies only on an interim basis in accord with § 5h, and will be expected to conduct an internal validity study in accord with § 12b below. Otherwise the borrowing user may rely upon such acceptable studies for operational use without an internal study.

c. Selection procedures shown by one user to be content valid in accord with § 12c will be considered acceptable for use by another user for a performance domain if the borrowing user's job analysis shows that the same performance domain is present in the borrowing user's job. The selection procedure may be used operationally if the conditions of § 12c(3) and § 12c(6) are satisfied by the borrowing user.

d. The conditions under which findings of construct validity may be generalized are described in § 12d(4).

e. If validity evidence from a multiunit or cooperative study satisfies the requirements of subparagraphs b, c or d above, evidence of validity specific to each unit or user usually will not be required unless there are variables in the units not studied which are likely to affect validity significantly.

§ 7 No Assumption of Validity

a. Under no circumstances will the general reputation of a selection procedure, its author or its publisher, or casual reports of its validity be accepted in lieu of evidence of validity. Specifically ruled out are: Assumptions of validity based on a procedure's name or descriptive labels; all forms of promotional literature; data bearing on the frequency of a procedure's usage; testimonial statements and credentials of sellers, users, or consultants; and other non-empirical or anecdotal accounts of selection practices or selection outcomes.

b. Professional supervision of selection activities is encouraged but is not a substitute for documented evidence of validity. The enforcement agencies will take into account the fact that a thorough job analysis and careful development of a selection procedure enhances the probability that the selection procedure is valid for the job.

§ 8 Employment Agencies and Employment Services

a. An employment agency, including private employment agencies and State employment agencies, which agrees to a request by an employer or labor organization to devise and utilize a selection procedure should follow the standards for determining adverse impact and, if adverse impact is demonstrated, show validity as set forth in these guidelines. An employment agency is not relieved of its obligation herein because the user did not request such validation or has requested the use of some lesser standard of validation than is provided in these guidelines. The use of an employment agency does not relieve an employer or labor organization of its responsibilities under Federal law to provide equal employment opportunity or its obligations as a user under these guidelines.

b. Where an employment agency or service is requested to administer a selection program which has been devised elsewhere and to make referrals pursuant to the results, the employment agency or service should obtain evidence of the absence of adverse

impact, or of validity, as described in these guidelines, before it administers the selection program and makes referrals pursuant to the results. The employment agency must furnish on request such evidence of validity. An employment agency or service will be expected to refuse to make referrals based on the selection procedure where the employer or labor organization does not supply satisfactory evidence of validity or lack of adverse impact.

§ 9 Disparate Treatment

The principle of disparate or unequal treatment must be distinguished from the concepts of validation. A selection procedure—even though validated against job performance in accordance with the guidelines in this part—cannot be imposed upon members of a racial, sex or ethnic group where other employees, applicants, or members have not been subjected to that standard. Disparate treatment occurs where members of a racial, sex, or ethnic group have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, the persons who were in the class of persons discriminated against and were available in the relevant job market during the period the user followed the discriminatory practices should be allowed the opportunity to qualify under the less stringent selection procedures previously followed, unless the user demonstrates that the increased standards are required for the safety or efficiency of the operation. Nothing in this section is intended to prohibit a user who has not previously followed merit standards from adopting merit standards; nor does it preclude a user who has previously used invalid or unvalidated selection procedures from developing and using procedures which are validated in accord with these guidelines.

§ 10 Retesting

Users should provide a reasonable opportunity for retesting and reconsideration. The user may however take reasonable steps to preserve the security of its procedures. Where examinations are administered periodically with public notice, such reasonable opportunity exists, unless persons who have previously been tested are precluded from retesting.

§ 11 Affirmative Action

The use of selection procedures which have been validated pursuant to these guidelines does not relieve users of any obligations they may have to undertake affirmative action to assure equal employment opportunity. Nothing in these guidelines is intended to preclude the use of selection procedures (consistent with Federal law—see § 4c) which assist in the achievement of affirmative action objectives.

PART II—TECHNICAL STANDARDS

§ 12 Technical Standards for Validity Studies

The following minimum standards, as applicable, should be met in conducting a validity study. Nothing in these guidelines is intended to preclude the development and use of other professionally acceptable techniques with respect to validation of selection procedures.

a. Any validity study should be based upon a review of information about the job for which the selection procedure is to be used. The review should include a job analysis except as provided in § 12b(3) below with respect to criterion related validity. Any method of job analysis may be used if it provides the information required for the specific validation strategy used.

b. *Criterion-related validity.* (1) Users choosing to validate a selection procedure by a criterion-related validity strategy should determine whether it is technically feasible (as defined in Part IV) to conduct such a study in

the particular employment context. The determination of the number of persons necessary to permit the conduct of a meaningful criterion-related study should be made by the user on the basis of all relevant information concerning the selection procedure, the potential sample and the employment situation. These guidelines do not require a user to hire or promote persons for the purpose of making it possible to conduct a criterion-related study; and do not require such a study on a sample of less than thirty (30) persons.

(2) There should be a review of job information to determine measures of work behaviors or performance that are relevant to the job in question. These measures or criteria are relevant to the extent that they represent critical or important job duties, work behaviors or work outcomes as developed from the review of job information. The possibility of bias should be considered both in selection of the measures and their application. In view of the possibility of bias in subjective evaluations, supervisory rating techniques should be carefully developed. All criteria need to be examined for freedom from factors which would unfairly alter scores of members of any group. The relevance of criteria and their freedom from bias are of particular concern when there are significant differences in measures of job performance for different groups.

(3) Proper safeguards should be taken to insure that scores on selection procedures do not enter into any judgments of employee adequacy that are to be used as criterion measures. Criteria may consist of measures other than work proficiency including, but not limited to length of service, regularity of attendance, training time or properly measured success in job relevant training. Measures of training success based upon pencil and paper tests will be closely reviewed for job relevance. Whatever criteria are used should represent important or critical work behaviors or work outcomes. Job behaviors including but not limited to production rate, error rate, tardiness, absenteeism and turnover, may be used as criteria without a full job analysis if the user can show the importance of the criterion to the particular employment context. A standardized rating of overall work performance may be utilized where a study of the job shows that it is an appropriate criterion.

(4) The sample subjects should insofar as feasible be representative of the candidates normally available in the relevant labor market for the job or jobs in question, and should insofar as feasible include the racial, ethnic and sex groups normally available in the relevant job market. Where samples are combined or compared, attention should be given to see that such samples are comparable in terms of the actual job they perform, the length of time on the job where time on the job is likely to affect performance and other relevant factors likely to affect validity differences; or that these factors are included in the design of the study and their effects identified.

(5) The degree of relationship between selection procedure scores and criterion measures should be examined and computed, using professionally acceptable statistical procedures. Generally, a selection procedure is considered related to the criterion, for the purposes of these guidelines, when the relationship between performance on the procedure and performance on the criterion measure is statistically significant at the .05 level of significance, which means that it is sufficiently high as to have a probability of no more than one (1) in twenty (20) to have occurred by chance. Absence of a statistically significant relationship between a selection procedure and job performance should not necessarily discourage other investigations of the validity of that selection procedure.

Users should evaluate each selection procedure to assure that it is appropriate for operational use. Generally, if other factors remain the same, the greater the magnitude of the relationship (e.g., correlation coefficient) between performance on a selection procedure and one or more criteria of performance on the job, and the greater the importance or number of aspects of job performance covered by the criteria, the more likely it is that the pro-

cedure will be appropriate for use. Reliance upon a selection procedure which is significantly related to a criterion measure, but which is based upon a study involving a large number of subjects and has a low correlation coefficient will be subject to close review if it has a large adverse impact. Sole reliance upon a single selection instrument which is related to only one of many job duties or aspects of job performance will also be subject to close review. The appropriateness of a selection procedure is best evaluated in each particular situation and there are no minimum correlation coefficients applicable to all employment situations. In determining whether a selection procedure is appropriate for operational use the following considerations should also be taken into account: The degree of adverse impact of the procedure, the availability of other selection procedures of greater or substantially equal validity; and the need of an employer, required by law or regulation to follow merit principles, to have an objective system of selection

(6) Users should avoid reliance upon techniques which tend to overestimate validity findings as a result of capitalization on chance unless an appropriate safeguard is taken. Reliance upon a few selection procedures or criteria of successful job performance, when many selection procedures or criteria of performance have been studied, or the use of optimal statistical weights for selection procedures computed in one sample, are techniques which tend to inflate validity estimates as a result of chance. Use of a large sample is one safeguard; cross-validation is another.

(7) *Fairness of the selection procedure.* i. When members of one racial, ethnic, or sex group characteristically obtain lower scores on a selection procedure than members of another group, and the differences are not reflected in differences in measures of job performance, use of the selection procedure may unfairly deny opportunities to members of the group that obtains the lower scores.

ii. Where a selection procedure results in an adverse impact on a racial, ethnic or sex group identified in accordance with the classifications set forth in § 4 above and that group is a significant factor in the relevant labor market, the user generally should investigate the possible existence of unfairness for that group if it is technically feasible to do so.

The greater the severity of the adverse impact on a group, the greater the need to investigate the possible existence of unfairness. Where the weight of evidence from other studies shows that the selection procedure is a fair predictor for the group in question and for the same or similar jobs, such evidence may be relied on in connection with the selection procedure at issue and may be combined with data from the present study; however, where the severity of adverse impact on a group is significantly greater than in the other studies referred to, a user may not rely on such other studies.

iii. Users conducting a study of fairness should review the APA Standards regarding investigation of possible bias in testing. An investigation of fairness of a selection procedure depends on both evidence of validity and the manner in which the selection procedure is to be used in a particular employment context. Fairness of a selection procedure cannot necessarily be specified in advance without investigating these factors. Investigation of fairness of a selection procedure in samples where the range of scores on selection procedures or criterion measures is severely restricted for any subgroup sample (as compared to other subgroup samples) may produce misleading evidence of unfairness. That factor should accordingly be taken into account in conducting such studies and before reliance is placed on the results.

iv. If unfairness is demonstrated through a showing that members of a particular group perform better or poorer on the job than their scores on the selection procedure would indicate through comparison with how members of other groups perform, the user may either revise or replace the selection instrument in accordance with these guidelines, or may continue to use the selection instrument oper-

30-071 O - 78 - 24

ationally with appropriate revisions in its use to assure compatibility between the probability of successful job performance and the probability of being selected.

v. In addition to the general conditions needed for technical feasibility for the conduct of a criterion-related study (see § 14(j), below) an investigation of fairness requires the following:

(1) A sufficient number of persons in each group for findings of statistical significance. These guidelines do not require a user to hire or promote persons on the basis of group classifications for the purpose of making it possible to conduct a study of fairness; and do not require a user to conduct a study of fairness on a sample of less than thirty (30) persons for each group involved in the study.

(2) The samples for each group should be comparable in terms of the actual job they perform, length of time on the job where time on the job is likely to affect performance, and other relevant factors likely to affect validity differences; or such factors should be included in the design of the study and their effects identified.

vi. If a study of fairness should otherwise be performed, but is not technically feasible, the use of a selection procedure which has otherwise met the validity standards of these guidelines will be considered in accord with these guidelines, unless the technical infeasibility resulted from discriminatory employment practices which are demonstrated by facts other than past failure to conform with requirements for validation of selection procedures. However, when it becomes technically feasible for the user to perform a study of fairness and such a study is otherwise called for, the user should conduct the study of fairness.

c. *Content validity.* (1) There should be a definition of a performance domain or the performance domains with respect to the job in question. Performance domains may be defined through job analysis, analysis of the work behaviors or activities, or by the pooled judgments of persons having knowledge of the job. Performance domains should be defined on the basis of competent information about job tasks and responsibilities. Performance domains include critical or important work behaviors, work products, work activities, job duties, or the knowledges, skills or abilities shown to be necessary for performance of the duties, behaviors, activities or the production of work. Where a performance domain has been defined as a knowledge, skill or ability, that knowledge, skill or ability must be used in job behavior. A selection procedure based on inferences about psychological processes cannot be supported by content validity alone. Thus content validity by itself is not an appropriate validation strategy for intelligence, aptitude, personality or interest tests. Content validity is also not an appropriate strategy when the selection procedure involves knowledges, skills or abilities which an employee will be expected to learn on the job.

(2) If a higher score on a content valid selection procedure can be expected to result in better job performance the results may be used to rank persons who score above minimum levels. Where a selection procedure supported solely by content validity is used to rank job candidates, the performance domain should include those aspects of performance which differentiate among levels of job performance.

(3) A selection procedure which is a representative sample of a performance domain of the job as defined in accordance with subsection (1) above, is a content valid procedure for that domain. Where the domain or domains measured are critical to the job, or constitute a substantial proportion of the job, the selection procedure will be considered to be content valid for the job. The reliability of selection procedures justified on the basis of content validity should be a matter of concern to the user. Whenever it is feasible to do so, appropriate statistical estimates should be made of the reliability of the selection procedures.

(4) A demonstration of the relationship between the content of the selection procedure and the performance domain of the job is critical to content validity. Content validity may be shown if the knowledges, skills or

abilities demonstrated in and measured by the selection procedure are substantially the same as the knowledges, skills or abilities shown to be necessary for job performance. The closer the content of the selection procedure is to actual work samples, behaviors or activities, the stronger is the basis for showing content validity. The need for careful documentation of the relationship between the performance domain of the selection procedure and that of the job increases as the content of the selection procedure less resembles that of the job performance domain.

(5) A requirement for specific prior training or for work experience based on content validity, including a specification of level or amount of training or experience, should be justified on the basis of the relationship between the content of the training or experience and the performance domain of the job for which the training or experience is to be required.

(6) If a selection procedure is supported solely on the basis of content validity, it may be used operationally if it represents a critical performance domain or a substantial proportion of the performance domains of the job.

d. *Construct validity.* Construct validity is a more complex strategy than either criterion-related or content validity. Accordingly, users choosing to validate a selection procedure by use of this strategy should be careful to follow professionally accepted standards, such as those contained in the APA standards and the standard text books and journals.

(1) There should be a job analysis. This job analysis should result in a determination of the constructs that underlie successful performance of the important or critical duties of the job.

(2) A selection procedure should be selected or developed which measures the construct(s) identified in accord with subparagraph (1) above.

(3) A selection procedure may be used operationally if the standards of subparagraphs (1) and (2) are met and there is sufficient empirical research evidence showing that the procedure is validity related to performance of critical job duties. Normally, sufficient empirical research evidence would take the form of one or more criterion related validity studies meeting the requirements of § 12b. See the second sentence of § 12.

(4) Where a selection procedure satisfies the standards of subsections (1), (2) and (3) above, it may be used operationally for other jobs which are shown by an appropriate job analysis to include the same construct(s) as an essential element in job performance.

PART III—DOCUMENTATION OF VALIDITY EVIDENCE

§ 13a. For each selection procedure having an adverse impact (as set forth in § 4) the user should maintain and have available the data on which the adverse impact determination was made and one of the following types of documentation evidence:

(1) Documentation evidence showing criterion related validity of the selection procedure (see § 13b, infra).

(2) Documentation evidence showing content validity of the selection procedure (see § 13c, infra).

(3) Documentation evidence showing construct validity of the selection procedure (see § 13d, infra).

(4) Documentation evidence from other studies showing validity of the selection procedure in the user's facility (see § 13e, infra).

(5) Documentation evidence showing what steps were taken to reduce or eliminate adverse impact, why validation is not feasible or not appropriate and why continued use of the procedure is consistent with Federal law.

This evidence should be compiled in a reasonably complete and organized manner to permit direct evaluation of the validity of the selection procedure. Previously written employer or consultant reports of validity are acceptable if they are complete in regard to the following documentation requirements, or if they satisfied requirements of guidelines which were in effect when the study was completed. If they are not complete, the required additional documentation should be appended. If necessary information is not available the report of the validity study may still be used as documentation, but its adequacy will be evaluated

in terms of compliance with the requirements of these guidelines.

In the event that evidence of validity is reviewed by an enforcement agency, the reports completed after the effective date of these guidelines are expected to use one of the formats set forth below.

Evidence denoted by use of the word "(Essential)" is considered critical and reports not containing such information will be considered incomplete. Evidence not so denoted is desirable, but its absence will not be a basis for considering a report incomplete.

b. *Criterion-related validity.* Reports of criterion-related validity of selection procedures are to contain the following information:

(1) *User(s), and location(s) and date(s) of study.* Dates of administration of selection procedures and collection of criterion data and, where appropriate, the time between collection of data on selection procedures and criterion measures should be shown (Essential). If the study was conducted at several locations, the address of each location, including city and state, should be shown.

(2) *Problem and setting.* An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cut-off scores, if any, should be provided.

(3) *Review of job information or job analysis.* Where a review of job information results in criteria which are measures other than work proficiency (see 12b(3)), the basis for the selection of these criteria should be reported (Essential). Where a job analysis is required, the report should include either: (a) The important duties performed on the job and the basis on which such duties were determined to be important, such as the proportion of time spent on the respective duties, their level of difficulty, their frequency of performance, the consequences of error, or other appropriate factors; or (b) the knowledge, skills, abilities and/or other worker characteristics and bases on which they were determined to be important for job performance (Essential). Published descriptions from industry sources or volume I of the Dictionary of Occupational Titles Third Edition, United States Government Printing Office, 1965, are satisfactory if they adequately and completely describe the job. If appropriate, a brief supplement to the published description should be provided.

If two or more jobs are grouped for a validity study, a justification for this grouping, as well as a description of each of the jobs, should be provided (Essential).

(4) *Job titles and codes.* It is desirable to provide the user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from United States Employment Service Dictionary of Occupational Titles Volumes I and II. Where standard titles and codes do not exist, a notation to that effect should be made.

(5) *Criteria.* A full description of all criteria on which data were collected including a rationale for selection of the final criteria, and means by which they were observed, recorded, evaluated and quantified, should be provided (Essential). If rating techniques are used as criterion measures the appraisal form(s) and instructions to the rater(s) should be included as part of the validation evidence (Essential).

(6) *Sample.* A description of how the research sample was selected should be included (Essential). The racial, ethnic and sex composition of the sample should be described, including the size of each subgroup (Essential). Racial and ethnic classifications should be those set forth in § 4a above. A description of how the research sample compares with the racial, ethnic and sex composition of the relevant labor market is also desirable. Where data are available, the racial, ethnic and sex composition of current applicants should also be described. Descriptions of educational levels, length of service, and age are also desirable.

(7) *Selection procedure.* Any measure, combination of measures, or procedures used as a basis for employment decisions should be completely and explicitly described or attached (Essential). If commercially available

selection procedures are used, they should be described by title, form, and publisher (Essential). Reports of reliability estimates and how they were established are desirable. A rationale for choosing the selection procedures investigated in the study should be included.

(8) *Techniques and results.* Methods used in analyzing data should be described (Essential). Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations and ranges) for all selection procedures and all criteria should be reported for all relevant racial, ethnic and sex subgroups (Essential). Statistical results should be organized and presented in tabular or graphical form, by racial, ethnic and/or sex subgroups (Essential). All selection procedure-criterion relationships investigated should be reported, including their magnitudes and directions (Essential). Statements regarding the statistical significance of results should be made (Essential).

Any statisitical adjustments, such as for less than perfect reliability or for restriction of score range in the selection procedure or criterion, or both, should be described; and uncorrected correlation coefficients should also be shown (Essential). Where the statistical technique used categorizes continuous data, such as bi-serial correlation and the phi coefficient, the categories and the bases on which they were determined should be described (Essential). Studies of test fairness should be included where called for by the requirements of § 12b(7) (Essential). These studies should include the rationale by which a selection procedure was determined to be fair to the group(s) in question. Where test fairness has been demonstrated on the basis of other studies, a bibliography of the relevant studies should be included (Essential). If the bibliography includes unpublished studies, copies of these studies, or adequate abstracts or summaries, should be attached (Essential). Where revisions have been made in a selection procedure to assure compatibility between successful job performance and the probability of being selected, the studies underlying such revisions should be included (Essential).

(9) *Uses and applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and application of the procedure (e.g., selection, transfer, promotion) should be provided (Essential). If weights are assigned to different parts of the selection procedure, these weights and the validity of the weighted composite should be reported (Essential).

(10) *Cut-off scores.* Where cut-off scores are to be used, both the cut-off scores and the way in which they were determined should be described (Essential).

(11) *Source data.* Each user should maintain records showing all pertinent information about individual sample members in studies involving the validation of selection procedures. These records (exclusive of names and social security number) should be made available upon request of a compliance agency. These data should include selection procedure scores, criterion scores, age, sex, minority group status, and experience on the specific job on which the validation study was conducted and may also include such things as education, training, and prior job experience. If the user chooses to include, along with a report on validation, a worksheet showing the pertinent information about the individual sample members, specific identifying information such as name and social security number should not be shown. Inclusion of the worksheet with the validity report is encouraged in order to avoid delays.

(12) *Contact person.* It is desirable for the user to set forth the name, mailing address, and telephone number of the individual who may be contacted for further information about the validity study.

c. *Content validity.* Reports of content validity of selection procedures are to contain the following information:

(1) *Definition of performance domain.* A full description should be provided for the basis on which a per-

formance domain is defined (Essential). A complete and comprehensive definition of the performance domain should also be provided (Essential). The domain should be defined on the basis of competent information about job tasks and responsibilities (Essential). Where the performance domain is defined in terms of knowledges, skills, or abilities, there should be an operational definition of each knowledge, skill or ability and a complete description of its relationship to job duties, behaviors, activities, or work products (Essential).

(2) *Job title and code.* It is desirable to provide the user's job title(s) and the corresponding job title(s) and code(s) from the United States Employment Service Dictionary of Occupational Titles Volumes I and II. Where standard titles and codes do not exist, a notation to that effect should be made.

(3) *Selection procedures.* Selection procedures including those constructed by or for the user, specific training requirements, composites of selection procedures, and any other procedure for which content validity is asserted should be completely and explicitly described or attached (Essential). If commercially available selection procedures are used, they should be described by title, form, and publisher (Essential). Where the performance domain is defined in terms of knowledges, skills or abilities, evidence that the selection procedure measures those knowledges, skills and abilities should be provided (Essential).

(4) *Techniques and results.* The method by which the correspondence between the content of the selection procedure and the job performance domain(s) was established and the relative emphasis given to various aspects of the content of the selection procedure as derived from the performance domain(s) should be described (Essential). If any steps were taken to reduce adverse racial, ethnic, or sex impact in the content of the procedure or in its administration, these steps should be described. Establishment of time limits, if any, and how these limits are related to the speed with which duties must be performed on the job, should be explained. The adequacy of the sample coverage of the performance domain should be described as precisely as possible. Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations) should be reported for all selection procedures as appropriate. Such reports should be made for all relevant racial, ethnic, and sex subgroups, at least on a statistically reliable sample basis.

(5) *Uses and applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and the application of the procedure (e.g., selection, transfer, promotion) should be provided (Essential).

(6) *Cut-off scores.* The rationale for minimum scores, if used, should be provided (Essential). If the selection procedure is used to rank individuals above minimum levels, or if preference is given to individuals who score significantly above the minimum levels, a rationale for this procedure should be provided (Essential).

(7) *Contact person.* It is desirable for the employer to set forth the name, mailing address and telephone number of the individual who may be contacted for further information about the validation study.

d. *Construct validity.* Reports of construct validity of selection procedures are to contain the following information:

(1) *Construct definition.* A clear definition of the construct should be provided, explained in terms of empirically observable behavior, including levels of construct performance relevant to the job(s) for which the selection procedure is to be used (Essential).

(2) *Job analysis.* The job analysis should show how the construct underlying successful job performance of important or critical duties were determined (essential). The job analysis should provide evidence of the linkage between the construct and the important duties of the job and how this linkage was determined (essential).

(3) *Job titles and codes.* It is desirable to provide the selection procedure user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from the United States Employment Service Dictionary of Occupational Titles, Volume I and II. Where standard titles and codes do not exist, a notation to that effect should be made.

(4) *Selection procedure.* The selection procedure used as a measure of the construct should be completely and explicitly described or attached (Essential). If commercially available selection procedures are used, they should be identified by title, form and publisher (Essential). The evidence demonstrating that the selection procedure is in fact a proper measure of the construct should be included (Essential). Reports of reliability estimates and how they were established are desirable.

(5) *Anchoring.* The empirical evidence showing that performance on the selection procedure is validly related to performance of critical job duties should be included (Essential).

(6) *Uses and applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and application of the procedure (e.g., selection, transfer, promotion) should be provided (Essential). If weights are assigned to different parts of the selection procedure, these weights (and the validity of the weighted composite) should be reported (Essential).

(7) *Cut-off scores.* Where cut-off scores are to be used, both the cut-off scores and the way in which they were determined should be described (Essential).

(8) *Source data.* Each user should maintain records showing all pertinent information about individual sample members in studies involving the validation of selection procedures. These records (exclusive of names and social security number) should be made available upon request of a compliance agency. These data should include selection procedure scores, criterion scores, age, sex, minority group status, and experience on the specific job on which the validation study was conducted and may also include such things as education, training, and prior job experience. If the user chooses to include, along with a report on validation, a worksheet showing the pertinent information about the individual sample members, specific identifying information such as name and social security number should not be shown. Inclusion of the worksheet with the validity report is encouraged in order to avoid delays.

(9) *Contact person.* It is desirable for the user to set forth the name, mailing address, and telephone number of the individual who may be contacted for further information about the validity study.

e. *Evidence of validity from other studies.* When validity of a selection procedure is supported by studies not done by the user, the evidence from the original study or studies should be compiled in a manner similar to that required in the appropriate section of this § 13 above. In addition, the following evidence should be supplied:

(1) *Evidence from criterion-related validity studies.* (i) *Job Information.*—A description of the important duties of the user's job and the basis on which the duties were determined to be important should be provided (Essential). A full description of the basis for determining that these important job duties are sufficiently similar to the duties of the job in the original study (or studies) to warrant use of the selection procedure in the new situation should be provided (Essential).

(ii) *Relevance of criteria.*—A full description of the basis on which the criteria used in the original studies are detemined to be relevant for the user should be provided (Essential).

(iii) *Other variables.*—The similarity of important applicant pool/sample characteristics reported in the original studies to those of the user should be described (Essential). A description of the comparison between the race and sex composition of the user's relevant labor market and the sample in the original validity studies should be provided (Essential).

(iv) *Use of the selection procedure.*—A full description should be provided showing that the use to be made of the selection procedure is consistent with the findings of the original validity studies (Essential).

(v) *Bibliography.*—A bibliography of reports of validity of the selection procedure for the job or jobs in question should be provided (Essential). Where any of the studies included an investigation of test fairness, the results of this investigation should be provided (Essential). Copies of reports published in journals that are not commonly available should be described in detail or attached (Essential). Where a user is relying upon unpublished studies, a reasonable effort should be made to obtain these studies. If these unpublished studies are the sole source of validity evidence they should be described in detail or attached (Essential). If these studies are not available, the name and address of the source, an adequate abstract or summary of the validity study and data, and a contact person in the source organization should be provided (Essential).

(2) *Evidence from content validity studies.* (i) *Similarity of Performance Domains.*—A full description should be provided of the similarity between the performance domain in the user's job and the performance domain measured by a selection procedure developed and shown to be content valid by another user (Essential). The basis for determining this similarity should be explicitly described (Essential).

(3) *Evidence from construct validity studies.* (i) *Uniformity of Construct.*—A full description should be provided of the basis for determining that the construct identified as underlying successful job performance by the user's job analysis is the same as the construct measured by the selection procedure (Essential).

PART IV—DEFINITIONS

§ 14 The following definitions shall apply throughout these guidelines:

(a) Ability: The present observable competence to perform a function.

(b) Adverse Impact: Defined in § 4 of these guidelines.

(c) Employer: Any employer subject to the provisions of the Civil Rights Act of 1964, as amended, including state or local governments and any Federal agency subject to the provisions of Sec. 717 of the Civil Rights Act of 1964, as amended, and any Federal contractor or subcontractor or federally assisted construction contractor or subcontractor covered by Executive Order 11246, as amended.

(d) Employment agency: Any employment agency subject to the provisions of the Civil Rights Act of 1964, as amended.

(e) Labor organization: Any labor organization subject to the provisions of the Civil Rights Act of 1964, as amended, and any committee controlling apprenticeship or other training.

(f) Enforcement agency: Any agency of the executive branch of the Federal Government which adopts these guidelines for purposes of the enforcement of the equal employment opportunity laws or which has responsibility for securing compliance with them.

(g) Labor organization: Any labor organization subject to the provisions of the Civil Rights Act of 1964, as amended, and any committee controlling apprenticeship or other training.

(h) Racial, sex or ethnic group: Any group of persons identifiable on the grounds of race, color, religion, sex or national origin.

(i) Selection procedure: Any measure, combination of measures, or procedure, other than a bona fide seniority system, used as a basis for any employment decision. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs or probationary periods and physical, educational and work experience requirements through informal or casual interviews and unscored application forms.

(j) Selection rate: The proportion of applicants or candidates who are hired, promoted or otherwise selected.

(k) Technical feasibility: The existence of conditions permitting the conduct of meaningful criterion related validity studies. These conditions include: (a) An adequate sample of persons available for the study to achieve

findings of statistical significance; (b) having or being able to obtain a sufficient range of scores on the selection procedure and job performance measures to produce validity results which can be expected to be representative of the results if the ranges normally expected were utilized; and (c) having or being able to devise unbiased, reliable and relevant measures of job performance or other criteria of employee adequacy. See § 12b(1). With respect to investigation of possible unfairness, the same considerations are applicable to each group for which the study is made. See § 12b(7).

(l) Unfairness of selection procedure (differential prediction): A condition in which members of one racial, ethnic, or sex group characteristically obtain lower scores on a selection procedure than members of another group, and the differences are not reflected in differences in measures of job performance. See § 12b(7).

(m) User: Any employer, labor organization, employment agency, or licensing or certification board, to the extent it may be covered by Federal equal employment opportunity law which uses a selection procedure as a basis for any employment decision. Whenever an employer, labor organization, or employment agency is required by law to restrict recruitment for any occupation to those applicants who have met licensing or certification requirements, the licensing or certifying authority to the extent it may be covered by Federal equal employment opportunity law will be considered the user with respect to those licensing or certification requirements. Whenever a state employment agency or service does no more than administer or monitor a procedure as permitted by Department of Labor regulations, and does so without making referrals or taking any other action on the basis of the results, the state employment agency will not be deemed to be a user.

[Order No. 668-76, 41 FR 51735, Nov. 23, 1976]

§ 50.15 Representation of Federal employees by Department of Justice Attorneys or by private counsel furnished by the Department in state criminal proceedings and in civil proceedings and Congressional proceedings in which Federal employees are sued or subpoenaed in their individual capacities.

(a) Under the procedures set forth below, a federal employee (herein defined to include former employees) may be represented by Justice Department attorneys in state criminal proceedings and in civil and Congressional proceedings in which he is sued or subpoenaed in his individual capacities, not covered by § 15.1 of this chapter.

(1) When an employee believes he is entitled to representation by the Department of Justice in a proceeding, he must submit a request for that representation, together with all process and pleadings served upon him, to his immediate supervisor or whomever is designated by the head of his department or agency, forthwith. The employee's employing federal agency shall submit to the Civil Division in a timely manner a statement, with all supporting data, as to whether the employee was acting within the scope of his employment, together with its recommendation as to whether representation should be provided. The communication between the employee and any individual acting as an attorney at his employing agency, with regard to the request for representation, shall be treated as subject to the attorney-client privilege. In emergency situations the Civil Division may initiate conditional representation after communication by telephone with the employing agency. In such cases, appropriate written data must be subsequently provided.

(2) Upon receipt of the agency's notification of request for counsel, the Civil Division will determine whether the employee's actions reasonably appear to have been performed within the scope of his employment, and whether providing representation is in the interest of the United States. If a negative determination is made, Civil Division will inform the agency and/or the employee that no representation will be provided.

(3) Where there appears to exist the possibility of a federal criminal investigation or indictment relating to the same subject matter for which representation is sought, the Civil Division will contact a designated official in the Criminal Division for a determination whether the employee is either a target of a federal criminal investigation or a defendant in a federal criminal case. An employee is the target of an investigation if, in addition to being circumstantially implicated by having the appropriate responsibilities at the appropriate time, there is some evidence of his specific participation in a crime. In appropriate instances, Civil Rights and Tax Divisions and any other prosecutive authority within the Department should be contacted for a similar determination.

(4) If the Criminal, Civil Rights or Tax Division or other prosecutive authority within the Department (hereinafter "prosecuting division") indicates that the employee is not the target of a criminal investigation concerning the act or acts for which he seeks representation, then representation may be provided. Similarly, if the prosecuting division indicates that there is an ongoing investigation, but into a matter other than that for which representation has been requested, then representation may be provided.

(5) If the prosecuting division indicates that the employee is the target of a criminal investigation concerning the act or acts for which he seeks representation, Civil Division will inform the employee that no representation by Justice Department attorneys will be provided. If the prosecuting division indicates that the employee is a target of an investigation concerning the act or acts for which he seeks representation, but no decision to seek an indictment or issue an information has been made, a private attorney may be provided to the employee at federal expense under the procedures of § 50.16.

(6) If conflicts exist between the legal or factual positions of various employees in the same case which make it inappropriate for a single attorney to represent them all, the employees may be separated into as many groups as is necessary to resolve the conflict problem and each group may be provided with separate representation. Some situations may make it advisable that private representation be provided to all conflicting groups and that Justice Department attorneys be withheld so as not to prejudice particular defendants. In such situations, the procedures of § 50.16 will apply.

(7) Once undertaken, representation under this subsection will continue until either all appropriate proceedings, including applicable appellate procedures, have ended, or until any of the foregoing bases for declining or withdrawing from representation is found to exist, including without limitation the basis that representation is not in the interest of the United States. In any of the latter events, the representing Department attorney on the case will seek to withdraw but will ensure to the maximum extent possible that the employee is not prejudiced thereby.

(8) Justice Department attorneys who represent employees under this section undertake a full and traditional attorney-client relationship with the employees with respect to the attorney-client privilege. If representation is discontinued for any reason, any incriminating information gained by the attorney in the course of representing the employee continues to be subject to the attorney-client privilege. All legal arguments appropriate to the employees's case will be made unless they conflict with governmental positions. Where adequate representation requires the making of a legal argument which conflicts with a governmental position, the Department attorney shall so advise the employee.

(b) Representation by Department of Justice attorneys is not available to a federal employee whenever:

(1) The representation requested is in connection with a federal criminal proceeding in which the employee is a defendant;

(2) The employee is a target of a federal criminal investigation on the same subject matter;

(3) The act or acts with regard to which the employee desires representation do not reasonably appear to have been performed within the scope of his employment with the federal government; or

(4) It is otherwise determined by the Department that it is not in the interest of the United States to represent the employee.

[Order No. 683-77, 42 FR 5695, Jan. 31, 1977]

§ 50.16 Representation of Federal employees by private counsel at Federal expense.

(a) Representation by private counsel at federal expense may be provided to a federal employee only in the instances described in § 50.15 (a)(5) and (a)(6).

(b) Where private counsel is provided, the following procedures will apply:

(1) The Department of Justice must approve in advance any private counsel to be retained under this section. Where national security interests may be involved, the Department of Justice will consult with the employing agency.

(2) Federal payments to private counsel for an employee will cease if the Department of Justice (i) decides to seek an indictment of or to issue an information against that employee on a federal criminal charge relating to the act or acts concerning which representation was undertaken; (ii) determines that the employee's actions do not reasonably appear to have been performed within the scope of his employment; (iii) resolves the conflict described in § 50.15(a)(6) and tenders representation by Department of Justice attorneys; (iv) determines that representation is not in the interest of the United States; (v) terminates the retainer with the concurrence of the employee-client, for any reason.

(c) In any case in which the employee is not represented by a Department of Justice attorney, the Department of Justice may seek leave to intervene or appear as amicus curiae on behalf of the United States to assure adequate consideration of issues of governmental concern.

[Order No. 683-77, 42 FR 5696, Jan. 31, 1977]

PART 51—PROCEDURES FOR THE ADMINISTRATION OF SECTION 5 OF THE VOTING RIGHTS ACT OF 1965

Subpart A—General Provisions

Sec.

Subpart B—Procedures for Submission to the Attorney General

Subpart C—Communications From Individuals or Groups

Subpart D—Processing of Submissions

Subpart E—Petition to Change Procedures

AUTHORITY: Sec. 5, 84 Stat. 315; 5 U.S.C. 301, 28 U.S.C. 509, 510, 42 U.S.C. 1973c.

SOURCE: Order 467-71, 36 FR 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 different 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 to 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.

CONTINUED

4 OF 5

§ 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 administrative 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 accomplished 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.

Subpart 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 of 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

30-071 O - 78 - 25

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 pe-

titioner, 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 55—IMPLEMENTATION OF THE PROVISIONS OF THE VOTING RIGHTS ACT REGARDING LANGUAGE MINORITY GROUPS

Subpart A—General Provisions

AUTHORITY: 5 U.S.C. 301, 28 U.S.C. 509, 510, Pub. L. 94-73.

SOURCE: Order No. 655-76, 41 FR 29998, July 20, 1976, unless otherwise noted.

Subpart A—General Provisions

§ 55.1 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.* Section numbers, such as "Section 14(c)(3)," refer to the Act.

(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(e). For the purposes of the Act the following Asian American groups are considered language minority groups: Chinese Americans, Filipino Americans, Japanese Americans, and Korean Americans. 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. As used in this Part, each of the seven following groups is considered a "single language minority group": American Indians, Alaskan Natives, persons of Spanish heritage, Chinese Americans, Filipino Americans, Japanese Americans, and Korean Americans.

(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).

§ 55.2 Purpose; standards for measuring compliance.

(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) In the Attorney General's view the objective of the Act's provisions is to enable members of applicable language minority groups to participate effectively in the electoral process. This Part establishes two basic standards by which the Attorney General will measure compliance: (1) That materials and assistance should be provided in a way designed to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected activities; and (2) that an affected jurisdiction should take all reasonable steps to achieve that goal.

(c) The determination of what is required for compliance with Section 4(f)(4) and Section 203(c) is the responsibility of the affected jurisdiction. These guidelines should not be used as a substitute for analysis and decision by the affected jurisdiction.

(d) Jurisdictions covered under Section 4(f)(4) of the Act are subject to the preclearance requirements of Section 5. See Part 51 of this Chapter. Such jurisdictions have the burden of establishing to the satisfaction of the Attorney General or to the United States District Court for the District of Columbia that changes made in their election laws and procedures in order to comply with the requirements of Section 4(f)(4) are not discriminatory under the terms of Section 5. However, Section 5 expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of the changes.

(e) Jurisdictions covered solely under Section 203(c) of the Act are not subject to the preclearance requirements of Section 5, nor is there a Federal apparatus available for preclearance of Section 203(c) compliance activities. The Attorney General will not preclear jurisdictions' proposals for compliance with Section 203(c).

(f) Consideration by the Attorney General of a jurisdiction's compliance with the requirements of Section 4(f)(4) occurs in the review pursuant to Section 5 of the Act of changes with respect to voting, in the consideration of the need for litigation to enforce the requirements of Section 4(f)(4), and in the defense of suits for termination of coverage under Section 4(f)(4). Consideration by the Attorney General of a jurisdiction's compliance with the requirements of Section 203(c) occurs in the consideration of the need for litigation to enforce the requirements of Section 203(c).

(g) In enforcing the Act—through the Section 5 preclearance review process, through litigation, and through defense of suits for termination of coverage under Section 4(f)(4)—the Attorney General will follow the general policies set forth in this Part.

(h) This Part is not intended to preclude 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 law.

§ 55.3 Statutory requirements.

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). These sections state that whenever a jurisdiction subject to their 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. * * *"

Subpart B—Nature of Coverage

§ 55.4 Effective date; list of covered jurisdictions.

(a) The 1975 Amendments took effect upon the date of their enactment, August 6, 1975.

(1) 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. Such determinations are not reviewable in any court.

(2) The requirements of Section 203(c) take effect upon publication in the FEDERAL REGISTER of the requisite determinations of the Director of the Census. Such determinations are not reviewable in any court.

(b) Jurisdictions determined to be covered under Section 4(f)(4) or Section 203(c) are listed, together with the language minority group with respect to which coverage was determined, in the Appendix to this Part. Any additional determinations of coverage under either Section 4(f)(4) or Section 203(c) will be published in the FEDERAL REGISTER.

§ 55.5 Coverage under Section 4(f)(4).

(a) *Coverage formula.* Section 4(f)(4) applies to any State or political subdivision in which (1) over five percent of the voting-age citizens were, on November 1, 1972, members of a single language minority group, (2) registration and election materials were provided only in English on November 1, 1972, and (3) fewer than 50 percent of the voting-age citizens were registered to vote or voted in the 1972 Presidential election.

All three conditions must be satisfied before coverage exists under Section 4(f)(4).[1]

(b) Coverage may be determined with regard to Section 4(f)(4) on a statewide or political subdivision basis.

(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 the State.

(2) Where an entire State is not covered under Section 4(f)(4), individual political subdivisions may be covered.

§ 55.6 Coverage under Section 203(c).

There are two ways in which coverage under Section 203(c) may be established.[2]

(a) Under the first method, a preliminary determination is made by the Director of the Census of States in which more than five percent of the voting-age citizens are members of a single language minority group the illiteracy rate of which, in the particular State, is greater than the national illiteracy rate. In these States, a particular political subdivision is covered with respect to the State's applicable language minority group if five percent or more of the voting-age citizens of the political subdivision are members of the applicable language minority group.

(b) The second method of establishing coverage is used with respect to language minority groups not reached by the preliminary determination based on statewide data. Under the second method, covered political subdivisions are those in which more than five percent of the voting-age citizens are members of a single language minority group the illiteracy rate of which, in the particular political subdivision, is greater than the national illiteracy rate.

(c) For the purpose of determinations of coverage under Section 203(c), "illiteracy means the failure to complete the fifth primary grade." Section 203(b).

§ 55.7 Termination of coverage.

(a) *Section 4(f)(4).* A covered jurisdiction may terminate coverage under Section 4(f)(4) (via Section 4(a)) by obtaining from the United States District Court for the District of Columbia a declaratory judgment that there has been no discriminatory use of a test or device for a period of ten years. The term "test or device" is defined in

[1] Coverage is based on Sections 4(b) (third sentence), 4(c), and 4(f)(3).

[2] The criteria for coverage are contained in Section 203(b).

Section 4(c) and Section 4(f)(3). When an entire State is covered in this regard, only the State, and not individual political subdivisions within the State, may bring an action to terminate coverage.

(b) *Section 203(c).* The requirements of Section 203(c) apply until August 6, 1985. A covered jurisdiction may terminate such coverage earlier if it can prove in a declaratory judgment action in a United States district court, that the illiteracy rate of the applicable language minority group is equal to or less than the national illiteracy rate.

§ 55.8 Relationship between Section 4(f)(4) and Section 203(c).

(a) The statutory requirements of Section 4(f)(4) and Section 203(c) regarding minority language material and assistance are essentially identical.

(b) Jurisdictions subject to the requirements of Section 4(f)(4)—but not jurisdictions subject only to the requirements of Section 203(c)—are 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).[3] See Part 51 of this Chapter.

(c) Although the coverage formulas applicable to Section 4(f)(4) and Section 203(c) are different, 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 have the effect of terminating coverage under the other provision.

§ 55.9 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 that hold elections within that political subdivision (e.g., cities, school districts) are subject to the same requirements as the political subdivision.

[3]In addition, a jurisdiction covered under Section 203(c) but not under Section 4(f)(4) is subject to the Act's special provisions if it was covered under Section 4(b) prior to the 1975 Amendments to the Act.

§ 55.10 Types of elections covered.

(a) *General.* The language 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 or issues as well as county offices or issues, 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 and assistance 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 that 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

§ 55.11 General.

The requirements of Section 4(f)(4) or Section 203(c) apply with respect to the languages of language minority groups. The applicable groups are indicated in the determinations of the Attorney General or the Director of the Census. This Subpart relates to the view of the Attorney General concerning the determination by covered jurisdictions of precisely the language to be employed. In enforcing the Act, the Attorney General will consider whether the languages, forms of languages, or dialects chosen by covered jurisdictions for use in the electoral process

enable members of applicable language minority groups to participate effectively in the electoral process. It is the responsibility of covered jurisdictions to determine what languages, forms of languages, or dialects will be effective.

§ 55.12 Language used for written material.

(a) *Language minority groups having more than one language.* Some language minority groups, for example, Filipino Americans, have more than one language other than English. A jurisdiction required to provide election materials in the language of such a group need not provide materials in more than one language other than English. The Attorney General will consider whether the language that is used for election materials is the one most widely used by the jurisdiction's voting-age citizens who are members of the language minority group.

(b) *Languages with more than one written form.* Some languages, for example, Japanese, have more than one written form. A jurisdiction required to provide election materials in such a language need not provide more than one version. The Attorney General will consider whether the particular version of the language that is used for election materials is the one most widely used by the jurisdiction's voting-age citizens who are members of the language minority group.

(c) *Unwritten Languages.* Many of the languages used by language minority groups, for example, by some American Indians and Alaskan Natives, are unwritten. With respect to any such language, only oral assistance and publicity are required. Even though a written form for a language may exist, a language may be considered unwritten if it is not commonly used in a written form. It is the responsibility of the covered jurisdiction to determine whether a language should be considered written or unwritten.

§ 55.13 Language used for oral assistance and publicity.

(a) *Languages with more than one dialect.* Some languages, for example, Chinese, have several dialects. Where a jurisdiction is obligated to provide oral assistance in such a language, the jurisdiction's obligation is to ascertain the dialects that are commonly used by members of the applicable language minority group in the jurisdiction and to provide oral assistance in such dialects. (See § 55.20.)

(b) *Language minority groups having more than one language.* In some jurisdictions members of an applicable language minority group speak more than one language other than English. Where a jurisdiction is obligated to provide oral assistance in the language of such a group, the jurisdiction's obligation is to ascertain the languages that are commonly used by members of that group in the jurisdiction and to provide oral assistance in such languages. (See § 55.20.)

Subpart D—Minority Language Materials and Assistance

§ 55.14 General.

(a) This Subpart sets forth the views of the Attorney General with respect to the requirements of Section 4(f)(4) and Section 203(c) concerning the provision of minority language materials and assistance and some of the factors that the Attorney General will consider in carrying out his responsibilities to enforce Section 4(f)(4) and Section 203(c). Through the use of his authority under Section 5 and his authority to bring suits to enforce Section 4(f)(4) and Section 203(c), the Attorney General will seek to prevent or remedy discrimination against members of language minority groups based on the failure to use the applicable minority language in the electoral process. The Attorney General also has the responsibility to defend against suits brought for the termination of coverage under Section 4(f)(4) and Section 203(c).

(b) In discharging these responsibilities the Attorney General will respond to complaints received, conduct on his own initiative inquiries and surveys concerning compliance, and undertake other enforcement activities.

(c) It is the responsibility of the jurisdiction to determine what actions by it are required for compliance with

the requirements of Section 4(f)(4) and Section 203(c) and to carry out these actions.

§ 55.15 Affected activities.

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." The basic purpose of these requirements is to allow members of applicable language minority groups to be effectively informed of and participate effectively in voting-connected 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, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process.

§ 55.16 Standards and proof of compliance.

Compliance with the requirements of Section 4(f)(4) and Section 203(c) is best measured by results. A jurisdiction is more likely to achieve compliance with these requirements if if has worked with the cooperation of and to the satisfaction of organizations representing members of the applicable language minority group. In planning its compliance with Section 4(f)(4) or Section 203(c), a jurisdiction may, where alternative methods of compliance are available, use less costly methods if they are equivalent to more costly methods in their effectiveness.

§ 55.17 Targeting.

The term "targeting" is commonly used in discussions of the requirements of Section 4(f)(4) and Section 203(c). "Targeting" refers to a system in which the minority language materials or assistance required by the Act are provided to less than all persons or registered voters. It is the view of the Attorney General that a targeting system will normally fulfill the Act's minority language requirements if it is designed and implemented in such a way that language minority group members who need minority language materials and assistance receive them.

§ 55.18 Provision of minority language materials and assistance.

(a) *Materials provided by mail.* If materials provided by mail (or by some comparable form of distribution) generally to residents or registered voters are not all provided in the applicable minority language, the Attorney General will consider whether an effective targeting system has been developed. For example, a separate mailing of materials in the minority language to persons who are likely to need them or to residents of neighborhoods in which such a need is likely to exist, supplemented by a notice of the availability of minority language materials in the general mailing (in English and in the applicable minority language) and by other publicity regarding the availability of such materials may be sufficient.

(b) *Public notices.* The Attorney General will consider whether public notices and announcements of electoral activities are handled in a manner that provides members of the applicable language minority group an effective opportunity to be informed about electoral activities.

(c) *Registration.* The Attorney General will consider whether the registration system is conducted in such a way that members of the applicable language minority group have an effective opportunity to register. One method of accomplishing this is to provide, in the applicable minority language, all notices, forms and other materials provided to potential registrants and to have only bilingual persons as registrars. Effective results may also be obtained, for example, through the use of deputy registrars who are members of the applicable language minority group and the use of decentralized places of registration, with minority language materials available at places where persons who

need them are most likely to come to register.

(d) *Polling place activities.* The Attorney General will consider whether polling place activities are conducted in such a way that members of the applicable language minority group have an effective opportunity to vote. One method of accomplishing this is to provide all notices, instructions, ballots, and other pertinent materials and oral assistance in the applicable minority language. If very few of the registered voters scheduled to vote at a particular polling place need minority language materials or assistance, the Attorney General will consider whether an alternative system enabling those few to cast effective ballots is available.

(e) *Publicity.* The Attorney General will consider whether a covered jurisdiction has taken appropriate steps to publicize the availability of materials and assistance in the minority language. Such steps may include the display of appropriate notices, in the minority language, at voter registration offices, polling places, etc., the making of announcements over minority language radio or television stations, the publication of notices in minority language newspapers, and direct contact with language minority group organizations.

[Order No. 655-76, 41 FR 29998, July 20, 1976, as amended by Order No. 733-77, 42 FR 35970, July 13, 1977]

§ 55.19 Written materials.

(a) *Types of materials.* It is the obligation of the jurisdiction to decide what materials must be provided in a minority language. A jurisdiction required to provide minority language materials is only required to publish in the language of the applicable language minority group materials distributed to or provided for the use of the electorate generally. Such materials include, for example, ballots, sample ballots, informational materials, and petitions.

(b) *Accuracy, completeness.* It is essential that material provided in the language of a language minority group be clear, complete and accurate. In examining whether a jurisdiction has achieved compliance with this requirement, the Attorney General will consider whether the jurisdiction has consulted with members of the applicable language minority group with respect to the translation of materials.

(c) *Ballots.* The Attorney General will consider whether a jurisdiction provides the English and minority language versions on the same document. Lack of such bilingual preparation of ballots may give rise to the possibility, or to the appearance, that the secrecy of the ballot will be lost if a separate minority language ballot or voting machine is used.

(d) *Voting machines.* Where voting machines that cannot mechanically accommodate a ballot in English and in the applicable minority language are used, the Attorney General will consider whether the jurisdiction provides sample ballots for use in the polling booths. Where such sample ballots are used the Attorney General will consider whether they contain a complete and accurate translation of the English ballots, and whether they contain or are accompanied by instructions in the minority language explaining the operation of the voting machine. The Attorney General will also consider whether the sample ballots are displayed so that they are clearly visible and at the same level as the machine ballot on the inside of the polling booth, whether the sample ballots are identical in layout to the machine ballots, and whether their size and typeface are the same as that appearing on the machine ballots. Where space limitations preclude affixing the translated sample ballots to the inside of polling booths, the Attorney General will consider whether language minority group voters are allowed to take the sample ballots into the voting booths.

§ 55.20 Oral assistance and publicity.

(a) *General.* Announcements, publicity, and assistance should be given in oral form to the extent needed to enable members of the applicable language minority group to participate effectively in the electoral process.

(b) *Assistance.* The Attorney General will consider whether a jurisdiction

has given sufficient attention to the needs of language minority group members who cannot effectively read either English or the applicable minority language and to the needs of members of language minority groups whose languages are unwritten.

(c) *Helpers.* With respect to the conduct of elections, the jurisdiction will need to determine the number of helpers (i.e., persons to provide oral assistance in the minority language) that must be provided. In evaluating the provision of assistance, the Attorney General will consider such facts as the number of a precinct's registered voters who are members of the applicable language minority group, the number of such persons who are not proficient in English, and the ability of a voter to be assisted by a person of his own choice. The basic standard is one of effectiveness.

§ 55.21 Record keeping.

The Attorney General's implementation of the Act's provisions concernng language minority groups would be facilitated if each covered jurisdiction would 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 E—Preclearance

§ 55.22 Requirements of Section 5 of the Act.

For many jurisdictions, changes in voting laws and practices will be necessary in order to comply with Section 4(f)(4) or Section 203(c). If a jurisdiction is subject to the preclearance requirements of Section 5 (see § 55.8(b)), such changes 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. Procedures for the administration of Section 5 are set forth in Part 51 of this Chapter.

Subpart F—Sanctions

§ 55.23 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 Sections 11(a)-(c) and 205.

Subpart G—Comment on This Part

§ 55.24 Procedure.

These guidelines may be modified from time to time on the basis of experience under the Act and comments received from interested parties. The Attorney General therefore invites public comments and suggestions on these guidelines. 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.

APPENDIX—*Jurisdictions covered under secs. 4(f)(4) and 203(c) of the Voting Rights Act of 1965, as amended by the Voting Rights Act Amendments of 1975.*

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4)	Coverage under sec. 203(c)
Alaska	Alaskan Natives [1].	
Election District 1.		Alaskan Natives.
Election District 2.		Do.
Election District 3.		Do.
Election District 4.		Do.
Election District 5.		Do.
Election District 13.		Do.
Election District 14.		Do.
Election District 15.		Do.
Election District 16.		Alaskan Natives [1].

See footnote at end of table.

APPENDIX—*Jurisdictions covered under secs. 4(f)(4) and 203(c) of the Voting Rights Act of 1965, as amended by the Voting Rights Act Amendments of 1975.*—Continued

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4)	Coverage under sec. 203(c)
Election District 17.	.....	Do.
Election District 18.	.....	Do.
Election District 19.	.....	Do.
Election District 21.	.....	Do.
Election District 22.	.....	Do.
Arizona	Spanish heritage [1].	
Apache County	American Indian.	Spanish heritage, American Indian.
Cochise County	.....	Spanish heritage.
Coconino County.	American Indian.	American Indian, Spanish heritage.
Gila County	.....	Do.
Graham County.	.....	Do.
Greenlee County.	.....	Spanish heritage.
Maricopa County.	.....	Do.
Mohave County.	.....	Do.
Navajo County	American Indian.	American Indian, Spanish heritage.
Pima County	.....	Spanish heritage.
Pinal County	American Indian.	American Indian, Spanish heritage
Santa Cruz County.	.....	Spanish heritage.
Yavapai County.	.....	Do.
Yuma County.	.....	Do.
California:		
Alameda County	.....	Do.
Amador County.	.....	Do.
Colusa County	.....	Do.
Contra Costa County.	.....	Do.
Fresno County	.....	Do.
Imperial County	.....	Do.
Inyo County	.....	American Indian.
Kern County	.....	Spanish heritage.
Kings County	Spanish heritage.	Do.
Lassen County	.....	Do.
Los Angeles County.	.....	Do.
Madera County	.....	Do.
Merced County	Spanish heritage.	Do.
Monterey County.	.....	Do.
Napa County	.....	Do.
Orange County	.....	Do.
Placer County	.....	Do.
Riverside County.	.....	Spanish heritage.
Sacramento County.	.....	Do.
San Benito County.	.....	Do.
San Bernardino County.	.....	Do.
San Diego County.	.....	Do.
San Francisco County.	.....	Spanish heritage, Chinese American.
San Joaquin County.	.....	Spanish heritage.
San Luis Obispo County.	.....	Do.
San Mateo County.	.....	Do.
Santa Barbara County.	.....	Do.
Santa Clara County.	.....	Do.
Santa Cruz County.	.....	Do.
Sierra County	.....	Do.
Solano County	.....	Do.
Sonoma County.	.....	Do.
Stanislaus County.	.....	Do.
Sutter County	.....	Do.
Tulare	.....	Do.
Tuolumne County.	.....	Do.
Ventura County.	.....	Do.
Yolo County	.....	Do.
Yuba County	Spanish heritage.	Do.
Colorado:		
Adams County	.....	Do.
Alamosa County	.....	Do.
Archuleta County.	.....	Do.
Bent County	.....	Do.
Boulder County.	.....	Do.
Chaffee County.	.....	Do.
Clear Creek County.	.....	Do.
Conejos County.	.....	Do.
Costilla County	.....	Do.
Crowley County.	.....	Do.
Delta County	.....	Do.
Denver County	.....	Do.
Eagle County	.....	Do.
El Paso County	Spanish heritage.	Do.
Fremont County	.....	Do.
Huerfano County.	.....	Do.
Jackson County.	.....	Do.
Lake County	.....	Do.

[1] See footnote at end of table.

APPENDIX—*Jurisdictions covered under secs. 4(f)(4) and 203(c) of the Voting Rights Act of 1965, as amended by the Voting Rights Act Amendments of 1975.*—Continued

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4)	Coverage under sec. 203(c)
La Plata County		Spanish heritage.
Las Animas County.		Do.
Mesa County		Do.
Moffat County		Do.
Montezuma County.		Spanish heritage, American Indian.
Montrose County.		Spanish heritage.
Morgan County		Do.
Otero County		Do.
Prowers County		Do.
Pueblo County		Do.
Rio Grande County.		Do.
Saguache County.		Do.
San Juan County.		Do.
San Miguel County.		Do.
Sedgwick County.		Do.
Weld County		Do.
Connecticut:		
Bridgeport Town (Fairfield County).		Do.
Florida:		
Collier County	Spanish heritage.	Do.
Dade County		Do.
Glades County		American Indian.
Hardee County	Spanish heritage.	Spanish Heritage.
Hendry County	Spanish heritage.	Do.
Hillsborough County.	Spanish heritage.	Do.
Monroe County		Do.
Hawaii:		
Hawaii County	Spanish heritage.	Filipino American, Japanese American.
Honolulu County.		Chinese American, Filipino American.
Kauai County		Filipino American, Japanese American.
Maui County		Do.
Idaho:		
Bingham County.		American Indian.
Cassia County		Spanish heritage.
Kansas:		
Finney County		Do.
Grant County		Do.
Wichita County		Do.
Louisiana:		
St. Bernard Parish.		Spanish heritage.
Maine:		
Passamaquoddy Pleasant Point Indian Reservation (Washington County).		American Indian.
Michigan:		
Clyde Township (Allegan County).		Spanish heritage.
Orangeville Township (Barry County).		Do.
Sugar Island Township (Chippewa County).		American Indian.
Imlay Township (Lapeer County).		Spanish heritage.
Adrian City (Lenawee County).		Do.
Madison Township (Lenawee County).		Do.
Grant Township (Newaygo County).		Do.
Buena Vista Township (Saginaw County).	Spanish heritage.	Do.
Saginaw City (Saginaw County).		Do.
Minnesota:		
Beltrami County		American Indian.
Cass County		Do.
Mississippi:		
Neshoba County		Do.
Montana:		
Blaine County		Do.
Glacier County		Do.
Hill County		Do.
Lake County		Do.
Roosevelt County.		Do.
Rosebud County		Do.
Valley County		Do.
Nebraska:		
Scotts Bluff County.		Spanish heritage.
Thurston County.		American Indian.

APPENDIX—*Jurisdictions covered under secs. 4(f)(4) and 203(c) of the Voting Rights Act of 1965, as amended by the Voting Rights Act Amendments of 1975.*—Continued

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4)	Coverage under sec. 203(c)
Nevada:		
Elko County		Spanish heritage, American Indian.
Mineral County		American Indian.
Nye County		Spanish heritage.
White Pine County.		Do.
New Mexico:		
Bernalillo County.		Do.
Catron County		Do.
Chaves County		Do.
Colfax County		Do.
Curry County		Do.
De Baca County.		Do.
Dona Ana County.		Do.
Eddy County		Do.
Grant County		Do.
Guadalupe County.		Do.
Harding County.		Do.
Hidalgo County		Do.
Lea County		Do.
Lincoln County		Do.
Los Alamos County.		Do.
Luna County		Do.
McKinley County.		American Indian, Spanish heritage.
Mora County		Spanish heritage.
Otero County		Do.
Quay County		Do.
Rio Arriba County.		American Indian, Spanish heritage.
Roosevelt County.		Spanish heritage.
Sandoval County.		American Indian, Spanish heritage.
San Juan County.		Do.
San Miguel County.		Spanish heritage.
Sante Fe County		Do.
Sierra County		Do.
Socorro County		Do.
Taos County		American Indian, Spanish heritage.
Torrance County.		Spanish heritage.
Union County		Do.
Valencia County		American Indian, Spanish heritage.

APPENDIX—*Jurisdictions covered under secs. 4(f)(4) and 203(c) of the Voting Rights Act of 1965, as amended by the Voting Rights Act Amendments of 1975.*—Continued

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4)	Coverage under sec. 203(c)
New York:		
Bronx County	Spanish heritage.	Spanish heritage.
Kings County	do	Do.
New York County.		Do.
North Carolina:		
Hoke County		American Indian.
Jackson County	American Indian.	Do.
Robeson County		Do.
Swain County		Do.
North Dakota:		
Benson County		Do.
Dunn County		Do.
McKenzie County.		Do.
Mountrail County.		Do.
Rolette County		Do.
Oklahoma:		
Adair County		Do.
Baline County		Do.
Caddo County		Do.
Cherokee County.		Do.
Choctaw County	American Indian.	Do.
Coal County		Do.
Craig County		Do.
Delaware County.		Do.
Harmon County.		Spanish heritage.
Hughes County		American Indian.
Johnston County.		Do.
Latimer County		Do.
McCurtain County.	American Indian.	Do.
McIntosh County.		Do.
Mayes County		Do.
Okfuskee County.		Do.
Okmulgee County.		Do.
Osage County		Do.
Ottawa County		Do.
Pawnee County		Do.
Pushmataha County.		Do.
Rogers County		Do.
Seminole County.		Do.
Sequoyah County.		Do.
Tillman County		Spanish heritage.
Oregon:		
Jefferson County.		American Indian.
Malheur County		Spanish heritage.

APPENDIX—*Jurisdictions covered under secs. 4(f)(4) and 203(c) of the Voting Rights Act of 1965, as amended by the Voting Rights Act Amendments of 1975.*—Continued

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4)	Coverage under sec. 203(c)
South Dakota:		
Bennett County		American Indian.
Charles Mix County.		Do.
Corson County		Do.
Lyman County		Do.
Mellette County.		Do.
Shannon County.	American Indian.	Do.
Washabaugh County.		Do.
Todd County	American Indian.	Do.
Texas	Spanish heritage[1].	
Andrews County		Spanish heritage.
Aransas County		Do.
Atascosa County		Do.
Bailey County		Do.
Bandera County		Do.
Bastrop		Do.
Bee County		Do.
Bell County		Do.
Bexar County		Do.
Blanco County		Do.
Borden County		Do.
Brazoria County		Do.
Brazos County		Do.
Brewster County		Do.
Briscoe County		Do.
Brooks County		Do.
Burleson County		Do.
Burnet County		Do.
Caldwell County		Do.
Calhoun County		Do.
Cameron County.		Do.
Castro County		Do.
Cochran County		Do.
Coke County		Do.
Colorado County.		Do.
Comal County		Do.
Concho County		Do.
Coryell County		Do.
Cottle County		Do.
Crane County		Do.
Crockett County		Do.
Crosby County		Do.
Culberson County.		Do.
Dallam County		Do.
Dawson County		Do.
Deaf Smith County.		Do.
De Witt County		Do.
Dickens County		Do.
Dimmit County		Do.
Duval County		Do.
Ector County		Do.
Edwards County		Do.
Ellis County		Do.
El Paso County		Spanish heritage.
Falls County		Do.
Fisher County		Do.
Floyd County		Do.
Foard County		Do.
Fort Bend County.		Do.
Frio County		Do.
Gaines County		Do.
Galveston County.		Do.
Garza County		Do.
Gillespie County		Do.
Glasscock County.		Do.
Goliad County		Do.
Gonzales County.		Do.
Grimes County		Do.
Guadalupe County.		Do.
Hale County		Do.
Hall County		Do.
Hansford County.		Do.
Harris County		Do.
Haskell County		Do.
Hays County		Do.
Hidalgo County		Do.
Hockley County		Do.
Howard County		Do.
Hudspeth County.		Do.
Jackson County		Do.
Jeff Davis County.		Do.
Jim Hogg County.		Do.
Jim Wells County.		Do.
Jones County		Do.
Karnes County		Do.
Kendall County		Do.
Kenedy County		Do.
Kerr County		Do.
Kimble County		Do.
Kinney County		Do.
Kleberg County		Do.
Knox County		Do.
Lamb County		Do.
Lampasas County.		Do.
La Salle County		Do.
Live Oak County		Do.
Lubbock County		Do.
Lynn County		Do.
McCulloch County.		Do.
McLennan County.		Do.

APPENDIX—*Jurisdictions covered under secs. 4(f)(4) and 203(c) of the Voting Rights Act of 1965, as amended by the Voting Rights Act Amendments of 1975.*—Continued

[Applicable language minority group(s)]

Jurisdiction	Coverage under sec. 4(f)(4)	Coverage under sec. 203(c)
McMullen County		Spanish heritage.
Madison County		Do.
Martin County		Do.
Mason County		Do.
Matagorda County		Do.
Maverick County		Do.
Medina County		Do.
Menard County		Do.
Midland County		Do.
Milam County		Do.
Mitchell County		Do.
Moore County		Do.
Nolan County		Do.
Nueces County		Do.
Parmer County		Do.
Pecos County		Do.
Potter County		Do.
Presidio County		Do.
Reagan County		Do.
Real County		Do.
Reeves County		Do.
Refugio County		Do.
Robertson County		Do.
Runnels County		Do.
San Patricio County		Do.
San Saba County		Do.
Schleicher County		Do.
Scurry County		Do.
Sherman County		Do.
Starr County		Do.
Sterling County		Do.
Sutton County		Do.
Swisher County		Do.
Taylor County		Do.
Terrell County		Do.
Terry County		Do.
Throckmorton County		Do.
Tom Green County		Do.
Travis County		Do.
Upton County		Do.
Uvalde County		Do.
Val Verde County		Do.
Victoria County		Do.
Ward County		Do.
Webb County		Do.
Wharton County		Do.
Willacy County		Do.
Williamson County		Do.
Wilson County		Spanish heritage.
Winkler County		Do.
Yoakum County		Do.
Zapata County		Do.
Utah:		
Carbon County		Spanish heritage.
San Juan County		American Indian.
Tooele County		Spanish heritage.
Uintah County		American Indian.
Virginia: Charles City County		Do.
Washington:		
Adams County		Spanish heritage.
Columbia County		Do.
Grant County		Do.
Okanogan County		American Indian.
Yakima County		Spanish heritage.
Wisconsin:		
Nashville Town (Forest County)		American Indian.
Bovina Town (Outagamie County)		Spanish heritage.
Oneida Town (Outagamie County)		American Indian.
Hayward City (Sawyer County)		Do.
Wyoming:		
Carbon County		Spanish heritage.
Fremont County		American Indian.
Laramie County		Spanish heritage.
Sweetwater County		Do.
Washakie County		Do.

[1]Statewide coverage.

[Order No. 655-76, 41 FR 29998, July 20, 1976, as amended by Order No. 733-77, 42 FR 35971, July 13, 1977] [1]Statewide coverage.

PART 57—INVESTIGATION OF DISCRIMINATION IN THE SUPPLY OF PETROLEUM TO THE ARMED FORCES

Sec.

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

PART 301—INMATE ACCIDENT COMPENSATION

Sec.

AUTHORITY: 18 U.S.C. 4126, 28 CFR 0.99 and by Board of Directors of Federal Prison Industries, Inc.

SOURCE: 37 FR 138, 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 Administrative 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 workrelated 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 completed 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 repetitious 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 consecutive 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 66⅔ 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 Processing of claims.

(a) A claim for inmate accident compensation shall be determined by an Inmate Accident Compensation Committee (hereinafter referred to as the "Committee") appointed by the Director of the Bureau of Prisons under authority delegated to him by the Board of Directors of Federal Prison Industries pursuant to § 0.99 of this title. The Committee shall consist of four members and four alternates, with any combination of three thereof required to form a quorum for decisionmaking purposes.

(b) In determining the claim the Committee will consider all available evidence. Written notice of the decision, including the reasons therefore, together with information as to the right to a hearing before the Committee or Committee reconsideration of the decision and to an appeal to the Associate Commissioner of Federal Prison Industries, shall be mailed to the claimant at his or her last known address.

[41 FR 55710, Dec. 22, 1976]

§ 301.13 Request for hearing or reconsideration, disclosure.

(a) Any claimant not satisfied with the decision of the Committee shall, upon written request made within 30 days after the date of issuance of such decision or thereafter, upon a showing of good cause, be afforded an opportunity for either a hearing before the Committee, or Committee reconsideration of the decision. A claimant may request a hearing or reconsideration by writing to the Inmate Accident Compensation Committee, Bureau of Prisons, 320 First Street, N.W., Washington, D.C. 20534.

(b) Upon receipt of claimant's request, a copy of the information upon which the Committee's initial determination was based shall be mailed to the claimant at his or her last known address. Where the Committee determines the release of information to the claimant or to the claimant's beneficiary is not in the best interest of the claimant or his beneficiary, the Committee may release the information to the claimant's or beneficiary's representative or personal physician upon receipt of both a written authorization from the claimant or beneficiary and a written request from the representative or personal physician. If the individual concerned is mentally incompetent, insane or deceased, the next of kin or legal representative must authorize in writing the release of records to the representative or personal physician.

[41 FR 55710, Dec. 22, 1976]

§ 301.14 Committee reconsideration.

If the claimant elects to have the Committee reconsider the initial determination, he or she may submit documentary evidence which the Committee shall consider in addition to the original record. The Committee shall fix the time in which it will receive evidence, and may request additional documented evidence from the claimant or other source. A copy of the Committee's reconsidered decision shall be mailed to the claimant at his or her last known address.

[41 FR 55711, Dec. 22, 1976]

§ 301.15 Notice, time, place of hearing and postponement.

(a) The hearing or reconsideration shall be held within 60 days of the Committee's receipt of claimant's request, except as provided in paragraph (b) of this section. Notice of the date set for Committee action shall be mailed to the claimant at his or her last known address. When practical, the hearing shall be set at a time convenient for claimant, and all hearings shall be conducted at the Central Office of the Bureau of Prisons, 320 First Street, N.W., Washington, D.C.

(b) A hearing or reconsideration may be postponed at the option of the Committee, or, if good cause is shown, upon request of claimant. A claimant shall be considered to have abandoned his or her request for a hearing if he or she fails to appear at the time and place set for hearing and does not, within 10 days after the time set for the hearing, show good cause for his or her failure to appear. A claimant may change his or her request from either hearing to reconsideration or reconsideration to hearing, but must give the Committee notice of such change at least 10 days prior to the previously scheduled action.

[41 FR 55711, Dec. 22, 1976]

§ 301.16 Witnesses.

(a) If a claimant plans to present witnesses at the hearing, he or she must provide the Committee with a list of the witnesses' names and addresses and an outline of their proposed testimony at least 10 days prior to the scheduled hearing date. The Bureau of Prisons has no authority to compel the attendance of witnesses.

(b) Any persn incarcerated at the time of the hearing in a Federal, State or local penal or correctional institution may not appear as a witness, but his or her testimony may be received in the form of a written statement.

[41 FR 55711, Dec. 22, 1976]

§ 301.17 Conduct of hearing.

(a) In conducting the hearing, the Committee is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, but may conduct the hearing in such manner as to best ascertain the rights of the claimant and the obligations of the government. At such hearing, the claimant shall be afforded an opportunity to present evidence in further support of his or her claim.

(b) The Committee shall receive such relevant evidence as may be adduced by the claimant and shall, in addition, receive such other evidence as the Committee may determine to be necessary and useful in evaluating the claim. Evidence may be presented orally or in the form of written statements and exhibits.

(c) In order to fully evaluate the claim, the Committee may question the claimant and any witnesses appearing before the Committee at the hearing on behalf of the claimant or government.

(d) A claimant, or his or her representative, may question the Committee or any witness appearing before the Committee on behalf of the government, but only on matters which the Committee determines are relevant to its evaluation of the claim.

(e) The hearing shall be recorded and a copy of the recording, or, in the discretion of the Committee, a transcript thereof, shall be made available to the claimant upon request, provided such request is made not later than 90 days following the date of the hearing.

(f) The Committee shall mail a written notice of its determination to affirm or amend its original decision with the reasons therefore to the claimant at his or her last known address not later than 30 days after the date of the hearing, unless the Committee needs to make a further investigation as a result of information received at the hearing.

[41 FR 55711, Dec. 22, 1976]

§ 301.18 Expenses.

The Bureau of Prisons may not assume any expenses incurred by the claimant, his or her representative, or any witnesses appearing on behalf of the claimant in connection with attendance at the hearing.

[41 FR 55711, Dec. 22, 1976]

§ 301.19 Representation of claimant.

(a) A claimant may appoint any person to represent his or her interest in any proceeding for determination of a claim under this part so long as that person is not incarcerated in any Federal, State or local penal or correctional institution. Claimant's appointment of a representative must be in writing with a copy filed with the Committee or on the record at the hearing.

(b) A claimant shall be responsible for any costs related to the services of his or her representative.

(c) A representative appointed in accordance with paragraph (a) of this section may make or give, on behalf of the claimant he or she represents, any request or notice relative to any proceeding before the Committee or Associate Commissioner. A representative shall be entitled to present or elicit evidence or make allegations as to facts and law in any proceeding affecting the claimant he or she represents and to obtain information with respect to the claim of such claimant to the same extent as such party. Notice to any claimant of any administrative action, determination, or decision, may be sent to the representative of such claimant, and such notice or request shall have the same force and effect as if it has been sent to the claimant.

[41 FR 55711, Dec. 22, 1976]

§ 301.20 Review by the Associate Commissioner of Federal Prison Industries, Inc.

Any claimant not satisfied with the Committee's reconsidered decision or decision after a hearing may appeal such decision to the Associate Commissioner of Federal Prison Industries, 320 First Street, N.W., Washington, D.C. 20534. Written notice of the appeal must be mailed within 90 days from the date of the reconsidered decision or the decision after a hearing. For good cause shown, the Associate Commissioner may waive the failure to appeal within this time limitation. The Associate Commissioner shall review the record and must act to affirm or amend the appealed decision not later than 90 days after receipt of claimant's notice of appeal. Written notice of the Associate Commissioner's decision shall be mailed to the claimant at his or her last known address.

[41 FR 55711, Dec. 22, 1976]

§ 301.21 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 each periodic payment shall be used as the wage basis in determining the amount of compensation. In no event shall compensation be paid in greater amount than that provided in the Federal Employees' Compensation Act.

(18 U.S.C. 4126; 28 CFR 0.99)

[43 FR 28466, June 30, 1978]

§ 301.22 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 beneficial 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.

[37 FR 138, Jan. 6, 1972. Redesignated at 41 FR 55711, Dec. 22, 1976]

§ 301.23 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.

[37 FR 138, Jan. 6, 1972. Redesignated at 41 FR 55711, Dec. 22, 1976]

§ 301.24 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.

[37 FR 138, Jan. 6, 1972. Redesignated at 41 FR 55711, Dec. 22, 1976]

§ 301.25 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.

[37 FR 138, Jan. 6, 1972. Redesignated at 41 FR 55711, Dec. 22, 1976]

§ 301.26 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.

[37 FR 138, Jan. 6, 1972. Redesignated at 41 FR 55711, Dec. 22, 1976]

§ 301.27 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.

[37 FR 138, Jan. 6, 1972. Redesignated at 41 FR 55711, Dec. 22, 1976]

FINDING AIDS

A list of current CFR volumes, a list of superseded CFR volumes, and a list of CFR titles, subtitles, chapters, subchapters and parts are included in the CFR Index to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected

Table of CFR Titles and Chapters

(As of July 3, 1978)

Title 1—General Provisions

Chap.

I Administrative Committee of the Federal Register (Parts 0-49)
II Office of the Federal Register (Parts 50-299)
III Administrative Conference of the United States (Parts 300-399)
IV Miscellaneous Agencies (Part 400-end)

Title 2—[Reserved]

Title 3—The President

Proclamations
Executive Orders
Presidential Documents Other Than Proclamations and Executive Orders
I Executive Office of the President (Parts 100 and 101)

Title 4—Accounts

I General Accounting Office (Parts 0-99)
II Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100-299)
III Cost Accounting Standards Board (Parts 300-499)

Title 5—Administrative Personnel

I Civil Service Commission (Parts 0-1199)
III Office of Management and Budget (Parts 1300-1399)
IV Advisory Committee on Federal Pay (Parts 1400-1499)
V The International Organizations Employees Loyalty Board (Parts 1500-1599)
VI Department of Defense (Parts 1600-1699)
VII Advisory Commission on Intergovernmental Relations (Parts 1700-1799)
IX Appalachian Regional Commission (Parts 1900-1999)
XI United States Soldiers' and Airmen's Home (Parts 2100-2199)
XIV Federal Labor Relations Council and Federal Service Impasses Panel (Parts 2400-2499)

Title 7—Agriculture—Continued

Chap.

XXIV Board of Contract Appeals, Department of Agriculture (Parts 2400-2499)

XXV Office of the General Sales Manager, Department of Agriculture (Parts 2500-2599)

XXVI Office of Investigation, Department of Agriculture (Parts 2600-2699)

XXVII Office of Audit, Department of Agriculture (Parts 2700-2799)

XXVIII Food Safety and Quality Service, Department of Agriculture (Parts 2800-2899)

Title 8—Aliens and Nationality

I Immigration and Naturalization Service, Department of Justice (Parts 0-499)

II Office of Alien Property, Department of Justice (Parts 500-599)

Title 9—Animals and Animal Products

I Animal and Plant Health Inspection Service, Department of Agriculture (Parts 0-199)

II Agricultural Marketing Service (Packers and Stockyards), Department of Agriculture (Parts 200-299)

III Food Safety and Quality Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300-399)

IV Agricultural Research Service, Department of Agriculture (Parts 400-499)

Title 10—Energy

I Nuclear Regulatory Commission (Parts 0-199)

II Federal Energy Administration (Parts 200-699)

III Energy Research and Development Administration (Parts 700-899)

X Department of Energy (General Provisions) (Parts 1000-1199)

Title 11—Federal Elections

I Federal Election Commission

Title 12—Banks and Banking

I Comptroller of the Currency, Department of the Treasury (Parts 0-199)

II Federal Reserve System (Parts 200-299)

III Federal Deposit Insurance Corporation (Parts 300-399)

IV Export-Import Bank of the United States (Parts 400-499)

V Federal Home Loan Bank Board (Parts 500-599)

VI Farm Credit Administration (Parts 600-699)

VII National Credit Union Administration (Parts 700-799)

VIII Federal Financing Bank (Parts 800-899)

Title 13—Business Credit and Assistance

Chap.

I Small Business Administration (Parts 100-199)

III Economic Development Administration, Department of Commerce (Parts 300-399)

IV Emergency Loan Guarantee Board (Parts 400-499)

V Regional Action Planning Commissions (Parts 500-599)

Title 14—Aeronautics and Space

I Federal Aviation Administration, Department of Transportation (Parts 0-199)

II Civil Aeronautics Board (Parts 200-399)

V National Aeronautics and Space Administration (Parts 1200-1299)

Title 15—Commerce and Foreign Trade

SUBTITLE A—Office of the Secretary of Commerce (Parts 0-19)

SUBTITLE B—Regulations Relating to Commerce and Foreign Trade

I Bureau of the Census, Department of Commerce (Parts 20-199)

II National Bureau of Standards, Department of Commerce (Parts 200-299)

III Industry and Trade Administration, Department of Commerce (Parts 300-399)

IV Foreign-Trade Zones Board (Parts 400-499)

VI [Reserved]

VIII Bureau of Economic Analysis, Department of Commerce (Parts 800-899)

IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900-999)

XII United States Travel Service, Department of Commerce (Parts 1200-1299)

XIII East-West Foreign Trade Board (Parts 1300-1999)

SUBTITLE C—Regulations Relating to Foreign Trade Agreements

XX Office of the Special Representative for Trade Negotiations (Parts 2000-2099)

Title 16—Commercial Practices

I Federal Trade Commission (Parts 0-999)

II Consumer Product Safety Commission (Parts 1000-1799)

Title 17—Commodity and Securities Exchanges

I Commodity Futures Trading Commission (Parts 0-199)

II Securities and Exchange Commission (Parts 200-299)

Title 18—Conservation of Power and Water Resources

Chap.

I Federal Energy Regulatory Commission, Department of Energy (Parts 0-299)

II Tennessee Valley Authority (Parts 300-399)

III Delaware River Basin Commission (Parts 400-499)

IV Office of Water Resources Research, Department of the Interior (Parts 500-599)

VI Water Resources Council (Parts 701-799)

VIII Susquehanna River Basin Commission (Parts 800-899)

X Administrator—Emergency Natural Gas Act of 1977 (Parts 1000-1099)

Title 19—Customs Duties

I United States Customs Service, Department of the Treasury (Parts 0-199)

II United States International Trade Commission (Parts 200-299)

Title 20—Employees' Benefits

I Office of Workers' Compensation Programs, Department of Labor (Parts 0-199)

II Railroad Retirement Board (Parts 200-399)

III Social Security Administration, Department of Health, Education, and Welfare (Parts 400-499)

IV Employees' Compensation Appeals Board, Department of Labor (Parts 500-599)

V Employment and Training Administration, Department of Labor (Parts 600-699)

VI Employment Standards Administration, Department of Labor (Parts 700-799)

VII Benefits Review Board, Department of Labor (Parts 800-899)

VIII Joint Board for the Enrollment of Actuaries (Parts 900-999)

Title 21—Food and Drugs

I Food and Drug Administration, Department of Health, Education, and Welfare (Parts 0-1299)

II Drug Enforcement Administration, Department of Justice (Parts 1300-1399)

III Special Action Office for Drug Abuse Prevention (Parts 1400-1499)

Title 22—Foreign Relations

I Department of State (Parts 0-199)

II Agency for International Development, Department of State (Parts 200-299)

III Peace Corps (Parts 300-399)

IV International Joint Commission, United States and Canada (Parts 400-499)

30-071 O - 78 - 27

Title 22—Foreign Relations—Continued

Chap.

V International Communication Agency (Parts 500-599)

VI United States Arms Control and Disarmament Agency (Parts 600-699)

VII Overseas Private Investment Corporation (Parts 700-799)

VIII Employee-Management Relations Commission (Parts 800-899)

IX Foreign Service Grievance Board (Parts 901-999)

X Inter-American Foundation (Parts 1000-1099)

XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100-end)

Title 23—Highways

I Federal Highway Administration, Department of Transportation (Parts 0-899)

II Highway Safety Program Standards, Department of Transportation (Parts 1200-1299)

Title 24—Housing and Urban Development

SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0-99)

SUBTITLE B—Regulations Relating to Housing and Urban Development

I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100-199)

II Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200-299)

III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300-399)

IV Office of Assistant Secretary for Housing Management, Department of Housing and Urban Development (Parts 400-499)

V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500-599)

VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600-699)

VII New Community Development Corporation, Department of Housing and Urban Development (Parts 700-799)

VIII Low-Income Housing, Department of Housing and Urban Development (Parts 800-1299)

IX Office of Interstate Land Sales Registration, Department of Housing and Urban Development (Parts 1700-1799)

X Federal Insurance Administration, Department of Housing and Urban Development (Parts 1900-1999)

XIII Federal Disaster Assistance Administration, Department of Housing and Urban Development (Parts 2200-2299)

XV Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700-2799)

Title 29—Labor—Continued

Chap.

XX Occupational Safety and Health Review Commission (Parts 2100-2300)

XXV Pension and Welfare Benefit Programs, Department of Labor (Parts 2500-2599)

XXVI Pension Benefit Guaranty Corporation (Parts 2600-2699)

XXVII Federal Mine Safety and Health Review Commission

Title 30—Mineral Resources

I Mining Safety and Health Administration, Department of Labor (Parts 0-199)

II Geological Survey, Department of the Interior (Parts 200-299)

III Board of Mine Operations Appeals, Department of the Interior (Parts 300-399)

VI Bureau of Mines, Department of the Interior (Parts 600-699)

VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700-799)

Title 31—Money and Finance: Treasury

SUBTITLE A—Office of the Secretary of the Treasury (Parts 0-50)

SUBTITLE B—Regulations Relating to Money and Finance

I Monetary Offices, Department of the Treasury (Parts 51-199)

II Fiscal Service, Department of the Treasury (Parts 200-399)

IV Secret Service, Department of the Treasury (Parts 400-499)

V Office of Foreign Assets Control, Department of the Treasury (Parts 500-599)

VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600-699)

VII Federal Law Enforcement Training Center, Department of the Treasury (Part 700-end)

Title 32—National Defense

SUBTITLE A—Department of Defense

I Office of the Secretary of Defense (Parts 0-499)

V Department of the Army (Parts 500-699)

VI Department of the Navy (Parts 700-799)

VII Department of the Air Force (Parts 800-1099)

SUBTITLE B—Other Regulations Relating to National Defense

XII Defense Logistics Agency (Parts 1200-1299)

XIV The Renegotiation Board (Parts 1400-1499)

XVI Selective Service System (Parts 1600-1699)

XVII Selective Service System (Clemency Program) (Parts 1700-1799)

XVIII Defense Civil Preparedness Agency (Parts 1800-1899)

XIX Central Intelligence Agency (Parts 1900-1999)

Title 32—National Defense—Continued

Chap.

XX Interagency Classification Review Committee (Parts 2000-2099)

XXI National Security Council (Parts 2100-2199)

XXII National Security Agency, Central Security Service (Parts 2200-2299)

Title 32A—National Defense, Appendix

I Federal Preparedness Agency, General Services Administration

VI Industry and Trade Administration, Department of Commerce

VII Department of Commerce and Department of Transportation

VIII Transport Mobilization Staff, Interstate Commerce Commission

XV Federal Reserve System

XVIII National Shipping Authority, Maritime Administration, Department of Commerce

XIX Office of the Maritime Administrator, Department of Commerce

Title 33—Navigation and Navigable Waters

I Coast Guard, Department of Transportation (Parts 0-199)

II Corps of Engineers, Department of the Army (Parts 200-399)

IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400-499)

Title 34—Government Management

I Office of Management and Budget (Parts 100-199)

Title 35—Panama Canal

I Canal Zone Regulations (Parts 0-299)

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 0-199)

II Forest Service, Department of Agriculture (Parts 200-299)

III Corps of Engineers, Department of the Army (Parts 300-399)

IV American Battle Monuments Commission (Parts 400-499)

V Smithsonian Institution (Parts 500-599)

VI American Revolution Bicentennial Administration (Parts 600-699)

VII Library of Congress (Parts 700-799)

VIII Advisory Council on Historic Preservation (Parts 800-899)

IX Pennsylvania Avenue Development Corporation (Parts 900-999)

X Commission of Fine Arts (Parts 1000-1099)

XI Architectural and Transportation Barriers Compliance Board

Title 37—Patents, Trademarks, and Copyrights

Chap.

I Patent and Trademark Office, Department of Commerce (Parts 0-199)

II Copyright Office, Library of Congress (Parts 200-299)

III Copyright Royalty Tribunal (Parts 300-399)

Title 38—Pensions, Bonuses, and Veterans' Relief

I Veterans Administration (Parts 0-99)

Title 39—Postal Service

I United States Postal Service (Parts 0-999)

III Postal Rate Commission (Parts 3000-3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 0-1399)

IV Low-Emission Vehicle Certification Board (Parts 1400-1499)

V Council on Environmental Quality (Parts 1500-1599)

Title 41—Public Contracts and Property Management

SUBTITLE A—Federal Procurement Regulations System

1 Federal Procurement Regulations (Parts 1-1—1-30)

3 Department of Health, Education, and Welfare (Parts 3-1—3-75)

4 Department of Agriculture (Parts 4-1—4-50)

5A Federal Supply Service, General Services Administration (Parts 5A-1—5A-76)

5B Public Buildings Service, General Services Administration (Parts 5B-1—5B-63)

6 Department of State (Parts 6-1—6-60)

7 Agency for International Development, Department of State (Parts 7-1—7-60)

8 Veterans Administration (Parts 8-1—8-95)

9 Energy Research and Development Administration (Parts 9-1—9-59)

10 Department of the Treasury (Parts 10-12—10-60)

12 Department of Transportation (Parts 12-1—12-99)

13 Department of Commerce (Part 13-1)

14 Department of the Interior (Parts 14-1—14-63)

14H Bureau of Indian Affairs, Department of the Interior (Parts 14H-1—14H-70)

14R Office of Saline Water, Department of the Interior (Part 14R-9)

15 Environmental Protection Agency (Parts 15-1—15-60)

18 National Aeronautics and Space Administration (Parts 18-1—18-52)

19 International Communication Agency (Parts 19-1—19-60)

Title 44—[Reserved]

Title 45—Public Welfare

SUBTITLE A—Department of Health, Education, and Welfare, General Administration (Parts 0-99)

SUBTITLE B—Regulations Relating to Public Welfare

Chap.

I Office of Education, Department of Health, Education, and Welfare (Parts 100-199)

II Social and Rehabilitation Service (Assistance Programs), Department of Health, Education, and Welfare (Parts 200-299)

III Office of Child Support Enforcement (Child Support Enforcement Program), Department of Health, Education, and Welfare (Parts 300-399)

IV Social and Rehabilitation Service (Rehabilitation Programs), Department of Health, Education, and Welfare (Parts 400-499)

V Foreign Claims Settlement Commission of the United States (Parts 500-599)

VI National Science Foundation (Parts 600-699)

VII Commission on Civil Rights (Parts 700-799)

VIII Civil Service Commission (Parts 800-899)

X Community Services Administration (Parts 1000-1099)

XI National Foundation on the Arts and the Humanities (Parts 1100-1199)

XII ACTION (Parts 1200-1299)

XIII Office of Human Development Services, Department of Health, Education, and Welfare (Parts 1300-1399)

XIV National Institute of Education, Department of Health, Education, and Welfare (Parts 1400-1499)

XV Fund for the Improvement of Postsecondary Education, Department of Health, Education, and Welfare (Parts 1500-1599)

XVI Legal Services Corporation (Parts 1600-1699)

XVII National Commission on Libraries and Information Science (Parts 1700-1799)

XVIII Harry S Truman Scholarship Foundation (Parts 1800-1899)

XIX National Commission on the Observance of International Women's Year (Parts 1900-1999)

XX National Fire Prevention and Control Administration, Department of Commerce (Parts 2000-2099)

Title 46—Shipping

I Coast Guard, Department of Transportation (Parts 0-199)

II Maritime Administration, Department of Commerce (Parts 200-399)

III Coast Guard (Great Lakes Pilotage), Department of Transportation (Parts 400-499)

IV Federal Maritime Commission (Parts 500-599)

Title 47—Telecommunication

Title 48—[Reserved]

Title 49—Transportation

Title 50—Wildlife and Fisheries

CFR Index

Alphabetical List of Agencies Appearing in the CFR

(As of July 3, 1978)

Agency	CFR Title, Subtitle or Chapter
ACTION	45, XII
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advisory Commission on Intergovernmental Relations	5, VII
Advisory Committee on Federal Pay	5, IV
Advisory Council on Historic Preservation	36, VIII
Agency for International Development	22, II; 41, 7
Agricultural Marketing Service	7, I, IX, X, XI; 9, II
Agricultural Research Service	7, V; 9, IV
Agricultural Stabilization and Conservation Service	7, VII
Agriculture Department	
Agricultural Marketing Service	7, I, IX, X, XI; 9, II
Agricultural Research Service	7, V; 9, IV
Agricultural Stabilization and Conservation Service	7, VII
Animal and Plant Health Inspection Service	7, III; 9, I, III
Audit, Office of	7, XXVII
Commodity Credit Corporation	7, XIV
Contract Appeals, Board of	7, XXIV
Farmers Home Administration	7, XVIII
Federal Crop Insurance Corporation	7, IV
Federal Procurement Regulations System	41, 4
Food and Nutrition Service	7, II
Food Safety and Quality Service	7, XXVIII; 9, III
Foreign Agricultural Service	7, XV
Foreign Economic Development Service	7, XXI
Forest Service	36, II
General Sales Manager, Office of	7, XXV
Investigation, Office of	7, XXVI
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Secretary of Agriculture, Office of	7, Subtitle A
Soil Conservation Service	7, VI
Statistical Reporting Service	7, XII
Air Force Department	32, VII
Alcohol, Tobacco and Firearms, Bureau of	27, I
Alien Property, Office of	8, II
American Battle Monuments Commission	36, IV
American Revolution Bicentennial Administration	36, VI
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	
Arms Control and Disarmament Agency, U.S.	22, VI; 41, 23
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Audit, Office of	7, XXVII
Automotive Agreement Adjustment Assistance Board	29, XVI
Benefits Review Board	20, VII
Blind and Other Severely Handicapped, Committee for Purchases from	41, 51
Budget, Office of Management and	5, III

Agency	CFR Title, Subtitle or Chapter
Canal Zone Regulations	35, I
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Children's Bureau, Social and Rehabilitation Service	42, II
Civil Aeronautics Board	14, II
Civil Rights Commission	45, VII
Civil Service Commission	5, I; 45, VIII
Claims Collection Standards, Federal	4, II
Clemency Program, Selective Service System	32, XVII
Coast Guard	33, I; 46, I, III; 49, IV
Commerce Department	
Census Bureau	15, I
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Federal Procurement Regulations System	41, 13
Fishery Conservation and Management	50, VI
Industry and Trade Administration	15, III; 32A, VI
Maritime Administration	32A, XVIII, XIX; 46, II
National Bureau of Standards	15, II
National Defense	32A, VII
National Fire Prevention and Control Administration	45, XX
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, IV
National Shipping Authority	32A, XVIII
Patent and Trademark Office	37, I
Secretary of Commerce, Office of	15, Subtitle A
United States Travel Service	15, XII
Commission on the Review of the National Policy Toward Gambling	1, IV
Committee for Purchase from Blind and Other Severely Handicapped	41, 51,
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services Administration	41, 22; 45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	16, II
Contract Appeals, Board of	7, XXIV
Copyright Office	37, II
Copyright Royalty Tribunal	37, III
Cost Accounting Standards Board	4, III
Council on Environmental Quality	40, V
Council on Wage and Price Stability	6, VII
Customs Service, United States	19, I
Defense Civil Preparedness Agency	32, XVIII
Defense Department	5, VI; 32, Subtitle A
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III
Defense Civil Preparedness Agency	32, XVIII
Engineers, Corps of	33, II; 36, III
Navy Department	32, VI
Secretary of Defense, Office of	32, I
Defense Logistics Agency	32, XII
Defense Manpower Commission	1, IV
Delaware River Basin Commission	18, III
Drug Abuse Prevention, Special Action Office for	21, III
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Education, Office of	45, I
Emergency Loan Guarantee Board	13, IV
Emergency Natural Gas Act of 1977, Administrator	18, X

Agency	CFR Title, Subtitle or Chapter
Employee Benefits Security, Office of	29, XXV
Employee-Management Relations Commission	22, VIII
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board, International Organizations	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Energy, Department of [1]	10, X
Federal Energy Regulatory Commission	18, I
Energy Research and Development Administration [1]	10, III; 41, 9, 109
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	40, I; 41, 15, 115
Equal Employment Opportunity	41, 60
Equal Employment Opportunity Commission	29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Export Marketing Service	7, XXV
Export-Import Bank of the United States	12, IV
Farm Credit Administration	12, VI
Farmers Home Administration	7, XVIII
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I
Federal Contract Compliance, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Disaster Assistance Administration	24, XIII
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Energy Administration [1]	10, II
Federal Energy Regulatory Commission	18, I
Federal Financing Bank	12, VIII
Federal Highway Administration	23, I; 49, III
Federal Home Loan Bank Board	12, V
Federal Insurance Administration	24, X
Federal Labor Relations Council and Federal Service Impasses Panel	5, XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries	28, III
Federal Procurement Regulations	41, I
Federal Procurement Regulations System	41, Subtitle A
Federal Property Management Regulations	44, 101
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II; 32A, XV
Federal Supply Service	41, 5A
Federal Trade Commission	16, I
Fine Arts Commission	36, X
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Quality Service,	7, XXVIII; 9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V

[1] The regulations in 10 CFR, Chapters II and III, and 41 CFR, Chapters 9 and 109, are handled by the Department of Energy.

Agency	CFR Title, Subtitle or Chapter
Foreign Economic Development Service	7, XXI
Foreign Service Grievance Board	22, IX
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
Fund for the Improvement of Postsecondary Education	45, XV
General Accounting Office	4, I, II
General Sales Manager, Office of	7, XXV
General Services Administration	
Federal Preparedness Agency	32A, I
Federal Procurement Regulations System	41, 1, 5A, 5B
Federal Property Management Regulations System	41, 101, 105
Geological Survey	30, II
Government National Mortgage Association	24, III
Great Lakes Pilotage	46, III
Harry S Truman Scholarship Foundation	45, XVIII
Health Care Financing Administration	42, IV
Health, Education, and Welfare, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Children's Bureau, Social and Rehabilitation Service	42, II
Education, Office of	45, I
Federal Procurement Regulations System	41, 3
Food and Drug Administration	21, I
Fund for the Improvement of Postsecondary Education	45, XV
Harry S Truman Scholarship Foundation	45, XVIII
Health Care Financing Administration	42, IV
Human Development Office	45, XIII
National Institute of Education	45, XIV
Public Health Service	42, I
St. Elizabeths Hospital	42, III
Social and Rehabilitation Service	42, II; 45, II, IV
Social Security Administration	20, III
Highway Safety Program Standards	23, II
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Disaster Assistance Administration	24, XIII
Federal Insurance Administration	24, X
Federal Procurement Regulations System	41, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II
Housing Management, Office of Assistant Secretary for	24, IV
Interstate Land Sales Registration, Office of	24, IX
Low-Income Housing	24, VIII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
Neighborhoods, Voluntary Associations and Consumer Protection, Office of Assistant Secretary for	24, XX
New Community Development Corporation	24, VII
Secretary, Office of	24, Subtitle A
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II
Housing Management, Office of Assistant Secretary for	24, IV
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I
Indian Affairs, Bureau of	25, I; 41, 14H
Indian Arts and Crafts Board	25, II
Indian Claims Commission	25, III
Information Agency, United States	22, V; 41, 19
Interagency Classification Review Committee	32, XX
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Federal Procurement Regulations System	41, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, II

Agency	CFR Title, Subtitle or Chapter
Indian Affairs, Bureau of	25, I; 41, 14H
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Mine Operations Appeals, Board of	30, III
Mines, Bureau of	30, VI
National Park Service	36, I
Reclamation, Bureau of	43, I
Saline Water, Office of	41, 14R
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining Reclamation and Enforcement, Office of	30, VII
United States Fish and Wildlife Service	50, I, IV
Water Resources Research, Office of	18, IV
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico	22, XI
International Communication Agency	22, V; 41, 19
International Development, Agency for	22, II; 41, 7
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Transport Mobilization Staff	32A, VIII
Interstate Land Sales Registration, Office of	24, IX
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I; 41, 128
Alien Property, Office of	8, II
Drug Enforcement Administration	21, II
Federal Claims Collection Standards	4, II
Federal Prison Industries	28, III
Federal Procurement Regulations System	41, 28
Immigration and Naturalization Service	8, I
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Contract Compliance, Office of	41, 60
Federal Procurement Regulations System	41, 29, 50
Labor-Management Relations, Office of the Assistant Secretary	29, II
Labor-Management Standards Enforcement, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefit Programs	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Wage and Hour Division	29, V
Worker's Compensation Programs, Office of	20, I
Labor Management Relations, Office of Assistant Secretary	29, II
Labor-Management Standards Enforcement, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Low-Emission Vehicle Certification Board	40, IV
Low-Income Housing, Department of Housing and Urban Development	24, VIII
Management and Budget, Office of	5, III; 34, I
Marine Mammal Commission	50, V
Maritime Administration	46, II
Maritime Administrator, Office of	32A, XIX
National Shipping Authority	32A, XVIII
Materials Transportation Bureau	49, I
Mine Operations Appeals, Board of	30, III
Mine Safety and Health Administration	30, I
Mines, Bureau of	30, VI
Miscellaneous Agencies	1, IV

Agency	CFR Title, Subtitle or Chapter
Monetary Offices	31, I
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 41, 18
National Bureau of Standards	15, II
National Commission on Libraries and Information Science	45, XVII
National Commission on Neighborhoods	24, XXIV
National Commission on the Observance of International Women's Year	45, XIX
National Credit Union Administration	12, VII
National Fire Prevention and Control Administration, Department of Commerce	45, XX
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	49, V
National Institute of Education	45, XIV
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Science Foundation	45, VI; 41, 25
National Security Agency, Central Security Service	32, XXII
National Security Council	32, XXI
National Shipping Authority	32A, XVIII
National Study Commission on Records and Documents of Federal Officials	5, XV
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
Navy Department	32, VI
Neighborhoods, National Commission on	24, XXIV
Neighborhoods, Voluntary Associations and Consumer Protection, Office of Assistant Secretary for	29, XX
New Community Development Corporation	24, VII
Nuclear Regulatory Commission	10, I
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Overseas Private Investment Corporation	22, VII
Panama Canal, Canal Zone Regulations	35, I
Patent and Trademark Office	37, I
Pennsylvania Avenue Development Corporation	36, IX
Pension Benefit Guaranty Corporation	29, XXVI
Pension and Welfare Benefit Programs, Department of Labor	29, XXV
Peace Corps	22, III
Postal Rate Commission	39, III
Postal Service, United States	39, I
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Privacy Protection Study Commission	1, IV
Procurement Regulations System, Federal	41, Subtitle A
Property Management Regulations System, Federal	41, Subtitle C
Public Buildings Service	41, 5B
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II
Railway Association, United States	49, IX
Reclamation, Bureau of	43, I
Regional Action Planning Commissions	13, V
Renegotiation Board	32, XIV
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Saint Elizabeths Hospital	42, III
Saint Lawrence Seaway Development Corporation	33, IV
Saline Water, Office of	41, 14R
Secret Service	31, IV
Securities and Exchange Commission	17, II

Agency	CFR Title, Subtitle or Chapter
Selective Service System	32, XVI; XVII
Small Business Administration	13, I
Smithsonian Institution	36, V
Social and Rehabilitation Service	42, II; 45, II, IV
Social Security Administration	20, III
Soil Conservation Service	7, VI
Soldiers' and Airmen's Home, United States	5, XI
Special Representative for Trade Negotiations, Office of	15, XX
State Department	22, I
Agency for International Development	22, II; 41, 7
Federal Procurement Regulations System	41, 6
Statistical Reporting Service, Agriculture Department	7, XII
Susquehanna River Basin Commission	18, VIII
Telecommunications Policy, Office of	47, II
Tennessee Valley Authority	18, II
Trade Negotiations, Office of Special Representative	15, XX
Transport Mobilization Staff, Interstate Commerce Commission	32A, VIII
Transportation, Department of	
Coast Guard	33, I; 46, I, III; 49, IV
Federal Aviation Administration	14, I
Federal Highway Administration	23, I; 49, III
Federal Procurement Regulations System	41, 12
Federal Railroad Administration	49, II
Highway Safety Program Standards	23, II
Materials Transportation Bureau	49, I
National Defense	32A, VII
National Highway Traffic Safety Administration	49, V
Saint Lawrence Seaway Development Corporation	33, IV
Secretary, Office of	49, Subtitle A
Urban Mass Transportation Administration	49, VI
Travel Service, United States	15, XII
Treasury Department	
Administration, Assistant Secretary for	6, VI
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Law Enforcement Training Center	31, VII
Federal Procurement Regulations System	41, 10
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Truman, Harry S, Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI; 41, 23
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I
United States International Trade Commission	19, II
United States Postal Service	39, I
United States Railway Association	49, IX
United States Soldiers' and Airmen's Home	5, XI
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Administration	38, I; 41, 8
Wage and Hour Division	29, V
Water Resources Council	18, VI
Water Resources Research, Office of	18, IV
Welfare-Pension Reports, Office of Labor-Management and	29, IV
Workers' Compensation Programs, Office of	20, I

30-071 O - 78 - 28

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1964, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1964, see the "List of Sections Affected, 1949-1963," which is published in a separate volume.

1964

28 CFR — 29 F.R. Page

Chapter I
0—50
Amended ... 15918
0
Subpart U heading revised ... 1644
Subpart W appendix added ... 7383
Subpart W appendix amended ... 7422
Subpart W appendix amended ... 7423
Subpart W appendix amended ... 13950
Subpart W appendix amended (2 documents) ... 15572
Subpart W appendix amended ... 15755
0.47
(e) added ... 7990
0.50
(a) revised ... 11182
0.55
(n) added ... 11182
0.77
(r) added ... 11182
0.78a
added ... 15918
0.130
(c) superseded ... 1645
0.133
Added ... 1644
0.160—0.175
Appendix added to Subpart W ... 7383
Subpart W appendix amended ... 7422
Subpart W appendix amended ... 7423

28 CFR—Continued — 29 F.R. Page

Chapter I—Continued
Subpart W appendix amended ... 13950
Subpart W appendix amended (2 documents) ... 15572
Subpart W appendix amended ... 15755
0.169
Revised ... 7383
16
Revised ... 14027
44.2
Revised ... 11960
44.3
(b) and (c) ... 284
44.5
(d) revised ... 11960
44.7
(a) revised ... 11960
44.16
Added ... 284

1965

28 CFR — 30 F.R. Page

Chapter I:
Amended ... 12941
0
Subpart O appendix added ... 1800
Appendix to Subpart W amended ... 7709
Appendix to Subpart W amended ... 7819
0.6
(b-1) added ... 2588
(b-1) superseded ... 5704
0.25
(l) added ... 7599

28 CFR—Continued

30 F.R. Page

Chapter I—Continued

0.50
(a) revised....5832
0.53
Added....5703
0.55
(i) revised....2316
(n) revised....5832
(o) added....12249
0.75—0.83
Subpart O appendix added....1800
0.86
Amended....2316
0.130a
Added....485
0.160—0.175
Subpart W appendix amended....7709
Subpart W appendix amended....7819
0.171
Revised....7245
2.49
Added....219
3
Revised....2316
3.6
Revised....5510
16.3
Corrected....7488
42
Existing text designated as Subpart A; Subpart B added....7387
42.1—42.35
Designated as Subpart A....7387
42.3
Amended....7389
42.5
(a) and (c) amended....7389
42.11
Amended....7389
42.17
Amended....7389
42.50—42.59
Subpart B added....7387
43.3
(a) and (b) amended....7819
45
Revised....17202
50.2
Added....5510

1966

28 CFR

31 F.R. Page

Chapter I

0
Appendix added to Subpart Q....705
Subpart F added....6275
Subpart W heading revised....6317
Subpart O Appendix amended....10961
Subpart O Appendix amended....12082
0.5
(g) revoked....10391
0.30—0.32
Subpart F added....6275
0.40
(a) revised....5071
0.45
(e) and (h) revoked; (i) amended....2427
(i) amended....6317
0.50
(g), (h), and (i) revoked....6867
(j) revoked....10391
0.52
Revoked....6867
0.53
(a) revoked....10391
0.55
(e) revoked....6317
(j) revised; (p) and (q) added....6867
0.56a
Added....6867
0.60
(j) and (k) added....14590
0.75—0.84
Subpart O Appendix amended....10961
Subpart O Appendix amended....12082
0.95—0.99
Appendix added to Subpart Q....705
0.96
(c-1) added....5071
0.109
Added....3286
0.110
Added....11720
0.160—0.178
Subpart W heading revised....6317
0.178
Added....6317
2.37
Revised....4204

28 CFR—Continued

31 F.R. Page

Chapter I—Continued
14
Added 16616
42
Heading revised; Subpart C added 10265
Subpart A revised 10388
42.1—42.35
Subpart A revised 10388
42.101—42.112
Subpart C added 10265
50.3
Added 5292
Chapter II
200
Added 3069

1967

28 CFR

32 F.R. Page

Chapter I
0
Subpart O appendices added (2 documents) 6576
Subpart O appendix added 8523
0.17
Revoked 16531
0.25
(d) revoked 15425
0.45
(e) added 15425
0.75—0.84
Subpart O appendices added (2 documents) 6576
Subpart O appendix added 8523
0.75
(d) added 16531
0.78
Revoked 20772
0.80
Revised 1087
0.130
(e) added 9663
0.147
Amended 11160
0.160
Introductory text amended 6930
0.164
Introductory text and (a) amended 6930
0.165
Amended 6930
0.171
Revised 8144
0.179
Added 20772
2.37
Revised 15014

28 CFR—Continued

32 F.R. page

Chapter I—Continued
5
Revised 6362
16
Revised 9663
43.3
Revised 713
45.735-9
(a) amended; (e) added 9066
45.735-14
(c) (5), (d), and (e) revised 13217
45.735-19
(a) amended; authority citation deleted 13217
45.735-21
(b), (e), (f), and (h) amended; (n) added 13217
45.735-22
(a) (1) (iii), (c), (d), and (g) revised; (i) added 13217
45.735-23
(a) revised 13218
50.4
Added 713
50.5
Added 1040
Chapter II
200
Revised 20809
202
Added L9163
0
Subpart AA added 5580
Subpart O appendix amended 8486
Subpart W appendix amended L12649
Subpart AA appendix added 16339
Subpart AA appendix amended 18236, 18237

1968

28 CFR

33 F.R. Page

Chapter I
0.1
Amended 9817
0.20
(b) revised 8339
0.58
Added 11539
0.59
Added 16564
0.75-0.84
Subpart O appendix amended 8486
0.77
(s) added 17349

28 CFR—Continued

33 F.R. Page

Chapter I—Continued

0.96
(m) added 11117
0.134
Added 9817
0.136
Revised 9817
0.138
Revised 9817
0.139
Revised 9817
0.140
Introductory text revised 9817
0.141
Revised 9817
0.142
Introductory text revised 9817
0.143
Revised 9817
0.144
Revised 9817
0.145
Revised 9818
0.146
Revised 9818
0.147
Revised 9818
0.148
Revised 9818
0.149
Revised 9818
0.150
Revised 9818
0.151
Revised 9818
0.152
Revised 9818
0.153
revised 9818
0.154
Revised 9818
0.159
Revised 9819
0.160—0.179
Subpart W appendix amended 12649
0.179
(a) revised 9819
0.200—0.202
Subpart AA added 5580
Subpart AA appendix added 16339
Subpart AA appendix amended 18236, 18237
45.735-20
Revoked 10516

28 CFR—Continued

33 F.R. Page

Chapter I—Continued

45.735-22
Introductory text of (a) revised; (c)(2) (i) and (xv) amended 10570
(c) (2) (xix) added 14780
47.4
Revised 9819
47.10
(c) revised 9819
50.6
Added 2442
Chapter II
200.735-101
Amended 9256

1969

28 CFR

34 F.R. Page

Chapter I
0
Subpart AA appendix amended 4889
Subpart AA appendix amended 9714
Subpart AA revised 11493
Subpart O appendix amended 15413
Subpart O appendix amended 16594
Subpart O appendix amended 19656
Revised 20388
0.17
Added 5726
Revised 7906
0.59
Existing text designated as (a); (b) added 11545
0.75—0.84
Subpart O appendix amended 15413
Subpart O appendix amended 16594
Subpart O appendix amended 19656
0.75
(d) revoked 5726
0.134
Revised 11493
0.155
Added 9676
0.200—0.202
Subpart AA appendix amended 4889

28 CFR—Continued

34 F.R. Page

Chapter I—Continued

Subpart AA appendix amended....9714
Subpart AA revised....11493
8
Added....1557
21.3
(a), (b), and (c)(1), (2), and (3) amended....436
42
Subpart A recodified and revised....12281
42.1, 42.2
Subpart A recodified from 42.1—42.35; revised....12281
42.1—42.35
Subpart A recodified as 42.1, 42.2; revised....12281
45.735-22
Introductory text of (a) revised; (c)(2)(i) and (xv) amended....5726
(c)(2)(xv) amended....7906

1970

28 CFR

35 F.R. Page

Chapter I
0
Subpart O appendix amended....1049
Subpart Y appendix amended....3994
Subpart O appendix amended....4210
Subpart O appendix amended....13077
Subpart R appendix amended....18467
Subpart O appendix amended....19397
New Subpart Z added....19397
Former Subpart Z redesignated Subpart AA....19397
Subpart AA redesignated Subpart BB....19397
Subpart BB redesignated Subpart CC....19397
0.17
Revised....14771
0.46
Revised....16318
0.48
Added....11391
0.55
(c) and (d) amended....19666

28 CFR—Continued

35 F.R. Page

Chapter I—Continued

0.59
Revoked....19397
0.66
Revised....16084
0.75—0.77
Subpart O appendix amended....1049
Subpart O appendix amended....4210
Subpart O appendix amended....13077
Subpart O appendix amended....19397
0.100—0.102
Subpart R appendix amended....18467
0.100
Amended....17332
0.102
Deleted....17332
0.160—0.172
Subpart Y appendix amended....3994
0.175—0.178
New subpart Z added....19397
0.180—0.186
Subpart Z redesignated Subpart AA....19397
0.190—0.191
Subpart AA redesignated Subpart BB....19397
0.190
Revised....9857
0.195—0.196
Subpart BB redesignated Subpart CC....19397
2.40
Revised....15288
9
Added....7013
9.1
Amended....19666
14.2
Existing text designated as (a); (b) added....314
14.9
Existing text designated as (a); (b) added....315
21.1
Revised....883
21.5
Added....11391
42
Subpart D added....19998
42.201—42.206
Subpart D added....19998

28 CFR—Continued

	35 F.R. Page
Chapter I—Continued	
44	
Rescinded	5034
45.735-22	
(c)(2) revised	11295
(c)(2)(ii) amended	18526

1971

28 CFR	36 F.R. Page
Chapter I	
0.41 (b) revised	10862
0.52 Added	2601
0.55 (c) and (d) amended; (n) removed	10852
0.59 Added	2601
0.61 (l) and (m) added	1251
0.64 Added	2601
0.65 (d) added	10862
0.67 Revised	20428
0.75—0.77 (Subpart O) appendix amended	5787
0.76 (c)(3) amended	12096
0.96 (p) added	6748
(q) added	12212
0.96a Added	12212
0.100 Revised	981
0.100—0.101 (Subpart R) appendix amended	15432
0.102 Added	10863
0.147 Amended	10862
0.160—0.172 (Subpart Y) appendix amended	10862, 12739, 15431, 24115
0.180—0.183 (Subpart AA) revised	12096
5.304 (c) revised	12212
5.306 (b) revised	12212
9a Added	3416
21.1 Revised	15432
(d) corrected	17506
21.2 Removed	15433
21.3 (e) revised	15433
45.735-22 (c)(2)(xiii) amended	14466
46 Removed	12096
47 Removed	12096
50.2 Revised	21028
51 Added	18186
52 Added	24931
Chapter II	
201.1—201.24 Redesignated as Subpart A	18280
201.51—201.68 (Subpart B) added	18280
201.65 Amended	18952

1972

28 CFR	37 F.R. Page
Chapter I	
0.11 Added	3110
0.12 Added	16956
0.41 (b) revised; (h) added	7790
0.50 (a) amended	11317
0.55 (n) added	9214
0.60 Added	13695
0.61 (n) added	16873
0.65 (e) added	11724
0.75-0.77 (Subpart O) appendix Memos 482 and 658 removed	5246
Memo 712 removed	10800
0.85 (j) added	932
(j) revised	25917
0.100-0.101 (Subpart R) appendix amended	1470, 9628
0.147 Amended	24345
0 Subpart Y (0.160—0.172) appendix amended	16936
Appendix amended	20237
0.168 (a) revised	16603
9.1 Revised	2768
9.2 (d) and (k) revised	2768
9.4 (f) amended	2768
9.5 (c)(3) added; (d)-(h) removed	2768
9.6 (c), (d) and (e) revised	2768
9.7 (a) amended; (c) (1) and (2), and (i) revised	2769
17 Added	15645
41 Removed	784
42.201—42.206 (Subpart D) revised	16671
45.735-22 (c)(2)(xvii) revised	2769
Chapter III	
301 Revised	138

1973

28 CFR	38 F.R. Page
Chapter I	
Nomenclature changes	18235, 18380, 18381
0 Subpart L heading removed	8152
0.1 Amended	6893, 8152, 12917
0.11 Removed	18380
0.12 Removed	18380
0.15 (a) removed; (h) revised	6893
0.17 Removed	12917
0.27 (Subpart E-1) added	6893
0.37 (Subpart G-1) added	14688
0.41 (h) amended	1013
0.55 (f) and (p) amended	8152
(s) added	18380

28 CFR—Continued

Chapter I—Continued

38 F.R. Page

28 CFR—Continued

Chapter II

38 F.R. Page

1973–1974

(Regulations published from July 10, 1973 through June 30, 1974)

28 CFR

Chapter I

38(39)* F.R. Page

[1] Chapter II was deleted automatically June 30, 1973, due to failure of Congress to appropriate funds for continuance of the Subversive Activities Control Board.

NOTE: Asterisk (*) identifies changes published in 1974.

28 CFR—Continued

38(39)* F.R. Page

Chapter I—Continued

0.45 Introductory text revised....29584
0.49 Added....32805
0.50 (a) amended....26910
Introductory text revised....29584
0.55 Introductory text revised....29585
0.57 Revised....31975
0.61 Introductory text revised; (e) and (f) removed....29585
0.65 (b) amended....26910
Introductory text revised....29585
0.68 Added....28289
0.70 Introductory text revised....29585
0.75—0.77 (Subpart O) Revised....29585
0.75—0.77 (Subpart O) *Appendix Memo 483 removed....1751
0.75 *Heading and introductory text revised; (r) removed....15875
0.76 *Introductory text, (d), and (q) revised....15875
(d) revised....41977
0.77 *Redesignated as 0.78; new 0.77 added....15875
0.78 *Redesignated from 0.77....15875
0.85 *Introductory text revised....15875
0.90—0.91 (Subpart P-1) *Added....18646
0.95 *Introductory text revised....15875
0.100—0.104 (Subpart R) Appendix amended....34662
*Appendix amended...4080, 10581, 18646
0.100 *Introductory text revised....15875
0.101 *Introductory text revised....15875
0.105 *Introductory text revised....15875
0.111 Introductory text revised....29586
0.115 Introductory text revised....29586
0.116 Introductory text revised....29586
0.125 Introductory text revised....29586
0.127 Revised....23311
0.128 Added....23311
0.129 Added....23311
0.129-2 Added....23311
0.132 (a) revised....29466
0.132 *(a) revised....10430
0.135 Removed....29586
0.136 Removed....29586

28 CFR—Continued

38(39)* F.R. Page

Chapter I—Continued

0.137 Amended....29586
0.138 Revised....29586
0.138a *Added....15875
0.139 (a) amended....29587
*Amended....15875
0.140 Amended....29587
*Amended....15875
0.141 Amended....29587
*Amended....15875
0.142 Amended....29587
*Amended....15875
0.143 Amended....29587
*Amended....15875
0.144 Amended....29587
*Amended....15875
0.145 Amended....29587
*Amended....15875
0.147 Revised....29587
*Revised....15875
0.148 Amended....29587
*Amended....15875
0.149 Amended....29587
*Amended....15875
0.150 Revised....29587
*Amended....15875
0.151 Amended....29587
*Amended....15875
0.152 Amended....29587
*Amended....15875
0.153 Amended....29587
*Amended....15875
0.154 Amended....29587
*Amended....15875
0.155 Amended....29587
*Amended....15875
0.159 Revised....29587
0.160—0.172 (Subpart Y) Appendix amended....21495, 33471
0.160 (b) amended....29587
0.161 Heading revised; text amended....29587
0.164 (b) amended....29587
0.165 Amended....29587
0.167 Introductory text and (c)(3) amended....29587
*Heading amended....18646
0.168 (b) amended....29587
0.171 (a) amended....29587
0.172 *Amended....15875
0.175 (b) and (c) amended....27285
0.190 Revised....29587
2 Revised....26652
*Revised....15875, 20028
*Effective date established....23261

NOTE: Asterisk (*) identifies changes published in 1974.

28 CFR—Continued

Chapter I—Continued

38(39)* F.R. Page

2.52 Added 31942
3.2 Revised 29588
3.6 Amended 29588
5.1 *(c) amended 18646
5.2 *Introductory text amended 18646
5.400 *(a) amended 18646
5.401 *(a) amended 18646
5.600 *Amended 18646
11.100 *Amended 18646
11.200 *Amended 18646
11.201 *Amended 18646
11.202 *Amended 18646
11.206 *Amended 18646
11.207 *Amended 18646
11.300 *Amended 18646
16.2 *Amended 18646
16.3 (a) amended 29588
*(a) amended 15875
16.4 Revised 29588
*Revised 15875
16.5 Amended 29588
*Amended 15875
16.7 (d) amended 29588
*(d) amended 15875
16.8 Amended 29588
*Amended 15875
16.30—16.34 (Subpart C) Added 32806
17.1 (a) amended 22777
17.36 (c) revised 22777
Heading corrected 26448
17.38 Revised 22778
*Heading amended 18646
17.50 Amended 22777
17.56 Amended 22777
17.67 Amended 22777
17.75 Amended 22777
19 *Added 4736
42.101—42.112 (subpart C) Appendix A revised 17956
42.103 Amended 17955
42.104 (b)(1)(vii) added; (b)(3) and (4) redesignated as (b)(4) and (5); new (b) (3) and (6) added; (c) designated as (c)(1) and amended; (c)(2) added 17955
42.105 (a) designated as (a)(1) and amended; (a)(2) and (d) added 17955
42.106 (b) amended 17955
42.107 (b) amended 17955
42.109 (b) and (d) amended 17955
42.110 (g) added 17956
42.112 (a) and (d) amended 17956

28 CFR—Continued

Chapter I—Continued

38(39)* F.R. Page

*(d) (38 FR 17956) correctly designated as (c) 18646
42.301—42.308 (Subpart E) Revised 23516
45.735-22 *(c)(2) revised 16444
48 *Added 7
48.16 *Heading amended 18646
50.6 Amended 34804
50.7 Added 19029
50.8 Added 19029
50.9 Added 19123
50.10 Added 29588
50.11 Added 34203
50.12 *Added 23056

1974–1975

(Regulations published from July 1, 1974 through June 30, 1975)

28 CFR

Chapter I

39 (40†) FR Page

0.1 Amended 31527
Amended ..... †3410
0.17 Amended 31527
0.18 Added ..... †6496
0.39—0.39b (Subpart G-2) Added ..... †3410
0.41 (i) added ..... †24726
0.43 Added 25487
0.57 Revised 37771
0.75—0.77 (Subpart O) Appendix; CFR correction ..... †8075
0.76 (d) revised 41977
0.95—0.99 (Subpart Q) Appendix revised 36009
0.95 (i) revised 37771
0.100—0.104 (Subpart R) Appendix amended 4419, 40584
0.147 Amended ..... 28154; †24726
2 Effective date amended 31882, 35165
Revised 45223
Revised ..... †10973
2.4 Revised ..... †5357
2.11 (c) revised ..... †5357
2.17 Revised ..... †5357
2.20 Revised ..... †5358
2.27 Revised ..... †5361
2.28 Revised ..... †5361
2.30 Revised ..... †5361
2.31 Revised ..... †5361
2.37 Revised ..... †5361
4a Added ..... †3210L
9a.7 Amended 43537

NOTE: Asterisk (*) identifies changes published in 1974.

NOTE: Symbol (†) refers to 1975 page numbers.

28 CFR—Continued

39 (40†) FR Page

Chapter I—Continued

11 Removed.....29594
15 Heading revised.....†4910
15.1 Amended.....†4910
15.3 Amended.....†4910
15.4 Removed.....†4910
16.2 Amended.....†6496, 7262
16.3 (a), (b), and (d) revised; (e) removed.....†6496, 7262
16.4 Revised.....†6496, 7263
16.5 Revised.....†6497, 7263
16.6 (b) and (d) revised.....†6497, 7263
16.7 Revised.....†6497, 7264
16.8 (c) revised.....†6498, 7264
16.9 (a) and (b)(2), (6), and (7) amended; (b)(3) removed; (b)(8) and (c) revised; new (b)(9) and (10) added.....†7265
16.10 (b) revised.....†6498, 7264
20 Added.....†22114
45.735-22 (c)(2)(xx) revised.....26023
(c)(2)(ii) amended.....31527
50.2 (b)(4) revised.....†22119

1975–1976

(Regulations published from July 1, 1975 through June 30, 1976)

28 CFR

40(41Δ)FR Page

Chapter I

0.1 Amended.....42745, 58643
0.6 Added.....42745
(c) redesignated as (d); new (c) added.....Δ5634
0.0.7 Amended.....42746
0.10 Added.....Δ7748
0.17 Removed.....42746
0.18 Amended.....33214
0.25 Amended.....42746
0.27 Amended.....42746
0.39—0.39c (Subpart G-2) Revised.....58643
0.40—0.43 (Subpart H) Revised.....36118
0.50—0.52 (Subpart J) Appendix added.....44326
0.55—0.64 (Subpart K) Appendix added.....36564
0.75 (r) added.....Δ26857
0.76 (g) revised.....58644
0.85 Introductory text revised....42746
0.95—0.99 (Subpart Q) Appendix revised.....Δ3289
0.96 (r) added.....Δ8346
0.100—0.104 (Subpart R) Appendix amended.....Δ22815

Note: Symbol (Δ) refers to 1976 page numbers.

28 CFR—Continued

40(41Δ)FR Page

Chapter I—Continued

0.150 Revised.....58644
0.179—0.179a (Subpart Z-1) Added.....53390
2 Revised.....41331
2.20 Table added.....Δ19333
Corrected.....Δ22344
4 Revised.....Δ3853
Nomenclature changes.....Δ24349
4a Revised.....Δ3855
Nomencature changes.....Δ24349
4a.15 Corrected.....Δ5387
16.7 (b) through (f) redesignated as (c) through (g); new (b) added; (c), (f), and (g) amended.....33214
16.8 (b) amended.....33214
16.23 (b)(2) (ii) and (iii) amended; (b)(2)(iv) added.....Δ20163
16.40—16.57 (Subpart D) Added.....50642
16.48 (b) corrected.....52007
16.70—16.101 (Subpart E) Added.....Δ12640
20.1—20.3 (Subpart A) Revised.....Δ11714
20.20—20.26 (Subpart B) Revised.....Δ11715
20.20 (b) and (c) hearing.....52846
20.21 (b), (c), and (d) hearing.....53846
Introductory text amended.....59204
50.9 Revised.....Δ10222
50.13 Added.....34114
55 Added.....46080
57 Added.....Δ12302

1976–1977

(Regulations published from July 1, 1976, through June 30, 1977)

28 CFR

41 (42*) FR Page

Chapter I

0 Technical correction.....36650
0.1 Amended.....*15314
0.6 (d) redesignated (e); new (d) added.....*4440
Revised.....*8140
0.8 Added.....*15314
0.13 Added.....*26205
0.15 (b)(8) redesignated as (b)(9); new (b)(8) added.....*5054
(b) revised; (c) removed.....*15315
(b) (5) redesignated as (b)(6); new (b)(5) added.....*22557
0.16 Revised.....46598
0.18 Revised.....55179

NOTE: Symbol (*) refers to 1977 page numbers.

28 CFR—Continued

41 (42*) FR Page

Chapter I—Continued

Technical correction *3163
0.20 (e) amended *15315
0.25 (m) amended *15315
0.27 (d) amended *15315
0.30 Nomenclature change *15315
0.40 Nomenclature change *15315
(a) amended *26205
0.41 Nomenclature change *15315
0.43 Removed *26205
0.45 (h) amended 54176
Nomenclature change *15315
0.50 Nomenclature change *15315
(a) amended *26205
0.55 (d) amended 52454
(i) revised 54176
0.60 Removed *26205
0.61 (d) revised 54176
0.64-1 Added *12853
0.65 (f) and (g) added 52454
Nomenclature change *15315
0.70 Nomenclature change *15315
0.75 Nomenclature change *15315
Amended *25499
(r) removed *32537
0.76 Nomenclature change *15315
Amended *25499
0.77 Nomenclature change *15315
Amended *25499
0.85 Introductory text revised *15315
0.95—0.99 (Subpart Q) Appendix amended 56802
0.96 (t) added 56802
0.105 Nomenclature change *15315
0.115 Nomenclature change *15315
0.116 Nomenclature change *15315
0.125—0.127 (Subpart V) Revised 35184
0.133 Existing text designated as (b); new (a) added *23801
(a) amended *29003
0.160—0.172 (Subpart Y) Appendix amended 53005, 53660
0.160-0.168 Nomenclature change *15315
0.171 Amended *15315
0.190 Nomenclature change *15315
2 Revised 37319
2.10 (b) revised *12045
(c) added; eff. 8-1-77 ..... *12045
2.14 (e) removed; eff. 8-1-77 ..... *31788
2.20 Table amended *12045
Revised; eff. 8-1-77 ..... *31786
2.21 (b)(2) revised *12045
2.24 (b) revised; eff. 7-25-77 ..... *31788
2.27 (a) revised; eff. 7-25-77 ..... *31788

28 CFR—Continued

41 (42*) FR Page

Chapter I—Continued

2.52 (d)(1) amended *12045
2.59 Added; eff. 7-25-77 ..... *31788
15 Heading revised *15409
15 Appendix added *32770
Authority citation corrected *17111
15.1 Revised *15409
Corrected *17111
15.2 Heading revised; existing text designated as (a); (b) added *15410
15.3 Revised *15410
16.21—16.26 (Subpart B) Appendix added *19145
16.23 (b)(2)(iii) and (iv) amended; (b)(2)(v) added *10846
16.24 (b) amended *12045
16.76 (f) and (g) added *9999
16.81 (d) and (e) added *9999
(a)(9) added; (b) revised *23506
16.88 (c) and (d) added *10000
16.90 (g) and (h) added *10000
16.91 (s) added 32423
16.92 Revised *10000
16.98 (g) and (h) added *10001
16.99 (a) (24) added; (a) undesignated paragraph and (b) through (d) revised *10001
16.200—16.208 (Subpart F) Added *14713
17.73 Corrected *29307
19.8 (d) removed 50822
19.10 (b) amended 50822
20 Appendix added 34949
22 Added 54846
25 Added 31532
30 Revised *5318
32 Added *23255
42.1 Revised *25724
42.2 (b) revised *25725
42.102 Nomenclature change *15315
42.201—42.217 (Subpart D) Revised *9497
42.206 (a) revised 28478
42.302 (f) removed *9493
42.306 (b) amended *9493
42.401—42.415 (Subpart F) Added 52669
Effective date corrected 53478
42.412 Nomenclauture change *15315
45.735-3 (b) nomenclature change *15315
45.735-5 (a)(2) nomenclature change *15315
45.735-9 (c) nomenclature change *15315

NOTE: Symbol (*) refers to 1977 page numbers.

28 CFR—Continued

41 (42*) FR Page

Chapter I—Continued
45.735-12 Nomenclature change *15315
45.735-22 (c) (2) revised 27317
(g) nomenclature change *15315
45.735-24 Nomenclature change *15315
50.6 Revised *11831
50.14 Added 51735
50.15 Added *5695
50.16 Added *5696
52 Removed *21470
55 Revised 29998
Chapter III
301.12 Redesignated as 301.21; new 301.12 added 55710
301.13 Redesignated as 301.22; new 301.13 added 55710
301.14 Redesignated as 301.23; new 301.14 added 55711
301.15 Redesignated as 301.24; new 301.15 added 55711
301.16 Redesignated as 301.25; new 301.16 added 55711
301.17 Redesignated as 301.26; new 301.17 added 55711
301.18 Redesignated as 301.27; new 301.18 added 55711
301.19 Added 55711
301.20 Added 55711
301.21 Redesignated from 301.12 55711
301.22 Redesignated from 301.13 55711
301.23 Redesignated from 301.14 55711
301.24 Redesignated from 301.15 55711
301.25 Redesignated from 301.16 55711
301.26 Redesignated from 301.17 55711
301.27 Redesignated from 301.18 55711

1977–1978

(Regulations published from July 1, 1977 through June 30, 1978)

Title 28

42(43†)FR Page

Chapter I
0.1 Amended 35970, 59384
0.7 Redesignated as 0.17 and introductory text amended ..... †26002

Note: Symbol (†) refers to 1978 page numbers.

28 CFR—Continued

42(43†)FR Page

Chapter I—Continued
0.8 Redesignated as 0.19; introductory text revised 59384
0.15 Revised ..... †26002
0.17 Redesignated from 0.7 and introductory text amended ..... †26002
0.19 (Subpart C-1) Redesignated from 0.8; introductory text revised; subpart heading added 59384
Revised ..... †26002
0.19a Added ..... †1066
Removed ..... †26002
0.37—0.38 (Subpart G-1) Removed 35970
0.40 Introductory text revised ..... †26002
0.41 (i) added ..... †8256
Introductory text revised ..... †26002
0.45a Added ..... †3115
0.50 Introductory text revised ..... †26002
0.55 (d) amended ..... †6228
Introductory text revised ..... †26002
0.61 Introductory text revised ..... †26002
0.65 (d) and (e) revised; (f) and (g) added ..... †3115
Introductory text revised ..... †26002
0.65a Added ..... †3115
0.69 Added 38177
0.70 Introductory text revised ..... †26002
0.75 Introductory text amended ..... †26003
0.76 (h) revised 40433
(w) added 41407
Introductory text amended ..... †26003
0.77 Introductory text amended ..... †26003
0.85(b) amended ..... †8137
Introductory text revised ..... †26003
0.85a Added ..... †26003
0.96b Added 63169
0.100-0.104 (Subpart R) Appendix amended 57457
0.111 (o) added ..... †20006
0.132 Revised 59384
0.133 Removed 59385
0.138 Revised 43392
0.142 Amended ..... †22969
0.143 Amended ..... †14009
0.151 Amended ..... †14009
0.160 Introductory text revised ..... †20793
0.168 (a) revised ..... †20793
0.177a Added 56730
2 Revised 39809
2.1 (c) and (d) revised 39668
(d) revised ..... †22707
2.2 Revised 41408
2.3 Revised 41408, 63774

28 CFR—Continued

42(43†)FR Page

Chapter I—Continued

2.10 (c) (3) revised 52399
2.14 (b) (1) and (2)(iii) corrected 44234
2.17 (b) (2) (ii) revised 44234
2.20 Table corrected 44234
Table amended 52399
2.22 Revised ..... †22707
2.23 (b) corrected 44234
2.25 (f) revised 39668
2.27 Revised ..... †4978
2.33 Heading corrected 44234
2.54 (b) correctly added 39669, 41408
Heading revised; (b) removed; (a) designation removed ..... †17470
2.59 Removed ..... †4977
14.5 Amended 62001
16.1—16.10 (Subpart A) Appendix added 54285
16.23(b) (2) (iv) and (v) amended; (b) (2) (vi) added ..... †19849
16.40—16.57 (Subpart D) Appendix added 54285
16.40 (d) added 37975
16.78 Removed 41409

28 CFR—Continued

42(43†)FR Page

Chapter I—Continued

16.81 (b) (1) corrected 38177
16.93 Revised 40906
16.102 Added 40907
16.200 (d) (5) revised ..... †4978
17.63 Amended 39213
17.64 Amended 39213
20.21 (a) (1) and (b) amended 61595
20.23 Amended 61596
22.2 (h) revised; (j) added ..... †16974
22.20 (a) amended ..... †16974
22.22 (a) (2) revised ..... †16974
32.24 (a) and (i) redesignated as (i) and (j); new (h) added 39386
42.2 Amended 35646
43.3 Nomenclature change ..... †1066
45.735-12 (d) added 64119
45.735-22 (c) (2) (viii) removed 35970
50.11 Revised 55470
55.18 (a) amended 35970
55 Appendix revised 35971

Chapter III

301.21 Revised ..... †28466

NOTE: Symbol (†) refers to 1978 page numbers

END