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PART I
(Part II begins on page 6121

HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

(Continued inside)

REMINDERS

NOTE: There were no items published after October 1, 1972, that are eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

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List of CFR Parts Affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears following the Notices section of each issue beginning with the second issue of the month. In the last issue of the month the cumulative list will appear at the end of the issue.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1973, and specifies how they are affected.

Presidential Documents

Title 3—The President

PROCLAMATION 4191

Red Cross Month, 1973

By the President of the United States of America

A Proclamation

Each year, in the spirit of good neighborliness, millions of Americans pool their resources and efforts under the Red Cross banner to help others in distress or need.

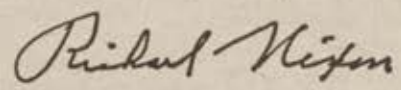
The services of the Red Cross assist many kinds of people. They help provide lifesaving blood for the ill and injured; help restore the shattered lives of disaster victims; help our servicemen, veterans, and their families in periods of emergency; and help save lives and lessen suffering through training in first aid, water safety, and simple nursing skills.

While these could be called the basic purposes of the Red Cross, the organization also seeks out new areas of concern in American life. The Red Cross has helped the elderly to obtain government food assistance, the veteran to readjust to civilian life, the drug abuser to seek help, the migrant worker to better his living standards, and the student to obtain tutoring assistance.

Although the Red Cross receives the cooperation of many Federal, State, and local agencies, it derives its major financial support from the voluntary contributions of the American people. During the past year the Red Cross has been operating under an especially heavy financial burden because of outlays for disaster relief following the flood in Rapid City, South Dakota, and the Hurricane Agnes tragedy. I urge every American to help ensure that the Red Cross has the funds and volunteer manpower to fulfill its responsibilities during the year ahead. Helping the Red Cross—the Good Neighbor—continue its wide range of assistance programs is one way in which each of us can help our communities and our country.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America and Honorary Chairman of the American National Red Cross, do hereby designate March 1973 as Red Cross Month, a month when every citizen is asked to join, serve, and contribute.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of March, in the year of our Lord nineteen hundred seventy-three, and of the Independence of the United States of America the one hundred ninety-seventh.



[FR Doc.73-4184 Filed 3-5-73;11:35 am]

NOTE: For the text of a Presidential memorandum dated March 3, 1973, and issued in connection with Proc. 4191, above, see Weekly Comp. of Pres. Docs., Vol. 9, No. 9, issue of March 5, 1973.

Rules and Regulations

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Defense

Section 213.3306 is amended to show that one position of Private Secretary to the Principal Deputy Assistant Secretary (Public Affairs) is excepted under Schedule C.

Effective on March 6, 1973, § 213.3306 (a) (48) is added as set out below.

§ 213.3306 Department of Defense.

(a) *Office of the Secretary.* * * *

(48) One Private Secretary to the Principal Deputy Assistant Secretary (Public Affairs).

* * * * *

(5 U.S.C. secs. 3301, 3302, E.O. 15077; 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73–4236 Filed 3–5–73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

Section 213.3316 is amended to show that two additional positions of Confidential Assistant to the Under Secretary are excepted under Schedule C.

Effective on March 6, 1973, § 213.3316 (a) (6) is amended as set out below.

§ 213.3316 Department of Health, Education, and Welfare.

(a) *Office of the Secretary.* * * *

(6) Six Confidential Assistants to the Under Secretary.

* * * * *

(5 U.S.C. secs. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73–4235 Filed 3–5–73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Transportation

Section 213.3394 is amended to show that one position of Confidential Secretary to the Assistant to the Secretary is excepted under Schedule C.

Effective on March 6, 1973, § 213.3394 (a) (32) is added as set out below.

§ 213.3394 Department of Transportation.

(a) *Office of the Secretary.* * * *

(32) One Confidential Secretary to the Assistant to the Secretary.

* * * * *

(5 U.S.C. secs. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73–4237 Filed 3–5–73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Housing and Urban Development

Section 213.3384 is amended to show that the following positions are excepted under Schedule C: One Private Secretary to the Executive Assistant to the Secretary and one Private Secretary to the Assistant to the Secretary (Public Affairs).

Effective on March 6, 1973, § 213.3384 (a) (35) and § 213.3384(a) (36) are added as set out below.

§ 213.3384 Department of Housing and Urban Development.

(a) *Office of the Secretary.* * * *

(35) One Private Secretary to the Executive Assistant to the Secretary.

(36) One Private Secretary to the Assistant to the Secretary (Public Affairs).

* * * * *

(5 U.S.C. secs. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp. p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73–4238 Filed 3–5–73;8:45 am]

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 130—COST OF LIVING COUNCIL PHASE III REGULATIONS

Pay Adjustments Affecting Employees in Construction

Part 130 is amended in subpart H by revising § 130.72. The existing provision is redesignated as paragraph (a) and a new paragraph (b) is added to reflect the Cost of Living Council's decision to extend the jurisdiction of the Construction Industry Stabilization Committee (CISC) to authorize review of certain collective bargaining agreements which are closely related to construction. Under the amended regulation and Council Order No. 20, the CISC will review pay adjustments relating to nonconstruction operations covered by a construction collective bargaining agreement. CISC review will also ertend to certain nonconstruction agreements which continue close historical relationships which have been established with respect to construction agreements, or provide for substantially the same levels of compensation, and which involve delivery and/or onsite application of materials under circumstances in which a dispute involving a nonconstruction agreement would cause more than a marginal interruption in onsite construction operations.

These agreements were subject to Council or Pay Board regulations during Phases I and II of the Economic Stabilization Program and the historical relationships were preserved between employees in the construction industry and the nonconstruction employees subject to the agreements described above. The Council has determined that many of the same factors affect both construction employees and those nonconstruction employees which are subject to new § 130.72(b), as set forth herein. This amendment is therefore necessary to assure continued stability in the construction industry and to preserve certain historical relationships with employee units outside the construction industry.

Because the purpose of this amendment is to provide immediate guidance as to Cost of Living Council policy, I find that publication in accordance with normal rulemaking procedure is impracticable and that good cause exists for making these regulations effective in less than 30 days. Interested persons may submit comments regarding these regulations. Communications should be addressed to the Office of General Counsel, Cost of Living Council, Washington, D.C. 20507.

(Economic Stabilization Act of 1970, title II of Public Law 92–210, 85 Stat. 743 and Executive Order 11695, 38 FR 1473)

In consideration of the foregoing, Part 130 of Title 6 of the Code of Federal Regulations is amended as set forth herein, effective January 11, 1973.

Issued in Washington, D.C., on February 28, 1973.

JAMES W. MCLANE,
Deputy Director,
Cost of Living Council.

Section 130.72 is amended by redesignating the existing provision as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 130.72 Pay adjustments.

* * * * *

(b) In addition to those pay adjustments determined to be pay adjustments affecting employees in construction under the rules and regulations of the Cost of Living Council, the Pay Board, and the Construction Industry Stabilization Committee in effect on January 10, 1973, the term "pay adjustments affecting employees in construction", within the meaning of paragraph (a) of this section, includes—

(1) Pay adjustments under the terms of a construction industry collective bargaining agreement which covers both construction and nonconstruction operations; and

(2) Pay adjustments under the terms of a nonconstruction collective bargaining agreement which—

(i) Continues a close historical relationship which has been established with respect to a construction industry collective bargaining agreement or sequence of agreements, or provides substantially the same levels of compensation as provided in a construction industry collective bargaining agreement; and

(ii) Covers delivery of materials to a construction site and/or onsite application of materials under circumstances in which a dispute involving such nonconstruction agreement would cause onsite construction operations to be more than marginally interrupted.

[FR Doc.73-4211 Filed 3-5-73;8:45 am]

Title 7—Agriculture

CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MILK), DEPARTMENT OF AGRICULTURE

[Milk Order No. 79]

PART 1079—MILK IN DES MOINES, IOWA, MARKETING AREA

Order Terminating Certain Provisions

This termination order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Des Moines, Iowa, marketing area.

Notice of proposed rule making was published in the FEDERAL REGISTER (38 FR 4346) concerning a proposed suspension or termination of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed thereon, and other available information, it is hereby found and determined that the following provisions of the order no longer tend to effectuate the declared policy of the Act:

In § 1079.44, all of paragraph (c), and in paragraph (d) the provisions "located not more than 150 miles by the shortest highway distance, as determined by the market administrator, from the nearest of the post offices of Corydon, Creston, Des Moines, Grinnell, Jefferson, and Ottumwa".

STATEMENT OF CONSIDERATION

This action terminates the provisions in the order that provide automatic Class I classification for milk that is transferred or diverted from a pool plant to a nonpool plant located more than 150 miles from the nearest of the six basing points listed above.

The termination was requested by a cooperative association supplying a pool distributing plant with milk produced in the vicinity of Caledonia, Minn. When this milk supply is not needed at the pool distributing plant it is moved to a nonpool manufacturing plant located in the production area.

Caledonia is located more than 150 miles from the nearest of the basing points. The provisions providing for automatic Class I classification of milk moved to a nonpool plant so located have been made inoperative by suspension actions since September 1971. Termination of the provisions will assure the continued classification of milk disposed of to nonpool plants located beyond 150 miles from the basing points on the basis of its actual use and, therefore, facilitate the economical disposition of reserve milk supplies to nearby nonpool manufacturing plants for Class II use.

Deletion of provisions providing mileage limitations on transfers and diversions of milk for Class II use is proposed in the recommended decision for 33 orders (including this order) issued August 28, 1972 (37 F.R. 19482). There were no exceptions received to this particular finding.

The present suspension order expires February 28, 1973. This termination action will enable the proponent cooperative association to continue providing an orderly marketing program for its member producers in the Caledonia area who have been associated with the Des Moines market.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This termination is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that it will facilitate the economical disposition of certain of the market's reserve milk supplies.

(b) This termination order does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rule making was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this termination. No views were received in opposition to the proposed rule making.

Therefore, good cause exists for making this order effective March 6, 1973.

It is therefore ordered, That the aforesaid provisions of the order are hereby terminated.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Effective date: March 6, 1973.

Signed at Washington, D.C., on February 28, 1973.

CLAYTON YEUTTER,
Assistant Secretary.

[FR Doc.73-4205 Filed 3-5-73;8:45 am]

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

MISCELLANEOUS AMENDMENTS TO CHAPTER

Pursuant to 5 U.S.C. 552 and the authority contained in 8 U.S.C. 1103 and 8 CFR 2.1, miscellaneous amendments, as set forth herein are prescribed in Parts 100, 341, and 343a of Chapter I of Title 8 of the Code of Federal Regulations.

On February 8, 1973, notice was published in the FEDERAL REGISTER (38 FR 3595) of the revocation, effective March 12, 1973, of the international airport status of Greater Buffalo International Airport, Buffalo, N.Y. In Part 100, § 100.4 is, therefore, being amended to delete that airport from the listing of ports of entry for aliens arriving by aircraft.

In Part 341, § 341.5 is amended for clarification to provide that the report containing the findings and recommendations of the officer acting on an application for a certificate of citizenship shall be prepared either by formal order or by completing the preprinted form in the Form N-600 application.

In Part 343a, § 343a.2 is amended to provide for the return to the person to whom issued of a certificate of citizenship in a service file which was surrendered on a finding that loss of U.S. nationality had occurred pursuant to section 301(b) of the Immigration and Nationality Act, the provisions of which were extended by section 301(c) of the Act to persons born after May 24, 1934, and which finding is no longer valid in view of the amendment to section 301(b) by Public Law 92-584 enacted October 27, 1972.

In the light of the foregoing, the following amendments to Chapter I of Title 8 of the Code of Federal Regulations are hereby prescribed:

PART 100—STATEMENT OF ORGANIZATION

§ 100.4 [Amended]

In subparagraph (3) Ports of entry for aliens arriving by aircraft of paragraph (c) Suboffices of § 100.4 Field Service, District No. 7—Buffalo, N.Y., is amended by deleting therefrom the following international airport listing: "Buffalo, N.Y., Greater Buffalo International Airport."

PART 341—CERTIFICATES OF CITIZENSHIP

In § 341.5, the first sentence is amended to read as follows:

§ 341.5 Report and recommendation.

The officer assigned to act on the application shall prepare a report containing his findings and recommendation, by completing the preprinted form in the Form N–600 application, or by formal order, as appropriate.* * *

PART 343a—NATURALIZATION AND CITIZENSHIP PAPERS LOST, MUTILATED, OR DESTROYED; NEW CERTIFICATE IN CHANGED NAME; CERTIFIED COPY OF REPATRIATION PROCEEDINGS

In § 343a.2, the first sentence is amended to read as follows:

§ 343a.2 Return or replacement of surrendered certificate of naturalization or citizenship.

A certificate of naturalization or citizenship in a service file which was surrendered on a finding that loss of U.S. nationality had occurred directly or through a parent by reason of section 404 (b) or (c) of the Nationality Act of 1940 or section 352 of the Immigration and Nationality Act and which finding is no longer valid in view of "Schneider v. Rusk," 377 U.S. 163, or a certificate of naturalization or citizenship in a service file which was surrendered on a finding that loss of U.S. nationality had occurred pursuant to section 401(e) of the Nationality Act of 1940 or section 349(a)(5) of the Immigration and Nationality Act and which finding is no longer valid in view of "Afroyim v. Rusk," 387 U.S. 253, or a certificate of citizenship in a service file which was surrendered on a finding that loss of U.S. nationality had occurred pursuant to section 301(b) of the Immigration and Nationality Act, the provisions of which were extended by section 301(c) of the same Act to persons born after May 24, 1934, and which finding is no longer valid in view of the amendment to section 301(b) on October 27, 1972, Public Law 92–584, may be returned to the person to whom it was issued, notwithstanding the fact that he has since been naturalized or repatriated in the United States or abroad.* * *

Compliance with the provisions of section 553 of title 5 of the United States Code (80 Stat. 383), as to notice of proposed rule making and delayed effective date is unnecessary in this instance and would serve no useful purpose because the amendment to § 100.4(c)(3) relates to agency management; the amendment to § 341.5 relates to agency procedure and is clarifying in nature; and the amendment to § 343a.2 is in implementation of Public Law 92–584 (86 Stat. 1289) enacted October 27, 1972, and confers benefits on persons affected thereby.

Effective date. This order shall become effective on March 6, 1973, except with regard to the amendment to § 100.4(c)(3) which shall become effective March 12, 1973.

Dated: February 28, 1973.

RAYMOND F. FARRELL,
Commissioner of Immigration and Naturalization.

[FR Doc.73-4214 Filed 3-5-73;8:45 am]

Title 10—Atomic Energy

CHAPTER I—ATOMIC ENERGY COMMISSION

PART 50—LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Reactor Containment Leakage Testing for Water-Cooled Power Reactors

Correction

In FR Doc. 73–2786 appearing at page 4385 in the issue of Wednesday, February 14, 1973, the following changes should be made:

1. In the third column on page 4387:

a. In paragraph (2), the first line should read, *"Peak pressure tests.* The leakage rate".

b. In the second line of paragraph B.1. *Test methods.*, delete the article "a".

c. The heading for paragraph C. should read *"Type C tests."*

2. On page 4388, in the second column, transfer the heading "V. INSPECTION AND REPORTING OF TESTS" to appear above "A. *Containment inspection.* A general in-".

Title 32—National Defense

CHAPTER VI—DEPARTMENT OF THE NAVY

MISCELLANEOUS AMENDMENTS TO CHAPTER

Chapter VI of Title 32 is amended by revising Parts 719, 720, 727, 750, 751, 753, 756, and 757 to read as follows.

PART 719—REGULATIONS SUPPLEMENTING THE MANUAL FOR COURTS-MARTIAL

Part 179 of Title 32 is revised to read as follows:

Subpart A—Nonjudicial Punishment

Sec.
719.101 General Provisions.
719.102 Letters of censure.

Subpart B—Convening Courts-martial

Sec.
719.103 Designation of additional convening authorities.
719.104 Preparation of convening orders.
719.105 Changes in membership after court has been assembled.
719.106 Convening special courts-martial.
719.107 Restrictions on exercise of court-martial jurisdiction.
719.108 Superior competent authority defined.

Subpart C—Trial Matters

Sec.
719.109 Trial guides.
719.110 Reporters and interpretors.
719.111 Oaths.
719.112 Authority to grant immunity from prosecution.
719.113 10 U.S.C. 839(a) sessions.
719.114 Pretrial agreements in general and special courts-martial.
719.115 Release of information pertaining to accused persons; spectators at judicial sessions.
719.116 Preparation and forwarding of charges.
719.117 Optional matter presented when court-martial constituted with military judge.
719.118 Court-martial punishment of reduction in grade.
719.119 Forfeitures, detentions, fines.
719.120 Preparation of records of trial.

Subpart D—Post-trial Matters

719.121 Request for appellate defense counsel.
719.122 Review by staff judge advocate.
719.123 Action on courts-martial by convening authority.
719.124 Promulgating orders.
719.125 Review of summary and special courts-martial.
719.126 Action on special courts-martial by general court-martial convening authorities.
719.127 Supervision over court-martial records and their disposition after review in the field.
719.128 Criminal activity, disciplinary infractions, and court-martial report.
719.129 Remission and suspension.
719.130 Effective date of confinement and forfeitures when previous sentence not completed.
719.131 Vacation of suspension.
719.132 Approval of sentences extending to dismissal of an officer.
719.133 Service of decision of Navy Court of Military Review on accused.
719.134 Execution of sentence.
719.135 Request for immediate execution of discharge.
719.136 Filing of court-martial records.

Subpart E—Miscellaneous Matters

719.137 Financial responsibility for costs incurred in support of courts-martial.
719.138 Fees of civilian witnesses.
719.139 Warrants of attachment.
719.140 Security of classified matter in judicial proceedings.
719.141 Court-martial forms.
719.142 Suspension of counsel.
719.143 Petition for new trial under 10 U.S.C. 873.
719.144 Application for relief under 10 U.S.C. 869 in cases which have been finally reviewed.
719.145 Set-off of indebtedness of a person against his pay.
719.146 Authority to prescribe regulations relating to the designation and changing of places of confinement.
719.147 Apprehension by civilian agents of the Naval Investigative Service.
719.148 Search and seizure forms.
719.149 Interrogation of criminal suspects form.
719.150 Court-martial case report.

AUTHORITY: Military Personnel and Civilian Employees Claims Act of 1964, as amended (31 U.S.C. 240–243).

Subpart A—Nonjudicial Punishment

§ 719.101 General provisions.

(a) *Authority to impose*—(1) *Multi-service commander.* In addition to the categories of officers authorized to impose nonjudicial punishment under 10 U.S.C. 815(b), the commander of a multi-service command to whose staff or command members of the naval service are

assigned may designate one or more naval units and shall for each such naval unit designate a commissioned officer of the naval service as commanding officer for the administration of discipline under 10 U.S.C. 815. A copy of any such designation by the commander of a multiservice command shall be furnished to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, and to the Judge Advocate General.

(2) *General authority.* Pursuant to the authority of 10 U.S.C. 815 and to the provisions of chapter XXVI, MCM, and except as provided in paragraph (b) of this section, nonjudicial punishment may be imposed in the naval service for minor offenses as follows:

(i) *Upon officers and warrant officers.* Any commanding officer, including a commanding officer as designated pursuant to subparagraph (1) of this paragraph, may impose upon officers of his command admonition or reprimand and restriction to certain specified limits, with or without suspension from duty, for not more than 15 consecutive days. Officers of the grade of major or lieutenant commander, or above, who are authorized to impose nonjudicial punishment, may in addition to admonition or reprimand, impose restriction for not more than 30 consecutive days. Only an officer of general or flag rank in command may impose the additional punishments authorized by 10 U.S.C. 815(b)(1)(B). See also subparagraph (4) of this paragraph.

(ii) *Upon other personnel.* Any commanding officer, including a commanding officer as designated pursuant to subparagraph (1) of this paragraph, may impose upon enlisted men of his command, and any commissioned officer who is designated as officer in charge of a unit by Departmental Orders, Tables of Organization, manpower authorizations, orders of a flag or general officer in command (including one in command of a multiservice command to which members of the naval service are attached), or orders of the Senior Officer Present, may impose upon enlisted men assigned to his unit, admonition or reprimand and one or more of the punishments authorized by 10 U.S.C. 815(b)(2)(A) through (G). Only commanding officers of the grade of major or lieutenant commander or above may impose the increased punishments authorized by 10 U.S.C. 815(b)(2)(H).

(3) *Jurisdiction over individual.*—(i) *General rule.* At the time nonjudicial punishment is imposed, the accused must be a member of the command of the commanding officer, or of the unit of the officer in charge, who imposes the punishment. A person is "of the command" or "of the unit" if he is assigned or attached thereto, and a person may be "of the command" or "of the unit" of more than one command or unit at the same time, such as persons assigned or attached to commands or units for the purpose of performing temporary additional duty.

(ii) *Issuance of letter of censure to party before fact-finding body.* A person who has been designated a party before a fact-finding body convened under these regulations (*see* Subpart J of this part) remains thereafter "of the command" of the unit or organization to which he was assigned or attached at the time of such designation for the purpose of imposition of the sole nonjudicial punishment of a letter of admonition or reprimand, even though for other purposes he may have been assigned or attached to another command before such letter was delivered to him. This status terminates automatically when all action contemplated by 10 U.S.C. 815, including action on appeal, has been completed respecting the letter of admonition or reprimand.

(iii) *Action when accused no longer with command.* Except as provided in subdivision (ii) of this subparagraph, if at the time nonjudicial punishment is to be imposed the accused is no longer assigned or attached to the unit, the alleged offense should be referred for appropriate action to a competent authority in the chain of command over the individual concerned. In the case of an officer, the referral normally should be to the officer who exercises general court-martial jurisdiction over him.

(4) *Nonjudicial punishment of reservists on active duty for training or inactive duty training.* If all aspects of the procedures specified by 10 U.S.C. 815, and paragraph 133b, MCM, which require the presence of the accused are conducted prior to the termination of the drill or training period during which the act for which punishment is imposed occurs, the imposition of punishment may occur subsequent to the termination of such drill or training period at a time at which the reservist is not subject to the Uniform Code of Military Justice. See paragraph 11d, MCM.

(i) Even though no proceedings are conducted during the drill or training period during which the act for which punishment is imposed occurs, nonjudicial punishment may be imposed if all aspects of the procedures described by 10 U.S.C. 815, and paragraph 133b, MCM, which require the presence of the accused are conducted on a subsequent period, or subsequent periods, of active duty for training or inactive duty training, unless there has been an intervening discharge or some equivalent change of status.

(ii) As a matter of policy, any physical restraint pending nonjudicial punishment, or imposed as nonjudicial punishment, shall not extend beyond the normal time of termination of a drill or training period.

(5) *Delegation to a "principal assistant" under 10 U.S.C. 815(a).* With the express prior approval of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, a flag or general officer in command may delegate all or a portion of his powers under 10 U.S.C. 815 to a senior officer on his staff who is eligible to succeed to command in case of absence of such officer in command. To the extent of the authority thus delegated, the officer to whom such powers are delegated shall have the same authority as the officer who delegated the powers.

(6) *Withholding of 10 U.S.C. 815 punitive authority.* Unless specifically authorized by the Secretary of the Navy, commanding officers of the Navy and Marine Corps shall not limit or withhold the exercise by subordinate commanders of any disciplinary authority they might otherwise have under 10 U.S.C. 815.

(b) *Limitations on imposition of nonjudicial punishment.*—(1) *Demand for trial.* A person in the Navy or Marine Corps who is attached to or embarked in a vessel does not have the right to demand trial by court-martial in lieu of nonjudicial punishment.

(2) *Cases previously tried in civil courts.* The provisions of § 719.107(e) with respect to trial by summary court-martial of persons whose cases have been previously adjudicated in domestic or foreign criminal courts apply also to the imposition of nonjudicial punishment in such cases.

(3) *Units attached to a ship.* The commanding officer or officer in charge of a unit attached to a ship of the Navy for duty therein should, as a matter of policy, refrain from exercising his powers to impose nonjudicial punishment. All such matters should be referred to the commanding officer of the ship for disposition. This policy shall not be applicable to Military Sea Transportation Service vessels operating under a master, nor is it applicable where an organized unit is embarked for transportation only.

(4) *Correctional custody.* This punishment shall not be imposed upon persons in grade E–4 and above.

(5) *Confinement on bread and water or diminished rations.* This punishment shall not be imposed upon persons in grade E–4 and above.

(6) *Extra duties.* Subject to the limitations set forth in paragraph 131c(6), MCM, this punishment shall be considered satisfied when the enlisted person shall have performed extra duties during available time in addition to performing his military duties. Normally the immediate commanding officer of the accused will designate the amount and character of the extra duties to be performed. The daily performance of the extra duties, before or after routine duties are completed, constitutes the punishment whether the particular daily assignment requires 1, 2, or more hours, but normally extra duties should not extend to more than 2 hours per day. Extra duty shall not be performed on Sunday although Sunday counts in the computation of the period for which such punishment is imposed. Guard duty shall not be assigned as punishment.

(7) *Reduction in grade.* Subject to the provisions of paragraph 131c(7), MCM, this punishment shall not be imposed except to the next inferior grade. Reduction in grade may be imposed only if the condition concerning promotion authority specified in paragraph 131, MCM, is met.

(8) *Arrest in quarters.* An officer or warrant officer undergoing this punishment shall not be required to perform

duties involving the exercise of authority over any person who is otherwise subordinate to him.

(9) *Forfeiture and detention.* The monthly contribution from his pay that an enlisted person in pay grade E–4 (4 years or less service) or below with dependents is required by law to make to entitle him to a basic allowance for quarters is $40. As provided in paragraphs 131c (8) and (9); MCM, this amount must be deducted before the net amount of pay subject to forfeiture or detention is computed. When a punishment of a person in pay grade E–4 or above includes both reduction to pay grade E–4 (4 years' or less service) or below and forfeiture or detention, $40 must be deducted before computing the net amount of pay subject to forfeiture or detention.

(c) *Nonpunitive measures.* (1) Commanding officers and officers in charge are authorized and expected to use nonpunitive measures, including administrative withholding of privileges not extending to deprivation of normal liberty, in furthering the efficiency of their commands.

(2) These measures are not punishment and may be administered either orally or in writing. (See paragraph 128c, MCM.) Nonpunitive letters of censure, other than those issued by the Secretary of the Navy, shall not be forwarded to the Bureau of Naval Personnel or the Commandant of the Marine Corps, quoted or appended to fitness reports, or otherwise included in the official departmental records of the recipient. A sample nonpunitive letter of caution is set forth for guidance in appendix section 1–a.[1]

(d) *Procedures.* (1) The procedures prescribed in paragraph 133b, MCM, and in this subsection shall be followed in imposing nonjudicial punishment. The requirements of paragraphs (d) and (e) of this section are also applicable if a letter of admonition or reprimand is to be imposed as punishment.

(2) If nonjudicial punishment is contemplated on the basis of the record of a court of inquiry or other fact-finding body, a preliminary examination shall be made of such record to determine whether the individual concerned was accorded the rights of a party before such fact-finding body and, if so, whether such rights were accorded with respect to the act or omission for which nonjudicial punishment is contemplated. If the individual concerned was accorded the rights of a party with respect to the act or omission for which nonjudicial punishment is contemplated, such punishment may be imposed without further proceedings. If the individual concerned was not accorded the rights of a party with respect to the offense for which punishment is contemplated, the impartial hearing prescribed in paragraph 133b, MCM, must be conducted. In the alternative, the record of the fact-finding body may be returned for additional proceedings during which the individual concerned shall be accorded the rights of a party with respect to the act or omission for which nonjudicial punishment is contemplated.

(3) The officer who imposes punishment under 10 U.S.C. 815 shall insure that the offender is fully informed of his right to appeal from such punishment.

(e) *Effective date and execution of punishments*—(1) *Forfeitures, detention, and reduction in grade.* As provided in paragraph 131e, MCM, these punishments, if unsuspended, take effect on the date imposed. If suspended, and the suspension is later vacated, these punishments take effect for all purposes on the date the suspension is vacated. However, if a forfeiture or detention is imposed while a prior punishment of forfeiture or detention is still in effect, the prior punishment will be completed before the latter begins to run.

(2) *Punishments involving restraint.* Normally, the punishments of arrest in quarters, correctional custody, confinement on bread and water, or diminished rations, extra duties, and restriction, unless suspended, take effect when imposed. However, as with forfeiture and detention, any prior punishment involving restraint will be completed before the second begins to run. In addition, commanding officers and officers in charge at sea may, when the exigencies of the service require, defer execution of correctional custody and confinement on bread and water for a reasonable period of time, not to exceed 15 days, after imposition. When correctional custody is to be served in a regular confinement facility, the conditions of service and the provisions for release therefrom shall be as prescribed in the Corrections Manual. Otherwise, correctional custody shall be imposed and administered in accordance with SECNAVINST 1640.7 series.

(3) *Admonition and reprimand.* These punishments take effect when imposed. A letter of censure is considered to be imposed when delivered to the offender.

(f) *Appeals*—(1) *Time.* (i) In accordance with paragraph 135, MCM, an appeal not made within a reasonable time may be rejected on that basis by the officer to whom the appeal was addressed. In the absence of unusual circumstances, an appeal made more than 15 days after the punishment was imposed may be considered as not having been made within a reasonable time. In computing this appeal period, allowance shall be made for the time required to transmit communications pertaining to the imposition of nonjudicial punishment and the appeal therefrom through the mails. This appeal period commences to run from the date of the imposition of the punishment, even though all or any part of the punishment imposed is suspended.

(ii) If unusual circumstances exist which make it impracticable or extremely difficult for the offender to prepare and submit his appeal within the 15-day period, he should immediately advise the officer who imposed the punishment of such circumstances and request an appropriate extension of time within which to submit his appeal. In the absence of such a request, an appeal submitted after the 15-day period will normally be considered as not having been made within a reasonable time. Upon the receipt of such a request, the officer who imposed the punishment shall advise the offender that an extension of time is or is not granted.

(2) *To whom made when officer who imposed the punishment is in a Navy chain of command.* Any appeal from nonjudicial punishment in accordance with paragraph 135, MCM, shall, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to the officer who imposed the punishment, be forwarded to the area coordinator authorized to convene general courts-martial. When the cognizant area coordinator is not superior in rank or command to the officer who imposed the punishment or when the punishment is imposed by a commanding officer who is an area coordinator, the appeal shall be forwarded to the officer authorized to convene general courts-martial and next superior in the chain of command to the officer who imposed the punishment.

(i) An immediate or delegated area coordinator who has authority to convene general courts-martial may take action in lieu of an area coordinator if he is superior in rank or command to the officer who imposed the punishment.

(ii) For mobile units, the area coordinator for the above purpose is the area coordinator most accessible to the unit at the time of the forwarding of the appeal.

(3) *To whom made when officer who imposed the punishment is in the chain of command of the Commandant of the Marine Corps.* Any appeal from nonjudicial punishment in accordance with paragraph 135, MCM, shall be made to the officer who is the next superior in the chain of command to the officer who imposed the punishment. This shall be the case without regard to whether the appellant is, at the time of his appeal, a member of an organization within that chain of command. In those cases in which the Commandant of the Marine Corps is the next superior in the chain of command and in which the officer who imposed punishment is not a general officer in command, the appeal shall, in the absence of specific direction to the contrary by the Commandant, be made to the Marine Corps general officer in command geographically nearest the officer who imposed the punishment.

(4) *To whom made when commanding officer is a commander of a multiservice command.* An appeal from nonjudicial punishment imposed by an officer of the Marine Corps designated as a commanding officer pursuant to subparagraph (1) of this paragraph shall, in the absence of specific direction to the contrary by the Commandant, be made to the Marine Corps general officer in command geographically nearest and superior in grade to the officer who imposed the punishment. An appeal from nonjudicial punishment imposed by a naval officer designated as a commanding officer pursuant to section 0101a(1) shall be made to the nearest area coordinator. However, when

[1] Filed as part of the original document.

such area coordinator is not superior in grade to the officer who imposed the punishment, the appeal shall be to the naval flag officer in command geographically nearest and superior in grade to the officer who imposed the punishment.

(5) *Delegation of authority to act on appeals.* Such authority may be delegated in accordance with the provisions of subparagraph (4) of this paragraph.

(6) *Prohibited and inappropriate actions.* An officer who has delegated his nonjudicial punishment powers to a principal assistant under subparagraph (4) of this paragraph may not act on an appeal from punishment imposed by such principal assistant. In such cases and in other cases where it may be inappropriate for the officer designated by subparagraph (2) or (3) of this paragraph (f) to act on the appeal, (as where an identity of persons or staff may exist with the command which imposed the punishment) such fact should be noted in forwarding the appeal.

(7) *Procedures.* When the officer who imposed the punishment is not the offender's immediate commanding officer, the latter may forward the appeal directly to the officer who imposed the punishment for forwarding under subparagraphs (2), (3), or (4) of this paragraph (f). Similarly, the action of the superior on appeal may be forwarded by the officer who imposed the punishment directly to the offender's commanding officer for delivery. Copies of the correspondence should be provided for intermediate authorities in the chain of command.

(i) In any case where nonjudicial punishment is imposed on the basis of information contained in the record of a court of inquiry or fact-finding body, a copy of the record, including the findings, opinions and recommendations, together with copies of endorsements thereon, shall, except where the interests of national security may be adversely affected, be made available to the individual concerned for his examination in connection with the preparation of an appeal. In case of doubt, the matter shall be referred to the Judge Advocate General for advice.

(g) *Records of punishment.* The records of nonjudicial punishment shall be maintained and disposed of in accordance with paragraph 133c, MCM and implementing regulations issued by the Chief of Naval Personnel and the Commandant of the Marine Corps. The forms used for the Unit Punishment Book are NAVPERS 2696 and NAVMC 10132PD.

(h) *Definition of "successor in command."* For the purposes of 10 U.S.C. 815 and this part, the term "successor in command" refers to an officer succeeding to the command by being detailed or succeeding thereto as described in U.S. Navy Regulations. The term is not limited to the officer next succeeding. See paragraph (j) of this section.

(i) *Punishment not to be increased.* As provided in paragraph 128d, MCM, a punishment once imposed may not be increased. In addition, punishment may not be withdrawn for the purpose of imposing a more severe punishment.

(j) *Suspension, mitigation, and remission.* (1) The authority of the officer who imposed the punishment, his successor in command, and superior authority to suspend, mitigate, remit, and set aside punishments is discussed in paragraphs 134 and 135, MCM.

(2) When a person upon whom nonjudicial punishment has been imposed is thereafter, by competent transfer orders, assigned to another command, unit, or activity, the receiving commanding officer (or officer in charge) and his successor in command, may under 10 U.S.C. 815 (d), and the conditions set forth in paragraph 134, MCM, exercise the same powers with respect to the punishment imposed as may be exercised by the officer who imposed the punishment.

§ 719.102 Letters of censure.

(a) *General.* "Censure" is a generic term applicable to adverse reflection upon or criticism of an individual's character, conduct, performance, or military appearance. Censure may be punitive or nonpunitive. Punitive censure is imposed as commanding officer's nonjudicial punishment or as the result of a sentence by court-martial. In increasing order of severity, there are two degrees of punitive censure, namely, "admonition" and "reprimand." Nonpunitive censure is provided for in paragraph 128, MCM, and in § 719.101(c). When imposed upon officers, punitive admonition or reprimand is required to be by written communication. If imposed upon enlisted personnel, punitive admonition or reprimand may be by either oral or written communication. Copies of punitive letters of admonition or reprimand, unless withdrawn or set aside, will be filed in the official records of the individuals to whom they are addressed and recorded in departmental records. As provided in § 710.101(l) of this chapter, once a letter of admonition or reprimand has been received by the individual to whom it is addressed, it may not be increased in severity or withdrawn to impose a more severe punishment. The remaining provisions of this section do not apply to oral censures of enlisted personnel or, unless specifically noted, to court-martial sentences involving admonition or reprimand.

(b) *Administrative letters of censure by the Secretary of the Navy.* In addition to the censures discussed in paragraph (a) of this section, the Secretary of the Navy may, by means of a written communication, administratively censure persons in the naval service without reference to 10 U.S.C. 815. Unless otherwise directed, a copy of the communication will be filed in the official record of the person censured and recorded in departmental records. The provisions of 10 U.S.C. 815, Chapter XXVI, MCM, and §§ 719.101 and 719.102 (including the right of appeal) are not applicable to administrative censure by the Secretary of the Navy. However, if the person censured is an officer and a copy of the communication is to be filed in his official record and recorded in departmental records, the officer being censured may submit such official statement as he may choose to make in reply. Any such reply shall be couched in temperate language and shall be confined to pertinent facts. Opinions shall not be expressed nor the motives of others impugned. Replies shall not contain countercharges.

(c) *Internal departmental responsibility.* Correspondence, records, and files in the Department of the Navy that relate to letters of admonition or reprimand are personnel matters under the primary cognizance of the Commandant of the Marine Corps or the Chief of Naval Personnel, as appropriate.

(d) *Procedure*—(1) *Issuing authority.* Where an officer has committed an offense which warrants a punitive letter of admonition or reprimand, the immediate commanding officer may, at his discretion, but subject to paragraphs 132 and 133, MCM, issue the letter or refer the matter through the chain of command, normally to the superior who exercises general court-martial jurisdiction and who has command over the prospective addressee (see § 719.101(a)(3)). Consideration must be given to the fact that the degree of severity and effect of punitive admonition or reprimand increases proportionately with the degree of superiority of the officer in command who issues the letter.

(2) *Hearing requirement.* Subject to the provisions of 10 U.S.C. 815, paragraph 132, MCM, and § 719.10(b) regarding demand for trial, a punitive letter may be issued, or its issuance recommended to higher authority, on the basis of an investigation or court of inquiry for acts or omissions for which the individual was accorded the rights of a party or on the basis of mast or office hours prescribed in paragraph 133b, MCM (see 719.101(d)). When mast or office hours is conducted, the officer conducting the hearing shall prepare a report thereof. The report shall include a summary of the testimony of witnesses, statements, and affidavits submitted to the officer holding the hearing, and a description of items of information in the nature of physical or documentary evidence considered at the hearing.

(e) *Content of letter.*—(1) *General.* A punitive letter of admonition or reprimand issued pursuant to 10 U.S.C. 815 may be imposed only for minor offenses (see paragraph 128b, MCM). Such offenses include only those acts or omissions constituting offenses under the punitive articles of the Uniform Code of Military Justice. The letter must set forth the facts constituting the offense but need not refer to any specific punitive article of the Uniform Code of Military Justice; nor must it satisfy the tests for legal sufficiency required of court-martial specifications. Each letter should contain sufficient specific facts, without regard to the existence of other documents, to apprise a reader of all relevant facts and circumstances surrounding the offense. General conclusions, such as "gross negligence," "unofficer-like conduct," or "dereliction of duty," are valueless unless accompanied by specific facts

upon which they are based. Sample letters of reprimand and admonition are set forth for guidance in Appendix section 1–b and 1–c.[1]

(2) *References.* In all punitive letters of admonition or reprimand, reference should be made to all prior proceedings and correspondence upon which they are based. Reference should also be made to applicable laws and regulations, including the MCM and this section. Particular reference should be made to the hearing afforded the offender. Where applicable, the letter shall include a statement that the recipient has been advised that he has the right to demand trial by court-martial in lieu of nonjudicial punishment and that he has not demanded such trial. See 10 U.S.C. 815.

(3) *Classification (security).* Every reasonable effort will be made to exclude specific details requiring security classification from punitive letters of admonition or reprimand. Unless it contains classified matter, a letter of censure shall be designated "For Official Use Only."

(4) *Notification of right to appeal and right to submit statement.* All punitive letters of admonition or reprimand, except letters issued in execution of a court-martial sentence as described in § 719.123(d), shall contain the following paragraphs:

You are hereby advised of your right to appeal this action to the next superior authority, the _____ via [*here insert the official designation of the commanding officer issuing the letter or, if he is not the immediate commanding officer of the offender, the official designations of the immediate commanding officer of the offender and the commanding officer issuing the letter*] in accordance with the provisions of 10 U.S.C. 815(e), paragraph 135 of the Manual for Courts-Martial, and § 719.102(f).

If, upon full consideration, you do not desire to avail yourself of this right to appeal, you are directed to so inform the issuing authority in writing within 15 days after the receipt of this letter.

If, upon full consideration, you do desire to appeal from the issuance of this letter, you are advised that an appeal must be made within a reasonable time and that, in the absence of unusual circumstances, an appeal made more than 15 days after the receipt of this letter may be considered as not having been made within a reasonable time. If, in your opinion, unusual circumstances exist which make it impracticable or extremely difficult for you to prepare and submit your appeal within the 15-day period, you shall immediately advise the officer issuing this letter of such circumstances and request an appropriate extension of time within which to submit your appeal. Failure to receive a reply to such request will not, however, constitute a grant of such extension of time within which to submit your appeal.

In all communications conecrning an appeal from the issuance of this letter, you are directed to state the date of your receipt of this letter.

Unless withdrawn, or set aside by higher authority, a copy of this letter will be placed in your official record in (the Bureau of Naval Personnel) (Headquarters, U.S. Marine Corps.) You are therefore privileged, pursuant to U.S. Navy Regulations, to forward within 15 days after receipt of final determination of your appeal or after the date of your notification of your decision not to appeal, whichever may be applicable, such statement concerning this letter as you may desire for inclusion in your record. (Omit "pursuant to U.S. Navy Regulations" in cases involving enlisted personnel.) If you elect not to submit a statement, you shall so state officially in writing within the time above prescribed. In connection with your statement, you are advised that any statement submitted shall be couched in temperate language and shall be confined to pertinent facts. Opinions shall not be expressed nor the motives of others impugned. Your statement may not contain countercharges. Your reporting senior is required to make notation of this letter in your fitness report submitted next after the issuance of this letter has become final, either by decision of higher authority upon appeal or by your decision not to appeal.

(Omit last sentence in cases involving enlisted personnel.)

(f) *Appeals.* The following special rules are applicable to appeals invoving punitive letters of admonition or reprimand (in addition to those rules contained in § 719.101(f)).

(1) A copy of the report of mast or office hours shall be provided the individual upon his request except where the interests of national security may be adversely affected. In any event a copy shall be made available to him for his use in preparation of a defense or appeal. See § 719.101(f) for similar rules concerning a copy of the record of an investigation or court of inquiry.

(2) In forwarding an appeal from a punitive letter of admonition or reprimand (see § 719.101(f)(4)), the officer who issued the letter shall attach to the appeal a copy of the punitive letter and the record of investigation or court of inquiry or report of hearing on which the letter is based. The appeal shall be forwarded via the chain of command to the superior to whom the appeal is made. The superior to whom the appeal is made may direct additional inquiry or investigation into matters raised by the appeal if he deems such action necessary in the interests of justice.

(3) Appeals from a letter of admonition or reprimand imposed as nonjudicial punishment shall be forwarded as specified in § 719.101(f).

(4) Upon determination of the appeal, the superior shall advise the appellant of the action taken via his immediate commanding officer with copies of the action to officers in the chain of command through whom the appeal was forwarded. He shall also return all papers directly to the commander who issued the letter.

(g) *Forwarding letter to Department.* Upon adverse determination of any appeal taken, the lapse of a reasonable time after issuance (see § 719.101(f)), or upon receipt of the addressee's statement that he does not desire to appeal, together with such statement as he may desire to make or his written declaration that he does not desire to make a statement, a copy of the punitive letter of censure, and such other documents as may be required by the Chief of Naval Personnel or the Commandant of the Marine Corps shall be forwarded via the chain of command to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. The command to which the addressee of the letter is then attached (if different from the forwarding command) and superior authority who took action on appeal pursuant to §§ 719.101(f) and 719.102(f) whether or not in the chain of command, shall be included as via addressee(s). If the letter of censure is not sustained on appeal, a copy of the letter shall not be filed in the official record of the member concerned. It is the responsibility of the command issuing a letter of admonition or reprimand to assemble and forward at one time all the foregoing documents. A copy of the forwarding letter shall be provided for each via addressee.

(h) *Cancellation.* (1) Except in certain highly infrequent situations, material properly placed in an officer's or enlisted member's official record is not removed therefrom or destroyed. When a letter of admonition or reprimand has been issued under 10 U.S.C. 815 and filed in the addressee's official record and it is shown that factual error occurred or that other sound reasons indicate that the punishment resulted in a clear injustice, the officers referred to in § 719.101(j) may cancel or direct cancellation of the letter of admonition or reprimand. The authority (i.e., the office as distinguished from the former incumbent) which issued such a letter of admonition or reprimand may also cancel such a letter. In these cases, cancellation will be accomplished by issuing a second letter to the officer concerned announcing the cancellation of the letter of admonition or reprimand and setting forth in detail the reason prompting such cancellation. Copies of the letter of cancellation shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, and to other addressees to whom copies of the original letter of censure may have been directed. The copy of the letter of admonition or reprimand and any reference thereto filed in the recipient's official record shall then be removed and destroyed.

(2) If a letter of admonition or reprimand is canceled by superior authority before a copy of the original of such letter has been received by the Chief of Naval Personnel or the Commandant of the Marine Corps, no copy of the letter of admonition or reprimand will be filed in the member's official record. If the cancellation occurs after the copy of the letter of admonition or reprimand has

[1] Filed as part of the original document.

been forwarded to the Department, a copy of the letter of cancellation shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. Upon receipt of the copy of the letter of cancellation, copies of the letter of admonition or reprimand shall not be filed in or, if already filed, shall be removed from the member's official record and destroyed. The order or letter of cancellation or a copy thereof shall not be filed in the member's official records. In other cases, physical removal of letters of admonition or reprimand and other documents in official records will normally be accomplished only by the Secretary of the Navy acting through the Board for Correction of Naval Records. However, if a letter of censure is filed inadvertently by reason of clerical error or mistake of fact, such document may be removed as authorized by the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

(i) *Public reprimands-Private reprimands.* For historical purposes and understanding of the captioned types of censure, brief comment is supplied thereon. Under Article 24 of the Articles for the Government of the Navy (superseded by the Uniform Code of Military Justice), "private reprimand" was one of the punishments specified as being within the authority of a commanding officer to impose upon officers under his command. The word "private" was employed to distinguish a formal letter of reprimand addressed to an individual officer without general publicity from a "public reprimand," i.e., one published verbatim throughout the naval service. Omission of the word "private" preceding "admonition or reprimand" in 10 U.S.C. 815 does not constitute authority to commanding officers to issue "public reprimands," which are looked upon with disfavor by the Department of the Navy.

Subpart B—Convening Courts-Martial

§ 719.103 Designation of additional convening authorities.

(a) *General courts-martial.* In addition to those officers authorized by 10 U.S.C. 822(a) (3) through (5) and (7), the following officers are, under the authority granted to the Secretary of the Navy by Uniform Code of Military Justice 10 U.S.C. 822(a)(6), designated as empowered to convene general courts-martial:

(1) All flag or general officers, or their immediate temporary successors, in command of units or activities of the Navy or Marine Corps.

(2) The following officers or their successors in command:

Chief of Naval Operations.
Vice Chief of Naval Operations.
Commandant of the Marine Corps.
Commander, Service Group One.
Commander, Service Force, Sixth Fleet.
Commanders, Fleet Air Wings.
Commanders, Fleet Air Commands.
Commander, Morocco—U.S. Naval Training Command.
Commanding Officer, U.S. Naval Support Activity, Naples.
Commander, U.S. Naval Activities, Spain.
Commander, U.S. Naval Training Center, Bainbridge, Md.
Commander, U.S. Naval Training Center, Great Lakes, Ill.
Commander, U.S. Naval Training Center, San Diego, Calif.
Commander, U.S. Naval Training Center, Orlando, Fla.

(3) The Commanding Officer, U.S. Naval Disciplinary Command, Portsmouth, New Hampshire, is hereby designated as empowered to exercise limited general court-martial jurisdiction for the purpose of performing the functions described in paragraphs 100c, 102, and 107, MCM. See § 719.129(a)(2) concerning the clemency powers of the Commanding Officer of the Naval Disciplinary Command.

(b) *Special courts-martial.* In addition to those officers otherwise authorized by 10 U.S.C. 23(a) (1) through (6), the following officers are, under the authority granted to the Secretary of the Navy by 10 U.S.C. 823(a)(7), empowered to convene special courts-martial:

(1) Commanding officers of all battalions and squadrons, including both regular and reserve Marine Corps commands.

(2) Any commander whose subordinates in the tactical or administrative chain of command have authority to convene special courts-martial.

(3) All commanders and commanding officers of units and activities of the Navy, except inactive duty training Naval Reserve units.

(4) All directors, Marine Corps Districts.

(5) All administrative officers, U.S. Naval Shipyards.

(6) All directors, Navy Recruiting, Navy Recruiting Areas.

(7) All Inspector-Instructors, Marine Corps Reserve Organizations.

(c) *Summary courts-martial.* Those officers who are empowered to convene general and special courts-mrtial may convene summary courts-martial.

(d) *Requests for authority to convene general, special, and summary courts-martial.* (1) If authority to convene general courts-martial is desired for an officer who is not empowered by statute or regulation to convene such courts, a letter shall be forwarded to the Judge Advocate General, via the Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate, with the request that authorization be obtained from the Secretary of the Navy pursuant to 10 U.S.C. 823.

(2) If authority to convene special or summary courts-martial is desired for officers other than those listed in subparagraphs (3) and (4) of this paragraph, and such officers are not empowered by statute or regulation to convene such courts, a letter shall be forwarded to the Judge Advocate General, via the Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate, with the request that authorization be obtained from the Secretary of the Navy pursuant to 10 U.S.C. 823(a)(7) or 10 U.S.C. 824(a)(4), as appropriate.

(3) If authority to convene special or summary courts-martial is desired for the commanding officer or officer in charge of any command designated as separate or detached under the provisions of U.S. Navy Regulations, the officer designating the organization as separate or detached shall request the Judge Advocate General to obtain authorization from the Secretary of the Navy pursuant to 10 U.S.C. 823(a)(7). The request shall state that the organization has been designated as separate or detached.

(4) If authority to convene special or summary courts-martial is desired for an officer designated as the commanding officer of staff enlisted personnel under the provisions of U.S. Navy Regulations, the designating commander shall request the Judge Advocate General to obtain authorization from the Secretary of the Navy pursuant to 10 U.S.C. 823(a)(7).

(5) Requests for authority to convene summary courts-martial are processed by the Judge Advocate General with other requests for authority to convene special courts-martial. A single letter of authorization, signed by the Secretary, will empower all addressees to convene special courts-martial. Upon receipt of the Secretary's letter, therefore, a superior commander who originally requested only summary court-martial authorization for his subordinate commander shall, pursuant to § 719.107(a), issue a letter to that subordinate commander restricting the authority granted to the convening of summary courts-martial. Copies of such letters of restriction shall be forwarded to the Judge Advocate General.

(6) Copies of all secretarial letters of authorization are maintained in the Military Justice Division, Office of the Judge Advocate General.

§ 719.104 Preparation of convening orders.

(a) *Form.* Convening and amending orders should be in the form set forth in Appendix 4, MCM.

(b) *Contents.* The text of the order is indicated by the forms in Appendix 4, MCM, and notes therein. Each convening order shall be assigned a Court-Martial Convening Order Number. The order shall be personally subscribed by the convening authority and shall show his name, grade, and title, including organization or unit. A copy of the convening order shall be furnished to each person named in such order. A copy of any amending order shall be furnished to each person named in the convening order to which such amending order pertains.

§ 719.105 Changes in membership after court has been assembled.

10 U.S.C. 829(a) provides that no member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

§ 719.106 Convening special courts-martial.

(a) *Bad conduct discharge cases.* As used herein, a bad conduct discharge case is one in which a bad conduct discharge is authorized, i.e., in which either because of the offenses charged or the accused's previous convictions, the maximum punishment authorized includes a bad conduct discharge, and in which the convening authority has not included in his endorsement on the charge sheet a direction that the authorized maximum punishment shall not include a bad conduct discharge. In bad conduct discharge cases, the convening authority shall detail to the court a military judge, a defense counsel having the qualifications prescribed under 10 U.S.C. 827(b), and a reporter: *Provided*, That a military judge need not be so detailed in any case in which a military judge cannot be detailed because of physical conditions or military exigencies. In some cases, detailed written explanation by the convening authority is required to be prepared prior to trail. See paragraph 15b, MCM.

(b) *Non-bad-conduct discharge cases.* In cases in which neither the offenses charged nor the accused's previous record authorize the imposition of a bad conduct discharge, or in which the convening authority has directed that a bad conduct discharge shall not be an authorized punishment, the convening authority may, but is not required to, detail a military judge, certified defense counsel, and a court reporter to the court. However, in every case the accused must be afforded the opportunity to be represented at trial by counsel having the qualifications prescribed under 10 U.S.C. 827(b), unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. In such cases, detailed written explanation by the convening authority is required to be prepared prior to assembly of the court. See paragraph 6c, MCM.

§ 719.107 Restrictions on exercise of court-martial jurisdiction.

(a) *Special and summary courts-martial.* In accordance with the provisions of paragraph 5b(4) and 5c, MCM, exercise of authority to convene summary and special courts-martial may be restricted by a competent superior commander.

(b) *Right to refuse summary court-martial.* All persons in the Navy and Marine Corps have the absolute right to refuse trial by summary court-martial.

(c) *Units attached to a ship.* The commanding officer or officer in charge of a unit attached to a ship of the Navy for duty therein should, while the unit is embarked therein, refrain from exercising any power he might possess to convene and order trial by special or summary court-martial, referring all such matters to the commanding officer of the ship for disposition. The foregoing policy does not apply to Military Sea Transportation Service vessels operating under a master, nor is it applicable where an organized unit is embarked for transportation only.

(d) *Jurisdiction under 10 U.S.C. 802 (4), (5), (6), and 10 U.S.C. 803.*

(1) *Policy.* In all cases in which jurisdiction is dependent upon the provisions of 10 U.S.C. 802 (4), (5), (6), and 10 U.S.C. 803, the following policies apply:

(i) No case of a retired member of the regular component of the Navy or Marine Corps not on aetive duty but entitled to receive pay, a retired member of the Naval Reserve or Marine Corps Reserve not on active duty who is receiving hospitalization from an armed force, or a member of the Fleet Reserve or Fleet Marine Corps Reserve not on active duty will be referred for trial by court-martial without the prior authorization of the Secretary of the Navy. This rule applies to offenses allegedly committed by such persons regardless of whether they were on active duty either at the time of the alleged offense or at the time they were accused or suspected of the offense.

(ii) No case in which jurisdiction is based on 10 U.S.C. 803 will be referred for trial by court-martial without the prior authorization of the Secretary of the Navy.

(iii) If authorization is withheld under subdivision (i) or (ii) of this subparagraph, the Judge Advocate General shall indicate alternative action or actions, if any, to the convening authority.

(2) *Request for authorization.* Requests for authorization should contain the following information: The nature of the offense or offenses charged; a summary of the evidence in the case; the facts showing amenability of accused to trial by court-martial; whether civil jurisdiction exists; the military status of the accused or suspected person at the present and at the time of the alleged offense; and the reasons which make trial by court-martial advisable. Requests shall be addressed to the Secretary of the Navy and shall be forwarded by air mail or other expeditious means. If considered necessary, authorization may be requested directly by message or telephone.

(3) *Apprehension and restraint.* Specific authorization of the Secretary of the Navy is required prior to apprehension, arrest, or confinement of any person who is amenable to trial by court-martial solely by reasons of the provisions of 10 U.S.C. 802 (4), (5), or (6) or 10 U.S.C. 803.

(4) *Tolling statute of limitations.* The foregoing rules shall not impede the preferring and processing of sworn charges under 10 U.S.C. 830 when such preferring and processing are necessary to prevent the barring of trial by the statute of limitations. See 10 U.S.C. 843 and paragraphs 29, 31, 33b, and 68c, MCM.

(5) *Recall to active duty.* Members described in subparagraph (1)(i) of this paragraph may not be recalled to active duty solely for trial by court-martial.

(e) *Cases which have been adjudicated in domestic or foreign criminal courts—*

(1) *Policy.* A person in the naval service who has been tried in a domestic or foreign court, whether convicted or acquited, or whose case has been adjudicated by juvenile court authorities, shall not be tried by court-martial for the same act or acts, except in those unusual cases where trial by court-martial is considered essential in the interests of justice, discipline, and proper administration within the naval service. Such unusual cases shall not be referred for trial without specific permission as provided below.

(2) *Criteria.* Referral for trial within the terms of this policy shall be limited to cases involving substantial discredit to the naval service and which meet one of the following criteria:

(i) Cases in which punishment by civil authorities consists solely of probation, and local practice does not provide rigid supervision of probationers, or the military duties of the probationer make supervision impractical.

(ii) Cases in which civil authorities have, in effect, divested themselves of responsibility by an acquittal manifestly against the evidence, or by the imposition of an exceptionally light sentence on the theory that the individual will be returned to the naval service and thus removed as a problem to the local community.

(iii) Cases of homosexuality in which mild penalties have been imposed upon conviction. Homosexuality is a more serious problem in the military society because of the close-contact living and working conditions of its members.

(iv) Other cases in which the interests of justice and discipline are considered to require further action under the Uniform Code of Military Justice (where conduct leading to trial before a foreign court has reflected adversely upon the naval service itself).

(3) *Procedure.*—(i) *General and special courts-martial.* No case described in subparagraph (2) of this paragraph shall be referred for trial by general court-martial or special court-martial without the prior permission of the Secretary of the Navy. Requests for such permission shall be forwarded by the general court-martial authority concerned (or by the special court-martial authority concerned via the general court-martial authority) to the Secretary of the Navy via the Commandant of the Marine Corps or the Chief of Naval Personnel, as appropriate, and the Judge Advocate General.

(b) *Summary courts-martial.* No case described in subparagraph (2) of this paragraph shall be referred for trial by summary court-martial without the prior permission of the officer exercising general court-martial jurisdiction over the command. Grants of such permission shall be reported by the general court-martial authority concerned by means of a letter addressed to the Secretary of the Navy in which he shall describe the offense alleged, the action taken by civil authorities, and the circumstances bringing the case within one or more of the exceptions to the general policy.

(i) *Reporting requirements.* The provisions of this section do not affect the reporting requirements or other actions required under other regulations in cases

of convictions of service personnel by domestic or foreign courts and adjudications by juvenile court authorities.

(4) *Limitations.* Personnel who have been tried by courts which derive their authority from the United States, such as U.S. District Courts, shall not be tried by court-martial for the same act or acts. See paragraph 68d, MCM.

(f) *Cases involving classified information.* (1) See OPNAVINST 5510.1 series for procedures relating to trial of cases involving classified information.

(2) See SECNAVINST 5511.4 series for policies relating to trial of cases involving cryptographic systems and publications.

(g) *Major Federal offenses*—(1) *Background.* The Federal civil authorities have concurrent jurisdiction with military authorities over offenses committed by military personnel which violate both the Federal criminal law and the Uniform Code of Military Justice. The Attorney General and the Secretary of Defense have agreed on guidelines for determining which authorities shall have jurisdiction to investigate and prosecute major crimes in particular cases. The administration of this program, on behalf of the naval service, has been assigned to the Naval Investigative Service. Guidelines are set forth in SECNAVINST 5430.13 series.

(2) *Limitation on court-martial jurisdiction.* Commanding officers receiving information indicating that naval personnel have committed a major Federal offense (including any major criminal offense, as defined in SECNAVINST 5430.13 series, committed on a naval installation) shall refrain from taking action with a view to trial by court-martial, but shall refer the matter to the commanding officer of the cognizant Naval Investigative Service Office, or his nearest representative, for a determination in accordance with SECNAVINST 5430.13 series. In the event that the investigation of any such case is referred to a Federal civilian investigative agency, any resulting prosecution normally will be conducted by the cognizant U.S. attorney, subject to the exceptions set forth below.

(3) *Exceptions.* (i) Where it appears that naval personnel have committed several offenses, including both major Federal offenses and serious but purely military offenses, naval authorities are authorized to investigate all of the suspected military offenses, and such of the civil offenses as may be practicable, and to retain the accused for prosecution. Any such action shall be reported immediately to the Secretary of the Navy (Judge Advocate General) and to the cognizant officer exercising general court-martial jurisdiction.

(ii) When, following referral of a case to a civilian Federal investigative agency for investigation, the cognizant U.S. attorney declines prosecution, the investigation normally will be resumed by the Naval Investigative Service, and the command may then commence court-martial proceedings as soon as the circumstances warrant.

(iii) If, while investigation by a Federal civilian investigative agency is pending, existing conditions require immediate prosecution by naval authorities, the officer exercising general court-martial jurisdiction will contact the cognizant U.S. attorney to seek approval for trial by court-martial. If agreement cannot be reached at the local level, the matter shall be referred to the Judge Advocate General for disposition.

(4) *Related matters.* See SECNAV INST 5430.13 series for procedures in cases involving civilian employees. See Part 720 of this chapter concerning the interviewing of naval personnel by Federal investigative agencies and the delivery of personnel to Federal authorities.

§ 719.108 Superior competent authority defined.

(a) *Accuser in a Navy chain of command.* Whenever a commanding officer comes within the purview of 10 U.S.C. 822(b) and 823(b), the "superior competent authority" as used in those articles is, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to such accuser, the area coordinator authorized to convene general or special courts-martial, as appropriate. For mobile units, the area coordinator for the above purpose is the area coordinator most accessible to the mobile unit at the time of forwarding of the charges. When the cognizant area coordinator is not superior in rank or command to the accuser, or when the accuser is an area coordinator, or if it is otherwise impossible or impracticable to forward the charges as specified above, they shall be forwarded to any superior officer exercising the appropriate court-martial jurisdiction (see paragraph 33i, MCM). An immediate or delegated area coordinator may receive the charges in lieu of the area coordinator if he is authorized to convene the appropriate court-martial and is superior in rank or command to the accuser.

(b) *Accuser in the chain of command of the Commandant of the Marine Corps.* Whenever a commanding officer comes within the purview of 10 U.S.C. 822(b) and 823(b), the "superior competent authority" as used in those articles is defined as any superior officer in the chain of command authorized to convene a special or general court-martial, as appropriate. If such an officer is not reasonably available, or if it is otherwise impossible or impracticable to so forward the charges, they shall be forwarded to any superior officer exercising the appropriate court-martial jurisdiction. See paragraph 33i, MCM.

Subpart C—Trial Matters

§ 719.109 Trial guides.

(a) *Summary courts-martial.* For the conduct of summary courts-martial, guidance may be obtained in NAVPERS 10091, Trial Guide for Summary Courts-Martial. The trial guide is for assistance and does not have the mandatory effect of regulations.

(b) *Special courts-martial with a military judge.* A special court-martial with a military judge, to the extent possible, should follow the same procedures as a general court-martial, including any 10 U.S.C. 839(a) session that may be held. See appendix 8 a and b, MCM.

§ 719.110 Reporters and interpreters.

(a) *Appointment.*—(1) *Reporters.* In each case before a general court-martial or before a military commission, the convening authority shall detail a qualified court reporter or reporters. The detail of qualified court reporters in cases of special courts-martial shall be in accordance with § 719.106 (a) and (b). If no reporter is detailed and sworn, the special court-martial may not adjudge a bad conduct discharge. (See paragraphs 15b and 33j, MCM, as to when bad conduct discharges may be adjudged by special courts-martial.) Detailed reporters shall record in shorthand or by mechanical or other means the proceedings of, and the testimony taken before, the court or commission. A reporter may be detailed by the convening authority of a summary court-martial, by the officer who orders an investigation under 10 U.S.C. 832, or by the officer who directs the taking of a deposition. As directed by the trial counsel of a general or special court-martial or by the summary court, the reporter shall prepare either a verbatim or a summarized record and shall preserve the complete shorthand notes or mechanical record of the proceedings as provided in § 719.120. Additional clerical assistants may be detailed when necessary.

(2) *Interpreters.* In each case before a court-martial or military commission, in each investigation conducted under 10 U.S.C. 832 and in each instance of the taking of a deposition, the convening authority or the officer directing such proceeding shall appoint, when necessary, an interpreter for the court, commission, investigation, or officer taking the deposition.

(3) *Manner of appointment.* Appointment of reporters and interpreters by the convening authority or authority directing the proceedings may be effected personally by him or, at this discretion, by any other person. Such appointment may be oral or in writing.

(b) *Source and expenses.* Whenever possible, reporters, interpreters, and clerical assistants shall be detailed from either naval or civilian personnel serving under the convening authority or officer directing the proceeding, or placed at his disposal by another officer or by other Federal agencies. When necessary, the convening authority or officer directing the proceeding may employ or authorize the employment of a reporter or interpreter, at the prevailing wage scale, for duty with a general or special court-martial, military commission, an investigation under 10 U.S.C. 832, or at the taking of a deposition. No expense to the Government shall be incurred by the employment of a reporter, interpreter, or other person to assist in a court-martial, military commission, 10 U.S.C. 832 investigation, or the taking of a deposition,

except when authorized by the convening authority or officer directing the proceeding. When required reporters or interpreters are not available locally, the convening authority or officer directing the proceeding shall communicate with the Chief of Naval Personnel or Commandant of the Marine Corps, as appropriate, requesting that such assistance be provided or authorized.

§ 719.111 Oaths.

(a) *Military judges.* A military judge, certified in accordance with 10 U.S.C. 826(b), may take a one-time oath to perform his duties faithfully and impartially in all cases to which he is detailed. This oath may be taken at any time and may be administered by any officer authorized by 10 U.S.C. 936 and section 2502 to administer oaths. Once such an oath is taken, the military judge need not be resworn at any court-martial to which he is subsequently detailed. Military judges will customarily be given a one-time oath. In the event that a military judge detailed to a particular court-martial has not been previously sworn, the trial counsel shall administer the oath to the military judge at the appropriate point in the proceedings. The following oath shall be used for the swearing in of military judges:

I ---------- do swear (or affirm) that I will faithfully and impartially perform, according to my conscience and the laws applicable to trials by courts-martial, all the duties incumbent upon me as military judge. So help me God.

(b) *Counsel.* Any military counsel, certified in accordance with (10 U.S.C. 827 (b), may be given a one-time oath. Such oath will customarily be administered when military counsel is certified. The oath may be given at any time and by any officer authorized by 10 U.S.C. 936, and section 2502 to administer oaths. Once such an oath is taken, counsel need not be resworn at any trial to which he is detailed trial counsel, assistant trial counsel, defense counsel or assistant defense counsel, or in any case in which he is serving as individual counsel at the request of the accused. Individual counsel, military (not certified) or civilian, requested by the accused must be sworn in each case. Detailed trial and defense counsel who are not certified in accordance with 10 U.S.C. 827(b) must be sworn in each case. Counsel who have taken one-time oaths administered by forces of the armed services other than the naval services need not again be sworn in courts-martial convened in the naval service. The following oath may be used in administering a one-time oath to counsel:

I ---------- do swear (or affirm) that I will faithfully perform the duties of counsel in any court-martial to which I am detailed as counsel or in which I participate as individual defense counsel. So help me God.

(c) *Court members.* Court members may be given one oath for all cases which are referred to the court in accordance with the convening order which detailed them as members. In the event the convening order is amended, a new member may be sworn when he arrives. This oath may be administered by any officer authorized by 10 U.S.C. 936, and section 2502 of the Manual of the Judge Advocate General to administer oaths. When court members are not sworn at trial, the fact that they have previously been sworn will be recorded in the transcript or record of trial. The oaths used for court members will be those prescribed in paragraph 114b, MCM. See also appendix 8b, MCM.

(d) *Reporters.* Any court reporter, military or civilian, may be given a one-time oath. The oath normally will be administered by trial counsel in the first court-martial to which the court reporter is assigned. Once such oath is taken, the court reporter need not be resworn at any trial to which he is assigned. Each command to which court reporters are permanently attached shall maintain a record of the one-time oaths administered to reporters attached to that command. In addition, a notation of the fact that a military court reporter has taken a one-time oath should be placed in the service record of such court reporter for future reference with instructions that such notation be retained in the service record upon re-enlistment. When the court reporter is not sworn at trial, the fact that he has been previously sworn will be recorded in the transcript or record of trial. The following oath may be used in administering a one-time oath to court reporters:

I ---------- do swear (or affirm) that I will faithfully perform the duties of reporter in any court-martial to which I am assigned as reporter. So help me God.

(e) *Interpreters.* Interpreters will be sworn by the trial counsel as provided in paragraph 114e, MCM.

§ 719.112 Authority to grant immunity from prosecution.

(a) *General.* In certain cases involving more than one participant, the interests of justice may make it advisable to grant immunity from prosecution to one or more of the participants in the offense in consideration for their testifying for the Government in the investigation and the trial of the principal offender. The authority to grant immunity from prosecution to a witness is reserved to officers exercising general court-martial jurisdiction. This authority may be exercised in any case whether or not formal charges have been preferred and whether or not the matter has been referred for trial. The approval of the Attorney General of the United States on certain orders to testify may be required, as outlined below.

(b) *Procedure.* The written recommendation that a certain witness be granted immunity from prosecution in consideration for testimony deemed essential to the Government shall be forwarded to the cognizant officer exerising general court-martial jurisdiction by the trial counsel in cases referred for trial, the pretrial investigating officer conducting an investigation upon preferred charges, the counsel or recorder of any other fact-finding body, or the investigator when no charges have been preferred. The recommendation shall state in detail why the testimony of the witness is deemed so essential or material that the interests of justice cannot be served without the grant of immunity. The officer exercising general court-martial jurisdiction shall act upon such request after referring it to his staff judge advocate for consideration and advice.

(c) *Civilian witnesses.* Pursuant to 18 U.S.C. 6002 and 6004, if the testimony or other information of a civilian witness at a court-martial may be necessary to the public interest, and if the civilian witness has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination, then the approval of the Attorney General of the United States or his designee must be obtained prior to the issuance of an order to testify to the witness by the cognizant officer exercising general court-martial jurisdiction. The officer exercising general court-martial jurisdiction may obtain the approval of the Attorney General in such a circumstance by directing a letter to the Judge Advocate General requesting assistance in obtaining a grant of immunity for the civilian witness and enclosing the signed order to testify sought to be approved. The order to testify should be substantially in the form set forth in Appendix section 1-d(2).[1] Requests to grant immunity to civilian witnesses must be in writing, allowing at least 3 weeks for consideration, and must contain the following information:

(1) Name, citation, or other identifying information, of the proceeding in which the order is to be used.

(2) Name of the individual for whom the immunity is requested.

(3) Name of the employer or company with which he is associated.

(4) Date and place of birth, if known, of the witness.

(5) FBI number or local police number, if any, and if known.

(6) Whether any State or Federal charges are pending against the prospective witness and the nature of the charges.

(7) Whether the witness is currently incarcerated, under what conditions, and for what length of time.

(8) A brief résumé of the background of the investigation or proceeding before the agency or department.

(9) A concise statement of the reasons for the request, including:

(i) What testimony the prospective witness is expected to give;

(ii) How this testimony will serve the public interest;

(iii) Whether the witness (*a*) has invoked the privilege against self incrimination; or (*b*) is likely to invoke the privilege;

(iv) If subdivision (iii) (*b*) of this subparagraph is applicable, then why it is anticipated that the prospective witness will invoke the privilege.

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(10) An estimate as to whether the witness is likely to testify in the event immunity is granted.

(d) *Civilian witnesses—post-testimony procedure.* After the witness has testified, the following information should be provided to the United States Department of Justice, Criminal Division, Immunity Unit, Washington, D.C. 20530.

(1) Name, citation, or other identifying information, of the proceeding in which the order was requested.

(2) Date of the examination of the witness.

(3) Name and residence address of the witness.

(4) Whether the witness invoked the privilege.

(5) Whether the immunity order was used.

(6) Whether the witness testified pursuant to the order.

(7) If the witness refused to comply with the order, whether contempt proceedings were instituted, or are contemplated, and the result of the contempt proceeding, if concluded. A copy of this correspondence together with a verbatim transcript of the witness' testimony, authenticated by the military judge, should be provided to the Judge Advocate General at the conclusion of the trial. No testimony given by a civilian witness pursuant to such an order to testify can be used against him in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

(e) *Review.* The officer granting immunity to a witness is thereafter precluded from taking reviewing action on the record of the trial before which the witness granted immunity testified. However, a successor in command not participating in the grant of immunity is not so precluded.

(f) *Form of grant.* In any case in which a witness is granted immunity, the general court-martial convening authority should execute a written agreement substantially in the form set forth in Appendix section 1–d(1).[1]

§ 719.113 10 U.S.C. 839(a) Sessions.

(a) *Procedure.* 10 U.S.C. 839(a) sessions will be called by order of the military judge. Either counsel, however, may make a request to the military judge that such a session be called. 10 U.S.C. 839(a) sessions prior to assembly are encouraged, and every effort should be made to resolve at that time those issues which would otherwise be considered out of the hearing of the members of the court. At an 10 U.S.C. 839(a) session held prior to assembly, the military judge may inquire into the accused's desire to be tried by a military judge alone. If the accused does so desire, the court may be immediately assembled with all further proceedings taking place subsequent to assembly. The military judge should determine at the initial 10 U.S.C. 839(a) session whether counsel have been sworn. If not, the appropriate oath should be administered at this time. See § 719.111(a). If the accused does not request to be tried by military judge alone, the 10 U.S.C. 839(a) session may proceed. The military judge of a general or special court-martial may, at an 10 U.S.C. 839(a) session hold the arraignment, hear arguments and rule upon motions, and receive the pleas of the accused. (See paragraph 53d, MCM.) If the accused pleads guilty, the military judge may at that time make the appropriate inquiry into the providence of his plea. The military judge may also at that time accept the plea of the accused. Upon acceptance of a plea of guilty, the military judge is authorized to enter a finding of guilty immediately and without further formalities. If the accused has pleaded guilty to some but not all of the charges and specifications, the military judge may enter findings of guilty on those charges and specifications to which the accused has pleaded guilty. When a finding of guilty has been so entered, the military judge need only inform the court members after assembly that the accused has been arraigned, a plea of guilty has been entered and accepted, and he has been found guilty. At an 10 U.S.C. 839(a) session either counsel may make challenges for cause or premptory challenges if he so desires. If questioning of a particular court member is desired, the military judge may, in his discretion, request the court member to appear at the 10 U.S.C. 839(a) session. The use of this procedure does not preclude voir dire of the court after assembly, further challenges at that time, or subsequent challenges as provided by paragraph 62d, MCM. If all matters have not been considered at the initial 10 U.S.C. 839(a) session, other 10 U.S.C. 839(a) sessions may be held prior to or after assembly of the members. An 10 U.S.C. 839(a) session is not authorized to be held by the president of a special court-martial without a military judge.

(b) *Entry of findings without a vote.* In special courts-martial without a military judge and in courts-martial with a military judge in which the plea has not been accepted at a previous Article 39(a) session, the president of the court or the military judge, as appropriate, may enter a finding of guilty without vote immediately upon the acceptance of a plea of guilty.

§ 719.114 Pretrial agreements in general and special courts-martial.

(a) *Legality of pretrial agreements.* Under the provisions of the Uniform Code of Military Justice, it is legal and proper for the convening authority to make a pretrial agreement as to charges and specifications upon which the accused will be tried and/or the maximum sentence which will be finally approved by the convening authority if the accused pleads guilty. Experience has shown that opportunities for advanced planning, savings in money and manpower, and a more expeditious administration of justice can be affected by such agreements.

(b) *Action by convening authorities.* Convening authorities and their staff judge advocates will take necessary action to insure that the rights of accused persons are fully protected in cases where there is a pretrial agreement. To that end, the following procedures shall apply:

(1) *General courts-martial.* (i) The offer to plead guilty must originate with the accused and his counsel and should be submitted to the assigned trial counsel who will conduct all arrangements as to the offer and make recommendations with respect thereto to the convening authority through the staff judge advocate. Whether or not the convening authority enters into such a pretrial agreement is a matter within his sound discretion. The agreement, if made, must be in writing and must be personally signed by the convening authority and the accused and witnessed on behalf of the accused by his counsel. A suggested form of such an agreement is set forth in Appendix section 1–e,[1] but this form must be modified as appropriate to include all of the agreement made between the accused and the convening authority. No matters "understood" between the parties should be omitted from the written agreement. The sentence which will ultimately be approved by the convening authority (under various sentences which may be adjudged by the court, if desired) shall be set forth clearly and should, under all of the circumstances of the particular case, be appropriate for the offense or offenses.

(ii) The offer of the accused to plead guilty will not be accepted if the Government has reason to believe that the evidence which it will be able to produce at the trial will be insufficient to convict. Unreasonable multiplication of charges which might tend to persuade the accused to enter into a pretrial agreement shall be avoided; nor shall an accused be induced to plead guilty to a lesser included offense by the preferring of more serious charges—as, for example, by preferring a charge of desertion where the evidence indicates that unauthorized absence is the appropriate charge.

(iii) Except for the military judge, under no circumstance will the court be officially informed of any negotiation between counsel and the convening authority on the subject of a pretrial agreement; of any such agreement existing at the time of trial; or of any such agreement made and later rejected by the accused to permit a plea of not guilty. Precaution shall also be taken to prevent the court, insofar as possible, from obtaining unofficial knowledge of the foregoing. A pretrial agreement will not preclude the accused from presenting matter in mitigation and extenuation; and counsel for the accused has a continuing duty, despite such an agreement, to vigorously represent the accused before the court with respect to the sentence to be adjudged. The military judge is authorized to examine in toto the pretrial agreement in those cases in which he sits with members of the court. The military judge hearing the case alone, without members, is not, prior to his adjudging sentence, authorized to examine or inquire into that portion of the pretrial

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agreement which sets forth the specific sentence agreed upon by the accused and the convening authority.

(iv) In all cases where there is a pretrial agreement followed by a guilty plea of the accused, the agreement (in a form substantially similar to that set forth in appendix section 1–e)[1] shall, where it has not been made a part of the record of proceedings as an appellate exhibit or otherwise, be made an enclosure to the review of the staff judge advocate prescribed by paragraph 85, MCM.

(2) *Special courts-martial.* (i) The procedures set forth above relating to pretrial agreements in general courts-martial are applicable to special courts-martial except as provided in subdivisions (ii) and (iii) of this subparagraph.

(ii) The provisions of subparagraph (1)(i) of this paragraph relating to submission of the proposed agreement through the staff judge advocate are not applicable in those cases in which the convening authority has no staff judge advocate. A suggested form of the agreement is set forth in appendix section 1–f.[1]

(iii) In those cases wherein the agreement contemplates a punitive discharge, if counsel for the accused is not a lawyer within the meaning of 10 U.S.C. 827(b), additional counsel so qualified shall be made available to the accused, unless specifically waived by the accused. Such additional counsel will advise the accused relative to the pretrial agreement and will also witness the signature of the accused thereon. In all cases where there is a pretrial agreement followed by a guilty plea, the agreement (in a form substantially similar to that set forth in appendix section 1–f),[1] shall, where it has not been made a part of the record of proceedings as an appellate exhibit or otherwise, be made an enclosure to the convening authority's action on the record of trial.

§ 719.115 Release of information pertaining to accused persons; spectators at judicial sessions.

(a) *Release of information*—(1) *General.* There are valid reasons for making available to the public information about the administration of military justice. The task of striking a fair balance between the protection of individuals accused of offenses against improper or unwarranted publicity pertaining to their cases, and public understanding of the problems of controlling misconduct in the military service and of the workings of military justice, depends largely on the exercise of sound judgment by those responsible for administering military justice and by representatives of the press and other news media. At the heart of all guidelines pertaining to the furnishing of information concerning an accused or the allegations against him is the mandate that no statements or other information shall be furnished to news media for the purpose of influencing the outcome of an accused's trial, or which could reasonably have such an effect.

(2) *Applicability of regulations.* These regulations apply to all persons who may obtain information as the result of duties performed in connection with the processing of accused persons, the investigation of suspected offenses, or the trial of persons by court-martial. These regulations are applicable from the time of apprehension, the preferral of charges, or the commencement of an investigation directed to make recommendations concerning disciplinary action, until the completion of trial (court-martial sessions) or disposition of the case without trial. These regulations also prescribe guidelines for the release or dissemination of information to public news agencies, to other public news media, or to other persons or agencies for unofficial purposes.

(3) *Release of information.* (i) As a general matter, release of information pertaining to accused persons should not be initiated by persons in the naval service. Information of this nature should be released only upon specific request therefor, and, subject to the following guidelines, should not exceed the scope of the inquiry concerned.

(ii) Except in unusual circumstances, information which is subject to release under this regulation should be released by the cognizant public affairs officer; and requests for information received by others from representatives of news media should be referred to such officer for action. When an individual is suspected or accused of an offense, care should be taken to indicate that the individual is alleged to have committed or is suspected or accused of having committed an offense, as distinguished from stating or implying that the accused has committed the offense or offenses.

(4) *Information subject to release.* On inquiry, the following information concerning a person accused or suspected of an offense or offenses may generally be released except as provided in subparagraph (6) of this paragraph:

(i) The accused's name, grade, age, unit, regular assigned duties, residence.

(ii) The substance of the offenses of which the individual is accused or suspected.

(iii) The identity of the victim of any alleged or suspected offense, except the victim of a sexual offense.

(iv) The identity of the apprehending and investigating agency, and the identity of counsel of the accused, if any.

(v) The factual circumstances immediately surrounding the apprehension of the accused, including the time and place of apprehension, resistance, pursuit, and use of weapons.

(vi) The type and place of custody, if any.

(vii) Information which has become a part of the record of proceedings of the court-martial in open session.

(viii) The scheduling or result of any stage in the judicial process.

(ix) The denial by the accused of any offense or offenses of which he may be accused or suspected (when release of such information is approved by the counsel of the accused).

(5) *Prohibited information.* The following information concerning a person accused or suspected of an offense or offenses generally may not be released except as provided in subparagraph (6) of this paragraph.

(i) Subjective opinions, observations, or comments concerning the accused's character, demeanor at any time (except as authorized in subparagraph (4)(v) of this paragraph), or guilt of the offense or offenses involved.

(ii) The prior criminal record (including other apprehensions, charges or trials) or the character or reputation of the accused.

(iii) The existence or contents of any confession, admission, statement, or alibi given by the accused, or the refusal or failure of the accused to make any statement.

(iv) The performance of any examination or test, such as polygraph examinations, chemical tests, ballistics tests, etc., or the refusal or the failure of the accused to submit to an examination or test.

(v) The identity, testimony, or credibility of possible witnesses, except as authorized in subparagraph (4)(c), of this paragraph.

(vi) The possibility of a plea of guilty to any offense charged or to a lesser offense and any negotiation or any offer to negotiate respecting a plea of guilty.

(vii) References to confidential sources or investigative techniques or procedures.

(viii) Any other matter when there is a reasonable likelihood that the dissemination of such matter will affect the deliberations of an investigative body or the findings or sentence of a court-martial or otherwise prejudice the due administration of military justice either before, during, or after trial.

(6) *Exceptional cases.* The provisions of this section are not intended to restrict the release of information designed to enlist public assistance in apprehending an accused or suspect who is a fugitive from justice or to warn the public of any danger that a fugitive accused or suspect may present. Further, since the purpose of this section is to prescribe generally applicable guidelines, there may be exceptional circumstances which warrant the release of information prohibited under subparagraph (5) of this paragraph or the nonrelease of information permitted under subparagraph (4) of this paragraph. In these cases the senior judge advocate of the command involved shall be responsible for determining whether questionable material shall be released.

(b) *Spectators*—(1) *At sessions of courts-martial.* The sessions of courts-martial shall be public and, in general, all persons, except those who may be required to give evidence, shall be admitted as spectators. Whenever necessary to prevent the dissemination of classified information to other than authorized persons, the military judge of a general or special court-martial or the president of a special court-martial without a military judge, or the summary court, as

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appropriate, may direct that the spectators involved be excluded from a trial or a portion thereof. In all other situations, spectators or classes of spectators may be excluded only when the military judge of a general or special court-martial or the president of a special court-martial without a military judge, or the summary court, in the exercise of the discretion reposed in him, determines such action to be legally necessary or proper.

(2) In any preliminary hearing, including a hearing conducted pursuant to 10 U.S.C. 832, or a court of inquiry or investigation conducted pursuant to this manual, the presiding officer, upon motion of the Government or the defense or upon his own motion, may direct that all or part of the hearing be held in closed session and that all persons not connected with the hearing be excluded therefrom. The decision to exclude spectators shall be based on the ground that dissemination of evidence, information, or argument presented at the hearing may disclose matters that will be inadmissible in evidence at a subsequent trial by court-martial and is therefore likely to interfere with the right of the accused to a fair trial by an impartial tribunal.

§ 719.116 Preparation and forwarding of charges.

(a) *Preparation generally.* See Chapter VI, MCM, for preparation of charges. Available data as to service, witnesses, and similar items, required to complete the first page of the charge sheet will be included. Ordinarily, the charge sheet will be forwarded in triplicate, and all copies will be signed. If several accused are charged on one charge sheet with the commission of a joint offense, the complete personal data as to each accused will be set forth on page 1 of the charge sheet or upon an attached copy of that page. One additional signed copy of the charge sheet will be prepared for each accused in excess of one.

(b) *Enlisted pay grades.* The pay grade of an accused, e.g., E–1, E–2, etc., shall be indicated following the grade or rate of the accused on page 1 of the charge sheet.

(c) *Pay and allotment data.*—(1) *Longevity increases.* Under applicable provisions of the Department of Defense Military Pay and Entitlements Manual, certain periods, such as unauthorized absence, do not constitute "time served" for the purpose of determining the cumulative years of service creditable for longevity pay increases. Care shall be taken in recording the basic pay of the accused on page 1 of the charge sheet to insure that the entry accurately reflects only the longevity increase to which the accused is entitled.

(2) *Contribution to basic allowance for quarters.* Inasmuch as the monthly contribution of an enlisted person to basic allowance for quarters (which is to be deducted prior to computing the net amount of pay subject to partial forfeitures or detention of pay) is the minimum contribution as required by law in the particular case (see § 719.119(a)), only such minimum amount, regardless of the actual contribution of the accused, shall be entered in the appropriate place on page 1 of the charge sheet.

(d) *Forwarding of charges by an officer in a Navy chain of command.*—(1) *General court-martial cases.* When a commanding officer, in taking action on charges, deems trial by general court-martial to be appropriate, but he is not authorized to convene such court or finds the convening of such court impracticable, the charges and necessary allied papers will, in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to such commanding officer, be forwarded to the area coordinator actively exercising general court-martial jurisdiction. For mobile units, the area coordinator for the above purposes is the area coordinator most accessible to the mobile unit at the time of forwarding of the charges. See § 719.108 for additional provisions in cases in which the forwarding officer is an accuser. An immediate or delegated area coordinator may receive the charges in lieu of the area coordinator if he is actively exercising general court-martial jurisdiction.

(2) *Special and summary court-martial cases.* When an officer in command or in charge, in taking action on charges, deems trial by special or summary court-martial to be appropriate, but he is not authorized to convene such courts-martial, the charges and necessary allied papers will be forwarded to the superior in the chain of command authorized to convene the type of court-martial deemed appropriate unless an officer authorized to convene general courts-martial and superior in the chain of command to such officer in command or charge, on the basis of a local arrangement with the area coordinator, has directed that such cases be forwarded to the area coordinator. For mobile units, the area coordinator for the above purposes is the area coordinator most accessible to the mobile unit at the time of the forwarding of the charges. See § 719.108 for additional provisions in cases in which the forwarding officer is an accuser. Subject to the terms of the local arrangement, forwarding to the area coordinator may also be resorted to even though the immediate or superior commanding officer of the accused is authorized to convene the type of court-martial deemed appropriate but finds such action impracticable. An immediate or delegated area coordinator may receive the charges in lieu of the area coordinator if he is authorized to convene the type of court-martial deemed appropriate.

(e) *Forwarding of charges by an officer in the chain of command of the Commandant of the Marine Corps.* When a commander, in taking action on charges, deems trial by general, special, or summary court-martial to be appropriate, but he is not empowered to convene a court as deemed appropriate for the trial of the case, the officer will forward the charges and necessary allied papers through the chain of command to an officer exercising the kind of court-martial jurisdiction deemed appropriate. See paragraphs 32f and 33i, MCM. See also § 719.108 for additional provisions in cases in which the forwarding officer is an accuser.

§ 719.117 Optional matter presented when court-martial constituted with military judge.

In accordance with the authority contained in paragraph 75d, MCM, the trial counsel may, prior to sentencing, obtain and present to the military judge, for use by either the court members or the military judge if sitting alone, personnel records of the accused or copies or summaries thereof. Personnel records of the accused include all those records made or maintained in accordance with departmental regulations which reflect the past conduct and performance of the accused. Records of nonjudicial punishment must relate to offenses committed prior to trial and during the current enlistment or period of service of the accused, provided such records of nonjudicial punishment shall not extend to offenses committed more than 2 years prior to the commission of any offense of which the accused stands convicted. In computing the 2-year period, periods of unauthorized absence as shown by the records of nonjudicial punishment or by the evidence of previous convictions should be excluded. See paragraph 75d, MCM, for applicable procedural regulations.

§ 719.118 Court-martial punishment of reduction in grade.

(a) *No automatic reduction.* Automatic reduction to the lowest enlisted pay grade under 10 U.S.C. 858a(a) and paragraph 126e, MCM, shall not be effected in the naval service. It is the policy of the Department of the Navy that enlisted persons of other than the lowest enlisted pay grade who are sentenced to confinement exceeding 3 months or to dishonorable or bad conduct discharge also be sentenced to reduction to the lowest enlisted pay grade. The sentence in such cases should expressly include reduction to the lowest enlisted pay grade.

(b) *Form of sentence to reduction in grade.* In adjudging a sentence which includes reduction to the lowest enlisted pay grade or to an intermediate pay grade, that portion of the sentence which relates to reduction should refer exclusively to the numerical designation of the grade to which reduced. Accordingly, this portion of the sentence should read: "To be reduced to the grade of pay grade E–_____." The proper grade or rate title, occupational field, or apprenticeship or striker designation of the reduced pay grade shall be administratively determined by the convening authority, subject to the provisions of the Bureau of Naval Personnel Manual or the Marine Corps Manual, as appropriate.

(c) *Execution of sentence to reduction in grade.* If the sentence includes, unsuspended, a dishonorable or bad conduct discharge or confinement for 1 year or more, execution of reduction included

in the sentence shall not be accomplished until the sentence has been affirmed by the Navy Court of Military Review, and in cases reviewed by it, the U.S. Court of Military Appeals.

§ 719.119 Forfeitures, detentions, fines.

(a) *Deduction of contribution to basic allowance for quarters.* The monthly contribution to basic allowance for quarters of persons in pay grades E–1 through E–4 (4 years' service or less) with dependents, required by paragraph 126h(2), MCM, to be deducted prior to computing the net amount of pay subject to forfeiture or detention, is $40 in all cases. The foregoing provision is equally applicable to members in pay grades E–4 or higher, with dependents, who are sentenced to reduction to pay grade E–4 (4 years' service or less) or below in combination with partial forfeiture or detention of pay. In such cases the amount of $40 shall be deducted whether or not an allotment has been registered. Regardless of the pay grade of a member with dependents, the effect of any forfeiture or detention of pay on his ability to discharge his responsibility for the care of his dependents is a factor in considering the amount of forfeiture or detention.

(b) *Forfeitures imposed by a summary court-martial.* Forfeiture of pay adjudged by summary courts-martial under 10 U.S.C. 820, may be apportioned over more than 1 month, but, as a matter of policy, the period of apportionment should not exceed 3 months.

(c) *Limitations.* In cases in which the sentence involves forfeiture of pay, detention of pay, or fine, the limitations prescribed by paragraph 126h, MCM, shall be observed, as well as the procedures prescribed in the Department of Defense Military Pay and Allowances Entitlements Manual.

§ 719.120 Preparation of records of trial.

(a) *Verbatim records of trial.* Records of trial shall be prepared verbatim in certain general and special courts-martial as provided in paragraphs 82b and 83a and Appendix 9a, MCM. When a verbatim record of trial is maintained, the trial counsel shall, unless unavoidably impractical, retain or cause to be retained any notes (stenographic or otherwise) or any recordings (mechanical or voice) from which the record of trial was prepared until such time as the convening authority (in general courts-martial) or the officer exercising general court-martial jurisdiction (in special courts-martial) takes action on the case.

(b) *Summarized records of trial.* Unless otherwise directed by the convening or higher authority, a summarized record of trial may be prepared in accordance with paragraph 82b and Appendix 10a, MCM, in general courts-martial where:

(1) The court has adjudged a sentence not including discharge; and

(2) The sentence is not in excess of that which can otherwise be adjudged by a special court-martial; and

(3) The case does not affect a general or flag officer.

(i) Unless otherwise directed by the convening or higher authority, a summarized record of trial may be prepared in accordance with paragraph 83b and Appendix 10a. MCM, in special courts-martial where the court has adjudged a sentence not including a bad conduct discharge.

(ii) When summarized records of trial are prepared, the notes or recordings (stenographic, mechanical, voice, or otherwise) from which the record of trial was prepared shall be retained until completion of appellate review.

(c) *Records of trial establishing lawful jurisdiction only.* In all courts-martial that have resulted in an acquittal of all charges and specifications, or that have been terminated prior to findings with prejudice to the Government, the record of trial need contain only sufficient information to establish lawful jurisdiction over the accused and the offenses. When the proceedings were terminated prior to findings with prejudice to the Government, a summary of the reasons for such termination shall be included in the record of trial.

(d) *Summary courts-martial.* In summary court-martial cases in which a not guilty plea is entered to any charge and specification and in which a finding of guilty results, the evidence considered by the summary court-martial relative to guilt or innocence must be summarized and attached to the record. Matters considered by a summary court-martial in extenuation and mitigation must, in all cases, be summarized and attached to the record. Strict compliance with the provisions of paragraph 79e, MCM, is directed.

(e) *Preparation, arrangement, and authentication; general and special courts-martial.* In the preparation of both verbatim and summarized records of trial, the preparation, arrangement, and authentication of records of trial and allied papers, to the extent possible, shall be in accordance with Appendixes 9 and 10, MCM, and the following rules:

(1) *Charge sheets.* The original of the charge sheet may be inserted into the original record and copies of the charge sheet may be inserted into copies of the record in lieu of copying into the record the charges and specifications upon which the accused is to be tried, the name and description of the accuser, the affidavit, and the reference for trial. However, when the charges and specifications, the name and description of the accuser, his affidavit and the reference for trial have been copied verbatim into the record, as recommended in the guide on page A8–13, MCM (Appendix 8b), the original of the charge sheet is to be prefixed to the original of the record.

(2) *Staff judge advocate's review.* In addition to the requirements of paragraph 85d, MCM, copies of the staff judge advocate's legal review shall be attached to all copies of records of trial forwarded for review by the Navy Court of Military Review.

(3) *Court-Martial Data Sheet.* Unless otherwise directed by the cognizant officer exercising general court-martial jurisdiction, the use of the Court-Martial Data Sheet (DD Form 494) is not required.

(4) *Request for appellate defense counsel.* When the statement of the accused concerning appellate representation before the Navy Court of Military Review is required (see § 719.121), the original shall be prefixed to the original record and a copy thereof to each copy of the record.

(5) *Court-Martial Data Form.* Effective January 1, 1970, all convening authorities and supervisory authorities, as appropriate, shall complete NAVJAG Form 5813/1 (Rev. 4–69) after review of all trials of general courts-martial and all trials of special courts-martial in which the approved sentence includes a bad conduct discharge. The form will be prefixed to the original record of trial just under the front cover sheet. Supplies of NAVJAG Form 5813/1 (Rev. 4–69) are available in the forms and publications segment of the Navy Supply System under Stock No. 0105–100–8132. A form containing sample entries and the Punitive Article Identification Code to be used in completing the form are set forth in Appendix section 1–g.[1]

(6) *Authentication.* Nonverbatim records of trial by special courts-martial shall be authenticated in the same manner as verbatim records.

(7) *Arrangement of original record with allied papers.* The record of trial should be bound within protective covers and arranged in the sequence shown on the back cover sheet of DD Form 490 or DD Form 491, as applicable.

(f) *Security classication of records of trial.* Records of trial containing classified matter shall be properly classified in accordance with the provisions of paragraph 82d, MCM, and the Department of the Navy Security Manual for Classified Information. Copies of such records for delivery to the accused shall be prepared and handled in accordance with paragraph 82g, MCM. Attention is directed to the fact that, while the security manual requires that matter bear the overall classication of its highest component, that degree of classification is not then imparted to other components. Rather it authorizes and requires that a component be marked with the classification it warrants (if any). Misunderstanding of these provisions may result in erroneously marking as classified each page of a voluminous record, rendering review for downgrading unnecessarily difficult and excision for delivery to the accused or counsel impossible.

Subpart D—Post-Trial Matters

§ 719.121 Request for appellate defense counsel.

10 U.S.C. 870(c)(1) provides that appellate defense counsel shall represent the accused, when requested by him, before the Navy Court of Military Review or the U.S. Court of Military Appeals. Paragraph 48k(3), MCM requires the trial defense counsel, immediately after

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a trial which results in a conviction, to advise the accused in detail as to his appellate rights. In order that each record of trial show compliance with that paragraph, the following procedures will be observed. In all general courts-martial which result in a conviction, and in those special courts-martial involving a bad conduct discharge, and within the period prescribed in paragraph 48k(3), MCM the accused will, after being advised of his appellate rights, be requested to indicate his wishes as to appellate representation by a statement in the form set forth in Appendix section 1–h.[1] The original signed statement will be attached to the original trial record in accordance with § 719.120(c)(4), and an unsigned copy will be similarly attached to each copy of the trial record.

§ 719.122 Review by staff judge advocate.

(a) *Who may act.* Ordinarily the senior judge advocate attached to the command of an officer exercising general court-martial jurisdiction is the staff judge advocate of that command within the meaning of 10 U.S.C. 834, 861, and 865(a) and (b). If, however, more than one judge advocate is attached to such a command, and if it appears that the senior is or may become disqualified for any reason from acting as staff judge advocate in any particular case or for a specific period of time, a convening authority may, in addition to the action authorized by paragraph 85a, MCM, designate, in writing, a junior to act as his staff judge advocate in any particular case or for a specified period of time if that junior officer is otherwise qualified.

(b) *Distribution of staff judge advocate's review.* In addition to the requirements or paragraph 85d, MCM, and § 719.120(c)(2), a copy of the review of the staff judge advocate shall be forwarded to the command at which the accused is to be confined in order that it may be available to those charged with developing an institutional program for the individual. In addition to the foregoing, one copy of the review of the staff judge advocate shall be forwarded to the Senior Member, Naval Clemency and Parole Board, Washington, D.C. 20370, in those cases wherein the sentence includes confinement for 8 months or more, or an unsuspended punitive discharge. The original and all copies must be legible.

§ 719.123 Action on courts-martial by convening authority.

(a) *Companion cases tried separately.* In court-martial cases where the separate trial of a companion case is ordered, the convening authority shall so indicate in his action on the record in each case.

(b) *Suspension of sentences.* Convening authorities are encouraged to suspend, for a probationary period, all or any part of a sentence when such action would promote discipline, and when the accused's prospects for rehabilitation would more likely be enhanced by probation than by the execution of all or any part of the sentence adjudged.

(c) *Sentences including a punitive discharge.* In order that the best interests of the service as well as those of the accused may be served, the convening authority, in those cases where the sentence as approved by him extends to a punitive discharge, whether or not suspended, shall include in his initial action a brief synopsis of the accused's conduct record during the current enlistment or current enlistment as extended. This synopsis should include in chronological order: Dates, nature of offenses committed, sentences adjudged and approved, and nonjudicial punishment imposed. The synopsis should also include medals and awards, commendations, and any other information of a commendable nature. Although not required, similar action may, if circumstances are deemed appropriate, be taken in other cases. The foregoing requirement does not in any way affect the legal requirements as to the admissibility of records of previous convictions during the trial itself. See also § 719.123(f).

(d) *Sentences including censure.*—(1) *General.* Censures (reprimands and admonitions) issued in execution of court-martial sentences are required to be in writing. Except as otherwise prescribed in this section, the provisions of § 719.102 (e) (1), (2), and (3) shall be applicable to letters of censure issued in execution of a court-martial sentence.

(2) *By whom issued.* Letters of censure in execution of sentences of summary courts-martial shall be issued by the convening authority. In those special and general court-martial cases wherein a sentence imposing censure is ordered executed by the convening authority, he shall issue the letter as part of his action on the record in accordance with the provisions of paragraph 89c(9), MCM. Otherwise the letter shall be issued as part of the promulgating order of the officer who subsequently directs execution of the sentence.

(3) *Contents.* The letter shall include the time and place of trial, type of court, and a statement of the charges and specifications of which convicted. It shall also contain the following paragraph:

> A copy of this letter will be placed in your official record in (the Bureau of Naval Personnel) (Headquarters, U.S. Marine Corps). You are therefore privileged to forward, within 15 days after receipt of this action, such statement concerning this letter as you may desire for inclusion in your record. If you elect not to submit a statement, you shall so state officially in writing within the time prescribed. In connection with your statement, you are advised that any statement submitted shall be couched in temperate language and shall be confined to pertinent facts. Opinions shall not be expressed nor the motives of others impugned. Your statement shall not contain countercharges.

(4) *Procedure for issuance.* The original letter shall be delivered to the accused and a copy appended to the convening authority's action (or the promulgating order of the officer subsequently directing execution of the sentence). The action (or order) should refer to the letter in the following tenor:

> Pursuant to the sentence of the court, as herein approved, a letter of (reprimand) (admonition) is this date being served upon the accused and a copy thereof is hereby incorporated as an integral part of this action.

(5) *Forwarding copy to Department.* Upon receipt of the accused's written statement or his written declaration that he does not desire to make a statement, an additional copy, together with the statement or declaration, shall be forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

(6) *Appeals.* Review, including appellate review, of letters of censure issued as part of an approved court-martial sentence will be accomplished as provided for by the Uniform Code of Military Justice, the Manual for Courts-Martial, and this Manual with respect to the proceedings of the particular court-martial which imposed the sentence. No separate appeal from these letters will be considered.

(e) *Designation of places of confinement.* The convening authority of a court-martial sentencing an accused to confinement is a competent authority to designate the place of temporary custody or confinement of naval prisoners. See § 719.146.

(f) *Cases involving convictions of larceny or other offenses involving moral turpitude.* If a punitive discharge has been approved, whether or not suspended, in a case involving conviction of larceny or other offense or offenses involving moral turpitude, the convening authority shall include in his action on the record facts which tend to extenuate, mitigate, or aggravate the offense or offenses and which do not appear in the court record or in the papers accompanying the same. If the accused entered a plea of guilty, the convening authority shall also include a synopsis of the circumstances of the offense amplifying the allegations set forth in the specification, regardless of whether such facts are otherwise set forth in the record of trial. In all cases in which the information to be so set forth in the action of the convening authority is not exclusively extenuating or mitigating, the convening authority shall refer a copy of the information to the accused before taking action on the case, and shall afford the accused an opportunity to rebut any part or portion of the information. A comment that such opportunity to rebut was afforded shall be included in the action of the convening authority, and any statement made by the accused in rebuttal shall be appended to such action. See paragraph 85b, MCM for limitations on consideration of adverse matter.

§ 719.124 Promulgating orders.

(a) *General and special courts-martial*—(1) *When promulgating orders required.* Any action taken on the proceedings, findings, or sentence of a general or special court-martial by the convening

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authority or any other party empowered to take such action shall be promulgated as prescribed in paragraphs 90 and 91, MCM. Separate orders shall be issued for each accused in the case of a joint or common trial. See Note, Appendix 15a, MCM, page A15–2.

(2) *When supplementary order is not required.* Where the findings and sentence set forth in the initial promulgating order are affirmed without modification upon subsequent review of the case, no supplementary promulgating order is required except as necessary to order the execution of the sentence or to designate a place of confinement.

(3) *Supplementary orders in Navy Court of Military Review cases.* If the sentence was ordered executed or suspended in its entirety by the convening or other authority, and the approved findings and sentence have been affirmed without modification by the Navy Court of Military Review and, in appropriate cases, the U.S. Court of Military Appeals, no supplementary court-martial order is necessary. Although not necessary for the validity of the action taken, a supplementary court-martial order shall be issued in all other cases. Such orders shall be issued in all other cases. Such orders shall be published as follows:

(i) Supplementary orders in cases involving flag or general officers, death sentences, and dismissals are issued by the Judge Advocate General by direction of the Secretary of the Navy.

(ii) Other supplementary orders shall be issued by the cognizant general court-martial authority. In cases not reviewed by the U.S. Court of Military Appeals (by petition or certification), orders should be issued immediately following the accused's execution of a "Request for Immediate Execution of Discharge" (see § 719.135) or upon expiration of 30 days from the date of service of the Navy Court of Military Review decision upon the accused. In cases considered by the U.S. Court of Military Appeals, supplementary orders should be issued upon notification of completion of review by the court.

(iii) All supplementary orders in Navy Court of Military Review cases shall bear the "NCM" number appearing on the Navy Court of Military Review decision.

(4) *Form.* The form of a promulgating order is prescribed in appendix 15, MCM. In copying and including the action of the convening authority in the promulgating order, any synopsis of the accused's record and/or circumstances of the offense contained in the convening authority's action pursuant to § 719.123 (c) and/or § 719.123(f) shall also be copied and included in the promulgating order. The order shall be subscribed by the officer issuing the order or by a subordinate officer designated by him. In either case the name, grade, and title of the subscribing officer, including his organization or unit, shall be given. Where a subordinate officer signs by direction, his name, title, and organization shall be followed by the words: "By direction of (name, grade, title, and organization of issuing officer)." Duplicate originals of promulgating orders are copies personally subscribed by the officer who subscribed the original. Certified copies of promulgating orders are copies bearing the statement: "Certified to be a true copy," over the signature, grade, and title of an officer.

(5) *Distribution.* All initial and supplementary promulgating orders shall be distributed as follows (the original and all copies must be legible):

(i) Original to be attached to original record of trial.

(ii) Duplicate original to be placed in the service record or service record book of the accused, unless the court-martial proceedings resulted in acquittal of all charges; disapproval of all findings of guilty; or disapproval of the sentence by the convening authority when no findings have been expressly approved by him.

(iii) Certified copies:

(*a*) Three to be attached to the original record of trial.

(*b*) One to be attached to each copy of the record of trial.

(*c*) Two to the commanding officer of the accused if a brig or correctional center is designated as the place of confinement; three if a disciplinary command is designated as the place of confinement. These copies should accompany the records of accused to the place of confinement.

(*d*) One to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate.

(*e*) One to the Senior Member, Naval Clemency and Parole Board, Washington, D.C. 20370, if the sentence, as approved by the convening authority, includes an unsuspended punitive discharge or confinement for 8 months or more.

(iv) Plain copies:

(*a*) One to the accused.

(*b*) One each to the military judge, trial counsel, and defense counsel of the court-martial before which the case was tried.

(*c*) One to the convening authority and, if the accused was serving in a command other than that of the convening authority at the time of the alleged offense, one to the command in which he was then serving.

(*d*) One to each appropriate subordinate unit and any other local distribution desired.

(b) *Summary courts-martial.* In accordance with paragraph 90e, MCM, the results of a trial by summary court-martial need be promulgated only to the accused. The results of any review or action on a summary court-martial pursuant to § 719.125(a), subsequent to the initial action of the convening authority, shall be communicated to the convening authority and to the commanding officer of the accused for notation in the service record or service record book of the accused.

§ 719.125 Review of summary and special courts-martial.

a. *Summary courts-martial and special courts-martial not involving a bad conduct discharge.*—(1) *Officers having supervisory powers.* In addition to the officer immediately exercising general court-martial jurisdiction over a command, the Judge Advocate General, the Deputy Judge Advocate General, any Assistant Judge Advocate General, all officers exercising general court-martial jurisdiction, and the deputies or chiefs of staff of officers exercising general court-martial jurisdiction are designated as having supervisory authority for the review of records of trial pursuant to 10 U.S.C. 865(c), and paragraph 94a(2), MCM.

(2) *Selection of supervisory authorities.* It is the policy of the Department of the Navy that review of cases pursuant to paragraph 94a(2), MCM will be accomplished in the field, unless compelling reasons exist for forwarding the record or records to the Judge Advocate General for review.

(i) For commands in a Navy chain of command, review pursuant to paragraph 94a(2), MCM will be accomplished, if practicable, and in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to the convening authority, by the area coordinator authorized to convene general courts-martial. For mobile units, the area coordinator for the above purpose is the area coordinator most accessible to the mobile unit at the time of forwarding of the record. An immediate or delegated area coordinator may take action in lieu of an area coordinator if he has authority to convene general courts-martial.

(ii) For commands in the chain of command of the Commandant of the Marine Corps, review pursuant to paragraph 94a(2), MCM, will be accomplished within the chain of command if practicable. If such accomplishment of the review is found not practicable, any officer having supervisory authority in the field may be requested to accept records of such cases and to act thereon pursuant to paragraph 94a(2), MCM. Only if all reasonably available officers having supervisory authority in the field find it impracticable to grant such requests, will the records in such cases be forwarded to the Judge Advocate General for review. If so forwarded to the Judge Advocate General, each record shall be accompanied by a letter stating the reasons why supervisory authority action was not accomplished in the field.

(3) *Courts convened by an officer exercising general court-martial jurisdiction.* When an officer exercising general court-martial jurisdiction is the convening authority of a summary court-martial or a special court-martial not involving a bad conduct discharge, his action thereon shall be as convening authority only.

(i) At activities in a Navy chain of command, the record should be forwarded, in the absence of specific direction to the contrary by a superior in the chain of command, to the area coordinator if superior in rank or command to the convening authority and authorized to

convene general courts-martial, otherwise the record should be forwarded to any appropriate superior officer authorized to convene general courts-martial, or if no such superior officer has a judge advocate available, the record shall be forwarded to the Judge Advocate General for review. For mobile units, the area coordinator for the above purpose is the area coordinator most accessible to the mobile unit at the time of forwarding the record.

(ii) At activities in the chain of command of the Commandant of the Marine Corps, the record should be forwarded to an appropriate superior officer exercising general court-martial jurisdiction or, if no such superior officer has a judge advocate available, the record shall be forwarded to the Judge Advocate General for review.

(4) *Identification of officer to whom record is forwarded for supervisory review.* In all cases, the action of the convening authority in forwarding the record for supervisory review shall identify the officer to whom the record is forwarded by stating his official title, such as "The record of trial is forwarded to the Commandant, First Naval District, for action under 10 U.S.C. 865(c)."

(5) *Review procedures.* (i) In accordance with the provisions of paragraph 94a(2), MCM, the officer having supervisory authority shall cause a judge advocate to review records of trial received for review under 10 U.S.C. 865(c). Unless, following such review, corrective or mitigating action by the officer having supervisory authority is required or recommended, no supervisory action need be taken. In lieu thereof, a notation may be made on the record of trial by the judge advocate who reviewed the record, reciting the designation of the command in which the review was accomplished; the date; the result of the review; and the signature of the judge advocate. In such cases, notification of the review and the result thereof will be made to the convening authority, the accused, and the commanding officer of the accused for notation in the service record or service record book of the accused. In cases in which corrective or mitigative action is required or recommended, action will be placed on the record of trial over the signature of the supervisory authority and a supplemental promulgating order will be issued (see § 719.124(a)(2)).

(ii) If the officer having supervisory authority disagrees with the recommendation of the judge advocate as to a matter of law, he shall not place an action on the record but shall forward the record to the Judge Advocate General, together with a signed copy of the judge advocate's recommendation, by a letter of transmittal giving his reasons for disagreement with the judge advocate's recommendation. When the question of law has been resolved by the Judge Advocate General, he may either take action on the record as the officer having supervisory authority, or he may return the record together with a final determination as to the law of the case, to the cognizant officer having supervisory authority for his action on the record.

(iii) Any action on the record by the officer having supervisory authority shall affirmatively indicate that the record was reviewed by a judge advocate by including the statement "This record has been reviewed in accordance with 10 U.S.C. 865(c)."

(b) *Special courts-martial involving a bad conduct discharge*—(1) *Action by convening authority who is an officer exercising general court-martial jurisdiction.* When an officer exercising general court-martial jurisdiction is the convening authority of a special court-martial which involves a bad conduct discharge, and if such discharge is approved by him, the record shall be forwarded directly to the Navy Appellate Review Activity for review by the Navy Court of Military Review. In taking his action on the record, such a convening authority shall follow the procedures set forth in paragraph 85, MCM.

(2) *Action by reviewing authority (officer exercising general court-martial jurisdiction).* In special court-martial cases where the sentence as approved by the convening authority who is not an officer exercising general court-martial jurisdiction includes a bad conduct discharge, review will be accomplished in accordance with paragraph 94a(3), MCM.

(i) For activities in a Navy chain of command, and in the absence of specific direction to the contrary by an officer authorized to convene general courts-martial and superior in the chain of command to the convening authority, review will be accomplished by the area coordinator authorized to convene general courts-martial. For mobile units, the area coordinator for the above purposes is the area coordinator most accessible to the mobile unit at the time of forwarding of the record. An immediate or delegated area coordinator may take action in lieu of an area coordinator if he has authority to convene general courts-martial. As indicated above, a superior officer authorized to convene general courts-martial in the chain of command may direct otherwise; he may, for example, direct that the records be forwarded to him for review.

(ii) For activities in the chain of command of the Commandant of the Marine Corps, review will be accomplished by the officer ordinarily exercising general courts-martial jurisdiction over the command. In the event review by any of the foregoing is impracticable (e.g., because of the absence or lack of a staff judge advocate) any other officer authorized to convene general courts-marital may be requested to accept records of trial for review. Only if all reasonably available officers exercising general court-martial jurisdiction find it impracticable to grant such request will the records be forwarded directly to the Navy Appellate Review Activity for review by the Navy Court of Military Review. If so forwarded, they shall be accompanied by a letter stating the reasons why review under 10 U.S.C. 865(b) was not accomplished in the field.

(3) *Disagreement between reviewing authority and his staff judge advocate.* If the reviewing authority is in disagreement with his staff judge advocate as to any matter of law, he shall take such action on the record as is within his discretionary powers notwithstanding the disagreement, and shall transmit the record of trial, with an expression of his own views as to the matters of law involved in the disagreement, to the Navy Appellate Review Activity for review by the Navy Court of Military Review.

(4) *Disapproval of bad conduct discharge by reviewing authority.* If a reviewing authority determines that he will not approve that portion of the sentence which provides for a bad conduct discharge, he shall, prior to placing his action upon the record, cause the record to be reviewed by a judge advocate in accordance with 10 U.S.C. 865(c), and in the manner set forth in paragraph (2)(3) of this section.

(c) *Special courts-martial tried in joinder or in common.* When one or more of the sentences adjudged in cases tried in joinder or in common require review only under paragraph 94a(2), MCM (not involving an approved bad conduct discharge), and the remaining sentence or sentences require review under paragraph 94a(3), MCM (including an approved bad conduct discharge), the officer exercising general court-martial jurisdiction shall cause each of the sentences to be reviewed in accordance with the applicable paragraph of the MCM. In his action on the sentence or sentences requiring review under paragraph 94a(3), MCM, he shall state that the sentence or sentences requiring review only under paragraph 94a(2), MCM, have been reviewed in accordance with 10 U.S.C. 765(c). The original of the action or review taken on the sentence or sentences requiring review only under paragraph 94a(2), MCM, shall be filed with the copy or copies of the record in the files of the officer exercising general court-martial jurisdiction, and a copy of such action or review shall be attached to the record forwarded to the Judge Advocate General, together with the action taken on the sentence or sentences requiring review under paragraph 94a(3), MCM.

§ 719.126 Action on special courts-martial by general court-martial convening authorities.

(a) *Suspension of sentences.* Officers exercising general court-martial jurisdiction are encouraged to suspend, for a probationary period, all or any part of a sentence when such action would promote discipline, and when the accused's prospects for rehabilitation would more likely be enhanced by probation than by the execution of all or any part of the sentence which was adjudged and approved by the convening authority.

(b) *Designation of places of confinement.* The general court-martial convening authority who orders a sentence of confinement into execution subsequent

to the initial action of the convening authority on the record shall designate the place of confinement in his action on the record. See also § 719.146.

§ 719.127 Supervision over court-martial records and their disposition after review in the field.

(a) *JAG supervision.* Records of all trials by courts-martial in the naval service are under the supervision of the Judge Advocate General of the Navy.

(b) *Navy Court of Military Review cases.* After completion of review in the field, all records requiring review by the Navy Court of Military Review shall be forwarded to the Navy Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, D.C. 20390.

(c) *Other general court-martial cases.* General court-martial cases which do not require review by the Navy Court of Military Review under 10 U.S.C. 866(b), shall be forwarded to the Navy Appellate Review Activity, Office of the Judge Advocate General, Washington Navy Yard, Washington, D.C. 20390.

(d) *Summary courts-martial and special courts-martial not involving a bad conduct discharge.* The records of trial of such cases shall be filed as provided in § 719.136.

§ 719.128 Criminal activity, disciplinary infractions, and court-martial report.

NAVJAG Form 5800/9 (Rev. 4–69) will be prepared by each supervisory authority for semiannual submission to the Judge Advocate General (Code 007), Navy Department, Washington, D.C. 20370. Reports must reach the Judge Advocate General no later than January 31 and July 31 of each year. Supplies of NAVJAG Form 5800/9 (Rev. 4–69) are available in the Forms and Publications Segment of the Navy Supply System under Stock No. 0105–100–8092. A sample form is set forth in appendix section 1–i.[1]

§ 719.129 Remission and suspension.

(a) *Authority to remit or suspend sentences.*—(1) *General.* Pursuant to the provisions of 10 U.S.C. 874(a) and paragraph 97a, MCM, the Under Secretary of the Navy, the Assistant Secretaries of the Navy, the Judge Advocate General, and all officers exercising general court-martial jurisdiction over the command to which the accused is attached are designated as empowered to remit or suspend any part or amount of the unexecuted portion of any sentence, including all uncollected forfeitures, other than a sentence approved by the President. However the Judge Advocate General shall not exercise this power in cases involving flag or general officers, and officers exercising general court-martial jurisdiction shall not exercise this power in cases involving officers or warrant officers. A sentence to death may not be suspended. Any action authorized by this subsection may be taken without regard to whether the person acting has previously approved the sentence.

[1] Filed as part of original document.

(2) *Authority of Commanding Officer, Naval Disciplinary Command, Portsmouth, N.H.* Authority of the Commanding Officer, Naval Disciplinary Command, Portsmouth, N.H., to take action pursuant to 10 U.S.C. 874(a), other than remission or suspension of any part or amount of any sentence by summary court-martial or of a sentence by special court-martial which does not include a bad conduct discharge, is limited to the following:

(i) Effecting actions directed by the Secretary following clemency review.

(ii) Remission of uncollected forfeitures in the cases of court-martial prisoners who are to be returned to duty.

(iii) Remission of confinement, not in excess of 5 days, for the purpose of facilitating administration by adjusting dates of transfer upon completion of confinement. Early releases in excess of 5 days may be granted when specifically authorized by the Chief of Naval Personnel.

(iv) In the event of an emergency, where, in the opinion of the commanding officer, the requirement to remit additional confinement or a punitive discharge is of such immediate nature as to preclude the normal or urgent processes of clemency as provided by SECNAVINST 5815.3 series, the commanding officer may take such action following report of the circumstances to, and having received concurrence in such action of, the Secretary of the Navy (Naval Clemency and Parole Board).

(3) *Inferior courts-martial.* Paragraph 97a, MCM, grants power to remit or suspend any part or amount of the unexecuted portion of a sentence by summary court-martial or of a sentence by special court-martial which does not include a bad conduct discharge to the officer having supervisory authority (§ 719.125a) and the commanding officer of the accused who has immediate authority to convene a court of the kind that adjudged the sentence.

(b) *Probationary period.* All suspensions shall be of the conditional remission type and shall be for a definite period of time. The running of the period of suspension of a sentence is interrupted either by the unauthorized and unexcused absence of the probationer or by commencement of proceedings to vacate suspension of the sentence. The running of the period of suspension of a sentence resumes: (1) As of the date the probationer's unauthorized and unexcused absence ends; or (2) as of the initial date of the interruption if proceedings to vacate suspension of the sentence are concluded without vacation of the suspension. For instructions concerning voluntary extension of enlistment for the purpose of serving probation, see SECNAVINST 5815.3 series.

(c) *Liaison with Naval Clemency and Parole Board.* Officers who take clemency action pursuant to the authority of paragraph (a) of this section on any sentence which includes a punitive discharge or confinement for 8 months or more shall coordinate such action with the Naval Clemency and Parole Board in accordance with the provisions of SECNAVINST 5815.3 series.

§ 719.130 Effective date of confinement and forfeitures when previous sentence not completed.

(a) *Confinement.* When a prisoner serving a sentence to confinement adjudged by court-martial is convicted by a court-martial for another offense and sentenced to a term of confinement, the subsequent sentence, upon being ordered into execution, will begin to run as of the date adjudged and will interrupt the running of the prior sentence. After the subsequent sentence has been fully executed, the prisoner will resume the service of any unremitted interrupted sentence to confinement.

(b) *Forfeitures.* If forfeitures are being collected pursuant to a sentence adjudged by a previous court-martial at the time the convening authority takes action approving a sentence to forfeitures adjudged by a subsequent court-martial, he may, in his discretion, provide in his action that the application of forfeitures adjudged by the latter court-martial will be deferred until the date upon which the sentence to forfeitures adjudged by the previous court-martial has been fully executed.

§ 719.131 Vacation of suspension.

(a) *Form of order.* The forms prescribed in Appendix 15e, MCM, shall be used for promulgating orders vacating suspensions of sentences. In cases where 10 U.S.C. 871(c) is applicable and appellate review is not complete, the final sentence of the appropriate form may be modified to read: "Upon completion of appellate review pursuant to 10 U.S.C. 871(c), the sentence as affirmed may be executed without further order."

(b) *Distribution of order.* The promulgating order shall be distributed in accordance with the applicable provisions of § 719.124, except that in 10 U.S.C. 872 (a) cases the original promulgating order and original report of proceedings to vacate suspension shall be forwarded to the Judge Advocate General for attachment to the record of trial.

§ 719.132 Approval of sentences extending to dismissal of an officer.

Pursuant to the authority of 10 U.S.C. 871(b), the Under Secretary of the Navy and the Assistant Secretaries of the Navy are designated as empowered to approve sentences extending to the dismissal of an officer (other than a general or flag officer), or such part, amount, or commuted form of such sentences as they see fit, and to suspend the execution of any part of the sentence as approved.

§ 719.133 Service of decision of Navy Court of Military Review on accused.

(a) *Promulgation packages.* When, in accordance with the provisions of paragraph 100c, MCM, the Judge Advocate General elects not to certify a case to the U.S. Court of Military Appeals, a "promulgation package" will be prepared by his office and forwarded to the officer immediately exercising general

court-martial jurisdiction over the command to which the accused is attached. The package shall include copies of the Navy Court of Military Review decision, a copy of the initial and supplementary court-martial orders, an endorsement (on the accused's copy of the decision) notifying him of his right to petition for review, a form of petition for review, and a postcard receipt to be signed by the accused. The package normally will also include directions to take action in accordance with the provisions of this section; however, detailed instructions may be included.

(b) *Delay in service.* Delivery of the Navy Court of Military Review decision to the accused shall be accomplished as soon as possible, unless delay is expressly authorized by the Judge Advocate General.

(c) *Change in place of confinement.* To avoid delay in service, it is imperative that the Judge Advocate General, as well as the designated confinement activity, be notified when the place of confinement or temporary custody, as designated in the initial court-martial order, is changed. In addition, any activity which receives information indicating that a promulgaton package has been misaddressed because of any such change shall immediately notify those concerned.

(d) *Action by general court-martial authority.* Upon receipt of a promulgation package, the officer exercising general court-martial jurisdiction will determine whether the accused is still under his jurisdiction.

(1) *Accused transferred.* If the accused has been transferred from that jurisdiction, the package will be forwarded by endorsement (copy to Judge Advocate General) to the officer currently exercising general court-martial jurisdiction over the accused. If the current location of the accused is unknown, communication by expeditious means to the convening authority should be initiated, keeping the Judge Advocate General informed.

(2) *Accused present.* If the accused is under the jurisdiction of the recipient of the promulgation package and present within his command, action shall be taken as follows:

(i) The accused's copy of the Navy Court of Military Review decision, with the endorsement thereon, and the petition for review form shall be delivered to the accused.

(ii) The accused's signature should be obtained on the postcard receipt. If the accused refuses to sign the receipt, a certificate of personal service reciting the facts shall be prepared.

(iii) The date of service shall be noted on the copy of the Navy Court of Military Review decision marked for the general court-martial authority and the copy marked for the accused's commanding officer, if appropriate, and the copies filed accordingly.

(iv) The postcard receipt or certificate of personal service should be forwarded promptly to the Judge Advocate General.

(3) *Accused on leave awaiting appellate review or administratively separated prior to completion of appellate review.* If the accused is on leave awaiting appellate review pursuant to the provisions of the Bureau of Naval Personnel Manual or the Marine Corps Manual, as appropriate, or if the accused has been administratively separated prior to completion of appellate review, the following shall apply:

(i) Service shall be made by registered mail, return receipt requested, in accordance with the provisions of those manuals.

(ii) Signature on the return receipt by anyone at the accused's leave address (or address of record if administratively separated) shall constitute notification as of the date of the receipt to the accused of the decision of the Navy Court of Military Review and shall commence the running of the 30-day appeal period.

(iii) The general court-martial authority shall cause a certificate of service by registered mail to be executed and to be mailed, together with the return receipt to the Judge Advocate General.

(iv) If no signed return receipt is received (for example, because the accused has changed his address without notifying his commanding officer), constructive service shall be made in the manner prescribed in paragraph (d)(4) of this section.

(4) *Accused absent or not at leave address or home of record.* When delivery cannot be made to an accused because he is absent without leave from his assigned ship or station, or because, having been granted leave under the provisions of the Bureau of Naval Personnel Manual or the Marine Corps Manual, as appropriate, he has changed his address without notifying his commanding officer, or because, having been administratively separated, he has changed the address listed as his home of record at the time of his separation without notifying proper authorities, if appropriate, constructive service may be made by certificate of attempted service, in accordance with the following:

(i) *Execution of certificate of attempted service.* The certificate of attempted service shall be executed in quintuplicate by the officer attempting service, and shall show the date, place, and manner in which service was attempted. In addition, it shall show either (*a*) that personal service could not be made because the accused was absent without authority from his assigned ship or station, or (*b*) that service by registered mail, return receipt requested, could not be made at the accused's leave address because he changed such address without notifying his commanding officer (or such other facts showing why a return receipt was not obtained). There shall be attached to the certificate of attempted service as enclosures thereto an authenticated extract copy of the entry in the service record or the service record book of the accused relating to his unauthorized absence or administrative separation or relating to his leave under the provisions of the Bureau of Naval Personnel Manual or the Marine Corps Manual, as appropriate, and an authenticated copy of Form DD 553 (Deserter-Absentee Wanted by Armed Forces), if issued, or the returned envelope showing the reason for nondelivery of attempted service by registered mail.

(ii) *Distribution.* Two copies of the certificate of attempted service shall be forwarded to the Judge Advocate General. One copy shall be forwarded to the Chief of Naval Personnel or to the Commandant of the Marine Corps, as appropriate. Two copies shall be retained by the officer immediately exercising general court-martial jurisdiction over the accused.

(c) *Return of accused within appeal period.* If the accused returns to his assigned ship or station or advises his commanding officer of his correct address within the 30-day appeal period, a copy of the promulgation package and a copy of the certificate of attempted service shall be served upon him. If he returns to the naval service within the appeal period at some place other than his assigned ship or station, the promulgation package and a copy of the certificate of attempted service shall be transmitted by the most expeditious means to such place for personal service upon him. In either case, the required endorsement, notifying the accused of his right to petition the U.S. Court of Military Appeals, should be modified by an appropriate endorsement informing him that his appeal period is limited to 30 days from the date of the certificate of attempted service. A receipt from the accused for his copy of the decision of the Navy Court of Military Review and for the certificate of attempted service shall be obtained and forwarded to the Judge Advocate General.

(d) *Effect of constructive service.* Constructive service constitutes notification to the accused of the decision of the Navy Court of Military Review and commences the running of the 30-day appeal period within which he may petition the U.S. Court of Military Appeals for grant of review. At the termination of the 30-day appeal period, action will be taken in the same manner as though the accused had been served personally or by registered mail on the date of the execution of the certificate of attempted service.

(e) *Form.* The form set forth in Appendix section 1-J[1] is recommended but may be modified as necessary to meet the requirements of a particular case.

§ 719.134 Execution of sentence.

(a) *General.* When the sentence of an enlisted man or warrant officer as affirmed by the Navy Court of Military Review includes, unsuspended, a dishonorable or bad conduct discharge, or confinement for 1 year or more, it may not, except as provided in § 719.135, be executed until completion of appellate review, i.e., expiration of the 30-day appeal period if no petition for review is filed, or final review by the U.S. Court of Military Appeals. When such sentence as

[1] Filed as part of original document.

affirmed by the Navy Court of Military Review does not include, unsuspended, a dishonorable or bad conduct discharge, or confinement for 1 year or more, it may be executed without further delay. See § 719.124 for requirements concerning issuance of promulgating orders.

(b) *Execution of punitive discharge.* In addition to the foregoing requirements, and notwithstanding the fact that the sentence may have been duly ordered executed, a punitive discharge may not in fact be executed until the provisions of SECNAVINST 5815.3 series have been complied with.

§ 719.135 Request for immediate execution of discharge.

(a) *General.* Prior to completion of appellate review, an accused may request immediate execution of the unexecuted portion of his sentence, following completion of the confinement portion thereof, if any, in those cases in which his sentence as affirmed by the Navy Court of Military Review:

(1) Includes an unsuspended punitive discharge; and

(2) Either does not include confinement, or the confinement portion thereof has been or will be completed prior to 30 days from the date the accused is served with a copy of the Navy Court of Military Review decision.

(b) *Conditions of approval.* Such requests may be approved by the officer exercising general court-martial jurisdiction subject to the following conditions:

(1) That the accused has received a copy of the decision of the Navy Court of Military Review in his case;

(2) That the accused has had fully explained to him his right to petition the U.S. Court of Military Appeals for grant of review;

(3) That the accused does not have an appeal pending before the U.S. Court of Military Appeals;

(4) That the accused does not intend to appeal to the U.S. Court of Military Appeals but, nevertheless, understands that his request for immediate release does not affect his right seasonably to petition the U.S. Court of Military Appeals;

(5) That the accused has consulted counsel of his own choice; and

(6) That Naval Clemency and Parole Board review, under the provisions of SECNAVINST 5815.3 series, if applicable, has been completed.

(c) *Execution of unexecuted portion of sentence.* Upon approval of such requests, the officer exercising general court-martial jurisdiction shall order the unexecuted portion of the sentence to be duly executed.

(d) *Form of request for immediate execution of discharge.* The prescribed form is set forth in Appendix section 1-k.[1] Three signed copies of the request shall be transmitted to the Judge Advocate General.

§ 719.136 Filing of court-martial records.

(a) *General courts-martial.* All records of trial by general court-martial shall, after completion of final action, be filed in the Office of the Judge Advocate General.

(b) *Special courts-martial.* Records of trial by special court-martial which (1) involve an officer accused or (2) have been acted upon by the Navy Court of Military Review, including those cases which have been returned to the officer exercising general court-martial jurisdiction for further action, shall, after completion of final action, be filed in the Office of the Judge Advocate General. All other special court-martial records shall be filed in the manner provided below for summary courts-martial.

(c) *Summary courts-martial*—(1) *Shore activities.* Officers having supervisory authority over shore activities shall retain original records for a period of two years after final action. At the termination of such retention period, the original records of proceeding shall be transferred to the National Personnel Records Center, GSA (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.

(2) *Fleet activities.* Officers having supervisory authority who are in command of fleet activities, including Fleet Air Wings and Fleet Marine Forces, shall retain original records of proceedings for a period of 3 months. At the termination of such retention period, the original records of proceedings shall be transferred to the National Personnel Records Center, GSA (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.

Subpart E—Miscellaneous Matters

§ 719.137 Financial responsibility for costs incurred in support of courts-martial.

Financial responsibility for costs incurred as the result of necessary activities of appointees to or witnesses called before courts-martial will be governed by the following:

(a) *Travel, per diem, and fees.* (1) The costs of travel and per diem of military personnel and civilian employees of the Navy, but excluding that of personnel attached to the office of the Officer in Charge, U.S. Navy-Marine Corps Judiciary Activity, and branch offices thereof, when acting as military judges of general courts-martial, will be charged to the operation and maintenance allotment which supports temporary additional duty travel for the convening authority of the court-martial. Such costs incurred by personnel attached to the office of the Officer in Charge, U.S. Navy-Marine Corps Judiciary Activity, and branch offices thereof, when acting as military judges of general courts-martial will be charged to the operation and maintenance allotment of the Judge Advocate General.

(2) Subject to obtaining authorization from the Commandant of the Naval District or the Fleet or Force Commander concerned, the costs of fees and mileage of civilians, other than employees of the Navy, will be charged as follows:

(i) When the convening authority is a Navy activity, costs will be charged to appropriation "Operation and Maintenance, Navy" funds administered by the Bureau of Naval Personnel.

(ii) When the convening authority is a Marine Corps command, costs will be charged to the operating budget which supports the temporary additional duty travel for the convening authority.

(b) *Services and supplies.* (1) The following costs of services and supplies provided by an activity in support of courts-martial will be charged to the operation and maintenance allotment of the convening authority:

(i) In-house costs which are direct, out-of-pocket, identifiable, and which total $100 or more in a calendar month; and

(ii) Costs which arise under contracts which were entered into in support of courts-martial.

(2) All other costs of services and supplies will be absorbed by the operation and maintenance allotment of the activity which provides the services or supplies.

§ 719.138 Fees of civilian witnesses.

(a) Method of Payment: The fees and mileage of a civilian witness shall be paid by the disbursing officer of the command of a convening authority or appointing authority or by the disbursing officer at or near the place where the tribunal sits or where a deposition is taken when such disbursing officer is presented a properly completed, public voucher or such fees and mileage, signed by the witness and certified by one of the following:

(1) Trial counsel or assistant trial counsel of the court-martial.

(2) Summary court.

(3) Counsel for the court in a court of inquiry.

(4) Recorder or junior member of a board to redress injuries to property.

(5) Military or civil officer before whom a deposition is taken.

(i) The public voucher must be accompanied by a subpoena or invitational orders (Joint Travel Regulations, vol. 2, chap. 5), and by a certified copy of the order appointing the court-martial, court of inquiry, or investigation. If, however, a deposition is taken before charges are referred for trial, the fees and mileage of the witness concerned shall be paid by the disbursing officer at or near the place where the deposition is taken upon presentation of a public voucher, properly completed as hereinbefore prescribed, and accompanied by an order from the officer who authorized the taking of the deposition, subscribed by him and directing the disbursing officer to pay to the witness the fees and mileage supported by the public voucher. When the civilian witness testifies outside the United States, its territories and possessions, the public voucher must be accompanied by a certified copy of the order appointing the court-martial, court of inquiry, or investigation, and by an order from the convening authority or appointing authority, subscribed by him and directing the disbursing officer to pay to the

[1] Filed as part of the original document.

witness the fees and mileage supported by the public voucher.

(b) Obtaining money for advance tender or payment: Upon written request by one of the officers listed in paragraph (a) of this section, the disbursing officer under the command of the convening or appointing authority, or the disbursing officer nearest the place where the witness is found, will, at once, provide any of the persons listed in paragraph (a) of this section, or any other officer or person designated for the purpose, the required amount of money to be tendered or paid to the witnesses for mileage and fees for one day of attendance. The person so receiving the money for the purpose named shall furnish the disbursing officer concerned with a proper receipt.

(c) Reimbursement: If an officer charged with serving a subpoena pays from his personal funds the necessary fees and mileage to a witness, taking a receipt therefor, he is entitled to reimbursement upon submitting to the disbursing officer such receipt, together with a certificate of the appropriate person named in paragraph (a) of this section, to the effect that the payment was necessary.

(d) Certificate of person before whom deposition is taken: The certificate of the person named in paragraph (a) of this section, before whom the witness gave his deposition, will be evidence of the fact and period of attendance of the witness and the place from which summoned. See paragraph 117b(9), MCM.

(e) Payment of accrued fees: The witness may be paid accrued fees at his request at any time during the period of attendance. The disbursing officer will make such interim payment(s) upon receipt of properly executed certificate(s). Upon his discharge from attendance, the witness will be paid, upon the execution of a certificate, a final amount covering unpaid fees and travel, including an amount for return travel. Payment for return travel will be made upon the basis of the actual fees and mileage allowed for travel to the court, or place designated for taking a deposition.

(f) Computation: Travel expenses shall be determined on the basis of the shortest usually traveled route in accordance with official schedules. Reasonable allowance will be made for unavoidable detention.

(g) Nontransferability of accounts: Accounts of civilian witnesses may not be transferred or assigned.

(h) Signatures. Signatures of witnesses signed by mark must be witnessed by two persons.

(i) Rates for civilian witnesses prescribed by law.

(1) *Civilian witnesses not in Government employ.* A civilian not in Government employ, who is compelled or required to testify as a witness before a naval tribunal, or at a place where his deposition is to be taken for use before such court or fact-finding body, will receive:

(i) $20 for each day's actual attendance and for the time necessarily occupied in going to and returning from the place of attendance.

(ii) $16 per day for expenses of subsistence (including the time necessarily occupied in going to and returning from the place of attendance) if the witness attends at a point so far removed from his residence as to prohibit return thereto from day to day.

(iii) 10 cents per mile for going from and returning to his place of residence, provided such travel is performed as a direct result of being compelled or required to appear as a witness. Regardless of the mode of travel employed by the witness, computation of mileage in this respect shall be made on the basis of a uniform table of distances adopted by the Attorney General (Rand McNally Standard Highway Mileage Guide or 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). With respect to travel in areas for which no such highway mileage guide exists, mileage shall be computed on the basis of (*a*) the mode of travel actually employed, (*b*) a usually traveled route, and (*c*) distances as generally accepted in the locality. In lieu of the mileage allowance provided for herein, witnesses who are required to travel between Hawaii, Puerto Rico, the territories and possessions, or to and from the continental United States, shall be entitled to the actual expenses of travel at the lowest first class rate available at the time of reservation for passage by the means of transportation employed.

(iv) Paragraph (i)(1) of this section shall not apply to Alaska. See 28 CFR 21.3 for fees and allowances of witnesses in Alaska, or the Judge Advocate General will, upon request, furnish the current applicable rates.

(v) Further, nothing in paragraph (i)(1) of this section shall be construed as authorizing the payment of attendance fees, mileage allowances, or subsistence fees to witnesses for: (*a*) Attendance or travel which is not performed either as a direct result of being compelled to testify pursuant to a subpena or as a direct result of the issuance of invitational orders; or (*b*) for travel which is performed prior to being duly summoned as a witness; or (*c*) for travel returning to their places of residence if the travel from their places of residence does not qualify for payment under this subsection.

(2) *Civilian witnesses in Government employ.* A civilian in the employ of the Government, when summoned as a witness, shall be paid (i) his necessary expenses, incident to travel by common carrier or, if travel is made by privately owned automobile, mileage at the rate of 10 cents per mile, and (ii) a per diem allowance at the rate of $25 in lieu of subsistence within the continental limits of the United States. In Alaska, Hawaii, and outside the United States, he shall be paid at the maximum rates prescribed by the Bureau of the Budget pursuant to the Travel Expense Act of 1949, as amended (5 U.S.C. 5702). Such per diem allowance shall be paid in accordance with the provisions of the Standardized Government Travel Regulations (see NCPI 4650). If the tribunal is in session at the place where the civilian witness in the employ of the Government is stationed, he shall receive no allowance.

(j) Nothing in this paragraph shall be construed as permitting or requiring the payment of fees to those witnesses not requested in accordance with paragraph 115a, MCM, or whose testimony is determined not to meet the standards of relevancy and materiality set forth in that paragraph.

(k) Expert witnesses: (1) The convening authority will authorize the employment of an expert witness and will fix the limit of compensation to be paid such expert on the basis of the normal compensation paid by United States attorneys for attendance of a witness of such standing in United States courts in the area involved. Information concerning such normal compensation may be obtained from the staff judge advocate of the local area coordinator. Convening authorities at overseas commands will adhere to fees paid such witnesses in the Hawaiian area and may obtain information as to the limit of such fees from the Commandant of the Fourteenth Naval District. See paragraph (1) of this section for fees payable to foreign nationals.

(2) The provisions of paragraph (i) of this section are applicable to expert witnesses. However, the expert witness fee prescribed by the convening authority will be paid in lieu of ordinary attendance fees on those days the witness is required to attend the court.

(3) An expert witness employed in strict accordance with paragraph 116, MCM, may be paid compensation at the rate prescribed in advance by the official empowered to authorize his employment (11 Comp. Gen. 504). In the absence of such authorization, no fees other than ordinary witness fees may be paid for the employment of an individual as an expert witness. After an expert witness has testified pursuant to such employment, the certificate of one of the officers listed in subsection a above, when presented to the disbursing officer, shall also enclose a certified copy of the authorization of the convening authority.

(l) Payment of witness fees to foreign nationals: Officers exercising general court-martial jurisdiction in areas other than a State of the United States shall establish rates of compensation for payment of foreign nationals who testify as witnesses, including expert witnesses, at courts-martial convened in such areas.

§ 719.139 Warrants of attachment.

Warrants of attachment shall not be issued without prior approval of the Judge Advocate General, acting for the Secretary of the Navy, in each case.

§ 719.140 Security of classified matter in judicial proceedings.

(a) *General.* Every precaution shall be taken by convening authorities, military judges, presidents of special courts-martial, summary courts, and trial counsel to protect the security of classified matter involved in judicial proceedings. If a trial of a case involves security information or cryptographic systems and publications, the convening authority, military judge, president of a special court-martial, summary court, and trial counsel, as appropriate, are charged with the responsibility of ensuring compliance with applicable provisions of the Department of the Navy Security Manual for Classified Information paragraph 33f, MCM, and SECNAVINST 5511.4 series.

(b) *Security clearance of personnel.* If classified matter is to be used for prosecution, appropriate personnel security clearances in accordance with the Department of the Navy Security Manual for Classified Information must be granted to all members of the court, members of the prosecution and defense, court reporters and interpreters, and all other persons whose presence is required when classified matter is introduced before the court. If the accused is represented by civilian defense counsel, such counsel must likewise be cleared before classified matter may be disclosed to him. The necessity for clearing the accused himself, and the practicability of obtaining such clearance rests in the sound discretion of the convening authority and may be one of the considerations in his determination that permission to try a particular case be requested from the Secretary of the Navy in accordance with the provisions of paragraph 33f, MCM. If it appears during the course of a trial that classified matter will be disclosed, and if the provisions of this subsection have not been complied with, the military judge or president of a special court-martial or summary court shall adjourn the court and refer the matter to the convening authority.

(c) *Procedures concerning spectators.* See § 719.115 which prescribes procedures necessary to prevent the dissemination of classified information to other than authorized persons.

§ 719.141 Court-martial forms.

(a) *List.* The forms listed below are used in courts-martial by the naval service:

STD 1156	Public Voucher for Fees and Mileage of Witnesses.
STD 1157	Claim for Fees and Mileage of Witnesses.
DD 453	Subpoena for Civilian Witness.
DD 454	Warrant of Attachment.
DD 455	Report of Proceedings to Vacate Suspension.
DD 456	Interrogatories and Depositions.
DD 457	Investigating Officer's Report.
DD 458	Charge Sheet.
DD 490	Verbatim Record of Trial.
DD 491	Summarized Record of Trial.
DD 493	Extract of Military Records of Previous Convictions.
DD 494	Court-Martial Data Sheet (Optional).
DD 1722	Request for Trial Before Military Judge Alone.
NAVJAG 5800/9	Criminal Activity, Disciplinary Infractions and Court-Martial Report (Rev. 4-69).
NAVJAG 5813/1	Court-Martial Data (Rev. 4-69).
NAVJAG 5813/2	Court-Martial Case Report (Rev. 6-69).

(b) *How to obtain forms.* The above-designated forms are available from the Forms and Publications Segment of the Navy Supply System as cognizance symbol "Q" material and may be obtained in accordance with the instructions contained in Navy Stock List of Forms and Publications, NAVSUP Publication 2002. Marine Corps activities will requisition forms in accordance with instructions contained in Chapter 22 of Marine Corps Unified Material Management System Manual, Marine Corps Order P-4400.84.

(c) *Forms prescribed by MCM.* Where forms are prescribed by the Manual for Courts-Martial, but are not immediately available, convening authorities may improvise as necessary, using the MCM and appendices thereto as guides.

§ 719.142 Suspension of counsel.

(a) *General.* When a person, military or civilian, has, pursuant to paragraph 43, MCM, and these regulations, been suspended from acting as counsel before courts-martial and the Navy Court of Military Review, he shall not, during the period of such suspension, be eligible to so act. Such suspension is separate and distinct from any matter involving contempt, discussed in paragraphs 10 and 118, MCM, and from withdrawal of certification made pursuant to 10 U.S.C. 826 and 827.

(b) *Grounds for suspension.* Suspension shall be accomplished only when, by his personal or professional conduct, a person has demonstrated that he is so lacking in competency, integrity, or ethical or moral character as to be unacceptable as counsel before a court-martial or the Navy Court of Military Review. Specific grounds for suspension include, but are not limited to:

(1) Demonstrated incompetence while acting as counsel during pretrial, trial or post-trial stages of a court-martial;

(2) Preventing or obstructing justice, including the deliberate use of frivolous or unwarranted dilatory tactics;

(3) Fabricating papers or other evidence;

(4) Tampering with a witness;

(5) Abusive conduct toward the court-martial, the Navy Court of Military Review, the military judge, or opposing counsel;

(6) Flagrant or repeated violations of any specific rules of conduct prescribed for counsel (see paragraphs 42, 44, 46, and 48, MCM);

(7) Conviction of an offense involving moral turpitude or conviction of a violation of 10 U.S.C. 848;

(8) Disbarment by a State or Federal court or the U.S. Court of Military Appeals; or

(9) Indefinite suspension as counsel by the Judge Advocate General of the Army or Air Force or the General Counsel of the Treasury Department.

Action to suspend should not be initiated because of personal prejudice or hostility toward counsel, nor should such action be initiated because counsel has presented an aggressive, zealous, or novel defense, or when his apparent misconduct as counsel stems from inexperience or lack of instruction in the performance of legal duties. The Code of Professional Responsibility of the American Bar Association is considered to be generally applicable as rules of professional conduct for persons acting as counsel before naval courts-martial and the Navy Court of Military Review, and is quoted, in part, for guidance:

DR 2-110 WITHDRAWAL FROM EMPLOYMENT

(A) *In general.* (1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) *Mandatory withdrawal.* A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

(1) He knows or it is obvious that his client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for him, merely for the purpose of harassing or maliciously injuring any person.

(2) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.

(3) His mental or physical condition renders it unreasonably difficult for him to carry out the employment effectively.

(4) He is discharged by his client.

(C) *Permissive withdrawal.* If DR 2-110 (B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) His client:

(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.

(b) Personally seeks to pursue an illegal course of conduct.

(c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under the Disciplinary Rules.

(d) By other conduct renders it unreasonably difficult for the lawyer to carry out his employment effectively.

(e) Insists, in a matter not pending before a tribunal, that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under the Disciplinary Rules.

(f) Deliberately disregards an agreement or obligation to the lawyer as to expenses or fees.

(2) His continued employment is likely to result in a violation of a Disciplinary Rule.

(3) His inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

(4) His mental or physical condition renders it difficult for him to carry out the employment effectively.

(5) His client knowingly and freely assents to termination of his employment.

(6) He believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

DR 4-101 Preservation of Confidences and Secrets of a Client

(A) "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would likely to be detrimental to the client.

(B) Except when permitted under DR 4-101 (C), a lawyer shall not knowingly:

(1) Reveal a confidence or secret of his client.

(2) Use a confidence or secret of his client to the disadvantage of the client.

(3) Use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.

(C) A lawyer may reveal:

(1) Confidences or secrets with the consent of the client or clients affected, but only after a full disclosure to them.

(2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.

(3) The intention of his client to commit a crime and the information necessary to prevent the crime.

(4) Confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

(D) A lawyer shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101 (C) through an employee.

DR 5-105 Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.

(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5-105(C).

(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5-105(C).

(C) In the situations covered by DR 5-105 (A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequate represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

(D) If a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his or his firm may accept or continue such employment.

DR 6-101 Failing To Act Competently

(A) A lawyer shall not:

(1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

(2) Handle a legal matter without preparation adequate in the circumstances.

(3) Neglect a legal matter entrusted to him.

DR 7-101 Representing a Client Zealously

(A) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101 (B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

(2) Fail to carry out a contract of employmitted under DR 2-110, DR 5-102, and DR sional services, but he may withdraw as permittee under DR 2-110, DR 5-102, and DR 5-105.

(3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 7-102(B).

(B) In his representation of a client, a lawyer may:

(1) Where permissible, exercise his professional judgment to waive or fail to assert a right or position of his client.

(2) Refuse to aid or participate in conduct that he believes to be unlawful, even though there is some support for an argument that the conduct is legal.

DR 7-102 Representing a Client Within the Bounds of the Law

(A) In his representation of a client, a lawyer shall not:

(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which he is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(B) A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal.

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

DR 7-103 Performing the Duty of Public Prosecutor or Other Government Lawyer

(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when he knows or it is obvious that the charges are not supported by probable cause.

(B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

DR 7-104 Communicating With One of Adverse Interest

(A) During the course of his representation of a client a lawyer shall not:

(1) Communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his client.

DR 7-106 Trial Conduct

(A) A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling.

(B) In presenting a matter to a tribunal, a lawyer shall disclose:

(1) Legal authority in the controlling jurisdiction known to him to be directly adverse to the position of his client and which is not disclosed by opposing counsel.

(2) Unless privileged or irrelevant, the identities of the clients he represents and of the persons who employed him.

(C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

(2) Ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

(3) Assert his personal knowledge of the facts in issue, except when testifying as a witness.

(4) Assert his personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but he may argue, on his analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of his intent not to comply.

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) Intentionally or habitually violate any established rule of procedure or of evidence.

DR 7-107 [Sections (A-(E)] Trial Publicity [See also: § 719.115]

(A) A lawyer participating in or associated with the investigation of a criminal

matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

(1) Information contained in a public record.

(2) That the investigation is in progress.

(3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

(5) A warning to the public of any dangers.

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.

(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(3) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.

(4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(5) The identity, testimony, or credibility of a prospective witness.

(6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

(C) DR 7-107 (B) does not preclude a lawyer during such period from announcing:

(1) The name, age, residence, occupation, and family status of the accused.

(2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.

(3) A request for assistance in obtaining evidence.

(4) The identity of the victim of the crime.

(5) The fact, time, and place of arrest, resistance, pursuit, and use of weapons.

(6) The identity of investigating and arresting officers or agencies and the length of the investigation.

(7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.

(8) The nature, substance, or text of the charge.

(9) Quotations from or references to public records of the court in the case.

(10) The scheduling or result of any step in the judicial proceedings.

(11) That the accused denies the charges made against him.

(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

(c) *Action to suspend.*—(1) *General.* Action to suspend a person from acting as counsel before courts-martial and the Navy Court of Military Review will be initiated only when other remedial measures, including punitive action, have failed to induce proper behavior or are inappropriate. In each stage of proceedings looking to suspension of counsel, full consideration shall be given to the effectiveness and appropriateness of such measures as warning, admonition, instruction, proceedings in contempt and other punitive action.

(2) *Report of grounds for suspension.* When information as to the occurrence or existence of any ground for suspension comes to the attention of a member of a court-martial, a military judge, appointed counsel, staff-judge advocate, or member of the Navy Court of Military Review, such information shall be reported, together with appropriate supporting information, to the officer exercising general court-martial jurisdiction over the command of such reporting officer or to the Judge Advocate General. Prompt action shall be taken by the recipient of such report to dispose of the matter in the interest of proper administration of justice, except that, if the alleged disqualifying conduct occurs during the trial of a particular case and involves counsel for the accused, action may be deferred pending completion of the trial.

(3) *Hearing.* If the officer exercising general court-martial jurisdiction or the Judge Advocate General is of the opinion that there is probable cause to believe that a ground for suspension exists, and that other remedial measures are not appropriate or will not be effective, he shall appoint a board of officers to investigate the matter and to report its findings and recommendations as to whether the person involved should be temporarily or indefinitely suspended. The board so appointed shall consist of two or more members who are certified as qualified to act as military judge or counsel of general courts-martial pursuant to 10 U.S.C. 826 or 827. The board shall cause notice to be given to the counsel concerned, informing him of the misconduct or other disqualification alleged and affording him the opportunity to appear before it for a hearing. The counsel shall be permitted at least 5 days subsequent to notice to prepare for a hearing. Failure to appear on a set date subsequent to notice will constitute a waiver of appearance. Upon ascertaining the relevant facts after notice and hearing, the board will report its findings and recommendations based thereon to the officer who appointed the board. If the board was not convened by the Judge Advocate General, the officer who appointed the board shall (unless he deems the investigation incomplete, in which case he may direct further investigation and hearing), forward the report of the board to the his comments and recommendations Judge Advocate General together with concerning suspension of the person involved.

(4) *Action by the Judge Advocate General.* Upon receipt of the report of a board, the Judge Advocate General shall determine whether the person involved shall be suspended as counsel and whether such suspension shall be for a stated term or indefinite, and shall issue an appropriate order implementing such determination. The Judge Advocate General may, upon petition of the person who has been suspended, and upon good cause shown, or upon his own motion, modify or revoke any prior order of suspension.

(5) *Effect upon other actions.* Notwithstanding these regulations, the Judge Advocate General may in his discretion withdraw any certification of qualification to act as military judge or as counsel before general courts-martial made pursuant to 10 U.S.C. 826 or 827.

§ 719.143 Petition for new trial under 10 U.S.C. 873.

(a) *Statutory provisions.* 10 U.S.C. 873, provides, "At any time within 2 years after approval by the convening authority of a court-martial sentence, the accused may petition the Judge Advocate General for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a Court of Military Review or before the Court of Military Appeals, the Judge Advocate General shall refer the petition to the appropriate court for action. Otherwise the Judge Advocate General shall act upon the petition."

(b) *Time limitations.* If the petition for new trial was placed in military channels within 2 years after approval of a sentence by the convening authority, regardless of the date of its receipt in the Office of the Judge Advocate General, it shall be considered to have been seasonably filed. Except in extraordinary circumstances, petitions will not be acted upon by the Judge Advocate General until all reviews in the field, contemplated by 10 U.S.C. 865, have been completed.

(c) *Submission procedures.* If the petitioner is on active duty the petition shall be submitted to the Judge Advocate General via the petitioner's commanding officer, the command which convened the court, and the command that took supervisory authority action on the case. If the supervisory authority has the record of trial he will forward it as an enclosure to his endorsement on the petition. The endorsement shall include information and comments as deemed appropriate. If the petitioner is no longer on active duty the petition may be submitted directly to the Judge Advocate General. If more than one court-martial is involved, a separate petition shall be filed for each trial.

(d) *Contents of petitions.* The form and contents of petitions for new trial are

specified in paragraph 109e, MCM. In addition, the petition shall include the following:

(1) Place of trial.

(2) Command title of the organization at which the court-martial was convened (convening authority).

(3) Command title of the officer exercising general court-martial jurisdiction over the petitioner at the time of trial (supervisory authority).

(4) Type of court-martial which convicted the petitioner.

(e) *Receipt in the Office of the Judge Advocate General.* (1) If the case is pending before the Navy Court of Military Review or the U.S. Court of Military Appeals, or will be so pending, the petition will be referred for action to the Navy Court of Military Review or the U.S. Court of Military Appeals, as appropriate. If referred for action to the Navy Court of Military Review, such court shall take action in accordance with Courts of Military Review rules of practice and procedure.

(2) In all other cases the Judge Advocate General may take one or more of the following actions as appropriate:

(i) Return the petition for compliance with the procedural requirements of paragraph 109e, MCM, and paragraph (d) of this section.

(ii) Deny the petition if relief is not warranted under the criteria set forth in paragraph 109d, MCM.

(iii) Grant the petition if relief is warranted under the criteria set forth in paragraph 109d, MCM.

(iv) Refer the petition to one or more officers for review and preparation of a recommendation for the Judge Advocate General. In the event such a referral is made, counsel for the Government and for the petitioner will be designated and a hearing with oral argument after submission of briefs may be permitted.

§ 719.144 Application for relief under 10 U.S.C. 769, in cases which have been finally reviewed.

(a) *Statutory provisions.* 10 U.S.C. 769 provides in pertinent part, "Notwithstanding section 876 of this title (article 76) the findings or sentence, or both, in a court-martial case which has been finally reviewed, but has not been reviewed by a Court of Military Review may be vacated or modified, in whole or in part, by the Judge Advocate General on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, or error prejudicial to the substantial rights of the accused."

(b) *Submission procedures.* Applications for relief may be submitted to the Judge Advocate General by letter. If the accused is on active duty, the application shall be submitted via the applicant's commanding officer, and the command that convened the court, and the command that took supervisory authority action on the case. If the original record of trial is held by the supervisory authority, he shall forward it as an enclosure to his endorsement. This endorsement shall also include information and comment on the merits of the application. If the applicant is no longer on active duty, the application may be submitted directly to the Judge Advocate General.

(c) *Contents of applications.* All applications for relief shall contain:

(1) Full name of the applicant;

(2) Service number and branch of service, if any;

(3) Social Security account number;

(4) Present grade if on active duty or retired, or "civilian" or "deceased" as applicable;

(5) Address at time the application is forwarded;

(6) Date of trial;

(7) Place of trial;

(8) Command title of the organization at which the court-martial was convened (convening authority);

(9) Command title of the officer exercising general court-martial jurisdiction over the applicant at the time of trial (supervisory authority);

(10) Type of court-martial which convicted the applicant;

(11) General grounds for relief which must be one or more of the following:

(i) Newly discovered evidence;

(ii) Fraud on the court;

(iii) Lack of jurisdiction over the accused or the offense;

(iv) Error prejudicial to the substantial rights of the accused;

(12) An elaboration of the specific prejudice resulting from any error cited. (Legal authorities to support the applicant's contentions may be included, and the format used may take the form of a legal brief if the applicant so desires);

(13) Any other matter which the applicant desires to submit; and

(14) Relief requested.

The applicant's copy of the record of trial will not be forwarded with the application for relief, unless specifically requested by the Judge Advocate General.

(d) *Signatures on applications.* Unless incapable of making application himself, the applicant shall personally sign his application under oath before an official authorized to administer oaths. If the applicant is incapable of making application, the application may be signed under oath and submitted by applicant's spouse, next of kin, executor, guardian, or other person with a proper interest in the matter.

§ 719.145 Set off of indebtedness of a person against his pay.

(a) *Court-martial decisions.* When the United States has suffered loss of money or property through the offenses of selling or otherwise disposing of, or willfully damaging, or losing military property, willfully and wrongfully hazarding a vessel, larceny, wrongful appropriation, robbery, forgery, arson, or fraud for which persons, other than accountable officers as defined in U.S. Navy Regulations, have been convicted by court-martial, the amount of such loss constitutes an indebtedness to the United States which will be set off against the final pay and allowances due such persons at the time of dismissal, discharge, or release from active duty.

(b) *Administrative determinations.* In addition, when the Government suffers a loss of money and competent authority has administratively determined that the loss occurred through the fraud, forgery, or other unlawful acts of such, persons as described in paragraph (a) of this section, the amount of such loss shall be set-off as described in paragraph (a) of this section. "Competent authority," as used herein, shall be the commanding officer of such persons and the administrative determination shall be made through an investigation pursuant to the JAG Manual and approved on review by a general court-martial authority

(c) *Army and Air Force property.* When the money or property involved belongs to the Army or the Air Force, and such service determines liability through the procedures provided by the authority of 37 U.S.C. 1007 and demands set off against the final pay and allowances of any naval service personnel, setoff shall be effected in accordance with subsection a above.

(d) *Voluntary restitution.* Immediate recovery action may be instituted on the basis of a voluntary offer of the member to make restitution of all or part of any indebtedness to the Government. The voluntary offer constitutes assumption of pecuniary responsibility for the loss and, as such, is sufficient to authorize checkage of current pay, if required, to collect the amount of the indebtedness. See also 10 U.S.C. 6161 and SECNAV INST 7220.38A series concerning the possibility of remission or cancellation of an enlisted member's indebtedness. Nothing herein shall be construed as precluding setoff against final pay in other cases when such action is directed by competent authority.

§ 719.146 Authority to prescribe regulations relating to the designation and changing of places of confinement.

The Chief of Naval Personnel and the Commandant of the Marine Corps are authorized to issue joint regulations as required to appropriate authorities relating to the designation and the changing of places of confinement of naval prisoners (see BUPERSINST 1640.5 series). Convening authorities, officers exercising supervisory authority, and commanding officers operating correctional facilities are considered appropriate authorities within the meaning of this section. The Chief of Naval Personnel is further authorized to designate places of confinement when necessary, to change the designation, and to authorize the transfer of prisoners between naval places of confinement and to Federal penal or correctional institutions.

§ 719.147 Apprehension by civilian agents of the Naval Investigative Service.

Pursuant to the provisions of paragraph 19, MCM, and under the authority of 10 U.S.C. 807(b), any civilian agent of the Naval Investigative Service, who is

duly accredited by the Director, Naval Investigative Service, and who is engaged in conducting an investigation within the investigative jurisdiction of the Naval Investigative Service as established in departmental directives, which investigation has been duly requested by, or is at the direction of, competent U.S. Navy or U.S. Marine Corps authority, may apprehend, if necessary, persons subject to the Uniform Code of Military Justice or to trial thereunder, upon reasonable belief that an offense has been committed and that the person apprehended committed it. A person so apprehended must be taken promptly before his commanding officer or other appropriate military authority. Such a civilian agent may apprehend a commissioned officer or a warrant officer only pursuant to specific orders of a commissioned officer except where such an apprehension is necessary to prevent disgrace to the service, the commission of a serious offense, or the escape of one who has committed a serious offense. Such a civilian agent, even though not conducting an investigation relating to the person apprehended, may also apprehend a person subject to the Uniform Code of Military Justice upon observation of the commission of a felony or a misdemeanor amounting to a breach of the peace occurring in the agent's presence. A person so apprehended must be delivered promptly to his commanding officer or other appropriate military authority.

§ 719.148 Search and seizure forms.

Appendix sections 1–l [1] and 1–m [1] contain suggested formats for recording information pertaining to authorization for searches (with instructions), and the granting of consent to search. These formats are designed as guides in processing problems which may arise in connection with cases involving searches and seizures. Use of these formats, even as guides, is not mandatory, but rests within the discretion of local commanders.

§ 719.149 Interrogation of criminal suspects form.

Appendix section 1–n [1] contains a suggested format which may henceforth be utilized by investigative personnel in cases in which criminal suspects desire to waive their rights concerning self-incrimination, and to make statements. This format is designed as a guide and its use is not mandatory.

§ 719.150 Court-martial case report.

The Court-Martial Case Report, NAVJAG 5813/2 (Rev. 6–69), is designed to serve as a statistical source for planning purposes and to afford the Judge Advocate General an early source of information regarding cases which may evoke public or congressional interest. A case report will be submitted by the "Presiding Officer" with respect to each accused tried by general or special court-martial. The term "Presiding Officer" includes a military judge of the Judiciary Activity, any other military judge assigned to a special court-martial, and the president of a special court-martial without a military judge. Supplies of NAV JAG Form 5813/2 (Rev. 6–69) are available in the Forms and Publications Segment of the Navy Supply System under Stock No. S/N 0105–100–8160. A form containing sample entries is set forth in appendix section 1–o.[1]

PART 720—DELIVERY OF PERSONNEL; SERVICE OF PROCESS AND SUBPENAS; PRODUCTION OF OFFICIAL RECORDS

Part 720 of Title 32 is revised to read as follows:

Subpart A—Delivery of Personnel

Sec.

Subpart B—Service of Process and Subpenas Upon Personnel of Naval Establishment

Subpart C—Production of Official Records

Subpart D—Liaison With the Department of Justice

AUTHORITY: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240–243).

Subpart A—Delivery of Personnel

§ 720.1 Delivery when personnel within territorial limits of the requesting State.

In cases in which the delivery of any person in the Navy or Marine Corps is requested by local civil authorities of a State, Territory, or Commonwealth for an alleged offense punishable under the laws of that jurisdiction, and such person is attached to a Navy or Marine Corps activity within the requesting jurisdiction, or aboard a ship within the territorial waters of such jurisdiction, commanding officers are authorized to and normally will deliver such person when a proper warrant is presented, subject to exceptions in § 720.8.

§ 720.2 Delivery when personnel beyond territorial limits of requesting State.

(a) *General.* In all cases in which the delivery of any person in the Navy or Marine Corps is wanted by State, Territory, or Commonwealth civil authorities for an alleged crime or offense made punishable by the laws of the jurisdiction making the request, and such person is not attached to a Navy or Marine Corps activity within such requesting State, Territory, or Commonwealth, or a ship within the territorial waters thereof, any officer exercising general courts-martial jurisdiction, or officer designated by him, is authorized, subject to exceptions in § 720.8, to deliver such person for the purpose of making him amenable to prosecution. The authorities of the requesting State will be required, in the absence of a waiver of extradition by the member concerned, to complete extradition process according to the prescribed procedures to obtain custody of a person from the State in which the individual is located, and to make arrangements to take the individual into custody there. Compliance with § 720.5 is required.

(b) *Waiver of extradition.* (1) Any person may waive formal extradition under circumstances cognizable under paragraph (a) of this section. A waiver must be in writing and witnessed. It must include a statement that the person signing it has received counsel of either a military or civilian attorney prior to executing the waiver, and it must further set forth the name and address of the attorney consulted. The form for waiver should be substantially as that suggested in appendix section A–13(a).[1]

(2) In every case where there is any doubt as to the voluntary nature of a waiver, such doubt shall be resolved against its use and all persons concerned will be advised to comply with the procedures set forth in paragraph (a) of this paragraph.

(3) Executed copies of all waivers will be mailed to the Judge Advocate General immediately after their execution.

(4) When an individual declines to waive extradition, the Commandant of the Naval District shall be informed and he shall make further representations to the civil authorities as appropriate. The individual concerned shall not be transferred or ordered out of the State in which he is then located, until the matter of extradition is resolved, without the permission of the Secretary of the Navy (Judge Advocate General).

(c) *Fugitive warrants.* A fugitive warrant, as used herein, is a warrant for the arrest of an individual issued by a court of competent jurisdiction of the State in

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which the individual concerned is then located, and which may be based on a warrant or other process issued by still another State. When delivery of an individual is sought on the basis of such a warrant, delivery will normally be granted. Section 720.1 is considered controlling in such cases. When the State in which the individual is located desires custody solely for the purpose of delivering the individual to another State, such as when delivery is sought on the basis of a fugitive warrant, officials of both States shall sign the agreement required by § 720.5, or the agreement will be modified so as to reflect clearly that the State in which the individual is located may not avoid the responsibility of returning the individual to the Department of the Navy. When an indivdual is delivered upon presentation of a proper fugitive warrant, the provisions of paragraph (b) of this section relative to extradition are applicable.

§ 720.3 Personnel stationed outside the United States.

(a) *Personnel desired by local authorities.* In all cases in which the delivery of any person in the Navy or Marine Corps is desired for trial by State, Territory, Commonwealth, or local civil authorities and such person is stationed outside the United States, a requisition for the delivery of the person must be made by the Governor of such State, Territory, or Commonwealth, addressed to the Secretary of the Navy. It must show that the person desired is charged with a crime in that State, Territory, or Commonwealth, for which he could be extradited under the Constitution of the United States, the enactments of Congress, or the laws of the State, Territory, or Commonwealth desiring his delivery. Such requisition should be forwarded to the Secretary of the Navy (Judge Advocate General) for examination. If the papers allege that the person is a fugitive from the justice of that State, Territory, or Commonwealth and that he is charged with an extraditable crime and the papers are otherwise found to be in due form, the Secretary of the Navy (Judge Advocate General) will direct the Commandant of the Marine Corps or Chief of Naval Personnel, as the case may be, to issue appropriate orders to the individual concerned directing his transfer to the United States to the military installation most convenient to the Department of the Navy. The individual will be held under the minimum restraint required under the circumstances. The Commandant of the Marine Corps or the Chief of Naval Personnel, as the case may be, will inform the officials of the requesting State of the location of the individual concerned and that custody may be obtained by compliance with § 720.1 or § 720.2, as applicable.

(b) *Personnel desired by Federal authorities.* In all cases in which the delivery of any person in the Navy or Marine Corps is desired for trial in Federal District Court, upon appropriate representations by the Department of Justice to the Secretary of the Navy (Judge Advocate General), the individual will be returned to the United States and held at a military facility convenient to the Department of the Navy. Delivery may be accomplished as set forth in § 720.6.

§ 720.4 JAG Authority.

The Judge Advocate General, the Deputy Judge Advocate General or any Assistant Judge Advocate General is authorized to act for the Secretary of the Navy in the performance of functions under §§ 720.1, 720.2, 720.3, 720.5, 720.8, 720.14, 720.20, 720.23, and 720.30.

§ 720.5 Agreement required prior to delivery to State authorities.

In every case in which the delivery for trial of any person in the Navy or Marine Corps to the civilian authorities of a State is authorized, such person's commanding officer shall, before making such delivery, obtain from the Governor or other duly authorized officer of such State a written agreement that conforms to the agreement as set forth in appendix section A–13(b).[1] When indicating in the agreement the naval or Marine Corps activity to which the person delivered is to be returned by the State, care should be taken to designate the closest appropriate activity which possesses special court-martial jurisdiction. The Department of the Navy considers this agreement substantially complied with when the man is furnished transportation back to a naval or Marine Corps activity as set forth herein and necessary cash to cover his incidental expenses en route thereto, and the Department of the Navy so informed. Any departure from the agreement set forth in appendix section A–13(b)[1] must have prior approval from the Secretary of the Navy (Judge Advocate General).

§ 720.6 Delivery of personnel to Federal authorities.

(a) *Authority to deliver.* Commanding officers are authorized to and should deliver personnel to Federal law enforcement authorities who display proper credentials and represent to the command that a Federal warrant for the arrest of the individual concerned has been issued, subject to exceptions in § 720.8.

(b) *Agreement not required of Federal authorities.* The agreement described in § 720.5 will not be exacted as a condition to the delivery of personnel to Federal law enforcement authorities. In the event that the person delivered is acquitted, or, if convicted, immediately upon satisfying any sentence of the court, or upon other disposition of his case, the person will be returned to the naval service: *Provided,* That naval authorities desire his return, and the necessary expenses will be paid from an appropriation under the control of the Department of Justice.

§ 720.7 Delivery of personnel to foreign authorities.

Except when provided by agreement between the United States and the foreign government concerned, commanding officers are not authorized to deliver persons in the Department of the Navy to foreign authorities. When a request for delivery of personnel is received, in a country with which the United States has no agreement or when the commanding officer is in doubt, advice should be sought from the Judge Advocate General.

§ 720.8 Circumstances in which delivery is refused.

(a) *Disciplinary proceedings pending.* When disciplinary proceedings involving military offenses are pending or the person is undergoing a sentence of a court-martial, commanding officers must obtain specific authority from the Secretary of the Navy (Judge Advocate General) to deliver personnel to Federal, State, Territory, Commonwealth, or local authorities.

(b) *When delivery may be refused.* Delivery may be refused in the following circumstances:

(1) Where the accused has been retained for prosecution as set forth in § 719.107(g)(3)(a) of this chapter;

(2) Where the accused is undergoing a sentence of a court-martial. However, attention is directed to the "Interstate Agreement on Detainers Act" (Public Law 91–538; 84 Stat. 1397; 18 U.S.C. A. App.), which provides for the delivery of a sentenced prisoner to a jurisdiction in which an untried indictment, information, or complaint is pending, for temporary custody during trial. Any request made pursuant to the "Interstate Agreement on Detainers Act" shall be forwarded in an expeditious manner to the Secretary of the Navy (Judge Advocate General, Code 14), for action;

(3) When the commanding officer considers that conditions exist which indicate that delivery should be denied.

(c) *Reports required.* When delivery is refused, see § 720.10.

§ 720.9 Reports required when personnel delivered.

(a) *General.* Upon delivery of naval personnel to civil authorities, whether Federal, State, Territory, Commonwealth, local, or foreign, a written report of delivery shall be made by the commanding officer to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. A copy will be furnished the Judge Advocate General in cases in which the Secretary of the Navy or the Judge Advocate General has authorized the delivery. The reports required by this paragraph and by paragraph (b) of this section need not be made when personnel are delivered to local civil authorities for misdemeanors not involving moral turpitude and are returned to the command within 24 hours.

(b) *When disposition is made by civil authorities.* When the trial of a person delivered pursuant to this chapter is

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completed or the charges dismissed, the commanding officer shall submit, by letter to the Chief of Naval Personnel or to the Commandant of the Marine Corps, a full report of the offense or offenses charged, the findings, sentence or other action taken. A copy shall be furnished the Judge Advocate General in cases where delivery of the person was authorized by the Secretary of the Navy or the Judge Advocate General. As a separate matter, certain cases also must be processed under applicable provisions of the Bureau of Naval Personnel Manual or the Marine Corps Personnel Manual relating to the separation of personnel.

§ 720.10 Report required when delivery refused.

In any case where delivery has been refused, the commanding officer shall report the circumstances to the Judge Advocate General by dispatch (telephone if circumstances warrant). He shall thereafter confirm the initial report by letter setting forth a full statement of the facts. A copy of the report shall be forwarded to the Commandant of the Naval District or to the Area Coordinator, as appropriate.

§ 720.11 Report required when personnel confined by foreign authorities.

When any person in the Navy or Marine Corps is held or confined by foreign authorities in connection with criminal charges, the commanding officer shall promptly submit by letter a full initial report to the Chief of Naval Personnel or the Commandant of the Marine Corps with a copy to the Judge Advocate General. The report, and subsequent reports as to any significant change, shall include the offenses charged and of which convicted, sentence (if convicted), place of confinement, confinement conditions, and health and welfare of personnel concerned. As a separate matter, certain cases also must be processed under the applicable provisions of the Bureau of Naval Personnel Manual or the Marine Corps Personnel Manual relating to the separation of Navy and Marine Corps personnel. The provisions of this subsection do not affect the reporting requirements set forth in SEC-NAVINST 5820.4 series (NOTAL).

§ 720.12 Personnel released by civil authorities on bail or on their own recognizance.

A person in the Navy or Marine Corps arrested by Federal, State, or territorial authorities and released on bail or on his own recognizance has a duty to return to his parent organization. Accordingly, where a person in the Navy or Marine Corps is arrested by Federal, State, or territorial authorities and returns to his ship or station on bail, or on his own recognizance, the commanding officer upon verification of the attending facts, date of trial, and approximate length of time that should be covered by the leave of absence should normally grant liberty or leave to permit appearance for trial. Nothing in this section is to be construed as permitting the person arrested and released to avoid the obligations of his bond or of his recognizance by reason of his being in the military service.

§ 720.13 Interviewing of naval personnel by Federal civilian investigative agencies.

Requests by the Federal Bureau of Investigation or other Federal civilian investigative agencies to interrogate persons in the naval service suspected or accused of crimes should be promptly honored. Any refusal of such a request shall be immediately reported to the Judge Advocate General.

§ 720.14 Habeas corpus.

(a) *General.* In all cases where habeas corpus process is served on a person in the Navy or Marine Corps, the nearest U.S. attorney will be informed immediately and his assistance requested. A report of such service will be made to the Secretary of the Navy (Judge Advocate General) by message (telephone if circumstances warrant) confirming the initial report by a speed letter to the Secretary of the Navy (Judge Advocate General). This letter should include the information outlined in paragraph (b) of this section. Action must be taken expeditiously in habeas corpus proceedings as the courts generally allow but a short period of time in which to prepare a response.

(b) *Reports required.* (1) Immediately following the dispatch or telephonic report to the Secretary of the Navy (Judge Advocate General), a copy of the petition for the writ of habeas corpus, and all other pleadings, orders, and process in the case, will be forwarded to the Secretary of the Navy (Judge Advocate General) by speed letter. The letter should also include a full statement as to the circumstances under which the petitioner has been detained.

(2) When the hearing has been completed and the court has issued its order in the case, a copy of the order shall be forwarded promptly to the Secretary of the Navy (Judge Advocate General). This is particularly important if the order was adverse to the Navy in order to permit a timely determination as to whether or not to undertake further proceedings.

Subpart B—Service of Process and Subpenas Upon Personnel of the Naval Establishment

§ 720.20 Service of process upon personnel.

(a) *Within the jurisdiction.* Commanding officers afloat and ashore are authorized to permit service of process of Federal, State, territorial, or local courts upon naval personnel or civilians located within their commands and within the jurisdiction of the court out of which the process issues. However, such service should not be allowed within the confines of the command until the permission of the commanding officer has first been obtained. Personnel serving aboard vessels located within the territorial waters of the State or territory out of which the process issues are considered within the jurisdiction of that State or territory for the purpose of service of process. The commanding officer shall permit the service of process except in unusual cases where he concludes that compliance with the mandate of the process would seriously prejudice the public interest. Where practicable, the commanding officer shall require that the process be served in his presence, or in the presence of an officer designated by him. Where service of process by mail is sufficient, the process may be mailed to the person named therein. In all cases commanding officers will insure that the nature of the process is explained to the person concerned.

(b) *Personnel beyond the jurisdiction of the court.* (1) Where a person in the naval service, or a civilian, is beyond the jurisdiction of the court issuing the process, the commanding officer will permit service or delivery of the process under the same conditions as noted in paragraph (a) of this section for whatever legal effect it may have. At the same time the commanding officer or his designee will advise the person being served that he is not required to indicate acceptance of service, in writing or otherwise, although he may do so voluntarily. In most cases he should further advise the person concerned to consult legal counsel.

(2) Where process is forwarded to a commanding officer with the request that it be delivered to a person within his command, he may deliver it to the person named therein, provided such person voluntarily agrees to accept it. In such cases the commanding officer will insure that the serviceman or civilian concerned is informed that he is not required to accept service of the process but may do so voluntarily. The commanding officer is not required to act as a process server. When the person named in the process does not voluntarily accept the process, it should be returned with a notation that the person named therein refused to accept it.

(c) *Service of process arising from official duties.* (1) If the service of process involves a potential claim against the Government, see §§ 750.2(d) and 750.55(d) of this chapter. While the right to remove to Federal court under 28 U.S.C. 1442 and 1442a requires color of office, which is considered to be more than simple scope of employment, this right must be fully explored in all situations where the outcome of the State court action may influence a claim or potential claim against the United States.

(2) Whenever a Government employee (as defined in § 750.1(a) of this chapter) is served with Federal or State court civil or criminal process or pleadings (including traffic tickets) arising from actions performed in the course of his official duties, he shall immediately deliver all process and pleadings served upon him to his commanding officer. The commanding officer shall thereupon ascertain the facts surrounding the incident and with the advice of a Navy or Marine Corps judge advocate, if one is reasonably available, take appropriate

action in accordance with JAGINST 5822.2 of February 2, 1962, Subject: Civil suits against military or civilian personnel of the Department of the Navy resulting from the operation of motor vehicles while acting within the scope of their office or employment, and legal representation in other court proceedings. The Government employee will be advised concerning his right to remove civil or criminal proceedings from State to Federal court under 28 U.S.C. 1442 and 1442a, his rights under the Federal Driver's Act (28 U.S.C. 2679B), and the contents of JAGINST 5822.2.

(3) Whenever a military member or civilian employee of the Department of the Navy is served with any process because of his official position, the Judge Advocate General shall be notified by message or telephone. This notification shall be confirmed by a letter report by the nearest appropriate command. The letter report shall include the detailed facts which give rise to the action. For lawsuits filed in the U.S. District Court, Washington, D.C., the Air Force has been assigned responsibility for accepting service of process for the Navy. See § 720.14 for habeas corpus and § 720.40 for litigation reports. In habeas corpus cases, liaison with the U.S. attorney assigned to protect the Navy's interests will be maintained through the Judge Advocate General after the initial notification prescribed by § 720.14.

(d) *Service of process of foreign courts.* (1) Usually, the question of the amenability of military personnel, civilian employees, and dependents of both stationed in a foreign country, to the service of process from courts of the host country will have been settled by an agreement between the United States and the foreign country concerned. (For example, in the countries of the signatory parties, amenability to service of civil process is governed by paragraphs 5(g) and 9 Article VIII of the NATO Status of Forces Agreement, TIAS 2846.) Where service of process on a person in the Department of the Navy is attempted within the command in a country with which the United States has no agreement on this subject, advice should be sought from the Judge Advocate General.

(2) Usually, persons in the Department of the Navy are not required to accept service of process outside the geographic limits of the jurisdiction of the court from which the process issued. In such cases acceptance of the service is not compulsory, but service may be voluntarily accepted in accordance with paragraph (c) of this section. In exceptional cases where the United States has agreed that service of process will be accepted by persons in the Department of the Navy located outside the geographic limits of the jurisdiction of the court from which the process issued, the provisions of the agreement and of paragraph (a), of this section, will govern.

(3) Under the laws of some countries (such as Sweden), service of process is effected by the document, in original or certified copy, being handed to the person for whom the service is intended. Service is considered to have taken place even if the person refuses to accept the legal document. If a commanding officer or other officer in the military service calls the serviceman to his office and personally hands him or attempts to hand him the document, service is considered to have been effected, permitting the court to proceed to judgment. Upon receipt of foreign process with a request that it be served upon a member of his command, a commanding officer shall notify the serviceman of the fact that a particular foreign court is attempting to serve process upon him and inform him that he may ignore the process or come to the office and receive it. If the serviceman chooses to ignore the service, the commanding officer will return, the document to the embassy or consulate of the foreign country with the notation that the serviceman had been notified that the document was in the office of the commanding officer, but that that he chose to ignore it, and that no physical offer of service had been made. The commanding officer will keep the Judge Advocate General advised of all requests for service of process from a foreign court and the details thereof.

(e) *Leave or liberty to be granted persons served with process.* In those cases where personnel are served with process, as noted in subsection a above, or accept service of process, as noted in subsection b above, the commanding officer normally should grant leave or liberty to the person served in order to permit him to comply with the process; provided, such absence will not prejudice the best interests of the naval service.

(f) *Report where service is not allowed.* Where service of process is not permitted, a report of such refusal and the reasons therefor shall be forwarded by speed letter (telephone if conditions warrant) to the Secretary of the Navy (Judge Advocate General).

§ 720.21 Personnel subpoenaed as witnesses in State or local courts.

Where military personnel or civilian employees are subpoenaed to appear as witnesses in State or local courts, and are served in the manner described under conditions set forth in § 720.20, the provisions of § 720.20(e) apply. If naval personnel are requested to appear as witnesses in State or local courts where the interests of the Federal Government are involved (e.g., Medical Care Recovery Act cases) the procedures described in § 720.22(a) may be followed.

§ 720.22 Personnel subpoenaed as witnesses in Federal courts.

(a) *Witnesses on behalf of Federal Government.* Where naval personnel are required to appear as witnesses in a Federal Court to testify on behalf of the Federal Government in a case involving activities of the Department of the Navy, the Bureau of Naval Personnel or the Commandant of the Marine Corps, as the case may be, will direct the activity to which the person is attached to issue Temporary Additional Duty Travel Orders to the person concerned. The charges for such orders shall be borne by the activity to which the required witness is attached. Payment to witnesses will be as provided by the Joint Travel Regulations and U.S. Navy Travel Instructions. If the required witness is to appear in a case where the activities of the Department of the Navy are not involved, the Department of the Navy will be reimbursed in accordance with the procedures outlined in the Navy Comptroller Manual, section 046278.

(b) *Witnesses on behalf of nongovernmental parties.*—(1) *Criminal actions.* Where naval personnel are served with a subpoena to appear as a witness for the defendant in a criminal action and the fees and mileage required by Rule 17(d) of the Federal Rules of Criminal Procedures are tendered, the commanding officer is authorized to issue the person subpenaed permissive orders authorizing attendance at the trial at no expense to the Government, unless the public interest would be seriously prejudiced by his absence. In this case a full report of the circumstances will be made to the Judge Advocate General. In those cases where fees and mileage are not tendered as required by Rule 17(d) of the Federal Rules of Criminal Procedure, but the person subpoenaed still desires to attend, the commanding officer is authorized to issue permissive orders at no cost to the Government. However, such persons should be advised that an agreement as to reimbursement for any expenses incident to travel, lodging, and subsistence should be effected with the party desiring their attendance and that no reimbursement should be expected from the Government.

(2) *Civil actions.* Where naval personnel are served with a subpoena to appear as a witness on the behalf of a nongovernmental party in a civil action brought in a Federal court, the provisions of § 720.20 apply.

§ 720.23 Naval prisoners as witnesses or parties in civil courts.

(a) *Criminal actions.* In those instances where the Federal, State, or territorial authorities desire the attendance of a naval prisoner as a witness in a criminal case, a request for such person's attendance should be submitted to the Secretary of the Navy (Judge Advocate General). Upon receipt of such a request, authority will be given, in a proper case, for the production of the requested naval prisoner in court without resort being had to a writ of *habeas corpus ad testificandum* (a writ which requires the production of a prisoner to testify before a court of competent jurisdiction).

(b) *Civil actions.* The Department of the Navy will not authorize the attendance of a naval prisoner in a Federal, State, or Territorial court, either as a party or as a witness, in private litigation pending before such court, because in these the court may grant a postponement or a continuance of the trial. The deposition of a naval prisoner may be taken in such a case subject to such reasonable conditions or limitations as may be imposed by the command concerned.

§ 720.24 Interviewing personnel preliminary to civil litigation in matters pertaining to official duties.

(a) *Request by parties in interest.* Except as hereinafter limited, requests, preliminary to civil litigation, for permission to conduct an ex parte interview of persons in the Department of the Navy (enlisted, commissioned, or civilian) in matters growing out of their official duties, and the obtaining of their statements shall be forwarded to the Judge Advocate General. The Judge Advocate General, when practicable, will make appropriate arrangements in order that all of the desired personnel may be interviewed at the same time. The interview will be by all of the counsel for the various parties in interest or by such counsel as desire to be present. Interviews of such personnel shall be conducted in the presence of an officer designated by the Judge Advocate General. If any of the parties in interest desire statements from the interviewed personnel, such statements shall be prepared under the direction of the designated officer. A signed copy of the statement shall be furnished to each party in interest, to the person making the statement, and to the Judge Advocate General. The officer assigned for the purpose of the interview shall distribute the copies of the statement as prescribed. If the interview involves any line of inquiry which would disclose or compromise classified material or otherwise result in detriment to the interests of the United States, the assigned officer shall immediately preclude that line of inquiry.

(b) *Limitations.* Requests mentioned in paragraph (a) of this section shall not be granted where the United States is a party in any related litigation or where its interests are involved, including cases where the interests of the United States or any Department thereof are represented by private counsel by reason of insurance or subrogation arrangements. In these instances, records, data, and witnesses shall be made available only to the Department of Justice or to such other U.S. Government departments, agencies or personnel requiring access thereto in the performance of their official duties.

(c) *Admiralty matters.* Inquiries which relate to admiralty matters or to maritime litigation, whether involving naval vessels or not, shall be sent to the Office of the Judge Advocate General (Deputy Assistant Judge Advocate General (Admiralty)). Examples of admiralty matters are set forth in paragraph (c) and (d) of paragraph (l) of § 752.1.

§ 720.25 Suits against the United States.

(a) *General.* The primary responsibility for representing the United States in any litigation in which the United States has an interest rests in the Attorney General. For the purpose of affording the Attorney General timely notice of legal actions arising out of operations of the Naval Establishment, the Judge Advocate General and the General Counsel, within the areas of their respective jurisdictions, maintain close liaison with the Department of Justice. Reports are required of all suits against the United States, or its prime contractors or subcontractors on contracts under which the Government may be obligated to make reimbursement or in cases where the United States is, in legal effect, the defendant.

(b) *Reports to the Judge Advocate General.* When any command is apprised, by service of process or otherwise, of the commencement of any civil litigation or legal proceedings, including those involving nonappropriated-fund activties, other than suits within the jurisdiction of the General Counsel as set forth in paragraph (c) of this section, which arise out of the operations of the Naval Establishment or are otherwise of substantial interest to it, such command will report to the Judge Advocate General, Navy Department, Washington, D.C., by the most expeditious means, using message, telephone, or letter, as may be warranted by the circumstances. This category of civil litigation and other legal proceedings includes, but is not limited to, any legal proceeding involving the United States as a party and arising out of operations of the Department of the Navy; proceedings against any person subject to military law or any official or employee of the Department of the Navy in connection with his public duties; and proceedings in which attachment of Government funds or other property is sought. The report shall contain as much of the following information as may be pertinent:

(1) Name of parties to the proceeding.

(2) Nature of the action.

(3) Correct designation of the tribunal in which the proceeding is brought.

(4) Docket number of case, if available.

(5) Names of person or persons on whom service was made, method of service, and dates.

(6) Explanation of Government's interest in the proceeding.

(7) Date by which the defendant must plead or otherwise respond.

(8) Nature of the principal defense, if known.

(9) Status of the defendant as being a Government officer, employee, agent, contractor, nonappropriated-fund activity employee, etc.

(10) Amount claimed, or other relief sought.

(11) If a contractor is involved, the contract number, and information as to whether the contractor desires or is willing to permit the suit to be defended by a U.S. Attorney.

(12) Data as to whether the subject matter of the suit is covered by insurance; if so, whether covered to the amount claimed, and whether the insurance carrier will accept full responsibility for defense of the suit.

(13) If action is brought in a foreign country, a recommendation as to qualified local attorneys, English-speaking if possible, available for retention to defend the interests of the United States. Normally, the names of such attorneys should be from a list maintained by the U.S. Embassy or Consulate.

(14) Such other available information as may be necessary for a full understanding of the action and to enable the Government to prepare a defense.

(c) *Reports to the General Counsel.* A report as required above shall be made to the General Counsel, Navy Department, Washington, D.C., rather than to the Judge Advocate General, in all cases in the field of business and commercial law, including cases relating to:

(1) The acquisition, custody, management, transportation, taxation, disposition of real and personal property, and the procurement of services, including the fiscal, budgetary, and accounting aspects thereof; excepting, however, tort claims and admiralty claims arising independently of contract, matters concerning nonappropriated-fund activities, and matters related to the Naval Petroleum Reserves;

(2) Operations of the Military Sealift Command, excepting tort and admiralty claims arising independently of contract;

(3) The Office of the Comptroller of the Navy;

(4) Procurement matters in the field of patents, inventions, trademarks, copyrights, royalty payments, and similar matters, including those in the Armed Services Procurement Regulations and Navy Procurement Directives and deviations therefrom; and

(5) Industrial security.

(d) *Initial and supplemental reports.* If all pertinent information is not readily available, a prompt report should be made with such information as is available, supplemented by an additional report as soon as possible.

Subpart C—Production of Official Records

§ 720.30 Production of official records in response to court order.

(a) *General.* Where unclassified naval records are desired by or on behalf of litigants, the parties will be informed that the records desired, or certified copies thereof, may be obtained by forwarding to the Secretary of the Navy, Navy Department, Washington, D.C., or other custodian of the records, a court order calling for the particular records desired or copies thereof. Compliance with such court order will be effected by transmitting certified copies of the records to the clerk of the court out of which the process issues. If an original record is produced by a naval custodian, it will not be removed from the custody of the person producing it, but copies may be placed in evidence. Upon written request of all parties in interest or their respective attorneys, records which would be produced in response to a court order as set forth above may be furnished without court order except as noted in subsections b and c below. Whenever compliance with a court order for production of Department of the Navy records is deemed inappropriate for any reason, such as when they contain privileged or classified information, the records and subpoena may be forwarded to the Secretary of the Navy (Judge Advocate General) for appropriate action, and the parties to the suit so notified.

(b) Records in the custody of National Personnel Records Center. Court orders, *subpoenas duces tecum*, and other legal documents demanding information from, or the production of, service or medical records in the custody of the National Personnel Records Center involving former (deceased or discharged) Navy and Marine Corps personnel shall be served upon the General Services Administration, 9700 Page Boulevard; St. Louis, MO 63132, rather than the Department of the Navy. In the following situations, the request shall be forwarded to the Secretary of the Navy (Judge Advocate General).

(1) When the United States (Department of the Navy) is one of the litigants.

(2) When the case involves a person or persons who are or have been senior officers within the Department of the Navy; and

(3) In other cases considered to be of special significance to the Judge Advocate General or the Secretary of the Navy.

(c) *Exceptions.* Where not in conflict with the foregoing restrictions relative to confidential matter, the production in Federal, State, territorial, or local courts of evidentiary material from investigations conducted pursuant to this Manual, and the service, employment, pay or medical records (including medical records of dependents) of persons in the naval service is authorized upon receipt of a court order, without procuring specific authority from the Secretary of the Navy. Where travel is involved, it must be without expense to the Government.

(d) *Medical and other records of civilian employees.* Production of medical certificates or other medical reports concerning civilian employees is controlled by the provisions of Executive Order 10561, 19 FR 5963, as implemented by Federal Personnel Manual, chapter 294, and chapter 339.1–4 (reprinted in MANMED article 23–255(6)). Records of civilian employees other than medical records may be produced upon receipt of a court order without procuring specific authority from the Secretary of the Navy, provided there is not involved any classified or otherwise confidential material such as loyalty or security records. Records relating to compensation benefits administered by the Bureau of Employees' Compensation may not be disclosed except upon the written approval of that Bureau (20 CFR 1.21). In case of doubt, the matter should be handled in accordance with the provisions of subsection a above. Where information is furnished hereunder in response to a court order, it is advisable that certified copies rather than originals be furnished and that, where original records are to be produced, the assistance of the U.S. Attorney or U.S. Marshal be requested so that custody of the records may be maintained.

§ 720.31 Production of official records in the absence of court order.

(a) *Furnishing information from personnel and related records to personnel concerned.* Whether or not litigation is involved, naval personnel, civilian employees of the Naval Establishment, their personal representatives (e.g., executors, guardians, etc.), or other properly interested parties may be furnished copies of records or information therefrom relating to death, personal injury, loss, or property damage to or involving such personnel without following the procedures prescribed in either § 720.24 or § 720.30, provided the interests of the United States are not prejudiced thereby. All such requests (except requests for medical records, for such traffic accident reports as are described in subparagraph (2) of this paragraph, and for records relating to matters under the cognizance of the General Counsel) shall be referred to the appropriate District Judge Advocate, or to the area coordinator, or to the Judge Advocate General. In no event shall findings of fact, opinions, and recommendations, or endorsements thereon, be released outside the Department of the Navy without approval of the Secretary of the Navy or the Judge Advocate General.

(1) *Medical records.* Requests for medical records, shall be processed in accordance with the Department of Defense policy set forth in Title 32, Code of Federal Regulations, § 66.1–66.2, as implemented by the manual of the Medical Department. If, in processing a request for medical records, it appears that the interests of the United States may be involved, then such requests shall be referred to the Judge Advocate General for a determination. Production of medical certificates or other medical reports concerning civilian employees is controlled by the provisions of the Executive Order and the Federal Personnel Manual referred to in § 720.30(d). See § 757.6 of this chapter concerning release of medical records in Medical Care Recovery Act cases.

(2) *Provost marshal or base police reports of traffic accidents.* Local commanders are authorized to release copies of traffic accident investigative reports where service personnel are not involved and where no Government vehicle is involved, provided the interests of the United States will not be prejudiced thereby. Release may be made to any properly interested party or to his authorized representative. If it appears that the interests of the United States may be involved, the request shall be referred to the appropriate district judge advocate, or the area coordinator, or the Judge Advocate General. (Charges will be made in accordance with the schedule of fees published in the Navy Comptroller Manual, paragraph 035887 (minimum fee $3). Fees collected will be credited as set forth in the Navy Comptroller Manual, paragraph 043145.)

(b) *OGC matters.* The General Counsel, Deputy General Counsel, and Assistant to the General Counsel for litigation matters have been designated to act for the Secretary of the Navy in releasing or producing, and authorizing the release or production of official records or copies thereof in matters within the assigned responsibilities of the Office of the General Counsel. Such responsibilities are outlined in § 720.25(c).

(c) *Security matters.* For information on the production of records involving classified matter, whether or not litigation is involved, see OPNAVINST 5510.1 series, Department of the Navy Security Manual for Classified Information, article 0922.3.

(d) *Confidential nature of military personnel records.* Officer and enlisted personnel records are deemed confidential. Such records may be released only to persons properly and directly concerned, including the serviceman himself, and personal representatives of the serviceman (e.g., executors, guardians, etc.) who present proper proof thereof, or in accordance with § 720.30 (a) and (b).

(e) *How to address requests for military medical and other personnel records.* The serviceman or personal representatives may obtain access to the health and medical records of both Navy and Marine Corps personnel by applying to the Chief of the Bureau of Medicine and Surgery, Navy Department, Washington, D.C. 20360. Applications for Navy and Marine Corps personnel records should be addressed to the Chief of Naval Personnel, Navy Department, Washington, D.C. 20370, or to the Commandant of the Marine Corps, Washington, D.C. 20380. Applications may be made in person or in writing.

§ 720.32 Certificates of full faith and credit.

The Judge Advocate General, the Deputy Judge Advocate General, or any Assistant Judge Advocate General is authorized to execute certificates of full faith and credit certifying the signatures and authority of officers of the Department of the Navy.

Subpart D—Liaison With the Department of Justice

§ 720.40 Litigation reports.

In all lawsuits involving the Department of the Navy, other than those purely contractual in nature, the litigation report to the Department of Justice will be prepared in the Office of the Judge Advocate General unless authority to prepare the report is specifically delegated to a field activity.

§ 720.41 Liaison with U.S. Attorney.

In matters other than those which are purely contractual in nature, liaison with local U.S. Attorneys will be maintained through the Judge Advocate General, except for the initial report required by § 720.14 in habeas corpus cases, unless specific authority has been delegated to a field activity.

PART 727—LEGAL ASSISTANCE

Part 727 of Title 32 is provided as follows:

Sec.
727.1 Purpose.
727.2 Policy.
727.3 Legal Assistance Officers.
727.4 Legal Assistance Offices.
727.5 Persons eligible for assistance.
727.6 Functions of Legal Assistance Officers.

AUTHORITY: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240–243).

§ 727.1 Purpose.

A legal assistance program providing needed legal advice and assistance to military personnel and their dependents has been in operation in the naval service since 1943. The program has improved the morale of personnel and reduced disciplinary problems since its inception. The purpose of this part is to provide guidelines for the continuation of the program.

§ 727.2 Policy.

Personal problems that remain unresolved adversely affect morale and efficiency and frequently result in behavior requiring disciplinary action. Prompt and understanding aid in resolving these problems is an effective preventative. Accordingly, it is the policy of the Department of the Navy to maintain from available resources a legal assistance program to make eligible persons aware of their legal rights and obligations and to assist military personnel and their dependents in obtaining adequate legal advice and services from within the military service.

§ 727.3 Legal assistance officers.

All Navy and Marine Corps judge advocates on active duty, regular or reserve, and all civilian lawyers under the cognizance of the Judge Advocate General who are members of the bar of a Federal court or of the highest court of any State or, in foreign countries, who are authorized to practice law in the courts of the country concerned, are legal assistance officers. Navy and Marine Corps judge advocates not on active duty may be designated as legal assistance officers by the Judge Advocate General. While performing legal assistance duties, legal assistance officers shall be guided by the Canons, Ethical Considerations, and Disciplinary Rules of the Code of Professional Responsibility of the American Bar Association, and the Canons of Professional Ethics of the Federal Bar Association. Persons who are authorized to practice law in the courts of a foreign country shall be guided by similar standards which have been promulgated for the guidance of lawyers in the country concerned.

§ 727.4 Legal assistance offices.

(a) *Establisment of Offices.* A legal assistance office shall be established at each Navy law center and at each Marine Corps command exercising general court-martial jurisdiction. In addition, any commanding officer having a legal assistance officer attached, assigned, or available to his command may establish a legal assistance office. The legal assistance office shall be disestablished when no person qualified to perform legal assistance duties is attached, assigned, or available to the command. Whenever a legal assistance office is established or disestablished, the Judge Advocate General shall be notified.

(b) *Location.* Each legal assistance office should be conveniently located so as to be easily accessible to all persons eligible for legal assistance, and should be provided with facilities which will enable private consultation with legal assistance clients. Information as to the location and hours of the legal assistance office and the nature of the services available shall be published periodically in local directives and posted in appropriate conspicuous places.

(c) *Legal assistance reference material.* The Judge Advocate General will, from time to time, furnish directly to legal assistance offices such professional information, reference material, and procedural suggestions and recommendations as he may deem advisable to enable legal assistance officers to render legal assistance services. Reference materials and publications so furnished are the property of the Office of the Judge Advocate General and shall remain in the legal assistance office and be carefully preserved. If the legal assistance office is disestablished, all such material shall be returned to the Judge Advocate General.

(d) *Action to be taken by commands not having a legal assistance office.* All commands shall maintain in a convenient location, and publish from time to time, a current list of the legal assistance offices serving the command and a list of local civilian lawyer-referral committees or services.

§ 727.5 Persons eligible for assistance.

Legal assistance shall be available to members of the Armed Forces of the United States and their dependents, and military personnel of allied nations serving in the United States, its territories or possessions. The service is intended primarily for the benefit of personnel during active service, but is to be extended to retired military personnel, their dependents, survivors of members of the Armed Forces who would be eligible were the service member alive, and in overseas areas, to civilians, other than local-hire employees, who are in the employ of, serving with, or accompanying the U.S. Armed Forces, and their dependents, when and if the workload of the office renders such service feasible.

§ 727.6 Functions of legal assistance officers.

(a) *Basic duties.* A legal assistance officer, while performing legal assistance duties, in addition to performing any other duties which may be assigned to him:

(1) Shall counsel, advise, and assist military personnel and their dependents in connection with their personal legal problems, or refer such persons to a civilian lawyer as provided in § 727.9.

(2) May, in appropriate cases and under guidelines promulgated by the Judge Advocate General, serve as advocate and counsel for, and provide full legal representation to, military personnel and their dependents in connection with their personal legal problems.

(3) Shall, subject to the direction of the senior legal assistance officer of the command, establish contact and maintain liaison with local bar organizations, lawyer referral services, legal aid societies, and other local organizations through which the services of civilian lawyers may be made available to military personnel and their dependents.

(4) Shall supervise the personnel and operation of the legal assistance office in accordance with good legal practice and the policies and guidance provided by the Judge Advocate General.

(5) Shall advise persons with complaints of discrimination on policies and procedures under the Civil Rights Act of 1964 and SECNAV instruction 5350.5 series.

(b) *Nature of assistance.* Legal assistance officers and administrative and clerical personnel assigned to legal assistance offices perform legal assistance duties as official duties in the capacity of an officer or an employee of the United States. Persons performing legal assistance duties, however, should not mislead those with whom they may deal into believing that their views or opinions are the official views or opinions of, approved by, or binding on, the Department of the Navy or the United States.

(c) *Duty to client.* A legal assistance officer should exercise his independent professional judgment on behalf of his client within the standards promulgated in the Code of Professional Responsibility and the specific limitations imposed in this part.

§ 727.7 Limitations on service provided.

(a) *Assistance in military criminal matters.* Legal assistance duties are separate and apart from the responsibilities of a trial counsel, defense counsel, or other officer involved in the processing of courts-martial or investigations. Frequently a serviceman accused or suspected of an offense will request advice from the legal assistance officer. In such a case, he should be advised of the prpoer procedures for obtaining counsel. This limitation does not prevent the assignment of the same officer to perform the functions of a legal assistance officer and the functions of a defense counsel.

(b) *Domestic-relations cases.* In domestic-relations cases, a legal assistance officer may, with the knowledge and consent of both parties, and where neither party is represented by counsel, consult both parties without impropriety.

(c) *Nonlegal advice.* The legal assistance officer, while giving legal advice may also determine that the client needs or desires advice on related nonlegal matters. The legal assistance officer should provide legal advice only, or defer giving such advice, and refer the client to an appropriate person or agency for such nonlegal counseling. The legal assistance officer should establish and maintain a working relationship with those individuals who are qualified to provide nonlegal counseling services.

(d) *Proceedings involving the United States.* A legal assistance officer shall not advise on, assist in, or become involved with, individual interests opposed to or in conflict with the interests of

the United States without the specific approval of the Judge Advocate General. In this connection see also 18 U.S.C. 201, and 18 U.S.C. 205.

(e) *Telephone inquiries.* In the absence of unusual or compelling circumstances, legal advice should not be given over the telephone.

§ 727.8 Confidential and privileged character of service provided.

All information and files pertaining to the persons served will be treated as confidential and privileged in the legal sense as outlined in Canon 4 of the Code of Professional Responsibility, as opposed to confidential in the military sense of security information. These privileged matters may not be disclosed to anyone by personnel rendering the service, except upon the specific permission of the person concerned, and disclosure thereof may not be lawfully ordered by superior military authority. This restriction does not prohibit providing the nonprivileged statistical data required by § 727.13. Protection of the confidences of a legal assistance client is essential to the proper functioning of the legal assistance program in order to assure all military personnel, regardless of grade, rank, or position, that they may disclose frankly and completely, all material facts of their problem to those rendering the service without fear that their confidence will be abused or used against them in any way. Administrative and clerical personnel assigned to legal assistance offices shall maintain the confidential nature of matters handled.

§ 727.9 Referrals to civilian lawyers.

(a) *General.* If it is determined that the legal assistance requested is beyond the scope of this part, or if no available legal assistance officer is qualified to give the assistance requested, the client should be referred to a civilian lawyer. When the client does not know of a lawyer whom he wishes to represent him, his case may be referred to an appropriate bar organization, lawyer referral service, legal aid society, or other local organization for assistance in obtaining reliable, competent, and sympathetic counsel, or to a civilian lawyer designated by such organization.

(b) *Fees charged by civilian lawyers.* Legal assistance clients being referred to a civilian lawyer should be advised that, even when the fee to be charged is set by statute or subject to court approval, it should be one of the first items discussed to avoid later misunderstandings and eliminate uncertainty. Legal assistance officers should exercise caution in discussing possible fees to be charged by civilian lawyers so as to avoid embarrassment or misunderstanding between the client and his civilian lawyer.

§ 727.10 Fees and compensation.

Military and civilian employees of the Navy are prohibited from accepting, directly or indirectly, any fee or compensation of any nature for legal services rendered to any person entitled to legal assistance under this part.

§ 727.11 Supervision.

The Judge Advocate General will exercise supervision over all legal assistance activities in the Department of the Navy. Subject to the supervision of the Judge Advocate General, the designated commanders set out in OPNAVINST 5800.6 (Subject: Law Centers; activation of), and all Marine Corps commanders exercising general court-martial authority, acting through their judge advocates, shall exercise supervision over all legal assistance activities within their respective areas of responsibility and shall insure that legal assistance services are made available to all eligible personnel within their areas. The Judge Advocate General will collaborate with the American Bar Association, the Federal Bar Association, and other civilian bar organizations as he may deem necessary or advisable in the accomplishment of the objectives and purposes of the legal assistance program.

§ 727.12 Communications.

Legal assistance officers are authorized to communicate directly with the Judge Advocate General, with each other, and with other appropriate organizations and persons concerning legal assistance matters.

§ 727.13 Reports.

Each legal assistance office shall, by the 10th day of January of each year, prepare and submit to the Judge Advocate General two copies of the Legal Assistance Report (NAVJAG 5801/3 (Rev. 5–71)) covering the preceding calendar-year period. A final report shall be submitted on the disestablishment of the legal assistance office. Special reports shall be submitted when requested by the Judge Advocate General. Information copies of all reports shall be furnished to the supervising commander referred to in § 727.11. Reports symbol JAG–5801–1 is assigned for this reporting requirement.

§ 727.14 Files and records.

(a) *Case files.* The material contained in legal assistance case files is necessarily limited to private unofficial matters and such material is privileged and protected under the attorney-client relationship. Each legal assistance office should therefore maintain only such files as are necessary for the proper operation of the office.

(b) *Office records.* Each legal assistance office should maintain whatever records are necessary for the preparation of required reports. The Legal Assistance Case Record (NAVJAG 5801/9 (Rev. 5–71)) provides for the recording of the information required for the annual report, and the use of this form to record each individual legal assistance case is recommended.

§ 727.15 Liberal construction of chapter.

The provisions of this part are intended to be liberally construed to aid in accomplishing the mission of legal assistance.

PART 750—GENERAL CLAIMS REGULATIONS

Part 750 of title 32 is revised to read as follows:

Subpart A—General Provisions for Claims

Sec.

Subpart B—Federal Tort Claims Act

Subpart C—Military Claims Act

Subpart D—Claims Not Cognizable Under Any Other Provision of Law

Subpart E—Advance Payments

Subpart F—Authorization To Adjudicate

AUTHORITY: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243).

Subpart A—General Provisions for Claims

§ 750.1 Scope of Subpart A.

Subpart A delineates general investigative and claims-processing requirements to be followed in the handling of all incidents and claims within the provisions of this part. Where the general provisions of this Subpart A conflict with the specific provisions of any subsequent part of this part, the specific provisions govern.

§ 750.2 Investigation: In general.

Every incident which may result in claims against or in favor of the Government shall be promptly and thoroughly investigated by trained personnel. The investigation shall be closely supervised to insure the preparation of an investigative report providing a sufficient basis for the prompt and just disposition of claims against and in favor of the Government and for all other official action required by the circumstances of the case. Claims against persons in the naval service arising from the performance of official duties shall be investigated and processed as claims against the United States.

§ 750.3 Investigation: Requirements.

(a) *When required.* Investigations are required whenever a claim against the Navy is filed or is likely to be filed, or when a claim in favor of the Navy is possible. The Navy must have the background information and data to process all claims and to defend all suits which are commenced before the running of the statute of limitations. Accordingly, even when recovery may be barred by statute or decisional law, all deaths, serious injuries, and substantial losses to or destruction of property must be investigated promptly while the evidence is available. When a claim may be barred, as by one of the exclusions enumerated in § 750.36 (c), (d), § 750.55(d) or § 750.65(b), the investigative report must document the factual basis for the exclusion.

(b) *Immediate reports.* An immediate letter report shall be made to the Judge Advocate General, with copies to the Chief of the Torts Section, Civil Division, Department of Justice, Washington, D.C. 20530, and the appropriate reviewing authority listed in § 750.80 in any of the following circumstances:

(1) Claims or possible claims arising out of a major disaster or out of an incident giving rise to five or more possible death or serious injury claims;

(2) Upon filing of a claim which could develop litigation which would involve a new precedent or point of law (see § 750.53(c)(2));

(3) Claims or possible claims which involve or are likely to involve another agency besides the Department of the Navy.

(c) *Investigation without delay.* Incidents falling within any of the categories listed in paragraph (a) of this section shall be investigated and reported upon without delay, even though no claim has been filed, and even though there may be no existing law or regulation under which any claim arising therefrom might be paid.

(d) *Additional requirements under other regulations.* This part in no way modifies the requirements of U.S. Navy Regulations, the Manual for Courts-Martial, or other provisions of the Manual of the Judge Advocate General, and the making of an investigation and report hereunder does not constitute or excuse compliance with any provision of U.S. Navy Regulations, the Manual for Courts-Martial, or other provisions of the Manual of the Judge Advocate General.

§ 750.4 Investigation: Responsibility for.

(a) *Immediate responsibility.* Responsibility for the investigation of an incident normally lies with the commanding officer or officer in charge of the local naval activity which is most directly concerned, normally the commanding officer or officer in charge of the personnel involved or of the activity in which the incident occurred. Where two or more activities are involved, see § 719.207 of this chapter. If a nonnaval activity is concerned, see § 750.3(b)(3). Such nonnaval activity should be promptly notified of the incident.

(b) *Assistance.* When an accident or incident occurs at a place where the naval service does not have an installation or a unit conveniently located for conducting an investigation, the commanding officer or officer in charge having immediate responsibility for making such investigation may request assistance from the commanding officer or officer in charge of any other organization of the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. Likewise, in the event that under similar circumstances the commanding officer or officer in charge of any other organization of the Department of Defense requests such assistance from the commanding officer or officer in charge of any naval installation or unit, the latter should comply with the request. If a complete investigation is requested, the report will be made in accordance with the regulations of the requested service. These investigations will normally be conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating installation or unit.

(c) *Report of Motor Vehicle Accident, Standard Form No. 91.* The driver of any Government motor vehicle involved in an accident of any sort shall be responsible for making an immediate report on the Operator's Report of Motor Vehicle Accident, Standard Form No. 91. This driver's report shall be made even though the driver of the other vehicle, or any other person involved, states that no claim will be filed, and even though the only vehicles involved are Government owned. An accident shall be reported by the driver regardless of who was injured, or what property was damaged, or to what extent, or where the accident occurred, or who was responsible. The driver's report shall be referred to the investigating officer, who shall be responsible for examining it for completeness and accuracy and who shall file it for future reference or for attachment to any subsequent investigative report of the accident.

§ 750.5 The investigating officer: In general.

Every investigation required by these regulations shall be conducted by an investigating officer. The commanding officer or officer in charge of each naval activity shall designate a qualified individual under his command, preferably one with legal training and with experience in the conduct of investigations, as the investigating officer for the activity. Whenever necessary, in the discretion of the commanding officer or officer in charge, additional or assistant investigating officers may be appointed, each with all and the same powers as the investigating officer, except that all assistant investigating officers shall be under the general supervision of the investigating officer. To insure prompt investigation of every incident while witnesses are available and before damage has been repaired, the duties of an individual in his capacity as an investigating officer shall ordinarily have priority over any other assignment he may have.

§ 750.6 The investigating officer: Duties.

It shall be the duty of the investigating officer, in making an investigation pursuant to these regulations:

(a) To consider all information and evidence obtained as a result of any previous investigation or inquiry into any aspect of the incident.

(b) To conduct further investigation of the matter in a fair and impartial manner, covering all phases of the incident and giving consideration to its bearing on possible claims against, or in favor of, the Government and on other interests of the service, to the end that a comprehensive, accurate, and unbiased factual report of the incident may be made available to higher authority for such action as is required by the circumstances of the case.

(c) To secure and consider signed statements from all competent witnesses

on facts pertinent to the incident. Witnesses should be interviewed by the investigating officer at the earliest opportunity. Full statements from principal witnesses, especially the claimant or prospective claimant, should be reduced to writing and their signatures obtained thereon if at all possible. The interests of the United States may be seriously prejudiced if the investigating officer fails to obtain such statements before witnesses forget significant facts or are confused by questions from persons with adverse interests.

(d) To inspect the property damage and to interview injured persons or their representatives personally; and, if such personal inspection and interview are not conducted, to state the reason therefor.

(e) To ascertain the nature, extent, and amount of damage and to obtain all pertinent repair bills or estimates, medical, hospital, and associated bills as are necessary to the proper adjudication of a claim against or in favor of the Government which may arise from the incident. For the proper method of computing the amount of damages, see § 750.14.

(1) *Loss of earnings.* Claims for loss of earnings and diminution of earning capacity arising under the Federal Tort Claims Act or the Military Claims Act require submission by the claimant of a statement by his employer executed before a notary public or, where the claimant is in business for himself, a certified copy of company records showing claimant's age, occupation, wage, or salary, and time lost from work as a result of the incident. Where such statements or records are not available, a sworn statement by the claimant will be obtained.

(2) *Medical information to be supplied by claimant.* Claims for loss of earnings, diminution of earning capacity, medical and hospital expenses, anticipated medical expense, pain and suffering, physical disfigurement, and temporary or permanent injury arising under the Federal Tort Claims Act or the Military Claims Act require submission by the claimant of a written statement by the attending physician setting forth the nature and extent of the injury and treatment, the duration and extent of the disability involved, the prognosis, and period of hospitalization or incapacity.

(f) To obtain from the proper maintenance office the latest report of material inspection of the Navy aircraft or motor vehicle that was conducted prior to the accident in all cases in which a suit against the United States is likely or is pending, and in all other cases in which it appears pertinent to determine liability.

(g) To secure from qualified persons of the activity concerned, or of another appropriate activity, statements concerning the extent of damage or injury and the reasonableness of the damages claimed.

(1) *Medical examination at a military installation.* The investigating officers, if the injured person does not object, should have a physical examination of the injured person conducted at a military installation. Consideration should be given to the availability of personnel and facilities of the installation. Expenses for services or supplies from other Federal agencies or civilian agencies should not be incurred. A copy of the report of the physical examination obtained from the medical installation shall be included in the report of investigation or, if made subsequent to the forwarding of that report, forwarded to the same addressee as the report of investigation.

(2) *Navy expert opinion.* In appropriate cases, a Navy-employed expert may be asked to evaluate the extent of damage. Anyone possessing special knowledge or experience, such as a public-works estimator, may qualify. Any costs involved in obtaining the expert opinion shall be absorbed by the command to which the expert is attached.

(3) *Government experts from other than Navy sources.* On occasion, expert opinion is available from other departments and agencies of the Government. Arrangements for this service, when available may be made locally. Any expense involved will be absorbed by the command conducting the investigation.

(4) *Civilian experts.* Occasionally, such as when accurate real-estate appraisals cannot be obtained from public-works or Federal Housing Administration personnel, civilian experts must be employed in order to protect the Government's interest. Whenever a Navy-funded civilian expert is considered necessary, the cost will be absorbed by the command conducting the investigation. Medical experts may be employed only with the permission of the Chief, Bureau of Medicine and Surgery, and a request for such permission will normally be made only after a physical examination has been conducted in accordance with subparagraph (1) of this paragraph.

(h) To reduce to writing and incorporate into a unified investigative report (prepared in triplicate) all pertinent testimony, exhibits, and any other evidence taken or considered, subject, however, to the exception for claims under $600 as set forth in § 750.7(b).

(i) To furnish the proper claim forms to any person who inquires concerning the procedure for making a claim against the Government as a result of a service-connected incident, and to advise such person where the claim should be filed and what substantiating evidence should accompany the claim, or, if a claim has been filed, to see that the information required by § 750.13 has been submitted by the claimant.

(j) To submit the complete investigative report to his commanding officer or officer in charge as promptly as circumstances permit. In a case where not all of the information required by § 750.7 is immediately available, as in an accident resulting in personal injuries requiring extended periods of hospitalization or medical care, the investigative report containing all available information shall be submitted promptly. It shall then be completed by means of a supplementary report or reports submitted as soon as the previously omitted information becomes available.

§ 750.7 The investigative report: Contents.

A written report of investigation will be made in each case using standard forms whenever appropriate.

(a) *Pertinent data.* Except in cases falling with the provisions of paragraph (b) of this section, the report shall be complete in every significant detail and will include particularly such of the following information as is pertinent:

(1) Date, time, and exact place the accident or incident occurred, specifying the highway, street, road, or intersection, including the streets between which or the number of the block where the accident or incident occurred, or the number of miles and the direction from the nearest town.

(2) A concise but complete statement of the circumstances of the accident or incident. Reference should be made to pertinent physical facts observed and to any material statements, admissions, or declarations against interest by any person involved.

(3) A statement as to whether a claim has been or is likely to be filed and, if so, the name and address of the claimant or potential claimant.

(4) A statement as to whether the claimant is the sole owner of the damaged property and, if not, the name and address of the owner, or part owners, and the basis of the claimant's alleged right to file a claim.

(5) Names, service numbers, grades, organizations, and addresses of military personnel and civilian employees involved as participants or witnesses.

(6) Names and addresses of witnesses.

(7) A recommendation as to whether or not military personnel and civilian employees involved were acting in the line of duty, or scope of their employment, as defined in § 750.31(b). The report shall contain statements and copies of records which bear on this issue for evaluation by the adjudicating authority.

(8) Accurate description of Government property involved and nature and amount of damage, if any. If Government property was not damaged, that fact should be stated.

(9) Accurate description of all privately owned property involved, nature and amount of damage, if any, and the names and addresses of the owners thereof.

(10) Names, addresses, and ages of all civilians or military personnel injured or killed; information as to the nature and extent of injuries, degree of permanent disability, prognosis, period of hospitalization, name and address of attending physician and hospital, and amount of medical, hospital, and burial expenses actually incurred; occupation and wage or salary of civilians injured or killed; and names, addresses, ages, relationship, and extent of dependency of survivors of any such person fatally injured.

(11) If straying animals are involved, a statement whether the jurisdiction has

an "open range law" and, if so, reference to such statute.

(12) A statement as to whether any person involved violated any State or Federal statute, local ordinance, or installation regulation and, if so, in what respect. The statute, ordinance, or regulation should be set out in full.

(13) A statement as to whether a police investigation was made. A copy of the police report of investigation should be included if available.

(14) A statement as to whether arrests were made or charges preferred, and the result of any trial or hearing in civil or military courts.

(15) The comments and recommendations of the investigating officer as to the existence of liability; as to the amount of the damage, loss or destruction, or the amount payable on account of personal injury or death; and as to whether and to what extent such liability, damage, loss, destruction, personal injury or death is covered by insurance companies concerned, or is covered by a contractual agreement to indemnify the Government.

(16) As many exhibits or enclosures as are pertinent and are secured in connection with the performance of duties under § 750.6 shall be obtained during the course of the investigation and shall be attached to the investigative report, forming a part thereof. The enclosures shall be numbered consecutively and shall be listed numerically in the investigative report in accordance with standard Navy correspondence procedure.

(b) *Limited investigation and report.* In lieu of the comprehensive investigation contemplated by § 750.6 and the detailed report described in paragraph (a) of this section, a more limited investigation and report may be made when the following circumstances exist:

(1) A claim has been presented for an amount of $600 or less;

(2) The claim is cognizable under the Federal Tort Claims Act (Subpart B of this part) or the Military Claims Act (Subpart C of this part); and

(3) The amount payable on the claim has been agreed upon.

This limited report will take the form of a certification and should provide substantially as set forth in Appendix page 20-c.[1]

§ 750.8 The investigative report: Action by the commanding officer or officer in charge.

(a) *Action.* If a claim is likely to arise, the investigative report shall be reviewed and, if necessary, returned to the investigating officer for the correction of any omissions noted. If there is a staff judge advocate available, the commanding officer or officer in charge should use his services in reviewing and, if practicable, in endorsing the report. If the report is in order, it shall be forwarded by endorsement, with any pertinent comments and recommendations. In cases in which the certificate report authorized in § 750.7(b) is used, the commanding officer or officer in charge may indicate his approval of the certificate report by signing that report in the space provided thereon. One copy of the report shall be retained in the file of the local activity and shall be made available to safety officers for use in accident prevention and to superior commands upon request.

(b) *Claim.* If a claim has been filed, the original claim and all copies filed by the claimant and the original investigative report shall be forwarded by means of the aforementioned endorsement to the appropriate adjudicating authority, "Attention Staff Judge Advocate." When there is doubt as to the appropriate adjudicating authority, the reports may be forwarded through the proper chain of command to the Judge Advocate General.

§ 750.9 The investigative report: Action by reviewing authority.

(a) *Return or endorsement.* A reviewing authority may return the investigative report for such additional investigation and information as may be considered necessary. When satisfied with the report, it shall be endorsed and forwarded to the next-level authority with appropriate recommendation including an assessment of the responsibility for the incident and a recommendation as to the disposition of any claim which may subsequently be filed. If a reviewing authority may be an adjudicating authority for a claim subsequently filed, one copy of the report shall be retained by such authority for at least 2 years after the incident.

(b) *When a claim has been filed.* If a claim has been filed, see § 750.16. When a claim is received, all holders of the investigative report shall be notified.

§ 750.10 Claims: In general.

(a) *Claims against the United States.* Claims against the Government shall receive expeditious and just disposition throughout the entire course of processing. Sections 750.11–750.22 should generally be followed in such processing. All claims against the Government, to be deemed meritorious, must have a basis in a specific Congressional enactment. Accordingly, any claim should be viewed in light of that statute under which it might be considered, if at all, and the specific provisions of this manual concerning that statute should be consulted.

(b) *Claims in favor of the United States.* See Part 757 of this chapter for the processing of claims in favor of the Government.

§ 750.11 Claims: A proper claimant.

(a) *Damage to property cases.* A claim for damage to or loss, or destruction of, property shall be presented by the owner of the property or his duly authorized agent or legal representative. The word "owner" as used herein, includes a bailee, lessee, mortgagor, and conditional vendee, but does not include a mortgagee, conditional vendor, or other person having title for purposes of security only. If the claim is filed by an agent or legal representative of the owner of the property, it shall show the title or capacity of the person signing and shall be accompanied by the evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary or legal representative.

(b) *Personal injury or death cases.* A claim on account of personal injury shall be presented by the person injured or his duly authorized agent, or, in the case of death, by the legal representative of the person deceased.

(c) *Subrogation.* A subrogor and a subrogee may file a claim jointly or may file separate claims. Except as provided in § 750.40, when separate claims are filed and each claim, individually, is within local authority, they may be processed locally, when appropriate, even if the aggregate of such claims exceeds the monetary jurisdiction of the approving or settlement authority. When one claim cannot be settled, the provisions of § 750.16(c–d) apply. Appropriate documentary evidence should be furnished by the subrogee in support of a subrogated claim.

(d) *Limitation on transfers and assignment.* All transfers and assignments made of any claim upon the United States, or of any part of shares thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor, and all power for attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, are absolutely null and void unless they are made after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. 31 U.S.C. 203. This statutory provision does not apply to the assignment of a claim by operation of law, as in the case of a receiver or trustee in bankruptcy appointed for an individual, firm, or corporation, or the case of an administrator or executor of the estate of a person deceased, or an insurer subrogated to the rights of the insured.

§ 750.12 Claims: Presentment of.

(a) *Standard Form No. 95.* A claim shall be submitted by presenting in triplicate a written statement setting forth the amount of the claim, in a sum certain, and, as far as possible, the detailed facts and circumstances surrounding the incident from which the claim arose. The Claim for Damage or Injury, Standard Form No. 95 (see appendix page 20-a),[1] shall be used whenever practicable. The claim and all other papers requiring signature by the claimant shall be signed by the claimant personally or by his duly authorized agent. The signatures of the claimant or his agent shall be identical throughout. When more than one person has a claim arising from a single incident, each person should file his claim separately and individually. A subrogor and a subrogee may file a claim jointly or separately. Only one claim,

[1] Filed as part of original document.

[1] Filed as part of original document.

combining damage to property and personal injury or death, may be submitted by a claimant.

(b) *To whom submitted.* The claim shall be submitted by the claimant to the commanding officer of the naval activity involved, if known. Othewise, it shall be submitted to the commanding officer of any naval activity, preferably the one within which, or nearest to which, the incident occurred, or to the Judge Advocate General of the Navy, Washington, D.C. 20370. See § 750.40.

§ 750.13 Claims: Contents of.

(a) *Information to be submitted.* The claimant shall include the following information in his claim:

(1) The full name and complete address of the claimant;

(2) The amount for property damage, loss, or destruction, and the amount claimed on account of personal injury or death;

(3) The date, time, and place of the incident giving rise to the claim;

(4) The persons, vehicles, and other property involved;

(5) The identity of the Government department, agency, or activity involved;

(6) A detailed description of the occurrence of the incident and the facts and circumstances attending it;

(7) The nature and extent of the resulting damage, loss, destruction, or injury;

(8) The names and addresses of any witnesses to the incident; and

(9) An agreement by the claimant to accept the amount claimed in full satisfaction and final settlement of the claim stated.

(b) *Amount of the claim.* The amount of the claim shall be stated in a sum certain and shall be substantiated by competent evidence, as follows:

(1) In support of claims for damage to real or personal property which has been or can be economically repaired, the claimant shall submit an itemized, signed statement or estimate of the cost of repairs. If the property is not economically repairable, or if it is lost or destroyed, the value thereof, both before and after the incident, shall be stated. If damage to realty is not economically repairable, the value, both before and after the incident, of the land damaged, or of the improvement or fixture if it can be readily and fairly valued apart from the land, shall be stated. In support of claims for damage to crops, the statement shall indicate the number of acres or other unit of measure of the crops damaged, the normal yield per unit, the gross income which would have been realized from such normal yield, and an estimate of the further costs of cultivation, harvesting, and marketing. If the crop is one which need not be planted each year, the diminution in value of the land beyond the damage to the current year's crop shall also be stated. All such statements or estimates shall, if possible, be made by competent, disinterested witnesses, preferably reputable dealers or officials familiar with the type of property damaged or lost. If payment for repairs has been made, itemized receipts evidencing payment shall be included. All itemized statements or receipted bills shall be certified by the creditor to be just and correct. A claimant for damage to, or loss or destruction of, registered or insured mail shall, in addition, submit the registration or insurance receipt showing the amount of fees and postage paid, or, in the event the receipt is not available, a signed statement by the issuing post office containing the essential information from the official records.

(2) In support of claims for personal injury or death, the claimant shall submit: A written report by the attending physician showing the nature and extent of the injury and the treatment; the period of hospitalization or incapacitation; the degree of temporary or permanent disability, if any; and the prognosis. In support of claims for lost earnings, the additional information delineated in § 750.6(d)(1) shall be submitted. Itemized statements or receipted bills, certified by the creditor to be just and correct, shall be included to cover medical, hospital, or burial expenses actually incurred.

(c) *Brief.* The claimant may, if he desires, file with his claim a brief setting forth the law and arguments in support of his position.

§ 750.14 Claims: The scope of liability and the measure of damages.

No claim can be paid unless a determination is made that the facts alleged and the conduct complained of by the claimant are facts and conduct for which the Government has agreed to stand responsible in money damages under a particular claims statute. Accordingly, the specific provisions of the subsequent parts of this chapter regarding "Scope of Liability" should be considered (see §§ 750.36, 750.55, and 750.65). Similarly, the specific provisions of this chapter concerning "Measure of Damages" should be utilized in valuing the quantum of liability (see §§ 750.37, 750.56, and 750.65).

§ 750.15 Claims: Action by receiving officer or command.

(a) *Record date of receipt.* The first command receiving the claim shall stamp or mark the date of receipt upon the letter of claim or claim form.

(b) *Determine military activity involved.* The receiving command should determine the local naval activity most directly concerned, normally the commanding officer or the officer in charge of the personnel involved or of the activity in which the incident occurred. If a nonnaval activity is or may be the activity most directly involved, see § 750.3(b)(3) and of paragraph (d) of this section.

(c) *When the receiving command is the activity most directly involved.* An immediate investigation in accordance with §§ 750.2–750.7 should be commenced. If an investigation has already been completed, an evaluation of such investigation in light of the claim should be conducted with a view to correcting or supplementing the investigation. In addition, the receiving command shall notify all holders of the investigation that a claim has been filed. The original claim and the investigation or any reevaluation thereof should then be forwarded as directed by § 750.8.

(d) *When the receiving command is not the activity most directly involved.* If an activity other than the receiving command is the activity most directly involved, the original claim should be forwarded to that activity.

§ 750.16 Claims: Action by adjudicating authority.

(a) *Review prior action.* The adjudicating authority is ultimately responsible for determining that an adequate and complete investigation in accordance with §§ 750.2–750.7 has been conducted, that the date of initial receipt of the claim is recorded on the face of the claim, and that all holders of the investigation, if completed, have been notified of the claim.

(b) *Determine sufficiency of claim.* A determination of the sufficiency of a claim under §§ 750.11–750.12 should be made. If the claim is deemed insufficient, it should be returned to the submitting party together with an explanation of the insufficiency. Such action by the adjudicating authority does not constitute denial of the claim.

(c) *Adjudication of claims.* (1) Claims within the adjudicating authority. Except as provided in § 750.35(c) concerning multiple claims, the appropriate adjudicating authority shall approve or disapprove the claims within his adjudicating authority as described in § 750.80. In unusual cases, the entire record, together with the information required by subsection of this section, may be referred to the Judge Advocate General for appropriate action.

(2) *Claims in excess of the adjudicating authority.* All claims, regardless of the amount involved, should be negotiated for settlement within local adjudicating authority if such settlement is appropriate and possible. Permission of higher command is not necessary. Negotiation beyond local adjudicating authority may be attempted, if appropriate, provided claimant is clearly informed that the final decision on his claim will be made by a higher command. Whenever a case is retained for negotiation more than 6 months after the claim has been submitted, an interim status report will be made to the Judge Advocate General (Litigation and Claims).

(d) *Forwarding a claim to the Judge Advocate General.* In the event a claim cannot be approved, settled, compromised, or denied within the adjudicating authority granted by this chapter, such claim should be forwarded promptly to the Judge Advocate General with the following materials:

(1) An official endorsement or letter of transmittal;

(2) A memorandum of law containing an analysis of the facts, a review of the applicable law, an evaluation of liability, and a recommendation as to the settlement value of the claim;

(3) The original of the investigative report together with all enclosures and allied papers; and

(4) The original claim and all copies thereof filed by the claimant. The adjudicating authority shall retain at least one copy of all materials transmitted to the Judge Advocate General under this subsection.

(e) *Litigation reports.* Most litigation reports originate from the Litigation and Claims Division of the Office of the Judge Advocate General. The Judge Advocate General may request that the cognizant district judge advocate or staff judge advocate provide a litigation report directly to the United States Attorney representing the Government's interest. A litigation report consists of a letter addressed to the Department of Justice, copy to the U.S. Attorney, containing a narrative summary of the pertinent facts concerning the claim upon which the lawsuit has been filed in the United States district court. It will normally contain an evaluation of the facts together with a comment on the law of the State where the claim arose and recommendations respecting settlement or defense of the case. The report should tell whether an administrative claim (Standard Form 95) or other writing sufficient under § 750.12 was submitted and what disposition was made of such claim. If records show that no administrative claim has been filed, prompt notification of this fact shall be given to the Judge Advocate General, the Department of Justice, and the U.S. Attorney. Copies of the enclosures to the JAG Manual investigation should be provided if they are not classified for security reasons. The investigative officer's finding of facts, opinions, recommendations and endorsements thereon shall not be released except as specifically authorized by the Secretary of the Navy or the Judge Advocate General in accordance with § 750.23. If there is a question as to the propriety of releasing a particular document or information, the matter should be referred to the Judge Advocate General (Litigation and Claims) for resolution.

§ 750.17 Claims: Payment of.

Claims approved for payment shall be forwarded to such disbursing officer as may be designated by the Comptroller of the Navy for payment from appropriations designated for that purpose. See § 750.40 regarding the payment of Federal tort claims in excess of $2,500 by the General Accounting Office and appendix page 20–d.[1]

§ 750.18 Claims: Settlement agreement and release.

(a) *Difference between fully and partially approved claims.* In cases in which the claim is approved in the full amount claimed, no settlement agreement, other than the agreement incorporated in the claim for damage or injury (Standard Form No. 95), is necessary. In cases in which the claim is being approved for a lesser amount than that claimed, no payment will be made until the claimant has indicated in writing his willingness to accept such amount in full satisfaction and final settlement of the claim. A sample settlement agreement is contained in Appendix page 20–b.[1]

(b) *Release.* Except for an advance payment pursuant to § 750.71 the acceptance by the claimant of any award or settlement made by the Secretary of the Navy, or his designees pursuant to the authority granted by statute and these regulations, or of any award, compromise, or settlement made by the Attorney General, is final and conclusive upon the claimant. Acceptance constitutes a complete release by the claimant of any claim against the United States by reason of the same subject matter. The acceptance by the claimant of any award, compromise, or settlement made under the provisions governing the administrative settlement of Federal tort claims under title 28, United States Code, or the civil action provisions of 28 USC 1346(b) and Subpart B of this part also constitutes a complete release by the claimant of any claim against any employee of the Government whose act or omission gave rise to the claim.

§ 750.19 Claims: Disposition or denial of.

(a) *Claimant to be notified.* In every case the approving or disapproving authority shall notify, promptly and in writing, the claimant of the action taken on his claim.

(b) *Final denial.* A final denial of any claim within this chapter shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail and return receipt requested. The notification of denial may include a statement of the reason or reasons for denial. Such notification shall include a statement that if the claimant is dissatisfied with the action taken on his claim he may:

(1) If the claim is cognizable under the Federal Tort Claims Act, within 6 months of the date of such notification, file suit in the appropriate U.S. District Court.

(2) If the claim is cognizable under the Military Claims Act, within 30 days after receipt of such notification, appeal to the Secretary of the Navy stating the grounds relied upon for such appeal. The notice of denial shall inform the claimant that suit or appeal pursuant to one statute will not toll the time limitation set forth above for the other.

§ 750.20 Claims: Amendment, appeal, or reconsideration of.

(a) *Amendment.* At any time prior to denial, or prior to action by the claimant exercising his option to deem a claim denied, a claim submitted pursuant to the Federal Tort Claims Act may be amended. See §§ 750.34(e) and 750.40.

(b) *Appeal or reconsideration.* (1) In connection with the denial of any claim within the scope of the Federal Tort Claims Act (Subpart B of this part), the claimant may, in writing and provided such writing is received by the authority who denied the claim not later than 6 months after the date of denial, appeal or request reconsideration of his claim. See §§ 750.34(i) and 750.40. Such appeal or request must state the reasons therefor. An appeal or request filed solely to extend the statutory period for filing suit shall be void.

(2) In connection with the denial of any claim within the scope of the Military Claims Act (Subpart C of this part), or not cognizable under any other provision of law (Subpart D of this part), the claimant may, in writing and provided such writing is received by the proper authority under § 750.53(h) or § 750.53(c) not later than 30 days after the date of denial, appeal or request reconsideration of his claim. Such appeal or request shall state the reasons therefor.

(c) *Disposition of appeal or reconsideration.* Upon receipt of a written appeal or request for reconsideration, such appeal or request shall be promptly considered by the appropriate adjudicating authority. Final disposition shall be in writing as prescribed by § 750.19.

§ 750.21 Claims: Action required upon notice of suit.

(a) *Action required of any Navy official receiving notice of suit.* The commencement, under the civil action provisions of 28 USC 1346(b), of any action against the United States, involving the Navy, which comes to the attention of any officer in connection with his official duties, shall be reported immediately to the commandant of the cognizant naval district, to the attention of the district staff judge advocate who shall initiate any necessary administrative action and shall give further prompt notification to the Judge Advocate General. The commencement of any legal action against any employee of the Navy as a result of an act or ommission committed within the scope of his employment which comes to the attention of any officer in connection with his official duties, whether or not the United States has been made a party to such legal action, shall be reported in the same manner. See §§ 750.-2 and 720.20(c).

(b) *Steps upon commencement of civil action.* Upon receipt by the Judge Advocate General of notice from the Department of Justice, or from any other source, that an action involving the Navy has been instituted against the United States under the civil action provisions of 28 U.S.C. 1346(b), a request shall be made upon the commandant of the appropriate naval district for an investigative report of the incident giving rise to the action if a complete report of the incident has not already been received. This request shall be forwarded immediately to the appropriate naval activity for prompt compliance in order that the preparation of the Government's defense may not be delayed.

(c) *Adjudicating authority.* A request for an investigative report shall be forwarded immediately to the appropriate naval activity for prompt compliance in

[1] Filed as part of original document.

order that the preparation of the Government's defense may not be delayed. In addition, the commandant shall determine if an administrative claim has been filed, and, if records show no claim to have been received, the Judge Advocate General, the Department of Justice, and the United States Attorney shall be promptly notified of this fact.

(d) *Litigation reports.* See § 750.16(e).

§ 750.22 Claims: Finality.

Subject to the provisions of 28 U.S.C. 1346(b) and § 750.34(l) respecting civil action against the United States and administrative reconsideration of Federal Tort Claims Act denials, and subject to the provisions of § 750.53(h) regarding appeal of Military Claims Act denials, any award or determination by the Secretary of the Navy or his designees is final and conclusive upon all officers of the Government, except when procured by means of fraud. Notwithstanding any other provision of law to the contrary, any settlement made by the Secretary of the Navy, or by his designees, under the authority of the Military Claims Act is final and conclusive for all purposes.

§ 750.23 Disclosure of information.

No military personnel or civilian employees of the Navy shall release copies of official papers or any other information which can be used as the basis of a claim against the United States unless such release has been properly authorized by competent authority. This prohibition does not apply to advice concerning the correct administrative procedure for filing claims or to providing prospective claimants with appropriate claim forms. Disclosure of information from an official JAG Manual investigation, excluding all endorsements, findings of fact, opinions, recommendations, appended material from personnel and medical records, and other material privileged under the Freedom of Information Act (5 U.S.C. 552), may be released by the adjudicating authority set forth in § 750.80 provided all claims filed or anticipated are within his adjudicating authority. All other requests for disclosure of information shall be processed in accordance wth Subpart C of Part 720 of this chapter.

§ 750.24 Single-service assignment of responsibility for processing of claims.

(a) *Applicable law.* Department of Defense Directive 5515.8 of July 28, 1967 (NOTAL), has assigned single-service responsibility for the processing of claims under the following laws:

(1) Foreign Claims Act (10 U.S.C. 2734 (see Part 753 of this chapter));

(2) Military Claims Act (10 U.S.C. 2733 (see Subpart C of this part));

(3) Act of September 7, 1962 (10 U.S.C. 2734a and 2734b), pro rata cost sharing of claims pursuant to international agreement (see § 753.27 of this chapter);

(4) NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) and other similar agreements (see § 753.27 of this chapter);

(5) Act of September 25, 1962 (42 U.S.C. 2651–2653) claims for reimbursement for medical care furnished by the United States (see part 757 of this chapter);

(6) Act of October 9, 1962 (10 U.S.C. 2737), claims not cognizable under any other provisions of law (see Subpart D of the part);

(7) Act of June 10, 1921 (31 U.S.C. 71), claims and demands by the Government of the United States (see Part 727 of this chapter); and

(8) Act of September 8, 1961 (10 U.S.C. 2736), advance or emergency payments (see Subpart E of this part).

(b) *List of countries.* Responsibility for the processing of all claims in favor of the United States cognizable under paragraph (a) (4), (5), or (7) of this section or against the United States cognizable under paragraph (a) (4), (6), or (8) of this section, which arise in the following countries is assigned to the military departments listed below:

(1) Department of the Army: Belgium, the Democratic Republic of the Congo, Ethiopia, France, the Federal Republic of Germany, Iran, Korea, Liberia, Mali, Senegal, the Republic of Vietnam, and as the Receiving State Office in the United States under paragraph (a) (3) and (4) of this section.

(2) Department of the Navy: Australia, Iceland, Italy, and Portugal.

(3) Department of the Air Force: Canada, Denmark, Greece, India, Japan, Libya, Luxembourg, Nepal, Netherlands, Norway, Pakistan, Saudi Arabia, Spain, Turkey, and the United Kingdom.

(c) *U.S. forces afloat cases under $200.* Notwithstanding the provisions of subsection (b) above, the Department of the Navy is authorized to settle claims under $200 caused by Navy personnel not acting within scope of employment and arising in foreign ports visited by U.S. forces afloat and may, subject to the concurrence of the authorities of the receiving state concerned, process such claims without regard to international agreements described in paragraph (a) (4) of this section concerning the processing of nonscope of duty claims by receiving and sending state authorities.

(d) *Assignment of responsibility of a unified command.* On an interim basis and while awaiting confirmation and approval from the Office of the Secretary of Defense, a Unified Command may, when necessary to implement contingency plans, assign single-service responsibility for the processing of claims in countries where such assignment has not already been made.

§§ 750.25–750.29 [Reserved]

Subpart B—Federal Tort Claims Act

§ 750.30 Scope of Subpart B.

The regulations of this subpart B apply exclusively to the administrative processing and consideration of claims against the United States arising under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2671–2680). The regulations of the Attorney General of the United States concerning administrative claims under the Federal Tort Claims Act (28 CFR Part 14) are presented in § 750.40 and are expressly incorporated into the regulations of the Judge Advocate General. In cases of conflict between provisions of §§ 750.30–750.39 and the provisions of § 750.40, the provisions of § 750.40 prevail for Federal Tort Claims Act claims.

§ 750.31 Definitions.

(a) *Employees of the Government.* The term "employee of the Government," as used in this chapter, includes members of the naval forces of the United States, officers or employees of the Navy, and persons acting on behalf of the Navy in an official capacity, temporarily or permanently in the service of the United States, with or without compensation. Contractors with the United States are not Federal agencies, and their employees are not "employees of the Government," even if the contractor is operating a Government-owned plant. Status as an "employee of the Government" is a Federal question to be determined by Federal law.

(b) *Scope of employment and line of duty.* "Scope of employment" and "acting in the line of duty" are synonymous for purposes of the Federal Tort Claims Act, and the meaning is determined in accordance with principles of respondent superior under the State law of the jurisdiction in which the act or omission occurred.

§ 750.32 Statutory authority.

(a) *Waiver of sovereign immunity.* Subject to the provisions of 28 U.S.C. 2671–80, Tort Claims Procedure, the U.S. district courts including the U.S. District Court for the District of the Canal Zone and the District Court of the Virgin Islands, have exclusive jurisdiction of civil actions on claims against the United States for money damages for damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred (28 U.S.C. 1346(b)).

(b) *Setoff, etc., encompassed.* The jurisdiction described in subsection (a) includes a jurisdiction of any setoff, counterclaim, or other claim or demand on the part of the United States (28 U.S.C. 1346(c)).

(c) *Venue.* Any civil action on a tort claim against the United States under 28 U.S.C. 1346(b) may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred (28 U.S.C. 1402(b)).

(d) *Jury trial.* Any action against the United States under 28 U.S.C. 1346(b) shall be tried without a jury (28 U.S.C. 2402).

(e) *Exclusive character of remedies—(1) Action against the United States.* The remedies provided by 28 U.S.C. 1346 (b) with respect to civil action against the United States are the exclusive remedies whereby action may be brought upon claims against the United States

for money damages, for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred (28 U.S.C. 2679(a)).

(2) *Action against the individual employee.* In most cases, the employee of the Government whose conduct gives rise to a civil action against the United States under 28 U.S.C. 1346(b) is immune from suit brought against him personally. In cases not covered by the Federal Driver's Act (28 U.S.C. 2679(b)), the immunity arises from case law (Barr v. Matteo, 360 U.S. 564 (1959); Bates v. Carlow, 430 F. 2d 1331 (10th Cir. 1970)), and the immunity must be pleaded and proved (Willingham v. Morgan, 424 F. 2d 200 (10th Cir. 1970)). Since it is possible, notwithstanding the statute and cases cited above, that a Government employee may be held personally liable for damages caused by his negligent performance of official duties, and he may be responsible for paying a judgment where the United States is not named as codefendant, the Government employee should be advised to seek appropriate legal advice in each case. See § 720.20(c) and JAG Instruction 582.2 of February 2, 1962. Subject: Civil suits against military or civilian personnel of the Department of the Navy resulting from the operation of motor vehicles while acting within the scope of their office or employment, and legal representation in other court proceedings.

§ 750.33 Administrative claim and consideration as a prerequisite to suit.

(a) No action may be maintained against the United States under 28 U.S.C. 1346(b) unless the claimant has first properly filed an administrative claim and that claim has been finally denied. See §§ 750.34(b) and 750.34(h) for what constitutes a proper filing and a final denial of a claim. The failure of the Navy to make final disposition of a claim within 6 months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim. The provisions of this subsection do not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third-party complaint, cross-claim, or counterclaim (28 U.S.C. 2675(a)).

(b) No action may be instituted for an amount in excess of the amount of the administrative claim unless the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of the filing of the claim, or upon allegation and proof of intervening facts relating to the amount of the claim (28 U.S.C. 2675(b)). See § 750.34(c) regarding the amendment of an administrative claim.

§ 750.34 The administrative claim.

(a) *Proper claimant*—(1) *Property.* A claim for damage to or loss or destruction of property may be presented by the owner of the property or his duly authorized agent or legal representative.

(2) *Personal injury.* A claim for personal injury may be presented by the injured person or his duly authorized agent or legal representative.

(3) *Death.* A claim based on death may be presented by the executor or administrator of the deceased's estate, or by any other person legally entitled to do so in accordance with local law governing the rights of survivors.

(4) *Loss compensated by insurer.* 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.

(5) *Claim presented by agent or legal representative.* A claim presented by an agent or legal representative will 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.

(b) *Proper claim and presentation.* A claim shall be deemed to have been presented when the Navy receives from a claimant an executed Standard Form 95 or written notification of an incident, together with a claim for money damages in a sum certain. See Appendix page 20–a [1] for a sample form. A claim presented to the wrong Federal agency shall be transferred forthwith to the appropriate agency. For purposes of the 6-months provision of § 750.33(a), a claim shall be deemed to have been filed when it is received by the appropriate Federal agency. See § 750.33(b)(3) for the reporting of claims within the purview of both the Navy and another Federal agency.

(c) *Evidence and information in support of the claim.* The claimant may be required to furnish any evidence which may have a bearing on either the responsibility of the United States for the death, personal injury, or injury to or loss of property, or the damages claimed (28 CFR 14.4). See § 750.40 and § 750.13 for the specific evidence and information that may be required. Failure of the claimant to provide the required information upon request may result in no administrative consideration of the claim

(d) *Investigation and examination.* The claim shall be investigated in accordance with Subpart A of this part. The Navy may request, or be requested by, any other Federal agency to investigate a claim filed under 28 U.S.C. 2672 or to conduct a physical examination of a claimant and to provide a report of the physical examination. See § 750.40.

(e) *Amendment of the claim.* A proper claim under paragraph (b) of this section may be amended by the claimant at any time prior to a final disposition of the unamended claim by the Navy or prior to the exercise of the claimant's option under § 750.33(a) and 28 U.S.C. 2675(a). An amendment shall be submitted in writing and shall be signed by the claimant or his duly authorized agent or legal representative. A proper amendment to a pending claim gives the Navy 6 months from the date of receipt of such an amendment to make a final disposition of the amended claim, and the claimant's option under § 750.33(a) and 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of the amendment. Notwithstanding the above, no finally denied claim for which reconsideration has been requested under subsection i may be amended.

(f) *Payment of the claim.* Any award, compromise, or settlement in an amount of $2,500 or less shall be paid in accordance with § 750.17. Payments in excess of $2,500 shall be paid in accordance with § 750.40. The officer signing Standard Form 1145 as an authorized designee must include a statement over his signature citing his JAG Manual authority to sign. See Appendix page 20–d.[1]

(g) *Settlement agreement.* A sample settlement agreement including the required statement concerning fee limitations in Federal Tort Claims Act cases is contained in Appendix page 20–b.[1] See § 750.18.

(h) *Denial of the claim.* Final denial of an administrative claim shall be accomplished in accordance with §§ 750.19 and 750.40.

(i) *Reconsideration of the claim under the Federal Tort Claims Act.* Prior to the commencement of suit and prior to the expiration of the 6-month period after a final denial of a claim by the Navy, the claimant or his duly authorized agent or legal representative may file a written request with the Navy for reconsideration of the finally denied Federal Tort Claims Act claim. The Navy shall have 6 months from the date of the filing of a proper request for reconsideration in which to make a final disposition of the request, and such final disposition shall be accomplished in accordance with § 750.20c. Claimant's option under § 750.33a and 28 USC 2675(a) shall not accrue until 6 months after the filing of the request. A final denial of a request for reconsideration is not a final denial of a claim for purposes of the first sentence of this paragraph, but is a final denial for purposes of §§ 750.33, 750.34(h), and 750.38. Nothing in this paragraph shall be construed to permit amendment of a finally denied claim. A request for reconsideration filed solely for the purpose of extending the § 750.38(b) statutory period for filing suit shall be void.

§ 750.35 Administrative consideration: Who is authorized?

(a) *Statutory authorization.* Pursuant to 28 U.S.C. 2672 of the Federal Tort

[1] Filed as part of original document.

Claims Act and in accordance with regulations issued by the Attorney General (see § 750.40), the Secretary of the Navy or his designee, acting on behalf of the United States, is authorized to consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for damages to or loss of property or personal injury or death caused by the negligent or wrongful act or omission tf any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. See paragraph (c) of this section for limitations on the authority of the Secretary or his designee.

(b) *Specific delegation and designation.* See § 750.80.

(c) *Limitations on authority.* Notwithstanding the provisions of paragraphs (a) and (b) of this section:

(1) Any award, compromise, or settlement by the Navy under 28 U.S.C. 2672 in excess of $25,000 may be effected only with the prior written approval of the Attorney General or his designee;

(2) An administrative claim presented under 28 U.S.C. 2672 may be approved, disapproved, compromised, or settled only after consultation with the Department of Justice by the Judge Advocate General when:

(i) A new precedent or a new point of law is involved;

(ii) A question of policy is or may be involved;

(iii) 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

(iv) For any reason, the compromise of a particular claim, as a practical matter, will control the disposition of a related claim in which the amount to be paid may exceed $25,000; and

(3) An administrative claim presented under 28 U.S.C. 2672 may be adjusted, determined, approved or disapproved, compromised, or settled by the Judge Advocate General only after consultation with the Department of Justice when the United States or its employee agent or cost-plus contractor is involved in litigation based on a claim arising out of the same transaction.

(4) In all situations noted in subparagraphs (2) and (3) of this paragraph in which the approval, disapproval, compromise, or settlement of a claim would otherwise be within the authority of the person handling it, the claim, along with the entire file, shall be forwarded to the Judge Advocate General with a full statement of the reasons therefor. Such forwarding shall be in accordance with § 750.16(d).

§ 750.36 Scope of liability.

(a) *In general.* Subject to the exceptions listed in paragraphs (c) and (d) of this section in adjudicating claims under § 750.35, the liability of the United States is generally determined in accordance with the law of the place where the act or ommission occurred (28 U.S.C. 2672). Where local law and applicable Federal law conflict, the latter prevails.

(b) *Multistate torts.* In situations involving more than one jurisdiction, the liability of the United States under paragraph (a) of this section is determined by the law of the place where the act or omission occurred, including the choice of law rules of that place (Richards v. United States, 369 U.S. 1 (1962)).

(c) *Claims not within the Act.* By virtue of 28 U.S.C. 2680, the provisions of the Federal Tort Claims Act do not apply to:

(1) Any claim based upon an act or omission of an employee of the Government exercising due care in the execution of a staute or regulation, whether or not such statute or regulation be valid; or based upon the exercise or performance of, or the failure to exercise or perform, a discretionary function or duty on the part of the Navy or an employee of the Government, whether or not the discretion involved may be abused;

(2) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter; but see § 750.55(c) for processing mail claims under the Military Claims Act;

(3) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law enforcement officer;

(4) Any claim for which a remedy is provided by the act of March 9, 1920, as amended (46 U.S.C. 741–752), or the act of March 3, 1925 as amended (46 U.S.C. 781–790) relating to claims or suits in admiralty against the United States. Claims arising under the Death on the High Seas Act (46 U.S.C. 761) are not excepted from the provisions of 28 U.S.C. 1346(b). Because they may involve both admiralty and torts procedure, however, claims under this Act will be referred to the JAG for adjudication in all cases. By virtue of 28 U.S.C. 2680(d), admiralty claims arising from damage caused by a vessel in the naval service are processed in accordance with Part 752 of this chapter. Admiralty claims arising from other sources may be adjudicated under the Military Claims Act or the Foreign Claims Act, with the assistance of the Admiralty Division of the Office of the Judge Advocate General if appropriate.

(5) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of the Trading with the Enemy Act, as amended (50 U.S.C. App. 1–44);

(6) Any claim for damages caused by the imposition or establishment of a quarantine by the United States;

(7) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(8) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system;

(9) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war;

(10) Any claim arising in a foreign country (see Part 753 of this chapter concerning Foreign Claims); and

(11) Any claim arising from the activities of the Tennessee Valley Authority, the Panama Canal Company, a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.

(d) *Additional claims not payable.* Although not expressly excepted from the application of the provisions governing administrative settlement of Federal tort claims, the following types of claims shall not be paid:

(1) Any claim for the personal injury or death of a member of the naval forces of the United States incurred incident to service or duty (Feres v. United States, 340 U.S. 135 (1950); compare Brooks v. United States, 337 U.S. 49 (1949));

(2) Any claim of military personnel or civilian employees of the Navy for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service, which claim is cognizable under 31 U.S.C. 240–243 and the applicable Personnel Claims Regulations (see Part 751 of this chapter);

(3) Any claim for the personal injury or death of a Government employee to whom the Federal Employees' Compensation Act, as amended and reenacted (5 U.S.C. 7901–7903, 8101–8193), is applicable (see 5 U.S.C. 8116c, specifically);

(4) Any claim for personal injury or death of a civilian employee of a nonappropriated-fund activity covered by the Longshoremen's and Harbor Workers' Compensation Act (see 33 U.S.C. 905 and 5 U.S.C. 8171);

(5) That portion of any claim attributable to the fault or negligence of a contractor of the Government, to the extent to which such contractor may be liable under the provisions of his contract (see United States v. Seckinger, 397 U.S. 203 (1969), and § 750.7(a)(15)), and

(6) Any claim against the Navy by another Federal agency. Tort or tort-type claims for damage to the property of one Government department or agency normally are not asserted against another Government department or agency, regardless of whether a department or agency is fully supported from appropriated funds, is partly supported by revenue-producing activities, or is a Government corporation or a nonappropriated-fund activity (see 25 Comp. Gen. 49 (1945); 9 Comp. Gen. 263 (1930); 6 Comp. Gen. 171 (1926); 6 Comp. Dec. 74 (1899); but see 26 Comp. Gen. 235 (1946); 14 Comp. Gen. 256 (1934)). This interdepartmental waiver is predicated on the doctrine that property belonging to the Government is not owned by any department of the Government (see 22 Comp. Dec. 390 (1916)). The Government does not reimburse itself for the loss of its own property except where

specifically provided for by law. A department or agency of the District of Columbia is not considered to be a Government department or agency for the purpose of filing a claim (see 46 Comp. Gen. 586 (1966); 36 Comp. Gen. 457 (1956)).

§ 750.37 Measure of damages.

(a) *In general.* Subject to the exceptions set out in paragraphs (b) and (d) of this section for claims under the Federal Tort Claims Act, the measure of damages is determined by the law of the place where the act or omission occurred (28 U.S.C. 2674). When there is a conflict between local law and applicable Federal law, the latter governs.

(b) *Multistate torts.* In situations involving more than one jurisdiction, the measure of damages of the United States under paragraph (a) of this section is determined by the law of the place where the act or omission occurred, including the choice of law rules of that place (Richards v. United States, 369 U.S. 1 (1962)).

(c) *Limitations on liability.* The United States is not liable for interest prior to judgment or for punitive damages. If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States is liable for, in lieu thereof, actual or compensatory damages measured by the pecuniary injuries resulting from such death to the persons, respectively, for whose benefit the action was brought (28 U.S.C. 2674).

(d) *Indemnity or contribution.* Under circumstances where the Government is deemed to be entitled to contribution or indemnity, the third party will be notified of the claim in writing and will be requested to contribute his fair share of a proposed settlement or to properly indemnify the Government. Contribution or indemnity claims will be processed and negotiated by the persons and commands listed in § 750.80 when the recommended contribution of the Navy is within the settlement authority of such persons or commands. If the third party fails to make satisfactory arrangements, a valid claim may be denied in order to force the third party to be joined as a party defendant when the claimant brings suit. See § 750.35(c)(2)(iii) concerning settlement without indemnification or contribution.

(e) *Setoff.* In a case brought by a serviceman not barred by the Feres doctrine (Feres v. United States, 340 U.S. 135, (1950)), an award will be reduced by the value of benefits received, and to be received in the future, by the serviceman (Brooks v. United States, 337 U.S. 49, (1949)).

§ 750.38 Statute of limitations.

(a) Every claim against the United States submitted for consideration under the Federal Tort Claims Act must be presented in writing within two years after the claim accrued or be forever barred (28 U.S.C. 2401(b)). The filing of suit against the United States does not constitute the presentment of a claim under this subsection or under 28 U.S.C. 2401 (b) (Gunstream v. United States, 307 F. Supp. 366 (C.D. Cal. 1969)).

(b) A tort claim is forever barred unless an action is commenced against the United States within 6 months after the date of mailing of notice of final denial of the claim by the agency to which it was presented (28 U.S.C. 2401(b)). See § 750.34(i) regarding a request for reconsideration.

§ 750.39 Attorney fees.

(a) Attorney fees not in excess of 20 percent of any compromise or settlement made pursuant to §§ 750.34–750.35 above may be allowed. Attorney fees so determined are to be paid out of the amount awarded and not in addition to the award. Where judgment is rendered in favor of the claimant by a court of competent jurisdiction or where settlement is made after suit is filed, attorney fees shall not exceed 25 percent (28 U.S.C. 2678).

(b) The fee limitations noted above are imposed by statute, and in order to ensure compliance they shall be incorporated in any settlement agreement secured from a claimant. See appendix page 20–b[1] for a sample settlement agreement including a statement regarding attorney fees.

§ 750.40 Regulations of Attorney General governing administrative claims procedure.

The Regulations of the Attorney General for administrative claims under the Federal Tort Claims Act, appear in 28 CFR Part 14.

§§ 750.41–750.49 [Reserved]

Subpart C—Military Claims Act

§ 750.50 Scope of Subpart C.

The regulations of this subpart C apply exclusively to the administrative processing of claims against the Navy arising under the Military Claims Act (10 U.S.C. 2733).

§ 750.51 Definitions.

As used in this part (§§ 750.50–750.59):

(a) The word "claim" refers to any demand for payment submitted by any individual, partnership, association, corporation, or political entity, including countries, states, territories, and political subdivisions thereof, but excluding the Federal Government of the United States and its instrumentalities.

(b) The words "military personnel or civilian employees of the Navy" include all military personnel of the Navy, prisoners of war and interned enemy aliens engaged by the Navy in labor for pay, volunteer workers and others serving as employees of the Navy with or without compensation, and members of the Environmental Science Services Administration or of the Public Health Service who are serving with the Navy or Marine Corps.

(c) Military includes "naval."

§ 750.52 Statutory authority.

(a) *General authorization.* Subject to the statutory exceptions set forth in § 750.55(d), the Secretary of the Navy—or the Judge Advocate General, subject to appeal to the Secretary—may settle and pay, in an amount not in excess of $15,000, a claim against the Navy for damage to or loss or destruction of real or personal property, or for personal injury or death, either caused by military personnel or civilian employees of the Navy while acting within the scope of their employment or otherwise incident to noncombat activities of the Navy, including claims for damage to or loss of destruction by criminal acts of registered or insured mail while in the possession of the military authorities, claims for damage to or loss or destruction of personal property bailed to the Government, and claims for damage to real property incident to the use and occupancy thereof, whether under a lease, express or implied, or otherwise (10 U.S.C. 2733(a)).

(b) *Authorization for payment of claims in excess of $15,000.* If the Secretary of the Navy considers that a claim in excess of $15,000 is meritorious and would otherwise be covered by 10 U.S.C. 2733 and subsection (a) of this section, he may make a partial payment of $15,000 and refer the excess to the Office of Management and Budget for submission to Congress for its consideration (10 U.S.C. 2733(d)).

(c) *Delegable authorization to pay claims not in excess of $2,500.* In any case where the amount to be paid is not more than $2,500, the Secretary of the Navy may delegate the authority of 10 U.S.C. 2733(a) and paragraph (a) of this section, subject to appeal to the Judge Advocate General (10 U.S.C. 2733(g)). See § 750.80 for the Navy and Marine Corps officials with delegated authority to pay claims under this subsection.

(d) *No right to sue.* The Military Claims Act authorizes the settlement and payment of certain claims but does not authorize any right to sue the United States. The United States has consented to be sued in tort under 28 U.S.C. 1346(b) only, and, by virtue of 10 U.S.C. 2733(b)(2), Federal tort claims are not payable under the Military Claims Act.

(e) *Territorial limitations.* There is no geographical limitation on the application of the Military Claims Act, but if a claim arising in a foreign country is cognizable under the Foreign Claims Act (10 U.S.C. 2734), the claim shall be processed under Part 753 of this chapter.

§ 750.53 The administrative claim.

(a) *Proper claimant.* In determining if a claimant is the proper party to pursue the claim, the provisions of §§ 750.11 and 750.34(a) apply. Where the claim is for wrongful death, however, only one claim shall be allowed and any payment shall be apportioned according to § 750.56(b).

(b) *Proper claim and presentation.* A claim is proper in form and presentation

[1] Filed as a part of original document.

if it constitutes written notification of an incident, signed by the claimant or a duly authorized agent or legal representative, together with a claim for money damages in a sum certain.

(c) *Evidence and information in support of the claim.* See § 750.13 for the evidence and information required to substantiate a claim. 10 U.S.C. 2733(b)(5) requires that a claim be substantiated in accordance with these regulations in order to be paid.

(d) *Amendment of the claim.* A proper claim may be amended by the claimant at any time prior to a final disposition of the claim. An amendment of a claim shall be submitted in writing and shall be signed by the claimant or a duly authorized agent or legal representative.

(e) *Payment of the claim.* Payment of a claim shall be accomplished in accordance with § 750.17.

(f) *Settlement agreement.* See § 750.18 and appendix page 20b.

(g) *Denial of the claim.* See § 750.19.

(h) *Appeal of the claim.* A claim which is disapproved in whole or in part may be appealed by the claimant at any time within 30 days after receipt of notification of disapproval. Such appeal shall be in writing and shall state the grounds relied upon. An appeal may be decided either by the Secretary of the Navy or by the Judge Advocate General—except that, where the claim is disapproved originally by the Judge Advocate General, an appeal thereof shall be decided by the Secretary. See § 750.20(c) for the procedure for disposing of an appeal.

§ 750.54 Authority to settle.

See § 750.80.

§ 750.55 Scope of liability.

(a) *Caused by a member or employee.* Subject to the exceptions of paragraph (d) of this section, the Navy shall be responsible under 10 U.S.C. 2733 in money damages for damage to or loss or destruction of property, real or personal, or for personal injury or death, which is caused by military personnel or civilian employees of the Navy while acting within the scope of their employment.

(b) *Otherwise incident to noncombat activities.* Subject to the exceptions of paragraph (d) of this section a claim for damage to or loss or destruction of property, real or personal, or for personal injury or death, although not shown to have been caused by any particular act or omission of military personnel or civilian employees of the Navy while acting within the scope of their employment, is payable under the Military Claims Act if otherwise incident to noncombat activities of the Navy. Claims within this category are those arising out of authorized activities which are peculiarly military activities having little parallel in civilian pursuits, and out of situations in which the Government has historically assumed a broad liability, such as claims for damage or injury arising from, and which are the natural or probable results or incidents of: maneuvers and special exercises; practice firing of heavy guns; practice bombing; naval exhibitions; operations of missiles, aircraft, and antiaircraft equipment; sonic booms; use of barriage balloons; use of instrumentalities having latent mechanical defects not traceable to negligent acts or omissions; explosions of ammunition; movement of combat vehicles or other vehicles designed especially for military use; and the use and occupancy of real estate.

(c) *Specific claims payable.* Claims payable by the Navy under paragraphs (a) and (b) of this section shall include, but shall not be limited to:

(1) *Registered or insured mail.* Claims for damage to or loss or destruction, by criminal acts, of registered or insured mail while in the possession of the military authorities are payable under the Military Claims Act. This provision of the Act is in the nature of an exception to the general requirement that the damage, loss, or destruction of personal property, in order to be compensable thereunder, be caused by military personnel or civilian employees of the Navy while acting within the scope of their employment or be otherwise incident to noncombat activities of the Navy. In effect, this provision makes it possible for the Navy to relieve the Postal Service of its obligation as an insurer with respect to registered and insured mail relinquished into the possession of the Navy for transportation or for delivery to the addressee. For this reason, the maximum award to a claimant under the provisions of this section shall be limited in amount to that to which the claimant would be entitled from the Postal Service in accordance with the registry or insurance fee paid. The amount of the award shall not exceed the cost of the item to the claimant, however, regardless of the fees paid. The claimant may be reimbursed for the postage and registry or insurance fees as elements of the cost.

(2) *Loaned or rented to the Government.* Claims for damage to or loss or destruction of personal property loaned, rented, or otherwise bailed to the Government, under an agreement expressed or implied, are payable under the Military Claims Act, even though legally enforceable against the Government as contract claims, unless by express agreement the bailor has assumed the risk of damage, loss, or destruction. Claims filed under this paragraph may, if deemed in the best interest of the Government, be referred to and processed by the Office of the General Counsel, Department of the Navy, as a contract claims.

(3) *Personal property of prisoners of war.* Claims of prisoners of war or interned enemy aliens for damage to or destruction of personal property in the custody of the Government are payable only when the proximate cause of the damage, loss, or destruction is shown to be the tortious act or omission of military personnel or civilian employees of the Navy.

(4) *Real property under lease or otherwise.* Claims for damage to real property incident to the use and occupancy thereof by the Government, whether under an express or implied lease or otherwise, are payable under the provisions of the Military Claims Act even though legally enforceable against the Government as contract claims. Claims filed under this paragraph may, if deemed in the best interest of the Government, be referred to and processed by the Office of the General Counsel, Department of the Navy, as contract claims.

(d) *Claims not payable.* Notwithstanding paragraphs (a), (b), and (c) of this section, the following claims shall not be paid under 10 U.S.C. 2733:

(1) Any claim for damage, loss, destruction, injury, or death which was proximately caused, in whole or in part, by any negligence or wrongful act on the part of the claimant, his agent, or his employee, unless the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances, and then only to the extent permitted by that law;

(2) Any claim for damage, loss, destruction, injury, or death resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat;

(3) Any claim for reimbursement for medical or hospital services furnished at the expense of the United States or, in the case of burial, for such portion of the expense thereof as may be otherwise paid by the United States;

(4) Any claim of military personnel or civilian employees of the Navy for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service which claim is cognizable under the Military Personnel and Civilian Employees' Claims Act as amended (31 U.S.C. 240-243) and applicable regulations (Part 751 of this chapter);

(5) Any claim arising in a foreign country or possession thereof which is cognizable under the Foreign Claims Act (10 U.S.C. 2734) and applicable regulations thereto (Part 753 of this chapter);

(6) Any claim cognizable under 10 U.S.C. 7622 relating to admiralty claims and to claims for damages caused by naval vessels (Part 752 of this Chapter);

(7) Any claim for damage to or loss or destruction of real or personal property founded in written contract, except as provided in subparagraphs (2) and (4) of paragraph (c) of this section;

(8) Any claim for rent of real or personal property, except as provided in subparagraphs (2) and (4) of paragraphs (c) of this section;

(9) Any claim involving the infringement of patents;

(10) Any claim for damage, loss, or destruction of mail matter occurring prior to delivery by the Postal Service to authorized military personnel or civilian employees of the Navy (e.g., designated Navy mail clerks and assistant Navy mail clerks, mail orderlies, or postal officers);

(11) Any claim for damage, loss, or destruction of mail matter occurring due to the fault of, or while in the hands of, bonded personnel;

(12) Any claim for damage, loss, or destruction of mail matter arising after resumption of possession by the Postal Service (e.g., for the purpose of forwarding to the addressee at a different address) and prior to redelivery to authorized military personnel or civilian employees of the Navy charged with transportation or distribution to the addressee;

(13) Any claim by an inhabitant of a foreign country who is a national of a country at war with the United States or of any ally of such an enemy country, unless it be determined that the claimant is friendly to the United States;

(14) Any claim for personal injury or death of military personnel or civilian employees of the Government if such injury or death occurs incident to their service; and

(15) Any claim for damage, injury, or death caused by a member or employee of the Department of the Navy while acting within the scope of his employment, and which is in all other respects within the cognizance of the Federal Tort Claims Act and Subpart B of this part.

§ 750.56 Measure of damages.

In cases cognizable under the Military Claims Act (10 U.S.C. 2733), the measure of damages shall be as follows:

(a) *Damage to property.* (1) If the property has been or can be economically repaired, the measure of damages shall be the actual or estimated net cost of the repairs necessary to restore the property to substantially the condition which existed immediately prior to the incident. Damages so determined shall not, however, exceed the value of the property immediately prior to the incident less the value thereof immediately after the incident. To determine the actual or estimated net cost of repairs, the value of any salvaged parts or materials and the amount of any net appreciation in value effected through the repair shall be deducted from the actual or estimated gross cost of repairs, and the amount of any net depreciation in the value of the property shall be added to such gross cost of repairs, provided such adjustments are sufficiently substantial in amount to warrant consideration. All estimates of the cost of repairs shall be based upon the lower or lowest of two or more competitive bids, or upon statements or estimates by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(2) If the property cannot be economically repaired, the measure of damages shall be the value of the property immediately prior to the incident less the value thereof immediately after the incident. All estimates of value shall be made, if possible, by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(3) Loss of use of damaged property which is economically repairable may, if claimed, be included as an additional element of damage to the extent of the reasonable expense actually incurred for appropriate substitute property, but only for such period as is reasonably necessary for repairs: *And provided,* That idle substitute property of the claimant was not employed. When substitute property is not obtainable, other competent evidence such as rental value, if not speculative or remote, may be considered. When substitute property is reasonably available but is not obtained and used by the claimant, loss of use is normally not payable.

(b) *Personal injury or death.* In claims for personal injury or death, the measure of damages may include reasonable medical, hospital, and burial expenses, loss of earnings and services, diminution of earning capacity, pain and suffering, permanent injury, and death. In computing damages in cases of personal injury or death, local standards will be taken into consideration as a guide. In case of death, only one claim will be allowed. The amount approved therefor shall, to the extent found practicable or feasible, be apportioned among the beneficiaries, and in the proportions prescribed by law or custom of the place in which the accident or incident resulting in death occurs.

(c) *Limitations.* Payment shall not be made for the following elements of damage: Interest, cost of preparation of claims, attorneys' fees, inconvenience, and other similar items. The cost of repair estimates reasonably required to process the claim, however, may be paid.

(d) *Setoff of a recovery from a joint tort-feasor.* If a claimant has elected to proceed against a third party as a joint tort-feasor, any amount paid by such third party for damage which might otherwise be properly included in the claim against the Government shall be deducted from any award by the Government to the claimant.

§ 750.57 Statute of limitations.

No claim may be settled under the Military Claims Act unless it is presented in writing within 2 years after it accrues. If such accident or incident occurs in time of war of armed conflict, however, or if war or armed conflict intervenes within 2 years after its occurrence, any claim may, on good cause shown, be presented within 2 years after the war or armed conflict is terminated. For the purposes of the Military Claims Act, the dates of the beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by determination of the President (10 U.S.C. 2733(b)(1)).

§§ 750.58–750.59 [Reserved]

Subpart D—Claims Not Cognizable Under Any Other Provision of Law

§ 750.60 Scope of Subpart D.

The regulations of this subpart D apply exclusively to the administrative processing and consideration of claims against the Navy arising under 10 U.S.C. 2737. These claims are sometimes referred to as "nonscope" 'claims and are claims that are not cognizable under any other provision of law.

§ 750.61 Definitions.

(a) *Civilian official or employee.* Any civilian official or employee of the Department of the Navy paid from appropriated funds at the time of the incident which resulted in the damage or loss.

(b) *Vehicle.* Includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land (1 U.S.C. 4).

(c) *Government installation.* A United States Government facility having fixed boundaries and owned or controlled by the Government.

§ 750.62 Statutory authority.

(a) *General authorization.* 10 U.S.C. 2737 provides authority for the administrative settlement in an amount not to exceed $1,000 of any claim against the United States not cognizable under any other provision of law for damage to or loss of property, or for personal injury or death, caused by military personnel or a civilian official or employee incident to the use of a vehicle of the United States at any place, or incident to the use of any other property of the United States on a Government installation.

(b) *No right to sue.* There is no right to sue the United States on a claim arising under 10 U.S.C. 2737.

(c) *Territorial application.* There is no geographical limitation on the application of 10 U.S.C. 2737.

§ 750.63 Proper claim and claimant/processing of the claim.

(a) *General.* The general claims provisions of subpart A of this part apply in determining what is a proper claim, who is a proper claimant, and how a claim is to be processed under 10 U.S.C. 2737 and this Part 750.

(b) *Claims submitted pursuant to another statute.* Claims submitted under the provisions of the Federal Tort Claims Act or Military Claims Act shall, in appropriate cases, be considered automatically for an award under this part when payment would otherwise be barred because the employee or serviceman was not in the scope of his employment. If a tender of payment under this part is not accepted by the claimant in full satisfaction of his claim, no award will be made, and the claim will be denied pursuant to the rules applicable to the statute pursuant to which it was submitted.

(c) *Claims submitted pursuant to this statute.* Claims submitted solely pursuant to 10 U.S.C. 2737 shall be promptly considered. If a claim is denied for any reason, the claimant shall be informed in writing of this fact and that he may appeal such decision (see § 750.19(b)) within 30 days of the notice of denial by writing to the Secretary of the Navy (Judge Advocate General). See § 750.20 (b)(2).

§ 750.64 Officials with authority to settle.

See appendix section A–20–(e).[1]

[1] Filed as part of original document.

§ 750.65 Scope of liability and measure of damages.

(a) *Scope of liability.* Subject to the exceptions of paragraph (b) of this section, the responsibility of the United States shall be in money damages, not to exceed $1,000, for damage to or loss or destruction of property or for personal injury or death caused by military personnel or civilian officials or employees:

(1) Incident to the use of a vehicle of the United States at any place; or

(2) Incident to the use of any other property of the United States on a Government installation; and

(3) Not cognizable under any other provision of law.

(b) *Specific claims not payable.* A claim may not be allowed under 10 U.S.C. 2737:

(1) If the damage to or loss of property, or the personal injury or death, was caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee;

(2) In the case of personal injury or death, for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States;

(3) Unless it is presented in writing within 2 years after it accrues;

(4) Unless the amount tendered is accepted in writing by the claimant in full satisfaction of any claim against the United States arising from the incident;

(5) To the extent that the claim or any part thereof is legally recoverable by the claimant under an indemnifying law or an indemnity contract;

(6) If it is a subrogated claim; or

(7) If it is cognizable under any other provision of law.

(c) *Measure of damages.* Compensation under 10 U.S.C. 2737 for damage to or loss or destruction of property, or for personal injury or death shall be computed in accordance with § 750.56, except that damages for personal injury or death under this part shall not be for more than the cost of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid for by the United States, and except that in no case under this part shall an award for damages be in excess of $1,000.

§ 750.66 Statute of limitations.

A claim against the United States under 10 U.S.C. 2737 shall be presented in writing within 2 years from the date it accrues or be forever barred.

§§ 750.67–750.69 [Reserved]

Subpart E—Advance Payments

§ 750.70 Scope of subpart E.

The regulations of the subpart E apply exclusively to the payment of amounts not to exceed $1,000 under 10 U.S.C. 2736 in advance of submission of a claim.

§ 750.71 Statutory authority.

10 U.S.C. 2736 authorizes the Secretary of the Navy or his designee to pay an amount not in excess of $1,000 in advance of the submission of a claim to or for any person, or the legal representative of any person, who was injured or killed, or whose property was damaged or lost, as the result of an accident for which allowance of a claim is authorized by law. Payment under this law is limited to that which would be payable under the Military Claims Act (10 U.S.C. 2733) or the Foreign Claims Act (10 U.S.C. 2734). Payment of an amount under this law is not an admission by the United States of liability for the accident concerned. Any amount so paid shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned.

§ 750.72 Officials with authority to make advance payments.

See § 750.80.

§ 750.73 Conditions for advance payments.

Prior to making an advance payment under 10 U.S.C. 2736, the adjudicating authority shall ascertain that:

(a) The injury, death, damage, or loss would be payable under the Military Claims Act (10 U.S.C. 2733) or the Foreign Claims Act (10 U.S.C. 2734);

(b) The payee, insofar as can be determined, would be a proper claimant under this Part (753 of this chapter), or under the Foreign Claims Regulations or is the spouse or next of kin of a proper claimant who is incapacitated;

(c) The provable damages are estimated to exceed the amount to be paid;

(d) There exists an immediate need of the person who suffered the injury, damage, or loss, or of his family, or of the family of a person who was killed, for food, clothing, shelter, medical, or burial expenses, or other necessities, and other resources for such expenses are not reasonably available;

(e) The prospective payee has signed a statement that it is understood that payment is not an admission by the Navy or the United States of liability for the accident concerned, and that the amount paid is not a gratuity but shall constitute an advance against and shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned; and

(f) No payment under 10 U.S.C. 2736 may be made if the accident occurred in a foreign country in which the NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) or other similar agreement is in effect and the injury, death, damage, or loss (1) was caused by a member or employee of the Department of the Navy acting within the scope of his employment or (2) occurred "incident to noncombat activities" of the Department of Navy as defined in § 750.55(b).

§§ 750.74–750.79 [Reserved]

Subpart F—Authorization To Adjudicate

§ 750.80 Table of delegation and designated authority to pay claim.

See Appendix A–20–e.[1]

PART 751—PERSONNEL CLAIMS REGULATIONS

Part 751 of title 32 is revised to read as follows:

Sec.

AUTHORITY: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240–243).

§ 751.0 Authority.

Sections 751.1 to 751.29 are issued under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240–243).

§ 751.1 Definitions.

In this part:

(a) *Claim.* "Claim" means any claim filed under oath by the commissioned, appointed, enrolled, and enlisted personnel of the Navy and Marine Corps, including their reserve components, and by civilian employees of the Naval Establishment, for damage, loss, destruction, capture, or abandonment of their personal property incident to their service.

(b) *Service personnel.* "Service personnel" means the commissioned, appointed, enrolled, and enlisted personnel of the Navy and Marine Corps.

[1] Filed as part of original document.

(c) *Civilian employees.* "Civilian employees" means employees of the Naval Establishment, including those paid on a contract basis.

(d) *Navy and naval.* "Navy" and "naval" include "Marine Corps" except where the context indicates to the contrary.

(e) *Damage or loss.* "Damage or loss" includes destruction, capture, or abandonment.

§ 751.2 Scope.

Under this part, claims are settled and paid for damage to or loss of personal property of service personnel and civilian employees of the Navy and Marine Corps. The loss must be incident to service, and possession of the property must be reasonable, useful, or proper under the circumstances. The maximum amount allowable on a claim is $10,000.

§ 751.3 Claims payable.

Claims are payable when the damage to or loss of the claimant's personal property occurs incident to his service under any of the following circumstances:

(a) *Property losses in quarters or other authorized places.* Claims are payable where property is damaged or lost by fire, flood, hurricane, or other serious occurrence, or by theft while located at:

(1) Quarters, wherever situated, which were assigned to claimant or otherwise provided in kind by the Government, including permanent or temporary housing units which are owned and maintained by the Government on, or in connection with, a military or naval installation; or

(2) Quarters outside the United States occupied by claimant which were not assigned to him or otherwise provided in kind by the Government, unless the claimant is a civilian employee who is a local inhabitant; or

(3) Any warehouse, office, hospital, baggage dump, or other place (except quarters, but see subparagraphs (1) and (2) of this paragraph), designated by superior authority for the reception of the property.

(b) *Transporation losses.* Claims are payable where property, including baggage checked or in personal custody, and including household effects, is damaged or lost incident to transportation by a government contracted carrier, an agent or agency of the Government, or by a private conveyance:

(1) When shipped under orders; or

(2) In connection with travel under orders irrespective of the purpose of such travel; or

(3) In connection with travel in performance of military duty with or without troops.

(c) *Marine or aircraft disaster.* Claims are payable where property is damaged or lost in consequence of perils of the sea and hazards connected with the operation of aircraft.

(d) *Enemy action.* Claims are payable where property is lost, abandoned, damaged, or destroyed by:

(1) Enemy action or threat of such action;

(2) Combat, or movement in the field which is part of a combat mission;

(3) Guerrilla, organized brigandage or other belligerent activities, whether or not the United States is involved; or

(4) Unjust confiscation by a foreign power or by its nationals.

(e) *Property subjected to extraordinary risks.* Claims are payable when property is damaged or lost as a direct result of extraordinary risks to which it has been subjected by the performance of official noncombat duties by the claimant, including but not limited to:

(1) Performance of duty in connection with civil disturbance, public disorder, or public disaster;

(2) Efforts to save Government property or human life where the situation was such that the claimant could have saved his own property had he not so acted; or by

(3) Abandonment or destruction of property by reason of military emergency or by order of superior authority.

(f) *Property used for benefit of Government.* Claims are payable where property is damaged or lost while being used, or held for use, for the benefit of the Government at the direction or request of superior authority or by reason of military necessity.

(g) *Negligence of the Government.* Claims are payable where property is damaged or lost incident to the service of the claimant and the proximate cause of such damage or loss was the negligent act or omission of agents or employees of the Government acting within the scope of their employment.

(h) *Money deposited for safekeeping, transmittal, or other authorized disposition.* Claims for loss of personal funds which were accepted by naval personnel, military or civilian, acting with the authority of the commanding officer, for safekeeping, deposit, transmittal, or other authorized disposition, are payable where the funds were neither applied as directed by the owner nor returned to him (see Article 1922, U.S. Navy Regulations, 1948).

(i) *Motor vehicles.* Claims are allowable for damage to or loss of automobiles and other motor vehicles if:

(1) The claim would otherwise be allowable under paragraph (a) of this section, or

(2) The claim would otherwise be allowable under paragraph (a) of this section, or

(3) The damage or loss occurred while the vehicle was located on a military installation, provided that the loss or damage was caused by fire, flood, hurricane, or other unusual occurrence or by theft or vandalism, or

(4) The damage or loss occurred during overseas shipment provided by the Government.

(i) "Motor vehicles" include utility trailers, camping trailers, boat and boat trailers. "Military installation" means any fixed land area, wherever situated, controlled and used by military activities or the Department of Defense. "Other unusual occurrence" does not include collision with another vehicle. "Shipments provided by the Government" means via Government vessels, charter of commercial vessels or by Government bills of lading on commercial vessels, and includes storage, on-loading and off-loading incident thereto.

(j) *Housetrailers.* (1) The term "house trailer," as used in this chapter, denotes a residence designed to be moved overland. It includes all household goods, personal effects and professional books, papers, and equipment contained in the trailer and owned or intended for use by the member or his dependents.

(2) Claims for loss of, or damage to, housetrailers and their contents while in storage on Government property pursuant to shipment under orders are payable under paragraph (a)(3) of this section. Claims for loss of, or damage to, housetrailers and their contents arising incident to shipment are payable under paragraph (b)(1) of this section: *Provided,* That, when transported by other than the service member or an agent or agency of the Government, the carrier must have operating rights approved by the Interstate Commerce Commission if in interstate commerce, or under applicable State regulations when the shipment is within a single State.

(3) It is the owner's responsibility to place the housetrailer (including the chassis, brakes, tires, tubes, bearings, undercarriage, frame, and the other parts of the housetrailer) and its contents in fit condition to withstand the stress of normal transportation. The Government has the responsibility of insuring that the housetrailer is inspected prior to movement to determine if it is roadworthy. Acceptance of a housetrailer for shipment by a carrier is presumptive evidence that the housetrailer was in condition to withstand the stress of normal transportation.

(4) The burden of proving a claim against the Government or the carrier rests on the claimant. However, the claimant can establish a prima facie case by proving that the damage occurred during transportation. Damage which is due to (i) the negligence of the carrier, or (ii) collision while the house trailer is in the possession of the carrier, is the responsibility of the carrier. Damage which is due to apparent defects (e.g., a heavily or unevenly loaded trailer; tires which are worn, undersized, or insufficient ply rating, or have deteriorated because of age or lack of use; undercarriage and frame sagging, bent, or of insufficient size or improper construction; loose panels; faulty brakes; missing equipment; etc.) unless noted by the carrier prior to acceptance for shipment, or unless otherwise excepted by contract with the Government, is also the responsibility of the carrier. If the claimant establishes that the damage occurred during shipment, the burden then shifts to the Government and the carrier to establish that they are not liable (e.g., that the damage resulted solely from a latent structural defect).

(5) Evidence desirable for the proper adjudication of a house trailer claim

should include, but is not necessarily limited to, the following:

(i) Copy of the premove inspection report;

(ii) Statement from claimant concerning condition of trailer prior to move, to include age of trailer, general condition, number and location of each prior move, whether any prior move resulted in damage, and, if so, type of damage and whether any prior claim has been paid;

(iii) Copy of the damage report (generally prepared by the carrier);

(iv) Government inspection (include photographs of each area or item of damage where this may prove helpful);

(v) Statement from the driver of the towing vehicle as to the circumstances surrounding the damage, as well as detailed travel particulars;

(vi) Repair bills or estimates as to the cost of repairs;

(vii) Statements from the persons providing claimant with estimates of repair as to their professional opinion as to the cause or causes of each area or item of damage;

(viii) Statements similar to the above by an engineer or by a member of the vehicle maintenance division of a public works department who possesses some expertise in this area;

(ix) Statements from the carrier, manufacturer, and dealer as to the cause of the damage;

(x) Dates and places of all prior transportation of the trailer, and, if at Government expense, copies of the Government bills of lading.

§ 751.4 Claims not payable.

Claims may not be allowed for:

(a) *Money or currency.* Money or currency except when deposited with authorized personnel as contemplated by § 751.3(h), or when lost incident to a marine or aircraft disaster, or when lost by fire, flood, hurricane, or theft from quarters. In instances of theft from quarters, it must be conclusively shown that the money or currency was in a locked container and that the quarters themselves were locked. Reimbursement for loss of money or currency will be limited to an amount which the adjudicating authority determines to have been reasonable for the claimant to have had in his possession at the time of the incident.

(b) *Unserviceable property.* Worn-out or unservicable property.

(c) *Easily pilferable articles.* Easily pilferable articles—such as jewels and jewelry; other small articles of substantial value usually worn or carried, such as cameras and accessories, watches, rings, binoculars, and necklaces; and items of greater size particularly subject to theft, including firearms, portable electronic equipment, and articles for which a substantial illegal market exists—when shipped with household goods by ordinary means or as unaccompanied baggage. (Shipment includes storage.) Claims for such articles are allowable when their loss is incident to shipment when special handling has been arranged and performed in accordance with current Naval Supply Systems Command guidelines or Marine Corps Order P4600.7A. This prohibition does not apply to baggage in the personal custody of the claimant or properly checked, provided reasonable protection or security measures have been taken. However, if small items of substantial value are lost or destroyed because of fire, flood, hurricane, the sinking of a vessel or other unusual occurrence in which the mode of shipment is not material to the type of loss, the claim may be allowed.

(d) *Articles acquired for other persons.* Articles intended directly or indirectly for persons other than the claimant or members of his immediate household. This prohibition includes articles acquired at the request of others, and articles to be disposed of as gifts or to be offered for sale.

(e) *Articles of extraordinary value.* Articles of extraordinary value, including articles of gold, silver, or other precious metals, paintings, antiques other than bulky furnishings, relics, authentic oriental or similar expensive rugs, and other articles of extraordinary value, are not payable when shipped with household effects by ordinary means or as unaccompained baggage. Claims for the loss of such articles are payable when their loss is incident to shipment when special handling has been arranged and performed in accordance with current Naval Supply Systems Command guidelines or Marine Corps Order P4600.7A. This prohibition does not apply to baggage checked, or in the personal custody of the claimant or his agent, provided reasonable protection or security measures have been taken.

(f) *Articles being worn.* Articles being worn, except under the circumstances described in § 751.3 (c), (d), and (e).

(g) *Intangible property.* Intangible property, such as bankbooks, checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, and traveler's checks.

(h) *Property owned by United States.* Property owned by the United States, except where the claimant is responsible to an agency of the Government other than the Department of the Navy.

(i) *Motor vehicles.* Motor vehicle claims, except as cognizable under §§ 751.3(a), 751.3(e), or 751.3(i), ordinarily will not be paid.

(j) *Enemy property.* Enemy property or property of civilian employees who are nationals of a country at war with the United States, or of any ally of such enemy country, except when it is determined that the claimant is friendly to the United States. The prohibition also includes the property of prisoners of war or interned enemy aliens, and the property of civilian employees who have collaborated with an enemy, or with an ally of an enemy of the United States.

(k) *Losses of insurers and subrogees.* Losses of insurers and other subrogees.

(l) *Losses recovered from insurers or carriers.* Losses, or any portion thereof, which have been recovered from an insurer or carrier.

(m) *Losses in unassigned quarters in the United States.* Claims otherwise cognizable under § 751.3(a) are not payable for property damaged or lost at quarters occupied by the claimant within the United States which are not assigned to him, or otherwise provided in kind by the Government.

(n) *Contractual coverage.* Losses, or any portion thereof, which have been recovered or are recoverable pursuant to contract.

(o) *Negligence of claimant.* Claims for damage to or loss of personal property caused in whole or in part by any negligence or any wrongful act on the part of the claimant, his dependents, his agents, or his employees.

(p) *Business property.* Property normally used for business or profit.

(q) *Fees for obtaining estimates of repair.* Claims normally are not payable for fees paid to obtain estimates of repair in conjunction with submitting a claim under these regulations. Where, however, in the opinion of the approving authority the claimant could not obtain an estimate without paying a fee, such a claim may be allowed in an amount reasonable in relation to the value and/or cost of repairs of the article involved, provided the evidence furnished clearly indicates that the amount of the estimate fee paid will not be deducted from the cost of repairs if the work is accomplished by the estimator.

(r) *Theft from possession of claimant.* In all cases where a claim is made for articles lost by theft from the possession of the claimant, the claim is not payable unless evidence clearly establishes:

(1) That the claimant exercised due care in the protection of his property; and

(2) The existence of a larceny, burglary, or housebreaking.

(s) *Trailers.* Loss or damage to trailers, including house trailers and integral parts thereof except as provided in § 751.3(j). Household effects contained in trailers may be considered under § 751.3 (a)(1) when the trailer is located in an assigned area on a Government installation.

(t) *Violation of law or directives.* Property acquired, possessed, or transported in violation of law or regulations of competent authority. This does not apply to limitations imposed on weight of shipments of household effects.

§ 751.5 Type and quantity of property.

(a) *Must be reasonable, useful, or proper.* Claims are payable under the provisions of this chapter only for such types and quantities of tangible personal property the possession of which shall be determined by the adjudicating authority to be reasonable, useful, or proper under the attendant circumstances at the time of the loss or damage. Among such items of personal property is property required by law or regulations of the Navy to be possessed or used by its military personnel or civilian employees incident to their service.

(b) *Ownership or custody.* Claims which are otherwise within the provisions of this chapter will not be disapproved for the sole reason that the property was not in the possession of the claimant at the time of the damage, loss, or destruction, or for the sole reason that the claimant was not the legal owner of the property for which the claim was made (e.g., borrowed property may be the subject of a claim if its possession was reasonable, useful, or necessary to the claimant).

§ 751.6 Computation of award.

(a) *Cost of property as basis.* The amount awarded on any item of property will not exceed its depreciated replacement cost at the time of loss. Unless proved otherwise, replacement cost will be based on the price paid in cash for the property or, if not acquired by purchase or exchange, the value at the time of acquisition. The amount normally payable on property damaged beyond economical repair is found by determining its depreciated value immediately before it was damaged or lost, less any salvage value. In lieu of deducting salvage value from the depreciated value of an item, the adjudicating authority may require surrender of the item to the Government upon payment of the full depreciated value. Items surrendered will be disposed of in the same manner as property coming into Government possession under the provisions of § 751.13(b). If the cost of repair is less than the depreciated value of the property, then it is economically repairable, and the cost of repair is the amount payable.

(b) *Depreciation.* Depreciation in value of an item is determined by considering the type of article involved, its costs, condition when lost or damaged beyond economical repair, and the time elapsed between the date of acquisition and the date of accrual of the claim. Schedules of depreciation are issued by the Judge Advocate General to the adjudicators as guides for determining the estimated life of various classes of items.

(c) *Expensive articles.* Allowance for expensive items, including heirlooms, or for items purchased at unreasonably high prices, will be based on the fair and reasonable purchase price of substitute articles of a similar nature.

(d) *Acquisition.* Allowance for articles acquired by barter will not exceed the adjusted cost of the articles tendered in barter.

(e) *Black market.* No reimbursement will be made for articles acquired in black market or other prohibited activities.

(f) *Maximum allowance.* The Judge Advocate General will promulgate to the adjudicators from time to time guides for determining the maximum amount allowable for specific articles, and for establishing maximum quantities which will be allowed. In applying these guides the claimant's standard of living, income and social obligations, the size of his family, and his need to have more than the average quantities of particular items will be considered.

§ 751.7 Statute of limitations.

No claim may be paid under the provisions of this chapter unless presented in writing within 2 years after such claim accrues: *Provided,* That if the claim accrues in time of war, or in time of armed conflict in which the Armed Forces of the United States are engaged, or if war or such armed conflict intervenes within 2 years after date of accrual, it may, if good cause for delay is shown, be presented within 2 years after such good cause ceases to exist, but not later than 2 years after peace is established or armed conflict terminates.

§ 751.8 Demand on carrier, contractor, and/or insurer.

(a) *Carrier.* Whenever property is damaged, lost, or destroyed while being shipped under Government bill of lading pursuant to authorized travel orders, the owner or claims investigating officer will file a written claim for reimbursement with the carrier according to the terms of its bill of lading or contract. When property is not shipped under Government bill of lading, the owner must file a written claim for reimbursement with the carrier according to the terms of its bill of lading or contract before submitting a claim against the Government under these regulations. This demand should be made against the last commercial carrier known or believed to have handled the goods, unless the carrier who was in possession of the property when the damage or loss occurred is known. In this event, the demand should be made against the responsible carrier. If more than one bill of lading or contract was issued, a separate demand should be made against the last carrier on each such document. If it is apparent that the damage or loss is attributable to packing, storage, or unpacking while in the custody of the Government, no demand need be made against the carrier.

(b) *Military Sealift Command.* A claim for loss, damage, or destruction of a privately owned vehicle or for household goods against an ocean carrier operating under a Military Sealift Command shipping contract and Government bill of lading is the responsibility of Military Sealift Command. No demand shall be made by individual claimants or by claim adjudicating authorities directly on an ocean carrier operating under such a contract. After payment of a claim against the Government involving loss, damage, or destruction of a privately owned vehicle or household goods by such an ocean carrier, one copy of the completed claim file shall be forwarded to Commander Military Sealift Command. Each file shall include the following:

(1) The payment voucher;

(2) The completed personnel claim form;

(3) The estimated or actual cost of repair;

(4) A document indicating the conditions of the item upon delivery to the carrier; and

(5) A document indicating the forwarding condition of the item upon its return to Government control.

The letter of transmittal should identify the vessel by name, number, and if available the sailing date. See the sample transmittal letter contained in appendix section A-21(a).[1]

(c) *Insurer.* Whenever the property which is damaged, lost, or destroyed incident to the claimant's service is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage. Such demand should be made within the time limit provided in the policy and prior to the filing of the concurrent claim against the Government as provided in § 751.9.

(d) *Failure to make demand on carrier, contractor, or insurer.* Failure to make demand or cooperate in preparing the Navy's demand on a carrier, contractor, or insurer, or to make all reasonable efforts to collect the amount recoverable from the carrier, contractor, or insurer, may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier, contractor, or insurer, had the claim been timely made or diligently prosecuted. However, no deduction will be made where the circumstances of the claimant's service preclude seasonable filing and prosecution of a claim or the evidence indicates that a demand was impracticable or would have been unavailing.

§ 751.9 Concurrent claims on the carrier, contractor, or insurer and the Government.

To expedite the settlement of household effects claims, the claim presented to the Government under these regulations should be submitted concurrently with the demand made against the carrier, contractor, and/or insurer. The claims investigating officer will prepare and submit the claim against the carrier, contractor, and/or insurer and will thereafter assume the responsibility of monitoring the claims against the carrier, contractor, or insurer to final settlement. The claimant shall be advised to direct the carrier, contractor, or insurer to address all correspondence regarding the claim to the commanding officer of the unit or activity at which the claim was filed, "Attention: Claims Investigating Officer." Further, any payment in settlement of the claim by the carrier, contractor, or insurer should be made payable to the Treasurer of the United States and forwarded to the commanding officer, "Attention: Claims Investigating Officer."

§ 751.10 Form of demand on carrier, contractor, or insurer.

Demands on a carrier, contractor or insurer should be made in writing on DD Form 1843 (appendix section A-21(b))[1] with a copy of DD Form 1845 appendix section A-21(d))[1] attached.

[1] Filed as part of original document.

Equivalent forms or formats may be used if DD Form 1843 is not available or if the claimant has not utilized DD Form 1845 in the submission of his claim.

§ 751.11 Responsibilities of the claimant regarding claims against carriers, contractors and/or insurers.

In accordance with the provisions of this chapter, the claimant is required to take all reasonable action to perfect a timely claim against any responsible carrier, contractor, and/or insurer or to assist the Navy in the perfection of a timely claim. Failure to take exceptions at the time of delivery of household goods shipments or to make notification of later-discovered damage within a reasonable time is considered sufficient grounds for deducting, from the amount otherwise payable under the provisions of this chapter, the amount of any carrier, contractor, or insurance recovery jeopardized by failure of the claimant or his agent to act promptly and reasonably.

§ 751.12 Transfer of right against the carrier, contractor, or insurer.

The claimant will assign to the United States, to the extent of any payment on his claim accepted by him, all his right, title, and interest in any claim he may have against any carrier, insurer, contractor, or other party arising out of the incident on which the claim against the United States is based. He will also furnish such evidence as may be required to enable the United States to enforce the claim.

§ 751.13 Recoveries from carrier, contractor, and/or insurer.

After payment of the claim by the United States, and upon receipt of any recovery from a carrier, contractor, and/or insurer, the United States shall be reimbursed as follows:

(a) *Monetary recoveries*—(1) *Damage not exceeding $10,000.* If the damage or loss adjudicated in accordance with § 751.6 is $10,000 or less, the proceeds will be paid to the United States to the extent of the payment received from the United States less any amount paid by a carrier, contractor or insurer over and above that paid by the Government for any item; and

(2) *Damage exceeding $10,000.* If the damage or los adjudicated in accordance with § 751.6 exceeds $10,000, the United States shall be reimbursed to the extent that the payments from the carrier, contractor and insurer, plus the $10,000 paid by the Government are in excess of the adjudicated loss less any amount paid by a carrier, contractor or insurer over and above that paid by the Government for any item.

(b) *Recovered property.* When previously lost property is found, the claimant may, at his option accept all or part of the property and return that portion of the payment he has received from the United States for the accepted property and surrender the remainder of the property to the Government. Surrendered property will be disposed of in accordance with standard disposal procedures or otherwise used for the benefit of the Government.

§ 751.14 Claims within provisions of other regulations.

(a) *Preemptive nature.* The provisions of this chapter are preemptive of other claims regulations in this Manual. However, claims not allowable under this chapter may possibly be allowable under part 750, "General Claims" of this chapter.

(b) *Ship's store claims.* Claims arising from the operation of a ship's store laundry and dry cleaning facility, tailor shop, or cobbler shop should be processed in accordance with NAVSUP P487.

§ 751.15 Claimants.

A claim may be presented only by a military member or civilian employee of the Navy, or in his name by his spouse as his authorized agent, or by any other authorized agent or legal representative. In the event the claim is filed by an agent or legal representative, this person must demonstrate his or her capacity to act in the claimant's behalf by submitting a power of attorney or other documentary evidence. If the military or civilian person is deceased, the claim may be presented by his survivor regardless of whether the claim arose before, concurrent with, or after the decedent's death. Survivors' claims will be presented in the following order of precedence.

(a) Spouse;
(b) Child or children;
(c) Father or mother, or both;
(d) Brothers or sisters, or both.

§ 751.16 Form of claim.

The claim will be submitted by presenting a detailed statement in duplicate, signed by or on behalf of the claimant, on DD Form 1842 (see appendix section A-21(c)) with DD Form 1845 attached (see appendix sections A-21(d).[1] If the claims investigating officer desires a copy of the adjudicated claim returned to his office for use in adjusting recoveries later received from carriers, contractors or insurers, a third copy of the claims form clearly marked for this purpose must be included. If DD Forms 1842 and 1845 are not available, any writing will be accepted and considered if it asserts a demand for a specific sum and substantially describes the facts necessary to support a claim cognizable under these regulations. Attention is directed to the following section which outlines the specific evidence required for particular classes of claims. Careful compliance with these requirements by the claimant in the preparation of his claim will substantially expedite adjudication, thus avoiding delays occasioned by the need of the adjudicating authority to obtain additional evidence from the claimant.

§ 751.17 Evidence in support of claims.

(a) *General.* The claim should be supported by the evidence required on the claim form and, in addition, the following evidence when applicable:

(1) Corroborating statement from a person who has personal knowledge of the facts concerning the claim.

(2) Statement of property recovered or replaced in kind.

(3) Itemized bill of repair for damaged property which has been repaired.

(4) At least one written estimate of the cost of repairs from a competent bidder or person if the property is repairable but has not been repaired. "Competent bidder or person" means one who has experience in the line of needed repairs and is in a position to know the cost of repairs of such items in the current market. Exception to the above is permissible when in the opinion of the claims investigating officer the probable estimate fee will be out of proportion to the cost of repairs. In this situation, the claims investigating officer, with the concurrence of the claimant, will recommend an amount for payment. The name, address, and experience of each such "competent" person must be given. The adjudicating authority may reject any estimate or statement of the cost of repairs that does not meet the above standards. The claimant shall satisfy the claims investigating officer that items claimed as beyond economical repair are in fact in that condition.

(5) Proof of the change in value when a claimant indicates that the replacement cost of an item lost or destroyed exceeds either the price paid in cash or property or, if not acquired by purchase or exchange, the value at the time of acquisition. The proof should be comprised of not less than two direct price quotations from the local market. In case there is no local market, the value may be property fixed by the value at the nearest market, adding the cost of transportation. Should there be no available market, he should submit at least one written estimate of the value from a competent person: "Competent person" in this instance is deemed to be one who, being apprised of the characteristics of the item in question, is able to render a knowledgeable estimate of its value at the time of loss. For items purchased outside the continental limits of the United States which do not contain qualities of identity to permit specific substantiation, allowances will be limited to a reasonable amount over and above the purchase price as agreed upon by the claimant and the claims officer. In this situation, allowance will not exceed double the cost of the item. Examples include custom-made items, unique items of clothing, art, household furnishings, and jewelry as distinguished from trademark items. In the event a claims officer by his experience knows that the approximate replacement cost in the area is close to what the claimant lists, the claimant will not be requested to submit evidence of the replacement cost. This fact, however, must be noted in the investigation report on the claim. In those cases where he knows the replacement cost to be less

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than the value claimed, he should include this information along with substantiating evidence.

(6) Certified statement concerning any insurance coverage and reimbursement obtained from the insurer. The statement should describe the type of insurance and coverage and give the name of the insurer. If the claimant has insurance, but has not submitted a claim, the failure to do so should be explained.

(b) *Waiver of written estimates.* (1) Regardless of the total amount of the claim, the requirement for written estimates of the cost of repairs or replacement cost on any item for which the amount claimed is less than $100 normally will be waived, provided the claims investigating officer has personally inspected the property, or the evidence otherwise available is sufficient to support the claim.

(2) In the event that the claimant and the claims investigating officer cannot agree on a reasonable value, the claims investigating officer should describe in his report the facts upon which his recommendation is based. The value set by the claims investigating officer is not necessarily binding on the adjudicating authority, and the claimant may submit written estimates or other supporting evidence in any case.

(c) *Specific classes of claims.* Claims of the following types should be accompanied by the specific and detailed evidence as listed in this subsection.

(1) For property losses in quarters or other authorized places, a statement indicating:

(i) Geographical location;

(ii) Whether quarters were assigned or provided in kind by the Government;

(iii) Whether quarters were regularly occupied by the claimant;

(iv) Name of authority, if any, who designated the place of storage of the property, if other than quarters;

(v) Measures taken to protect the property; and

(vi) If claimant is a civilian employee, a statement from the competent authority establishing that when the claim arose the claimant was a civilian employee of the Navy, and was, or was not, a local inhabitant.

(2) For theft, a statement indicating:

(i) Geographical area of the loss;

(ii) Facts and circumstances surrounding the loss, including evidences of larceny, burglary, or housebreaking (e.g., evidence of breaking and entering, capture of the thief, recovery of part of the stolen goods); and

(iii) Evidence that the claimant exercised due care in protecting this property prior to the loss. Attention will be given to the degree of care normally exercised in the locale of the loss due to any unusual risks involved.

(3) For transportation losses:

(i) Copy of orders authorizing the travel, transportation or shipment, or in lieu thereof a certificate explaining the absence of orders, and stating their substance;

(ii) All bills of lading, and inventories of property shipped;

(iii) Copy of demand on carrier, contractor, and/or insurer, and any reply or replies (see §§ 751.8 and 751.9);

(iv) In case of missing baggage, a statement indicating action taken to locate the missing property, with related correspondence; and

(v) Where property was turned over to a quartermaster, transportation officer, supply officer, or contract packer, a statement indicating:

Name (or designation) and address of quartermaster, transportation officer, supply officer, or contract packer,

Date property was turned over,

Condition when property was turned over,

When and where property was packed, and by whom,

Date of shipment and re-shipment,

Copies of all manifests, bills of lading and contracts,

Date and place of delivery to claimant,

Date property was unpacked,

Statements of disinterested witnesses as to condition of property when received and delivered, or as to handling or storage,

Whether the negligence of any Government employee acting within the scope of his employment caused the damage or loss, and

Whether the last common carrier or local civilian carrier was given a clear receipt.

(4) For marine or aircraft disaster, a copy of orders or other evidence to establish a claimant's right to be on board and/or to have his property on board.

(5) For enemy action, public disaster, or public service:

(i) Copy of orders or other evidence establishing claimant's required presence in the area involved; and

(ii) A detailed statement of facts and circumstances showing applicable causes enumerated in § 751.3 (d) and (e).

(6) For property used for benefit of Government:

(i) A statement from proper authority that the claim was for property which was required to be supplied by the claimant in the performance of his official duty or occupation at the request or direction of superior authority, or by reason of military necessity; and

(ii) Evidence that, if the property being used for the benefit of the Government was lost while not in use, the loss occurred in an authorized storage area.

(7) For money deposited for safekeeping, transmittal, or other authorized disposition:

(i) Name, grade, service number, and address of the person or persons who received the money and of other persons involved;

(ii) The name, and designation of the authority who authorized such person or persons to accept personal funds, and the disposition requested (see article 1922, U.S. Navy Regulations, 1948); and

(iii) Receipts and written sworn statements explaining the failure to account for the funds or to return such funds to the claimant.

§ 751.18 Filing of claim.

All claims coming within the cognizance of this part should, if practicable, be submitted by the claimant or his authorized agent to the commanding officer or officer-in-charge of the military activity, installation, or unit nearest to the point of delivery of the goods or where investigation of the facts and circumstances can most conveniently be made. As an alternative, the claim may be submitted to the commanding officer or officer-in-charge of the activity, installation, or unit to which the claimant belongs or is attached. Acceptance of a claim for filing will not be refused even though the claim does not appear to be within the scope of these regulations or could have been filed with another activity. Commanding officers and officers-in-charge will accept claims made by civilians, members of another armed force, veterans, or on behalf of a deceased person.

(a) *Air Force claim.* Claims of Air Force personnel and civilian employees of the Air Force will be investigated and processed up to the point of adjudication and then forwarded directly to the nearest Air Force installation.

(b) *Army claim.* Claims of Army personnel and civilian employees of the Army will be investigated and processed up to the point of adjudication and then forwarded directly to the nearest Army installation.

(c) *Demands on carriers.* Demands on carriers will be the responsibility of the claimant's parent service.

§ 751.19 Appointment of claims investigating officers.

Each commanding officer shall, as appropriate, appoint one or more claims investigating officers to investigate, process, and make recommnedations on all claims presented to him under this part. Commanding officers of major or separate commands and commanding officers processing an appreciable number of claims may appoint one or more claims investigating officers on a continuing basis. This is particularly pertinent to activities receiving many shipments of household effects. Claims investigating officers will receive their technical guidance from the Judge Advocate General.

§ 751.20 Investigation of claims.

Upon receipt of a claim filed in accordance with the provisions of this part, the commanding officer shall refer the claim, with all available information relating thereto, to the claims investigating officer. The investigating officer shall consider all information and evidence submitted with the claim and shall conduct such further investigation as may be necessary and appropriate. Direct correspondence between investigating officers and commands or other naval personnel is authorized for the purpose of tracing the location or disposition of missing baggage or effects.

§ 751.21 Action of claims investigating officer in transportation losses.

(a) *Filing of concurrent claims against carriers, contractors, and insurers.* Upon submission of a claim against the Government, the claims investigating officer

will prepare and submit the claim to the appropriate carrier, contractor, and/or insurer for damage, loss, or destruction of household and personal effects being shipped pursuant to authorized travel orders.

(b) *Concurrent claims against carriers, contractors, and insurers.* The claimant should provide the claims investigating officer with all documents, papers, and other evidence needed to press the claim against the carrier, contractor, and/or insurer. In return, the claims investigating officer shall advise the claimant that the claim will be monitored to final settlement. The claimant will notify the claims investigating officer promptly of any communication received from the carrier, contractor, or insurer, particularly if it involves settlement, partial settlement, or denial of liability. Any subsequent correspondence with the carrier, contractor, and/or insurer shall be identified properly with the company's claim or reference symbols.

(c) *Approval or denial of concurrent claim by carrier, contractor, or insurer.* (1) The claims investigating officer shall report any denial of a claim by a carrier, contractor, or insurer to the command where the claim has been forwarded for adjudication.

(2) Upon receipt of approval of the claim by a carrier, contractor, or insurer, the claims investigating officer shall determine that the offered settlement is representative of the contractual liability for which the claim has been made, then forward the settlement to the adjudicating authority. The adjudicating authority will review the settlement and forward it for deposit to the appropriate account.

(i) If the claim filed with the Government has been forwarded to the adjudicating authority and the recovery received from the carrier, contractor, or insurer is considered to be sufficient, then the claims investigating officer should advise the claimant to accept the award. Upon acceptance of the award, the claims investigating officer shall notify the adjudicating authority (a suggested speedletter format is shown in appendix section A–21(e).[1]

(ii) If the claimant has already received full payment from the Government, he will pay the proceeds received from the carrier, contractor, and/or insurer to the United States by endorsing the check to the Treasurer of the United States and delivering it to the command or to the claims investigating officer. If the amount to be refunded, as determined according to § 751.13, is less than the amount received, remittance may be made by personal check or money order payable to the Treasurer of the United States.

(d) *Nonconcurrent claims.* If an independent claim has been filed against a carrier, contractor, and/or insurer, the claimant will be asked, at the time the claim is filed with the Government, to certify whether or not he has obtained any recovery from any other party. A sample certificate is contained in appendix section A–21(f).[1] If any recovery has been obtained, appropriate comment indicating the amount recovered shall be made by the claims investigating officer on the claim being forwarded to the adjudicating authority. If action by the carrier, contractor, and/or insurer is still pending, the claimant will advise them to address all correspondence to him in care of the claims investigating officer of the command, unit, or activity at which the claim was filed, Attention: Claims Investigating Officer. The claimant shall be advised to notify the claims investigating officer promptly as to any offer of settlement or denial of liability. Forwarding of the claim to the appropriate adjudicating authority will not be delayed pending action of a carrier, contractor, and/or insurer unless it is apparent that final action by the carrier, contractor, and/or insurer will be immediately forthcoming.

(e) *Failure of carrier, contractor, and/or insurer to respond.* Normally an acknowledgement, or perhaps even final action, will be received from the carrier, contractor, and/or insurer within 10 days after the claim is submitted to them. In the event a response is not received to the claim or to subsequent correspondence, the matter should be reported to the origin transportation officer as a matter bearing upon the adequacy of contractual performance. The origin transportation officer will render assistance in obtaining action from the company and report the actions taken to the claims investigating officer who will monitor the claim against the carrier, contractor, or insurer until a reply has been received from the origin transportation officer.

(f) *Unjustified denials by the carrier, contractor, or insurer.* If a carrier, contractor, or insurer has refused to acknowledge or respond to a claim within a reasonable time (normally 30 days if applicable regulations or agreements do not specify another time limit), if the claims investigating officer considers a valid claim to have been denied or no adequate settlement offered, or if there has been a delay in settlement of a claim beyond 120 days, then, in addition to initiation of administrative action as appropriate under Interstate Commerce Commission regulations, military tender of service, or other applicable regulation or agreement, the matter shall be reported to the adjudicating authority which paid the claim. The letter report shall contain a statement of the facts, copies of pertinent correspondence and documents, and the claims officer's opinion as to liability. A copy of the letter report with enclosures will be sent to the origin transportation officer. The carrier should be notified of this action by a copy of the letter report or by separate correspondence.

(g) *Action by adjudicating authority.* The adjudicating authority shall review the entire file and shall make a further demand on the carrier, contractor, or insurer when liability seems clear. If recovery is not effected within 30 days from this demand, or negotiations likely to result in an adequate recovery in the near future are not underway at that time, the file will be forwarded to the Judge Advocate General with appropriate recommendations, and itemization of the amount recommended for involuntary collection from a carrier, and a recitation of the evidence upon which clear liability for each item is based. The carrier should be notified of this action by a copy of the forwarding letter or by separate correspondence. The Judge Advocate General will take whatever action is necessary to recover from the carrier, contractor, or insurer when liability is clear.

§ 751.22 Preparation of claims investigating officer's report.

(a) *General.* The claims investigating officer will prepare a written report of investigation including his recommendations. Sufficient copies will be prepared so that the original and two copies may be forwarded to the appropriate adjudicating authority and one copy retained at the command. Only one set of supporting papers, documents, and exhibits need be forwarded to the adjudicating authority. The claims investigating officer may, at his discretion, utilize DD Form 1844 (see appendix A–21 (h))[1] as a worksheet in appropriate cases and attach a copy of the form to his report.

(b) *Regular claims procedure.* The claims investigating officer's report shall include a statement of all additional facts and circumstances not pointed out by the claimant, including any facts overlooked or incorrectly stated by the claimant in his statement of the facts and circumstances of the incident, and specific recommendations regarding any items for which reimbursement in an amount less than the full amount claimed, less normal depreciation, if applicable, is recommended due to preexisting damage, inflated estimates of repair, economically repairable property claimed as beyond repair, salvage value of property, or other factors. Specific recommendations shall also include designation of those repair and replacement costs for which written estimates have been waived in accordance with § 751.17(b) of this chapter and an explanation of any unusual circumstances justifying nonroutine processing of the claim. Any convenient format can be used for the written report as long as all relevant information is included. Appendix section A–21(g)[1] shows a sample report. The claims investigating officer will complete and sign part III of DD Form 1842 (see appendix section A–21c (2))[1] when investigation of the claim is complete.

(c) *Claims arising from the same incident.* A separate report shall be prepared on each claim filed. However, where separate claims arise from the same incident, the claims investigating officer

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may avoid duplication of effort by completing one detailed report of investigation with all necessary exhibits and documents. He may then incorporate this report and its supporting exhibits by reference. A brief reference to the case (name, case number, date, etc.) in which the detailed report and exhibits may be found shall be included.

(d) *Small-claims procedure.* When the total amount claimed is $500 or less and the claims investigating officer has determined that all damage or loss claimed was actually incurred, that the amounts claimed are accurate and reasonable, and that the full amount claimed, limited by normal depreciation where applicable, should be allowed, he may complete part II of DD Form 1842 (see appendix section A-21c(3))[1] in lieu of making a more detailed written report. Preparation of DD Form 1842, part II, for certification and signature by the adjudicating authority shall constitute a finding that the claim is properly presented and substantiated and a recommendation for payment in full less normal depreciation, if applicable.

(e) *Forwarding of claim.* For all claims not including enlisted uniform items to be replaced in kind, a claims investigating officer representing a Navy Personal Property Office or Marine Corps Transportation Office may, with the permission of his Commanding Officer, forward the claim file and claims investigating officer's report directly to the cognizant adjudicating authority. All other claims should be forwarded to the cognizant adjudicating authority via the Commanding Officer.

§ 751.23 Action by commanding officer.

Items of military clothing and related articles which have been lost or destroyed incident to service may be replaced in kind. (See § 751.24(e).) The items issued need not be new and unused, provided they are in at least as good condition as the lost or destroyed items immediately prior to the accident or incident causing the loss or damage. If items which were initially issued to the claimant by the Government have been lost or damaged incident to service and replacement in kind cannot be effected, because items are not available for issue, monetary compensation is payable for those items replaced or to be replaced by the claimant at his own expense. The amount allowable normally will be the reasonable cost of replacement with no deduction for depreciation (in order that the claimant will not be required to bear an expense which he would not have incurred if the items had been available for replacement in kind). If military items were initially acquired by the claimant at his own expense, and replacement in kind cannot be effected or the claimant is unwilling to accept replacement in kind because the lost or destroyed items were of a better quality than those available for issue, monetary compensation may be allowed for the loss or destruction of the items involved.

(a) *Examination and approval of report.* The commanding officer, the chief of staff, chief staff officer, or executive officer, or judge advocate shall review the file and determine whether the findings of the investigating officer are complete, whether the facts and evidence are clearly stated, and whether the recommendation of the investigating officer is supported by adequate evidence. In proper cases he may refer such report back to the investigating officer for further investigation and the inclusion of additional data. The commanding officer, chief of staff, chief staff officer, executive officer, or judge advocate shall then by first endorsement to the investigating officer's report, indicate his title and approve the report without qualification or with stated exceptions. In no event will any opinion be expressed to the claimant as to whether his claim will be approved. The endorsement shall express an opinion as to whether the possession of the property by the claimant was reasonable, useful, or proper under the attendant circumstances.

(b) *Statement concerning replacement in kind.* There shall be included in the first endorsement on the investigating officer's report, and attached to each copy of such report, either a statement that no replacement in kind was made or a list of the items replaced, together with the price of each. This statement may be omitted when replacement in kind is made for all items claimed.

(c) *Forwarding of claim.* When there has been replacement in kind for all items claimed, the report need not be forwarded beyond the officer authorizing such replacement. In all other cases the investigating officer's report in triplicate, including the original and two copies of the claim plus one copy of each supporting document or paper, shall be forwarded by endorsement to the cognizant adjudicating authority. A list of commands authorized to adjudicate these claims is contained in appendix section A-21(j).[1]

§ 751.24 Adjudicating authority.

(a) *Claims by Navy personnel.* The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General; the Deputy Assistant Judge Advocate General (litigation and claims); the Director, Litigation and Claims Division; and the Head, Personnel Claims Branch, Litigation and Claims Division and such other officers as may be specifically designated by the Secretary of the Navy are hereby designated and authorized to consider, adjust, and determine claims of Navy personnel both military and civilian up to $10,000. Commandants of naval districts and their staff judge advocates, Directors of Law Centers, and, subject to the restriction of superior authority, all staff judge advocates attached to Law Centers are hereby designated and authorized to adjudicate and to authorize payment of personnel claims up to $5,000. In addition to the above, all Navy judge advocates are hereby designated and authorized to adjudicate and authorize payment of personnel claims up to $500 filed under this chapter. Exercise of adjudicating authority is conditioned upon receipt of funding authority and accounting data from the Judge Advocate General. Requests to implement adjudicating authority may be directed to the Judge Advocate General, Washington, D.C. 20370. Appendix A-21(j)[1] lists those commands currently authorized to adjudicate personnel claims.

(b) *Claims by Marine Corps personnel.* The Commandant of the Marine Corps; the Director of Personnel of the Marine Corps; the Deputy Director of Personnel of the Marine Corps; the Head, Personal Affairs Branch, Personnel Department, Headquarters, U.S. Marine Corps; and such other officers as may be specifically designated by the Secretary of the Navy are hereby designated and authorized to consider, ascertain, adjust and determine claims of Marine Corps personnel, both military and civilian, filed under this chapter.

(c) *Claims by nonappropriated-fund employees.* Claims by employees of Navy nonappropriated-fund activities for loss, damage or destruction of personal property incident to their employment will be processed and adjudicated in accordance with this part and forwarded to the appropriate nonappropriated-fund activity for payment from nonappropriated funds. Claims by employees of Marine Corps nonappropriated-fund activities should be referred directly to the appropriate nonappropriated-fund activity for investigation and payment.

(d) *Partial payments when hardship exists.* Every instance of loss or damage cognizable under this part can be expected to cause some degree of inconvenience to the claimant and/or his family. When the magnitude of the loss or damage is such that the claimant needs funds to feed, clothe or house himself or his family properly, the Judge Advocate General may authorize a partial payment of up to $5,000; any adjudicating authority authorized to adjudicate claims up to $5,000 may authorize a partial payment of up to $2,000; and any other adjudicating authority may, with the specific approval of a $5,000 adjudicating authority or the Judge Advocate General, authorize a partial payment of up to $500. Each authorization of partial payment must be accompanied by:

(1) A statement signed by the claimant requesting advance payment and setting forth in detail the circumstances of the loss or damage, the extent of the loss or damage, the estimated total value of his claim, his awareness that any amount advanced will be in partial payment of his claim and will not constitute a final settlement of the claim, an agreement to pay checkage if the amount advanced exceeds the amount allowed following final adjudication by the appropriate adjudicating authority, and a

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statement that he is aware of the penalties imposed by title 18 section 287 of the United States Code for willfully making a false claim. The claimant may present his statement on a Personal Claim form (DD Form 1842 with DD Form 1845 attached) for the purpose of compliance with this requirement.

(2) A statement by the Claims Investigating Officer confirming that the claimant is a proper claimant under the provisions of this part and setting forth his opinion regarding the reasonablenes of the estimated total value of the claim, the extent to which the claim has been substantiated, the amount and type of additional substantiation necessary before investigation of the claim can be completed, and any other information relevant to the hardship of the claimant or his family.

(3) A statement by the adjudicating authority certifying that the claim is cognizable under the provisions of this part and that the final adjudicated value of the claim is expected to exceed the amount of the partial payment authorized in accordance with the terms of this subparagraph. When a partial payment has been made, a copy of the payment voucher and all other information related to the partial payment will be placed in the claimant's claim file and other necessary action will be taken to ensure that the amount of the partial payment is deducted from the adjudicated value of the claim when final payment is made.

(e) *Replacement in kind.* Officers in the grade of lieutenant commander, major, or higher who are commanding officers, or who are in higher echelons of command, including the officers specified in paragraph (a) of this section, or who are Senior Officers Present, are hereby designated and authorized to consider, ascertain, adjust, and determine the respective claims of Navy or Marine Corps enlisted personnel for replacement in kind filed under this chapter. Marine Corps officers below the grade of major, where such officers are in command of separate companies, batteries, squadrons, detachments, ports, or stations, are hereby designated and authorized to consider, ascertain, adjust, and determine claims of enlisted personnel for replacement in kind filed under this chapter. Replacement in kind authority may also be exercised by such other officers as may be specifically designated by the Secretary of the Navy. Accounting data for replacement of uniform items is specified in Navy Comptroller Manual section 023304 paragraph 3.

(f) *Payments and collections.* Payment of approved personnel claims and deposit of checks received from carriers, contractors, insurers, or members will be made by the Navy or Marine Corps disbursing officer serving the adjudicating authority. Payments will be charged to funds made available to the adjudicating authority for this purpose. Credit for collections will be to the accounting data specified in Navy Comptroller Manual section 046370, paragraph 2.

(g) *Reports.* Commands adjudicating personnel claims shall forward reports to the Judge Advocate General on the last day of any calendar month when the number of personnel claims pending adjudication on that date exceeds one-third of the number of claims adjudicated during the reporting month. The report will contain the number and dollar amount of claims received for adjudication during the month, the number and dollar value of claims allowed, the number of claims denied, the number of claims forwarded to a higher authority for adjudication, and the number of claims pending as of the reporting date. The report should contain relevant information relating to the cause for the backlog of claims pending adjudication. In lieu of making periodic reports, adjudicating authorities will maintain in their files data for the current and preceding fiscal year.

§ 751.25 Limitation on agent or attorney fees.

(a) *Controlling statute.* The Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240–243), the statutory authority underlying this part, provides in section 243 that:

> No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under the authority of sections 240–243 of this title shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of sections 240–243 of this title shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

(b) *Federal tort claims distinguished.* The above-quoted provision which does not require that an attorney's fees be fixed in, and be made a part of, the award adjudicating the claim, is different from an otherwise similar provision concerning certain Federal tort claims as described in § 751.39.

(c) *Other prohibition.* The provisions concerning an attorney's fee set forth in (a) above does not authorize a fee in those cases where a fee is prohibited for other reasons (see SECNAVINST 5801.1B, Legal assistance program, paragraph 15).

§ 751.26 Separation from service.

Separation from the service or termination of employment shall not bar military personnel or civilian employees from filing claims or bar the authority of the designated officers from considering, ascertaining, adjusting, determining, and authorizing payment of claims otherwise failing within the provisions of these regulations when such claim accrued prior to separation or termination.

§ 751.27 Meritorious claims not otherwise provided for.

Meritorious claims within the scope of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240–243) which are not otherwise provided for in this chapter, may be forwarded via official channels to the Secretary of the Navy (Judge Advocate General) for consideration. Exceptional meritorious cases may be approved for payment by the Secretary of the Navy or by the Judge Advocate General.

§ 751.28 Reconsideration.

(a) A claim may be reconsidered which was previously disapproved in whole or in part even though final settlement has been made when it appears that the original action was erroneous or incorrect in law or in fact based on the evidence of record at the time of the action or subsequently submitted. A request for reconsideration shall be made in writing to the adjudicating authority originally acting on the claim and should include all documents which have been returned to the claimant. All requests for reconsideration shall be made within 6 months from the date the claimant received notice of the initial adjudication of his claim. Any adjudicating authority shall reconsider a claim upon which he has originally acted upon the request of a claimant or someone acting in the claimant's behalf and may settle it by granting such relief as may be warranted. If it is determined that the original action was incorrect, it shall be modified and, if appropriate, a supplemental payment shall be approved. An adjudicating authority may also, on his own initiative, reconsider a claim which he has denied in whole or in part.

(b) If an adjudicating authority does not grant the relief requested, or otherwise resolve the claim to the satisfaction of the claimant, the request for reconsideration shall be forwarded, together with the entire file and the adjudicating authority's recommendation, to the nearest appropriate higher adjudicating authority for final disposition. Final reconsideration of claims originally adjudicated by authorities authorized to pay claims up to $500 or $1,000 can be made by any adjudicating authority authorized to pay claims up to $5,000. Final reconsideration of claims originally adjudicated by adjudicating authorities authorized to pay claims up to $5,000 can be made by the Judge Advocate General.

§ 751.29 Authorization for issuance of instructions.

The Judge Advocate General of the Navy may issue such amplifying instruction or guidance as may be considered appropriate to give full force and effect to the purposes of this part.

PART 753—FOREIGN CLAIMS REGULATIONS

Part 753 of Title 32 is revised to read as follows:

Sec.

Sec.
753.8 Use and occupancy of real property.
753.9 Other noncombat activities.
753.10 Persons excluded as claimants.
753.11 Claims excluded.
753.12 Negligence or wrongful act on the part of claimant.
753.13 Combat activities.
753.14 Claims of subrogees.
753.15 Statute of limitations.
753.16 Nature of claim.
753.17 Claims for damage occasioned by naval vessels.
753.18 Creation of Foreign Claims Commission.
753.19 Qualifications of Commission members.
753.20 No formal procedure prescribed.
753.21 Report of proceedings.
753.22 Notification of award and payment.
753.23 Releases.
753.24 Appeal and reconsideration.
753.25 Meritorious claims in excess of $15,000.
753.26 Claims outside the jurisdiction of the Commission.
753.27 Claims arising in specified foreign countries.
753.28 Claims generated by civilian employees of the Department of Defense.
753.29 Advance payments.

AUTHORITY: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243).

§ 753.1 General.

Claims for personal injury to, or death of, any inhabitant of a foreign country or damage to, or loss of, real or personal property of a foreign country, political subdivision, or inhabitant of a foreign country, occurring outside the United States, its territories, Commonwealths, or possessions and caused by its military forces or individual members thereof (whether military personnel or civilian employees) or otherwise incident to noncombat activities of such forces are within the scope of the Foreign Claims Act (10 U.S.C. 2734). The word "claims" as used in this chapter refers to those demands for payment submitted by individuals, partnerships, associations, or corporations, including foreign countries, and States, territories, and other political subdivisions of such countries, other than such demands for payment as arise under ordinary obligations incurred by the Department of the Navy in the procurement of services or supplies.

§ 753.2 Purpose.

The purpose of the Foreign Claims Act (10 U.S.C. 2734) is "to promote and maintain friendly relations" in foreign countries "through the prompt settlement of meritorious claims." The regulations of this chapter are to be so administered as to effectuate this expressed purpose of Congress.

§ 753.3 Territorial application.

The provisions of this chapter are applicable to claims arising outside the United States, its territories, Commonwealths, or possessions. The fact that a claim arises at a place, within a foreign country, under the temporary or permanent jurisdiction of the United States does not preclude consideration of such a claim which would otherwise be within the Foreign Claims Act.

§ 753.4 Acts not within scope of employment.

The doctrine of scope of employment has no application to foreign claims arising from the acts of military personnel and other-than-indigenous civilian personnel. Foreign claims arising from the acts of indigenous civilian personnel may be allowed only if such employee was acting within the scope of his employment, unless, and only to the extent that, an employer or owner of the property involved would be held liable under local law under the circumstances.

§ 753.5 Criminal acts.

The fact that the act giving rise to the claim may constitute a crime does not bar relief. Claims, otherwise within the Foreign Claims Act, may be allowed regardless of whether the act of the military member or civilian employee of the United States which caused the damage, injury, or death was a crime or other wrongful act, or negligence, or mere error of judgment.

§ 753.6 Elements of damage in case of personal injury and death.

Actual and reasonable medical and hospital expenses, reasonable compensation for pain and suffering and loss of earning capacity may be paid in cases of personal injury. If death results, actual and reasonable burial expenses and reasonable compensation for loss of prospective support may also be allowed. Claims of dependents for loss of prospective support are allowable only if such claims are recognized by the law of the country where the injury occurred. In computing damages in cases of personal injury or death, local standards will be taken into consideration as the controlling factor. In case of death, only one claim will be considered. In such a case the amount approved will be apportioned among the beneficiaries in the proportions prescribed by the law or customs of the place where the accident or incident occurred to the extent that it is practicable or feasible.

§ 753.7 Bailed or leased property.

Claims for damage to, or loss or destruction of, personal property, otherwise within the Foreign Claims Act, may be settled notwithstanding the fact that the property was loaned, rented, or otherwise bailed to the Government under an agreement, expressed or implied. Claims for rent of personal property are not payable under these regulations.

§ 753.8 Use and occupancy of real property.

Claims for damage to real property incident to the use and occupancy thereof by the Government under a lease, expressed or implied, or otherwise, are payable under the provisions of these regulations even though legally enforceable against the Government as contract claims. Payment may, however, be precluded by the provisions of § 753.13. Claims payable under this section may be processed as contract claims if it is deemed to be in the best interests of the Government. Claims for rent of real property are not payable under this part.

§ 753.9 Other noncombat activities.

Claims for damage to, or loss or destruction of, property, or for personal injury or death, though not caused by acts or omissions of military personnel or civilian employees of the Navy, are payable under the provisions of this section if otherwise incident to the noncombat activities of the Navy. In general, the claims within this category are those arising out of authorized activities which are peculiarly military in nature, having little parallel in civilian pursuits, and which arise out of situations that historically have been considered as furnishing a proper basis for the payment of claims. Included are claims where no particular act or omission on the part of military personnel or civilian employees is present. Claims arising out of activities which involve the use of dangerous instrumentalities, such as explosives, or which result from maneuvers and special field exercises, practice firing of heavy guns, practice bombing, operation of aircraft and antiaircraft equipment, movement of combat vehicles or other vehicles designed especially for military use, or the use of instrumentalities having latent mechanical defects are also included regardless of whether such resulting damage, injury, or death is traceable to acts or omissions of military personnel or civilian employees of the United States.

§ 753.10 Persons excluded as claimants.

The following classes of claimants are among those excluded:

(a) *Inhabitants of the United States.* Members and civilian employees of the Armed Forces of the United States and and their dependents who are inhabitants of the United States and who are in a foreign country primarily because of their sponsors' or their own military orders; and

(b) *Enemy aliens.* Nationals of a country at war with the United States, or any ally of such an enemy country, except as the Foreign Claims Commission considering the claim, or the local military commander shall determine that the claimant is friendly to the United States.

§ 753.11 Claims excluded.

The following classes of claims are excluded:

(a) Claims purely contractual in character;

(b) Private contractual and domestic obligations of individual military personnel or civilian employees;

(c) Claims based solely on compassionate grounds;

(d) Bastardy claims; and

(e) Claims for patent infringements.

§ 753.12 Negligence or wrongful act on the part of claimant.

No claim will be allowed where the damage, injury, or death is proximately caused, in whole or in part, by negligence

or wrongful act on the part of the claimant, his agent, or employee. This limitation is applicable to situations where, under the law of the country where the claim arises, contributory negligence bars recovery. However, if, under the law or custom of the country in which the claim arises, such contributory negligence or wrongful act is not recognized as a bar to recovery in tort claims, or is held to be a factor diminishing the extent of the claimant's recovery, then such local law or custom will be applied as far as practicable in determining the effect of such negligence or wrongful act.

§ 753.13 Combat activities.

Claims for damage to, or loss or destruction of, property, or for personal injury or death resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat, are not payable under the Foreign Claims Act. But see 10 U.S.C. 2734(b)(3).

§ 753.14 Claims of subrogees.

In cases of damage to or loss or destruction of property or personal injury or death covered by insurance, settlement will be made solely with the insured or his legal representative, rather than with the insurer, or with both the insured and the insurer. No inquiry will be made into the relative interests as between insured and insurer. The entire claim, including any portion covered by insurance, will be filed by, or on behalf of, the insured and payment of the entire amount allowed will be made to the insured as the real claimant. Claims by insurers in their own right are not within the provisions of the Foreign Claims Act and will not be considered. Insurers presenting such claims shall be informed that subrogation claims are not recognized under the Act. Evidence of authority to file a claim on behalf of the insured may be established by a power of attorney or other documentary evidence satisfactory to the Foreign Claims Commission.

§ 753.15 Statute of limitations.

A claim may be allowed under this part only if presented within 2 years after it accrued. A claim presented to a foreign government under applicable treaty or agreement within the time limit satisfies this requirement.

§ 753.16 Nature of claim.

Any claim will be considered if it states the material facts with such definiteness as to give reasonable notice of the time, place, and nature of the accident or incident out of which the claim arose and an estimate or statement of the damage, loss, destruction, injury, or death resulting. The claim should be signed by, or on behalf of, the claimant and should, if practicable, be under oath. In cases in which the claim is made in behalf of the true claimant, satisfactory evidence of authority to act for the claimant must be furnished.

§ 753.17 Claims for damage occasioned by naval vessels.

Unless specifically authorized by the Judge Advocate General in each case, the Foreign Claims Commission shall not assume jurisdiction or proceed to hear any claim for damage occasioned by a naval vessel. This provision applies to claims for damage caused to land structures as well as claims of an admiralty nature. The occurrence of any such damage, if brought to the attention of a claims commission, shall be reported immediately to the Judge Advocate General: Attention Admiralty Division.

§ 753.18 Creation of Foreign Claims Commission.

(a) *Appointing Authority.* All Navy commanding officers are hereby granted authority to appoint Foreign Claims Commissions. All Marine Corps commanding officers are granted authority to appoint Foreign Claims Commissions, provided a member of the Judge Advocate General's Corps or a Judge Advocate of the Marine Corps is appointed to the commission. All claims which are presented to Marine Corps commands which do not have a member of the Judge Advocate General's Corps or a Judge Advocate of the Marine Corps attached will be forwarded to the nearest Navy or Marine Corps command with an active Foreign Claims Commission. For the purposes of the Foreign Claims Act and these regulations, the Judge Advocate General; the Officer in Charge, U.S. Sending State Office for Italy; the Officer in Charge, U.S. Sending State Office for Australia; Chiefs of Naval Missions (including chiefs of the naval section of military missions); Chiefs, Military Assistance Advisory Groups (including Chiefs, Naval Section, MAAGS); Senior Naval Advisor to Argentina; and naval attachés are to be considered commanding officers. Commissions may be appointed to consider each claim as presented or one commission constituting a standing claims commission may be appointed to consider all claims presented. The commanding officer to whom a claim is presented shall refer the claim to such a commission.

(b) *Composition of commissions and limitations on adjudicating authority.* Claims commissions are delegated the following authority:

(1) A one-officer commission may consider, approve in full or in part, or disapprove claims in amounts up to and including $1,000.

(2) A one-officer commission composed of a member of the Judge Advocate General's Corps or a Judge Advocate of the Marine Corps, may consider, approve in full or in part, or disapprove claims in amounts up to and including $2,000.

(3) A three-officer commission may consider claims in any amount. It may approve in full or in part when the award is in an amount up to and including $3,000, provided the claimant accepts any partial award. It may recommend awards in full or in part in amounts over $3,000 and up to and including $15,000 respect to claims which arise in Italy, the Officer in Charge, U.S. Sending State Office for Italy, or, with respect to claims which arise in Australia, the Officer in Charge, U.S. Sending State Office for Australia. Claims in excess of $15,000 may be processed in accordance with § 753.25. It may deny claims in amounts up to and including $3,000.

(4) A three-officer commission which includes one or more members of the Judge Advocate General's Corps or a Judge Advocate of the Marine Corps may consider claims of any amount. It may approve in full or in part when the award is in an amount up to and including $5,000, provided the claimant accepts any partial award. It may recommend awards in full or in part in amounts over $5,000 and up to and including $15,000 to the Judge Advocate General or, with respect to claims which arise in Italy, the Officer in Charge, U.S. Sending State Office for Italy, or, with respect to claims which arise in Australia, the Officer in Charge, U.S. Sending State Office for Australia. Claims in excess of $15,000 may be processed in accordance with § 753.25. It may deny claims in amounts up to and including $5,000.

§ 753.19 Membership of commissions.

Foreign claims commissions shall consist of one or three commissioned officers of the Navy or Marine Corps whose grades and experience are commensurate with the responsibilities to be executed in carrying out the purposes of the Foreign Claims Act.

§ 753.20 No formal procedure prescribed.

No formal procedure for the conduct of an investigation of a foreign claim is prescribed. However, the investigative procedures as set forth in Part 719 of this chapter should be followed as a guide. A transcript of the testimony of witnesses is not required and only the substance of statements of witnesses need be recorded. It is desirable, however, that signed statements of material witnesses be made a part of the record. The formal rules of evidence need not be adhered to, and any evidence, regardless of its form, which the commission deems material may be received and evaluated.

§ 753.21 Report of proceedings.

(a) The commission shall make a written report of each claim. The report shall include:

(1) A copy of the appointing order creating the commission,

(2) The claim document,

(3) The dates of the proceedings,

(4) The amount claimed stated in the indigenous currency and the conversion into U.S. currency at the existing official rate of exchange on the date of initial consideration of the claim,

to the Judge Advocate General or, with

(5) A brief summary of the facts, including the date of incident giving rise to the claim, the date the claim was filed, the nature and extent of the damages or

injuries, and the necessary jurisdictional facts,

(6) Signed statements of material witnesses or transcripts of their oral testimony for claims in excess of the commission's authority,

(7) An evaluation of applicable local laws and customs,

(8) The date the commission reached its final determination,

(9) The amount awarded, or recommended to be awarded, stated in the indigenous currency and the conversion into U.S. currency at the existing official rate of exchange on the date of final determination,

(10) An explanation of the basis of any recommendation in excess of the commission's authority,

(11) A release from the claimant as required by § 753.23 when an award has been accepted, or a copy of the notice of denial when the claim has been disallowed.

(b) When the commission has approved a claim which is within its final adjudicating authority, the original of the report and all allied papers shall be submitted to the appointing authority.

(c) When the commission recommends approval of a claim in excess of its adjudicating authority, a legible copy of the report and all allied papers shall be forwarded to the Judge Advocate General. The commission should retain the original of all papers for its files.

(d) When the commission has disallowed for any reason a claim within its final adjudicating authority or has recommended disallowance of a claim in excess of its final adjudicating authority, the original and one copy of the report and all allied papers shall be forwarded to the Judge Advocate General. The commission should retain one copy for its files.

(e) The commission's report will not be released or shown to the claimant without the express approval of the Judge Advocate General.

§ 753.22 Notification of award and payment.

(a) *Notification.* When a commission determines that a claim is meritorious and approves an award within its authority to pay in accordance with § 753.18(b), or when a larger award has been approved by the Judge Advocate General, the claimant shall be notified. When a commission determines that a claim is meritorious and recommends payment of an amount in excess of its authority, the commission may advise the claimant that the matter has been referred to the Judge Advocate General of the Navy for consideration. Under no circumstances may the claimant be notified of the amount of the recommended award.

(b) *Payment.* When a commission has approved an award for payment within its final adjudicating authority, or when a larger award has been approved by the Judge Advocate General, the convening authority shall submit the original and one copy of the commission's report and the release required by § 753.23 to the nearest Navy or Marine Corps disbursing officer, or to any U.S. disbursing officer if no Navy or Marine Corps disbursing officer is reasonably available, for payment of the claim. Foreign claims are paid under an open allotment with fund citation as follows: 97-0102 Claims, Department of Defense, subhead 1341, fiscal year current at the time of approval, object class 420, bureau control number 11003, authorization accounting activity 000020, transaction type 2D, cost code 000000099252. Copies of paid vouchers will be forwarded immediately to the Navy Accounting and Finance Center (NAFC 321), Washington, D.C. 20390.

§ 753.23 Releases.

(a) A release shall be obtained from the claimant in every case in which an award is accepted.

(b) The release executed by the claimant should release the United States and also release the tort-feasor or the persons who have occasioned the damage, injury, or death, if their identity is known. If the identity of such persons is unknown, the release should recite that the claimant also releases the person or persons who occasioned the damage, injury, or death, the names and identity of said person or persons being unknown to the claimant.

(c) The release should preclude any possible future assertion of the claim for which the United States has made compensation.

(d) A suggested release is contained in appendix section 22.[1]

§ 753.24 Appeal and reconsideration.

(a) *Appeal.* While there is no right to appeal from the action of a Foreign Claims Commission, the commission may reconsider its action upon the written request of the claimant or on its own initiative. If, after reconsideration, the commission again denies a claim, or the claimant declines to accept an award in full satisfaction of his claim, the commission's report shall be forwarded to the Judge Advocate General in accordance with § 753.21(d).

(b) *Reconsideration.* The Judge Advocate General may refer a claim for reconsideration to the original commission, a successor commission, or to a commission convened by the Judge Advocate General.

§ 753.25 Meritorious claims in excess of $15,000.

(a) Claims within the Foreign Claims Act where the total amount due on account of damage, injury, and death exceeds $15,000, and where the claimant will not accept $15,000 in full satisfaction and final settlement of his claim, shall be forwarded directly to the Judge Advocate General for legal review and appropriate administrative action. The record in such proceedings shall include signed statements of material witnesses or transcripts of their oral testimony. The Foreign Claims Commission shall forward with and such claim its findings and recommendations as to the action to be taken (including its findings as to the extent and nature of the damage, injury, and/or death sustained) together with, if practicable, a statement from the owner of the property or the person injured, or the legal representative of the person killed, signifying his willingness to accept the amount so found in full satisfaction and final settlement of his claim. In all such cases, the original and two copies of the report, claim, and supporting papers shall be forwarded. The remaining copy should be retained by the commission for its files.

(b) When, after review of the records, the Judge Advocate General considers that a claim in excess of $15,000 is meritorious and would otherwise be covered by this section, he will recommend to the Secretary partial payment of $15,000 and report the excess to Congress for its consideration.

§ 753.26 Claims outside the jurisdiction of the commission.

Claims arising from incidents on the high seas are ordinarily not within the jurisdiction of a Foreign Claims Commission. See § 753.17. In cases in which a commission considers that the claimant (or decedent in the case of a death claim) is not an inhabitant of a foreign country, or is not the government or a political subdivision of a foreign country, reports shall be forwarded in triplicate to the Judge Advocate General as in cases under § 753.25.

§ 753.27 Claims arising in specified foreign countries.

(a) *NATO Status of Forces and similar agreements.* The United States has ratified the NATO Status of Forces Agreement and has entered into similar agreements with other foreign countries. Article VIII of the NATO Status of Forces Agreement and certain provisions of other agreements are inconsistent with the unrestricted use of the Foreign Claims Act and its implementing regulations in certain countries. Accordingly, directives of the cognizant area commander shall be consulted and claims shall not be referred to Foreign Claims Commissions until it has been determined that such action is consistent with the provisions of the aforementioned agreements and their implementing directives. Department of Defense Directive 5515.3 of August 18, 1965 (NOTAL), directs that, where a single service has been assigned responsibility for claims in a country or area, all claims arising under the Foreign Claims Act (10 U.S.C. 2734) and the Military Claims Act (10 U.S.C. 2733) shall normally be settled and paid by claims commissions or other claims settlement authorities appointed by the Secretary of that military department, or his designee, in accordance with the department's regulations. In countries in which the NATO Status of Forces Agreement or other similar agreement is in force, incidents which may give rise to tort claims against the United States arising from acts or omissions of naval personnel, or

[1] Filed as part of the original document.

members of the civilian component of the naval service, including claims for death or personal injury, resulting from the navigation or operation of a ship, or from the loading, carriage, or discharge of its cargo, shall be investigated and reports shall be made in accordance with instructions promulgated by the cognizant naval commanders.

(b) *Single-service responsibility and cross-servicing.* Single-service responsibility for processing claims under this part shall be accomplished as provided in Part 750, § 750.24 of this chapter. Where cross-servicing of claims has been accomplished, the forwarding command shall afford any assistance necessary to the appropriate service in the investigation and adjudication of such claims.

§ 753.28 Claims generated by civilian employees of the Department of Defense.

Department of Defense Directive 5515.3 of August 18, 1965 (NOTAL), provides that all Foreign Claims Commissions are designated to settle and pay claims for damage caused by civilian employees of the Department of Defense other than an employee of a military department.

§ 753.29 Advance payments.

Advance payments may be made pursuant to the provisions of §§ 750.70–750.73 and 750.80 of this chapter. In addition to the adjudicating authorities authorized by § 753.72 to make advance payments, all three-member Foreign Claims Commissions may make advance payments provided such action is approved by the Commanding Officer appointing the commission.

PART 756—NONAPPROPRIATED FUND CLAIMS REGULATIONS

Part 756 of Title 32 is revised to read as follows:

Sec.
756.1 General.
756.2 Notification.
756.3 Processing claims.
756.4 Payment of claims.
756.5 Claims by employees.

AUTHORITY: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240–243).

§ 756.1 General.

(a) Non-appropriated-fund activities are Federal agencies within the meaning of the Federal Tort Claims Act if charged with an essential function of the Navy Department and if the degree of control and supervision by the Navy Department is more than casual or prefunctory. Compare United States v. Holcombe, 277 F. 2d 143 (4th Cir. 1960) and Scott v. United States, 226 F. Supp. 846, (D. Ga. 1963). To the extent that sovereign immunity is waived by the Federal Tort Claims Act, therefore, the United States remains ultimately liable for payment of non-appropriated-fund-activity claims. It is policy to pay these claims from non-appropriated funds and to process them primarly through non-appropriated-fund-activity claims procedures, using as guidelines the regulations and statutes applicable to similar appropriated-fund-activity claims.

(b) Claims arising out of the operation of non-appropriated-fund activities, in and outside the United States, shall be investigated in accordance with the procedures for investigating similar claims against appropriated-fund activities. All claims should be submitted to the command having cognizance over the non-appropriated-fund activity involved.

§ 756.2 Notification.

Many non-appropriated-fund activities carry commercial insurance to protect them from claims for property damage and personal injury attributable to their operations. The Commandant of the Marine Corps, the Chief of Naval Personnel, and the Naval Supply Systems Command determine whether non-appropriated-fund activities within their cognizance shall carry liability insurance or become self-insurers, in whole or in part. When the operations of non-appropriated-fund activities result in property damage or personal injury, the insurance carrier, if any, should be given written notification immediately. Notification should not be postponed until a claim is filed. When the activity is self-insured, the self-insurance fund shall be notified of the potential liability.

§ 756.3 Processing claims.

(a) *Responsibility for processing.* The primary responsibility for the negotiation and settlement of claims resulting from non-appropriated-fund activities is normally with the non-appropriated-fund activity and its insurer. The standard procedures described in Part 750 of this chapter for investigating and processing claims must, however, be followed in order to protect the residual liability of the United States.

(b) *Negotiations.* (1) When a non-appropriated-fund activity is insured, the insurer will normally conduct negotiations with claimants. The appropriate Naval adjudicating authority has the responsibility of monitoring the negotiations conducted by the insurer. Such monitoring shall be limited to ascertaining that someone has been assigned to negotiate, to obtaining periodic status reports, and to closing out files on settled claims. Any dissatisfaction with the insurer's handling of the negotiations should be referred directly to the Judge Advocate General for appropriate action.

(2) When there is no private insurer and the non-appropriated-fund activity has made no independent arrangements for negotiations, the appropriate Navy adjudicating authority is responsible for conducting negotiations. Under special circumstances, even when there is an insurer, the appropriate Naval adjudicating authority may conduct negotiations, provided the command involved and the insurer agree to it. When an appropriate settlement is negotiated by the Navy, the recommended award will be forwarded to the non-appropriated-fund activity, or its insurer, for payment from nonappropriated funds.

(3) In cases where payment may be authorized under some statute, such as the Foreign Claims Act, but where there is no negligence and neither the non-appropriated-fund activity not its insured is legally responsible, the claim may be considered for payment from appropriated funds or may be referred to the Judge Advocate General for appropriate action.

(c) *Denial.* Claims resulting from non-appropriated-fund activities may be denied only by the appropriate Naval adjudicating authority, since such a denial is required to begin the 6-month limitation on filing suit under the Federal Tort Claims Act. Claims which have initially been processed and negotiated by a non-appropriated-fund activity or its insurer should not be denied until the activity or its insurer has clearly stated in writing that it does not intend to pay the claim and has elected to defend in court. Claimants shall be notified of a denial in accordance with § 750.7 of this chapter.

§ 756.4 Payment of claims.

(a) *Small claims.* Any claim not covered by insurance (or if covered by insurance and not paid by the insurer) which can be settled for $100 or less may be adjudicated by the commanding officer of the activity concerned or his designee. The claim will be paid out of funds available to the commanding officer.

(b) *Other claims.* Claims in excess of $100, for which private insurance is not available and which have been negotiated by the Navy, shall be forwarded to the appropriate headquarters command for payment from nonappropriated funds. Private insurance is usually not available to cover losses which result from some act or omission of a mere participant in a non-appropriated-fund activity. In the event the non-appropriated-fund activity declines to pay the claim, the file shall be forwarded to the Judge Advocate General for determination.

§ 756.5 Claims by employees.

(a) *Property.* Claims by employees of non-appropriated-fund activities for loss, damage, or destruction of personal property incident to their employment will be processed and adjudicated in accordance with Part 751 of this chapter and forwarded to the appropriate non-appropriated-fund activity for payment from nonappropriated funds.

(b) *Personal injury or death of citizens or permanent residents of the United States employed anywhere, or of foreign nationals employed within the United States.* The compensation provided by the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901–950) was extended to provide for employees of non-appropriated-fund activities who suffered injury or death arising out of and in the course of their

employment (5 U.S.C. 8171). If there is a substantial possibility that an employee's injury or death is covered by the Longshoremen's and Harbor Workers' Compensation Act, a claim should first be made under that Act since it is the exclusive basis for Government liability for injuries or deaths which are covered (5 U.S.C. 8173).

(c) *Personal injury or death of foreign nationals employed outside of the Continental United States.* Employees who are not citizens or permanent residents, and who are employed outside of the Continental United States, are protected by private insurance of the non-appropriated-fund activity or by other arrangements (5 U.S.C. 8172). When a non-appropriated-fund activity has neglected to obtain insurance coverage or to make other arrangements, the matter will be processed as a foreign claim, or a Federal Tort Claims Act claim if appropriate, and any award will be paid from nonappropriated funds.

PART 757—AFFIRMATIVE CLAIMS REGULATIONS

Part 757 of title 32 is revised to read as follows:

Subpart A—Medical Care Claims

Sec.
757.1 Definitions.
757.2 Authority of the Judge Advocate General and JAG designees.
757.3 Report of care and treatment.
757.4 Investigations.
757.5 Determination, assertion, and collection of claims.
757.6 Medical records.
757.7 Notice of claim.
757.8 Statistical reports.
757.9 Geographical limitations—single-service responsibility.
757.10 Rates for medical care provided in Federal hospitals.
757.11 Single demand for medical care and property damage claims.
757.12 Statute of limitations.
757.13 Reference material.

Subpart B—Property Damage Claim

757.14 Regulations concerning affirmative claims.
757.15 Pursuit, settlement, and termination of claims.
757.16 Collection of claims.
757.17 Repair of Government property by the tort-feasor.
757.18 Referral of cases to the Department of Justice or GAO.
757.19 Statute of limitations.
757.20 Reports.

Subpart C—Joint Regulations on Claims Collection

757.21 Joint regulations of the General Accounting Office and Department of Justice on Federal claims collection standards.

AUTHORITY: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240–243).

Subpart A—Medical Care Claims

§ 757.1 Definitions.

For purposes of this subpart.

(a) *Medical care.* "Medical care" includes hospital, medical, surgical, or dental care and treatment, and the furnishing of prostheses and medical appliances.

(b) *JAG designees.* "JAG designees" are:

(1) The Deputy Judge Advocate General; any Assistant Judge Advocate General; the Deputy Assistant Judge Advocate General (Litigation and Claims); the Director, Litigation and Claims Divison;

(2) The commandants of all naval districts and their district judge advocates;

(3) The officers in command and the directors of all Navy law centers outside the United States, except for law centers in countries where another service has single-service responsibility;

(4) The officers in charge of U.S. Sending State Offices; and

(5) Such other officers as may be designated by the Judge Advocate General.

(c) *Action JAG designees.* "Action JAG designees" are the JAG designees in whose area the incident giving rise to the claim occurred. This is a general definition and should not be considered applicable in cases where the best interests of the Government would be served by transferring the case to another JAG designee e.g., where the tortfeasor has moved from or resides in a place other than the place where the incident occurred. When a case is transferred from one JAG designee to another, the responsibility for conducting an investigation and making an initial assertion remains with the JAG designee in whose area the incident giving rise to the claim occurred.

(d) *The Act.* "The Act" means the Medical Care Recovery Act (42 USC 2651–53).

(e) *Waiver.* "Waiver" means the total relinquishment of the Government's claim.

(f) *Compromise.* "Compromise" means a partial reduction in the amount of the Government's claim.

§ 757.2 Authority of the Judge Advocate General and JAG designees.

(a) *Assertion of claim.* When the Department of the Navy furnishes medical care, the Judge Advocate General or the action JAG designee shall determine (1) whether a third-party claim (i.e., a claim under the Act) is possible against a person who is legally liable for causing the injury or disease treated, and (2) whether a Government claim is possible under workmen's compensation or under medical-payments insurance (e.g., in all automobile accident cases). If either circumstance exists, the action JAG designee shall assert a claim for the reasonable value of such care and treatment. When an accident occurs at a place where the naval service does not have a command, unit, or activity conveniently located for conducting an investigation, the commanding officer or officer in charge having immediate responsibility for making the investigation may request assistance from the commanding officer or officer in charge of any other command, unit, or activity within the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. In a reciprocal situation where the commanding officer or officer in charge of any other command, unit, or activity within the Department of Defense requests assistance from any naval command, unit, or activity, the latter should honor the request. If a complete investigation is requested, the report shall be made in accordance with the regulations of the service actually making the investigation. These investigations will normally be conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating activity.

(b) *Authority of JAG and certain JAG designees.* (1) The Judge Advocate General and JAG designees serving in the Office of the Judge Advocate General may accept payment for the full amount of any claim and execute a release therefor.

(2) A claim not in excess of $20,000 may be waived completely or compromised and a release executed therefor by either the Judge Advocate General or the Deputy Judge Advocate General.

(3) A claim not in excess of $15,000 may be waived completely or compromised and a release executed therefor by any Assistant Judge Advocate General.

(4) A claim not in excess of $10,000 may be waived completely or compromised and a release executed therefor by the Deputy Assistant Judge Advocate General (Litigation and Claims).

(c) *Authority of other JAG designees.* All other JAG designees are authorized to (1) accept payment for the full amount of a claim and execute a release therefor, or (2) waive completely or compromise and execute a release of any claim not in excess of $5,000.

(d) *Waiver and compromise.* A claim may be waived or compromised for the convenience of the Government or if it is determined that collection would result in undue hardship to the person who suffered the injury or disease giving rise to the claim.

(e) *Claims exceeding $20,000.* Claims in excess of $20,000 may be compromised, settled, and waived only with the prior approval of the Department of Justice.

(f) *Limitations.* The authority set forth in this section shall not be exercised in any case in which (1) the claim of the United States has been referred to the Department of Justice or (2) a suit has been instituted by the third party against the United States or against the individual who received or is receiving the medical care described above, and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

(g) *Restrictions on contact with Department of Justice and U.S. attorneys.* JAG designees, except those serving in the Office of the Judge Advocate General, shall refrain from dealing directly with the Department of Justice or U.S. attorneys except in those cases (1) where the Department of Justice or a U.S. attorney has assumed cognizance over the case; (2) where circumstances dictate immediate action to protect the interests of the United States; or (3)

where such action is authorized by the Judge Advocate General.

§ 757.3 Report of care and treatment.

(a) *NAVJAG Form 5890/12.* NAVJAG Form 5890/12 (see appendix section 24d)[1] shall be used by all Navy medical facilities to report the value of medical care furnished to any patient (1) when a third-party may be legally liable for causing the injury or disease treated, or (2) when a Government claim is possible under workmen's compensation or under medical-payments insurance (e.g., in all automobile accident cases).

(b) *Computations.* NAVJAG Form 5890/12 shall be computed by using the rates set out in appendix section 24c.[1] The term "inpatient days" excludes periods charged to leave (annual or convalescent), periods of weekend liberty, and periods during which the injured party was attached to the hospital for the convenience of the Government (e.g., awaiting the arrival of his ship).

(c) *Submission of NAVJAG Form 5890/12.* The NAVJAG Form 5890/12 shall be submitted to the action JAG designee at the following times:

(1) An "initial" submission of NAV JAG Form 5890/12 shall be made as soon as practicable after the patient is admitted if it appears that inpatient care will exceed 2 days, or that more than 10 outpatient treatments will be furnished. The "initial" submission need not be based upon an extensive investigation of the cause of the injury or disease, but it should include all known facts. Statements by the patient, police reports, and similar information (if available) should be appended to the form.

(2) An "interim" submission of NAVJAG Form 5890/12 shall be made every 4 months after the "initial" submission, until the patient is released, transferred, or changed from an inpatient to an outpatient status.

(3) A "final" submission of NAVJAG Form 5890/12 shall be made upon completion of treatment or upon transfer of the patient to another hospital. The hospital to which the patient is transferred should be noted on the form.

(d) *Supplementary documents.* A narrative summary (Standard Form 502) should accompany the final NAVJAG Form 5890/12 in all cases involving inpatient care. In addition, when Government care exceeds $1,000, the hospital should also provide a completed NAVJAG Form 5890/13 (*see* Appendix 24f). On this form, the determination of "patient status" may be based on local hospital usage. If the hospital prefers, it may furnish in lieu of NAVJAG Form 5890/13 a statement by the treating physician (normally on a locally prepared form) giving the date that necessary inpatient treatment was essentially completed, and the number of outpatient treatments that would have been required if the patient had been discharged on that date.

(e) *Information for health record and for action JAG designees.* Copies of all NAVJAG Forms 5890/12 shall be retained in the health record of the patient. Action JAG designees shall be notified immediately when a patient receives treatment subsequent to the issuance of a "final" NAVJAG Form 5890/12 if the subsequent treatment is related to the treatment which gave rise to the claim.

(f) *Treatment of nonnaval personnel.* Where care is provided to personnel of another Federal agency or department by a naval medical facility, that agency or department generally will assert any claim in behalf of the United States. In such cases, the NAVJAG Form 5890/12 shall be forwarded directly to the appropriate addressee as follows:

(1) *U.S. Army:* Commanding general of the Army of comparable area commander in which the incident occurred;

(2) *U.S. Air Force:* Staff judge advocate of the Air Force installation nearest the location where the initial medical care was provided;

(3) *U.S. Coast Guard:* Department of Health, Education, and Welfare regional attorney's office in the region where the incident occurred;

(4) *Department of Labor:* Subrogation, Office of the Solicitor, Bureau of Employees Compensation, Department of Labor, Washington, D.C. 20210;

(5) *Veterans' Administration:* Director of the Veterans' Administration Hospital responsible for medical care of the injured party;

(6) *Department of Health, Education, and Welfare:* Department of Health, Education, and Welfare regional attorney's office in the region where the incident occurred.

(g) *Treatment of naval personnel by other Federal agencies.* Where medical care is provided to naval or Marine Corps servicemen, retirees, or their dependents by another Federal department or agency, the Department of the Navy generally will assert any claim on behalf of the United States. Appropriate forms should be forwarded to the action JAG designees.

(h) *Civilian medical care.* The district medical officers and the district dental officers are responsible for paying emergency civilian medical expenses incurred by active-duty servicemen. Such officers should furnish evidence of payment to the action JAG designee (1) when a third party may be legally liable for causing the injury or disease treated, or (2) when a Government claim is possible under workmen's compensation or under medical-payments insurance (e.g., in all automobile accident cases).

(i) *CHAMPUS cases.* CHAMPUS (Civilian Health and Medical Program of the Uniformed Services) contractors for hospital treatment have been directed by the Executive Director, OCHAMPUS, Denver, Colo. 80240, to forward reports of payments in injury cases directly to the action JAG designees. Reports of payments for physician and outpatient care may be obtained by JAG designees from the appropriate fiscal administrators.

§ 757.4 Investigations.

(a) *When required.* Whenever medical care is furnished by the Department of the Navy, either in kind without reimbursement or by reimbursing another department, agency, private facility, or individual under circumstances which may give rise to a medical care claim, an investigation shall be conducted in the manner and form prescribed in Part 750 of this chapter. However, no investigation is required for the purposes of this chapter if the medical care furnished does not exceed 3 inpatient days or 10 outpatient treatments. In cases where the Department of the Navy receives reimbursement from another department or agency for medical care furnished at a naval facility, that department or agency will normally be responsible for investigating the incident giving rise to the medical care and processing any resulting claim. See § 757.3(f) for addresses of other departments and agencies.

(b) *Consolidation.* Separate investigations are not required for the purposes of this chapter in cases where there has been an investigation for other purposes which can be used as a basis for determining liability. It shall be the responsibility of the action JAG designee, upon receipt of a NAVJAG Form 5890/12 or equivalent CHAMPUS forms, to supervise and to avoid duplication of investigative effort and to request an investigation in those cases where it appears that none has been or is likely to be conducted.

(c) *Information for action JAG designee.* All investigations, regardless of origin, involving a possible medical care claim, shall be routed via, or a copy forwarded to, the action JAG designee.

§ 757.5 Determination, assertion, and collection of claims.

(a) *Determination and notice of claim.* Action JAG designees, regardless of the amount of the claim, shall determine liability in accordance with the law of the state or country in which the incident occurs. If the JAG designee determines that a third party is liable, he shall forward a "Notice of Claim" (Standard Form 96) to the third party. If he determines that an insurance company or workmen's compensation carrier is liable, he shall forward the company an appropriate notice of the Government's claim. If he determines that there is no liability, this fact shall be reflected in the endorsement on any information forwarded to the Judge Advocate General. The specific reasons supporting the determination of no liability should be included. If the action JAG designee is in doubt on the question of liability, the matter should be submitted to the Judge Advocate General for final decision.

(b) *Foreign claims.* Claims against a foreign government or a political subdivision, agency, or instrumentality thereof, or against a member of the armed forces or an official or civilian employee of such foreign government, shall not be asserted without the prior approval of the Judge Advocate General. Investigation and report thereof

[1] Filed as part of original document.

shall be made as provided in this chapter unless the provisions of applicable agreements, or regulations in implementation thereof, negate the requirement for such investigation and report.

(c) *Advice for injured party.* In cases where an action JAG designee determines that third-party liability is indicated and a "Notice of Claim" (Standard Form 96) is issued, the injured party shall be contacted and advised in writing that:

(1) Under the Act, the United States is entitled to recover from the third party the value of medical care furnished or to be furnished by the United States to the injured party.

(2) The injured party may be required to: (i) Furnish the action JAG designee any pertinent information concerning the incident; (ii) notify the action JAG designee of any settlement offer from the third party or his insurer; and (iii) cooperate in the prosecution of the Government's claim against the third party.

(3) The injured party may seek the advice of legal counsel concerning any possible claim he may have for personal injury and should furnish the action JAG designee the name and address of any civilian attorney consulted or retained.

(4) The injured party should not execute a release or settle any claim concerning the injury and should not furnish the third party, the third party's insurance company, or other representative of the third party, any information or signed statement without the approval of his attorney and the approval of the action JAG designee.

(d) *Pursuit of claims.* (1) Action JAG designees shall, if possible, and if not contrary to the best interests of the United States, pursue to satisfactory settlement all claims coming within their authority. In those cases where administrative settlement is not possible, or is not considered in the best interests of the United States, the action JAG designee shall determine whether the case should be closed and filed or forwarded to the Judge Advocate General for further action. However, the authority of any JAG designee to close and file cases shall be limited to those cases over which compromise authority is granted by § 757.2(c). Before action is taken on a file, the action JAG designee shall determine:

(i) Whether the injured party has retained or intends to retain counsel;

(ii) Whether the tortfeasor denies liability and/or refuses to pay;

(iii) In cases involving insurance, whether the insurance carrier denies liability and/or refuses to settle; and

(iv) Whether consideration has been given to asserting a claim under available uninsured-motorist or medical-payments coverages.

(e) *Claims file.* In cases exceeding their settlement authority, or in other cases deemed appropriate, the action JAG designees shall take the action set forth in paragraphs (a) and (b) of this section, and shall forward the file to the Judge Advocate General for action. The claim file should contain the following information:

(1) The name, address, and occupation of each person determined to be a third party.

(2) In those cases where the third party is a serviceman or an employee of the United States, a statement should be included regarding whether such person was acting within the scope of his official duties or employment at the time of the incident.

(3) The nature and extent of any insurance coverage of the third party with the name and address of the insurer.

(4) In vehicle accident cases where the third party is uninsured, a report as to whether any injured party, owner, driver, or passenger had uninsured-motorist coverage, whether such coverage was mandatorily offered by the insurer in accordance with a State requirement, and whether action has been taken under the financial-responsibility law of the situs.

(5) Completed copies of NAVJAG Forms 5890/12 (or equivalent forms of the other services) and a statement whether there will be any permanent disability and the degree thereof. If such forms are not presently available, then a statement to the effect that the action JAG designee will request the appropriate medical facility to forward them directly to the Judge Advocate General should be included. It shall be the responsibility of the action JAG designee to insure that all completed copies of NAVJAG Forms 5890/12 and authorizations made by district medical or dental officers for payment for civilian care are forwarded to the Judge Advocate General in those cases where the file has been forwarded to the Judge Advocate General for action.

(6) The original or copies of all bills or statements of cost incurred where treatment is furnished by civilian facilities.

(7) A statement regarding liability of the third party. (Where liability is questionable, a brief of the law of situs applicable should be included.)

(8) A statement as to whether a "Notice of Claim" (Standard Form 96) was sent to the third party; the name, address, and phone number of the injured party's attorney, if any; and a statement as to whether a suit has been or is likely to be instituted.

(9) A statement as to whether the injured party's attorney will protect the interests of the United States—i.e., whether the Government's claim will be included in the injured party's demand or suit.

(10) A recommended disposition of the case.

(f) *Waiver and compromise requests.* In cases in which a compromise or a complete waiver of the Government's claim is requested, and the claim is beyond the settlement authority of the action JAG designee, the claims file shall be forwarded to the Judge Advocate General. In addition to the information required by paragraph (e) of this section, the file should also contain detailed information as to:

(1) The anticipated amount of the gross recovery.

(2) The degree and permanency of any disability and the extent to which the Government otherwise is obligated to compensate the injured party for such disability.

(3) Whether the injured party is entitled to continuing medical care at Government expense.

(4) Out-of-pocket expenses incurred or anticipated by the injured party, including litigation costs and counsel fees.

(5) The present and prospective assets, income, and obligations of the injured party.

(6) Any other information indicating that full collection of the Government's claim would work an undue hardship upon the injured party.

(g) *Payments.* Payments of claims should be made in the form of checks, drafts, or money orders payable to the collecting organization, such as "Commandant Twelfth Naval District" or "Commander, U.S. Naval Forces Marianas," and are to be forwarded for deposit by the disbursing officer serving the collecting organization. (These receipts are to be credited to appropriation accounts as designated by the Comptroller of the Navy.)

§ 757.6 Medical records.

The Surgeon General has been designated by the Secretary of the Navy as the official responsible for the execution of Department of Defense policies in releasing medical records of members or former members of the Navy. Commanding officers of U.S. naval hospitals and U.S. naval dispensaries have been authorized to release medical records physically located within their commands directly to the injured member or his representative, subject to the limitations contained in chapter 23, Manual of the Medical Department. See Part 720 of this chapter concerning certifications where necessary for litigation.

§ 757.7 Notice of claim.

The "Notice of Claim" (Standard Form 96) shall be used when a claim under the Act is asserted against a third-party tort feasor. Substitute forms are not authorized. Locally-prepared forms are authorized, however, for claims not based upon third-party liability.

§ 757.8 Statistical reports.

Action JAG designees shall forward monthly reports to the Judge Advocate General setting forth the following information:

(1) The number of claims asserted during the month;

(2) The number of recoveries made during the month (In cases where partial recoveries are made, the claim will not be considered to be "recovered" until the total recovery is effected);

(3) The dollar amount of claims asserted during the month;

(4) The dollar amount of recoveries made during the month (including partial recoveries); and

(5) The total number of active claims on file at the end of the month.

Report Symbol JAG–5800–2 is assigned for this reporting requirement.

§ 757.9 Geographical limitations—single-service responsibility.

There is no geographical limitation to the Act, and claims shall be asserted in countries where such claims are recognized by local law. See § 750.24 of this chapter for single-service responsibility.

§ 757.10 Rates for medical care provided in Federal hospitals.

The rates to be charged for medical care provided in Federal hospitals under circumstances coming within the provisions of the Act are set forth in Appendix section A–24(c).[1]

§ 757.11 Sinlge demand for medical care and property damage claims.

An effort should be made to include all medical care and property damage claims in a single demand for payment against a third-party or his insurance company.

§ 757.12 Statute of limitations.

Pursuant to the provisions of 28 U.S.C. 2415(b), a 3-year statute of limitations exists for actions arising under the Federal Medical Care Recovery Act. Accordingly, consideration should be given to forwarding files to JAG in cases where it appears that the Government's claim is not adequately protected and that settlement of the Government's claim will not occur within the time prescribed by the statue.

§ 757.13 Reference material.

The following aids and reference materials are contained in Appendix section A–24(c).[1]

(a) Executive Order 11060 of 7 November 1962, authorizing the Director of the Bureau of the Budget to establish rates and the Attorney General to prescribe regulations to carry out the purpose of the Medical Care Recovery Act;

(b) Department of Justice Order Number 289–62 (as amended), pursuant to Executive Order 11060;

(c) Bureau of the Budget Rate Schedules, pursuant to Executive Order 11060;

(d) NAVJAG Form 5890/12, "Hospital and Medical Care 3rd Party Liability Case;"

(e) Standard Form 96, "Notice of Claim."

(f) NAVJAG Form 5890/13, "Supplemental Statement for Hospital and Medical Care Third Party Liability Case."

(g) Promissary Note containing Agreement for Judgment.

(h) Property damage claims in favor of the United States.

Subpart B—Property Damage Claims

§ 757.14 Regulations concerning affirmative claims.

Property damage claims in favor of the United States shall be processed in accordance with the Federal Claims Collection Act (31 U.S.C. 952), as implemented by the "Joint Regulations of the General Accounting Office and Department of Justice on Federal Claims Collection Standards" (part C of this chapter). Department of Defense Directive 5515.11 of 10 December 1966 (see appendix, section 24g)[1] delegates to the Secretary of the Navy, and his designee, the authority granted to the Secretary of Defense under the Federal Claims Collection Act.

§ 757.15 Pursuit, settlement, and termination of claims.

(a) *Authority to handle claims.* Subject to paragraph (b) of this section, the following officers are authorized to pursue, collect, compromise, and terminate collection action on property damage claims in favor of the United States.

(1) The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General; the Deputy Assistant Judge Advocate General (Litigation and Claims); the Director, Litigation and Claims Division;

(2) The commandant or the district judge advocate of a naval district;

(3) The officer in command or the director of a Navy law center; and

(4) Such other officers as may be designated by the Secretary of the Navy.

(b) *Claims over $20,000.* Claims in excess of $20,000 may not be compromised or terminated without the permision of the Department of Justice. The officers designated by paragraph (a) of this section should pursue all Navy claims on behalf of the United States. If a compromise offer is obtained, or if termination is recommended, the claims file should be sent to the Judge Advocate General for referral to the Department of Justice. The file should include the information required by the Joint Regulations on Claims (Subpart C of this part).

(c) *Release.* The officers designated by paragraph (a) of this section are authorized to executie a release on behalf of the United States (1) when full payment is received, (2) when a claim is under $20,000, or (3) when permission to compromise has been granted by the Department of Justice.

§ 757.16 Collection of claims.

(a) *Deposit of funds.* When a private party or his insurer tenders a full payment or a compromise settlement, the payment should be in the form of a check or money order made payable to the order of the collecting organization, such as the "Commandant, Twelth Naval District" or the "Commander, U.S. Naval Forces Marianas." The check or money order should then be forwarded for deposit by the disbursing officer serving the collecting organization. Funds so collected are normally to be deposited to the Navy general fund receipt accounts as provided in the Navy Comptroller Manual.

(b) *Navy Industrial Fund.* Where the loss or the cost of repairs has been borne by an industrial-commercial activity, payment should be deposited to the Navy Industrial Fund of the repairing activity. *See* Navy Comptroller Manual, paragraph 043114. When a claim is based upon loss or damage sustained by such an activity, a notation to this effect shall be included in any file forwarded to the Judge Advocate General.

§ 757.17 Repair of Government property by the tort-feasor.

In some cases, a person who has damaged Government property (or his insurer) offers to repair the property or to arrange for its repair. The commanding officer or officer-in-charge of the activity concerned is authorized to accept such an offer if he considers it to be in the best interests of the Government. The commanding officer or officer-in-charge is also authorized to assure the private party that a full release of the claim of the United States will be executed (a) when the repairs are completed to the Government's satisfaction, and (b) when all repair bills have been paid by the private party. Such a procedure may be followed without the prior approval of the Judge Advocate General or his designee, and without first submitting an investigate report. When the investigative report is submitted, however, it shall contain a statement of the cost of the repairs and a statement by the commanding officer or officer-in-charge that the property has been satisfactorily repaired, and that all bills for repairs have been paid.

§ 757.18 Referral of cases to the Department of Justice or GAO.

Only the Judge Advocate General shall refer claims to the Department of Justice or to the General Accounting Office. Before recommending such action, the command handling the claim should assure that full collection efforts (as required by Subpart C of this part) have been completed.

§ 757.19 Statute of limitations.

There is a 3-year statute of limitation on affirmative Government claims "founded upon a tort." 28 U.S.C. 2415(b). Uncollected affimative claims should therefore be forwarded to the Judge Advocate General soon enough for timely referral to the Department of Justice. Any installment-payment agreement that will run beyond the statutory period should include a confess-judgment clause (see appendix section A–24(h)).[1]

§ 757.20 Reports.

The officers designated by § 757.15(a)(2)–(4) shall make a quarterly report on property damage claims to the Judge Advocate General. The report should include the following figures:

(a) Number of claims asserted.

(b) Dollar amount of claims asserted.

(c) Number of claims collected.

(d) Dollar amount of claims collected.

[1] Filed as a part of original document.

[1] Filed as part of original document.

Subpart C—Joint Regulations on Claims Collection

§ 737.21 Joint regulations of the General Accounting Office and the Department of Justice on Federal claims collection standards.

Joint regulations of the General Accounting Office and the Department of Justice on Federal Claims Collection standards are found in 4 CFR Part 101 et seq.

[SEAL] H. B. ROBERTSON, Jr.,
Rear Admiral, JAGC, U.S. Navy, Acting Judge Advocate General.

FEBRUARY 16, 1973.

[FR Doc.73-3511 Filed 3-5-73;8:45 am]

Title 12—Banks and Banking

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

[73-327]

PART 545—OPERATIONS

Borrowing, Issuance of Obligations, and Giving of Security

FEBRUARY 27, 1973.

Section 545.24 of the rules and regulations for the Federal Savings and Loan System (12 CFR 545.24) was amended by the Federal Home Loan Bank Board on December 9, 1972 (Document No. 72-1405; 37 FR 26315; effective on January 8, 1973). That amendment was made in connection with the Board's adoption of amendments relating to the issuance of subordinated debt securities (12 CFR 563.8-1). Said amendment to § 545.24 inadvertently omitted the phrase "to the same extent that it would have authority to do so if said paragraph (2) had not been enacted" which appeared in § 545.24 prior to the amendment. The Board now considers it desirable to amend said section to replace that phrase with an appropriate modification to exclude subordinated debt securities as defined in 12 CFR 561.24. Accordingly, the Board hereby amends said § 545.24 by revising it to read as set forth below, effective March 5, 1973.

Since the above amendment is for the purpose of clarification, the Board finds that notice and public procedure with respect to said amendment are unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b); and since publication of said amendment for the period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to the effective date of said amendment would in the opinion of the Board likewise be unnecessary for the same reason, the Board provides that said amendment shall become effective on March 5, 1973.

§ 545.24 Borrowing, issuance of obligations, and giving of security.

An association may borrow to such extent as is authorized by the terms of its charter or by the Board by advice in writing. An association may issue such notes, bonds, debentures, or other obligations, or other securities, as are not inconsistent with the terms of paragraph (2) of subsection (b) of section 5 of the Home Owners' Loan Act of 1933, as amended, (a) to the extent that such issuance is in compliance with the provisions of § 563.8-1 of this chapter, (b) to such extent as is otherwise authorized by the Board by advice in writing, or (c), except in the case of subordinated debt securities as that term is defined in § 561.24 of this chapter, to the same extent that it would have authority to do so if said paragraph (2) had not been enacted. To such extent as is authorized by the terms of its charter or by the Board by advice in writing, an association may give security, but an association shall not give security for any of its shares or share accounts or for any of its savings accounts representing share interests in the association.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan. No. 3 of 1947, 12 FR 4981, 3 CFR, 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

[SEAL] JACK CARTER,
Secretary.

[FR Doc.73-4265 Filed 3-5-73;8:45 am]

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

[73-328]

PART 561—DEFINITIONS

PART 563—OPERATIONS

Subordinated Debt Security

FEBRUARY 27, 1973.

The Federal Home Loan Bank Board, in Document No. 72-1406, dated November 30, 1972, amended Parts 561 and 563 of the rules and regulations for Insurance of Accounts (12 CFR Parts 561 and 563) to permit insured institutions to issue subordinated debt securities, with the prior written approval of the Federal Savings and Loan Insurance Corporation. The said amendments to Parts 561 and 563 were published in the FEDERAL REGISTER on December 9, 1972 (37 FR 26315-17) and were effective on January 8, 1973. The Board now considers it desirable to further amend Parts 561 and 563 in order to clarify certain ambiguities and to resolve several problems which arose under the January 8, 1973 amendments.

The definition of "net worth" in § 561.13 has been amended to make clear that only subordinated debt securities issued pursuant to § 563.8-1 may be used to satisfy up to 20 percent of the annual closing net worth requirement of § 563.13(b). An insured institution may use subordinated debt securities issued pursuant to § 563.8-1 or otherwise with the specific prior written approval of the Corporation to satisfy any other net worth requirement to the extent the institution is explicitly authorized to do so in writing by the Corporation.

Section 563.7-2 has been amended to make clear that the Corporation thereby approves for insured institutions, pursuant to section 403(b) of the National Housing Act, as amended, each of the securities referred to in said § 563.7-2 as to form, return and maturity.

The Board has made several technical amendments to § 563.8, *Limitation on borrowing* in order to clarify that section. The substance of the section has not been changed.

Paragraph (a) of § 563.8-1 has been amended by deleting the second sentence thereof which had provided: "If the issuance of such securities is requested in writing by the Corporation, such issuance shall be effected in accordance with such request without regard to the eligibility requirements contained in paragraph (b) of this section." Waiver of the eligibility requirements for insured institutions issuing subordinated debt securities pursuant to §563.8-1 at the request of the Corporation will be considered on a case-by-case basis under paragraph (b) of § 563.8-1. As a result, the third sentence in such paragraph (a) has been amended by revising "In all other cases" to read "In each case".

Paragraph (a) of 563.8-1 has also been amended to make it clear that the prior written approval by the Corporation is also necessary for any amendment of the terms of the securities after issuance.

Paragraph (d) of § 563.8-1 has been amended in several respects. The reference to post-default interest in subdivision (ii) of subparagraph (1) thereof has been rearranged to make it clear that the payment of principal, interest and premium on subordinated debt securities is subordinated to post-default interest on savings accounts and other claims of the same or any higher priority. An additional part (*d*) has been added to subdivision (ii) of subparagraph (1) to make clear that each certificate evidencing subordinated debt issued by an insured institution pursuant to § 563.8-1 must state that such security will be offered and sold (including any resale) only in negotiated transactions and not by means of any form of general advertising.

Subdivision (iii) of subparagraph (1) presently provides that an insured institution must have the right to prepay its subordinated debt securities, That subdivision (iii) has been amended to make clear that this right to prepay shall not be subject to any premium or other prepayment penalty during the 15 months prior to the maturity date. Subdivision (iv) of subparagraph (1) has been amended to permit an insured institution to make required sinking fund payments and other prepayments or reserve allocations regardless of the effect of such payments on the institution's ability to meet its Federal insurance reserve or net worth requirements under § 563.13. (It should be noted, however, that subdivision (iv) continues to prohibit an insured institution from making accelerated payments of principal which would cause the institution to fail to meet its Federal insurance reserve or net worth requirements under § 563.13.)

Subparagraph (2) of paragraph (d) of § 563.8-1 has been amended to make clear that an insured institution may not

make a sinking fund or other prepayment or reserve allocation during the first 6 years that a subordinated debt security is outstanding in excess of the amount obtained by applying the formula set forth in that subparagraph. For example, an insured institution could not prepay more than one-seventh of a 7-year security per year. If it made no sinking fund or other prepayment or reserve allocations during the first year, the institution could, however, prepay up to two-sevenths during the second year.

Subparagraph (3)(i) of paragraph (d) of § 563.8–1 presently prohibits the sale or issuance of subordinated debt securities by means of a "public offering" as that term is used in section 4(2) of the Securities Act of 1933, as amended. That prohibition means that insured institutions must sell or issue such securities by means of a "private placement". The Board has determined that the general rules for effecting a "private placement" are unnecessarily restrictive and burdensome as applied to subordinated debt securities of insured institutions issued with the approval of the Corporation pursuant to § 563.8–1. Consequently, the Board has amended subparagraph (3) to set forth three specific limitations on the manner of offering and advertising such subordinated debt securities.

First, the securities must be sold only in a "negotiated transaction", which is defined to mean a transaction in which securities are offered and the terms and arrangements relating to any sale of the securities are arrived at through direct communication between the seller or its representative and the purchaser or its investment representative. Second, the securities cannot be offered or sold in conjunction with any form of general advertising. Third, the seller must require the purchaser of the securities to comply with the first two limitations in the event that the purchaser sells the securities.

Paragraph (g) of § 563.8–1, captioned "Disclosure and other requirements", has been amended to require insured institutions to make available upon request to purchasers of subordinated debt securities unaudited quarterly and audited annual statements of condition and operation. This amendment is in connection with the above-mentioned amendments to subparagraph (3) of paragraph (d) of § 563.8–1.

Paragraph (i) of § 563.8–1 has been amended to make clear that the required reports following the issuance of subordinated debt securities are to be transmitted to the Supervisory Agent within 30 days after such issuance.

Paragraphs (b), (c), (d)(4), (d)(5), (e), (f), (g), (h), and (i) of § 563.8–1 have been amended to add the words "pursuant to this section" or "issued pursuant to this section" in order to distinguish subordinated debt securities issued pursuant to § 563.8–1 from subordinated debt securities issued with the specific approval of the Corporation other than pursuant to § 563.8–1.

Since the above amendments relieve restriction and clarify, the Board hereby finds that notice and public procedure with respect to said amendments are unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b); and since publication of said amendments for the period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to the effective date of said amendments would in the opinion of the Board likewise be unnecessary for the same reason, the Board hereby adopts said amendments, all of which shall become effective on March 5, 1973.

1. Part 561 is amended by revising § 561.13 thereof, to read as follows:

§ 561.13 Net worth.

The term "net worth" means the sum of all reserve accounts (except specific or valuation reserves), retained earnings, capital stock, and any other nonwithdrawable accounts of an insured institution. For purposes of satisfying the annual closing net worth requirement of § 563.13(b) of this subchapter, there may be included as net worth, up to a limit of 20 percent of such net worth requirement, the principal amount of any subordinated debt securities (the amount of which shall be calculated as provided in § 563.8 of this subchapter) issued upon written approval by the Corporation of an application submitted pursuant to § 563.8–1 of this subchapter, as long as the remaining period to maturity (or time of any required sinking fund or other prepayment or reserve allocation, with respect to the amount of such prepayment or reserve) is not less than 1 year. For purposes of satisfying any net worth requirement of the Corporation other than the annual closing net worth requirement of § 563.13(b), there may be included as net worth, to the extent explicitly authorized in writing by the Corporation, the principal amount of any subordinated debt securities issued pursuant to § 563.8–1 or otherwise with the specific prior written approval of the Corporation.

2. Part 563 is amended by revising §§ 563.7–2, 563.8, and 563.8–1 thereof, to read as follows:

§ 563.7–2 Form, return, and maturity of securities.

Securities of any insured institution which are (a) in conformity with § 563.3–1, § 563.3–2, or § 563.8–1 or with § 545.24 of this chapter, (b) issued in connection with any borrowing which is in conformity with § 563.8, (c) issued in connection with any transaction which is not a borrowing or the issuance of a savings account and is not in nonconformity with the terms of any provision of this part which by its terms is applicable to such transaction, or (d) issued with specific prior approval of the Corporation are, as to form, return, and maturity (as referred to in those parts of the third sentence of subsection (b) of section 403 of the National Housing Act, as now or hereafter in effect, which refer to the form, return, and maturity of securities), hereby approved by the Corporation.

§ 563.8 Limitation upon borrowing.

No insured institution shall borrow in excess of the amount authorized by the law under which such insured institution operates. Within the foregoing limit, an insured institution may borrow an aggregate amount not exceeding one-half the amount paid in and credited on shares, share accounts, savings accounts, stock, certificates of deposit, and investment certificates; and, within such aggregate amount, may borrow an amount aggregating not more than one-fifth thereof from sources other than a Federal Home Loan Bank or a State-chartered central reserve institution; except that with prior approval of the Board, any such institution may borrow from a Federal Home Loan Bank or from any Federal agency or instrumentality without limitation upon such terms and conditions as may be required by such bank or agency. No action of an insured institution in obtaining funds through borrowing, in accordance with the provisions of this section, shall be deemed a violation hereof should its aggregate borrowings exceed the limitations of the next foregoing sentence because of a subsequent reduction in the amounts paid in and credited on shares, share accounts, savings accounts, stock, certificates of deposit, and investment certificates. For the purposes of this section, the issuance of subordinated debt securities by an insured institution shall be considered borrowing. For the purposes of this section, § 561.13 of this subchapter, and § 563.8–1, the amount of such subordinated debt securities shall be calculated as the difference between the face amount of such securities and the amount of any related sinking fund or specific reserve account.

§ 563.8–1 Issuance of subordinated debt securities.

(a) *General.* No insured institution shall issue subordinated debt securities pursuant to this section unless it has obtained the prior written approval of the Corporation. Such approval shall also be required for any amendment of the terms of such securities after issuance. In each case, an application for such approval must be submitted to the Corporation in accordance with the provisions of this section.

(b) *Eligibility requirements.* The Corporation will consider and process an application by an insured institution for approval of the issuance of subordinated debt securities pursuant to this section only if the applicant meets all of the following eligibility requirements, unless one or more of such requirements are waived by the Corporation upon specific request in the case of a particular application:

(1) The issuance of such securities by the applicant is authorized by applicable law and regulation and is not inconsistent with any provision of the applicant's charter, constitution, or bylaws;

(2) Applicant's net worth, without regard to the amount of any subordinated debt securities included or to be

included in such net worth, meets the requirements of § 563.13;

(3) Applicant's scheduled items do not exceed 2.5 percent of its specified assets;

(4) All appraised losses have been offset by specific loss reserves to the extent required by the Corporation under § 563.17–2;

(5) Applicant's income from operations before income taxes in its most recent fiscal year and in at least one of its two immediately preceding fiscal years (after distribution of earnings to the holders of savings accounts and payment of interest on, and amortization of, nonsubordinated debt) and its average of such income for such 3-year period is at least three times the annual amount required for interest, debt discount amortization (if any, and amortization of the related expenses of issuance on all outstanding and proposed subordinated debt securities (excluding any debt securities to be refunded out of the proceeds of the proposed subordinated debt securities); and

(6) The aggregate amount of all outstanding and proposed subordinated debt securities (excluding any debt securities to be refunded out of the proceeds of the proposed subordinated debt securities) does not exceed 50 percent of applicant's net worth, not including any such outstanding and proposed subordinated debt securities.

(c) *Application form; supporting information.* An application for approval of the issuance of subordinated debt securities by an insured institution pursuant to this section shall be in the form prescribed by the Corporation. Such application and instructions may be obtained from the Supervisory Agent. Information and exhibits shall be furnished in support of the application in accordance with such instructions, setting forth all of the terms and provisions relating to the proposed issue and showing that all of the requirements of this section have been or will be met.

(d) *Requirements as to securities*—(1) *Form of certificate.* Each certificate evidencing subordinated debt issued by an insured institution pursuant to this section shall—

(i) Bear on its face, in bold-face type, the following legend: "This security is not a savings account or deposit and it is not insured by the Federal Savings and Loan Insurance Corporation";

(ii) Clearly state that the security (*a*) is subordinated on liquidation, as to principal, interest, and premium, if any, to all claims (including post-default interest) against the institution having the same priority as savings account holders or any higher priority; (*b*) is unsecured; (*c*) is not eligible as collateral for any loan by the issuing institution; and (*d*) is to be offered and sold (including any resale) only in negotiated transactions and not by means of any form of general advertising.

(iii) State or refer to a document stating the terms under which the issuing institution may prepay the obligation, which shall include at least the right to prepay without premium or other penalty during the 15 months immediately prior to the maturity date;

(iv) State or refer to a document stating that no payment of principal shall be accelerated without the approval of the Corporation, if after giving effect to such payment the institution would fail to meet the net worth or Federal insurance reserve requirements of § 563.13; and

(v) Be in a minimum original amount of at least $50,000, except that upon partial prepayment a certificate for the amount then outstanding may be issued in substitution therefor.

(2) *Limitation as to term.* No subordinated debt security issued by an insured institution pursuant to this section shall have an original period to maturity of less than 7 years. During the first 6 years that such a security is outstanding, the total of all required sinking fund payments, other required prepayments and required reserve allocations with respect to the portion of such 6 years as have elapsed shall at no time exceed the original principal amount thereof multiplied by a fraction the numerator of which is the number of years which have elapsed since the issuance of the security and the denominator of which is the number of years covered by the original period to maturity.

(3) *Limitations on manner of offering and advertising.* The offer and sale (including any resale) of subordinated debt securities issued by an insured institution pursuant to this section shall be subject to all of the following limitations:

(i) The securities shall be offered and sold only in negotiated transactions. The term "negotiated transactions" shall mean transactions in which the securities are offered and the terms and arrangements relating to any sale of the securities are arrived at through direct communications between the seller or any person acting on its behalf and the purchaser or his investment representative. The term "investment representative" shall mean a professional investment adviser acting as agent for the purchaser and independent of the seller and not acting on behalf of the seller in connection with the transaction.

(ii) The securities shall not be offered or sold by means of any form of general advertising including, but not limited to, the following:

(*a*) Any advertisement, article, notice, or other communication published in any newspaper, magazine, or similar medium (other than a "tombstone" advertisement after the sale of the securities has been completed);

(*b*) Any radio or television broadcast;

(*c*) Any seminar or promotional meeting; and

(*d*) Any letter, circular, notice, or other written communication sent, given, or communicated to persons by a general mailing or otherwise than in connection with a negotiated transaction. The term "general mailing" shall mean a mailing of the same or substantially the same communication to more than 35 persons who prior to the mailing have not indicated an interest in purchasing the securities.

(iii) The insured institution upon issuance of the securities shall require that any resale of the securities shall be made in compliance with paragraph (d)(3) of this section. Upon any resale of the securities, no transfer shall be effected by the insured institution until the purchaser has supplied evidence of such compliance to such institution.

(4) *Limitations on sale to certain institutions.* No insured institution may sell any subordinated debt securities issued pursuant to this section to a Federal Home Loan Bank or, except with prior written approval of the Board in a supervisory situation, to the Corporation.

(5) *False or misleading statements.* No insured institution shall, directly or indirectly, in connection with the offer, sale, or issuance of any subordinated debt securities pursuant to this section, make any statement (i) that is false or misleading with respect to any material fact or (ii) that omits to state any material fact (*a*) necessary in order to make the statements made, in light of the circumstances in which they were made, not false or misleading or (*b*) necessary to correct any earlier statement that has subsequently become false or misleading.

(e) *Filing of application.* The application for approval of the issuance of subordinated debt securities pursuant to this section is filed with the Corporation by transmitting the original and three copies of the application and all supporting documents to the Supervisory Agent. As used in this section, the term "Supervisory Agent" means the President of the Federal Home Loan Bank of the district in which the applicant is located or any other officer or employee of such bank designated by the Board as agent of the Corporation, as provided by § 501.10 or § 501.11 of this chapter.

(f) *Supervisory objection.* No application for approval of the issuance of subordinated debt securities pursuant to this section shall be approved if, in the opinion of the Corporation, the policies, condition, or operation of the applicant afford a basis for supervisory objection to the application.

(g) *Disclosure and other requirements.* In approving an application for approval of the issuance of subordinated debt securities, pursuant to this section, the Corporation will require, as a condition to be met by the applicant prior to the issuance of such securities, such disclosure of information as it may deem necessary or desirable for the protection of the prospective purchasers of such securities. As a minimum, such disclosure shall include the applicant's latest audited annual statement of condition and audited statements of operations for each of its last 3 years. The applicant shall also make available promptly upon request to each purchaser of such securities (including purchasers upon resale) while the securities are outstanding audited annual statements of condition and operations and comparative unaudited quarterly statements of condition

and operations for the first three quarters. In addition, the Corporation may impose on the applicant such other requirements or conditions with regard to the securities or the issuance thereof as it may deem necessary or desirable for the protection of such purchasers, the applicant, or the Corporation.

(h) *Limitation on offering period.* Following the date of the approval of the application by the Corporation, the institution shall have an offering period of not more than 1 year in which to complete the sale of the subordinated debt securities issued pursuant to this section. The Corporation may in its discretion extend such offering period if a written request showing good cause for such extension is filed with it not later than 30 days before the expiration of such offering period or any previous extension thereof.

(i) *Reports.* Within 30 days after completion of the sale of the subordinated debt securities issued pursuant to this section, the institution shall transmit a written report to the Supervisory Agent stating the number of purchasers, the total dollar amount of securities sold, and the amount of net proceeds received by the institution.

(Secs. 402, 403, Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., 1071)

By the Federal Home Loan Bank Board.

[SEAL] JACK CARTER, *Secretary.*

[FR Doc.73-4266 Filed 3-5-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-791, Amdt. 20]

PART 221—CONSTRUCTION, PUBLICATION, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Information Required To Be Submitted With Tariff Publications

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 28th day of February 1973.

Notice of proposed rule making EDR-226,[1] the Board proposed to amend § 221.165 of the regulations by, among other things, rescinding in part the current exemption of air freight forwarders and international air freight forwarders from the requirement that air carriers submit to the Board with the filing of tariff publications containing tariff changes or new matter related to interstate or overseas air transportation (1) supporting economic data and information and (2) a table of comparisons of proposed rates with current rates. It was proposed to continue the exemption for those forwarders with annual revenues of less than $5,000,000. The other portions of the proposal, which affected direct air carriers as well as freight forwarders and other indirect air carriers, were adopted with minor modifications in ER-760.[2] However, the Board deferred that portion of the proposal dealing specifically with freight forwarders because it was a subject of considerable controversy and the comments thereon raised issues warranting further consideration.

Comments in response to the Notice were filed by the Air Freight Forwarders Association (AFFA); Asiatic Forwarders, Inc., Global Van Lines, Inc., Imperial Household Shipping Co., Inc., and Smyth Worldwide Movers, Inc., jointly (Asiatic, et al.); the Department of Defense (DOD); Emery Air Freight Corp. (Emery); the Flying Tiger Line Inc. (FTL); Jet Air Freight (JAF); Northwest Airlines, Inc. (Northwest; P-I-E Air Freight Forwarding, Inc. (P-I-E); Trans World Airlines, Inc. (TWA); United Air Lines, Inc. (United); and Wings and Wheels Express, Inc. (Wings).

Adoption of the proposed amendment is favored by DOD, FTL, Northwest, TWA, and United. P-I-E supports rescission of the forwarders' current exemption from the requirement of filing the information in question, and Asiatic, et al. take no position on this issue, but both of these comments state that if the amendment is adopted the Board should broaden the coverage of the continuing exemption for smaller forwarders. AFFA, Emery, JAF, and Wings oppose rescission of the exemption,[3] but urge that, if the exemption is rescinded, it should be rescinded for small as well as large forwarders. In addition, FTL would require the filing of economic justification by the smaller forwarders where a proposed tariff would apply to 20 percent or more of the traffic of the forwarder.

The opposition to the proposed amendment rests primarily upon the contention that the Board should not undertake to regulate freight forwarders' rates, since the vigorous and growing competition among forwarders is sufficient to insure that their rates will be just and reasonable, and it would be unfair for the Board to regulate these rates unless the Board is prepared to restrict entry into the forwarding industry. It is also argued that there are valid reasons, including differential pricing in various markets and differences in services offered by different forwarders, for the absence of a consistent relationship between airline rates and forwarder rates and for differences in level and structure among the various forwarders' rates; that forwarder rates on chartered aircraft are not a problem because the Board can control the airlines' charter tariffs; that the Board has overstated the proportion of forwarder participation in the cargo market, but the rule would be ill-advised even if forwarders achieved 100 percent of the market; that the rule would impose the burden of requiring economic research and forecasting to support tariff filings; and that a forwarder may not be able to provide economic justification for its many negotiated rates, although the growth of air freight by diverting surface freight should itself justify the rate sought.

After careful consideration of all comments and supporting materials the Board has decided to adopt the amendment to § 221.165 as proposed. As explained in the notice, this will rescind the exemption of the larger air freight forwarders and international freight forwarders from the requirement that they supply the information and data described in paragraphs (b) and (c) of § 221.165, but would continue the exemption for forwarders whose revenues were below $5 million a year. All forwarders will remain subject to the requirement of § 221.165(a) that they furnish with each tariff filing an explanation of the new or changed matter contained in the tariff publication and the reasons for the filing, including the basis of rate making employed.

Many of the arguments of those forwarders which oppose the rule appear to assume that forwarders are not now subject to regulation. The fact is, of course, that these indirect air carriers may operate only with the authorization of the Board, and that they are not exempt from rate regulation or the tariff requirements of the Act. The rule will not change the operations of the forwarders, but will merely require them to submit with their tariff filings the supporting information needed to facilitate economic analyses by shippers, by direct carriers, and by the Board, all of whom have an interest in the rates being proposed.

With the growth of air cargo generally and freight forwarder participation in particular,[4] it has become increasingly important that the means for intelligent assessment of rate changes be filed with tariff submissions. This is especially true with respect to the rates of the few larger forwarders which account for the largest share of forwarding revenue.[5] Competition among forwarders may not always provide a sufficient protection of shipper interests since many markets are served by only one forwarder and in other markets only one forwarder may offer a particular service desired. The lack of a consistent

[1] Dated April 20, 1972, Docket 24426, 37 FR 8093.

[2] These amendments of § 221.165 of the Economic Regulations, adopted Sept. 18, 1972, and appearing in 37 FR 19604, require that more complete information be submitted in support of tariff filings and that competing rates be specifically identified where relied upon as the basis for an exception from the requirement for furnishing supporting materials.

[3] Wings would make an exception to require supporting economic data and information where tariffs are filed in connection with forwarder rates related to charter operations.

[4] Whether the extent of forwarder participation is "only" a third of the market, as AFFA would have it, or is as much as 40 percent, as indicated by our review of available data, would not alter our conclusion that the shipping public is to a very substantial extent paying forwarder rates rather than direct air carrier rates.

[5] Seventeen forwarders with revenues of $5 million or more received 89 percent of the forwarding revenues in 1970, according to Asiatic, et al.

direct relationship between forwarder rates and the rates of the direct carriers also renders control over the latter an insufficient protection for persons using forwarder service. Even if the rates varied directly, the filing of supporting data would be needed in any event to verify those cases where a pass-through of a change in direct charges is used to justify a change in forwarder rates. Finally, the Board has experienced a number of complaints by competing direct and indirect carriers against forwarder tariffs, the processing of which has been hampered by the absence of adequate economic justification accompanying the tariff.

While some forwarders have alleged that the rule would impose an undue burden upon them, we cannot find that furnishing the data and information required to support tariff filings would result in any hardship for the larger forwarders. It would appear that the forwarders' own business interests would require them to perform the research and forecasting necessary to estimate the costs of service and the effect of new or changed rates upon their traffic and revenues, even if this information did not have to be supplied to the Board, and surely they would need at least a sample of the rates for the pairs of points between which new or changed tariff matter would apply. The extent to which a negotiated rate might not be economically justified would also appear to be a matter of concern to the forwarder, as well as other interested parties, although the rule does not purport to limit the reasons which may be adduced for a tariff filing, but only sets forth the information and data which are required to be supplied with the filings. It is true that preparing and assembling such material in the form set forth in the rule could require some additional paperwork, but it remains our belief that the benefits to be derived from the supporting data of the larger forwarders outweigh the burden on them of filing this information with the Board.

On the other hand, this additional overhead item assumes a greater importance for the numerous smaller operators, since the opportunities for spreading this administrative time and expense decrease with the size of the business. Further, the benefits to be derived from the imposition of the requirement are much narrower in the case of the smaller forwarders in view of the limited percentage of the service they provide: the businesses with annual forwarder revenues of less than $5 million which compromise over 90 percent of the forwarder companies account for but ten percent of forwarder revenues. For these reasons, the Board adheres to its tentative view, expressed in the notice, that the requirement to furnish economic data and rate comparisons should be limited to those larger forwarders with annual revenues from forwarder operations of $5 million or more. In our judgment, the $5 million figure represents an appropriate cut-off point which balances the benefits of reasonably broad coverage of forwarder traffic against the burden of filing.

We believe that the benefit-burden criteria should be controlling at this time and so will not now adopt Tiger's suggestion to extend § 221.165 (b) and (c) to a forwarder's tariff which applies to 20 percent of its volume, even if annual gross revenues are under $5 million. By the same token, using payments to direct carriers as a measure of forwarder size would relate the exclusion less closely to ability to absorb the burden and, according to its proponent, Asiatic et al., would reduce the number of reporting forwarders from 17 to 11, while P-I-E's suggested cut-off of $30 million in revenues would leave only two forwarders subject to the rule. Asiatic's alternative suggestion of excluding revenues from shipments transported for the military or on government bills of lading would make coverage of the rule depend on the identity of the user of the service, rather than on any burden on the forwarder, and must also be rejected.[6]

AFFA has also contended that forwarder rate standards and guidelines would have to be established before the proposed rule is adopted, and that an evidentiary proceeding to determine the proper role of freight forwarders would also have to precede adoption of the rule. However, the scope of this rule making proceeding is confined to the question whether forwarders should be required to furnish certain material of a nature now filed by other carriers with their tariffs. It would be premature to formulate detailed, precise standards for forwarders while standards which may be used for evaluating tariff filings by direct carriers are in issue in the "Domestic Air Freight Rate Investigation," Docket 22859, yet there is no reason for interested persons and the Board to be deprived of factual information relating to forwarder tariffs pending the further development of standards. Further, the minimal burden the rule would impose on those forwarders which will be charged with supplying that information is hardly a reason for embarking upon an enquiry into the role of forwarders, as proposed by AFFA.

In consideration of the foregoing and of the reasons adduced in the Notice, the Board hereby amends Part 221 of the Economic Regulations (14 CFR Part 221), effective April 5, 1973, by amending § 221.165(d)(1)(iii) to read as follows:

[6] As Asiatic et al. contend, where military aircraft or direct air carriers paid directly by MAC are used as the underlying carriers, the revenues are not considered forwarder revenues. However, where forwarder operations, such as break-bulk or consolidation services, are performed or provided for, and the indirect carrier is responsible for transportation services, the revenues are forwarder revenues even if a government bill of lading is used. We also note that DOD has supported the requirement for justification of forwarder rates and suggested no exceptions.

§ 221.165 Explanation and data supporting tariff changes and new matter in tariff publications.

* * * * *

(d) * * *

(1) * * *

(iii) By air freight forwarders or international air freight forwarders, as defined in Parts 296 and 297 of this subchapter, whose revenues from forwarder operations during their most recent fiscal year prior to the filing of the tariff publication were less than $5,000,000, or

* * * * *

(Secs. 204(a), 403, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758; 49 U.S.C. 1324, 1373)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.73-4252 Filed 3-5-73;8:45 am]

SUBCHAPTER E—ORGANIZATION REGULATIONS

[Reg. OR-69, Amdt. 30]

PART 385—DELEGATIONS AND REVIEW OF ACTION UNDER DELEGATION; NONHEARING

Delegation of Authority to Director, Bureau of Operating Rights, To Reject or Accept Travel Group Charter Filings

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 28th day of February 1973.

Section 372a.22(a) of the Board's Travel Group Charter (TGC) rule (14 CFR 372a.22(a)) provides that the charter organizer and the direct air carrier shall jointly file with the Board's Supplementary Services Division, Bureau of Operating Rights, a TGC option and certain other documents and to wait 15 days after such filing before selling or offering to sell the charter. That section further provides that, if during such 15-day period the charter organizer is notified that the Board has rejected such filing for noncompliance with the part (part 372a) then the may not market the TGC until he has subsequently been notified by the Board that the filing has been accepted. Since the TGC rule was adopted, the Director, Bureau of Operating Rights, has been performing these Board functions, as we intended, but we have not heretofore formally delegated to him the requisite authority. The within amendment to Part 385 of our Organization Regulations reflects our formalization of this delegation of authority.

Since the amendment being adopted herein is a rule of agency organization, the Board finds that notice and public procedure are not required, and the rule may be made effective immediately.

In consideration of the foregoing, the Board hereby amends § 385.13 of the Organization Regulations (14 CFR Part 385), effective February 28, 1973, by adding a new paragraph (ff), the section as amended to read in part as follows:

§ 385.13 Delegation to the Director, Bureau of Operating Rights.

* * * * *

(ff) Reject or accept travel group charterfilings made pursuant to § 372.22(a) of Part 372a of this chapter.

(Sec. 204(a), Federal Aviation Act of 1958, as amended, 72 Stat. 743; 40 U.S.C. 1324. Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989; 40 U.S.C. 1324 (note))

By the Civil Aeronautics Board.

HARRY J. ZINK,
Secretary.

[FR Doc.73-4253 Filed 3-5-73;8:45 am]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. C-2347]

PART 13—PROHIBITED TRADE PRACTICES

Davis Carpet Mills, Inc. et al.

Subpart—Importing, manufacturing, selling, or transporting flammable wear: § 13.1060 *Importing, manufacturing, selling, or transporting flammable wear.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 67 Stat. 111, as amended; 15 U.S.C. 45, 1191) [Cease and desist order, Davis Carpet Mills, Inc. et al., Ellijay, Ga., Docket No. C-2347, Jan. 30, 1973]

In the Matter of Davis Carpet Mills, Inc., a Corporation, Davis Tile Co., Inc., a Corporation, and Ralph T. Davis, Individually and as an Officer of the Said Corporations

Consent order requiring an Ellijay, Ga., seller and manufacturer of carpets and rugs, among other things to cease manufacturing for sale, selling, importing, or distributing any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Davis Tile Co., Inc., a corporation, its successors and assigns, and its officers, Davis Carpet Mills, Inc., a corporation, its successors and assigns, and its officers, and respondent Ralph T. Davis, individually and as an officer of said corporations and respondents' agents, representatives, and employees directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material; or manufacturing for sale, selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce, as "commerce", "product", fabric", and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint, of the flammable nature of said products and effect the recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the provisions of this order with respect to customer notification, recall and processing or destruction shall be applicable to your products made in style "Princess" carpet tiles in colors "Lilac Pink" and "Orange Flame" as designated in subparagraph 1 of paragraph 2 of the complaint giving rise to this order and any subsequent products made in any style or any color, and determined to be in violation of the Flammable Fabrics Act, as amended, prior to the date of acceptance by the Commission, of the final compliance report.

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning: (1) The identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (5) any disposition of said products since March 7, 1972, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Respondents will submit with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing, a sample of any such carpet or rug.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or successor corporations, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall incude respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: January 30, 1973.

By the Commission.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.73-4222 Filed 3-5-73;8:45 am]

[Docket No. C-2350]

PART 13—PROHIBITED TRADE PRACTICES

J. C. Penney Company, Inc.

Subpart—Advertising falsely or misleadingly: § 13.170 *Qualities or properties of product or service:* 13.170-40 Fire-extinguishing or fire-resistant. Subpart—Misrepresenting oneself and goods—Goods: § 13.1710 *Qualities or properties.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, J. C. Penney Company, Inc., New York, N.Y., Docket No. C-2359, Feb. 2, 1973]

In the Matter of J. C. Penney Company, Inc., a Corporation

Consent order requiring the nation's second largest retailing organization located in New York City, among other things to cease representing that certain of their merchandise, including mattress pads and covers, sheets, pillow cases, and protectors, are flame-retardant or have been treated with a flame retardant finish.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondent J. C. Penney Company, Inc., a corporation, its successors and assigns and respondent's officers, agents, representatives and employees directly or through any corporation, subsidiary, division, or other device in connection with the advertising, offering for sale, sale and distribution of mattress pads, mattress covers, sheets, pillow cases, and pillow protectors, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or indirectly that said products are flame retardant, or have been treated with a flame retardant finish, and from utilizing any words or depictions of similar import or meaning in connection therewith, unless all uncovered or exposed parts (except sewing threads) will retard and resist flame,

flare, and smouldering, or have been treated with a finish which will retard and resist flame, flare, and smouldering.

It is further ordered, That in all instances where respondent represents said products to be flame retardant or treated with a flame retardant finish, that warnings be provided in or on the packaging in immediate conjunction with said representations and in type or lettering of equal size and conspicuousness, and on a label affixed to the products securely and with sufficient permanency to remain in a conspicuous, clear, and plainly legible condition, of any danger from flammability which may result if these products be dry cleaned or washed by other than the recommended means or in excess of a stated number of times.

It is further ordered, That respondent make every reasonable effort to immediately notify in writing all of its customers who have purchased or to whom have been delivered the mattress pad which gave rise to this complaint to alert them to the fact that the top, bottom, and skirt portions of such pad had been treated with a flame retardant chemical, but that the binding tape portion, which joins the top of the pad to the skirt portion, may have not in some cases have been so treated; therefore, purchasers should not expect complete protection against all types of flames.

It is further ordered, That respondent notify the Commission at least 30 days prior to any proposed changes in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other changes in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all personnel of respondent responsible for the preparation, creation, production, or publication of advertising, packaging, or labeling of all products covered by this order.

It is further ordered, That respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Issued: February 2, 1973.

By the Commission.

[SEAL] VIRGINIA M. HARDING,
Acting Secretary.

[FR Doc.73-4225 Filed 3-5-73;8:45 am]

[Docket No. C-2348]

PART 13—PROHIBITED TRADE PRACTICES

K & J Carpets et al.

Subpart—Importing, manufacturing, selling, or transporting flammable wear, § 13.1060 Importing, manufacturing, selling, or transporting flammable wear.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 67 Stat. 111, as amended; 15 U.S.C. 45, 1191) [Cease and desist order, K & J Carpets et al., Dalton, Ga., Docket No. C-2348, Jan. 30, 1973]

In the Matter of K & J Carpets, a Partnership, and James A. Kittle and Dennis L. Jackson, Individually and as Copartners Trading as K & J Carpets

Consent order requiring a Dalton, Ga., manufacturer and seller of carpets and rugs, among other things to cease manufacturing for sale, selling, importing, or distributing any product, fabric, or related material which fails to conform to an applicable standard of flammability or regulation issued under the provisions of the Flammable Fabrics Act, as amended.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents K & J Carpets, a partnership, and James A Kittle and Dennis L. Jackson, individually and as copartners trading and doing business as K & J Carpets, or under any other name or names, their successors and assigns, and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from manufacturing for sale, selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or manufacturing for sale, selling, or offering for sale, any product made of fabric, or related material which has been shipped or received in commerce as "commerce," "product," "fabric," and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric, or related material fails to conform to an applicable standard or regulation continued in effect, issued, or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint, of the flammable nature of said products and effect the recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the identity of the purchasers of said products, (3) the amount of said products on hand and in the channels of commerce, (4) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and the results thereof, (5) any disposition of said products since August 31, 1972, and (6) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or to destroy said products, and the results of such action. Respondents will submit, with their report, a complete description of each style of carpet or rug currently in inventory or production. Upon request, respondents will forward to the Commission for testing a sample of any such carpet or rug.

It is further ordered, That the individual respondents named herein promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new business or employment. Such notice shall include individual respondents' current business or employment in which they are engaged as well as a description of their duties and responsibilities.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: January 30, 1973.

By the Commission.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.73-4224 Filed 3-5-73;8:45 am]

[Docket No. C-2349]

PART 13—PROHIBITED TRADE PRACTICES

Michael Yaccarino and Reno's Auto Sales

Subpart—Advertising falsely or misleadingly: § 13.73 *Formal regulatory and statutory requirements:* 13.73–92 Truth in Lending Act; § 13.155 *Prices:* 13.155–95 Terms and conditions; 13.155–95(a) Truth in Lending Act. Subpart—Misrepresenting oneself and goods—Goods: § 13.1623 *Formal regulatory and statutory requirements:* 13.1623–95 Truth in Lending Act;—Prices: § 13.1823 *Terms and conditions;* 13.1823–20 Truth in Lending Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements;* 13.1852–75 Truth in Lending Act; § 13.1905 *Terms and conditions;* 13.1905–50 Sales contract; 13.1905–60 Truth in Lending Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 82 Stat. 146, 147; 15 U.S.C. 45, 1601–1605) [Cease and desist order, Michael Yaccarino t/a Reno's Auto Sales, Neptune, N.J., Docket No. C-2349, Feb. 1, 1973]

In the Matter of Michael Yaccarino, an Individual Doing Business as Reno's Auto Sales

Consent order requiring a Neptune, N.J., seller and distributor of used automobiles, among other things to cease violating the Truth in Lending Act by failing to disclose to consumers, in connection with the extension of consumer credit, such information as required by Regulation Z of the said Act. Respondent is further required to provide his customers who speak and read only Spanish with contracts and credit cost disclosures printed in Spanish.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

I. *It is ordered,* That respondent Michael Yaccarino, an individual doing business as Reno's Auto Sales, and respondent's agents, representatives, employees, successors, and assigns, directly or through any corporate or other device or under any other name in connection with any consumer credit sale, as "consumer credit" and "credit sale" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 et seq.) do forthwith cease and desist from:

1. Failing to use the term "cash downpayment" to describe the downpayment in money made in connection with the credit sale, as required by § 226.8(c)(2) of Regulation Z.

2. Failing to use the term "unpaid balance of cash price" to describe the difference between the cash price and the total downpayment as required by § 226.8(c)(3) of Regulation Z.

3. Failing to use the term "amount financed" to describe the amount of credit extended as required by § 226.8(c)(7) of Regulation Z.

4. Failing in some instances to use the term "finance charge" to describe the sum of all charges required by § 226.4 of Regulation Z to be included therein, as required by § 226.8(c)(8)(i) of Regulation Z.

5. Failing to disclose the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and failing in some instances to describe that sum as the "deferred payment price," as required by § 226.8(c)(8)(ii) of Regulation Z.

6. Failing in some instances to use the term "annual percentage rate" to express the rate of finance charge as required by § 226.8(b)(2) of Regulation Z.

7. Failing to disclose the annual percentage rate computed in accordance with § 226.8(b)(2) of Regulation Z.

8. Failing to use the term "total of payments" to describe the sum of the payments scheduled to repay the indebtedness as required by § 226.8(b)(3) of Regulation Z.

9. Failing to identify the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation, as required by § 226.8(b)(7) of Regulation Z.

10. Failing to make full disclosure before the transaction is consummated and to furnish the customers with a duplicate of the instrument or a statement by which the required disclosures are made, as required by § 226.8(a) of Regulation Z.

11. Failing to print the term "finance charge" more conspicuously than other terminology where such term is required to be used, as required by § 226.6(a) of Regulation Z.

12. Failing to: (a) Obtain a specific dated and separately signed affirmative written indication of the customer's desire for credit life insurance to be written in connection with its credit sale, and (b) disclose the cost of such insurance to the customer in the insurance authorization signed by the customer, as required by § 226.4(a)(5) of Regulation Z.

13. Failing to furnish a clear, conspicuous, and specific statement in writing setting forth: (a) The cost of insurance against loss or damage to the property purchased which is written in connection with the credit transaction, and (b) the privilege of the customer to choose the person through whom the insurance is to be obtained, as required by § 226.4(a)(6) of Regulation Z.

14. Failing to properly identify the creditor as required by § 226.8(a) of Regulation Z.

15. Failing to comply with § 226.6(k) of Regulation Z by continuing to use printed retail in stallment contract forms subsequent to December 31, 1969, which did not conform to the specific disclosure requirements of Regulation Z.

16. Failing, in any consumer credit transaction or advertisement, to make all disclosures determined in accordance with §§ 226.4 and 226.5 of Regulation Z, in the manner, form, and amount required by §§ 226.6, 226.7, 226.8, 226.9, and 226.10 of Regulation Z.

It is further ordered, That respondent prominently displayed no less than two signs on the premises which will clearly and conspicuously state that a customer must receive a complete copy of the consumer credit cost disclosures, as required by the Truth In Lending Act, in any transaction consummated.

ORDER

II. *It is further ordered,* That respondent, Michael Yaccarino, an individual doing business as Reno's Auto Sales, and respondent's agents, representatives and employees, and their successors and assigns, directly or through any corporate or other device or under any other name or names, in connection with the advertising, offering for sale, sale and distribution of used automobiles in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to provide customers who speak and read only Spanish with contracts and credit cost disclosures printed in Spanish.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondent secures a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the individual respondent named herein promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. Such notice shall include respondent's current business or employment in which he is engaged as well as a description of his duties and responsibilities.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which he has complied with this order.

Issued: February 1, 1973.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.73-4223 Filed 3-5-73;8:45 am]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-5373, 34-10006, 35-17882, 40-7673, AS-141]

PART 210—FORM AND CONTENT OF FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, AND INVESTMENT COMPANY ACT OF 1940

Interpretations and Minor Amendments Applicable to Certain Revisions of Regulation S-X

The Commission adopted amendments to Regulation S-X (17 CFR Part 210) in Accounting Series Release Nos. 125 (June 23, 1972) (37 FR 14591) and 128 (September 20, 1972) (37 FR 20235) in which various sections of the regulation were extensively revised. The amendments were made effective with respect to financial statements for periods ending on or after December 31, 1972.[1]

Subsequent to the issuance of the releases a number of inquiries have been received by the staff regarding the meaning or interpretation of new terms, instructions or rules in the revised

[1] The effective date of the requirement for compensating balance disclosure was deferred to cover periods beginning on or after Dec. 30, 1972 (Accounting Series Release No. 136) (38 FR 1733).

regulations. Interpretations of such items on the basis of the questions raised are given in Part A of this release. In Part B, a number of minor amendments have been adopted to correct errors of a typographical or editorial nature which have been noted or to clarify certain items.

PART A—INTERPRETATIONS

General. Financial statements, notes and schedules filed for fiscal periods ending before December 31, 1972, the effective date specified in Accounting Series Release Nos. 125 and 128, need not, but may if a registrant prefers, be conformed to the amendments to Regulation S-X adopted in those releases.

In instances where, because of the new test for a significant subsidiary, the separate financial statements of additional subsidiaries are required in filings which had not been required in prior filings on the basis of the old tests of significance, the requirements in the filing forms for audited financial statements of such subsidiaries for earlier periods will be applicable. However, a request for waiver of the audit requirement for the financial statements for the earlier periods will be considered if such requirement is impracticable or would cause undue hardship.

Section 210.1-02.—Definitions of terms used in regulation S-X. In making the tests for significance called for in the definition of "significant subsidiary" in this rule the proportionate share of the assets or sales of the subsidiary after intercompany eliminations would be compared to the consolidated assets or sales after normal intercompany eliminations but without elimination of the investments and advances to subsidiaries and 50 percent or less owned persons. With respect to application of the test to unconsolidated subsidiaries or other persons who also have equity interests in other subsidiaries or other persons, the proportionate share of the assets (in lieu of the investment and advances) or of sales of such other subsidiary or other persons should not be added to the assets or sales of the unconsolidated subsidiary or 50 percent or less owned person for the purpose of this test.

Section 210.3-16(i).—Commitments and contingent liabilities. The disclosure regarding noncancelable leases specified in part (2) of this rule may be limited to such leases which have a noncancelable term of 1 year or longer.

Section 210.3-16 (j) and (n). The term "key employees" used in those rules is interpreted in the sense of "selected employees" or the employees to which a bonus plan or plan for the sale of stock is applicable when such plan is not available to all employees on a pro rata basis.

Section 210.3-16(o).—Income tax expense. With regard to the separate disclosure of other income taxes specified in this rule, state and foreign income taxes should be reported separately if either item amounts to 5 percent of the component.

Section 210.4-03.—Group financial statements of subsidiaries not consolidated and 50 percent or less owned persons. Under this rule, significant majority-owned unconsolidated subsidiaries may not be combined with 50 percent or less owned persons and significant 50 percent or less owned persons may not be combined with majority-owned unconsolidated subsidiaries. However, if all such persons are not significant individually or as a group, they may be combined in one statement.

Section 210.4-07.—Consolidation of financial statements of a registrant and its subsidiaries engaged in diverse financial activities. With regard to the separate audited financial statements for each significant financial subsidiary or each significant group of financial subsidiaries required under part (a) of this rule, different types of insurance companies (e.g., life; fire, and casualty) may not be considered together as one group of financial subsidiaries.

With regard to whether specific subsidiaries are financial or nonfinancial activities for purposes of part (b) of this rule, the circumstances in each case would have to be considered. For example, it is considered that a leasing subsidiary with both financing and nonfinancing types of leases is a financial activity; an investment banking subsidiary or a broker-dealer subsidiary is a financial activity; and a real estate subsidiary whose primary business is holding mortgage loans would be considered a financial activity, while such subsidiary whose primary business is constructing homes or developing land would be a nonfinancial activity. Other examples of nonfinancial activities are subsidiaries which sell mutual fund securities or are advisers to mutual funds or to real estate companies which are not related to the parent or its subsidiaries.

In the determination of whether an activity is principally for the benefit of the operations of the major group as specified in part (b) of this rule, if 50 percent or more of the activity benefits or supports the major group all of the activity would be so classified.

Section 210.5-02-6.—Inventories. In the determination of replacement or current cost for the purpose of disclosing the excess of that amount over the stated LIFO value, any inventory method may be used (such as FIFO or average cost) which derives a figure approximately current cost.

Section 210.5-02-39—Other stockholders' equity. In providing the disclosure regarding the undistributed earnings of unconsolidated subsidiaries and 50 percent or less owned persons as specified in part (b) of this rule, the amount to be disclosed would be the difference between the cumulative equity in earnings of the unconsolidated persons reflected in consolidated retained earnings and the cumulative dividends received from such persons by the consolidated group. Dividends paid to shareholders of the consolidated group should not be considered in the calculation since they are not relevant to the undistributed earnings of such persons.

Section 210.9-05—Financial statements and schedules of banks.—When Schedule VIII, specified in part (b) (4) of this rule, is filed with the consolidated financial statements of a registrant bank holding company, the directors, officers, and principal holders of equity securities of the registrant and its affiliates shall be considered as persons in those relationships with the registrant bank holding company and each bank and other affiliate, and the amounts to be reported shall be aggregate indebtedness of each of those persons to all companies in the consolidated group. Write-offs of any such indebtedness during the period being reported on shall be separately disclosed. Information need not be reported concerning indebtedness to the consolidated group from an otherwise unaffiliated person in which one or more of the persons in the categories specified above are directors, officers or principal holders of equity securities of the otherwise unaffiliated persons or its affiliates.

In connection with unconsolidated financial statements of a parent bank holding company, the schedule requirements of Rule 5-04 (17 CFR 210.5-04) are applicable and the schedule prescribed by Rule 12 03 (17 CFR 210.12-03) shall be filed.

Section 210.12-16—Supplementary income statement information. The totals shown in this schedule should be the amounts described by each caption which are included in the income statement for the period covered.

The rents applicable to leased personal property to be included under Item 5 of Rule 12-16 (17 CFR 210.12-16), in accordance with Instruction 4, would be rents for personal property which is used for an extended period of time (generally more than 1 year) and which the company elects to rent or lease rather than to buy such as postage meters, computers, and trucks. The expected period of use of the asset rather than the legal term of the lease should govern. Temporary rentals such as a daily car rental or the rental of display space at a convention would be excluded.

Instruction 5 explaining "Advertising Costs" calls for the inclusion of "all costs related to advertising the company's name, products, or services in newspapers, periodicals, or other advertising media." Such costs would include the indirect costs expended in support of advertising such as the cost of an advertising department, a market research group which specializes in evaluation of advertising and promotional efforts (but not all market research), a media buying department, or a graphic arts department that specializes in the preparation of advertising copy, as well as the direct costs of advertising space. In addition, the cost of "other advertising media" would generally include expenditures for preparing and mailing sales brochures and direct mail advertising materials. In cases where a company or division is primarily in the mail-order business, however, the costs of preparing a catalog would be a selling cost similar to that of a salesman in most industrial concerns,

and such catalog costs should not be included in "advertising costs." The cost of employing salesmen, preparing product display signs, printing price list, and standard product catalogs, and reports to stockholders should also not be considered advertising costs for purposes of this rule.

It is recognized that the distinction between advertising costs and other selling expenses is frequently not clear cut. Where the guidance set forth herein is not sufficient to enable the registrant to determine the appropriateness of including or excluding certain classifications of significant costs, disclosure of the type of costs included or excluded from the caption will be a satisfactory solution.

Under Item 8, research and development costs, all costs charged to expense as incurred in the current period for the benefit of the company in these account classifications should be reported. These would include company sponsored projects of pure and practical research as well as the development of new products or services or new or better production machinery and equipment and for the improvement of existing products and services. The amortization of deferred research and development costs should not be included herein since this amount is described in Item 3 of the schedule.

PART B—CORRECTIONS, CLARIFICATIONS, AND EDITORIAL CHANGES

Commission action. The Commission hereby amends the following sections of Part 210 of Chapter II of Title 17 of the Code of Federal Regulations, and, as so amended, they shall read as shown in the attached text of the amendments.

The amendments to Regulation S–X are adopted pursuant to authority conferred on the Securities and Exchange Commission by the Securities Act of 1933, particularly sections 6, 7, 8, 10, and 19(a) thereof; the Securities Exchange Act of 1934, particularly sections 12, 13, 15(d), and 23(a) thereof; the Public Utility Holding Company Act of 1935, particularly sections 5(b), 14, and 20(a) thereof; and the Investment Company Act of 1940, particularly sections 8, 30, 31(c), and 38(a) thereof.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85, secs. 205, 209, 48 Stat. 906, 908, sec. 8, 68 Stat. 685, 15 U.S.C. 77f, 77g, 77h, 77j, 77s; secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901, secs. 3, 8, 49 Stat. 1377, 1379, secs. 3, 4, 6, 10, 78 Stat. 565, 569, 570, 580, secs. 1, 2, 84 Stat. 1497, 15 U.S.C. 78l, 78m, 78o(d), 78w; secs. 5(b), 14, 20(a), 49 Stat. 812, 827, 833, 15 U.S.C. 79e, 79n, 79t; secs. 8, 30, 31(c), 38(a), 54 Stat. 803, 836, 838, 841, sec. 3(c), 84 Stat. 1415, 15 U.S.C. 80a–8, 80a–29, 80a–30(c), 80a–37(a))

The text of the amendments is attached to this release.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

FEBRUARY 15, 1973.

AMENDMENTS OF REGULATION S–X [PART 210 OF THIS CHAPTER]

1. Section 210.1–02(g)(2) is amended to read as follows:

§ 210.1–02 Definitions of terms used in Regulation S–X (Part 210 of this chapter).

* * * * *

(q) *Promoter.* The term "promoter" includes—

* * * * *

(2) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

* * * * *

2. Sections 210.3–15 is amended to read as follows:

§ 210.3–15 Discount on capital shares.

Discount on capital shares, or any unamortized balance thereof, shall be shown separately as a deduction from capital shares or from other stockholders' equity as circumstances require.

3. Paragraph 23 of § 210.5–02 is amended to read as follows:

§ 210.5–02 Balance sheets.

* * * * *

23. Deferred commissions and expense on capital shares. State, in a note referred to herein, the policy for deferral and amortization. These items may be shown as deductions from other stockholders' equity.

* * * * *

4. Paragraph (a)(1) and Schedule X of § 210.5–04 are amended to read as follows:

§ 210.5–04 What schedules are to be filed.

(a) * * *

(1) The schedules specified below in this section as Schedules I, IX, XI, XIII, XIV, XV, XVII, XVIII, and XIX shall be filed as of the dates of the most recent audited balance sheet and any subsequent unaudited balance sheet being filed for each person or group: *Provided,* That any such schedule (other than Schedules I, XIII, XVII, XVIII, and XIX) may be omitted if both of the following conditions exist:

* * * * *

Schedule X—Indebtedness to affiliates and other persons; not current. The schedule prescribed by § 210.12–11 shall be filed in support of Caption 31 of each balance sheet; however, the required information may be presented separately on Schedule III or Schedule IV. This schedule may be omitted if: (1) Neither the sum of Captions 10 and 11 in the related balance sheet nor the amount of Caption 31 in such balance sheet exceeds 5 percent of total assets as shown by the related balance sheet at either the beginning or end of the period, or (2) there have been no material changes in the information required to be filed from that last previously reported.

* * * * *

5. Paragraph (b)(4) of § 210.9–05 is amended to read as follows:

§ 210.9–05 Financial statements and schedules of banks.

* * * * *

(b) * * *

(4) *Schedule VIII.* Amounts receivable from directors, officers, and principal holders (other than affiliates) of equity securities of the person and its affiliates. A schedule in the format prescribed by § 210.12–03 shall be filed showing the aggregate amounts of indebtedness of more than $20,000 or 1 percent of total assets, whichever is less, of each director, officer, or principal holder (other than affiliates) of equity securities of the person and its affiliates that are receivable or were receivable at any time during the period for which related income statements are required to be filed. It shall not be necessary to disclose a loan or extension of credit to any person made in the ordinary course of business that (i) was made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons, and (ii) did not involve more than normal risk of collectibility or present other unfavorable features. Notwithstanding the foregoing, disclosure shall be made if at any time during the period for which related income statements are required to be filed there existed—

* * * * *

6. Sections 210.12–02, 210.12–04, 210.12–06, 210.12–16, 210.12–42, and 210.12–43 are revised to read as follows.

§ 210.12–02 Marketable securities—other security investments.

Column A	Column B	Column C	Column D[3]
Name of issuer and title of each issue.[1]	Number of shares or units—principal amount of bonds and notes.	Amount at which shown in the balance sheet.[2]	Value based on market quotations at balance sheet date.

[1] (a) Each issue shall be stated separately, except that reasonable groupings, without enumeration, may be made of (1) securities issued or guaranteed by municipalities, states, the U.S. Government or agencies thereof and (2) securities issued by others for which the amounts shown in column C in the aggregate are not more than 2 percent of total assets.

(b) In the case of bank holding companies group separately (1) securities of banks and (2) other securities, and in column C show totals for each group.

[2] State the basis of determining the amounts in column C. Column C shall be totaled to correspond to the respective balance sheet captions.

[3] This column may be omitted if all amounts that would be shown are the same as those shown in column C.

§ 210.12–04 Investments in, equity in earnings of, and dividends received from affiliates and other persons.

Column A	Column B		Column C		Column D		Column E		Column F
	Balance at beginning of period		Additions		Deductions		Balance at end of period		
	(1)	(2)	(1)	(2)	(1)	(2)	(1)	(2)	
Name of issuer and description of investment [1]	Number of shares or units [2] Principal amount of bonds and notes	Amount in dollars.	Equity taken up in earnings (losses) of affiliates and other persons for the period [3]	Other [4]	Distribution of earnings by persons in which earnings (losses) were taken up [5]	Other [6]	Number of shares or units.[2] Principal amount of bonds and notes	Amount in dollars [7]	Dividends received during the period from investments not accounted for by the equity method. [8]

[1] (a) Group separately securities of (1) subsidiaries consolidated, (2) subsidiaries not consolidated, (3) other affiliates, and (4) other persons, the investments in which are accounted for by the equity method, showing shares and bonds separately in each case. Investments in individual affiliates which, when considered with related advances, exceed 2 percent of total assets shall be stated separately. Dividends from (1) marketable securities and (2) other security investments shall also be included and may be shown in separate aggregate amounts.

(b) Those foreign investments, the enumeration of which would be detrimental to the registrant, may be grouped.

[2] Disclose, in the column or in a note hereto, the percentage of ownership interest represented by the shares or units, if material.

[3] The total of column C(1) shall be reconciled with the amount of the related income statement caption.

[4] Briefly describe each item in column C(2); if the cost thereof represents other than a cash expenditure, explain. If acquired from an affiliate (and not an original issue of that affiliate) at other than cost to the affiliate, show such cost, provided the acquisition by the affiliate was within 2 years prior to the acquisition by the person for which the statement is filed.

[5] As to any dividends other than cash, state the basis on which they have been taken up in the accounts, and the justification for such action. If any such dividends received from affiliates have been credited in the accounts in an amount differing from that charged to retained earnings by the disbursing company, state the amount of such difference and explain.

[6] Briefly describe each item in column D(2) and state; (a) Cost of items sold and how determined; (b) amount received (if other than cash, explain); and (c) disposition of resulting profit or loss.

[7] The total (or a sub-total) of column E(2) shall be reconciled with the amount reported under caption 10 of the related balance sheet.

§ 210.12–06 Property, plant and equipment.[1]

Column A	Column B	Column C	Column D	Column E	Column F
Classification [2]	Balance at beginning of period [3]	Additions at cost [4]	Retirements [5]	Other changes—add (deduct)—describe [6]	Balance at end of period

[1] Comment briefly on any significant and unusual additions, abandonments, of retirements, or any significant and unusual changes in the general character and location, of principal plants and other important units, which may have occurred within the period.

[2] (a) Show by major classifications, such as land, buildings, machinery, and equipment, leaseholds, or functional grouping. If such classification is not present or practicable, this may be stated in one amount. The additions included in column C shall, however, be segregated in accordance with an appropriate classification. If property, plant and equipment abandoned is carried at other than a nominal amount indicate, if practicable, the amount thereof and state the reasons for such treatment. Items of minor importance may be included under a miscellaneous caption.

(b) *Public utility companies.* A public utility company shall, to the extent practicable, classify utility plant by the type of service rendered (such as electric, gas, transportation and water) and shall state separately under each of such service classifications the major subclassifications of utility plant accounts.

(c) *Mining companies using §§ 210.5a–01 to 210.5a–07.* Such mining companies shall include herein only depreciable mine property, plant and equipment at dollar amounts required by the instructions set forth under caption 13, property, plant and equipment of §§ 210.5a–01 to 210.5a–07. A mining company falling into this category shall also, to the extent practicable, observe the other instructions set forth under this rule.

[3] If neither the total additions nor total deductions during any of the periods covered by the schedules amount to more than 10 percent of the ending balance of that period and a statement to that effect is made, the information required by columns B, C, D, and E may be omitted for that period, provided that the totals of columns C and D are given in a note hereto and provided further than any information required by instructions 4, 5, and 6 shall be given and may be in summary form.

[4] For each change in accounts in column C that represents anything other than an addition from acquisition, and for each change in that column that is in excess of 2 percent of total assets, at either the beginning or end of the period, state clearly the nature of the change and the other accounts affected. If cost of property additions represents other than cash expenditures, explain. If acquired from an affiliate at other than cost to the affiliate, show such cost, provided the acquisition by the affiliate was within 2 years prior to the acquisition by the person for which the statement is filed.

[5] If changes in column D are stated at other than cost, explain if practicable.

[6] State clearly the nature of the changes and the other accounts affected. If provision for depreciation, depletion and amortization of property, plant and equipment is credited in the books directly to the asset accounts, the amounts shall be stated in column E with explanations, including the accounts to which charged.

§ 210.12–16 Supplementary income and statement information.[1]

Column A Item	Column B[2] Charged to costs and expenses
1. Maintenance and repairs	
2. Depreciation, depletion and amortization of property, plant and equipment	
3. Depreciation and amortization of intangible assets, deferred research and development expenses, preoperating costs and similar deferrals[3]	
4. Taxes, other than income taxes[3]	
5. Rents[4]	
6. Royalties	
7. Advertising costs[5]	
8. Research and development costs (excluding amortization of deferred costs	

[1] State, for each of the items noted in column A which exceeds 1 percent of total sales and revenues as reported in the related income statement, the amount called for in column B.

[2] Totals may be stated in column B without further designation of the accounts to which charged.

[3] State separately each category of tax which exceeds 1 percent of total sales and revenues.

[4] Include rents applicable to leased personal property.

[5] This item shall include all costs related to advertising the company's name, products or services in newspapers; periodicals or other advertising media.

[6] State separately each category of cost amortized.

§ 210.12–42 Real estate and accumulated depreciation.[1]

(For Certain Real Estate Companies)

Column A	Column B	Column C		Column D		Column E			Column F	Column G	Column H	Column I
		Initial cost to company		Cost capitalized subsequent to acquisition		Gross amount at which carried at close of period[3,4,5,7]						
Description[2]	Encumbrances	Land	Buildings and improvements	Improvements	Carrying costs	Land	Buildings and improvements	Total	Accumulated depreciation	Date of construction	Date acquired	Life on which depreciation in latest income statements is computed

[1] All money columns shall be totaled.

[2] The description for each property should include type of property (e.g., unimproved land, shopping center, garden apartments, etc.) and the geographical location.

[3] The required information is to be given as to each individual investment included in column E except that an amount not exceeding 5 percent of the total of column E may be listed in one amount as "miscellaneous investments."

[4] In a note to this schedule, furnish a reconciliation, in the following form, of the total amount at which real estate was carried at the beginning of each period for which income statements are required, with the total amount shown in column E:

Balance at beginning of period ..... $.....
Additions during period:
Acquisitions through foreclosure ..... $.....
Other acquisitions .....
Improvements, etc. .....
Other (describe) .....
$.....
Deductions during period:
Cost of real estate sold ..... $.....
Other (describe) .....
$.....
Balance at close of period ..... $.....

If additions, except acquisitions through foreclosure, represent other than cash expenditures, explain. If any of the changes during the period result from transactions, directly or indirectly with affiliates, explain the bases of such transactions and state the amounts involved.

A similar reconciliation shall be furnished for the accumulated depreciation.

[5] If any item of real estate investments has been written down or reserved against, describe the item and explain the basis for the write-down or reserve.

[6] State in a note to column E the aggregate cost for Federal income tax purposes.

[7] The amount of all intercompany profits included in the total of column E shall be stated if material.

§ 210.12–43 Mortgage loans on real estate.[1]

(FOR CERTAIN REAL ESTATE COMPANIES)

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
Description [2,3,4]	Interest rate	Final maturity date	Periodic Payment Terms [5]	Prior liens	Face amount of mortgages	Carrying amount of mortgages [2,6,7,8,9]	Principal amount of loans subject to delinquent principal or interest [10]

[1] All money columns shall be totaled.

[2] The required information is to be given for each individual mortgage loan which exceeds three percent of the total of column G.

[3] If the portfolio includes large numbers of mortgages most of which are less than three percent of column G, the mortgages not required to be reported separately should be grouped by classifications that will indicate the dispersion of the portfolio, i.e., for a portfolio of mortgages on single family residential housing. The description should also include number of loans by original loan amounts (e.g., over $100,000, $50,000–$99,999, $20,000–$49,000, under $20,000) and type loan (e.g., VA, FHA, Conventional). Interest rates and maturity dates may be stated in terms of ranges. Data required by columns D, E and F may be omitted for mortgages not required to be reported individually.

[4] Loans should be grouped by categories, e.g., first mortgage, second mortgage, construction loans, etc., and for each loan the type of property, e.g., shopping center, high rise apartments, etc., and its geographic location should be stated.

[5] State whether principal and interest is payable at level amount over life to maturity or at varying amounts over life to maturity. State amount of balloon payment at maturity, if any. Also state prepayment penalty terms, if any.

[6] In a note to this schedule, furnish a reconciliation, in the following form, of the carrying amount of mortgage loans at the beginning of each period for which income statements are required, with the total amount shown in column G:

Balance at beginning of period		$
Additions during period:		
New mortgage loans	$	
Other (describe)		
		$
Deductions during period:		
Collections of principal	$	
Foreclosures		
Cost of mortgages sold		
Amortization of premium		
Other (describe)		
		[7]
Balance at close of period		$ [7]

If additions represent other than cash expenditures, explain. If any of the changes during the period result from transactions, directly or indirectly with affiliates, explain the bases of such transactions, and state the amounts involved. State the aggregate mortgages (a) renewed and (b) extended. If the carrying amount of new mortgages is in excess of the unpaid amount of the extended mortgages, explain.

[7] If any item of mortgage loans on real estate investments has been written down or reserved against, describe the item and explain the basis for the write-down or reserve.

[8] State in a note to column G the aggregate cost for Federal income tax purposes.

[9] The amount of all intercompany profits in the total of column G shall be stated, if material.

[10] (a) Interest in arrears for less than 3 months may be disregarded in computing the total amount of principal subject to delinquent interest.

(b) Of the total principal amount, state the amount acquired from controlled and other affiliates.

[FR Doc.73-4063 Filed 3-5-73;8:45 am]

Title 19—Customs Bureau

CHAPTER I—BUREAU OF CUSTOMS, DEPARTMENT OF THE TREASURY

[T.D. 73-64]

PART 1—GENERAL PROVISIONS

Designation of National Holidays

Executive Order No. 11582, effective January 1, 1971 (34 FR 2957; 3 CFR Ch. II), implemented 5 U.S.C. 6103 which increases the number of national holidays from eight to nine and restated the dates for their celebration. The cited Executive order revoked Executive Orders No. 10358 of June 9, 1952, No. 11226 of May 27, 1965, and No. 11272 of February 23, 1966.

Accordingly, to conform the Customs regulations to Executive Order No. 11582, footnote 10 of § 1.7(a), is amended to read as follows:

§ 1.7 Hours of business.

(a) * * *[10]

(E.O. No. 11582, January 1, 1971; 34 FR 2957; 3 CFR Ch. II; R.S. 251, as amended, sec. 624, 46 Stat. 759; 5 U.S.C. 301; 19 U.S.C. 66, 1624)

[10] The national holidays are the first day of January, the third Monday of February, the last Monday of May, the fourth day of July, the first Monday of September, the second Monday of October, the fourth Monday of October, the fourth Thursday of November, the 25th of December, or any other calendar day designated as a holiday by Federal statute or Executive order. If a holiday falls on Saturday, the day immediately preceding such Saturday will be observed (5 U.S.C. 6103(b)(1)). If a holiday falls on Sunday, the following day will be observed.

This amendment deals with administrative matters relating to agency management and therefore notice and public procedure thereon is found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

Effective date. This amendment shall be effective March 6, 1973.

[SEAL] VERNON D. ACREE,
Commissioner of Customs.

Approved: January 31, 1973.

EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[FR Doc.73-4203 Filed 3-5-73;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 5-73-02 R]

PART 127—SECURITY ZONES

Hampton Roads, Elizabeth River, Norfolk, Va.

This amendment to the Coast Guard's Security Zone Regulations establishes the waters of the Elizabeth River and Hampton Roads between the Norfolk and Portsmouth Beltline Railroad Bridge on the southern branch of the Elizabeth River and Elizabeth River Channel Lighted Horn Buoy 1, LL 2939, as a security zone. This security zone is established to prevent interference with the sailing of the U.S.S. *Independence* from the Norfolk Naval Shipyard, Portsmouth, Va.

This amendment is issued without publication of a notice of proposed rule making; and this amendment is effective in less than 30 days from the date of publication, because this security zone involves a military function of the United States.

In consideration of the foregoing, Part 127 of Title 33 of the Code of Federal Regulations is amended by adding § 127.500 to read as follows:

§ 127.500 Hampton Roads—Elizabeth River—Norfolk, Va.

The waters of the Elizabeth River, Norfolk, Va., are a security zone: from the Norfolk-Portsmouth Beltline Railroad Bridge on the southern branch of the Elizabeth River, at position 36°48'42" N. latitude, 76°17'26" W. longitude; to a line between position 36°59'12" N. latitude, 76°18'10" W. longitude (Fort Wool Light); and position 37°00'06" N. latitude, 76°18'24" W. longitude (Old Point Comfort Light).

(46 Stat. 220, as amended, § 1, 63 Stat. 503, § 6(b), 80 Stat. 937; 50 U.S.C. § 191, 14 U.S.C. § 91, 49 U.S.C. § 1655(b); E.O. 10173, E.O. 10277, E.O. 10352, E.O. 11249; 3 CFR, 1949–1953 Comp. 356, 778, 873, 3 CFR, 1964–1965 Comp. 349, 33 CFR Part 6, 49 CFR 1.46(b))

Effective date. This amendment is effective from 1000R to 1230R, March 6, 1973.

H. E. STEEL,
Captain, United States Coast Guard, Captain of the Port, Hampton Roads Area.

[FR Doc.73-4379 Filed 3-5-73;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER E—PESTICIDES PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Certain Inert Ingredients in Pesticide Formulations Applied to Animals

Correction

In FR Doc. 73-2635 appearing at page 4330 in the issue of Tuesday, February 13, 1973, in the table in the second column on page 4331, the second entry should read as follows:

Poly (oxypropylene) block polymer with poly(oxyethylene); molecular weight 1,800-9,000.	Surfactants, related adjuvants of surfactants.

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 2-10; Notice 5]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Bus Window Retention and Release

The purpose of this notice is to amend Motor Vehicle Safety Standard No. 217, Bus Window Retention and Release, 49 CFR 571.217, in response to petitions received. Several minor amendments for purposes of clarification have also been made. The standard was published initially on May 10, 1972 (37 FR 9394), and amended September 6, 1972 (37 FR 18034).

Wayne Corp. has petitioned that the torque limit of 20 inch-pounds for the actuation of rotary emergency exit releases in S5.3.2(a)(3) of the standard is impractical. The Blue Bird Body Co. also objected to the requirement, requesting that the limit be raised to 225 inch-pounds in order to avoid inadvertent openings. The NHTSA has decided, based on these petitions, that a maximum torque requirement is redundant, since the force magnitude generally is limited in S5.3.2 to not more than 20 pounds. Accordingly the torque requirement is deleted from the rule.

Blue Bird also requested that Figure 3A, which depicts access regions for roof and side emergency exits without adjacent seats in both an upright and overturned bus, be made more explicit.

In response to this request, Figure 3A is being replaced by two figures, one of which depicts a side emergency exit (Figure 3A), and the other a roof emergency exit (Figure 3B). Existing Figure 3B, depicting access regions for a rear exit with a rear shelf or other obstruction behind the rearmost seat, becomes Figure 3C. A new Figure 3D is added to depict rear seat access regions in buses not having a rear shelf or other obstruction behind the rearmost seat, a configuration common to school buses. Paragraph S5.2.1, regarding provision of emergency exits, is amended to make it clear that a required rear exit must meet the requirements of S5.3 through S5.5 when the bus is overturned on either side, with the occupant standing facing the exit, as well as when the bus is upright.

In consideration of the above, Standard No. 217, Bus Window Retention and Release, 49 CFR 571.217, is amended as follows:

1. S5.2.1 is amended to read:

S5.2.1 *Buses with GVWR of more than 10,000 pounds.* Except as provided in S5.2.1.1, buses with a GVWR of more than 10,000 pounds shall meet the unobstructed openings requirements by providing side exits and at least one rear exit that conforms to S5.3 through S5.5. The rear exit shall meet the requirements when the bus is upright and when the bus is overturned on either side, with the occupant standing facing the exit. When the bus configuration precludes installation of an accessible rear exit, a roof exit that meets the requirements of S5.3 through S5.5 when the bus is overturned on either side, with the occupant standing facing the exit, shall be provided in the rear half of the bus.

2. S5.3.1 is amended to read:

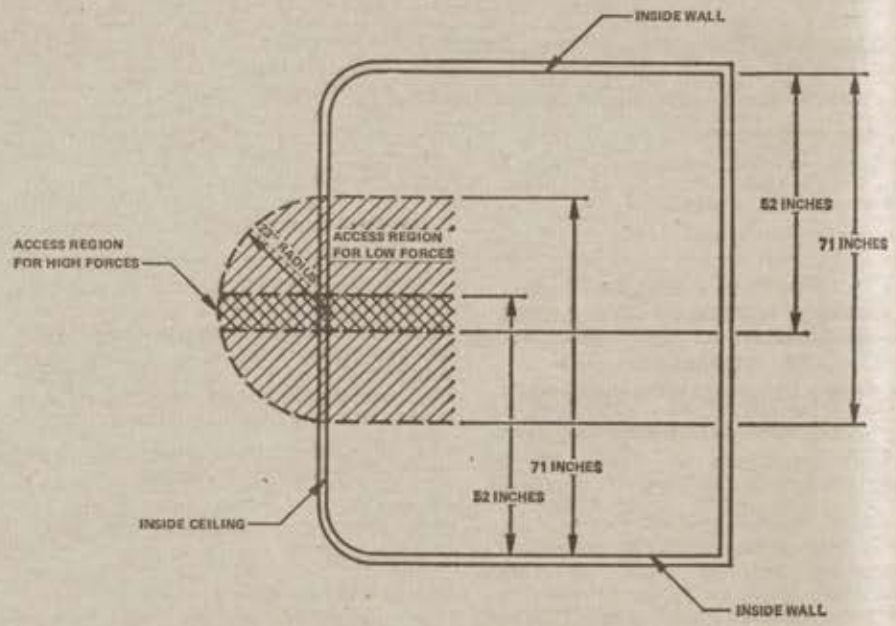
S5.3.1 Each push-out window or other emergency exit shall have a release mechanism located within the regions specified in Figure 1, Figure 2, or Figure 3. The lower edge of the region in Figure 1, and Region B in Figure 2, shall be located 5 inches above the adjacent seat, or 2 inches above the armrest, if any, whichever is higher.

3. S5.3.2(a) is amended to read:

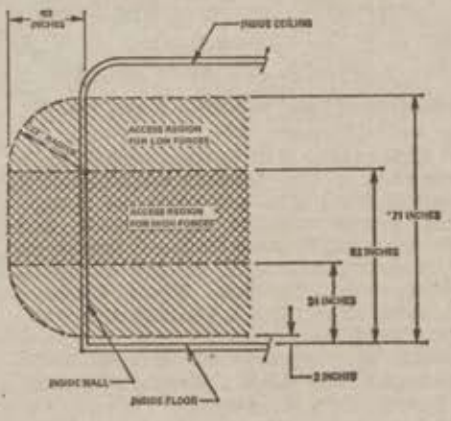
(a) * * *

Magnitude: Not more than 20 pounds.

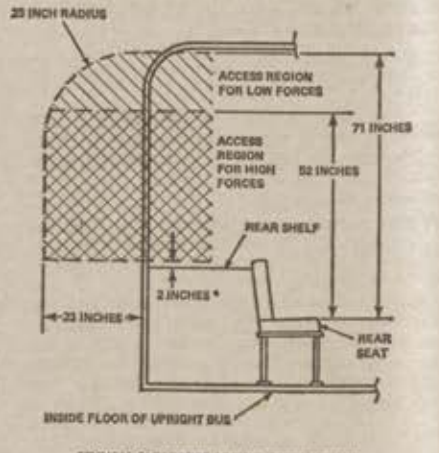
4. Figure 3 is amended to appear as follows:



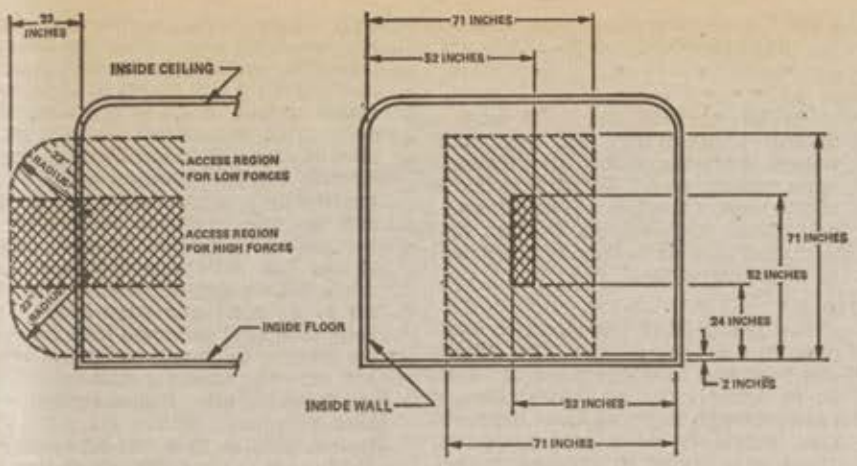
3A. SIDE EMERGENCY EXIT



3B. ROOF EMERGENCY EXIT



3C. REAR EMERGENCY EXIT WITH REAR OBSTRUCTION



30. REAR EMERGENCY EXIT WITHOUT REAR OBSTRUCTION

FIGURE 3 LOW AND HIGH-FORCE ACCESS REGIONS FOR EMERGENCY EXITS WITHOUT ADJACENT SEATS

Effective date: September 1, 1973.

(Secs. 103, 112, 119, Public Law 89-563, 80 Stat. 718, 15 U.S.C. 1392, 1401, 1407; delegation of authority, 49 CFR 1.51.)

Issued on February 28, 1973.

DOUGLAS W. TOMS,
Administrator.

[FR Doc.73-4257 Filed 3-5-73;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—BUREAU OF SPORT FISHERIES AND WILDLIFE, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 12—AREAS CLOSED TO HUNTING

PART 32—HUNTING

Miscellaneous Amendments

Redesignation of Part 12—Areas Closed To Hunting.

Present 50 CFR Part 12, Areas Closed to Hunting, is redesignated § 32.4 Areas closed to hunting and is added to Part 32—Hunting. Part 12 is reserved to allow for expansion.

A new section is added in the table of contents for Part 32 to read:

Sec.
32.4 Areas closed to hunting.

This revision redesignates an existing regulation, does not impose any new requirements, restrictions, or procedures. Accordingly, notice and public procedure thereon are impracticable, unnecessary, and contrary to the public interest and this redesignation is effective on March 16, 1973.

(33 Stat. 614, 16 U.S.C. 685; 43 Stat. 651, 16 U.S.C. 725; 45 Stat. 449, 16 U.S.C. 690d; 45 Stat. 1224, 16 U.S.C. 715l; 48 Stat 402, 16 U.S.C. 664; 48 Stat. 451, 16 U.S.C. 718d; 48 Stat. 1270, 43 U.S.C. 315a; 76 Stat. 653, 16 U.S.C. 460k; 80 Stat. 926, 16 U.S.C. 668bb)

E. V. SCHMIDT,
Deputy Director, Bureau of Sport Fisheries and Wildlife.

FEBRUARY 28, 1973.

[FR Doc.73-4213 Filed 3-5-73;8:45 am]

CHAPTER II—DEPARTMENT OF COMMERCE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, NATIONAL MARINE FISHERIES SERVICE

SUBCHAPTER H—EASTERN PACIFIC TUNA FISHERIES

PART 280—YELLOWFIN TUNA

Miscellaneous Amendments

A notice of proposed rule making was published January 15, 1973 (38 FR 1521), to amend Part 280, Title 50, Code of Federal Regulations, which are regulations governing the eastern Pacific yellowfin tuna fisheries.

Interested persons were given the opportunity to participate through a public hearing at San Diego on January 24, 1973, and through submission of written material.

There was no adverse comment concerning the Inter-American Tropical Tuna Commission's recommendation that, for 1973 only, restrictions be removed from part of the regulatory area to encourage exploratory fishing. The area to be opened up lies south and west of the Galapagos Islands.

The proposed rule making announced that the Commission's resolution for 1973, as in 1972, allows vessels of 400 short tons carrying capacity or less to fish for yellowfin tuna within the regulatory area during the closed season under such restrictions as may be necessary to limit the catch of yellowfin by such vessels to 6,000 tons during 1973. The proposed rule making also stated that, in the experience of the National Marine Fisheries Service, as much as 700 short tons of yellowfin may be available from the unused portion of the overall country 15 percent incidental catch. Thus, the yellowfin tuna to be allotted to the vessels under 400 short tons carrying capacity would be 6,000 short tons, plus approximately 700 short tons which is expected to be available from the unused portion of the 15 percent incidental catch. In regard to the allocation of the total 6,700 short tons, the National Marine Fisheries Service invited comments upon the desirability of combining the seiners of 300 short tons carrying capacity or less and the seiners of 301–400 short tons carrying capacity into one allotment group.

The proposed rule making further stated that in the absence of general interest or a workable plan to combine the two groups of small seiners, or any interest in a redistribution of the allotments to the three categories of small vessels, the allotments and incidental catch rates for 1973 would remain the same as in 1972, namely:

(1) Purse seiners of 301–400 short tons carrying capacity: 900 short tons, with an incidental catch rate of 40 percent by round weight of each vessel's total catch.

(2) Purse seiners of 300 short tons carrying capacity or less: 3,500 short tons, with an incidental catch rate of 50 percent by round weight of each vessel's total catch.

(3) Bait and jig boats: 2,300 short tons, with an incidental catch rate of 50 percent by round weight of each vessel's established short ton carrying capacity.

Some industry testimony, both oral and written, favored combining the two categories of small seiners, and suggested certain incidental closed season catch rates for each of the two vessel categories while harvesting the allotment. Other industry testimony, while arguing against combining the two vessel categories, indicated that the combination would be acceptable if certain incidental yellowfin catch rates were adopted for each category. Testimony was received both for and against increasing the closed season allotment to bait and jig boats.

Careful consideration has been given to all testimony received, both oral and written. As a result of this testimony, the two small seiner categories are to be combined and the revised distribution of tonnage among vessel categories is adopted as follows:

(1) Purse seiners of 400 short tons carrying capacity or less: 4,400 short tons.

(2) Bait and jig boats: 2,300 short tons.

The revised yellowfin tuna incidental catch limitation for each vessel category is adopted as follows:

(1) Purse seiners of 301–400 short tons carrying capacity: 40 percent by round weight of each vessel's total catch: *Provided*, That vessels which are on a fishing voyage longer than 70 days may land 20 percent by round weight of each vessel's established short ton carrying capacity.

(2) Purse seiners of 300 short tons carrying capacity or less: 60 percent by round weight of each vessel's total catch: *Provided*, That vessels which are on a fishing voyage longer than 50 days may land 25 percent by round weight of each vessel's established short ton carrying capacity.

(3) Bait and jig boats: 50 percent by round weight of each vessel's established short ton carrying capacity.

Accordingly Part 280 is amended as follows:

1. Paragraph (g) of § 280.1 is amended to read as follows:

§ 280.1 Definitions.

* * * * *

(g) *Regulatory area.* All waters of the eastern Pacific Ocean bounded by the mainland of the Americas and the following lines: Beginning at a point on the mainland where the parallel of 40° north latitude intersects the coast; thence due west to the meridian of 125° west longitude; thence due south to the parallel of 20° north latitude; thence due east to the meridian of 120° west longitude; thence due south to the parallel of 5° north latitude; thence due east to the meridian of 110° west longitude; thence due south to the parallel of 10° south latitude; thence due east to the meridian of 90° west longitude; thence due south to the parallel of 30° south latitude; thence due east to a point on the mainland where the parallel of 30° south latitude intersects the coast. Except that for 1973 only, the area encompassed by a line drawn starting at 110° west longitude and 3° north latitude extending east along 3° north latitude to 95° west longitude; thence south along 95° west longitude to 3° south latitude; thence east along 3° south latitude to 90° west longitude; thence south along 90° west longitude to 10° south latitude; thence west along 10° south latitude to 110° west longitude; thence north along 110° west longitude to 3° north latitude shall be excluded from the regulatory area to encourage exploratory fishing.

* * * * *

2. Paragraph (b) of § 280.6 is amended as follows:

§ 280.6 Open season restrictions applicable to fishing vessels.

* * * * *

(b) During the open yellowfin tuna season, every fishing vessel operating in the Pacific Ocean, but outside the regulatory area, shall transmit daily a message between 0800 and 1000 hours local California time. This requirement will also apply, for 1973 only, to every fishing vessel operating in the area described in the second sentence of paragraph (g) of § 280.1. The message shall be transmitted directly to Coast Guard Radio New Orleans (NMG) on frequency 16,565.2, 12,421.0, or 8,281.2 KHz and shall state: "This message is being transmitted in compliance with the U.S. eastern tropical Pacific yellowfin tuna regulations, and confirms that the vessel (name of reporting vessel) is fishing in the Pacific Ocean, but outside the regulatory area as of this date (give date)." After a date to be announced by the Service Director through publication of a notice in the FEDERAL REGISTER, transmissions required under paragraph (b) of this section shall be sent to Coast Guard Radio San Francisco (NMC) on frequency 16,565.0, 12,421.0, or 8,281.2 KHz.

3. Paragraphs (a)(1), (b)(2), (3), (4), (5), and (d) of § 280.7 are amended as follows:

§ 280.7 Closed season restrictions applicable to fishing vessels.

* * * * *

(a) * * *

(1) In addition, for 1973 only, any fishing vessel which has completed a voyage in the regulatory area during the open season; and is in port on the date of the season closure, will be allowed one additional unrestricted fishing voyage provided that departure is made within 30 days thereafter.

* * * * *

(b) Any fishing vessel which departs port on a fishing voyage after closure of the yellowfin season, except as provided in paragraph (a) of this section, may land yellowfin tuna captured from within the regulatory area in limited quantities as provided in subparagraphs (1) to (3) of this paragraph as an incident to fishing for species with which yellowfin may be mingled. The Service Director may, however, through publication of a notice in the FEDERAL REGISTER adjust the incidental catch limitations to assure that the special allotments designated for vessels of 400 short tons carrying capacity or less are not underutilized and the 15 percent overall incidental catch for the entire tuna fleet is not exceeded. Any quantity of yellowfin tuna landed in excess of the limitations provided in subparagraphs (1) to (3) of this paragraph shall be subject to seizure and forfeiture pursuant to the Tuna Conventions Act of 1950, as amended (16 U.S.C. 951–961).

* * * * *

(2) Purse seiners of 400 short tons carrying capacity or less may land in any U.S. port, yellowfin tuna captured from within the regulatory area as an incident to fishing for species with which yellowfin may be mingled, but in no event shall any vessel of 301–400 short tons carrying capacity be permitted to land yellowfin tuna in excess of 40 percent by round weight of its total catch: *Provided, however,* That any vessel of 301–400 short tons carrying capacity which is on a fishing voyage longer than 70 days may land 20 percent yellowfin tuna by round weight of its established short ton carrying capacity. Nor shall any purse seiner of 300 short tons carrying capacity or less be permitted to land yellowfin tuna in excess of 60 percent by round weight of its total catch: *Provided, however,* That any such vessel that is at sea longer than 50 days may land 25 percent yellowfin tuna by round weight of its established short ton carrying capacity. That local wet fish seiners may accumulate the 60 percent allowance by weight for the separate period from the date of closure of the yellowfin fishing season until the end of that month, and for each separate period consisting of 1 calendar month thereafter provided such vessels have not landed any yellowfin tuna during the open season and make deliveries only on a daily basis. When the catch of yellowfin tuna by purse seiners of 400 short tons carrying capacity or less reaches 4,400 short tons, the amount of yellowfin tuna which any such vessel may lawfully land will revert to 15 percent by round weight of its total catch. After a date to be announced through publication of a notice in the FEDERAL REGISTER by the Service Director, any vessel departing on a fishing voyage shall be subject to this reversion limitation of 15 percent. (3) Bait and jig boats may land in any U.S. port, yellowfin tuna captured from within the regulatory area, but in no event shall any such vessel be permitted to land yellowfin tuna in excess of 50 percent by round weight of its short ton carrying capacity once established in accordance with subparagraph (4) of this paragraph. When the catch of yellowfin tuna by bait and jig boats collectively reaches 2,300 short tons, the amount of yellowfin tuna which any such vessel may lawfully land will revert to 15 percent by round weight of its total catch. After a date to be announced through publication of a notice in the FEDERAL REGISTER, by the Service Director, any vessel departing on a fishing voyage shall be subject to this reversion limitation of 15 percent.

(4) The short ton capacity of vessels will be determined from tables prepared by the Commission which relate carrying capacity to registered tonnages and from official unloading records available to the National Marine Fisheries Service.

(i) Managing owners of purse seine vessels of 400 short tons carrying capacity or less will be notified by registered mail that their vessel is in this category and is subject to the provisions of subparagraph (2) of this paragraph.

(ii) Except as provided below for bait and jig boats, managing owners not receiving notification by registered mail can assume that their vessel is over 400 short tons carrying capacity and is subject to the provisions of subparagraph (1) of this paragraph.

(iii) To qualify for the bait and jig boat yellowfin allocation, managing owners of such vessels shall supply the Regional Director documentation concerning the gross and net tonnage of their vessels together with records of prior unloadings. This information will be used by the Regional Director to establish the short ton carrying capacity of each vessel. Failure to comply shall result in each such vessel being limited to 15 percent yellowfin tuna by round weight of its total catch. This 15 percent limitation shall remain in effect until the aforesaid documentation is furnished by the vessel's managing owner.

(5) The tonnage limitations specified in subparagraphs (2) and (3) of this paragraph are subject to adjustment upward or downward. Any such adjustment will be based upon the estimated use of the incidental catch allowance, and shall be apportioned as determined by the Service Director. Announcement of such

adjustment shall be made by publication of a notice in the FEDERAL REGISTER by the Service Director.

* * * * *

(d) Any fishing vessel electing to fish exclusively in the Pacific Ocean, but outside the regulatory area, shall report to the Regional Director, within 48 hours before leaving port, giving the name of the reporting vessel and the port of departure; within 24 hours before leaving the regulatory area, giving the latitude of departure and the approximate time of departure; and within 24 hours before returning to the regulatory area, giving the latitude of reentry, the approximate time of reentry and the tonnage by species of fish aboard. For 1973 only, the area described in the second sentence of paragraph (g) of § 280.1 is considered to be outside the regulatory area. Therefore, all requirements for vessels fishing in the area described above will be precisely the same as for those vessels fishing in the Pacific Ocean but outside the regulatory area.

* * * * *

Effective date. These regulations are effective March 6, 1973.

Issued at Washington, D.C., and dated March 1, 1973.

ROBERT W. SCHONING,
Acting Director, National Marine Fisheries Service.

[FR Doc.73-4209 Filed 3-5-73;8:45 am]

Proposed Rule Making

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 145]

POTENCY OF ANTIBIOTIC-CONTAINING DRUGS AT TIME OF CERTIFICATION

Withdrawal of Proposed Statement of Policy

In the FEDERAL REGISTER of January 11, 1972 (37 FR 336), the Commissioner of Food and Drugs issued a notice proposing that Subpart B of 21 CFR Part 145 be amended by adding a statement of policy stating that no preparation containing antibiotic drugs would be certified unless the batch contained at least 100 percent of the declared potency (or a higher amount if so specified in the regulations) at the time of certification. The proposal also provided that a batch which showed minor deviations from 100 percent of the declared potency could be certified if the Commissioner of Food and Drugs, in light of other factors, deemed such minor deviations acceptable. The notice invited interested persons to file comments within 30 days after its publication; this time period for filing comments was extended to March 11, 1972 by a notice published in the FEDERAL REGISTER on January 29, 1972 (37 FR 1477).

Comments regarding the proposed statements of policy were received from the Pharmaceutical Manufacturers Association (PMA) and 20 manufacturers of antibiotic-containing drugs. The comments indicated an agreement in principle with the objective of the proposal to assure that antibiotic-containing drugs would have the appropriate strength or potency when dispensed and administered to patients throughout the expiration dating period. However, these comments emphasized that, due to the vagaries of the essay procedures, some batches would not be certified even though they had been formulated with the intent to contain 100 percent of the declared potency. Those who commented noted that in order to assure that a batch would assay at least 100 percent of the declared potency at the time of certification, it would be necessary to formulate the batch with an excess of the antibiotic beyond that required for good manufacturing practices; they also noted that such an unwarranted excess could result in increased cost of the drug to the consumer and create problems of superpotency. In addition, those who commented noted that the provisions of the proposal which allow for the certification of a batch which shows minor deviations from 100 percent of the declared potency are so vague that the manufacturer is placed in a position of not knowing precisely the level of acceptance for certification.

In general, the comments suggested that the proposal be revised so as to require that each batch of antibiotic-containing drug be formulated with the intent to provide not less than 100 percent of the declared amount of the antibiotic.

The Commissioner having considered the comments received and other relevant material, has concluded that there are valid reasons why the proposed statement of policy should not be published as a final order. The Commissioner has determined that, because of the inherent vagaries of the assay procedures, it would be difficult to enforce a requirement that there be a minimum level of 100 percent of the declared potency without anticipating that many firms would add an excess of the antibiotic which may in turn result in problems of superpotency. In addition, the Commissioner concludes that the problems of defining the "minor deviations" from 100 percent of potency which would be acceptable for certification are so great that any attempt to define precisely such deviations would be impractical. The Commissioner agrees with the comment that unless such deviations are defined, manufacturers are denied the right of knowing precisely the level of acceptance for certification.

The Commissioner sees no benefit at this time in publishing a statement of policy, as proposed in the comments, requiring that antibiotic-containing drugs be formulated with the intent to provide at least 100 percent of the declared strength or potency. This is already the current policy of the Food and Drug Administration (FDA) and also of both the National Formulary and the U.S. Pharmacopeia; it is recognized in the industry as a good manufacturing practice. The "Guidelines for Manufacturing and Controls for IND's and NDA's" developed jointly by the FDA and the PMA also contains a statement that "* * * the formulation should be prepared with the intent to provide not less than 100 percent of the formula amount of the active ingredient."

If there becomes apparent a need to formalize this current policy regarding formulation with the intent to provide at least 100 percent of the declared strength or potency, the Commissioner will consider a revision of the current good manufacturing practice regulations (21 CFR Part 133) to include such a requirement.

Where the FDA encounters manufacturers apparently aiming for a potency level significantly below 100 percent of the declared strength or potency but yet above the minimum level as established by antibiotic regulations, warning letters will be sent to these manufacturers and inspections of them will be made. If such a practice continues, these manufacturers will be notified that the FDA will not certify batches that barely meet the minimum level of potency.

The Commissioner concludes that the proposed statement of policy should be withdrawn.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 507, 701(a), 52 Stat. 1055, 59 Stat. 463 as amended; 21 U.S.C. 357, 371(a)) and under authority delegated to the Commissioner (21 CFR 2.120), the notice of proposed rule making published in the FEDERAL REGISTER of January 11, 1972 (37 FR 336) concerning a statement of policy regarding the potency of antibiotic-containing drugs at the time of certification is hereby withdrawn.

Dated: February 26, 1973.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 73-4188 Filed 3-5-73;8:45 am]

[21 CFR Part 295]

CERTAIN LIQUID PAINT SOLVENT PREPARATION CONTAINING PETROLEUM DISTILLATES, BENZENE, TOLUENE, XYLENE, OR COMBINATIONS THEREOF

Proposed Child Protection Packaging Standards

Correction

In FR Doc. 73-2527 appearing at page 3989 of the issue for Friday, February 9, 1973, the following changes should be made:

1. On page 3989 in the third column, in the second line of paragraph 2 of the commissioner's findings, "moderate" should read "modern".

2. On page 3990 in the second column, in the paragraph beginning "Interested persons" the phrase "on or after April 10, 1973," should read "on or before April 10, 1973,".

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 53]

FOUNDATION TAX

Taxes on Excess Business Holdings of Private Foundations; Hearing

Proposed regulations under section 4943 of the Internal Revenue Code of 1954, relating to taxes on excess business holdings of private foundations, appear in the FEDERAL REGISTER for January 3, 1973 (38 FR 32).

A public hearing on the provisions of the proposed regulations will be held on March 29, 1973, at 10 a.m., e.s.t., in Room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224.

The rules of § 601.601(a)(3) of the Statement of Procedural Rules (26 CFR Part 601) shall apply with respect to such public hearing. Copies of these rules may be obtained by a request directed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, or by telephoning (Washington, D.C.) 202—964-3935. Under such § 601.601(a)(3), persons who have submitted written comments or suggestions within the time prescribed in the notice of proposed rule making, and who desire to present oral comments at such hearing should by March 15, 1973, submit an outline of the topics and the time they wish to devote to each topic. Such outlines should be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

Persons who desire a copy of such written comments or suggestions or outlines and who desire to be assured of their availability on or before the beginning of such hearing should notify the Commissioner, in writing, at the above address by March 22, 1973. In such a case, unless time and circumstances permit otherwise, the desired copies are deliverable only at the above address. The charge for copies is ten cents ($0.10) per page, subject to a minimum charge of $1.

LEE H. HENKEL, Jr.,
Chief Counsel.

[FR Doc.73-4416 Filed 3-5-73;9:44 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 72-WA-57]

ADDITIONAL CONTROL AREAS

Proposed Designation

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate additional control areas along the east coast of the United States.

Coincident with this proposal, nonrule making action would be required to alter Warning Areas W-50, W-72 and W-386 as desribed herein. Procedures for joint use of these areas by the using agency and the FAA would also be required.

The proposed designation of controlled airspace would permit vectoring of traffic from overland routes or the New York Oceanic CTA/FIR through the above-mentioned warning areas when said areas are not being used by the using agency.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20591. All communications received on or before April 20, 1973 will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief, Federal Aviation Administration, Southern Region, Post Office Box 20636, Atlanta, GA 30320; and the office of the Regional Air Traffic Division Chief, Federal Aviation Administration, Eastern Region, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430.

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the ICAO International Standards and Recommended Practices.

Applicability of international standards and recommended practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of and Annex 11 to the Convention on International Civil Aviation, which pertain to the establishment of air navigation facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to insure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The international standards and recommended practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting State, derived from ICAO, wherein air traffic services are provided and also whenever a contracting State accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting State accepting such responsibility may apply the international standards and recommended practices to civil aircraft in a manner consistent with that adopted for airspace under its jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, State aircraft are exempt from the provisions of Annex 11 and its standards and recommended practices. As a contracting State, the United States agreed by Article 3(d) that its State aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

The proposed amendment would designate additional control areas as follows:

1. HOG ISLAND, VA.

That airspace extending upward from 2,000 feet MSL bounded on the north by latitude 38°00'00'' N.; on the northeast by the southwest edge of Control 1148; on the east by the New York Oceanic CTA/FIR; on the south by the north edge of Control 1149; on the west by longitude 75°30'00'' W., and on the northwest by a line 3 nautical miles southeast of and parallel to the shoreline to the point of beginning.

2. PENDLETON, VA.

That airspace extending upward from 2,000 feet MSL bounded on the north by the south edge of Control 1149; on the east and southeast by the New York Oceanic CTA/FIR; on the southwest by the northeast edge of Control 1181; and on the west by longitude 75°30'00'' W.

The nonrule making actions associated with the proposed amendment would alter certain warning areas.

1. The description of W-72 would be deleted and the following would be substituted therefor:

A. W-72A

BOUNDARIES

Beginning at latitude 36°49'00'' N., longitude 75°54'00'' W.; to latitude 36°49'00'' N., longitude 75°32'00'' W.; to latitude 36°46'57'' N., longitude 74°30'00'' W.; to latitude 35°11'00'' N., longitude 74°30'00'' W.; to latitude 35°57'00'' N., longitude 75°33'00' W.; thence 3 nautical miles from and parallel to the shoreline to the point of beginning.

Altitude: East of longitude 75°30'00'' W., surface to unlimited; west of longitude 75°30'00'' W., surface to but not including 2,000 feet MSL and above FL 600 to unlimited.

Time of use: Intermittent.

Using agency: Virginia Capes Operating Area Coordinator (VCOAC) COMNAVAIRLANT MAS Oceana, Virginia Beach, Va.

Controlling agency: Federal Aviation Administration, Washington ARTC Center.

B. W-72B

BOUNDARIES

Beginning at latitude 36°46'57'' N., longitude 74°30'00'' W.; to latitude 36°43'00'' N., longitude 73°00'00'' W.; to latitude 35°00'00'' N., longitude 73°00'00'' W.; to latitude 34°33'10'' N., longitude 73°40'50'' W.; to latitude 35°11'00'' N., longitude 74°30'00.. W.; thence to the point of beginning.

Altitude: Surface to unlimited.

Time of use: Intermittent.

Using agency: Virginia Capes Operating Area Coordinator (VCOAC) COMNAVAIRANT Oceana, Virginia Beach, Va.

Controlling agency. Federal Aviation Administration, Washington ARTC Center.

2. The description of W–386 would be deleted and the following would be substituted therefor:

A. W–386A

BOUNDARIES

Beginning at lat. 38°00'00" N., long. 75°11'20" W.; to lat. 38°00'00" N., long. 74°30'00" W.; to lat. 37°05'18" N., long. 74°30'00" W.; to lat. 37°00'00" N., long. 75°32'00" W.; to lat. 37°08'00" N., long. 75°32'00" W.; to lat. 37°08'00" N., long. 75°47'00" W.; thence 3 nautical miles from and parallel to the shoreline to the point of beginning.

Altitude: East of long. 75°30'00' W., surface to unlimited; west of long. 75°30'00" W., surface to but not including 2,000 feet MSL and above FL 600 to unlimited.

Time of use: Intermittent.

Using agency: Virginia Capes Operating Area Coordinator (VCOAC) COMNAV AIRLANT NAS Oceana, Virginia Beach, Va.

Controlling agency: Federal Aviation Administration, Washington ARTC Center.

B. W–386B

BOUNDARIES

Beginning at lat. 38°00'00" N., long. 74°30'00" W.; to lat. 38°00'00" N., long. 73°44'00" W.; to lat. 37°18'00" N., long. 73°00'00" W.; to lat. 37°12'00" N., long. 73°00'00" W.; to lat. 37°05'18" N., long. 74°30'00" W.; thence to the point of beginning.

Altitude: Surface to unlimited.

Time of use: Intermittent.

Using agency: Virginia Capes Operating Area Coordinator (VCOAC) COMNAVAIR LANT NAS Oceana, Virginia Beach, Va.

Controlling agency: Federal Aviation Administration, Washington ARTC Center.

3. W–50 would be modified as follows:

a. Change the time of use from "1230Z to 2130Z Monday through Friday" to "Intermittent."

b. The Using agency designation would be changed by deleting "* * * COMNAVAIRLANT / COMFAIRNORFOLK NAS Oceana, * * *" and substituting "* * * COMNAVAIRLANT NAS Oceana, * * *" therefor.

c. Add "Controlling Agency. Federal Aviation Administration, Washington ARTC Center."

(Sec. 307(a), 1110 Federal Aviation Act of 1958, 49 U.S.C. 1348(a) and 1510), Executive Order 10854, 24 FR 9565; sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655 (c))

Issued in Washington, D.C., on February 27, 1973.

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.73–4183 Filed 3–5–73;8:45 am]

[14 CFR Part 105]

[Docket No. 12336; Notice 72–29A]

PARACHUTE JUMPING

Extension of Comment Period

The Federal Aviation Administration proposed in Notice 72–29 published in the FEDERAL REGISTER on November 3, 1972 (37 FR 23458), to amend Part 105 of the Federal Aviation Regulations to require any person conducting an intentional parachute jump in any controlled airspace to obtain an authorization from ATC and give prior notice to ATC before making the jump. In addition, the time during which lights are required for a parachute jump would be changed to conform with the time specified in § 91.73 of the flight rules. The other changes proposed are minor in nature and not substantive.

The United States Parachute Association (USPA) has requested a 90-day extension of time for submission of comments. The extension is requested to enable USPA to review the comments they have received from their individual members in response to the notice and to prepare an official statement on behalf of the USPA regarding Notice 72–29.

The FAA believes it would be desirable to receive comments from the USPA and therefore an extension is warranted; however, it appears that a 30-day extension should provide the USPA with sufficient time to review the notice and submit its comments.

I find that the petitioner has shown a substantive interest in the proposed rule, that good cause exists for the extension and that the extension is consistent with the public interest.

Therefore, pursuant to the authority delegated to me by the Administrator (14 CFR 11.45), the time within which comments on Notice 72–29 will be received is extended to April 4, 1973.

Issued in Washington, D.C., on March 2, 1973.

C. R. MELUGIN, Jr.,
Acting Director,
Flight Standards Service.

[FR Doc.73–4409 Filed 3–5–73;9:59 am]

COMMITTEE FOR PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY HANDICAPPED

[41 CFR Ch. 51]

PROCUREMENT, ORGANIZATION, AND FUNCTIONS

Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped. The proposed regulations describe, pursuant to the authority contained in Public Law 92–28, June 23, 1971 (85 Stat. 77, 41 U.S.C. 46–48) (hereinafter referred to as the "Act"), the policy and procedures for the administration of the Act. These regulations will supersede Chapter 51, Title 41, CFR.

Public Law 92–28 amended the Wagner-O'Day Act (41 U.S.C. 46–48), dated June 25, 1938, in two major respects. It extended the special priority in selling certain products to the Federal Government formerly reserved to the blind to other severely handicapped persons and it expanded the scope of the Act to include services as well as products or commodities. However, the Act provides that the blind will have a first preference in the sale of commodities and, until December 31, 1976, in the provision of services.

The Act also increased the Committee from seven to 14 members, enumerated its duties and powers, and defined the terms used in the expanded Act. These changes have resulted in the need for a complete revision of the current Chapter 51, Title 41 CFR.

The proposed regulations have been divided into five parts to permit ready reference. In addition to the changes brought about by the Act, a number of sections have been modified or expanded to reflect the procedures the Committee has found to be necessary to carry out the purposes of the Act.

Interested persons may, on or before April 5, 1973, submit written comments on the proposed regulations to the Executive Director, Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, VA 22201.

By the Committee.

CHARLES W. FLETCHER,
Executive Director.

CHAPTER 51—COMMITTEE FOR PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY HANDICAPPED

TABLE OF PARTS

PART 51–1—GENERAL

AUTHORITY: Public Law 92–28, June 23, 1971 (85 Stat. 77, 41 U.S.C. 46–48).

§ 51–1.1 Policy.

(a) The Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped was established by Public Law 92–28, June 23, 1971 (85 Stat. 77, 41 U.S.C. 46–48) (hereinafter the Act), for the purpose of directing the procurement of selected commodities and services by the Federal Government to qualified workshops serving blind and other severely handicapped individuals with the objective of increasing the employment opportunities for these individuals. The Committee is required to establish and publish in the FEDERAL REGISTER a procurement list of:

(1) Commodities produced by any qualified nonprofit agency for the blind or by any qualified nonprofit agency for other severely handicapped, and

(2) The services provided by any such agency which the Committee determines are suitable for procurement by the Government pursuant to the Act.

(b) The Act further provides that any entity of the Government which intends to procure any commodity or service on the procurement list, shall procure such commodity or service, at the price established by the Committee, from a qualified nonprofit agency for the blind or such agency for the other severely handicapped if the commodity or service is available within the normal period required by that Government entity. However, this requirement shall not apply to the procurement of any commodity or service which is available from Federal Prison Industries, Inc.

§ 51–1.2 Definitions.

As used in this chapter:

(a) "Committee" means the Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped.

(b) "Direct labor" means all work required for preparation, processing, and packing of a commodity or work directly related to the performance of a service but not supervision, administration, inspection, and shipping.

(c) "Fiscal year" means the 12-month period beginning on July 1 of each year.

(d) "Government" and "entity of the Government" means any entity of the legislative branch or the judicial branch, any executive agency or military department, the U.S. Postal Service, and any nonappropriated fund instrumentality under the jurisdiction of the armed forces.

(e) "State" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(f) "Blind" means an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200 is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle no greater than 20°.

(g) "Other severely handicapped individual" means any person (other than a blind person) who is so severely incapacitated by any physical or mental disability that he cannot engage in normal competitive employment because of such disability.

(1) Some specific categories of severely handicapped persons include those disabled by the following:

(i) Spinal cord injury;
(ii) Deafness;
(iii) Muscular dystrophy (adults);
(iv) Multiple sclerosis;
(v) Developmental disability or other neurological disorders;
(vi) Severe orthopedic handicaps;
(vii) Multiple disabilities;
(viii) Severe personality or behavioral disorders including psychoses and neuroses;
(ix) Severe pulmonary disease;
(x) Severe cardiac disorders.

The foregoing represent examples only and should not be considered exclusive.

(2) A severely handicapped person who is able to engage in normal competitive employment because he has overcome his handicap or his condition has been substantially corrected is not an "other severely handicapped individual" within the meaning of this definition.

(3) Capability for normal competitive employment shall be determined from information developed by an on-going placement program conducted by the workshop. Such placement program shall include at least (i) a pre-admission evaluation and annual review to determine each worker's capability for normal competitive employment, and (ii) maintenance of liaison with appropriate community services for the placement in such employment of any of its workers who may qualify for such placement.

(h) "Qualified nonprofit agency for the blind" (hereinafter "workshop for the blind") means an agency organized under the laws of the United States or of any State, operated in the interest of blind individuals, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; which complies with applicable occupational health and safety standards prescribed by the Secretary of Labor; and which in the production of commodities and the provision of services (whether or not the commodities or services are procured under these regulations) during the fiscal year employs blind individuals for not less than 75 percent of the man-hours of direct labor required for the production or provision of the commodities or services.

(i) "Qualified nonprofit agency for other severely handicapped" (hereinafter "workshop for other severely handicapped") means an agency organized under the laws of the United States or of any State, operated in the interests of severely handicapped individuals who are not blind, and the net income which does not inure in whole or in part to the benefit of any shareholder or other individual; which complies with applicable occupational health and safety standards prescribed by the Secretary of Labor; and which in the production of commodities and the provision of services(whether or not the commodities or services are procured under these regulations) during the fiscal year employs severely handicapped individuals (including blind) for not less than 75 percent of the man-hours of direct labor required for the production or provision of commodities or services.

(j) "Procurement list" means a list of (1) the commodities produced by any workshop for the blind or by any workshop for other severely handicapped, and (2) the services, provided by any such workshop, which the Committee determines are suitable for procurement by the Government pursuant to these regulations.

(k) "Central nonprofit agency" means an agency organized under the laws of the United States or of any State, operated in the interest of the blind or other severely handicapped, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual, and designated by the Committee to facilitate the distribution (by direct allocation, subcontract, or any other means) of orders of the Government for commodities and services on the procurement list among workshops for the blind or workshops for other severely handicapped, and to assist the Committee in administering these regulations.

(l) "Workshop" means a workshop for the blind or a workshop for other severely handicapped, as appropriate.

§ 51–1.3 Priorities.

(a) The Committee, in making assignment of commodities and services on the procurement list will make such assignments in accordance with paragraphs (b) and (c) of this section.

(b) In the purchase by the Government of commodities produced and offered for sale by workshops for the blind or workshops for other severely handicapped, priority shall be accorded to commodities produced and offered for sale by workshops for the blind.

(c) In the purchase by the Government of services offered by workshops for the blind or workshops for other severely handicapped, priority shall, until December 31, 1976, be accorded to services offered for sale by workshops for the blind.

PART 51–2—COMMITTEE FOR PURCHASE OF PRODUCTS AND SERVICES OF THE BLIND AND OTHER SEVERELY HANDICAPPED

Sec.
51–2.1 Membership.
51–2.2 Responsibility.
51–2.3 Duties and powers.
51–2.4 Procurement list.
51–2.5 Fair market price.

AUTHORITY: Public Law 92–28, June 23, 1971 (85 Stat. 77, 41 U.S.C. 46–48).

§ 51–2.1 Membership.

Under the Act the Committee is composed of 14 members appointed by the President. There is one representative from each of the following departments or agencies of the Government: The Department of Agriculture, the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Health, Education, and Welfare, the Department of Commerce, the Department of Justice, the Department of Labor, the Veterans Administration, and the General Services Administration. Three members are private citizens: One who is conversant with the problems incident to the employment of the blind and other severely handicapped individuals; one who represents blind individuals employed in qualified nonprofit agencies for the blind; and one who represents severely handicapped individuals (other than blind) employed in qualified nonprofit agencies for the other severely handicapped.

§ 51–2.2 Responsibility.

It is the Committee's responsibility to administer the Act, the purpose of which is to direct the procurement of selected

products and services by the Federal Government to qualified workshops for the blind and other severely handicapped. The objective is to increase the opportunities for the employment of the blind and other severely handicapped individuals and, whenever possible, to prepare these individuals to engage in normal competitive employment.

§ 51–2.3 Duties and powers.

The duties and powers of the Committee are:

(a) To establish and publish in the FEDERAL REGISTER a list, entitled the procurement list, of those commodities and services which it determines are suitable for workshops for the blind or other severely handicapped to supply to the Government.

(b) To determine the fair market price of the commodities or services on the procurement list and to revise these prices in accordance with changing market conditions.

(c) To designate a central nonprofit agency or agencies to facilitate the distribution, among the workshops for the blind and other severely handicapped, of orders of the Government for commodities or services appearing on the procurement list (by direct allocation, subcontract, or any other means).

(d) To establish rules and regulations regarding the effective implementation of the Act.

(e) To assure that workshops for the blind will have priority over workshops for other severely handicapped in the production of commodities and, until December 31, 1976, in the provision of services.

(f) To conduct a continuing study and evaluation of its activities under the Act for the purpose of assuring effective and efficient administration of the Act. On its own, or in cooperation with other public or nonprofit private agencies, the Committee may study problems relating to the employment of the blind and other severely handicapped individuals, and to the development and adaptation of production methods which would enable a greater utilization of these individuals.

§ 51–2.4 Procurement list.

The Committee shall issue to each Government ordering office (hereinafter "ordering office") a procurement list which will include commodities and services which shall be procured from the indicated central nonprofit agency or its workshops. For commodities, the procurement list includes the item description, specification identification, price and other pertinent information. Where a workshop is authorized to perform GSA maintenance, and repair services for equipment, the procurement list identifies the type of service to be provided and the agencies or area to be serviced and include information on prices and pertinent ordering data.

§ 51–2.5 Fair market price.

The Committee is responsible for determining the fair market price including changes thereto, for a commodity or service, and shall consider recommendations from the procuring agencies and the central nonprofit agency concerned. Recommendations for fair market price or changes thereto shall be submitted by the workshops to the central nonprofit agency representing the workshop. The central nonprofit agency shall analyze the data and submit a recommended fair market price to the Committee along with the detailed justification necessary to support this recommended price.

PART 51–3—CENTRAL NONPROFIT AGENCIES

Sec.
51–3.1 General.
51–3.2 Responsibilities.
51–3.3 Assignment of commodity or service.
51–3.4 Distribution of orders.
51–3.5 Fees.

AUTHORITY: Public Law 92–28, June 23, 1971 (85 Stat. 77, 41 U.S.C. 46–48).

§ 51–3.1 General.

Under the provisions of section 2(c) of the Act, the following are designated central nonprofit agencies:

(a) To represent the workshops for the blind:

National Industries for the Blind.

(b) To represent the workshops for other severely handicapped:

Goodwill Industries of America.
International Association of Rehabilitation Facilities.
Jewish Occupational Council.
National Association for Retarded Children.
National Easter Seal Society for Crippled Children and Adults.
United Cerebral Palsy Association.

§ 51–3.2 Responsibilities.

Each central nonprofit agency shall:

(a) Represent its workshops in dealing with the Committee under the Act.

(b) Evaluate the qualifications and capabilities of its workshops and provide the Committee with pertinent data concerning its workshops, their status as qualified nonprofit agencies, their manufacturing or service capabilities, and other information required by the Committee.

(c) Recommend to the Committee, with appropriate justification including recommended prices, suitable commodities or services for procurement from its qualified workshops.

(d) Provide technical assistance to its workshops to insure successful performance in the provision to the Government of assigned commodities and services.

(e) Distribute within the policy guidelines of the Committee (by direct allocation, subcontract, or any other means) orders from Government activities among its participating workshops.

(f) Maintain the necessary records and data on participating workshops to enable it to allocate orders equitably.

(g) Supervise its workshops to insure contract compliance in the production of a commodity or performance of a service.

(h) As market conditions change, recommend price changes with appropriate justification for assigned commodities or services on the procurement list.

(i) Monitor and inspect the activities of its workshops to insure compliance with the Act and appropriate regulations.

(j) Enter into contracts with the Federal procuring activities for the furnishing of commodities or services provided by its workshops.

(k) Submit to the Committee a comprehensive annual report for each fiscal year concerning the operations of its workshops under the Act, including significant accomplishments and developments, and such other details as the central nonprofit agency considers appropriate or the Committee may request. This report will be submitted by September 30 for the fiscal year ending the preceding June 30.

§ 51–3.3 Assignment of commodity or service.

(a) The central nonprofit agency first proposing a commodity or service for addition to the procurement list shall have priority on its assignment unless Federal Prison Industries, Inc., or National Industries for the Blind (representing the workshops for the blind) exercises a priority (see §§ 51–1.2 and 51–1.3).

(b) Within 60 days after notification by the Committee that a central nonprofit agency has proposed a commodity or service for addition to the Procurement List, Federal Prison Industries, Inc., and National Industries for the Blind shall notify the Committee of their intentions to exercise or waive their priorities on the proposed commodity or service.

(c) The Committee shall assign commodities or services to central nonprofit agencies based on paragraphs (a) and (b) of this section.

(d) A central nonprofit agency assigned a commodity or service shall complete action to place it on the procurement list within 9 months after assignment. At that time if the central nonprofit agency has not completed action, the Committee may reassign the commodity or service to another central nonprofit agency having a workshop capable of producing the commodity or performing the service provided that agency is prepared to take action promptly to place the commodity or service on the procurement list. Priority on reassignment will be determined by the order in which the central nonprofit agencies proposed the commodity or service for addition to the procurement list, the first having the highest priority.

§ 51–3.4 Distribution of orders.

A central nonprofit agency shall distribute orders from the Government for a commodity or service only to the workshop or workshops which the Committee has approved to produce the specific commodity or to perform the particular service. When the Committee has approved two or more workshops to produce a specific commodity or perform a particular service, the central nonprofit agency shall distribute orders among those workshops in a fair and equitable manner.

§ 51–3.5 Fees.

The fees the central nonprofit agency shall charge a workshop for the discharge of their responsibilities under the Act shall not exceed the rates established by the Committee.

PART 51–4—WORKSHOPS

Sec.
51–4.1 General.
51–4.2 Procedures for qualification.
51–4.3 Responsibilities.
51–4.4 Subcontracting.
51–4.5 Production.
51–4.6 Violations.

AUTHORITY: Public Law 92–28, June 23, 1971 (85 Stat. 77, 41 U.S.C. 46–48).

§ 51–4.1 General.

A workshop affiliated with more than one central nonprofit agency will designate one central nonprofit agency to represent its interests to the Committee. A workshop may not change the designation of its central nonprofit agency without prior written approval of the Committee.

§ 51–4.2 Procedures for qualification.

(a) To qualify for participation under the Act, a workshop shall submit to the Committee through its central nonprofit agency the following documents, transmitted by a letter signed by an officer of the corporation:

(1) A legible copy (preferably a photocopy) of the articles of incorporation showing the date of filing and the signature of an appropriate official in the office of the Secretary of State.

(2) A copy of the bylaws certified by an officer of the corporation.

(3) If available, a copy of the Internal Revenue Service certificate indicating that the corporation has been accepted as a nonprofit agency for taxation purposes.

(b) At the time the central nonprofit agency recommends to the Committee the addition of a commodity or service to the procurement list, it shall submit a signed copy of the appropriate initial workshop certification for the workshop concerned.

(c) To maintain its qualification under the Act, each workshop shall complete the appropriate annual workshop certification and submit a signed copy to the Committee through its central nonprofit agency by September 30 for the fiscal year ending the preceding June 30.

§ 51–4.3 Responsibilities.

(a) Each workshop participating under the Act shall:

(1) Furnish commodities or services in strict accordance with the allocation and Government orders.

(2) Make its records available for inspection at any reasonable time to representatives of the Committee or the central nonprofit agency representing the workshop.

(3) Maintain records of direct labor hours performed in the workshop by each worker.

(4) Submit the appropriate annual workshop certification to the Committee through its central nonprofit agency by September 30 for the fiscal year ending the preceding June 30.

(5) Comply with applicable occupation, health and safety standards prescribed by the Secretary of Labor.

(6) Maintain a file on each blind individual which includes a written report prepared by a licensed physician reflecting visual acuity and field of vision of each eye with and without glasses.

(7) Maintain a file on each blind and other severely handicapped individual which includes reports of pre-admission evaluation, and annual reevaluations of the individual's capability for normal competitive employment, prepared by a person or persons qualified by training and experience to evaluate work potential, interests, aptitudes and abilities of handicapped persons.

(8) Maintain an on-going placement program that includes staff assigned placement duties and liaison responsibilities with appropriate community services such as the State employment service, employer groups, and others; and list with one or more of these services those individuals whose most recent evaluations show them to be capable of normal competitive employment.

(b) Each workshop for other severely handicapped shall in addition to the foregoing maintain a file for each other severely handicapped individual which includes a written report prepared by a licensed physician, psychiatrist, and/or qualified psychologist, reflecting the nature and extent of the disability or disabilities that cause such person to qualify as severely handicapped.

§ 51–4.4 Subcontracting.

Workshops shall seek the broadest possible competitive base in the purchase of raw materials and components used in the commodities and services provided the Government under the Act. Workshops shall inform the Committee before entering into multi-year contracts for raw materials or components used in the commodities and services provided the Government under the Act.

§ 51–4.5 Production.

In the production of commodities under the Act, a workshop shall make an appreciable contribution to the reforming of raw materials or the assembly of components or a combination thereof.

§ 51–4.6 Violations.

Any alleged violations of these regulations by a workshop shall be investigated by the appropriate central nonprofit agency which shall notify the workshop concerned and afford it an opportunity to submit a statement of facts and evidence. The central nonprofit agency shall report its findings to the Committee, together with its recommendations, including a recommendation regarding whether allocations to workshops concerned should be suspended for a period of time. In reviewing the case, the Committee may request the submission of additional evidence or may hold a hearing on the matter. Pending a decision by the Committee, the central nonprofit agency concerned may temporarily suspend allocations to the workshop.

PART 51–5—PROCUREMENT REQUIREMENTS AND PROCEDURES

Sec.
51–5.1 Purchase procedure.
51–5.1–1 General.
51–5.1–2 Allocations.
51–5.1–3 Orders.
51–5.2 Purchase exceptions.
51–5.3 Prices.
51–5.4 Shipping and packing.
51–5.5 Payments.
51–5.6 Military resale commodities.
51–5.7 Adjustment and cancellation of orders.
51–5.8 Correspondence and inquiries.
51–5.9 Quality of merchandise.
51–5.10 Quality complaints.
51–5.11 Recommendations.

AUTHORITY: Public Law 92–28, June 23, 1971 (85 Stat. 77.41 U.S.C. 46–48).

§ 51–5.1 Purchase procedure.

§ 51–5.1–1 General.

(a) When a commodity is identified on the procurement list as being available through the Defense Supply Agency (DSA) or from General Services Administration (GSA) supply distribution facilities, it shall be obtained in accordance with the requisitioning procedures of the supplying agency.

(b) DSA supply centers and GSA supply distribution facilities shall submit their stock replenishment orders to the central nonprofit agency shown on the procurement list as responsible for the commodity and request that an allocation be made.

(c) When a commodity or service is not identified on the procurement list as available through DSA or from GSA supply distribution facilities, the Government ordering office shall submit its requirements to the central nonprofit agency shown on the procurement list as responsible for the item and request that an allocation be made.

(d) Purchase procedures for military resale commodities are contained in § 51–5.6.

§ 51–5.1–2 Allocations.

(a) Letter requests for allocations for products or services to be purchased from agencies for the blind or other severely handicapped shall be submitted to the appropriate central nonprofit agencies listed below:

Agency	*Agency symbol*
United Cerebral Palsy Association, 66 East 34th Street, New York, NY 10016.	CP
International Association of Rehabilitation Facilities, 5530 Wisconsin Avenue NW., Washington, DC 20014.	RF
National Industries for the Blind, 1511 K Street NW., Washington, DC 20005.	IB
National Easter Seal Society for Crippled Children and Adults, 2023 West Ogden Avenue, Chicago, IL 60612.	ES

Agency	Agency symbol
Goodwill Industries of America, 9200 Wisconsin Avenue, Washington, DC 20014.	GI
Jewish Occupational Council, 114 Fifth Avenue, New York, NY 10011.	JO
National Association for Retarded Children, 2709 Avenue "E" East, Arlington, TX 76011.	RC

(b) Requests for allocations shall contain for: (1) Commodities: Name, stock number, quantity, unit price, and place and time of delivery where applicable; (2) services: Type of service required, work to be performed, estimated volume, and time for completion when applicable.

(c) Allocations are not an obligation to supply any product or service nor are workshops authorized to commence production until receipt of an order. Ordering offices shall request a locations in sufficient time for the actions in § 51–5.1–3 to be accomplished.

§ 51–5.1–3 Orders.

(a) The central nonprofit agency shall make allocations to the appropriate workshop(s) and instruct the ordering office whether to forward the order to the central nonprofit agency or its workshop. (See paragraph (c) of this section for procedure for transmitting orders direct to a workshop without requesting an allocation.)

(b) Upon receipt of an allocation, the ordering office shall promptly submit an order to the appropriate central nonprofit agency or designated workshop(s). Where this cannot be done promptly, the ordering office shall so advise the central nonprofit agency and the workshop immediately. An order for commodities or services shall provide leadtime sufficient for purchase of raw materials, production or preparation, and delivery or completion. Where it does not, the central nonprofit agency or workshop, depending on which received the order, may request an extension of delivery or completion date which should be granted, if feasible. If extension of delivery or completion date is not feasible, the ordering office shall (1) notify the central nonprofit agency and/or workshop, as appropriate and (2) request the central nonprofit agency to reallocate or to issue a clearance for purchase from commercial sources.

(c) Commodities or services produced by the blind or other severely handicapped may be ordered without requesting an allocation for each order provided prior arrangements have been made with the central nonprofit agency for sending orders for specified commodities or services directly to the designated workshops. This method shall be used whenever possible since it eliminates double handling and decreases the time required for processing orders. Copies of such orders shall be submitted by the ordering office to the central nonprofit agency to which the workshop is affiliated.

(d) If an ordering office desires packing, packaging, or marking of products other than the standard pack or as provided in the procurement list, the difference in cost thereof, if any, shall be added to the purchase price.

§ 51–5.2 Purchase exceptions.

(a) An ordering office may purchase from a commercial source commodities or services listed in the procurement list in any of the following circumstances:

(1) Military necessity requires delivery within 2 weeks and the central nonprofit agency cannot give positive assurance of delivery.

(2) When the central nonprofit agency has notified the ordering office that commodities or services listed in the request for allocation cannot be furnished within the period specified.

(b) Prior to issuing any clearance for a Government entity to procure a commodity or service from commercial sources when the value of the procurement is $2,500 or more, the central nonprofit agency shall obtain concurrence of the Committee.

(c) When a purchase exception is granted, purchase action must be taken within 15 days of receipt of notice of clearance from the central nonprofit agency or as may be further extended by the central nonprofit agency.

§ 51–5.3 Prices.

(a) The prices included in the procurement list are fair market prices established by the Committee.

(b) Prices for commodities, except for military resale commodities, are for delivery aboard the vehicle of the initial carrier at point of production (f.o.b. shipping point) and include packaging, packing, and marking as shown on the procurement list.

(c) Price changes:

(1) Price changes for commodities will cover all orders placed after the effective date of the change and in special cases with the concurrence of the ordering office, undelivered orders on hand at the workshop on the effective date of the change.

(2) Price changes for services will cover all services performed on or after the effective date of the change.

(d) Some prices are different for Eastern and Western areas of the United States. The Western area includes the States of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, and Washington. Western-area prices are applicable to items manufactured by workshops located in these States.

§ 51–5.4 Shipping and packing.

(a) Commodities, except for military resale commodities, will be delivered aboard the vehicle of the initial carrier at point of production (f.o.b. shipping point) for transportation to destination on Government bills of lading. Delivery is accomplished when a shipment is placed aboard the vehicle of the initial carrier. Time of delivery is the date shipment is released to and accepted by the transportation company. Bills of lading may accompany orders or be otherwise furnished, but they must be supplied promptly. Failure by an ordering office to furnish bills of lading promptly may result in an excusable cause for delay in delivery.

(b) Standard pack information is stated in item descriptions. In ascending order, standard pack is given in multiples of the unit of issue contained within the inner wrap(s) and the outer shipping container pack.

(c) Shipping weights, where available, are included in the procurement list. The weight indicated applies to the last quantity shown in the information on standard pack.

§ 51–5.5 Payments.

Payments for products or services of the blind or other severely handicapped shall normally be made within 20 days, but in no event later than 30 days, after shipment.

§ 51–5.6 Military resale commodities.

(a) Military resale commodities are items sold for the private, individual use of authorized patrons of Armed Forces commissaries, ship's stores, and exchanges, or like activities of other Government departments and agencies (authorized resale outlets).

(b) Purchase procedures for ordering military resale commodities are contained in instructions issued by the central nonprofit agency concerned. Authorized resale outlets shall request the central nonprofit agency to designate the workshop to which orders shall be forwarded.

(c) Authorized resale outlets will stock military resale commodities in as broad a range as is practicable. Comparable brand name items, procured from commercial sources, may also be stocked in military nonappropriated fund sales outlets to meet patron demand, but not to the exclusion of military resale commodities.

(d) The price of military resale commodities includes delivery to destination or, in the case of destinations overseas (including Alaska and Hawaii), to designated depots at ports of embarkation.

§ 51–5.7 Adjustment and cancellation of orders.

When the central nonprofit agency or a workshop fails to comply with the terms of a Government order, the ordering office shall make every effort to negotiate an adjustment before taking action to cancel the order. When a Government order is cancelled for failure to comply with its terms, the central nonprofit agency shall be notified, and, if practicable, requested to reallocate the order.

§ 51–5.8 Correspondence and inquiries.

Routine correspondence or inquiries concerning deliveries of commodities being shipped from or performance of service by blind and other severely handicapped workshops shall be with the workshop involved. Major problems shall be referred to the appropriate central nonprofit agency. Contacts regarding

items shipped from the DSA supply centers or the GSA supply distribution facilities should be made in accordance with established procedures of the supplying agency.

§ 51–5.9 Quality of merchandise.

(a) Commodities furnished under Government specification by blind or other severely handicapped workshops are manufactured in strict compliance with such specifications. Where no specifications exist, commodities produced are of the highest quality and are equal to similar items available on the commercial market. Commodities are inspected utilizing nationally recognized test methods and procedures for sampling and inspection.

(b) Services provided by blind or other severely handicapped workshops are performed in accordance with Government specifications and standards. Where no Government specification or standard exists, the services are performed in accordance with good commercial practices.

(c) Specifications cited in the procurement list may undergo a series of revisions, indicated by successive suffix letters, to keep current with industry changes and agency needs. Since it is not feasible to show the latest revision current on the publication date, only the basic specification is referenced in the procurement list.

§ 51–5.10 Quality complaints.

(a) When the quality of a commodity received is not considered satisfactory by the using activity, the activity shall take the following actions as appropriate:

(1) For commodities received from DSA supply centers or GSA supply distribution facilities, notify the supplying agency in accordance with that agency's procedures.

(2) For commodities received from blind or other severely handicapped workshops, address complaints to the workshop involved with a copy to the central nonprofit agency with which it is affiliated.

(b) When the quality of a service is not considered satisfactory by the using activity, the activity shall address complaints to the workshop involved with a copy to the central nonprofit agency with which it is affiliated.

(c) In those instances where quality problems cannot be resolved by the workshop and the using activity, the Committee and the central nonprofit agency shall be advised.

§ 51–5.11 Recommendations.

All Government entities, particularly individuals concerned with procurement, are encouraged to recommend to the Committee those commodities and services which appear to be suitable for provision to the Government by blind or other severely handicapped workshops.

[FR Doc.73-4093 Filed 3-5-73;8:45 am]

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 124]

PROCUREMENT AND TECHNICAL ASSISTANCE

Contracting Under Small Business Act

Notice is hereby given that the Administrator of the Small Business Administration proposes to amend Part 124 of Chapter I of Title 13 of the Code of Federal Regulations by revising §§ 124.8–1 and 124.8–2 thereof, pertaining to contracting under section 8(a) of the Small Business Act.

These amendments clarify existing policies and procedures; limit the number of eligible concerns in which a person may have an interest; raise a presumption of ineligibility where a nondisadvantaged participant in a concern provides equity capital for the disadvantaged participant; raise a presumption of eligibility where a concern is 60 percent owned by disadvantaged persons; provide that a section 8(a) contract generally will not be awarded where a substantial beneficiary thereof would not be section 8(a) eligible; provide that limited competition will be used in awarding contracts where practicable; and provide program completion and termination guidelines for eligible concerns.

Interested persons may submit written comments, suggestions, or objections regarding the proposed amendments to the Small Business Administration on or before March 26, 1973.

All correspondence shall be addressed to:

Marshall J. Parker, Associate Administrator for Procurement and Management Assistance, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

Accordingly, it is proposed to amend Part 124 of Chapter I of Title 13 of the Code of Federal Regulations by revising §§ 124.8–1 and 124.8–2 to read as follows:

§ 124.8–1 Introduction.

(a) *General.* These regulations implement section 8(a) of the Small Business Act which authorizes SBA to enter into all types of contracts (including, but not limited to, supply, services, construction, research, and development) with other Government departments and agencies and negotiate subcontracts for the performance thereof.

(b) *Purpose.* It is the policy of SBA to use such authority to assist small business concerns owned, controlled, and operated by socially and economically disadvantaged persons to achieve a competitive position in the marketplace.

(c) *Eligibility.* (1) *Social or economic disadvantage.*

An applicant concern must be owned and controlled by one or more persons who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social or economic disadvantage. Such disadvantage may arise from cultural, social, chronic economic circumstances or background, or other similar cause. Such persons include, but are not limited to, black Americans, American Indians, Spanish-Americans, Oriental-Americans, Eskimos and Aleuts. Vietnam-era service in the Armed Forces may be a contributing factor in establishing social or economic disadvantage.

(2) *Ownership and control.*

Disadvantaged persons must presently own and control the concern except where a divestiture agreement or management contract, approved by the Associate Administrator for Procurement and Management Assistance, temporarily vests ownership or control in nondisadvantaged persons. If a disadvantaged person obtains equity capital from nondisadvantaged owners of any interest in the concern or from the management contractor, it will be presumed that the disadvantaged person does not have control of the concern. No person, disadvantaged or otherwise (except Indian tribes, nonprofit foundations, small business investment companies and other institutional sources of venture capital), may own any interest in, or exercise any control of, more than one 8(a) concern at any one time unless approved by the Associate Administrator for Procurement and Management Assistance.

(i) *Proprietorships.* If the applicant concern is a proprietorship, it must be 100 percent owned and controlled by disadvantaged persons.

(ii) *Partnerships.* The ownership of at least 60 percent interest in the partnership by disadvantaged persons will create a rebuttable presumption of ownership and control.

(iii) *Corporations.* The ownership of at least 60 percent of each class of stock by disadvantaged persons will create a rebuttable presumption of ownership and control.

(iv) *Divestiture agreements.* If an applicant concern is not presently owned and controlled by disadvantaged persons, the persons exercising such ownership or control must execute a divestiture agreement which will provide for ownership and control in disadvantaged persons in accordance with the foregoing prescribed criteria within a reasonable period of time, usually not exceeding 3 years. All divestiture agreements must be approved by the Associate Administrator for Procurement and Management Assistance.

(v) *Management contracts.* All management contracts entered into by 8(a) concerns must be approved by SBA. Management contracts will generally be on a fixed-price basis. No contract for management services based upon payment of a percentage of the gross receipts, profit, etc., will be entered into without approval of the Associate Administrator for Procurement and Management Assistance.

(vi) *Exceptions.* Exceptions to the policies set forth in the subdivisions a, b, c, and e must be approved by the Associate Administrator for Procurement and

Management Assistance. Exceptions may be approved only in conformity with the following standards:

(a) Approval of the exception will be consistent with, and effectuate, the purposes of the program, and

(b) The exception involves unique or extraordinary justifying circumstances.

§ 124.8–2 Procedures.

(a) *Submission of business plans.* Applicants must submit a business plan, including complete information regarding the concern's qualifications, which will demonstrate that 8(a) assistance will foster its participation in the economy as a self-sustaining, profit-oriented, small business. Business plans will usually reflect the need for 8(a) assistance for 3 years or less.

In no event may the acceptance or approval of a business plan by SBA be construed as a commitment by SBA to award a single contract, a continuing series of contracts, or provide any other assistance, contractual or otherwise.

(b) *Selection of potential contracts.* SBA will, in consultation and cooperation with other Government departments and agencies, select proposed procurements suitable for performance by 8(a) concerns. In making these selections, among the factors given consideration will be the percentage of all similar contracts awarded under the 8(a) program over a relevant period of time, the existence of prior public solicitation, the probability that an eligible concern could obtain a competitive award of the contract, and the extent to which other small concerns have historically been dependent upon the contract in question for a significant percentage of their sales.

(c) *Nondisadvantaged participants in a contract.* To insure that the purposes of the 8(a) program are being accomplished, applicants will disclose the extent to which nondisadvantaged persons or firms will participate in the performance of proposed 8(a) contracts. Section 8(a) contractors may not subcontract any portion of an 8(a) contract without the written consent of the SBA contracting officer. Joint Venture Agreements must be approved by the SBA Regional Director. As a general rule, SBA will not enter into an 8(a) contract where a substantial beneficiary of that contract, either through subcontracting, joint venture, or otherwise, would not be an eligible participant in the 8(a) program.

(d) *Negotiation of 8(a) subcontracts.* Section 8(a) subcontracts shall be negotiated with approved 8(a) companies on a limited competitive basis to the extent feasible and practicable. It is recognized that in some cases competition will be neither feasible nor practicable due to limited availability of qualified concerns, geographic considerations, or other factors. Section 8(a) subcontracts shall be awarded at prices which are fair and reasonable to the Government and to the subcontractor.

(e) *Program completion and termination.* An 8(a) concern which has substantially achieved the objectives of its business plan will be notified that its participation in the program is completed. 8(a) concerns shall not be retained in the program for more than three (3) years without prior approval of the Associate Administrator for Procurement and Management Assistance. The judgment as to the completion of program participation will be made in the light of the purposes of the program.

If the objectives and goals set forth in the business plan are not being met, the concern shall be informed what corrective measures are necessary. In cases where it is determined, in the judgment of SBA, that continued participation in the 8(a) program will not further the program objectives, the concern will be notified that its participation in the program is terminated. Reasons which would indicate the necessity for program termination prior to completion of the business plan termination date are, among others: The unavailability of appropriate 8(a) contracting support; the inability of the 8(a) concern to develop suitable commercial or competitive markets; inadequate management performance; evidence of continued inadequate technical performance et al.

Dated: February 28, 1973.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.73-4417 Filed 3-5-73;10:13 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 1]

[Docket No. 19658; FCC 73-222]

SCHEDULE OF FEES

Order Rescheduling Dates for Filing Comments and Reply Comments

In the matter of Amendment of Subpart G of Part I of the Commission's rules relating to the schedule of fees, Docket No. 19658.

1. The Commission has before it a petition filed by National Cable Television Association, Inc. (NCTA) for extension of time to file comments and reply comments in the above-captioned proceeding.

2. The Commission, acting on its own motion, adopted an order on January 29, 1973, released January 30, 1973, and published at 38 FR 3336 rescheduling the dates for filing comments from February 13 to February 28 and for filing reply comments from February 28 to March 15, 1973.

3. NCTA has made a request, pursuant to the Freedom of Information Act, to be furnished certain information by the Commission which it stated it needed in order to adequately prepare its comments.

4. We conclude that the request for the extension is a reasonable one and accordingly hereby grant it.

5. *It is ordered,* That the time for filing comments in this proceeding is extended to March 14 and reply comments to March 28.

Adopted: February 26, 1973.

Released: February 28, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.73-4215 Filed 3-5-73;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF STATE

[Public Notice CM-9]

ADVISORY COMMITTEE ON INTERNATIONAL INTELLECTUAL PROPERTY

Notice of Meeting

The International Copyright Panel of the Department of State's Advisory Committee on International Intellectual Property will meet on March 14, 1973. The meeting will not be open to the public because it will involve discussion of the official U.S. negotiating position for the upcoming international Meeting of Government Experts on the Protection of Programme-Carrying Signals Transmitted by Satellites. This determination is in accordance with 5 U.S.C. 552(b). Anyone interested in obtaining substantive information on the subject matter of this meeting may do so by calling 632-2181.

HARVEY J. WINTER,
Executive Secretary.

MARCH 2, 1973.

[FR Doc.73-4337 Filed 3-5-73;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

ELECTRONIC COLOR SEPARATING OR SORTING MACHINES FROM THE UNITED KINGDOM

Withholding of Appraisement Notice

Information was received on August 14, 1972, that electronic color separating or sorting machines from the United Kingdom are being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an antidumping proceeding notice which was published in the FEDERAL REGISTER of September 15, 1972, on page 18758. The antidumping proceeding notice indicated that there was evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

Pursuant to section 201(b) of the Act (19 U.S.C. 160(b)), notice is hereby given that there are reasonable grounds to believe or suspect that the purchase price (section 203 of the Act; 19 U.S.C. 162) of electronic color separating or sorting machines from the United Kingdom is less, or is likely to be less than the foreign market value (section 205 of the Act; 19 U.S.C. 164).

Statement of reasons. The information before the Bureau of Customs tends to indicate that the probable basis of comparison for fair value purposes will be between purchase price and the adjusted home market price of such or similar merchandise.

Purchase price will probably be based on the f.o.b. U.S. port price with deductions for a discount, inland freight, air freight, brokerage fees, commissions, and U.S. duty, as appropriate.

Home market price will probably be based on the ex-factory price with a deduction for a discount. Adjustments will probably be made for differences in the merchandise, technical assistance, differences in packing cost, and selling expenses not exceeding the commission in the export market.

Using the above criteria, there are reasonable grounds to believe or suspect that purchase price will be lower than the adjusted home market price.

Customs officers are being directed to withhold appraisement of electronic color separating or sorting machines from the United Kingdom in accordance with § 153.48, Customs regulations (19 CFR 153.48).

In accordance with §§ 153.32(b) and 153.37, Customs regulations (19 CFR 153.32(b), 153.37), interested parties may present written views or arguments, or request in writing that the Secretray of the Treasury afford an opportunity to present oral views.

Any requests that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 2100 K Street NW., Washington, DC 20229, in time to be received by his office not later than March 16, 1973. Such requests must be accompanied by a statement outlining the issues wished to be discussed.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than April 5, 1973.

This notice, which is published pursuant to § 153.34(b), Customs regulations, shall become effective on March 6, 1973. It shall cease to be effective on September 6, 1973, unless previously revoked.

[SEAL] EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

FEBRUARY 28, 1973.

[FR Doc.73-4264 Filed 3-5-73;8:45 am]

DEPARTMENT OF JUSTICE

Bureau of Narcotics and Dangerous Drugs

RESEARCH AND DEVELOPMENT ADVISORY COMMITTEE

Notice of Meeting

Pursuant to 21 U.S.C. 874, the Bureau of Narcotics and Dangerous Drugs (Bureau) will convene a meeting of its Research and Development Advisory Committee (Committee) on Tuesday, March 6, 1973.

In accordance with section 13(d) of Executive Order 11671 (dated June 5, 1972, released June 6, 1972), I have determined that because the activities of the Committee are analogous to those recognized in 5 U.S.C. 552(b)(7), in that they relate to the continued development of the investigative and enforcement capabilities of the Bureau, they should be withheld from disclosure. Accordingly, the meeting will not be open to the public.

Dated: March 2, 1973.

JOHN E. INGERSOLL,
Director, Bureau of Narcotics and Dangerous Drugs.

[FR Doc.73-4392 Filed 3-5-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CHIEF, DIVISION OF ADMINISTRATION, ADMINISTRATIVE OFFICER; CRAIG, COLO.

Delegation of Authority Regarding Contracts and Leases

A. Pursuant to redelegation of authority contained in Bureau Manual 1510.03C and the State Director's redelegation order of April 16, 1968, the Chief, Division of Administration, Administrative Officer, Craig District, is authorized.

1. To enter into contracts with established sources for supplies and services, excluding capitalized and major noncapitalized equipment, regardless of amount and,

2. To enter into contracts on the open market for supplies and materials, excluding capitalized and major noncapitalized equipment, not to exceed $2,500 per transaction, provided the requirement is not available from the established sources, and,

3. To enter into negotiated contracts without advertising pursuant to section 302(c)(2) of the FPAS Act, of 1949, as amended, for rental of equipment and aircraft covered by offer agreements necessary for the purpose of emergency fire suppression, and,

4. To enter into contracts for construction and land treatment not to exceed $2,000 per transaction.

B. This authority may not be further redelegated.

MARVIN W. PEARSON,
District Manager.

[FR Doc.73-4250 Filed 3-5-73;8:45 am]

Fish and Wildlife Service

ANAHO ISLAND NATIONAL WILDLIFE REFUGE

Public Hearing Regarding Wilderness Proposal; Extension of Time for Filing Comments

Notice of the public hearing for the Anaho Island National Wildlife Refuge wilderness proposal was published in the December 12, 1972 issue of the FEDERAL REGISTER as Doc. 72-21269.

The period of time during which comments and testimony will be accepted into the public hearing record is extended to May 15, 1973.

The notice of public hearing is hereby amended as follows: In the final sentence substitute "May 15, 1973" for "March 10, 1973".

SPENCER H. SMITH,
Director, Bureau of Sport Fisheries and Wildlife.

FEBRUARY 28, 1973.

[FR Doc.73-4220 Filed 3-5-73;8:45 am]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Additions, Deletions, or Corrections

By notice in the FEDERAL REGISTER of February 28, 1973, Part II, there was published a list of the properties included in the National Register of Historic Places. Further notice is hereby given that certain amendments or revisions in the nature of additions, deletions, or corrections to the previously published list are adopted as set out below.

It is the responsibility of all Federal agencies to take cognizance of the properties included in the National Register as herein amended and revised in accordance with section 106 of the National Historic Preservation Act of 1966, 80 Stat. 915, 16 U.S.C. 470.

The following properties have been demolished and removed from the National Register:

CALIFORNIA

Sacramento County

Sacramento vicinity, *Bennett Mound*, 9 miles northwest of Sacramento on the Garden Highway.

CONNECTICUT

Hartford County

New Britain, *Hanna's Block*, 432 Main Street.

The following properties have been added to the National Register since February 1, 1973:

ALABAMA

Dallas County

Selman, *Sturdivant Hall (Watts-Parkman-Gillman House)*, 713 Mabry Street.

Elmore County

Wetumpka, *First United Methodist Church (Methodist Episcopal Church)*, 308 Tuskena Street.

Mobile County

Mobile (Spring Hill), *Carolina Hall (Yesterhouse, Dawson-Perdue House)*, 70 South McGregor.

ARKANSAS

Lonoke County

Scott vicinity, *Toltec Indian Mounds (Knapp Mounds)*, about 5 miles southeast of Scott off Arkansas 30.

CALIFORNIA

Imperial County

Anza-Borrego Desert State Park, *Fages-De Anza Trail—Southern Emigrant Route* (also in San Diego County).

Marin County

Novato vicinity, *Rancho Olompali (Coast Miwok Indian Village)*, 8901 Redwood Highway (U.S. 101), 3.5 miles north of Novato.

San Diego County

Fages-De Anza Trail—Southern Emigrant Route (see Imperial County).

Santa Clara County

San Jose, *Civic Art Gallery (Old Post Office)*, 110 Market Street.

COLORADO

Archuleta County

Antonito vicinity, *Cumbres and Toltec Scenic Railroad (Denver & Rio Grande Western Railroad)*, between Antonito and Chama, N. Mex. (also in Conejos County, Colo., and Rio Arriba County, N. Mex.).

Clear Creek County

Georgetown, *Alpine Hose Company No. 2*, 507 Fifth Street.

Conejos County

Cumbres and Toltec Scenic Railroad (*Denver & Rio Grande Western Railroad*) (see Archuleta County).

El Paso County

Colorado Springs, *Chief Theatre (Burns Building and Theatre)*, 21½ East Pikes Peak.

Gilpin County

Central City, *Central City Opera House*, Eureka Street.

Central City, *Teller House*, Eureka Street.

CONNECTICUT

New Haven County

Cheshire, *Farmington Canal Lock*, 487 North Brooksvale Road.

New London County

Norwich, *Norwichtown Historic District*.

DELAWARE

New Castle County

Blackbird vicinity, *Old Union Methodist Church*, 1.5 miles north of Blackbird on U.S. 13.

Odessa vicinity, *Old Drawyers Church (Drawyers Church)*, about 1 mile north of Odessa on U.S. 13.

Wilmington vicinity, *Village of Arden*, 6 miles north of Wilmington.

DISTRICT OF COLUMBIA

Washington

Friendship House (The Maples), 619 D Street SE.

Indonesian Embassy (Walsh-McLean House), 2020 Massachusetts Avenue NW.

GEORGIA

Bartow County

Cartersville, *Roselawn (Sam Jones House)*, 244 Cherokee Avenue.

Decatur County

Bainbridge vicinity, *Curry Hill Plantation*, 6 miles east of Bainbridge on U.S. 84.

Newton County

Oxford, *Orna Villa (Alexander Means House)*, 1008 North Emory Street.

HAWAII

Honolulu County

Honolulu, *Chinatown Historic District*, bounded roughly by Beretania Street on the northeast, Nuuanu Stream on the north, Nuuanu Avenue on the southeast, and a line running north and south 50 feet west of the longest pier in Honolulu Harbor.

Kaneone, *Heeia Fish Pond*, off Kamehameha Highway, adjacent to Heeia Point.

IDAHO

Bannock County

Pocatello, *Stanrod House*, 648 North Garfield Avenue.

ILLINOIS

McLean County

Bloomington, *McLean County Courthouse*, block bounded by Main, Washington, Center, and Jefferson Streets.

Peoria County

Peoria, *Peoria City Hall*, 419 Fulton Street.

INDIANA

Allen County

Fort Wayne, *Johnny Appleseed Memorial Park*, about 0.4 mile south of Coliseum Boulevard (U.S. 30 Bypass) on the east side of Parnell Avenue (3800 block).

Madison County

Anderson vicinity, *Mounds State Park*, 3 miles east of Anderson on SR 32.

Vigo County

Terre Haute, *Dresser, Paul, Birthplace*, northwest corner of First and Farrington Streets, in Fairbanks Park.

KANSAS

Clay County

Clay Center, *Clay County Courthouse*, Fifth and Court Streets.

Cloud County

Concordia, *Nazareth Convent and Academy*, 13th and Washington Streets.

Ellsworth County

Ellsworth, *Hodgden House*, 104 West Main Street.

Harper County

Harper, *Old Runnymede Church (St. Patrick's Episcopal Church)*, northeast corner of 11th and Pine Streets.

Hodgeman County

Jetmore, *Haun, Thompson S., House*, Main Street.

Mitchell County

Beloit, *Hart, F. H., House*, 304 East Main Street.

Montgomery County

Coffeyville, *Condon National Bank*, 811 Walnut Street.

Pottawatomie County

Wamego, *Old Dutch Mill (Schonof Mill)*, Wamego City Park.

Shawnee County

Topeka, *Curtis, Charles, House*, 1101 Topeka Avenue.

KENTUCKY

Fayette County

Lexington, *Loudoun House*, corner of Bryan Avenue and Castlewood Drive.

Mercer County

Harrodsburg, *Morgan Row*, 222, 230, 232 South Chiles.

Harrodsburg vicinity, *Dutch Reform Church (Old Mud Meeting House)*, 3 miles southwest of Harrodsburg, on Dry Branch Road.

Nelson County

Bardstown vicinity, *Wickland*, 0.5 mile east of Bardstown on U.S. 62.

Pike County

Pikeville, *Pikeville College Academy Building*, College Street.

Scott County

Georgetown, *Giddings Hall*, Giddings Drive between Jackson and College Streets.

LOUISIANA

East Baton Rouge Parish

Baton Rouge, *Old Louisiana State Capitol (State House)*, North Boulevard and St. Philip Street.

West Feliciana Parish

St. Francisville vicinity, *Oakley Plantation House*, 4.5 miles east of St. Francisville, off Louisiana 965, in Audubon Memorial State Park.

MAINE

Cumberland County

Gorham, *Academy Building (Gorham Academy, Gorham Seminary)*, Gorham School Street (Route 114).

Portland, *First Parish Church*, 425 Congress Street.

Portland, *Green Memorial A.M.E. Zion Church (Abyssinian Congregational Church and Society)*, 46 Sheridan Street.

Portland, *Portland Club (Hunnewell-Shepley House)*, 156 State Street.

Portland, *Stroudwater Historic District*.

Lincoln County

Wiscasset, *Wiscasset Historic District*.

Penobscot County

Orono, *Washburn, Governor Israel, House*, 120 Main Street.

MARYLAND

Allegany County

Cumberland, *Washington Street Historic District*, east bank of Wills Creek to mid-600 block of Washington Street and Prospect Square.

Anne Arundel County

Annapolis, *Creagh, Patrick, House*, 160 Prince George Street.

Annapolis, *Mount Moriah A.M.E. Church*, 84 Franklin Street.

Annapolis, *Old City Hall & Engine House*, 211–213 Main Street.

Baltimore (independent city)

Londontown Manufacturing Company, Inc. (Meadow Mill), 3600 Clipper Mill Road.

Pascault Row, 651–655 West Lexington Street.

MASSACHUSETTS

Berkshire County

Hancock, *Hancock Town Hall*, Main Street.

Bristol County

New Bedford, *Fort Taber District*, on Wharf Road, within Fort Rodman Military Reservation.

Essex County

Salem, *Fort Pickering (Fort William, Fort Anne)*, southeastern part of Winter Island.

Middlesex County

Cambridge, *Old Harvard Yard*, Massachusetts Avenue and Cambridge Street.

Lowell, *Chelmsford Glass Works' Long House*, 139–141 Baldwin Street.

Worcester County

Northbridge, Uxbridge, *Blackstone Canal*, east of Route 122, from Northbridge to Uxbridge.

MICHIGAN

Bay County

Bay City, *Tromble House*, 114, 116, 118 Webster Street.

Huron County

Port Hope, *Stafford House*, 4467 Main Street.

Ottawa County

Coopersville, *Grand Rapids, Grand Haven & Muskegon Railway Depot*, 363 West Main Street.

Wayne County

Highland Park, *Highland Park Plant, Ford Motor Company*, 15050 Woodward Avenue.

MISSISSIPPI

Harrison County

Biloxi, *Biloxi Garden Center (Old Brick House)*, 410 East Bayview Avenue.

Jefferson County

Rodney vicinity, *Laurel Hill Plantation House*, 2 miles southeast of Rodney.

Rodney, *Rodney Presbyterian Church*.

Warren County

Redwood, *Snyder's Bluff (Fort Saint Peter-Fort Snyder)*, on Mississippi 3.

MISSOURI

Howard County

New Franklin, *"Rivercene,"* RFD 1.

Jasper County

Carthage, *Jasper County Courthouse*, Courthouse Square.

St. Louis County

Hazelwood, *Utz-Tesson House*, 615 Utz Lane.

NEBRASKA

Hall County

Grand Island vicinity, *Grand Island FCC Monitoring Station*, 5 miles west of Grand Island near State Spur 430.

Thayer County

Alexandria, *Dill, Richard E., House*.

NEW JERSEY

Burlington County

Arney's Mount, *Arney's Mount Friends Meeting House and Burial Ground*, intersection of Mount Holly-Juliustown and Pemberton-Arney's Mount Roads.

Camden County

Cinnaminson vicinity, *Morgan, Griffith, House*, about 2 miles west of Cinnaminson on the Delaware River at the mouth of Pennsauken Creek.

Gloucester County

Barnsboro, *Barnsboro Hotel*, north side of intersection of Pitman-Sewell Roads.

National Park, *Whitall, James Jr., House*, 100 Grove Avenue.

Swedesboro, *Trinity Church (Old Swedes Church)*, northwest corner of Church Street and King's Highway.

Swedesboro vicinity, *Stratton, Governor Charles C., House*, 0.5 mile east of Swedesboro on King's Highway.

Wenonah, *Clark, Benjamin, House*, Glassboro Road (CR 553).

Woodbury, *Woodbury Friends' Meeting House*, 120 North Broad Street.

Hunterdon County

Annandale, *Bray-Hoffman House*, west side of Bray's Hill Road, 0.6 mil south of U.S. 22.

Mercer County

Hamilton Square vicinity, *Hutchinson House*, 1 mile northeast of Hamilton Square on Hutchinson Mill-Pond Road.

Lawrenceville vicinity, *White, John, House*, 1 mile north of Lawrenceville on Cold Soil Road.

Trenton, *Bow Hill (DeKlyn House)*, Jeremiah Avenue off Laylor Street.

Trenton, *The Mansion House (McCall House, Ellarslie)*, Cadwalader Park.

Union County

Scotch Plains, *Old Baptist Parsonage*, 547 Park Avenue.

NEW MEXICO

Rio Arriba County

Cumbres and Toltec Scenic Railroad (Denver & Rio Grande Western Railroad) (see Archuleta County, Colo.).

Valencia County

Laguna, *San Jose de la Laguna Mission and Convento*, southeast corner of Laguna Plaza.

NEW YORK

Albany County

Albany, *First Trust Company Building*, 35 State Street.

Altamont, *Hayes House*, 104 Fairview Avenue.

Chenango County

Earlville, *Earlville Opera House (Douglass Opera House)*, 12–20 East Main Street.

Dutchess County

Pawling, *Oblong Friends Meeting House*, Meetinghouse Road, Quaker Hill.

Erie County

Buffalo, *Buffalo State Hospital*, 400 Forest Avenue.

Irving, *Thomas Indian School*, on route 438, in Cattaraugus Indian Reservation.

Essex County

Essex vicinity, *Octagonal Schoolhouse*, on Route 22 in Bouquet.

Montgomery County

Palatine, *Palatine Church (Evangelical Lutheran)*, on Mohawk Turnpike (NY 5).

New York County

New York, *Smith, Abigail Adams, House (Stable)*, 421 East 61st Street.

New York, *Surrogate's Court (Hall of Records)*, 31 Chambers Street.

New York, *U.S. General Post Office*, Eighth Avenue between 31st and 33d Streets.

Orange County

Newburgh, *Mill House (Gomez the Jew House*, Mill House Road.

Rensselaer County

Troy, *Troy Public Library (Hart Memorial Library)*, 100 Second Street.

Richmond County

Staten Island, *Kreuzer-Pelton House*, 1262 Richmond Terrace.

Westchester County

Ossining, *First Baptist Church of Ossining*, South Highland Avenue and Main Street.
Purdys, *Purdy, Joseph, Homestead*, intersection of (Old) NY 22 and NY 116.
Scarsdale, *Hyatt, Caleb, House (Cudner-Hyatt House)*, 937 White Plains Post Road.

Wyoming County

Wyoming, *Middlebury Academy*, 22 South Academy Street.

NORTH CAROLINA

Cumberland County

Erwin vicinity, *Oak Grove*, south of Erwin off NC 82, 0.8 mile north of junction of NC 82 and SR 1875.
Fayetteville, *Fayetteville Woman's Club and Oval Ballroom*, 225 Dick Street.

Guilford County

Jamestown, *Jamestown Historic District*, about 1 mile stretch flanking U.S. 29A-70A.

Halifax County

Scotland Neck vicinity, *Sally-Billy House*, 0.8 mile west of Scotland Neck on south side of SR 1117.

Harnett County

Dunn vicinity, *Lebanon*, 4.5 miles southwest of Dunn on NC 82.

Iredell County

Statesville, *Main Building, Mitchell College*, Broad Street.

Lee County

Sanford, *The Railroad House*, Carthage Street at Hawkins Avenue.

Macon County

Wests Mill vicinity, *Cowee Mound and Village Site*, 0.75 mile west of Weste Mill on the south bank of Little Tennessee River.

Pamlico County

Oriental vicinity, *China Grove*, 3 miles southwest of Oriental on Janeiro RPR 1302.

Warren County

Warrenton vicinity, *Elgin*, 1.5 miles southeast of Warrenton on SR 1509.

OHIO

Cuyahoga County

Cleveland, *Mather, Samuel, Mansion (University Hall, Cleveland State University)*, 2605 Euclid Avenue.

Greene County

Wilberforce, *Homewood Cottage (Hallie Q. Brown House)*, on Brush Row Road, immediately northwest of the Post Office.
Wilberforce, *President's House, Central State University (Scarborough, William, House)*, southeast side of Brush Row Road, just southeast of the Post Office.

Hamilton County

Cincinnati, *Covenant-First Presbyterian Church*, Eighth and Elm Streets.
Cincinnati, *Dayton Street Historic District*, bounded on the north by Bank Street, on the east by Linn Street, and on the south by Poplar Street, and on the west by Winchell Avenue.
Cincinnati, *St. Peter-in-Chans Cathedral*, 325 west Eighth Street.
Cincinnati, *Taft Museum (Baum, Martin, House)*, 316 Pike Street.

Medina County

Wadsworth, *St. Mark's Episcopal Church (Wadsworth Congregational Church)*, 146 College Street.

PENNSYLVANIA

Chester County

Dilworthtown, *Dilworthtown Historic District*, intersection of CR 15199 and 15087.

Philadelphia County

Philadelphia, *Church of the Holy Trinity*, southwest corner of 19th and Walnut Streets.

RHODE ISLAND

Newport County

Newport, *Rosecliff (Hermann Oelrichs House, J. Edgar Monroe House)*, east side of Belmont Avenue, south of Marine Avenue.

Providence County

Providence, *Hope Street Historic District*, Hope Street from its intersection with Benevolent Street at the south to its intersection with Angell Street at the north.
Providence, *Hoppin, Thomas F., House*, 383 Benefit Street.
Providence, *St. Stephen's Church*, 114 George Street.

TENNESSEE

Jefferson County

Dandridge, *Dandridge Historic District*, bounded on the east by Mill Street extended to the dike, on the south by the dike, on the west by a line about 800 feet west of Gay Street, and on the north by a line about 900 feet north of Meeting Street.

Williamson County

Franklin, *Carnton*, Confederate Cemetery Lane.
Franklin, *Fort Granger*, off Liberty Pike.

VERMONT

Windsor County

Woodstock, *Woodstock Village Historic District*.

VIRGINIA

Fairfax County

Fairfax, *Harp's Ordinary (Ratcliffe-Logan-Allison House)*, 200 east Main Street.

Lancaster County

Lancaster vicinity, *Belle Isle*, southwest side of the west end of Route 683, 1 mile west of intersection with Route 354.

Virginia Beach (independent city)

Virginia Beach, *Pleasant Hall*, 5184 Princess Anne Road.

WASHINGTON

Clark County

Vancouver, *Slocum House*, 605 Esther Street.

Jefferson County

Port Townsend, *Tucker, Horace, House*, 706 Franklin Street.

Spokane County

Spokane, *Cowley Park*, South Division Street between Sixth and Seventh Avenues.

WISCONSIN

Waukesha County

Saylesville vicinity, *Booth, J. C., House (John Rankin House)*, about 1 mile southwest of Saylesville on Saylesville Road (County Trunk Highway X).

WYOMING

Albany County

Between Rock River and Medicine Bow, *Como Bluff*, on U.S. 30, along Como Ridge (also in Carbon County).

Carbon County

Como Bluff (see Albany County).

Laramie County

Cheyenne, *Union Pacific Depot*, 121 West 15th Street.
Cheyenne, *Wyoming State Capitol Building and Grounds*, 24th Street and Capitol Avenue.

ROBERT M. UTLEY,
Director, Office of Archeology, and Historic Preservation.

[FR Doc.73-4158 Filed 3-5-73;8:45 am]

ROSS LAKE NATIONAL RECREATION AREA

Notice of Intention To Negotiate Concession Contract

Pursuant to the provisions of section 5, of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20) public notice is hereby given that on or before April 5, 1973, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Diablo Lake Resort authorizing it to provide concession facilities and services for the public at Ross Lake National Recreation Area for a period of 15 years from January 1, 1973, through December 31, 1987.

The foregoing concessioner has performed its obligations under the expiring contract to the satisfaction of the National Park Service, and therefore, pursuant to the Act cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. However, under the Act cited above, the Secretary is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted on or before April 5, 1973. Interested parties should contact the Chief, Office of Concessions Management, National Park Service, Washington, D.C. 20240, for information as to the requirements of the proposed contract.

Dated: February 26, 1973.

LAWRENCE C. HADLEY,
Assistant Director, National Park Service.

[FR Doc.73-4157 Filed 3-5-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Forest Service

[Region 6]

DESCHUTES NATIONAL FOREST CATTLEMEN AND WOOLGROWERS ADVISORY BOARD

Notice of Meeting

The Deschutes National Forest Cattlemen and Woolgrowers Advisory Board will meet at 1:30 p.m., March 16, 1973, at the Supervisor's Office, 211 East Revere, Bend, OR.

The purpose of this meeting is to discuss the following topics:

1. Forest Position Statements.
2. Oregon State Game Commission's Report on Wildlife.
3. Bureau of Sport Fishery and Wildlife's Report on Predator Situation.

4. General Discussion of Permittee Problems.

The meeting will be open to the public. Persons who wish to attend should notify Milton J. Griffith, 382-6922. Ext. 262. Written statements may be filed with the committee before or after the meeting. The Chairman may request comments from any individual or group representative.

EARL E. NICHOLS,
Forest Supervisor.

FEBRUARY 26, 1973.

[FR Doc.73-4156 Filed 3-5-73;8:45 am]

[Region 6]

ROGUE RIVER NATIONAL FOREST ADVISORY COUNCIL COMMITTEE

Notice of Meeting

The Rogue River National Forest Advisory Council Committee will meet March 29, 1973, 9 a.m., in the Jackson County Courthouse auditorium.

The purpose of this meeting is to discuss the following topics: Overview of Current Forest Activities, Squaw Lakes Management Plan Proposals, Status of Roadless Area Study, Rogue River Corridor, and Cattle Grazing in Mountain Meadows and along Hiking Trails.

The meeting will be open to the public.

Dated: February 26, 1973.

H. M. LILLIGREN,
Forest Supervisor.

[FR Doc.73-4251 Filed 3-5-73;8:45 am]

ROUTT NATIONAL FOREST MULTIPLE-USE ADVISORY COMMITTEE

Notice of Meeting

The Routt National Forest Multiple-Use Advisory Committee will meet at 10 a.m., March 9, 1973, in the meeting room at the Yampa Valley Electric Association Building in Steamboat Springs, Colo.

The purpose of this meeting is to:

Discuss the Routt National Forest Accomplishment Report.
Discuss management of South Fork of the Williams Fork Area.
Discuss roadless areas and Chief's draft environmental statement.
Discuss possible land exchange with Woodmoor Corp.
Report on proposed transportation system and travel restrictions.
Report on Bureau of Reclamation 345 kv. powerline project and Yampa Valley Electric 69 kv. line to Clark.
Report on timber management plans for the next 5 years.
Determine time and place for the summer field meeting.

The meeting will be open to the public. Persons who wish to attend should notify the Routt National Forest in Steamboat Springs, Colo., phone number 879-1722. Written statements may be filed with the committee before or after the meeting.

The committee has established the following rules for public participation:

The chairman will provide time for the public to present oral statements and ask pertinent questions at the conclusion of the business meeting.

W. B. METCALF,
Forest Supervisor.

FEBRUARY 27, 1973.

[FR Doc.73-4200 Filed 3-5-73;8:45 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. B-558]

BRUCE G. HUSON

Notice of Loan Application

FEBRUARY 28, 1973.

Bruce G. Hudson, 508 Summer Street, Manchester, MA 01944, has applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a new wood vessel, about 36 feet in length, to engage in the fishery for lobsters.

Notice is hereby given, pursuant to the provisions of 16 U.S.C. 742c, Fisheries Loan Fund Procedures (50 CFR Part 250, as revised), and Reorganization Plan No. 4 of 1970, that the above-entitled application is being considered by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, National Marine Fisheries Service, on or before April 5, 1973. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operation of the vessel will or will not cause such economic hardship or injury.

ROBERT W. SCHONING,
Acting Director, National Marine Fisheries.

[FR Doc.73-4201 Filed 3-5-73;8:45 am]

ECONOMIC HARDSHIP EXEMPTIONS

Notice of Applications

Notice is hereby given that the following applicants have filed applications for an economic hardship exemption pursuant to section 101(c) of the Marine Mammal Protection Act of 1972 (Public Law 92-522), and § 216.13, of the interim regulations governing the taking and importing of marine mammals (37 FR 28177).

1. Paul A. Paulbitski, graduate student, Department of Marine Biology, California State University, San Francisco, Calif., to continue tagging harbor seals (*Phoca vitulina richardi*) in San Francisco Bay in order to complete his research requirements for an advanced degree from California State University.

Applicant states that he:

(a) Has been conducting research for the past 2 years to determine the status and movement of harbor seals in San Francisco Bay. During this time, he has tagged three seals.

(b) Has developed a mortality-free technique to capture harbor seals on shore, mark them, and release them with minimum stress to the animals.

(c) Desires to tag no more than 20 harbor seals through April 1973. Has made no recovery plans, but will observe the tagged seals visually.

(d) Has invested in capturing and tagging equipment, is supporting research and education with personal funds.

(e) Will be caused undue economic hardship as failure to receive an exemption would require cancellation or redirection of his graduate study program.

2. Charles O. Handley, Jr., Curator and Supervisor, Division of Mammals, National Museum of Natural History, Smithsonian Institution, Washington, D.C., to import from Argentina the skeleton of one Beaked whale (*Tasmacetus sp.*) to add to the Smithsonian reference collection.

Applicant states that:

(a) The carcass of this rare whale was found on the beach during a Smithsonian reconnaissance trip to Peninsula Valdez, Chubut, Argentina, by Dr. James G. Mead.

(b) Only five examples of this whale are known to exist in world museums; none in the United States.

(c) The previous skeletons, mostly fossil, have all been found in the Pacific around New Zealand.

(d) The specimen has great scientific value.

(e) Failure to receive an exemption would result in the loss of the investment which has been made in semi-preserving and preparing the skeleton for shipment and create an undue economic hardship.

3. H. L. Stone, Ph. D., Chief, Cardiovascular Control Section, Division of Comparative Marine Neurobiology, The Marine Biomedical Institute, Galveston, Tex., to capture and hold 20 California sea lions (*Zalophus californianus*) for the purpose of continuing scientific research efforts to describe their diving reflexes elicited by face immersion.

Applicant states that:

(a) Information on the reaction and control of the cardiovascular system of the sea lion upon diving will furnish needed information about disease processes in these animals and benefit medical science in understanding cerebral vascular and coronary artery disease.

(b) The sea lion has proven to be technically the most successful mammal for this type study.

(c) Animals will be purchased from a commercial collector agent in California.

(d) The requested exemption will allow completion of two scheduled experimental series involving 10 animals each.

(e) Utmost care and humane treatment are rendered to the sea lion before and after implantation of the bioinstrumentation.

(f) At the conclusion of each set of experiments, most of the animals are donated to aquaria for public display.

Some, however, may be sacrificed for autopsy.

(g) During work to date, four animals have been involved, and none have been sacrificed.

(h) The Marine Biomedical Institute and the National Institutes of Health are supporting this project in excess of $70,000 per year.

(i) Continued studies are planned for future years.

(j) Interruption of this continuing scientific research would affect the jobs of the five people directly involved, and would cause economic hardship to the Institute through the loss of grant funds.

4. Frederick J. Woelkers III, Alaska Research Co., Post Office Box 877, Seward, Alaska, to take adult and pup seals and sea lions for commercial sale of the hides, meat, and fat.

Applicant states that:

(a) The area to be hunted is mostly from the southern coast of south central Alaska, centering in the Seward-Kodiak area.

(b) One or two hunting trips will be made near Yakutat, and a few trips out on the Aleutian chain and Bering Sea during the next summer.

(c) Conditions will determine time, date, and area.

(d) The numbers to be harvested are as follows:

Seal adults—under 1,600, not more than 30 percent of any one herd or group in a given area.

Seal pups—500, not more than 50 percent in a given rookery or area.

Sea lion adults—under 500, not more than 20 percent of any one herd in a given area.

Sea lion pups—under 500, not more than 50 percent of any given rookery.

(e) He has discussed the effects of the numbers harvested on the seal and sea lion populations with biologists in Alaska and his conclusion is that, in general, the sea lion is underharvested and the seal has been harvested through the years with no apparent damage to the total population.

(f) His livelihood is dependent upon the taking and selling and failure to receive an exemption will cause undue economic hardship.

5. Ray C. Randall, Port William, Alaska, to take 2,500 sea lion pups for commercial sale of the hides, meat, and fat.

Applicant states that:

(a) The area to be hunted is Marmot Island, a rookery in the Kodiak, Alaska, island group.

(b) Past practice has been to take about half the pups in any one rookery area.

(c) The harvest has historically started in the late spring and continued into the summer.

(d) An economic hardship is claimed on the basis that his livelihood has been derived, exclusively, during the past 10 years, from sea lion and seal hunting.

6. Joseph L. Hrachovec, President, Black Hills Marineland Inc., Post Office Box 1243, Rapid City, SD, to take and display three California sea lions (*Zalophus californianus*) and to lease and display one bottle-nosed dolphin (*Tursiops truncatus*). Applicant states that:

(a) During the past 10 years, he has operated a commercial marine aquarium open to the public principally during the summer months.

(b) He desires to purchase three California sea lions from a California collector/agent to add to his display.

(c) He desires to lease one dolphin, subject to the Marine Mammal Protection Act, from Gulfarium, Fort Walton Beach, Fla., which is one of the listed animals in a separate application for an economic hardship exemption for Gulfarium, published in the FEDERAL REGISTER on January 24, 1973.

(d) Two animals have been shipped from Florida to South Dakota in the spring and returned during the fall of each of the past 8 years and the applicant has gained considerable handling experience in this process.

(e) Two animals will actually be shipped this year, if the exemption is granted, one of which is already trained and is exempt from the Marine Mammal Protection Act because it was captured before December 21, 1972. The second animal, which is the subject of this application, will undergo team training with the first during the summer.

(f) Veterinary care is provided locally during the summer, with advice and assistance from the veterinarian employed by the gulf coast supplier.

(g) His business is totally dependent upon securing and training these animals and if an exemption is not granted, his show will not open and he will suffer economic hardship.

7. Lawrence E. Bond, Director, Global Sea Lions Inc., Santa Barbara, Calif., to take 200 California sea lions (*Zalophus californianus*), for sale to aquariums and zoos.

Applicant states that:

(a) He has performed a collecting service for zoos and other displayers for 5 years and has developed humane methods of capture, holding, and shipment.

(b) Animals are netted in the water at, or near, Adams Cove, San Miguel Island, Calif.

(c) No pregnant, nursing, diseased, or injured animals are retained.

(d) Prior to shipment, animals are held in clean pens and fed daily.

(e) His entire income is derived from this operation and failure to receive an exemption would constitute economic hardship to himself and to zoos and aquaria which generally do not have collecting capabilities or experience.

Documents submitted in connection with these applications are available for inspection in the Office of the Director, National Marine Fisheries Service. Confidential financial documents and trade secrets will not be available.

All factual statements and opinions contained in this notice, with respect to each application, are those supplied by the respective applicants and do not necessarily reflect the findings or opinions of the National Marine Fisheries Service.

Dated: March 1, 1973.

ROBERT W. SCHONING,
Acting Director, National Marine Fisheries Service.

[FR Doc.73-4324 Filed 3-5-73;8:45 am]

YELLOWFIN TUNA

Closure of Season

Notice is hereby given pursuant to § 280.5, Title 50, Code of Federal Regulations, as follows:

On February 28, 1973, the Director of Investigations of the Inter-American Tropical Tuna Commission recommended to the representatives of all nations having vessels operating in the regulatory area defined in 50 CFR 280.1(g), that the yellowfin tuna fishing season be closed at 0001 hours, local time, on March 8, 1973, to assure that the established catch limit of 130,000 short tons for 1973 will not be exceeded.

I hereby announce that the 1973 season for the taking of yellowfin tuna without restriction as to quantity by persons and vessels subject to the jurisdiction of the United States will terminate at 0001 hours, local time in the area affected, March 8, 1973.

Issued at Washington, D.C., and dated March 1, 1973.

ROBERT W. SCHONING,
Acting Director, National Marine Fisheries Service.

[FR Doc.73-4210 Filed 3-5-73;8:45 am]

Office of Import Programs

ROOSEVELT UNIVERSITY ET AL.

Notice of Consolidated Decision on Applications for Duty-Free Entry of Ultramicrotomes

The following is a consolidated decision on applications for duty-free entry of ultramicrotomes pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.). (See especially § 701.11(e).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 73-00163-33-46500. Applicant: Roosevelt University, 430 South Michigan Avenue, Chicago, IL 60605. Article: Ultramicrotome, Model "Om U2". Manufacturer: C. Reichert Optische Werke AG, Austria. Intended use of article: The article is intended to be used in studies involving the following: (1) Cytochemical localization of phosphatase

activity in the branchial epithelium of the black mollie in fresh water and during sea water adaptation. This study is part of an effort to identify the cytological basis for an extrarenal salt excreting mechanism in euryhaline fish species adapted to sea water.

(2) A comparison of the fine structure of Tetrahymena cells in stock cultures with that in cells following a 24-hour bout of parasitism in the hemolymph of the cockroach.

The article will also be used in the course Biological Electron Microscopy (Biology 385) to help each student acquire skill in processing a particular specimen for electron miscroscopy and to acquaint him with the variety of techniques available for the preparation of biological materials frequently used in research and clinical electron microscope laboratories. Application received by Commissioner of Customs: September 26, 1972. Advice submitted by Department of Health, Education, and Welfare on: February 16, 1972.

Docket No. 73-00167-33-46500. Applicant: Chico State College, Department of Biological Sciences, Chico, Calif. 95926. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produckter AB, Sweden. Intended use of article: The article is intended to be used in studies of biological materials both plant and animal. Experiments to be conducted include:

(1) Study of the role that microtubules play in the morphogenesis of parasitic protozoa, particularly flagellates;

(2) Study of the ultrastructure and development of generative cells in geranium pollen grain and pollen tube; and

(3) Study of the role of generative organelles (amyloplasts and mitochondria) in male transmission of cytoplasmic inherited characters in several plants, and ultrastructure of the wall of pollen grains.

The article will also be used in the course Biology Science 202, Cytology, to present an introduction to the structure and related functions of plant and animal cells and protoplasmic systems. In addition the article will be used to present theory and provide actual experience in preparing biological specimens for electron microscopy. Application received by Commissioner of Customs: September 27, 1972. Advice submitted by Department of Health, Education, and Welfare on: February 16, 1972.

Docket No. 73-00169-33-46500. Applicant: Howard University, College of Medicine, Department of Pathology, 520 W Street NW., Washington, DC 20001. Article: Ultramicrotome, Model LKB 8800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used in studies of biological tissues, mainly mammalian derived from surgical biopsies of hospital patients and experimental animal tissues, exhibiting both pathological and normal cytology. The objectives to be pursued in the course of these investigations are to reveal at the ultrastructural level the changes that occur in very early stages of disease processes. Application received by Commissioner of Customs: September 27, 1972. Advice submitted by Department of Health, Education, and Welfare on February 16, 1972.

Docket No. 73-00170-33-46500. Applicant: University of Houston, 3801 Cullen Boulevard, Houston, TX 77004. Article: Ultramicrotome, Model LKB 4800A and accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of biological materials, primarily the gametes of mammals in experiments which include effecting capacitation of mammalian sperm in vitro, and examination of gametes so treated, with an electron miscroscope for evidence of changes in the fine structure of the gametes. In addition the article will be used to acquaint selected advanced students with electron miscroscope theory and procedures to a sufficient degree for them to apply the procedures to their research. Application received by Commissioner of Customs: September 27, 1972. Advice submitted by Department of Health, Education, and Welfare on February 16, 1972.

Comments: No comments have been received with respect to any of the foregoing applications. Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign articles, for such purposes as these articles are intended to be used, is being manufactured in the United States. Reasons: Each of the foreign articles provides a range of cutting speeds from equal to or less than 0.5 millimeters/second (mm./sec.) to equal to or greater than 10 mm./sec. The most closely comparable domestic instrument is the Model MT-2B ultramicrotome which is manufactured by Ivan Sorvall, Inc. (Sorvall). The Model MT-2B has a range of cutting speeds from 0.09 to 3.2 mm./sec. The conditions for obtaining high quality sections that are uniform in thickness depend to a large extent on the hardness, consistency, toughness and other properties of the specimen materials, the properties of the embedding materials and the geometry of the block. In connection with a prior application (Docket No. 69-00118-33-46500) which relates to the duty-free entry of an article in the category of instruments to which the foregoing applications relate, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such [other] obvious factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned." In connection with another prior case (Docket No. 69-00665-33-46500) relating to the duty-free entry of an article in the same category as those described above, HEW advised that "The range of cutting speeds and a capability for the higher cutting speeds is * * * a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with still another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an article similar to those described above, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." Accordingly, HEW advises in its respectively cited memoranda, that cutting speeds in excess of 4 mm./sec. are pertinent to the satisfactory sectioning of the specimen materials and the relevant embedding materials that will be used by the applicants in their respective experiments.

For these reasons, we find that the Sorvall Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign articles to which the foregoing applications relate, for such purposes as these articles are intended to be used, which is being manufactured in the United States.

B. BLANKENHEIMER,
Acting Director,
Office of Import Programs.

[FR Doc.73-4217 Filed 3-5-73;8:45 am]

UNIVERSITY OF CALIFORNIA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 73-00155-00-46070. Applicant: University of California at Santa Cruz, Purchasing Office, Santa Cruz, Calif. 95060. Article: Goniometer Stage (GS-3). Manufacturer: JEOL, Ltd., Japan. Intended use of article: The article is an accessory for an existing scanning electron microscope being used by students and faculty in the fields of biology, geology, and paleontology. Biologists are studying the form, structure, development, and chemical composition of spores of lower land plants, especially of bryophytes; as well as conducting a study of the structure of the outer membrane of Mitochondria. Geologists are investigating terrestrial and lunar glasses and their alteration products; and also structure and defects within crystals are being studied. Paleontological study with the scanning electron microscope is being made of ultramicroscopic fossils such as coccoliths and discoasters. The addition of this accessory will permit

observation of any material with much greater facility and thus be extremely useful as a teaching aid.

Comments: No comments have been received with respect this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The application relates to an accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used and is pertinent to the applicant's purposes.

The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with or can be readily adapted to the instrument with which the foreign article is intended to be used.

B. BLANKENHEIMER,
Acting Director,
Office of Import Programs.

[FR Doc. 73-4216 Filed 3-5-73;8:45 am]

V.A. REGIONAL OFFICE, N.Y.

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 FR 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 73-00165-33-43780. Applicant: Veterans Administration Regional Office. Supply Officer (4814-R), 252 Seventh Avenue, New York, NY 10001. Article: Myoelectric Hand. Manufacturer: Viennatone Co., Austria. Intended use of article: The article is a prosthetic device developed by the Veterans' Administration to be used in research and educational programs conducted by the Veterans' Administration to enrich the professional and technical people in this field as well as provide the amputee population with better prosthetic devices.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The article and its tentative specifications will be the subject of a feasibility study aimed at providing amputees with better prosthetic equipment. The Department of Health, Education, and Welfare (HEW) in its memorandum dated February 9, 1973 advised that the capabilities of the foreign article are pertinent to the research purposes for which the article is intended to be used. HEW also advised that it knows of no comparable domestic instrument of equivalent scientific value to the foreign article for such purposes for which the article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

B. BLANKENHEIMER,
Acting Director,
Office of Import Programs.

[FR Doc.73-4218 Filed 3-5-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[DESI 9418; Docket No. FDC-D-602; NDA No. 9-418 etc.]

CERTAIN DRUGS CONTAINING PENTAERYTHRITOL TETRANITRATE IN COMBINATION WITH RAUWOLFIA ALKALOIDS, MEPROBAMATE, OR HYDROXYZINE HYDROCHLORIDE

Notice of Opportunity for Hearing on Proposal To Withdraw Approval of New Drug Applications

In a notice (DESI 9418) published in the FEDERAL REGISTER of October 20, 1971 (36 FR 20313), the Commissioner of Food and Drugs announced his conclusions pursuant to the evaluation of reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the drugs described below, stating that the drugs were regarded as possibly effective and lacking substantial evidence of effectiveness for the various labeled indications. The possibly effective indications have been reclassified as lacking substantial evidence of effectiveness in that no evidence of effectiveness of the drugs has been received pursuant to the notice.

NDA No.	Drug	NDA holder
9-418	Pentoxylon Tablets, containing pentaerythritol tetranitrate and alseroxylon.	Riker Laboratories, Inc., Subsidiary of 3M Co., 19901 Nordhoff St., Northridge, CA 91325.
10-084	Nitralox Tablets, containing pentaerythritol tetranitrate and alseroxylon.	Dorsey Laboratories, Division of Sandoz-Wander, Inc., Northeast U.S. 6 and Interstate 80, Lincoln, Nebr. 68501.
10-245	Pentaserpine Tablets and Pentaserpine "20" Tablets, containing pentaerythritol tetranitrate and reserpine.	Nysco Laboratories, Inc., 34-24 Vernon Boulevard, Long Island City, N Y 11106.
11-129	Respet Tablets, containing pentaerythritol tetranitrate and reserpine.	Westerfield Laboratories, Inc., 3941 Brotherton Road, Cincinnati, OH 45209.
11-423	Equanitrate 10 and Equanitrate 20 Tablets, containing pentaerythritol tetranitrate and meprobamate.	Wyeth Laboratories, Inc., Division of American Home Products Corp., Post Office Box 8299, Philadelphia, PA 19101.
11-502	Miltrate Tablets, containing pentaerythritol tetranitrate and meprobamate.	Wallace Pharmaceuticals, Division of Carter-Wallace, Inc., Half Acre Road, Cranbury, N.J. 08512.
10-908	Cartrax 10 and Cartrax 20 Tablets, containing pentaerythritol tetranitrate and hydroxyzine hydrochloride.	J. B. Roering Division, Pfizer Pharmaceuticals, 235 East 42d Street, New York, N Y 10017.

Therefore, notice is given to the holders of the new drug application(s) and to any other interested person that the Commissioner proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 (e)) withdrawing approval of the listed new drug application(s) and all amendments and supplements thereto on the grounds that new information before him with respect to the drug(s), evaluated together with the evidence available to him at the time of approval of the application(s), shows there is a lack of substantial evidence that the drug(s) will have all the effects purported or represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

All identical, related, or similar products, not the subject of an approved new drug application, are covered by the new drug application(s) reviewed. See 21 CFR 130.40 (37 FR 23185, October 31, 1972). Any manufacturer or distributor of such an identical, related, or similar product is an interested person who may in response to this notice submit data and information, request that the new drug application(s) not be withdrawn, request a hearing, and participate as a party in any hearing. Any person who

wishes to determine whether a specific product is covered by this notice should write to the Food and Drug Administration, Bureau of Drugs, Office of Compliance (BD-300), 5600 Fishers Lane, Rockville, Maryland 20852.

In accordance with the provisions of section 505 of the Act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Part 130), the Commissioner hereby gives the applicant(s) and any other interested person an opportunity for a hearing to show why approval of the new drug application(s) should not be withdrawn.

On or before April 5, 1973, the applicant(s) and any other interested person is required to file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, Maryland 20852, a written appearance electing whether or not to avail himself of the opportunity for a hearing. Failure of an applicant or any other interested person to file a written appearance of election within said 30 days will constitute an election by him not to avail himself of the opportunity for a hearing.

If no person elects to avail himself of the opportunity for a hearing, the Commissioner without further notice will enter a final order withdrawing approval of the application(s).

If an applicant or any other interested person elects to avail himself of the opportunity for a hearing, he must file, on or before April 5, 1973, a written appearance requesting the hearing, giving the reasons why approval of the new drug application(s) should not be withdrawn, together with a well-organized and full-factual analysis of the clinical and other investigational data he is prepared to prove in support of his opposition. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing (21 CFR 130.14 (b)).

If review of the data submitted by an applicant or any other interested person warrants the conclusion that there exists substantial evidence demonstrating the effectiveness of the product(s) for the labeling claims involved, the Commissioner will rescind this notice of opportunity for hearing.

If review of the data in the application(s) and data submitted by the applicant(s) or any other interested person in a request for a hearing, together with the reasoning and factual analysis in a request for a hearing, warrants the conclusion that no genuine and substantial issue of fact precludes the withdrawal of approval of the application(s), the Commissioner will enter an order of withdrawing making findings and conclusions on such data.

If, upon the request of the new drug applicant(s) or any other interested person, a hearing is justified, the issues will be defined, a hearing examiner will be named, and he shall issue, as soon as practicable on or before April 5, 1973, a written notice of the time and place at which the hearing will commence. All persons interested in identical, related, or similar products covered by the new drug application(s) will be afforded an opportunity to appear at the hearing, file briefs, present evidence, cross-examine witnesses, submit suggested findings of fact, and otherwise participate as a party. The hearing contemplated by this notice will be open to the public except that any portion of the hearing that concerns a method or process the Commissioner finds entitled to protection as a trade secret will not be open to the public, unless the respondent specifies otherwise in his appearance.

Requests for a hearing and/or elections not to request a hearing may be seen in the office of the hearing clerk (address given above) during regular business hours, Monday through Friday.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-53, as amended; 21 U.S.C. 355), and the Administrative Procedure Act (5 U.S.C. 554), and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: February 23, 1973.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc.73-4057 Filed 3-5-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[FAP 3B2877]

E. I. du PONT de NEMOURS & CO.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 3B2877) has been filed by E. I. du Pont de Nemours & Co., 1007 Market Street, Wilmington, DE 19898, proposing that § 121.2524 *Polyethylene phthalate films* (21 CFR 121.2524) be amended to extend the present limited use of polyethylene terephthalate, a form of polyethylene phthalate, in the manufacture of film to use in other articles intended to contact food.

Dated: February 25, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73-4187 Filed 3-5-73;8:45 am]

National Institutes of Health

BIOLOGICAL MODELS SEGMENT ADVISORY GROUP

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Biological Models Segment Advisory Group, March 22 and 23, 1973, at 9 a.m., National Institutes of Health, Building Landow, 7910 Woodmont Avenue, Bethesda, MD, Conference Room B301-B303. This meeting will be open to the public from 1:30 p.m., March 23, 1973, to discuss long range plans in model development of specific organ cancers and the immuniate feasibility of implementing a cooperative agreement with other nations in assessing the carcinogenesis of breast cancer and closed to the public from 9 a.m., March 22, 1973 through 1:30 p.m., March 23, 1973, in accordance with the provisions set forth in section 552(b)(4) of title 5, United States Code and 10(d) of Public Law 92-463. Attendance by the public will be limited to space available.

Mr. Frank Karel, Associate Director for Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Md. 20014, 301—496-1911, will furnish summaries of the open/closed meeting and roster of committee members.

Dr. Richard A. Pledger, Executive Secretary, Landow Building, Room A306, National Institutes of Health, Bethesda, Md. 20014, 301—496-5471, will provide substantive program information.

Dated: February 26, 1973.

JOHN F. SHERMAN,
Deputy Director, National Institutes of Health.

[FR Doc.73-4165 Filed 3-5-73;8:45 am]

COMMITTEE ON CYTOLOGY AUTOMATION

Notice of Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Committee on Cytology Automation, March 12-13, 1973, at 9 a.m. each day, National Institutes of Health, Building 31, Conference Room 9. This meeting will be open to the public from 9 a.m., March 12-13, 1973, at which time the committee will discuss Specimen Preparation and Collection for Automated Cytology. The meeting will be closed to the public March 12 from 10 a.m. to 12 noon; 2:30 p.m. to 5 p.m., and 9 p.m. to 11 p.m., also March 13 from 10 a.m. to 12 noon and 2:30 p.m. to 5 p.m., in accordance with section 552(b)4 of title 5 United States Code and 10(d) of Public Law 92-463. Attendance by the public will be limited to space available.

Mr. Frank Karel, Associate Director for Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Md. 20014, 301—496-1911, will furnish summaries of the open/closed meeting and roster of committee members.

Dr. Chester Herman, Chairman, Building 10, Room 1A24, National Institutes of Health, Bethesda, Md. 20014, 301—496-2441, will provide substantive program information.

Dated: February 26, 1973.

JOHN F. SHERMAN,
Deputy Director, National Institutes of Health.

[FR Doc.73-4161 Filed 3-5-73;8:45 am]

AD HOC COMMITTEE FOR PREVIEW OF THE SPECIAL VIRUS CANCER PROGRAM

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Ad Hoc Committee for Review of the Special Virus Cancer Program, March 23, 1973, 9:30 a.m., Room 302, Tower Building, Rockefeller University, New York City. This meeting will be open to the public from 9:30 a.m., March 23, 1973, to discuss the modus operandi of the committee. Attendance by the puplic will be limited to space available.

Mr. Frank Karel, Associate Director for Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Md. 20014, 301—496–1911, will furnish summaries of the open meeting and roster of committee members.

Dr. Maurice L. Guss, Executive Secretary, Building 37, Room 1B14, National Institutes of Health, Bethesda, Md. 20014, 301—496–3323, will provide substantive program information.

Dated: February 26, 1973.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

[FR Doc.73–4168 Filed 3–5–73;8:45 am]

MOLECULAR CONTROL WORKING GROUP

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Molecular Control Working Group, March 15, 1973, at 9 a.m., National Institutes of Health, Building 31, Conference Room 2. This meeting will be open to the public from 9 a.m. to 12 noon, March 15, 1973, to discuss applications of molecular biology and biophysics to cancer research, and closed to the public from 1:30 p.m. to 5 p.m., March 15, 1973, in accordance with the provisions set forth in section 552(b)4 of title 5 United States Code and 10(d) of Public Law 92–463. Attendance by the public will be limited to space available.

Mr. Frank Karel, Associate Director for Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Md. 20014, 301—496–1911, will furnish summaries of the open/closed meeting and roster of committee members.

Dr. Timothy E. O'Connor, Executive Secretary, Building 41, Room A107, National Institutes of Health, Bethesda, Md. 20014, 301—496–3647, will provide substantive program information.

Dated: February 26, 1973.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

[FR Doc.73–4164 Filed 3–5–73;8:45 am]

NATIONAL ADVISORY NEUROLOGICAL DISEASES AND STROKE COUNCIL

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Neurological Diseases and Stroke Council, March 22, 23, and 24, 1973, at 9 a.m., in Conference Room 10, Building 31–C, National Institutes of Health, Bethesda, Md. This meeting will be open to the public on March 22, 1973, from 9 a.m. until 1:30 p.m. and on March 23, 1973, from 3 p.m. until the conclusion of the meeting, to discuss program planning and program accomplishments and closed to the public from 1:30 p.m. on March 2, 1973, until 3 p.m. on March 23, 1973, to review, discuss, and and evaluate and/or rank research and training grant and research career development award applications in accordance with the provisions set forth in section 10(d) of Public Law 92–463. Attendance by the public will be limited to space available.

1. The institute information officer who will furnish summaries of the meeting and rosters of committee members is: Mrs. Ruth Dudley, Building 31, Room 8A03, phone: 496–5751.

2. The executive secretary from whom substantive program information may be obtained is: Dr. Murray Goldstein, Room 757, Westwood Building, NIH, phone: 496–7705.

Dated: February 23, 1973.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

[FR Doc.73–4160 Filed 3–5–73;8:45 am]

NATIONAL CANCER ADVISORY BOARD

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, March 26–28, 1973, at 2 p.m., National Institutes of Health, Building 31, Conference Room 6. This meeting will be open to the public from 2 p.m. to 5 p.m., March 26; 2 p.m. to 5 p.m., March 27; 9 a.m. through adjournment, March 28, to discuss various programs within the Institute; i.e., cancer centers; cancer control, and the special virus cancer program. A report on Criteria for Radiation Therapy will be presented on Tuesday, March 27. The meeting will be closed to the public from 9 a.m. to 12:30 p.m., March 27, in accordance with the provisions set forth in section 552(b)4 of title 5 United States Code, and section 10(d) of Public Law 92–463. Attendance by the public will be limited to space available.

Mr. Frank Karel, Associate Director for Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Md. 20014 (301—496–1911) will furnish summaries of the open/closed meeting and roster of committee members.

Dr. James A. Peters, Executive Secretary, NCI, Building 31, Room 11A05, National Institutes of Health, Bethesda, Md. 20014 (301—496–6618) will provide substantive program information.

Dated: February 26, 1973.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

[FR Doc.73–4163 Filed 3–5–73;8:45 am]

NATIONAL HEAD AND NECK CANCER CADRE

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Head and Neck Cancer Cadre, March 22–23, 1973, from 9 a.m. to 5 p.m. each day at the Holiday Inn, 8200 Wisconsin Avenue, Bethesda, MD, Montgomery Room. This meeting will be open to the public to discuss the state of the art in head and neck cancer research, including early diagnosis and prevention, etiology, treatment, immunology, and pathology. Attendance by the public will be limited to space available.

Mr. Frank Karel, Associate Director for Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Md. 20014 (301—496–1911) will furnish summaries of the meeting and roster of committee members.

Dr. Diane Fink, Executive Secretary, Westwood Building, Room 10A11, National Institutes of Health, Bethesda, Md. 20014 (301—496–7903) will provide substantive program information.

Dated: February 26, 1973.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

[FR Doc.73–4169 Filed 3–5–73;8:45 am]

TUMOR VIRUS DETECTION WORKING GROUP

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Tumor Virus Detection Working Group, March 12, 1973, at 9 a.m., National Institutes of Health, Building 31, Conference Room 8. This meeting will be open to the public from 9 a.m., March 12, 1973, to discuss the Working Group's progress in the previous 5 months and closed to the public from 9:30 a.m., March 12, 1973, in accordance with the provisions set forth in section 552(G)4 of title 5 United States Code and 10(d) of Public Law 92–463. Attendance by the public will be limited to space available.

Mr. Frank Karel, Associate Director for Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Md. 20014 (301—496–1911) will furnish summaries of the open/closed meeting and roster of committee members.

Dr. Roy F. Kinard, Executive Secretary, Building 37, Room 1B18A, National Institutes of Health, Bethesda, Md. 20014 (301—496-6135) will provide substantive program information.

Dated: February 26, 1973.

JOHN F. SHERMAN,
Deputy Director,
National Institutes of Health.

[FR Doc.73-4166 Filed 3-5-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

APPLICATION OF AREA NAVIGATION IN THE NATIONAL AIRSPACE SYSTEM

Policy Regarding Implementation of Area Navigation Concepts Recommended by Joint FAA/Industry Task Force

Notice is hereby given that the Federal Aviation Administration (FAA) intends to clarify the potential role of area navigation in the National Airspace System.

As a result of a joint FAA/Industry Symposium held in January 1972 wherein area navigation capabilities and potentials were explored in depth, conclusions were drawn which recommended the FAA assume a more dynamic leadership role and provide the aviation industry with guidance in the matter of area navigation (RNAV) applications. Consistent with the tenor of the symposium a joint FAA/Industry User Task Force was formed to provide advice to the FAA as to the potential use of area navigation techniques in the National Airspace System. The guideline under which the task force functioned was simply stated—"Determine where we are, where we are going, how we get there and the payoff."

The deliberations and activity of the task force culminated in a report titled "Application of Area Navigation in the National Airspace System" and was presented to the FAA for consideration and adoption. In addition to other related issues the report includes a concept of applied RNAV techniques to the Air Traffic Control System spanning a 10-year time frame, identification of problem areas with solutions, suggested minimum equipment operating characteristics, anticipated benefits, and a plan of action to adopt RNAV as the prime method of navigation in the National Airspace System. The action plan provides a framework for implementation actions deemed necessary for an orderly development and transition to an RNAV-based system. These actions would require, in addition to the formulation of new methods of application and regulations, extensive investigative efforts to validate the conclusions of the task force and support system implementation.

The FAA appreciates the efforts that were expended by the task force in the development of its findings and recommendations. However, the FAA believes there is a need for additional inputs from all segments of the aviation community to insure recognition and adequate consideration of their needs. Accordingly, prior to establishing a policy with regards to how the agency should pursue the matter of application of area navigation in the national airspace system, all members of the aviation community are invited to provide comments on the report of the FAA/Industry RNAV Task Force.

Any interested person who wishes to express his views or comment with respect to this report may do so by submitting them in writing to the Federal Aviation Administration, Air Traffic Service, Chief, Automation Division, AAT-500, 800 Independence Avenue SW., Washington, DC 20591. All communications received prior to May 31, 1973, will be considered in the formulation of a final policy.

This notice is issued under the authority of sections 307(a) and 312(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on March 2, 1973.

WILLIAM M. FLENER,
Acting Associate Administrator
for Operations.

[FR Doc.73-4366 Filed 3-5-73;8:45 am]

FLIGHT SERVICE STATION AT UNALAKLEET, ALASKA

Notice of Conversion to Remote Control Outlet

Notice is given that on March 1, 1973, the Flight Service Station at Unalakleet, Alaska, will be converted from a manned Flight Service Station to a full-time Remote Control Outlet. Services to the general aviation public, formerly provided by this office, will be provided by remote control from the Nome, Alaska, Flight Service Station. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Anchorage, Alaska, on February 23, 1973.

QUENTIN S. TAYLOR,
Acting Director, Alaskan Region.

[FR Doc.73-4182 Filed 3-5-73;8:45 am]

National Highway Traffic Safety Administration

NATIONAL MOTOR VEHICLE SAFETY ADVISORY COUNCIL

Notice of Public Meeting

On March 14–15, 1973, the National Motor Vehicle Safety Advisory Council will hold open meetings in the DOT Headquarters Building, 400 Seventh Street SW., Washington, DC. The Advisory Council is composed of 22 members, a majority of whom are representatives of the general public, including representatives of State and local governments, with the remainder including representatives of motor vehicle manufacturers, motor vehicle equipment manufacturers, and motor vehicle dealers. The Secretary of Transportation consults with the Advisory Council on motor vehicle safety standards promulgated under the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.).

The following meetings, subject to the approval of the Secretary of Transportation, will be held in the DOT Headquarters Building, Room 4238.

The Crashworthiness Committee of the Council will meet from 1 p.m. to 5 p.m. on March 14, 1973, with the following agenda:

Accident investigation issues and problems.
Retrofit of seatbelts.
Clarification of NCUTLO model seatbelt law.
Schoolbus and motorcycle ESV's.
New business.

The full Advisory Council will meet in regular session from 9 a.m. to 1 p.m. on March 15 with the following agenda:

Status report—airbag fleet test program.
Investigation of airbag crashes.
Council travel budget.
Report of meeting with domestic auto industry.
Report of crashworthiness committee.
New business.
Future meetings.

This notice is given pursuant to section 10(a)(2) of Public Law 92-463, Federal Advisory Committee Act (FACA) effective January 5, 1973.

For further information, contact Executive Secretariat, Room 5215, 400 Seventh Street SW., Washington, DC, telephone 202—426-2872.

Issued on February 28, 1973.

CALVIN BURKHART,
Executive Secretary.

[FR Doc.73-4258 Filed 3-5-73;8:45 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50-373, 50-374]

COMMONWEALTH EDISON CO.

Amended Notice of Evidentiary Hearing

In the matter of Commonwealth Edison, Co. (La Salle County Nuclear Power Station, Units 1 and 2), Dockets Nos. 50-373 and 50-374.

Take notice, on February 26, 1973, by telegram to the parties and by press release, the evidentiary hearing on health and safety issues scheduled by the Board for February 28, 1973, was postponed. That hearing will be held at the Mars Theater, Main Street, Marseilles, Ill., on Tuesday, March 20, 1973, commencing at 10 a.m., local time.

The public is invited to the hearing and limited appearance statements will be received in the course of the first day of the hearing. Oral limited appearance statements will be limited to 5 minutes for each person. Written statements in place of or supplementing oral statements will be accepted by the Board if submitted at the time provided for limited appearances.

Limited appearance statements will also be received under the same conditions at the subsequent evidentiary hearing on environmental issues. Limited appearance statements relating to either health and safety or environmental issues or both may be made at either hearing. Since the parties will have technical personnel, knowledgeable on health and safety matters present at the first segment of the hearing, it would be more beneficial to individuals who are interested only in the health and safety issues to make a limited appearance on March 20, 1973. The parties will have technical personnel knowledgeable on environmental matters at the subsequent hearing on the environmental issues; therefore it would be more beneficial to individuals who are only interested in the environmental aspects to make a limited appearance at that time. No individuals will be permitted to make more than one oral limited appearance statement.

Issued at Washington, D.C., this 28th day of February 1973.

It is so ordered.

THE ATOMIC SAFETY AND LICENSING BOARD,
ELIZABETH S. BOWERS,
Chairman.

[FR Doc.73-4198 Filed 3-5-73;8:45 am]

[Docket No. 50-286]

CONSOLIDATED EDISON CO. OF NEW YORK

Notice of Hearing on Facility Operating License

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the National Environmental Policy Act of 1969 (NEPA), and the regulations in Title 10, Code of Federal Regulations, Part 50, Licensing of Production and Utilization Facilities, and Part 2, rules of practice, notice is hereby given that, subject to conditions set forth in a memorandum and order of February 28, 1973, a hearing will be held on the pressurized water reactor identified as the Indian Point Nuclear Generating Unit No. 3 (the facility) of the applicant, Consolidated Edison Co. of New York. The hearing to consider the issuance of an operating license for the facility will be held at a time and place to be set in the future by the Atomic Safety and Licensing vicinity of the facility in Buchanan, Westchester County, N.Y. Construction of the facility was authorized by Construction Permit No. CPPR-62, issued by the Atomic Energy Commission on August 13, 1969. The instant facility is subject to the provisions of section C.3 of appendix D to 10 CFR Part 50, which sets forth procedures applicable to review of environmental considerations for production and utilization facilities for which construction permits were issued prior to January 1, 1970.

The Licensing Board, designated by the Chairman of the Atomic Safety and Licensing Board Panel, will consist of Samuel W. Jensch, Esq. (chairman), Dr. John C. Geyer, and Mr. R. B. Briggs. Mr. Ernest E. Hill has been designated as a technically qualified alternate, and Max D. Paglin, Esq., has been designated as an alternate qualified in the conduct of administrative proceedings.

A Notice of Consideration of Issuance of Facility Operating License and Notice of Opportunity for Hearing was published in the FEDERAL REGISTER on October 25, 1972 (37 FR 22816). The notice provided that, within 30 days from the date of publication, any person whose interest may be affected by the proceeding could file a petition for leave to intervene in accordance with the requirements of 10 CFR Part 2, Rules of Practice. Petitions for leave to intervene were thereafter filed by various petitioners, including (1) the State of New York; (2) Hudson River Fishermen's Association (HRFA); (3) Save Our Stripers (SOS); (4) Cortlandt Conservation Association, Inc. (CCA); and (5) Mary Hays Weik. As set out in the memorandum and order referred to above, a public hearing will be held. Petitioners New York, HRFA, and SOS will be admitted as parties to the proceeding; petitioners CCA and Weik may subsequently be admitted as parties or, alternatively, will be permitted to make limited appearances pursuant to 10 CFR 2.715.

A prehearing conference or conferences will be held by the Licensing Board, at a date and place to be set by it, to consider pertinent matters in accordance with the Commission's rules of practice. The date and place of the hearing will be set by the Board at or after the prehearing conference. Notices as to the dates and places of the prehearing conference and the hearing will be published in the FEDERAL REGISTER. The specific issues to be considered at the hearing will be determined by the Licensing Board.

For further details pertinent to the matters under consideration, see the application for the facility operating license, dated December 4, 1970, as amended, and the Applicant's environmental report, dated June 14, 1971, as supplemented, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Hendrick Hudson Free Library, 31 Albany Post Road, Montrose, NY. As they become available, the following documents also will be available at the above locations: (1) The report of the Advisory Committee on Reactor Safeguards on the application for facility operating license; (2) the Commission's draft detailed statement on environmental considerations pursuant to 10 CFR Part 50, appendix D; (3) the Commission's final detailed statement on environmental consideration; (4) the safety evaluation prepared by the Directorate of Licensing; (5) the proposed facility operating license; and (6) the technical specifications, which will be attached to the proposed facility operating license. Copies of items (1), (3), (4), and (5) may also be obtained by request to the Deputy Director for Reactor Projects, Directorate of Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

Any person who wishes to make an oral or written statement in this proceeding but who has not filed a petition for leave to intervene as noted above, may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715 of the Commission's rules of practice. Limited appearances will be permitted at the time of the hearing in the discretion of the Licensing Board, within such limits and on such conditions as may be fixed by it. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, on or before April 5, 1973. A person permitted to make a limited appearance does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of the hearing as specified above. A member of the public does not have the right to participate unless he has been granted the right to intervene as a party or the right of limited appearance.

An answer to this notice, pursuant to the provisions of 10 CFR 2.705 of the Commission's rules of practice, must be filed by the parties to this proceeding (other than the regulatory staff) on or before March 26, 1973.

Papers required to be filed in this proceeding may be filed by mail or telegram addressed to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

Pending further order of the Licensing Board, parties are required to file pursuant to the provisions of 10 CFR 2.708 of the Commission's rules of practice, an original and 20 conformed copies of each such paper with the Commission.

Issued at Washington, D.C., this 28th day of February 1973.

It is so ordered.

THE ATOMIC SAFETY AND LICENSING BOARD,
ELIZABETH S. BOWERS,
Chairman.

[FR Doc.73-4199 Filed 3-5-73;8:45 am]

[Docket Nos. 50-329; 50-330]

CONSUMERS POWER CO.

Notice of Oral Argument

In the matter of Consumers Power Co. (Midland Plant, Units 1 and 2) Docket Nos. 50-329 and 50-330.

Notice is hereby given that the oral argument in the above-captioned proceeding, which was previously calendared for Tuesday, March 6, 1973, has now been rescheduled, in accordance with the Atomic Safety and Licensing Appeal Board's Order of February 28, 1973, for Wednesday, March 14, 1973, at 10:00

a.m. in Room 309, U.S. Court of Claims, 717 Madison Place NW., Washington, DC 20005.

Dated: February 28, 1973.

For the Atomic Safety and Licensing Appeal Board.

MARGARET E. DUFLO,
Secretary to the Appeal Board.

[FR Doc.73-4196 Filed 3-5-73;8:45 am]

[Dockets Nos. 50-369, 50-370]

DUKE POWER CO.

Issuance of Construction Permits

Notice is hereby given that, pursuant to the initial decision of the Atomic Safety and Licensing Board, the Deputy Director for Reactor Projects, Directorate of Licensing, has issued Construction Permits Nos. CPPR-83 and CPPR-84 to Duke Power Co. for construction of two pressurized water nuclear reactors at the applicant's site on the shore of Lake Norman, in Mecklenburg County, N.C. The reactors, known as the McGuire Nuclear Station, Units 1 and 2, are designed for initial operation at 3,411 megawatts (thermal).

Copies of the initial decision and the construction permits are on file in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20545, and in the Public Library of Charlotte, Mecklenburg County, 310 North Tryon Street, Charlotte, NC 28208.

Dated at Bethesda, Md., this 28th day of February 1973.

For the Atomic Energy Commission.

D. B. VASSALLO,
Chief, Pressurized Water Reactors Branch No. 1, Directorate of Licensing.

[FR Doc.73-4221 Filed 3-5-73;8:45 am]

[Docket No. 50-331]

IOWA ELECTRIC LIGHT & POWER CO., ET AL.

Notice of Hearing

In the matter of Iowa Electric Light & Power Co., Central Iowa Power Cooperative, and Corn Belt Power Cooperative (Duane Arnold Energy Center), Docket No. 50-331.

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10, Code of Federal Regulations, Part 50, Licensing of Production and Utilization Facilities and Part 2, Rules of Practice, notice is hereby given that a hearing will be held at a time and place to be set in the future by an Atomic Safety and Licensing Board, to begin in or in the vicinity of Palo, Iowa; in Linn County, Iowa, about 8 miles northwest of Cedar Rapids, Iowa. On June 22, 1970, construction was authorized by Construction Permit No. CPPR-70 for a boiling water nuclear reactor at steady-state power levels not to exceed 1,658 megawatts thermal. The hearing will be conducted by an Atomic Safety and Licensing Board (Board) designated by the Chairman of the Atomic Safety and Licensing Board Panel, consisting of Elizabeth S. Bowers, Esq. (chairman); Lester Kornblith, Jr., and Dr. William E. Martin. Dr. A. Dixon Callihan has been designated a technically qualified alternate, and Douglas V. Rigler, Esq., has been designated as an alternate qualified in the conduct of administrative proceedings.

On September 30, 1972, a Notice of Hearing Pursuant to 10 CFR Part 50, appendix D, Section B; Notice of Consideration of Issuance of Facility Operating License and Opportunity for Hearing in the above matter appeared in the FEDERAL REGISTER (37 FR 20584). The notice advised that, within 30 days from the date of publication, "any person whose interest may be affected by this proceeding may file a petition for leave to intervene (1) with respect to whether, considering those matters covered by appendix D to 10 CFR Part 50, the construction permit should be continued, modified, terminated, or appropriately conditioned to protect environmental matters; and (2) with respect to the issuance of the facility operating license." Petitions to intervene were filed by George W. Brown, Ph. D., and by John Laitner. As stated in the memorandum and order on this matter, dated February 27, 1973, it was determined that both petitioners must be denied. Both petitioners were invited to make limited appearances at the hearing.

Since there are no issues in controversy on the issuance of an operating license, except for the following, the hearing will be limited to the provisions of section B of appendix D to 10 CFR Part 50, which sets forth procedures for environmental review of certain licenses to construct or operate production or utilization facilities issued in the period January 1, 1970, to September 9, 1971. The Board will, in accordance with section A.11 of said appendix D: (a) Determine whether the requirements of section 102(2) (C) and (D) of NEPA and appendix D to 10 CFR Part 50 of the Commission's regulations have been complied with in this proceeding; (b) independently consider the final balance among conflicting factors contained in the record of the proceeding with a view toward determining the action to be taken; and (c) determine, after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, whether the construction permit should be continued, modified, terminated, or appropriately conditioned to protect environmental values.

An operating license would be issued only after appropriate findings are made by the Director of Regulation on the matters set forth below (and upon compliance with the applicable provisions of Appendix D to 10 CFR Part 50 dealt with above):

1. Whether construction of the facility has been substantially completed in conformity with the construction permit and the application, as amended, the provisions of the Act, and the rules and regulations of the Commission.

2. Whether the facility will operate in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission.

3. Whether there is reasonable assurance (i) that the activities authorized by the operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the regulations of the Commission.

4. Whether the applicant is technically and financially qualified to engage in the activities authorized by the operating license in accordance with the regulations of the Commission.

5. Whether the applicable provisions of 10 CFR Part 140, Financial Protection Requirements and Indemnity Agreements, of the Commission's regulations have been satisfied.

6. Whether the issuance of the license will be inimical to the common defense and security or to the health and safety of the public.

For further details pertinent to the matters under consideration, see the application for the facility operating license docketed May 8, 1972, as amended, and the Applicants' Environmental Report dated November 1971, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Reference Service, Cedar Rapids Public Library, 426 Third Avenue SE., Cedar Rapids, IA 52401. As they become available, the following documents also will be available at the above locations: (1) The report of the Advisory Committee on Reactor Safeguards on the application for facility operating license; (2) the Commission's draft detailed statement on environmental considerations pursuant to 10 CFR Part 50, appendix D; (3) the Commission's final detail statement on environmental considerations; (4) the safety evaluation prepared by the Directorate of Licensing; (5) the proposed facility operating license; and (6) the proposed technical specifications, which will be attached to the proposed facility operating license. Copies of items (3), (4), and (5) may be obtained by request to Deputy Director for Reactor Projects, Directorate of Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

With respect to this proceeding concerning continuation, modification, termination or conditioning the construction permit, the Commission will delegate to the Atomic Safety and Licensing Appeal Board the authority and the review function which would otherwise be exercised and performed by the Commission. The Commission will establish the Appeal Board pursuant to 10 CFR 2.785 and will make the delegation pursuant to subparagraph (a)(1) of that section. The Appeal Board will be composed of a Chairman, and two other members to be designated by the Commission. Notice as to the membership of the Appeal Board will be published in the FEDERAL REGISTER.

Issued at Washington, D.C., this 27th day of February 1973.

It is so ordered.

THE ATOMIC SAFETY AND LICENSING BOARD,
ELIZABETH S. BOWERS,
Chairman.

[FR Doc.73-4197 Filed 3-5-73;8:45 am]

[Docket No. 50-20]

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

Notice of Proposed Issuance of Construction Permit

The Atomic Energy Commission (the Commission) is considering the issuance of a construction permit and subsequently an amended facility operating license to the Massachusetts Institute of Technology (MIT) in Cambridge, Mass. Since 1958, MIT has been authorized by the Commission (under Facility License No. R-37) to operate a heavy water-moderated and cooled reactor on its campus for research and development, and medical therapy purposes. In October 1965, the Commission amended the license to authorize MIT to operate the reactor at 5 megawatts (thermal).

The proposed permit would authorize MIT to make modifications to convert the reactor to a light water-cooled heavy water reflected reactor. The proposed amended license subsequently would authorize operation of the modified reactor at its presently licensed power level of 5 megawatts (thermal) and an increase from 17.5 kilograms to 45 kilograms in the quantity of contained uranium 235 that MIT is authorized to receive, possess and use in connection with operation of the modified reactor, in accordance with MIT's application dated November 18, 1970, as amended.

The Commission has found that MIT's application dated November 18, 1970, and amendments thereto dated January 4, 1971, July 12, 1971, May 12, 1972, July 19, 1972, August 11, 1972, August 17, 1972, November 29, 1972, December 18, 1972, and January 12, 1973, comply with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations published in 10 CFR Ch. I. Prior to issuance of the proposed construction permit, the Commission will have made the remainder of the findings required by the Act and the Commission's regulations which are set forth in the proposed permit.

Upon completion of the modifications to the reactor in compliance with the terms and conditions of the construction permit and the application, as amended, and in the absence of good cause to the contrary, the Commission will issue to MIT (without prior notice) an amended Class 104 a. and c. facility license authorizing operation of the reactor at power levels up to 5 megawatts (thermal) since the application is complete enough to permit evaluation of the safety of the operation of the modified facility in the manner and location proposed. Prior to the issuance of the license, the facility will be inspected by a representative of the Commission to determine whether it has been modified in accordance with the application and the provisions of the construction permit. The amended operating license will not be issued until the Commission makes the findings required by the Act and the Commission's regulations which are set forth in the proposed amended license, and concludes that the issuance of the amended license will not be inimical to the common defense and security or to the health and safety of the public.

On or before April 5, 1973, the applicant may file a request for a hearing and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions to intervene shall be filed in accordance with the Commission's rules of practice in 10 CFR Part 2. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to these actions, see (1) the application by MIT dated November 18, 1970, and amendments thereto, (2) the proposed construction permit, (3) proposed amended facility license, and (4) the Commission's related Safety Evaluation, all of which are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, DC. A copy of each of items (2), (3), and (4) may be obtained upon request sent to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention. Deputy Director for Reactor Projects, Directorate of Licensing. Prior to issuance of the amended facility operating license, to the proposed Technical Specifications for Facility Operating License No. R-37 will be made available in the above Public Document Room.

Dated at Bethesda, Md., this 23d day of February 1973.

For the Atomic Energy Commission.

ROBERT J. SCHEMEL,
Acting Assistant Director for Operating Reactors, Directorate of Licensing.

[FR Doc.73-4194 Filed 3-5-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 24944]

SOUTH AFRICAN AIRWAYS

Notice of Hearing

In the matter of South African Airways, foreign air carrier permit amendment, Johannesburg-Sal Island-Las Palmas-New York.

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, that hearing in the above-entitled proceeding will be held on April 9, 1973, at 10 a.m. (local time) in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Administrative Law Judge Ross I. Newmann.

For details of the issues involved in this proceeding, interested persons are referred to the Prehearing Conference Report served on February 23, 1973, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., February 28, 1973.

[SEAL] ROSS I. NEWMANN,
Administrative Law Judge.

[FR Doc.73-4254 Filed 3-5-73;8:45 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF DEFENSE

Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Defense to fill by noncareer executive assignment in the excepted service the position of Special Assistant to the Deputy Assistant Secretary (Reserve Affairs), Office of the Secretary of Defense.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-4228 Filed 3-5-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Legislative Counsel and Director, Office of Legislation, Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-4230 Filed 3-5-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of the Interior to fill by noncareer executive assignment in the accepted service the position of Director of Economic Development, Bureau of Indian Affairs.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-4234 Filed 3-5-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Deputy Commissioner, Bureau of Indian Affairs.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-4233 Filed 3-5-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Assistant to the Secretary, Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-4229 Filed 3-5-73;8:45 am]

FEDERAL POWER COMMISSION

Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Federal Power Commission to fill by noncareer executive assignment in the excepted service the position of Assistant to the Chairman, Commissioners and Offices, Office of the Chairman.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-4226 Filed 3-5-73;8:45 am]

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Occupational Safety and Health Review Commission to fill by noncareer executive assignment in the excepted service the position of Executive Director.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-4227 Filed 3-5-73;8:45 am]

OFFICE OF ECONOMIC OPPORTUNITY

Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Office of Economic Opportunity to fill by noncareer executive assignment in the excepted service the position of Associate Director for Economic Development, Office of the Associate Director, Office of Economic Development.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-4232 Filed 3-5-73;8:45 am]

OFFICE OF ECONOMIC OPPORTUNITY

Revocation of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Office of Economic Opportunity to fill by noncareer executive assignment in the excepted service the position of Chief, Economic Development Division, Office of Program Development.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.73-4231 Filed 3-5-73;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN WOOL AND MAN-MADE FIBER TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN HONG KONG

Entry or Withdrawal From Warehouse for Consumption

MARCH 1, 1973.

The purpose of this notice is to advise that since hand-made carpets, rugs and floor coverings of man-made fiber and wool are excluded from the coverage of the United States-Hong Kong Bilateral Wool and Man-Made Fiber Textile Agreement of January 6, 1972, shipments of such carpets, rugs and floor coverings, produced or manufactured in Hong Kong, from Hong Kong do not require a visa for entry for consumption or withdrawal from warehouse for consumption in the United States.

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229.

MARCH 1, 1973.

DEAR MR. COMMISSIONER: Pursuant to paragraph 2 of the bilateral United States-Hong Kong Wool and Man-Made Fiber Textile Agreement of January 6, 1972, a Hong Kong textile visa is not required for handmade (handwoven, hand-knotted, or hand-inserted with a hand-held tool) carpets, rugs and floor coverings made of man-made fiber and wool.

This letter will be published in the FEDERAL REGISTER.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements and Director, Office of Textiles.

[FR Doc.73-4268 Filed 3-5-73;8:45 am]

CERTAIN COTTON TEXTILES AND COTTON, WOOL, AND MANMADE FIBER TEXTILE PRODUCTS FROM HONG KONG

Entry or Withdrawal From Warehouse for Consumption

MARCH 2, 1973.

This notice advises that the Hong Kong textile visa will no longer be required for the entry for consumption or the withdrawal from warehouse for consumption of commercial shipments of textile products from Hong Kong valued at $250 or less.

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textiles.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

MARCH 2, 1973.

DEAR MR. COMMISSIONER: This letter amends, but does not cancel, the directive of January 3, 1973, which established an export visa requirement for the entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and manmade fiber textiles and textile products, produced or manufactured in Hong Kong.

Under the provisions of the bilateral Cotton Textile Agreement of December 17, 1970, as amended, and the bilateral Wool and Man-Made Fiber Textile Agreement of January 6, 1972, between the Governments of the United States and Hong Kong, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, effective as soon as possible and until further notice, the directive of January 3, 1973, is amended by adding after the second paragraph the following sentence:

"These visa requirements will not be applicable to commercial shipments of textiles and textile products valued at $250 or less."

The actions taken with respect to the Government of Hong Kong and with respect to imports of cotton, wool, and manmade fiber textiles and textile products from Hong Kong, have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs being necessary to the implementation of such action, fall within the foreign affairs exception to the rule making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 73-4419 Filed 3-5-73;10:19 am]

COMMISSION ON CIVIL RIGHTS

VIRGINIA ADVISORY COMMITTEE

Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia State Advisory Committee will convene at 12 noon on March 6, 1973, at 1407 14th Street NW., Washington, DC 20005. This meeting shall be open to the public and the press.

The purposes of this meeting shall be to finalize plans for investigation of the selection of judges in the State of Virginia, and to discuss discrimination in employment in the Virginia courts.

This meeting will be conducted pursuant to rules and regulations of the Commission.

Dated at Washington, D.C., February 26, 1973.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.73-4357 Filed 3-5-73;8:45 am]

DELAWARE STATE ADVISORY COMMITTEE

Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware State Advisory Committee will convene at 12 noon, on March 9, 1973, at the YWCA at 908 King Street, Wilmington, DE 19801. This meeting shall be open to the public and the press.

The purpose of this meeting shall be to review the current developments of the committee's prison study.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., February 26, 1973.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.73-4358 Filed 3-5-73;8:45 am]

MISSISSIPPI STATE ADVISORY COMMITTEE

Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi State Advisory Committee will convene at 12 noon on March 14, 1973, at the Hotel Heidelberg (Parlor B), 1316 Capitol Street, Jackson, MS 39201. This meeting shall be open to the public and the press.

The purposes of this meeting shall be to discuss budget and program planning for fiscal year 1974, and consider recommendations for prospective State committee members.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., February 22, 1973.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.73-4359 Filed 3-5-73;8:45 am]

MISSOURI STATE ADVISORY COMMITTEE

Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri State Advisory Committee will convene at 8:30 a.m. on March 9, 1973, in Room 148, 601 East 12 Street, Kansas City, MO 64152. This meeting shall be open to the public.

The purpose of this meeting shall be to collect information concerning legal developments constituting a denial of the equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin which pertain to housing problems in Kansas City, Mo.; to appraise denials of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin as these pertain to housing problems in Kansas City, Mo.; and to disseminate information with respect to denials of the equal protection of the laws because of race, color, religion, sex, or national origin with respect to housing problems in Kansas City, Mo.; and to related areas.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., February 22, 1973.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.73-4360 Filed 3-5-73;8:45 am]

NORTH CAROLINA STATE ADVISORY COMMITTEE

Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina State Advisory Committee will convene at 1 p.m. on March 8, 1973, at the Pullen Memorial Baptist Church, Hillsborough Street and Cox Avenue, Raleigh, NC 27605. This meeting shall be open to the public and the press.

The purpose of this meeting shall be to finalize plans for the North Carolina committee's prison project.

This meeting will be conducted pursuant to rules and regulations of the Commission.

Dated at Washington, D.C., February 23, 1973.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.73-4361 Filed 3-5-73;8:45 am]

WISCONSIN STATE ADVISORY COMMITTEE

Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin State Advisory Committee will convene at 1:30 p.m. on March 7, 1973, at the Hall of Presidents, 424 East Wisconsin Avenue, Milwaukee, WI 53202. This meeting shall be open to the public and the press.

The purposes of this meeting shall be to (1) plan followup strategy in connection with the implementation of the commitee's report, Police Isolation and Community Needs, Milwaukee; (2) plan followup strategy in connection with the implementation of the committee's report on The Black Student in the Wisconsin State Universities System; and (3) revise plans for the committee's project on the administration of justice with special attention to the problems of the American Indian in Wisconsin.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., February 28, 1973.

ISAIAH T. CRESWELL, JR.,
Advisory Committee Management Officer.

[FR Doc.73-4362 Filed 3-5-73;8:45 am]

COST OF LIVING COUNCIL

[Cost of Living Council Order No. 20]

CONSTRUCTION INDUSTRY STABILIZATION COMMITTEE

Delegation of Authority

Pursuant to the authority vested in me by Executive Order 11695, it is hereby ordered as follows:

1. In addition to the authority delegated by Cost of Living Council Order No. 16, the Construction Industry Stabilization Committee is hereby authorized to review and issue determinations, in accordance with the procedures established pursuant to Executive Order 11695 and Cost of Living Council Order No. 16, with respect to any wage or salary increase pursuant to any collective bargaining agreement which is within the terms of § 130.72(b) of the Council's regulations (6 CFR 130.72(b)).

2. In accordance with the procedures set forth in Executive Order 11695 and Cost of Living Council Order No. 16, the parties to any collective bargaining agreement which is within the terms of § 130.72(b) shall promptly submit such agreement to the appropriate craft dispute board, or, where there is no appropriate craft dispute board, directly to the Construction Industry Stabilization Committee.

3. This order shall be effective January 11, 1973.

Issued in Washington, D.C., on February 28, 1973.

GEORGE P. SHULTZ,
Chairman, Cost of Living Council.

[FR Doc.73-4212 Filed 3-5-73;8:45 am]

TERMINATION OF THE PAY BOARD AND PRICE COMMISSION

Announcement of Effective Date

In accordance with section 10(a) of Executive Order No. 11695, which provided that the Pay Board and Price Commission are abolished effective not more than 90 days from the date of that order or such earlier date as the Chairman of the Cost of Living Council may designate, I do hereby designate March 1, 1973, as the effective date on which the Pay Board and Price Commission are terminated.

An orderly transfer of stabilization functions has been accomplished and all outstanding matters have been disposed of or transferred to the Cost of Living Council. Consequently, effective March 1, 1973:

1. All delegations of economic stabilization functions to the Pay Board and Price Commission not previously revoked, and all redelegations issued thereunder, are terminated without prejudice to actions taken thereunder. All economic stabilization functions will be performed by the Cost of Living Council as provided by Executive Order No. 11695 and in accordance with Cost of Living Council regulations, rulings, orders (including delegations to the Commissioner of Internal Revenue and the Construction Industry Stabilization Committee), and other appropriate public issuances.

2. All decisions and orders of the Pay Board and Price Commission, or their delegates, issued prior to March 1, 1973, shall, subject to such modifications as the Cost of Living Council may make from time to time, operate according to their terms and continue in full force and effect.

3. All regulations, rulings, and orders of the Pay Board and Price Commission which were in effect on January 10, 1973, shall continue in full force and effect to the extent provided by Executive Order No. 11695 and Cost of Living Council regulations, rulings, orders, and other appropriate public issuances.

4. All records, including reports, cases, and requests for information, property, personnel, and funds relating to the Pay Board and Price Commission and not previously transferred to the Cost of Living Council, are transferred to the Cost of Living Council.

GEORGE P. SCHULTZ,
Chairman, Cost of Living Council.

MARCH 1, 1973.

[FR Doc.73-4406 Filed 3-5-73;8:45 am]

FEDERAL MARITIME COMMISSION

BOARD OF TRUSTEES OF THE GALVESTON WHARVES AND LYKES BROS. STEAMSHIP COMPANY, INC.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015, or may inspect the agreement at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for a hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before March 16, 1973. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. Carl S. Parker, Jr., Galveston Wharves, 802 Rosenberg, Post Office Box 328, Galveston, TX 77550.

Agreement No. T-2521-1, between the Board of Trustees of the Galveston Wharves (Galveston) and Lykes Bros. Steamship Company, Inc. (Lykes), amends the basic agreement between the parties which is a 3-year lease providing for first call on berth privileges for Lykes' Seabee barges at a covered barge loading, unloading, and interchange terminal. The purpose of the modification is to change the rate for using the bridge crane at the facility from $27.50 per hour straight time and $40 per hour overtime (in both instances manned by Galveston personnel) to $21 per hour unmanned, straight time or overtime.

Dated: February 28, 1973.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.73-4241 Filed 3-5-73;8:45 am]

BRAZIL/U.S. ATLANTIC AND GULF NORTHBOUND POOLING AGREEMENTS

Notice of Agreements Filed

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreements at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015, or may inspect the agreements at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before March 26, 1973. Any person desiring a hearing on the proposed agreements shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreements (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreements filed by:

Frank R. A. Levier, Executive Administrator, Inter-American Freight Conference, Av. Rio Branco, 156-27°, Andar-Grupos 2707/2711, Rio de Janeiro, Brazil.

Agreements Nos. 10027-1 and 10029-1 amend Article 9(b) of each of their approved pooling agreements by canceling therefrom the words "or elsewhere" so that the pool accounting and resultant settlement of pool payment shall be prepared by an independent accounting company located in Rio de Janeiro, only.

Dated: February 26, 1973.

By order of the Federal Martime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.73-4242 Filed 3-5-73;8:45 am]

CANTON CO. OF BALTIMORE, ET AL.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before March 26, 1973. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged,

the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Raymond S. Clark, President, Canton Co. of Baltimore, 300 Water Street, Baltimore, MD 21203.

Agreement No. T-2745, between Canton Co. of Baltimore, Canton Railroad Co., The Cottman Co. (Lessor), and Transamerican Trailer Transport, Inc., provides for the 2-year lease (with renewal options) to TTT of Pier No. 10 and two parcels of improved inland area at Baltimore, Md., for use as a waterfront shipping terminal, trucking, and rail freight handling and forwarding terminal and uses incidental thereto. As compensation, Lessor is to receive $243,000 annually in lieu of tariff charges plus the construction costs of improvements made to the premises under the agreement.

Dated: February 28, 1973.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.73-4243 Filed 3-5-73;8:45 am]

EUROPE CANADA LAKE LINE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before March 16, 1973. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

F. J. Barry, General Traffic Department, United States Navigation Co., Inc., 17 Battery Place, New York, NY 10004.

Agreement No. 9912-2 modifies the basic agreement of the above-named joint service to reflect the withdrawal of one of its members, Poseidon Schiffahrt Gesellschaft Mit Beschraenkter. As a result it provides for the new allocation of tonnage and division of mutually incurred expenses between the remaining members, Hapag-Lloyd Aktiengesellschaft and Ernst Russ.

Dated: February 28, 1973.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.73-4244 Filed 3-5-73;8:45 am]

SAN FRANCISCO PORT COMMISSION AND AMERICAN PRESIDENT LINES

Notice of Agreements Filed

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreements at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreements at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before March 26, 1973. Any person desiring a hearing on the proposed agreements shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreements (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. Richard A. Bobier, Port of San Francisco, Ferry Building, San Francisco, CA 94111.

Agreement No. T-2743, between the San Francisco Port Commission (Port) and American President Lines, Ltd. (APL), is a license, under which the Port will provide APL with a containership terminal at Pier 94 East, San Francisco, CA. The facility will include (a) 35 acres for shipside, container yard, gate, container freight station, and other support services; (b) two berths consisting of a minimum of 1,550 lineal feet; (c) two container cranes; and (d) a container freight station, maintenance, and repair facility, transit shed, administration building, and other ancillary facilities. APL occupancy of the facility under the license will be for a term ending January 1, 1980, subject to revocation by the Port on 30 days' notice. As compensation, the Port is to receive all tariff charges applicable to APL's operations in connection with the facility, plus 27½ cents per square foot per month for area used in the Administration Building. The agreement provides for an option, however, under which APL may pay the Port an annual minimum of $975,000 for the rights under the license and 15,000 square feet of the Administration Building. Any tariff receipts over the minimum will be divided equally up to the amount of $1,200,000 annually at which point APL will retain all tariff charges.

Dated: February 27, 1973.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.73-4245 Filed 3-5-73;8:45 am]

[Independent Ocean Freight Forwarder License No. 190]

W. R. KEATING & CO., INC.

Order of Revocation Regarding Independent Ocean Freight Forwarder License

On February 16, 1973, W. R. Keating & Co., Inc., 90 Broad Street, New York, NY 10004, voluntarily surrendered its Independent Ocean Freight Forwarder License No. 190 for revocation.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (revised) section 7.04(f) dated May 1, 1972);

It is ordered, That Independent Ocean Freight Forwarder License No. 190 of W. R. Keating & Co., Inc., be and is hereby revoked effective February 16, 1973, without prejudice to reapply for a license at a later date.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served upon W. R. Keating & Co., Inc.

AARON W. REESE,
Managing Director.

[FR Doc.73-4246 Filed 3-5-73;8:45 am]

INACTIVE TARIFFS

Notice of Intent To Cancel

The domestic offshore files of the Federal Maritime Commission contain several tariffs which have for a period of time been classified as inactive either due to the absence of any tariff changes for a period of 1 year or longer or because the Commission's staff has been unable to correspond with the tariff filers or because the Commission's staff has been advised that the tariff filers no longer offer a common-carrier service. The following carriers, including their

last known address, fall into the "inactive tariff" category.

B & R Tug and Barge, Inc., 400 Norton Building, Seattle, Wash. 98104.
Berger Transportation Co., Ames Terminal, Seattle, Wash.
Boyer Towing, Inc., Box 443, Ketchikan, AK 99901.
Brito Shipping Corp., 43–45 Throop Avenue, Brooklyn, NY 11206.
Capitol Transportation, Inc., General Post Office Box 3008, San Juan, PR 00936.
Caribe Shipping, Inc., 1134 Broadway, Brooklyn, NY.
Carib Star Line, Inc., 617 Parque Street, Santurce, PR 00909.
Chasqui Moving & Storage, Inc., 911 Longwood Avenue, Bronx, NY 10459.
Cymeon Barge Lines, Inc., 233 Broadway, New York, NY 10007.
Felix Moving Co., 587 East 168th Street, Bronx, NY 10472.
Figueroa Deliveries & Moving, 1813 Southern Boulevard, Bronx, NY 10460.
Golden Arrow Hydrofoil Corp., 20 Evergreen Place, East Orange, NJ 07018.
Gulf Alaska Shipping Corp., 610 Bank of the Southwest Building, Houston, Tex. 79102.
Hawaii Container Service, 330 Cypress Street, Oakland, CA 94607.
Hawaiian Freight Service, Inc., Bush Terminal Building 57, Brooklyn, NY.
Hawaiian Pacific Line, Inc., 625 Market Street, San Francisco, CA.
Hawaiian Water Transportation Corp., 1025 Ala Moana Boulevard, Honolulu, HI.
Isbrandtsen Steamship Co., a division of American Export Lines, Inc., 26 Broadway, New York, NY 10004.
Kahanic Trucking Co., 10923 South Painter Avenue, Sante Fe Springs, CA 90670.
Kay Transport Co., Inc., Box 9605, Baltimore, MD 21237.
Los Hermanitos Shipping Co., Inc., 43–45 Throop Avenue, Brooklyn, NY 11206.
Lykes Bros. Steamship Co., Inc., Post Office Box 53068, New Orleans, LA 70150.
Major Van Lines, Inc., 601 Ocenan Avenue, Jersey City, NJ 07305.
P. D. M., Inc., 811 Traction, Los Angeles, CA 90013.
Pan American Express, 2612 West Division Street, Chicago, IL 60622.
Pope & Talbot, Inc., 1 Bush Street, San Francisco, CA 94105.
Rico Shipping Co., 1997 Third Avenue, New York, NY.
Roho Enterprises, Inc., 10837 Northeast Second Place, Bellevue, WA 98004.
Signal Terminals, Inc., 1645 Daisy Avenue, Long Beach, CA 90803.
States Marine-Isthmian Agency, Inc., Post Office Box 1540, Stamford, CT 06904.
Transoceanic Navigation Co., Post Office Box 7514, Honolulu, HI 96821.
Virgin Islands Hydrolines, Inc., Post Office Box 639, St. Thomas, VI 00801.
Weeks Moving & Storage Corp., 55 Maple Avenue, Rockville Centre, NY 11570.
X-Presso Parcel Service, Inc., 796 Southern Boulevard, Bronx, NY 10455.

Inactive tariffs reflect inaccuracte information to the shipping public and serve no useful purpose in the Commission's files. Further, Rule 18(g) of Tariff Circular No. 3, as amended (46 CFR 531.18(g)), requires the cancellation of inactive tariffs; and, accordingly, the Commission proposes to cancel these tariffs in the absence of a showing of good cause as to why they should not be cancelled.

Now, therefore it is ordered, That the above carriers advise the Director, Bureau of Compliance at 1405 I Street NW., Washington, DC 20573, in writing on or before April 5, 1973, of any reasons why the Commission should not cancel inactive tariffs.

It is further ordered, That a copy of this order be sent by registered mail to the last known address of the carriers listed herein;

It is further ordered, That the tariffs of all carriers named herein not responding to this order be, and they are in such event hereby cancelled;

It is further ordered, That this notice be published in the FEDERAL REGISTER and a copy thereof filed with any tariff cancelled pursuant to this notice.

By the Commission pursuant to authority delegated by section 7.15 of Commission Order No. 1 (Revised) dated September 29, 1970.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.73-4247 Filed 3-5-73;8:45 am]

[Docket No. 73-7; Agreement No. T-2719]

PORT OF HOUSTON AUTHORITY AND LOUIS DREYFUS CORP.

Order of Investigation and Hearing

On December 27, 1972, an agreement, whereby the Port of Houston Authority (PHA) will lease the grain elevator facilities at Houston, Tex., for a period of 10 years to Louis Dreyfus Corp. (Dreyfus), was filed with the Commission for: (1) Determination as to the applicability of section 15 of the Shipping Act, 1916 (Act); or (2) approval pursuant to the provisions of section 15 of the Act. The agreement, designated Agreement T-2719, was noticed in the FEDERAL REGISTER on January 5, 1973, and protests were filed by the West Gulf Maritime Association (WGMA), the International Longshoremen's Association, South Atlantic and Gulf Coast District (ILA), and Cook Industries, Inc. (Cook).

The lease provides that Dreyfus will operate the grain elevator facilities, which were constructed with public funds and operated by PHA as the only public grain elevator in the Port of Houston, for its exclusive use. If, in Dreyfus' sole discretion, the entire facility is not required for Dreyfus' use, then others may use the excess capacity. Moreover, the lease will grant to Dreyfus the prior right to use the berths and berthing facilities in conjunction with the leased premises, will grant to Dreyfus the unabridged right to establish rules and regulations governing the operation of the grain elevator and the use of the berths and berthing facilities, and provides that Dreyfus will not be required to hire PHA employees or to assume any employee agreement that preexisted the lease.

In consideration for these provisions, Dreyfus will pay a rental fee of $1,006,000 per annum, will make any improvements necessary to bring the elevator facilities into compliance with all "laws, regulations, rules, or orders of duly constituted governmental bodies or agencies with * * * authority over emissions or discharges which affect or may affect the environment", and with the Occupational Safety and Health Act of 1970.

Finally, the agreement is subject to a prior lease of a portion of the facilities to the I. S. Joseph Co. (Joseph), which is detailed in the Commission's order to show cause issued this date.

The ILA has been staffing and manning the elevator facilities at Houston under contracts governing wage rates, hours, and conditions of employment which are consistent with the same paid other ILA employees at the Port of Houston.

Since Dreyfus is not bound by any labor agreements preexisting the lease, and PHA will discharge or transfer its present employees, the ILA claims that substandard wages, hours, and conditions of employment will probably prevail at the elevator if the agreement is approved. Such a situation allegedly will jeopardize the position of the ILA at other private elevators in the Port of Houston and will be contrary to the best interests of the United States. Moreover, the decreased flow of grain which the ILA claims will necessarily result from the reduction of many users of the elevator to one, will require fewer ILA employees, and therefore, will be contrary to the best interests of the United States, and detrimental to the free flow of commerce.

The members of WGMA are engaged in the operation, handling, and stevedoring of vessels in the foreign commerce into and out of Houston. Its objections to approval of the agreement are: (1) That the elevator facilities were constructed with public funds, heretofore served the public on a nondiscriminatory basis, and under the agreement, will be turned over to a private concern for its own use with no public control over its operations; (2) that it is unfair and discriminatory to grant Dreyfus preferential use of two of Houston's limited berthing facilities without providing substitute berths for waiting vessels; and (3) that Dreyfus' refusal to serve common carriers is unfair and discriminatory to common carriers subject to the Commission's jurisdiction and protection, because this tariff provision is an attempt to remove the agreement from the Commission's jurisdiction.

Cook is, inter alia, a grain merchandizer which has used 66 to 87 percent of the Houston grain elevator facilities over the past 4 years. It unsuccessfully attempted to secure the lease of the Houston grain elevator facilities, but was outbid by Dreyfus.

Cook's objections to approval are: (1) Based on revenues the elevator has generated in the past, Dreyfus' operation of the elevator facility will return insufficient profits to pay the rental fees of $1,006,000 per annum; (2) based on limited information regarding Dreyfus' financial condition, Cook questions its ability to meet the rental fees and expenditures for improvements under the lease, thus endangering PHA's ability to earn a fair compensation for the entire lease term; (3) Cook will be excluded as a Texas-Gulf exporter of grain because Houston is the only port with sufficient

storage and handling capabilities and adequate rail facilities to handle Cook's grain requirements; and (4) Dreyfus' decision to exclude common carriers will adversely affect the small grain exporters that use common carrier services.

Moreover, Cook claims that implementation of the agreement will cause a diversion of traffic from Houston because Dreyfus will not ship as much grain and the small exporter, which uses common carriers will be excluded from the facility. As a result, the Port suffers the loss of revenues.

For these reasons, Cook alleges that the agreement grants Dreyfus an undue and unreasonable preference and advantage to the undue and unreasonable prejudice of Cook and other grain exporters in violation of section 16 first, and constitutes an unreasonable practice by PHA in violation of section 17.

The jurisdictional questions presented by Agreement T-2719 lend themselves to early resolution by affidavits of fact and memoranda of law and are being considered in a separate order to show cause issued this day.

Now, therefore, it is ordered, That pursuant to sections 15 and 22 of the Shipping Act, 1916, an investigation be instituted to determine:

1. Whether Agreement T-2719, if found subject to the requirements of section 15, should be approved, disapproved, or modified pursuant to that section;

2. Whether the implementation of Agreement T-2719 will result in any practice which will subject any person, locality, or description of traffic to undue or unreasonable prejudice or disadvantage in violation of section 16 of the Shipping Act, 1916 (46 U.S.C. 815);

3. Whether the implementation of Agreement T-2719 will result in any practice which is unjust or unreasonable in violation of section 17 of the Shipping Act, 1916 (46 U.S.C. 816);

It is further ordered, That PHA and Dreyfus be made respondents, and that Cook, WGMA, and ILA be made petitioners in this proceeding;

It is further ordered, That this matter be assigned for public hearing before an administrative law judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined and announced by the Presiding Administrative Law Judge;

It is further ordered, That notice of this order be published in the FEDERAL REGISTER, and that a copy thereof and notice of hearing be served upon respondents and petitioners;

It is further ordered, That any person, other than respondents, petitioners, and the Commission's Bureau of Hearing Counsel, who desires to become a party to this proceeding and participate therein, shall file a petition to intervene with the Secretary, Federal Maritime Commission, Washington, D.C. 20573, with copies to all parties;

And it is further ordered, That all future notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing or prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.73-4248 Filed 3-5-73;8:45 am]

[Docket No. 73-6; Agreement No. T-2719]

PORT OF HOUSTON AUTHORITY AND LOUIS DREYFUS CORP.

Order To Show Cause

On December 27, 1972, an agreement, whereby the Port of Houston Authority (PHA) will lease the grain elevator facilities at Houston, Tex., for a period of 10 years to Louis Dreyfus Corp. (Dreyfus), was filed with the Commission for: (1) Determination as to the applicability of section 15 of the Shipping Act, 1916 (Act); or (2) approval pursuant to the provisions of section 15 of the Act. The agreement, designated Agreement T-2719, was noticed in the FEDERAL REGISTER on January 5, 1973, and protests, detailed in an order of investigation issued this date, were filed by the West Gulf Maritime Association (WGMA), the International Longshoremen's Association, South Atlantic and Gulf Coast District (ILA), and Cook Industries, Inc. (Cook).

The grain elevator facilities that are the subject of the proposed lease were constructed with public funds, are operated by PHA, and are the only public grain elevator facilities in Houston.

The lease provides, inter alia that Dreyfus will operate these facilities as a grain elevator in connection with shipments to and from Houston, will receive prior right to use the berths and berthing facilities in conjunction therewith, will not be required to hire PHA employees, or to assume any employee agreement that preexisted the lease, and will establish rules and regulations governing the operation of the grain elevator and the use of the berths and berthing facilities. If neither Dreyfus nor its affiliates require use of the entire facility, then Dreyfus, in its sole discretion, may serve others desiring to use the excess capacity.

Finally, the agreement is subject to a prior lease of a portion of the facilities to the I. S. Joseph Company (Joseph),[1] which is engaged in pelletizing "* * * a number of different soft or powdery substances or ingredients" and in exporting the pelletized product. Presently, PHA loads this pelletized product into vessels, including common carriers, calling at the elevator facility.

On January 30, 1973, Dreyfus filed its proposed tariff with the Commission, and among its provisions is the following:

> Common carriers by water, as defined by the Shipping Act of 1916, shall not be accepted for loading at the elevator.

By this tariff provision, Dreyfus[2] claims that it is not an "other person subject to the Act" as defined in section 1 of the Act, and therefore, the agreement is not subject to section 15.

The Port of Houston Authority files a terminal tariff with this Commission, and is an "other person subject to the Act", but there is some question regarding Dreyfus' status under section 1 of the Act. The terms of Agreement T-2719 do not preclude Dreyfus from serving common carriers by water, and it is the agreement which must be considered by the Commission in determining whether approval is required under the standards of section 15. Moreover, the agreement is subject to the lease between PHA and Joseph, whereby PHA has been loading Joseph's pelletized products into vessels, including common carriers by water. Thus, despite Dreyfus' tariff provision denying service to common carriers, it may have to provide terminal service to common carriers pursuant to the Joseph lease.

The jurisdictional questions presented by Agreement No. T-2719 lend themselves to early resolution by affidavits of fact and memoranda of law. The factual questions presented by the protests to Agreement No. T-2719 will be considered in a separate order of investigation and hearing issued this day.

Now therefore it is ordered, That, pursuant to sections 15 and 22 of the Shipping Act, 1916, Dreyfus and PHA be named respondents in this proceeding and that they be ordered to show cause why Dreyfus should not be found to be an "other person subject to the Act" as defined in section 1 of the Act;

It is further ordered, That Dreyfus and PHA be ordered to show cause why Agreement T-2719 should not be found subject to section 15 of the Act;

It is further ordered, That there appearing to be no material issues of fact in dispute regarding the jurisdictional issues arising under section 15, this proceeding shall be limited to the submission of affidavits and memoranda of law and replies thereto. Should any party feel that an evidentiary hearing be required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, and why such proof cannot be submitted through affidavit. Requests for hearing shall be filed on or before March 14, 1973. Affidavits of fact and memoranda of law shall be filed by respondents and served upon all parties no later than the close of business March 14, 1973. Reply affidavits and memoranda of law shall be filed by the Commission's Bureau of Hearing Counsel and intervenors, if any, no later than close of business March 26, 1973. Time and date of oral argument if requested and/or deemed necessary by the Commission will be announced at a later date.

It is further ordered, That a notice of this order be published in the FEDERAL REGISTER and that a copy thereof be served upon respondents.

It is further ordered, That persons other than those already party to this proceeding who desire to become parties to this proceeding and to participate therein shall file a petition to intervene

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[1] Pursuant to a request from the Commission's staff, this lease was submitted for informational purposes only on Dec. 4, 1972.

[2] Dreyfus is a party to Agreement No. T-1419 between the members of the Pacific Northwest Tidewater Elevators Association and operates an elevator at Pascagoula, Miss., under approved lease agreement No. T-1825.

pursuant to Rule 5(1) of the Commission's rules of practice and procedure (46 CFR 502.72) no later than close of business March 9, 1973.

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in an original and 15 copies as well as being mailed directly to all parties of record.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.73-4249 Filed 3-5-73;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. RP73-57]

SOUTH TEXAS NATURAL GAS GATHERING CO.

Notice of Change in Purchase Gas Adjustment Clause

FEBRUARY 26, 1973.

Take notice that South Texas Natural Gas Gathering Co. (South Texas) on February 7, 1973, tendered for filing a revised substitute page 1 to the notice of change in rate which became effective as of January 10, 1973, and a Substitute Exhibit A-1. South Texas states that both of these sheets reflect a base purchase gas cost as of January 10, 1973, of 21.02 cents per Mcf, instead of 21.65 cents per Mcf shown on the sheets submitted on December 4, 1972.

By paragraph (D) of the Commission's order issued January 10, 1973, in Shell Oil Co. et al., Dockets Nos. CI72-240 et al., including South Texas Natural Gas Gathering Co., Docket No. RP73-57, the Commission accepted South Texas' revised PGA clause to become effective as of the date of the issuance of that order. South Texas had submitted its PGA clause on October 17, 1972, and had submitted a revision to its PGA clause on December 4, 1972. As revised, Exhibit A-1 to South Texas' PGA clause reflected a base purchase gas cost of 21.65 cents per Mcf which was anticipated to be effective as of the termination of the suspension period in Docket No. RP73-57. Since the Commission's order of January 10, 1973, terminated the suspension period in Docket No. RP73-57 as of that date, South Texas says that it is appropriate to revise the base purchase gas cost in the PGA clause to reflect more accurately the base purchase gas cost as of that date.

South Texas requests that these sheets be made effective as of January 10, 1973, in accordance with the Commission's order of that date.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before March 13, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73-4190 Filed 3-5-73;8:45 am]

FEDERAL RESERVE SYSTEM

BANKAMERICA CORP.

Proposed Acquisition of GAC Finance, Inc.

Bankamerica Corp., San Francisco, Calif., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of GAC Finance, Inc., Allentown, Pa., and thereby to acquire indirectly shares of 145 active subsidiaries of GAC Finance, Inc., all doing business under the name of GAC Finance, Inc. Notice of the application was published on November 29 or 30, 1972, in each of the regional editions of The Wall Street Journal and was published or is in the process of publication in newspapers of general circulation in each of the communities in which is located one or more of the 408 offices of GAC Finance, Inc. located in the United States and to be retained by applicant if the proposed transaction is consummated. The offices of subsidiaries of GAC Finance, Inc. located in California would be promptly sold by applicant to an unaffiliated third party in the event of consummation of the proposed transaction. The subsidiaries of GAC Finance, Inc., operate offices in the District of Columbia and every State other than Alaska, Arkansas, Delaware, Hawaii, Maine, Nevada, Utah, Vermont, and Wisconsin.

Applicant states that the proposed subsidiary would engage in the activities of making direct loans to consumers; purchasing sales finance paper; financing inventory of distributors of and dealers in various consumer durable goods through agreements with manufacturers in the case of distributors and with distributors in the case of dealers; servicing manufacturer-funded receivables arising from inventory financing by certain manufacturers of consumer durable goods; rediscount financing for nonaffiliated consumer finance and consumer sales finance companies; and sale to its direct consumer borrowers of credit life and credit health and accident insurance and of insurance coverage against damage to personal property securing extensions of credit made by the subsidiary to its direct consumer borrowers. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 27, 1973.

Board of Governors of the Federal Reserve System, February 27, 1973.

[SEAL] MICHAEL A. GREENSPAN, *Assistant Secretary of the Board.*

[FR Doc.73-4172 Filed 3-5-73;8:45 am]

FIRST INTERNATIONAL BANCSHARES, INC.

Acquisition of Bank

J 84-000, Folio 6675, 31-10

First International Bancshares, Inc., Dallas, Tex., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to Park Cities Bank & Trust Co., Highland Park (Dallas), Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than March 27, 1973.

Board of Governors of the Federal Reserve System, January 27, 1973.

[SEAL] MICHAEL A. GREENSPAN, *Assistant Secretary of the Board.*

[FR Doc.73-4173 Filed 3-5-73;8:45 am]

FLORIDA BANKSHARES, INC.

Formation of Bank Holding Company

Florida Bankshares, Inc., Hollywood, Fla., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 percent of the voting shares (less directors' qualifying shares) of the following banks: First National Bank of Hollywood, Hollywood; First National Bank of Hallandale, Hallandale; and Second National Bank of West Hollywood, Hollywood, all lo-

cated in Florida. The factors that are considered in acting on the application are set forth in sec. 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than March 27, 1973.

Board of Governors of the Federal Reserve System, January 27, 1973.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.73-4171 Filed 3-5-73;8:45 am]

WESTERN & SOUTHERN LIFE INSURANCE CO.

Determination Regarding "Grandfather" Privileges

Section 4 of the Bank Holding Company Act (12 U.S.C. 1843) provides certain privileges ("grandfather" privileges) with respect to nonbanking activities of a company that, by virtue of the 1970 amendments to the Bank Holding Company Act, became subject to the Bank Holding Company Act. Pursuant to section 4(a)(2) of the Act, a "company covered in 1970" may continue to engage, either directly or through a subsidiary, in nonbanking activities that such a company was lawfully engaged in on June 30, 1968 (or on a date subsequent to June 30, 1968, in the case of activities carried on as a result of the acquisition by such company or subsidiary, pursuant to a binding written contract entered into on or before June 30, 1968, of another company engaged in such activities at the time of the acquisition), and has been continuously engaged in since June 30, 1968 (or such subsequent date).

Section 4(a)(2) of the Act provides, inter alia, that the Board of Governors of the Federal Reserve System may terminate such grandfather privileges if, having due regard to the purposes of the Act, the Board determines that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. With respect to a company that controls a bank with assets in excess of $60 million on or after December 31, 1970, the Board is required to make such a determination within a 2-year period.

Notice of the Board's proposed review of the grandfather privileges of the Western & Southern Life Insurance Co., Cincinnati, Ohio, and an opportunity for interested persons to submit comments and views or request a hearing, has been given (37 FR 22414). The time for filing comments, views, and requests has expired, and all those received have been considered by the Board in light of the factors set forth in section 4(a)(2) of the Act.

On the evidence before it, the Board makes the following findings. The Western & Southern Life Insurance Co., Cincinnati, Ohio (Registrant), became a bank holding company on December 31, 1970, as a result of the 1970 Amendments to the Act, by virtue of Registrant's ownership of substantially all the voting shares of The Southern Ohio Bank, Cincinnati, Ohio (Bank) (assets of about $110 million, as of December 31, 1970). Bank, control of which was acquired by Registrant in April 1968, had total deposits of approximately $115 million as of December 31, 1971, representing under 5 percent of the total deposits of the 37 commercial banks in the Cincinnati banking market. Bank's management, financial condition, and prospects are regarded as good, and the Board has found no evidence of unsound banking practices.

Registrant, a mutual life insurance company since 1948 (converted from a stock company organized in 1888), is engaged in investing and in the business of selling, underwriting, and issuing individual and group life insurance, accident and health policies as well as selling individual annuity contracts and apparently has engaged in such activities continuously since before June 30, 1968. In addition, Registrant has four other direct subsidiaries and one indirect subsidiary, all of which are engaged in nonbanking activities. The Waslic Management Corp., Cincinnati, Ohio (formed in July 1946) manages apartment buildings and commercial buildings owned by Registrant in Hamilton County, Ohio. Ronado Management Co., Los Angeles, Calif. (formed in January 1969), manages apartment buildings and commercial buildings owned by Registrant in Los Angeles, Calif. WestAd, Inc., Cincinnati, Ohio (formed in May 1970), prepares copy or scripts and arranges for publication or broadcasting of advertising for Registrant and two of its subsidiaries. Eagle Savings Association, Cincinnati, Ohio (acquired in April 1970), with savings capital of approximately $213 million, as of December 31, 1971, is the largest savings and loan association in Hamilton County as well as in the Cincinnati banking market; and controls over 10 percent of savings capital at savings and loan associations headquartered in the county and close to 9 percent of total savings capital in the Cincinnati market area. Eagle Investment Co., Cincinnati, Ohio (formed in March 1971), is a wholly owned subsidiary of Eagle Savings Association and is engaged in the activity of purchasing and developing real estate for sale to others as permitted under Ohio law.

It appears that the direct activities of Registrant and the activities of the Waslic Management Corp. are eligible for grandfather benefits. To the extent that Waslic Management Co. furnishes services solely to the bank holding company, such activity appears to be exempt, under section 4(c)(1)(C)[1] of the Act, from the general prohibitions against nonbanking activities. Registrant acquired its interests in its other nonbanking subsidiaries after June 30, 1968; consequently, such subsidiaries seem not to be entitled to grandfather authority for retention beyond December 31, 1980. However, to the extent that Ronado Management Co. or WestAd is engaged in performing services for Registrant or its banking subsidary, such activities would appear to warrant exemption under section 4(c)(1)(C) of the Act. Eagle Savings Association does not appear to qualify for grandfather benefits nor for exemption under any provision of the Act; thus, Registrant must reduce its interest in such subsidiary to 5 percent or less of the outstanding shares of such subsidiary by December 31, 1980, unless, in the interim, the Registrant receives Board approval for retention (or ceases to be a bank holding company). In addition, Registrant acquired its interest in Eagle Investment Co. after December 31, 1970, and without Board approval (which is required under the Act). On this basis, Registrant should take prompt steps to divest itself of its interest in that company unless Registrant can demonstrate that its interest in Eagle Investment Co. is lawful under the Act.[2]

The total resources of banks, savings and loan associations, and insurance companies in the Cincinnati banking market as of December 31, 1971, was over $8 billion. Registrant, which operates some 400 offices in 30 States, had total assets of slightly less than $2 billion on this date or about 24 percent of the total. Bank and Eagle Savings Association represent an additional 1.4 percent and 2.6 percent, respectively. However, because of the broad geographic area over which Registrant's interests are spread, the above 24-percent figure substantially overstates Registrant's resources available to the Cincinnati market. The record shows that 36 commercial banks, 196 savings and loan associations and 23 mortgage companies currently operate in the Cincinnati market and compete with Registrant. Furthermore, Bank does not appear to be of sufficient size to add measurably to Registrant's influence in the market; there is no evidence that Registrant has used Bank to finance other ventures of Registrant; Registrant has not taken any dividends from Bank; and Registrant must either divest itself of Eagle Savings Association (or cease to be a bank holding company) by Decem-

[1] Section 4(c)(1)(C) of the Act enables a holding company to acquire (without) Board approval "(1) shares of any company engaged * * * solely in * * * (C) furnishing services to or performing services for such bank holding company or its banking subsidiaries; * * *".

[2] Registrant (in its Registration Statement filed with the Board) indicates that its interest in Eagle Investment Co. is permissible under section 4(c)(11) of the Act. To the extent the activities engaged in by Eagle Investment were performed by Registrant on or before June 30, 1968, and continuously thereafter until taken over by a de novo corporation (through the formation of Eagle Investment Co.), such activities would be entitled to grandfather benefits and, under the provisions of section 4(c)(11) of the Act, Registrant would have the authority to hold the shares of Eagle Investment Co. Not enough information is available now to the Board to determine the validity of Registrant's claim with respect to the interest in Eagle Investment Co.

ber 31, 1980, or secure Board approval to retain the S. & L. beyond that date.

On the basis of the foregoing and all the facts before the Board, it appears that the volume, scope, and nature of the activities of Registrant and its grandfathered subsidiaries do not demonstrate an undue concentration of resources, decreased or unfair competition, conflicts of interest nor unsound banking practices.

There appears to be no reason to require Registrant to terminate its grandfathered interests. It is the Board's judgment that, at this time, termination of the grandfather privileges of Registrant is not necessary in order to prevent an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. However, this determination is not authority to enter into any activity that was not engaged in on June 30, 1968, and continuously thereafter, or any activity that is not the subject of this determination. Nor is this determination authority for Registrant to acquire any additional real property or any additional shares of any company if the Registrant's holdings in said company will exceed 5 percent of the outstanding voting shares of such company.

A significant alteration in the nature or extension of Registrant's activities or a change in location thereof (significantly different from any described in this determination) will be cause for a reevaluation by the Board of Registrant's activities under the provisions of section 4(a)(2) of the Act, that is, whenever the alteration or change is such that the Board finds that a termination of the grandfather privileges is necessary to prevent an undue concentration of resources or any of the other evils at which the Act is directed. No merger, consolidation, acquisition of assets other than in the ordinary course of business, nor acquisition of any interest in a going concern, to which the Registrant or any nonbank subsidiary thereof is a party, may be consummated without prior approval of the Board. Further, the provision of any credit, property, or service by the Registrant or any subsidiary thereof shall not be subject to any condition which, if imposed by a bank, would constitute an unlawful tie-in arrangement under section 106 of the Bank Holding Company Act Amendments of 1970.

The determination herein does not preclude a later review by the Board of Registrant's nonbank activities and a future determination by the Board in favor of termination of grandfather benefits of Registrant. The determination herein, is subject to the Board's authority to require modification or termination of the activities of Registrant or any of its nonbanking subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulation and orders issued thereunder, or to prevent evasions thereof.

By determination of the Board of Governors,[*] effective February 26, 1973.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.73-4170 Filed 3-5-73;8:45 am]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regs.; Temporary Reg. F-170]

SECRETARY OF DEFENSE

Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in a telephone services rate proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the City Council of El Paso, Tex., in a proceeding involving the application of Mountain Bell Telephone Co., for a telephone rate increase.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and, further, shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

ARTHUR F. SAMPSON,
Acting Administrator of General Services

FEBRUARY 27, 1973.

[FR Doc.73-4219 Filed 3-5-73;8:45 am]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

FEDERAL GRAPHICS EVALUATION ADVISORY PANEL

Notice of Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that a closed meeting of the Federal Graphics Evaluation Advisory Panel to the National Endowment for the Arts will be held at 9:30 a.m., on March 6, 1973, in Washington, D.C.

The panel will review, discuss, evaluate, and make recommendations in connection with Federal agency graphics programs. It has been determined by the Chairman, in accordance with section 10(d) of the Act, that the meeting involves matters exempt from the requirements of public disclosure under the provisions of the Freedom of Information Act (5 U.S.C. 552(b)).

Further information with reference to this meeting can be obtained from Mrs. Eleanor A. Snyder, Advisory Committee Management Officer, National Endowment for the Arts, 806 15th Street NW., Washington, DC 20560, or call area code 202—382-2854.

P. P. BERMAN,
Director of Administration, National Foundation on the Arts and the Humanities.

[FR Doc.73-4208 Filed 3-5-73;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[70-5309]

CENTRAL AND SOUTH WEST CORP.

Notice of Proposed Amendment of Certificate of Incorporation To Split Authorized Common Stock Two-for-One, and Order Authorizing Solicitation of Proxies in Connection Therewith

FEBRUARY 28, 1973.

Notice is hereby given that Central and South West Corp., 300 Delaware Avenue, Wilmington, DE 19899 (Central), a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6 and 7 of the Act and Rules 20, 23, 62, and 100(a) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Central proposes, by amendment to its Certificate of Incorporation, to effect a two-for-one split of its authorized common stock of 24 million shares, par value $7 per share. The proposed split would result in 48 million shares of authorized common stock with par value of $3.50 per share. Central's board of directors has proposed the split in the interests of encouraging wider ownership of Central's shares of common stock and making them more attractive to a larger segment of investors. Presently, there are approximately 31,000 Central common stockholders of record.

Central intends to present the proposed amendment to its shareholders effecting the two-for-one split at its annual shareholders' meeting on April 19, 1973, and to solicit proxies in connection with the said meeting. The affirmative vote of a majority of the outstanding shares is required for adoption of the amendment. Central has filed its proxy solicitation materials for acceleration of the effectiveness of its declaration with respect to the solicitation as provided in Rule 62. The cost of solicitation, which will be borne by Central, is estimated at

[*] Voting for this action: Chairman Burns and Governors Robertson, Daane, Brimmer, Sheehan, and Bucher. Absent and not voting: Governor Mitchell.

$13,000, principally consisting of printing and mailing costs.

If the amendment is adopted and made effective, Central proposes to issue to each stockholder of record stock certificates for a number of shares of its common stock, par value of $3.50 per share, equal to the number of shares registered in his name. Stockholders will not be required to surrender outstanding stock certificates.

It is estimated that the fees and expenses of the transaction, excluding the costs associated with the solicitation of the proxies is $116,000, including additional stock exchange listing fees of $60,000 and transfer agents' expenses of $36,500. Central represents that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than April 2, 1973, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing that the declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered, That the declaration regarding the proposed solicitation of proxies, be and hereby is, permitted to become effective forthwith pursuant to Rule #2 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-4180 Filed 3-5-73;8:45 am]

[File No. 500-1]

CRYSTALOGRAPHY CORP.

Order Suspending Trading

FEBRUARY 27, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.01 par value, and all other securities of Crystalography Corp., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, That trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from February 28, 1973, through March 9, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-4175 Filed 3-5-73;8:45 am]

[812-3364]

INVESTORS DIVERSIFIED SERVICES, INC., AND INVESTORS SYNDICATE OF AMERICA, INC.

Notice of Filing of Application for Order Exempting Proposed Transactions

Notice is hereby given that Investors Diversified Services, Inc., IDS Tower, Minneapolis, Minn. 55402 (IDS), and its wholly owned subsidiary. Investors Syndicate of America, Inc. (ISA), which is registered under the Investment Company Act of 1940 (Act) as a face-amount certificate company (hereinafter sometimes referred to collectively as Applicants), have filed an application pursuant to section 17(b) of the Act for an order of the Commission exempting from the provisions of section 17(a) of the Act the sale by IDS to ISA of certain noninsured home improvement loans in exchange for cash. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

IDS proposes to sell to ISA for cash approximately, but no more than, $10 million of noninsured home improvement loans (amounts as given herein refer to unpaid principal balance less unamortized discount, except as otherwise noted). Inasmuch as IDS is an affiliated person of ISA, the foregoing transaction is prohibited by section 17(a) of the Act unless exempted pursuant to section 17(b) of the Act.

ISA is required to invest its assets, in amounts equal to its face-amount certificate reserves and capital stock requirement, in qualified investments. Under section 28(b) of the Act, qualified investments are defined to mean investments of a kind which life insurance companies are permitted to invest in or hold under the provisions of the Code of the District of Columbia, and such other investments as the Commission shall by rule, regulation, or order authorize as qualified investments.

The Commission on February 9, 1960, issued an order (Investment Company Act Release No. 2973) which authorized, as qualified investments for ISA, property improvement loans insured by the Commissioner of the Federal Housing Administration (FHA) under the provisions of Title I of the National Housing Act. Under that order ISA limited its holdings of such insured property improvement loans to an amount not in excess of 15 percent of its total qualified investments.

The Commission on March 4, 1965, also issued an order (Investment Company Act Release No. 4178) which authorized, as qualified investments for ISA, uninsured property improvement loans. The maximum principal amount of an uninsured loan was limited to $5,000 per property, regardless of the number of units of which the property might be comprised. Obligors on uninsured loans were to be required to have an interest in the property of the kind prescribed by the FHA regulations for FHA-insured loans. The aggregate amount of loans purchased by ISA, both FHA-insured and uninsured, could not exceed 15 percent of ISA's total qualified investments, provided that not more than 5 percent of ISA's total assets could be invested in uninsured loans.

From 1960 to 1967 Investors Syndicate Credit Corp. (ISCC), a then wholly-owned subsidiary of ISA, generated, sold, and serviced both insured and, since 1965, uninsured loans for ISA. In 1967, pursuant to a declaration of dividends in kind, ISCC became a wholly-owned subsidiary of IDS (becoming IDS Credit Corp., but referred to herein as ISCC), but continued its business relationships with ISA pursuant to a Commission order (Investment Company Act Release No. 4909).

IDS disposed of ISCC (which thereafter, became FBS Financial, Inc.) in 1971. In connection with such disposition and shortly prior thereto, ISA purchased $9,850,000 in uninsured loans from ISCC, which purchase was authorized pursuant to the Commission's order of October 28, 1971 (Investment Company Act Release No. 6794), and in connection with such disposition IDS received from ISCC certain loans amounting to $29.3 million as of December 29, 1972.

Such loans comprise commercial notes, mobile home contracts, miscellaneous retail contracts, land contracts, cottage plan contracts, shell home contracts, and noninsured home improvement loans, the latter including the loans involved in the subject transaction and amounting to $11.4 million as of December 29,

1972. IDS and ISCC then entered into a servicing agreement dated December 30, 1971, whereby ISCC agreed to collect on such loans and to repurchase all delinquent loans to the extent of its existing reserve for losses. The loans proposed to be purchased by ISA are calculated to provide a net annual yield of 7½ percent. They are seasoned loans with an original term of not more than 60 months and a current average maturity of approximately 20 months. None of said loans is more than 1 monthly payment past due. ISCC will continue to service said loans pursuant to the terms of its servicing agreement with IDS, which terms cover the eventuality of sale of the loans by IDS to an affiliate, and when any of said loans shall prove to be uncollectible, they will be repurchased by ISCC to the extent of the then existing loss reserve maintained by ISCC. To the extent that such loss reserve proves insufficient to cover any such uncollectible loans, IDS will execute to ISA its written agreement that should the loss reserve of ISCC not be sufficient to provide full recourse on any of said loans which prove uncollectible, IDS will repurchase from ISA any of said loans determined in the discretion of ISA to be uncollectible.

Loss experience with respect to noninsured property improvement loans purchased previously, pursuant to the Commission orders referred to above, has been favorable. In face amount, the aggregate amount of such loans purchased by ISA through November 30, 1972, was $34.8 million, and by said date there had been a total liquidation of $27.4 million. The aggregate of such loans repurchased and applied against loss reserve by ISCC to such date was $600,775, or 1.73 percent of the amount purchased. The repurchase percentage with respect to the loans purchased by IDS has been considerably higher than this, but Applicants attribute the difference to the facts that many of the loans purchased by IDS were unseasoned or became the subject of litigation. However, inasmuch as the subject loans now proposed to be purchased by ISA would be only seasoned loans, none of which is more than one monthly payment past due, Applicants believe that ISA's experience with respect to such loans will be similar to its past experience with loans of the same type. Applicants contend that, in any event, ISA would not suffer adverse effects from a higher incidence of default in view of the undertaking to be entered into by IDS to repurchase in event of default.

ISA's holding of Title I and noninsured property loans upon consummation of the proposed transaction will be well within the limits set by previous orders of the Commission noted above. Total ISA holdings of such loans as of November 30, 1972, constituted 2.48 percent of qualified assets, and an additional $10 million of loans would increase such percentage to 3.48 percent.

The proposed purchase will cover only loans constituting qualified investments as provided in Commission orders dated February 9, 1960, and March 4, 1965, Investment Company Act Releases Nos. 2973 and 4178, as amended by Investment Company Act Release No. 6170 of August 25, 1970, and by the Commission's order of October 28, 1971, Investment Company Act Release No. 6794, and will conform to said orders as presently in effect.

ISA initiated negotiations for the proposed transaction because ISA is in need of portfolio invettments and, in thellight of its investment program, is particularly desirous of obtaining short to medium term investments at an attractive yield and with the liquidating features of the loans in question. The 7½ percent yield on the subject loans is higher than the yield generally available in the open market for any other than long-term investments and is particularly attractive in view of the guaranty agreement to be entered into with IDS. IDS, on the other hand, is interested in the transaction because it had taken over the subject loans outside its normal course of business and only to facilitate the disposition of ISCC. IDS borrowed money in order to carry the loans, and IDS is interested in improving its cash and loan positions as a result of the sale.

Applicants believe that the proposed transaction will provide a sound and favorable investment to ISA and that its terms are reasonable and fair and do not involve overreaching on the part of any person concerned. Investment in uninsured loans has been a policy of ISA for a number of years and is consistent with the policy of ISA as recited in its registration statement and reports filed under the Act.

Section 17(a) of the Act, as here pertinent, prohibits an affiliated person of a registered investment company from selling to such registered company any securities or other property unless the Commission, upon application pursuant to section 17(b), grants an exemption from the provisions of section 17(a). Such exemption may be granted if evidence establishes that the terms of the proposed transactions, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned. In addition, the proposed transaction must be consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

Notice is further given that any interested person may, not later than March 23, 1973, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address stated above. Proof of such service (by affidavit, or in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing thereon shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-4179 Filed 3-5-73;8:45 am]

[File No. 500-1]

LIBERTY INVESTORS LIFE INSURANCE CO.

Order Suspending Trading

FEBRUARY 22, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.05 par value, and all other securities of Liberty Investors Life Insurance Co., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from 10 a.m., e.s.t., on February 23, 1973, through March 4, 1973.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-4176 Filed 3-5-73;8:45 am]

[812-3372]

MASSACHUSETTS INCOME DEVELOPMENT FUND, INC.

Notice of Filing of Application for Order Exempting Sale by Open-End Company

Notice is hereby given that Massachusetts Income Development Fund, Inc., 200 Berkeley Street, Boston, MA 02116, (Applicant), a Massachusetts corporation registered under the Investment Company Act of 1940 (Act) as a diversified, open-end management investment company, has filed an application pursuant to section 6(c) of the Act requesting an order of the Commission exempting from the provisions of section 22(d) of the Act a transaction in which Applicant's redeemable securities will be issued without any sales charge in exchange for substantially all of the assets of Ridgewood Investment Co. (Ridgewood). All interested persons are referred to the

application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Ridgewood, an Ohio corporation, is a personal holding company, all of whose outstanding common stock is held, in the aggregate, by not more than eight individuals and one trust, and is exempt from registration under the Act by reason of the provisions of section 3(c)(1) thereof.

In December 1972, Applicant and Ridgewood negotiated an Agreement and Plan of Reorganization (Agreement) whereby substantially all the assets of Ridgewood, consisting of securities and cash, are to be transferred to Applicant in exchange for shares of $1 par value capital stock of Applicant. Pursuant to the Agreement, the number of shares of Applicant to be delivered to Ridgewood shall be determined on the business day preceding the closing date, as defined in the Agreement, by dividing the net value of the assets of Ridgewood (subject to certain adjustments as set forth in the Agreement), to be transferred to Applicant by the net asset value per share of Applicant. The application represents that the shareholders of Ridgewood have no present intention of redeeming or otherwise disposing of shares of Applicant following the proposed transaction.

It is a condition of the Agreement that Ridgewood receive prior to the closing an opinion of its counsel to the effect that the proposed exchange constitutes a tax-free reorganization within the meaning of section 368(a)(1)(C) of the Internal Revenue Code, in which case the tax basis of Ridgewood's assets will be carried over to Applicant and remain the same after the transaction (in the hands of Applicant) as before (in the hands of Ridgewood). The adjustment in the Agreement provides a formula to minimize the potential tax effect, if any, to Applicant of any disproportion in realized and unrealized taxable gains and losses of the combining companies.

As of November 10, 1972, the net asset value of Applicant's stock was $15.11 per share, and the net value of the assets of Ridgewood to be delivered to Applicant was approximately $771,075. Assuming that the closing under the Agreement had taken place on that date, there would have been no adjustment to the value of assets of Ridgewood to be transferred, and Ridgewood would have received 51,030.77 shares of Applicant in the exchange.

Section 22(d) of the Act provides, in pertinent part, that registered open-end investment companies may sell their shares only at the current public offering price as described in the prospectus. The public offering price of Applicant's shares, as described in its prospectus, includes a sales charge. Section 6(c) of the Act permits the Commission, upon application, to exempt a transaction from the provisions of the Act if it finds that such an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

The application states that there is no affiliation between Applicant and Ridgewood and that the Agreement was arrived at by arms-length bargaining. The application further contends that the proposed acquisition will be beneficial to the shareholders of Applicant because it will enable Applicant to increase its portfolio size without brokerage commissions, although Applicant does presently intend to sell securities received from Ridgewood representing approximately 29 percent of the market value of Ridgewood as of February 16, 1973. It is also represented that there will be no effect on the market prices of the shares to be acquired, and that the increase in portfolio size will result in reduced expenses per share of Applicant's outstanding stock.

Notice is further given that any interested person may, not later than March 23, 1973 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73-4181 Filed 3-5-73;8:45 am]

[812-3366]

NATIONAL MUNICIPAL TRUST (FIRST AND SUBSEQUENT NATIONAL AND STATE SERIES)

Notice of Filing of Application for Order Granting Exemption

Notice is hereby given that National Municipal Trust (First and Subsequent National and State Series) (Applicant), c/o Kohlmeyer & Co., 147 Carondelet Street, New Orleans, LA 70150, a unit investment trust registered under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 6(c) of the Act for exemption from the provisions of section 14(a) of the Act and Rules 19b-1 and 22c-1 under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below.

Applicant is a registered unit investment trust, organized under the laws of the State of New York. It is intended that the United States Trust Company of New York will act as Trustee of Applicant (Trustee) pursuant to a trust agreement (Trust Agreement) between the Trustee and Kohlmeyer & Co., Legg, Mason & Co., Inc., and Piper, Jaffray & Hopwood Inc. (or succeeding sponsors) (Sponsors). Standard & Poor's Corp. will serve as Evaluator with respect to each Series of Applicant.

Pursuant to the Trust Agreement for each Series of Applicant, the Sponsors will deposit with the Trustee in excess of $3 million principal amount of tax-free municipal bonds (bonds), which the Sponsors shall have accumulated for such purpose, and simultaneously with such deposit will receive from the Trustee registered certificates representing in excess of 3,000 units which will represent the entire ownership of a Series. Applicant presently proposes to offer units of its First Series for sale to the public, and for this purpose a registration statement under the Securities Act of 1933 has been filed which has not yet become effective. Since the Trust Agreement does not provide for the issuance of additional units after the initial offering of a Series, the proceeds of bonds which may be sold, redeemed or which mature will be distributed to unitholders. While the Sponsors are not obligated to do so, it is their present intention to maintain a secondary market for units of the Applicant and continuously to offer to purchase such units at prices in excess of the redemption price, as set forth in the Trust Agreement.

SECTION 14(a)

Section 14(a) of the Act, in substance, provides that no registered investment company and no principal underwriter for such a company shall make a public offering of securities of which such company is the issuer unless: (1) The company has a net worth of at least $100,000; (2) at the time of a previous public offering it had a net worth of $100,000; or (3) provision is made that a net worth of $100,000 will be obtained from not more than 25 responsible persons within 90 days, or the entire proceeds received, including sales charge, will be refunded.

Applicant asserts that section 14(a) of the Act is intended to limit the formation of undercapitalized investment companies. Applicant states that it is intended that each Series, at the date of deposit and before any unit is offered to the public, will have a net worth far in excess of $100,000, that the Sponsors intend to sell all units to the public at an offering price disclosed in the prospectus for such Series, that it is intended that a

secondary market for the units be maintained, and that interest rates and other applicable information concerning the underlying bonds will be disclosed in the prospectus.

The Sponsors have agreed to the requested exemption being subject to the condition that they will refund, on demand and without deduction, all sales charges paid by purchasers of units in the initial public offering of a Series if, within 90 days from the time that the registration statement relating to such Series becomes effective, either (i) the net worth of such Series shall be reduced to less than $100,000, or (ii) such fund shall have been terminated. The Sponsors have further agreed to instruct the Trustee on the date of deposit of each Series that in the event that redemption by the Sponsors of units constituting a part of the unsold units shall result in that Series having a net worth of less than $2 million, the Trustee shall terminate the Series in the manner provided in the Trust Agreement and distribute any municipal bonds or other assets deposited with the Trustee pursuant to the Trust Agreement as provided therein.

RULE 19b–1

Rule 19b–1(b) provides, in part, that no registered investment company which is not a "regulated investment company" as defined in section 851 of the Internal Revenue Code shall make more than one distribution of long-term capital gains in any 1 taxable year of such investment company.

Applicant proposes to make monthly distributions of principal and interest to unitholders of a Series. Distributions of principal constituting capital gains to unitholders may arise in two instances: (1) If an issuing authority calls or redeems an issue held in the portfolio, the sums received by Applicant will be distributed to unitholders on the next distribution date; and (2) if bonds are sold in order to provide funds necessary to meet redemptions.

Applicant states that the dangers against which Rule 19b–1 is intended to guard will not exist in connection with any Series of Applicant, since neither Applicant nor the Sponsors have control over the events which could trigger capital gains. Applicant seeks to make a combined distribution of principal, including capital gains, and interest each month, and states that any capital gains in such distribution will be clearly indicated as such in accompanying reports to unitholders. In addition, it is alleged that the amounts involved in a normal distribution of principal will be relatively small in comparison to the normal interest distribution.

Paragraph (b) of Rule 19b–1 provides that a unit investment trust may distribute capital gain dividends received from a "regulated investment company" within a reasonable time after receipt. Applicant states that the purpose behind such provision is to avoid forcing unit investment trusts to accumulate valid distributions received throughout the year and distribute them only at yearend. Applicant further alleges that its situation places it squarely within the purpose of such provision. However, in order to comply with the literal requirements of the rule, Applicant would be forced to hold any moneys which would constitute capital gains upon distribution until the end of its taxable year. Applicant contends that such a practice would clearly be to the detriment of the unitholders.

RULE 22c–1

Rule 22c–1 provides, in part, that redeemable securities of registered investment companies may be sold, redeemed, or repurchased at a price based on the current net asset value (computed on each day during which the New York Stock Exchange is open for trading not less frequently than once daily as of the time of the close of trading on such Exchange) which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

Applicant states that the rule has two purposes: (1) To eliminate or to reduce any dilution of the value of outstanding redeemable securities of registered investment companies which would occur through the redemption or repurchase of such securities at a price above their net asset value or the sale of such securities at a price based on a previously established net asset value which would permit a potential investor to take advantage of an upswing in the market and the accompanying increase in the net asset value of the securities; and (2) to minimize speculative trading practices in the securities of registered investment companies.

Applicant represents that the Sponsors, while not obligated to do so, intend to maintain a market for the units and continuously to offer to purchase units at prices in excess of redemption prices. For purposes of the secondary market transactions, an evaluation will only be made once each week.

Applicant asserts that the pricing of units by the Sponsors in the secondary market in no way affects the assets of Applicant, i.e., the underlying bonds. Finally, because of the nature of the bonds in the portfolio, price changes are limited. Thus the movement in the municipal bond market is not sufficient to make speculation in an interest in a group of bonds ordinarily profitable.

Applicant asserts that public unit holders benefit from the Sponsors' pricing procedure in the secondary market, since they receive a normally higher repurchase price for their units without the cost burden of daily evaluations of the unit redemption value. Moreover, the application states that the Sponsors have undertaken to adopt a procedure whereby the Evaluator, without a formal evaluation, will provide the Sponsors with estimated evaluations on trading days. In the case of a repurchase, if the Evaluator cannot state that the previous Friday's price is at least equal to the current bid price, the Sponsors will order a full evaluation. In case of resale, if the Evaluator cannot state that the previous Friday's price is no more than one-half point ($5 per $1,000 principal amount of underlying bonds) greater than the current offering price, a full evaluation will be ordered.

Section 6(c) of the Act provides, in part, that the Commission may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provisions of the Act or of any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than March 20, 1973, at 5:30 p.m., submit to the Commission in writing a request for hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.73–4178 Filed 3–5–73;8:45 am]

[File 500–1]

STAR-GLO INDUSTRIES INC.

Order Suspending Trading

FEBRUARY 27, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.10 par value, and all other securities of Star-Glo Industries Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of

1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from February 28, 1973 through March 9, 1973.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.73-4177 Filed 3-5-73;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 30-VII, Amdt. 1]

CHIEF, REGIONAL FINANCING DIVISION, ET AL.

Delegation of Authority To Conduct Program Activities in the Field Offices

Delegation of Authority No. 30-VII (37 FR 17616) is hereby amended to include approval and certain other authority for strategic arms limitation economic injury loans; more clearly define certain other authorities; eliminates references to Class B disasters; and includes authority to contract for local credit bureau services and loss verification services. Parts I, II, and VIII are revised to read as follows:

PART I—FINANCING PROGRAM

SECTION A. *Loan approval authority* * * *

3. *Displaced business and other economic injury loans.* a. To decline displaced business loans, coal mine health, and safety loans, strategic arms limitation economic injury loans, consumer protection loans (meat, egg, poultry), occupational safety and health, and economic injury disaster loans in connection with declarations made by Secretary of Agriculture for natural disasters in any amount and to approve such loans up to the following amounts (SBA share):

* * * * *

b. To approve or decline displaced business loans, coal mine health and safety loans, strategic arms limitation economic injury loans, consumer protection loans (meat, egg, poultry), occupational safety and health, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters up to the following amounts (SBA share):

* * * * *

SEC. B. *Other financing authority*—1. a. To enter into business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), strategic arms limitation economic injury loans, occupational safety and health, and coal mine health and safety loan participation agreements with banks:

* * * * *

3. To cancel, reinstate, modify, and amend authorizations:

a. For business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), occupational safety and health, strategic arms limitation economic injury loans, and coal mine health and safety loans:

* * * * *

b. For fully undisbursed or partially disbursed business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), occupational safety and health, strategic arms limitation economic injury loans, and coal mine health and safety loans:

* * * * *

c. For business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), coal mine health and safety, and occupational safety and health, strategic arms limitation economic injury loans, loans personally approved under delegated authority: Not applicable.

* * * * *

PART II—DISASTER PROGRAM

SECTION A. *Disaster loan authority*—1. To decline direct disaster and immediate participation disaster loans in any amount and to approve such loans up to the total SBA funds of (1) $50,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned for physical loss or damage exceed $55,000 for a single disaster on home loans, except for funds to refinance prior liens or mortgages, which may be approved in addition to the foregoing limits for amounts up to $50,000; and (2) $500,000 on disaster business loans (excluding displaced business loans, coal mine health and safety, occupational safety and health, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters) except to the extent of refinancing of a previous SBA disaster loan:

(1) Chief and Assistant Chief, Regional Financing Division.

(2) District Directors.

(3) Chiefs, District Financing Divisions.

(4) Disaster Branch Managers, as assigned.

2. To decline direct disaster and immediate participation disaster loans (excluding displaced business loans, coal mine health and safety, occupational safety and health, strategic arms limitation economic injury loans, and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters) in any amount and to approve such loans up to the total SBA funds of $50,000:

(1) Supervisory Loan Officers, Regional Financing Division.

3. To decline disaster guaranteed loans in any amount and to approve such loans up to an SBA guarantee of the following amounts:

(1) Chief and Assistant Chief, Regional Financing Division	$500,000
(2) Supervisory Loan Officers, Regional Financing Divisions	50,000
(3) District Directors	500,000
(4) Chiefs, District Financing Division	350,000
(5) Disaster Branch Managers, as assigned	350,000

4. To appoint as a processing representative any bank in the disaster area:

(1) Chief and Assistant Chief, Regional Financing Division.

(2) District Directors.

(3) Disaster Branch Managers, as assigned.

SEC. B. *Administrative authority*—1. *Establishment of Disaster Field Offices.* (a) To establish field offices upon receipt of advice of the designation of a disaster area and to close disaster field offices when no longer advisable to maintain such offices; and (2) to obligate the Small Business Administration to reimburse the General Services Administration for the rental of temporary office space.

(1) Chief and Assistant Chief, Regional Financing Division.

(2) District Directors.

(3) Disaster Branch Managers, as assigned.

2. Purchase and contract authority—a. To contract for local credit bureau services and loss verification services pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in section 257 (a) and (b) of that Chapter.

(1) Chief and Assistant Chief, Regional Financing Division.

(2) District Directors.

(3) Disaster Branch Managers, as assigned.

PART VIII—ADMINISTRATIVE

SECTION A. *Authority to purchase, or contract for equipment, services, and supplies*—1. To purchase reproductions of loan documents, chargeable to the revolving fund, requested by U.S. attorneys in foreclosure cases:

(1) Chief, Regional Administrative Division.

(2) District Directors.

(3) Chief, District Administrative Divisions.

2. To purchase office supplies and equipment, including office machines and rent regular office equipment and furnishings; contract for repair and maintenance of equipment and furnishings; contract for printing (Government sources only); contract for services required in setting up and dismantling and moving SBA exhibits; and issue Government bills of lading pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in section 257 (a) and (b) of that Chapter.

(1) Chief, Regional Administrative Division.

(2) Regional Office Services Manager.

(3) District Directors.

(4) Chief, District Administrative Divisions.

3. To rent motor vehicles and garage space for the storage of such vehicles when not furnished by this Administration.

(1) Chief, Regional Administrative Division.

(2) Regional Office Services Manager.

(3) District Directors.

Effective date: Part I, Sec. A, 3a and 3b; Sec. B, 1a, 3a, 3b and 3c, Septem-

ber 28, 1972; Parts II and VIII, July 1, 1972.

C. I. MOYER,
Regional Director,
Region VII.

[FR Doc.73-4159 Filed 3-5-73;8:45 am]

SBA-GUARANTEED SBIC DEBENTURES DUE 1983

Notice of Invitation To Bid

The Small Business Administration (SBA), pursuant to the authority of the Small Business Investment Act of 1958, as amended, invites bids for an issue of approximately $38 million debentures issued by small business investment companies (SBIC's) and guaranteed as to principal and interest by SBA. The exact principal amount will be determined on March 6, 1973, and incorporated in the final papers. A description of the debentures and SBA's guaranty, together with the bid requirements, are set forth in the Notice of Sale. The documents referred to therein are available from SBA. Bids should be submitted in the manner provided by the Official Form of Proposal. The Notice of Sale and the Official Form of Proposal are as follows:

NOTICE OF SALE
OF
$
% DEBENTURES DUE MARCH 1, 1983
FULLY GUARANTEED AS TO PRINCIPAL AND INTEREST
BY THE
SMALL BUSINESS ADMINISTRATION
ISSUED BY
SMALL BUSINESS INVESTMENT COMPANIES

As more fully described in the Preliminary Prospectus relating thereto,[1] $ aggregate principal amount of Debentures due March 1, 1983 (the "Debentures") will be issued by certain Small Business Investment Companies and will be fully guaranteed as to principal and interest by the Small Business Administration (the "SBA"). Sealed proposals for the purchase of all the Debentures shall be hand delivered to the Federal Reserve Bank of New York, 33 Liberty Street, New York, N.Y., Northwest Conference Room, on March 13, 1973, and must be received by the SBA at such place prior to 11 a.m. (e.s.t.), at which time and place all proposals will be publicly opened and announced.

Timely payment of the principal of and interest on the Debentures will be guaranteed by the SBA acting pursuant to section 303(b) of the Small Business Investment Act of 1958, as amended, which provides that the full faith and credit of the United States is pledged to the payment of all amounts required to be paid pursuant to this guaranty.

The Debentures, to be issued in principal amounts of $10,000 each, will be dated and bear interest from March 27, 1973, and will mature on March 1, 1983. The Debentures will not be subject to redemption or prepayment prior to maturity.

The Debentures will bear interest at the rate specified in the proposal of the successful bidder in accordance with this Notice of Sale. Interest will be payable on March 1 and September 1 in each year. The principal of and interest on the Debentures will be payable at the principal office of the Federal Reserve Bank of New York, as Fiscal Agent of the SBA.

As described in the Preliminary Prospectus, the Debentures will be offered pursuant to Guaranty Agreements[1] covering a specific Debenture or Debentures identified in a debenture register maintained by the SBA. The Debentures represented by the Guaranty Agreements will be held by, and be payable to, the SBA, as bailee for holders of Guaranty Agreements, and the SBA, as collection agent, will remit payments of principal and interest on the Debentures to such holders through its Fiscal Agent. The successful bidder (the term "bidder" as used herein applying to a single bidder or, in the case of a group of bidders, to such group) shall be deemed to have designated the SBA to act as bailee of the Debentures in accordance with the Guaranty Agreement.

Each proposal must be submitted on the Official Form of Proposal referred to in the closing paragraph of this Notice of Sale and must represent a bid of not less than 99 percent nor more than 101 percent of the principal amount of all the Debentures, plus interest thereon accrued to the date of delivery, and must specify in a multiple of ⅛ or 1/20 of 1 percent the rate per annum of interest which the Debentures are to bear. Only one interest rate may be specified for the Debentures. Each proposal must be enclosed in a sealed envelope and should be addressed to the Small Business Administration in care of the addressee specified in the first paragraph hereof and be marked on the outside, in substance, "Proposal for Debentures." Each proposal must be submitted in duplicate, and each counterpart must be signed by the bidder.

The right is reserved by the SBA pursuant to authority vested in it by the issuing SBIC's to reject all proposals, or any proposal not conforming to this Notice of Sale or not on the Official Form of Proposal (without alteration except for the insertions required by the form). The right is also reserved to waive, if permitted by law, any irregularity in any proposal.

As between legally acceptable proposals complying with this Notice of Sale, the Debentures will be sold to the bidder whose bid shall result in the lowest basis cost of money computed from March 27, 1973, to the maturity date of the Debentures. Such lowest basis cost of money will be determined by reference to a specially prepared table of bond yields, a copy of which is available for examination by prospective bidders at the national office of the SBA. Straight-line interpolation will be applied if necessary. If it should be necessary to make such a determination for a coupon rate not shown in said table of bond yields, reference will be made to other tables of bond yields prepared by Financial Publishing Co. The decision of the SBA, acting pursuant to authority vested in it by the issuing SBIC's, as to the lowest basis cost of money shall be conclusive. If two or more bids provide the identical lowest basis cost of money, the SBA (unless it shall reject all bids) will give the makers of such identical resulting bids an opportunity to submit improved bids within such time as the SBA shall specify, but in no case later than 2 hours after the opening of such bids. If no improved bid is made by the makers of such identical resulting bids within the time specified by the SBA, or if upon such rebidding two or more improved bids again provide the identical basis cost of money, the SBA in its discretion may, within 2 hours after the time specified for such rebidding, accept any one of the identical resulting bids or may reject all bids.

Proposals will be accepted or rejected promptly but not later than 3 p.m. (e.s.t.), on the date set for receiving proposals. When the successful bidder has been ascertained, the SBA will promptly accept the proposal of such bidder by executing and delivering to such successful bidder the duplicate of its proposal whereupon the Purchase Agreement attached as an exhibit to the Official Form of Proposal will become effective without any separate execution thereof, and thereafter all rights of SBA, the issuing SBIC's and the successful bidder shall be determined solely in accordance with the terms thereof.

As soon as practicable after the successful bidder is ascertained, the SBA will modify the Preliminary Prospectus relating to the Debentures to reflect the effect of the proposal of the successful bidder, and the document so modified will constitute the Prospectus. The SBA will then furnish the successful bidder with copies of the Prospectus in reasonable quantity as required by it in connection with the public offering and sale of the Debentures, including one copy thereof signed manually by the Administrator or Deputy Administrator of the SBA.

The successful bidder will be furnished, without cost, the opinions of Hogan & Hartson, Special Counsel to the SBA,[1] and the General Counsel of the SBA,[1] as to the validity of the Debentures and the guaranty by the SBA of the payment of the principal of and interest on such debentures, each in substantially the form annexed to the Purchase Agreement.

The successful bidder will also be furnished without cost memoranda prepared by Hogan & Hartson with respect to (1) the status of the Debentures for sale under the securities or blue sky laws of various States and (2) the legality of the Debentures for investment by certain financial institutions in various States.

Messrs. Brown, Wood, Fuller, Caldwell & Ivey, New York, N.Y., will act as counsel for the successful bidder and will furnish an opinion at the closing substantially in the form annexed to the Purchase Agreement. The compensation and disbursements of such counsel are to be paid by the successful bidder under the terms of the Purchase Agreement. Said counsel will, on request, advise any prospective bidders of the amount of such compensation and estimated disbursements to be paid by the successful bidder.

A Guaranty Agreement (in temporary form) representing all the Debentures will be delivered at the office of the Federal Reserve Bank of New York, 33 Liberty Street, New York, N.Y., on March 27, 1973, at 10 a.m. (e.s.t.), or such other place, date, and time as may mutually be agreed upon, at which time the successful bidder shall pay the purchase price by one or more checks payable in Federal funds to the order of "Federal Reserve Bank of New York."

The Guaranty Agreement(s) representing the Debentures will be delivered in definitive form on April 16, 1973 in exchange for the temporary Guaranty Agreement in such denominations (in integral multiples of $10,000) and registered in such names as shall be requested by the successful bidder on or before April 6, 1973.

Copies of the Preliminary Prospectus dated March 6, 1973, relating to the Debentures, the Official Form of Proposal, the Form of Purchase Agreement and the preliminary blue sky and legal investment memoranda will be furnished upon application to the SBA.

Dated: March 6, 1973.

SMALL BUSINESS ADMINISTRATION,
ANTHONY G. CHASE,
Deputy Administrator.

[1] Filed as part of the original document.

[1] Filed as part of the original document.

OFFICIAL FORM OF PROPOSAL
FOR

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% DEBENTURES DUE MARCH 1, 1983

FULLY GUARANTEED AS TO PRINCIPAL AND INTEREST
BY THE
SMALL BUSINESS ADMINISTRATION

ISSUED BY
SMALL BUSINESS INVESTMENT COMPANIES

SMALL BUSINESS ADMINISTRATION,
Care of Federal Reserve Bank of New York,
33 Liberty Street,
New York, NY 10045.

MARCH 13, 1973.

GENTLEMEN: Subject to the provisions and in accordance with the terms of the attached Notice of Sale (the "Notice of Sale"), which is hereby made a part of this proposal, the undersigned (the "Representatives"), on behalf of the persons, firms, and corporations named in Schedule A[1] of the Purchase Agreement attached hereto (the "Purchase Agreement"), as the same may be changed by the Representatives subject to the provisions hereof (the "Purchasers"), severally and not jointly, hereby offer to purchase (for resale to the public) on the terms and conditions set forth in this proposal and the purchase agreement all of the $ aggregate principal amount of Debentures due March 1, 1983, to be issued by certain Small Business Investment Companies (SBIC's) and to be fully guaranteed as to principal and interest by the Small Business Administration (the "SBA") (such $ principal amount of Debentures being hereinafter referred to as the "Debentures"), at the price of percent of the principal amount thereof plus interest accrued thereon from March 27, 1973, to the date of their delivery. The Representatives are Purchasers and represent and warrant to the SBA that they have all necessary power and authority to act for each of the Purchasers.

Said Debentures shall bear interest at the rate of percent per annum.

Receipt of the Notice of Sale, the Purchase Agreement and the Preliminary Prospectus, dated March 6, 1973, prepared in connection with the sale of the Debentures, is hereby acknowledged.

Changes may be made by the Representatives as to the Purchasers (other than the Representatives) set forth in Schedule A and as to the respective principal amounts of Debentures set opposite their respective names in Schedule A, provided that any Debentures not purchased as a result of such changes shall be purchased severally by the Representatives in proportion to their respective commitments hereunder.

If this bid shall be approved by the SBA as resulting in the lowest basis cost of money, computed as provided in the Notice of Sale, the Representatives will, promptly upon receipt of notification from the SBA and prior to completion by the SBA of the form of acceptance set forth below, supply to the SBA any such changes to Schedule A.

In consideration of the agreement of the SBA set forth in the Notice of Sale, the Representatives agree on behalf of each of the Purchasers that: (a) the offer of such Purchaser included in this proposal shall be irrevocable until 3 p.m. (e.s.t.), on the date hereof unless sooner rejected by the SBA; and (b) when all changes, if any, to Schedule A to the Purchase Agreement attached hereto shall be made and this bid accepted by the SBA by execution of the form of acceptance set forth below, said Purchase Agreement shall become effective without any separate execution thereof, and thereafter all rights of the SBA, the SBIC's and of the Purchasers shall be determined solely in accordance with the terms of said Purchase Agreement.

This Official Form of Proposal must be submitted in duplicate and shall be deemed rejected by the SBA unless accepted by the SBA prior to 3 p.m. (e.s.t.), on the date hereof.

Very truly yours,

By_____
On behalf of and as the Representatives of the person(s), firm(s), and/or corporation(s) named or to be named in Schedule A to the Purchase Agreement hereto attached.

Accepted this 13th day of March 1973.

SMALL BUSINESS ADMINISTRATION,
ANTHONY G. CHASE,
Deputy Administrator.

[1] Filed as part of the original document.

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% DEBENTURES DUE MARCH 1, 1983

FULLY GUARANTEED AS TO PRINCIPAL AND INTEREST BY THE SMALL BUSINESS ADMINISTRATION

ISSUED BY
SMALL BUSINESS INVESTMENT COMPANIES

Purchase Agreement

The undersigned, acting for and in behalf of themselves and the other Purchasers named in Schedule A hereof (herein called the "Purchasers"), for whom they are acting as Representatives for the purposes of this Agreement as set forth below, hereby confirm their agreement with the Small Business Administration (herein called "SBA"), an agency of the United States acting pursuant to authorization on behalf of certain Small Business Investment Companies ("SBIC's"), for the purchase by the Purchasers, acting severally and not jointly, and the sale by the SBIC's of $ aggregate principal amount of % Debentures due March 1, 1973 to be issued by the SBIC's and to be fully guaranteed as to principal and interest by SBA (such $ principal amount of % Debentures due March 1, 1983 being hereinafter referred to as the "Debentures"). Each Debenture is to be in the principal amount of $10,000 and ownership of the Debentures is to be evidenced by Guaranty Agreements (herein called the "Guaranty Agreements") in substantially the form attached hereto as Schedule B. The undersigned represent and warrant that as such Representatives (herein called the "Representatives"), they have been authorized by the other Purchasers to enter into and execute this Agreement on their behalf and to act for them in the manner provided herein.

SECTION 1. *Purchase and sale.* Upon the terms and conditions and upon the basis of the representations, warranties and agreements herein set forth, SBA agrees, pursuant to authorization from the SBIC's, to cause such SBIC's to sell to the Purchasers and the Purchasers agree, severally and not jointly, to purchase from the SBIC's, the respective principal amounts of Debentures set forth opposite the names of the Purchasers in Schedule A hereof at the purchase price set forth in the Form of Official Proposal to which this Purchase Agreement is attached, plus interest, if any, accrued thereon from March 27, 1973 to the date of Closing (hereinafter defined). The Purchasers contemplate a public offering of the Debentures. SBA agrees to (a) assemble the Debentures as agent for the SBIC's for sale to the Purchasers; (b) accept delivery of the Debentures as bailee pursuant to the Guaranty Agreements; (c) make delivery of the Guaranty Agreements as provided in section 3 hereof; and (d) direct the Federal Reserve Bank of New York to distribute to the SBIC's the purchase price for the Debentures, less any cost incident to the sale of the Debentures (see section 6 herein), paid by the Purchasers to the Federal Reserve Bank of New York for the account of the SBIC's.

SEC. 2. *Representations, warranties, and agreements of SBA.* SBA represents, warrants, and agrees with the Purchasers that:

(a) The Guaranty Agreements, when executed and delivered at the Closing, will be in substantially the form attached hereto as Schedule B and will be legal, valid and binding undertakings of SBA in accordance with their terms.

(b) The Debentures are identified in a debenture register maintained at SBA, and SBA has full power and authority on behalf of the SBIC's to deliver such Debentures in accordance herewith and to receipt for the purchase price therefor upon payment thereof by the Purchasers to the Federal Reserve Bank of New York for the account of the SBIC's.

(c) SBA has full power and authority to accept the Debentures as bailee on behalf of the holders of Guaranty Agreements and upon delivery thereof to SBA as herein and in the Guaranty Agreements provided, the holders of Guaranty Agreements will have title to the Debentures, subject to no prior liens or restrictions.

(d) The guaranty by SBA of the Debentures is in conformity with section 303(b) of the Small Business Investment Act of 1958, as amended, and will be within the limitations set forth in section 4(c)(4)(B) of the Small Business Act and the authority of SBA under and pursuant to Public Law 92-544, in each case after giving effect to all other loans, guaranties and other obligations or commitments outstanding pursuant to Title III of the Small Business Investment Act of 1958.

SEC. 3. *Payment for delivery of debentures—closing.* Payment of the purchase price for the Debentures shall be made at the office of the Federal Reserve Bank of New York, 33 Liberty Street, New York, New York, or at such other places as shall be agreed upon by SBA and the Representatives, at 10 a.m. (e.s.t.) on March 27, 1973 (the "Closing"). The Closing may be postponed to such later time or date as shall be agreed upon by SBA and the Representatives. Such payment shall be made to the Federal Reserve Bank of New York for the account of the SBIC's by the Purchasers, or the Representatives on their behalf, in federal funds, against delivery of the Debentures to SBA, as bailee, pursuant to the Guaranty Agreements and against delivery of the Guaranty Agreements to or upon the order of the Representatives for the respective accounts of the Purchasers. Delivery of the Guaranty Agreements at the Closing shall be effected by delivery to such person, firm or corporation as shall be designated by the Representatives of one Guaranty Agreement in temporary form evidencing ownership of the Debentures.

SEC. 4. *Prospectus.* SBA has heretofore furnished to the Representatives copies of a Preliminary Prospectus relating to the Debentures and Guaranty Agreements. SBA agrees that, as soon as practicable after this Agreement becomes effective, it will complete the Preliminary Prospectus and will make such changes therein as it may deem advisable and as shall be approved by the Representatives as to form and substance and as not involving a material adverse change from the Preliminary Prospectus, and that one or more copies thereof as so completed and changed (the "Prospectus") will be

executed on behalf of SBA by its authorized representative, dated the date the proposal was accepted by SBA, and delivered to the Representatives on or prior to the date of Closing. SBA hereby authorizes the Purchasers to use the Prospectus in connection with the public offering and sale of the Debentures.

SBA represents and warrants to each of the Purchasers that the statements and information contained in the Prospectus at the date thereof and at the date of Closing will be true, correct and complete in all material respects, and the Prospectus as of such times will not omit any statement or information which should be included therein for the purpose for which it is to be used or which is necessary to make the statements and information contained therein not misleading in any material respect, except as such statements and information may have been furnished in writing by the Purchasers expressly for use in the Prospectus.

SEC. 5. *Blue Sky qualification.* SBA agrees to cooperate with the Purchasers in qualifying the Debentures for offering and sale under the securities or Blue Sky laws of such States as may be designated by the Representatives, provided that SBA shall not be required to file any general consent to service of process under the laws of any such State, and that any applications required in connection therewith shall be prepared on behalf of SBA by Special Counsel for SBA and, to the extent permitted by law, filed by such counsel on behalf of SBA.

SEC. 6. *Payment of expenses.* The Purchasers shall be under no obligation to pay any expenses incident to the performance of the obligations of SBA hereunder including, but not limited to, the fees and disbursements of Special Counsel for SBA and the cost of printing or other reproduction and delivery of the Bidding Papers, the Preliminary Prospectus, the Prospectus, the Debentures, the Guaranty Agreements, the memoranda referred to in the notice of sale, and the opinion of the General Counsel of SBA. The Purchasers agree to pay all their expenses, including the fees and disbursements of counsel for the Purchasers, incurred in connection with the debentures or Guaranty Agreements.

SEC. 7. *Conditions of purchasers' obligations.* The obligations of the Purchasers to purchase and pay for the Debentures shall be subject to the accuracy of the representations and warranties on the part of SBA and to the performance of its obligations to be performed hereunder prior to the Closing, and to the following further conditions:

(a) At the time of closing, the Representatives shall have received the favorable opinions of the General Counsel of SBA, Hogan & Hartson, Special Counsel for SBA, and Brown, Wood, Fuller, Caldwell & Ivey, counsel for the Purchasers[1] each dated the date of closing, substantially in the forms of Exhibits A, B, and C to this Agreement.

(b) At the time of closing, the Representatives shall have received a certificate of SBA dated the date of closing, signed by the Administrator or Deputy Administrator of SBA, to the effect that:

(i) The representations and warranties of SBA contained herein are true and correct as if made as of the time of closing; and

(ii) The debentures have been delivered to SBA, as bailee, in accordance herewith and pursuant to the Guaranty Agreements.

If any conditions contained in this Agreement shall not be satisfied or if the obligations of the Purchasers shall be terminated for any reason permitted by this Agreement, this Agreement shall terminate and neither the Purchasers nor SBA nor the SBIC's shall be under further obligation hereunder.

SEC. 8. *Termination of agreement.* The Representatives shall have the right to terminate this Agreement by giving the notice indicated below in this section, at any time at or prior to the Closing (a) if there shall have occurred any new outbreak of hostilities or other national or international calamity or development the effect of which on the financial markets of the United States shall be such as, in the judgment of the Representatives, makes it impracticable for the Purchasers to sell the Debentures, (b) if trading on the New York Stock Exchange shall have been suspended or maximum or minimum prices for trading shall have been fixed, or maximum ranges for prices for securities on the New York Stock Exchange shall have been required by that Exchange or by order of any governmental authority having jurisdiction, (c) if a banking moratorium shall have been declared by Federal authorities, or (d) if there shall have been enacted legislation which would adversely affect SBA's power as described in the Prospectus to guarantee the Debentures. If the Representatives shall elect to terminate this Agreement as provided in this section, SBA shall be notified promptly by the Representatives, by telephone or telegram, and such notice confirmed by letter. If this Agreement shall be terminated as provided in this section, neither the Purchasers nor the SBIC's nor SBA shall be under further obligation hereunder.

SEC. 9. *Substitution of purchasers or increase in purchasers' commitments.* If for any reason one or more of the Purchasers shall fail at the Closing to purchase the Debentures which they have agreed to purchase hereunder (the "Unpurchased Debentures"), then:

(a) If the aggregate principal amount of Unpurchased Debentures does not exceed $3,000,000, the remaining Purchasers shall be obligated to purchase the full amount thereof, in proportion to their respective commitments hereunder.

(b) If the aggregate principal amount of Unpurchased Debentures exceeds $3,000,000, any of the remaining Purchasers selected by the Representatives, or any other purchasers the Representatives select, shall have the right within 24 hours after the closing to purchase or procure purchasers for all, but not less than all, of such Unpurchased Debentures in such amounts as may be agreed upon; and if the remaining Purchasers shall not agree to purchase and/or procure a party or parties to agree to purchase such Debentures on such terms within such period, then SBA shall be entitled to an additional period of 24 hours in which to procure another responsible party or parties to agree to purchase such Debentures on such terms. If neither the remaining Purchasers nor SBA shall procure another party or parties to agree to purchase such Debentures within the aforesaid periods, then SBA may, at its option, by written notice delivered to the Purchasers: (a) Terminate this agreement without any liability on the part of SBA or any Purchaser; or (b) elect to proceed with the sale to the remaining Purchasers of the Debentures which they have agreed to purchase.

The termination of this Agreement pursuant to this section shall be without liability on the part of SBA, the SBIC's or any of said remaining Purchasers.

Nothing herein shall relieve any Purchaser so defaulting from liability, if any, for such default.

In the event of a default by any one or more Purchasers as set forth in this section, either the Representatives or SBA shall have the right to postpone the Closing for an additional period of not exceeding 5 business days in order that any required changes in any documents or arrangements may be effected.

SEC. 10. *Representations, warranties, and agreements to survive delivery.* All representations, warranties, agreements, and covenants contained in this Agreement shall remain operative and in full force and effect regardless of any investigation made by or on behalf of any Purchaser or by or on behalf of SBA, and shall survive delivery of the Debentures to the Purchasers.

SEC. 11. *Notices.* Except as herein otherwise provided, all communications hereunder shall be in writing and, if sent to the Purchasers, shall be mailed, delivered, or telegraphed and confirmed in writing to the Representatives to the care of and at the address of the first Representative appearing in Schedule A hereto or, if sent to SBA shall be mailed, delivered, or telegraphed and confirmed in writing to 1441 L Street NW., Washington, DC 20416, attention of the Administrator or Acting Administrator, and a copy of each notice shall be furnished to the General Counsel of SBA.

Bids will be opened at the Federal Reserve Bank of New York at 11 a.m., e.s.t., on March 13, 1973. SBA reserves the right to reject all bids.

Dated: March 1, 1973.

ANTHONY G. CHASE,
Deputy Administrator.

[FR Doc.73-4255 Filed 3-5-73;8:45 am]

[1] Filed as part of the original document.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

STANDARDS ADVISORY COMMITTEE ON AGRICULTURE

Notice of Subcommittee Meetings

Notice is hereby given that the Standards Advisory Committee on Agriculture, and its subcommittees on Pesticides, Temporary Labor Camps, and Machinery Guarding, established under section 7(b) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet on Wednesday, March 14, 1973, starting at 9:30 a.m., and on Thursday, March 15, 1973, starting at 9 a.m., in the Federal Building, 1961 Stout Street, Denver, CO. The Committee will meet in Room 1430, the Subcommittee on Pesticides in Room 15032, the Subcommittee on Temporary Labor Camps in Room 15036, and the Subcommittee on Machinery Guarding in Room 1430.

The agenda provides for the full committee to meet in an introductory session each day after which the three subcommittees will meet in separate sessions. The subcommittees will continue their development of recommendations for standards in their respective areas of pesticides, temporary labor camps, and machinery guarding. At 1:30 p.m., on March 15, 1973, the full committee will meet to receive and consider the final recommendations of each subcommittee.

The meetings shall be open to the public. Any interested person wishing to submit written presentations to the committee or any of its subcommittees may do so by filing such statements with the Executive Secretary, Office of Standards, Occupational Safety and Health

Administration, Room 509, 400 First Street NW., Washington, DC 20210, not later than March 12, 1973, or by filing them with the Executive Secretary at the meetings.

Signed at Washington, D.C., this 1st day of March 1973.

CHAIN ROBBINS,
Acting Assistant Secretary of Labor.

[FR Doc.73-4174 Filed 3-5-73;8:45 am]

Wage and Hour Division

CERTIFICATES AUTHORIZING EMPLOYMENT OF FULL-TIME STUDENTS WORKING OUTSIDE OF SCHOOL HOURS AT SPECIAL MINIMUM WAGES IN RETAIL OR SERVICE ESTABLISHMENTS OR IN AGRICULTURE

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.), the regulation on employment of full-time students (29 CFR Part 519), and Administrative Order No. 621 (36 FR 12819), the establishments listed in this notice have been issued special certificates authorizing the employment of full-time students working outside of school hours at hourly rates lower than the minimum wage rates otherwise applicable under section 6 of the act. While effective and expiration dates are shown for those certificates issued for less than a year, only the expiration dates are shown for certificates issued for a year. The minimum certificate rates are not less than 85 percent of the applicable statutory minimum.

The following certificates provide for an allowance not to exceed the proportion of the total hours worked by full-time students at rates below $1 an hour to the total number of hours worked by all employees in the establishment during the base period in occupations of the same general classes in which the establishment employed full-time students at wages below $1 an hour in the base year; or provide the same standards authorized in certificates previously issued to the establishment.

A & R Food Store, Inc., foodstore; 930 Oxmoor Road, Birmingham, AL; 11-15-73.

Auerbach's, variety-department store; 2457 Washington Boulevard, Ogden, UT; 10-10-72 to 9-2-73.

Autry Greer & Sons, Inc., foodstores, 10-9-73: Bay Minette, Ala.; La Baron Avenue, Citronelle, Ala.; Fairhope, Ala.; Foley, Ala.; Jackson, Ala.; 2216 Dauphin Island Parkway, Mobile, AL; 3311 Dauphin Island Parkway, Mobile, AL; 7 South McGregor Avenue, Mobile, AL; 268 South Alabama, Monroeville, AL; Saraland, Ala.; Lucedale, Miss.

Baker's Red & White, foodstore; 209 Main Street, Tabor City, NC; 11-26-73.

Bass Memorial Baptist Hospital, hospital; Enid, Okla.; 11-11-73.

A. J. Bayless Markets, Inc., foodstores, 9-30-73, except as otherwise indicated: No. 61, Apache Junction, Ariz. (10-31-73); Nos. 81 and 84, Phoenix, Ariz.

Ben Franklin Store, variety-department store; No. 5640, Tucson, Ariz.; 10-31-73.

Best Super Market, foodstore; No. 2, Tucson, Ariz.; 10-31-73.

Big John, foodstore; No. 10, Olney, Ill.; 11-30-73.

Billowa, Inc., restaurant; 1046 Grand Avenue, Billings, MT; 11-18-73.

Blue Hills Supermarket, foodstore, 2309 North Third Street, Manhattan, KS; 11-8-73.

Bornemann's Nursing Home, nursing home; 1853 Mills Street, Green Bay, WI; 10-20-73.

Buck's Supermarket, foodstore; 504 Elm Street, Marked Tree, AR; 10-27-73.

Cahokia Drive In, Inc., restaurant; 1110 Camp Jackson Road, Cahokia, IL; 11-6-73.

Clement & Benner, Inc., variety-department store; 1735 Central Avenue, Los Alamos, NM; 10-14-73.

Clifton's Grocery, foodstore; 201 South A Street, McAlester, OK; 11-13-73.

Community Memorial Hospital, Inc., hospital; Burwell, Nebr.; 11-2-73.

Conley's AG Supermarket, foodstore; Hazen, Ark.; 11-17-73.

Dan's, Inc., foodstores; 10-2-72 to 9-9-73: 2085 East 21st South, Salt Lake City, UT; 2266 East 33d South, Salt Lake City, UT; 1326 South 21st East, Salt Lake City, UT; 3735 South Ninth East, Salt Lake City, UT.

Dave Bloom & Sons, apparel store; El Con Center, Tucson, Ariz.; 9-30-73.

Dillon Companies, Inc., foodstore; 505 South Mill, Pryor, OK; 10-31-73.

Doneckers, apparel store; 409 North State Street, Ephrata, PA; 9-24-73.

Dreisbach's Steakhouse, Inc., restaurant; 1137 South Locust, Grand Island, NE; 10-24-73.

Duckwall Stores, Co., variety-department stores: No. 4, Clay Center, Kans., 11-9-73; No. 28, Council Grove, Kans., 10-28-73; No. 43, Scott City, Kans., 11-12-73.

Edwards, Inc., variety-department stores: 1739 Maybank Highway, Charleston, SC, 12-1-73; Laurens Plaza, Laurens, S.C., 12-8-73.

Exira Super Valu, foodstore; Exira, Iowa; 11-19-73.

Ezell's Department Store, Inc., variety-department store; 604 West Main Street, Leesburg, FL; 11-27-73.

Family Host, Inc., restaurant; Pleasant Valley Boulevard, Altoona, PA; 9-30-73.

The Fandel Co., variety-department store; 602 St. Germain Street, St. Cloud, MN; 11-3-73.

Farmer's, foodstore; West Columbia, Tex.; 10-14-73.

Farmers Investment Co., agriculture, 10-31-73: Aquila, Picacho, and Santa Cruz Valley Farms, Sahuarita, Ariz.

Froshin's, variety-department store; 68 Broad Street, Alexander City, AL; 10-26-73.

Gandy's Food Lane Market, foodstore; 708 North Seventh Street, Dade City, AL; 11-30-73.

Gee Bee, foodstore; Route 22, Monroeville, PA; 9-20-73.

George's Market, foodstore; No. 2, Morristown, Tenn.; 10-31-73.

Geri's Hamburgers, restaurant; 2709 West State Street, Rockford, IL; 11-14-73.

Gindlers Department Store, variety-department store; 419 St. George, Gonzales, TX; 11-16-73.

Glenn's Mr. A. G., foodstore; 511 Main, Stockton, KS; 11-10-73.

W. T. Grant Co., variety-department stores: No. 1100, Cedar Falls, Iowa, 10-23-73; No. 644, Pompton Lakes, N.J., 10-31-73; No. 254, Steubenville, Ohio, 10-19-73; No. 575, Milton, Pa., 9-24-73; No. 458, Pittsburgh, Pa., 10-6-73; No. 848, State College, Pa., 10-11-73; No. 761, El Paso, Tex., 10-26-73; No. 1370 Roanoke, Va., 10-17-73.

Hales Super Market, foodstore; Highway 13, Gallatin, MO; 10-20-73.

Hammond Bros. Produce, Inc., foodstore; 240 North 13th Street, Decatur, IN; 11-5-73.

Handy Andy, Inc., foodstores, 11-2-73, except as otherwise indicated: Nos. 28 and 29, San Antonio, Tex.; No. 31, San Antonio, Tex. (11-14-72 to 10-31-73).

Hy-Klas Food & Family Center, foodstore; Hamilton, Mo.; 10-20-73.

The International House of Pancakes, restaurant; 3260 Broadway, Kansas City, MO; 10-31-73.

Jerry's Markets, foodstore; 2117 South Weinbach, Evansville, IN; 12-8-73.

Kientz IGA, foodstore; 1016 West Sixth Street, Junction City, KS; 11-17-73.

S. S. Kresge Co., variety-department stores: No. 4279, Lauderhill, Fla., 11-13-73; No. 725, Miami, Fla., 11-30-73; No. 786, Miami, Fla., 10-29-73; No. 4245, Tampa, Fla., 11-9-72 to 10-30-73; No. 4070, Atlanta, Ga., 11-8-72 to 7-31-73; No. 4230, Atlanta, Ga., 11-15-73; No. 4265, Atlanta, Ga., 10-19-73; No. 4133, Augusta, Ga., 10-19-73; No. 4242, Macon, Ga., 11-21-73; No. 295, Kewanee, Ill., 11-21-73; No. 4289, Cedar Rapids, Iowa, 10-31-73; No. 4314, Cedar Rapids, Iowa, 10-29-73; No. 4315, Iowa City, Iowa, 10-29-73; No. 4443, Overland Park, Kans., 11-13-72 to 10-31-73; No. 139, Newport, Ky., 11-3-73; No. 4172, Monroe, La., 8-8-73; No. 4065, Battle Creek, Mich., 11-10-73; No. 696, Farmington, Mich., 10-27-73; No. 4535, Owosso, Mich., 11-7-73; No. 135, Minneapolis, Minn., 11-16-73; No. 4605, St. Cloud, Minn., 12-7-73; No. 4137, Charlotte, N.C., 11-30-73; No. 4450, Raleigh, N.C., 10-31-73; No. 4272, Bismarck, N. Dak., 9-30-73; No. 381, Chillicothe, Ohio, 10-6-73; No. 4263, Eastlake, Ohio, 11-26-73; No. 4149, Lorain, Ohio, 11-29-73; No. 102, Mansfield, Ohio, 11-22-73; No. 4168, Oregon, Ohio, 11-27-73; No. 4166, Toledo, Ohio, 12-6-73; No. 4209, Toledo, Ohio, 11-23-73; No. 4241, East Ridge, Tenn., 10-31-73; No. 4401, Abilene, Tex., 11-14-72 to 10-31-73; No. 4388, Austin, Tex., 10-14-73; No. 4195, Beaumont, Tex., 9-21-73; No. 4259, Fort Worth, Tex., 9-26-73; No. 4287, Groves, Tex. No. 4259, Houston, Tex., 9-20-73; No. 4267, Hurst, Tex., 11-10-72 to 10-30-73; No. 4029, San Angelo, Tex., 10-27-73; No. 4025, Tyler, Tex., 11-13-73.

Lalonde's Super Market, foodstore; Port Sulphur, La.; 10-29-73.

Leach Home, nursing home; 714 North Fourth Street, Wahpeton, ND; 10-2-72 to 9-27-73.

Magic Mart-Baseline, Inc., variety-department store; 5919 Baseline Road, Little Rock, AR; 10-31-73.

McCrory-McLellan Green Stores, variety-department stores: No. 660, Flagstaff, Ariz., 10-31-73; No. 543, Tucson, Ariz., 11-9-72 to 10-31-73; No. 1033, Milford, Conn., 10-14-73; No. 107, Dunedin, Fla., 11-30-73; No. 311, Key West, Fla., 11-21-73; No. 129, Tallahassee, Fla., 11-14-73; No. 1301, Baltimore, Md., 9-28-73; No. 345, Ellicott City, Md., 10-8-73; No. 354, Salisbury, Md., 9-20-73; No. 394, Detroit, Mich., 11-28-73; No. 253, Grand Rapids, Mich., 10-21-73; No. 692, Ionia, Mich., 11-8-73; No. 238, Menominee, Mich., 11-8-73; No. 174, Natchez, Miss., 10-31-73; No. 313, Natchez, Miss., 10-21-73; No. 260, Oxford, Miss., 11-15-73; No. 1306, Bricktown, N.J., 11-3-73; No. 576, Raleigh, N.C., 11-9-73; No. 708, Grants, N. Mex., 11-10-72 to 10-24-73; No. 8, Allentown, Pa., 9-21-73; No. 45, Chambersburg, Pa., 9-21-73; No. 1116, Chester, Pa., 10-7-73; No. 147, Ebensberg, Pa., 10-15-73; No. 1122, Hollidaysburg, Pa., 10-6-73; No. 167, Pottstown, Pa., 9-21-73; No. 334, Reading, Pa., 9-23-73; No. 364, Scranton, Pa., 9-22-73; No. 85, Waynesboro, Pa., 9-20-73; No. 333, Wyoming, Pa., 9-24-73; No. 317, York, Pa., 10-5-73; No. 165, Dallas, Tex., 11-19-73; No. 322, Dallas, Tex., 11-15-72 to 10-22-73; No. 1020, Fort Worth, Tex., 10-26-73; No. 1208, Houston, Tex., 10-26-73; No. 108, Irving, Tex., 10-14-73; No. 177, Waco, Tex., 10-25-73; No. 138, Charlottesville, Va., 9-30-73; No. 1069, Falls Church, Va., 10-13-73; No. 54, Madison, Wis., 11-14-73.

McDonald's Hamburgers, restaurants, 11-6-72 to 10-31-73: 12499 Natural Bridge Road, Bridgeton, MO; 3594 North Lindbergh Boulevard, St. Ann, MO.

Memorial Hospital, hospital, 300 East 23rd Street, Cheyenne, WY; 10–5–73.

Minimax, foodstore; 1201 Strawberry Road, Pasadena, TX; 10–18–73.

Mitzelfeld's Inc., variety-department store; 312 Main Street, Rochester, MI; 11–26–73.

Morgan & Lindsey, variety-department stores: No. 3065, Baton Rouge, La., 10–25–73; No. 3129, Natchitoches, La., 11–18–73; No. 3114, Long Beach, Miss., 10–31–73; No. 3059, Conroe, Tex. 10–31–73.

M. E. Moses Co., variety-department stores: 8417 Lake June Road, Dallas, TX, 11–10–72 to 10–29–73; 428 South Galloway Street, Mesquite, TX, 11–15–73.

G. C. Murphy Co., variety-department stores: No. 329, Ashland, Ky., 10–27–73; No. 317, Bel Air, Md., 10–3–73; No. 320, Hampton, Va., 10–14–73.

Neisner Brothers, Inc., variety-department stores: No. 7, Homestead, Fla., 12–1–73; No. 41, Tampa, Fla. 11–22–73.

J. J. Newberry Co., variety-department stores: No. 411, Richmond Heights, Mo. 11–9–73; 600 Race Street, Cincinnati, OH, 11–20–73; No. 226, Kennett Square, Pa., 9–20–73.

Parsons, Inc., variety-department store; Duluth, Ga.; 11–20–73.

Patterson Dixie Dandy, Inc., foodstores; Junction City, Ark.; 10–18–73.

Pence Food Center, foodstore; 122 South Sixth Street, Osage City, KS; 10–27–73.

R & R Farms, Inc., agriculture; Carthage, Miss.; 9–27–73.

Randle's IGA, foodstore; Eureka, Utah; 9–28–72 to 9–9–73.

Raylass Department Store, variety-department store; 217 Broad Avenue, Albany, GA; 10–29–73.

Ream's Bargain Annex, foodstore; 1350 North Second West, Provo, UT; 10–27–73.

Rocky Ridge Farm Market, Inc., foodstore; Route 6, Hagerstown, Md.; 9–25–73.

Ronk's Variety Store, Inc., variety-department store; Covington, Tenn.; 11–12–73.

Royal's, Inc., variety-department store; 400 Southwest Avenue A, Belle Glade, FL; 10–27–73.

St. Luke Lutheran Home, nursing home; Spencer, Iowa; 11–16–73.

St. Mary's Home and Geriatric Hospital, nursing home; 607 East 26th Street, Erie, PA; 10–3–73.

Schaper's IGA Foodliner, foodstore; 526 West Main, Jackson, MO; 11–5–73.

Schnelthurst Livpak Seafoods, Inc., restaurant; 2110 Hampton Avenue, St. Louis, MO; 11–14–73.

Scurlock's, Inc., foodstores: 725 North Sunshine Strip, Harlingen, TX, 11–10–72 to 11–7–73; 105 South Seventh, Raymondville, TX, 11–14–73.

Shady Oaks, nursing home; Lake City, Iowa; 10–29–73.

Spurgeon's, variety-department stores: 113 First Street, Dixon, IL, 11–7–73; 604 Broadway, Lincoln, IL, 11–14–73; 125 South Side Square, Macomb, IL, 10–9–73; 723 Washington Street, Mendota, IL, 10–7–73; 227 South Main Street, Monmouth, IL, 10–14–73; 432 South Main Street, Princeton, IL, 11–5–73; 310 North 12th Street, Centerville, IA; 10–26–73; 1104 Second Street, Perry, IA, 10–25–73; 216–218 Bush Street, Red Wing, MN, 10–14–73.

The Stern & Mann Co., apparel store: 4355 Belden Mall, Canton, OH, 10–20–73.

Super Drive-Ins, foodstore; No. 8, Nashville, Tenn., 11–14–73.

Super Duper Food Center, foodstore; 2665 Buffalo Gap Road, Abilene, TX, 10–2–72 to 8–7–73.

T. G. & Y. Stores Co., variety-department stores: No. 1606, Birmingham, Ala., 10–31–73; No. 1503, Tempe, Ariz., 9–30–73; No. 656, Corona, Calif., 9–21–72 to 8–31–73; No. 514, Covina, Calif., 9–21–72 to 8–31–73; No. 715, Orlando, Fla., 12–10–73; No. 127, Kansas City, Kans., 11–6–73; No. 176, Santa Fe, N. Mex., 9–22–73; No. 1001, Del City, Okla., 10–13–73; No. 459, Glaremore, Okla., 9–26–73; No. 37, Midwest City, Okla., 10–15–73; No. 69, Oklahoma City, Okla., 11–14–73; No. 87, Oklahoma City, Okla., 11–13–73; No. 1015, Oklahoma City, Okla., 10–31–73; No. 21, Shawnee, Okla., 11–13–73; No. 467, Tulsa, Okla., 11–7–73; No. 469, Tulsa, Okla., 11–7–73; No. 1771, Taylors, S.C., 12–11–73; No. 340, Houston, Tex., 11–13–73; No. 806, Houston, Tex., 10–5–73; No. 811, Houston, Tex., 10–9–73; No. 834, Houston, Tex., 11–20–73; No. 838, Houston, Tex., 10–9–73; No. 779, Nederland, Tex., 11–13–73.

Thrift-Way Supermarket, foodstore; Gate City, Va.; 10–16–73.

Town & Country Supermarket, foodstore; 818 North Elm, Hoisington, Kans.; 10–26–73.

Vonada's Store, foodstore; Aaronsburg, Pa.; 10–6–73.

Walters Red and White, Inc., foodstore; 304 South Parlet Avenue, St. George, SC; 10–31–73.

The Webber Co., Inc., variety-department store; 39 North Berry Street, Montgomery, AL; 10–24–73.

William C. Wiechmann Co., apparel store; 116 South Jefferson, Saginaw, MI; 11–8–73.

Wolf Super Market, foodstore; Yorktown, Tex., 11–16–73.

Wytheville Crest 5–10–25¢ Store Co., Wytheville, Va.; 9–24–73.

Younker Bros., Inc., variety-department store; 901 East 27th Street, Cedar Falls, IA; 11–14–73.

The following certificates issued to establishments permitted to rely on the base-year employment experience of others were either the first full-time student certificates issued to the establishment, or provide standards different from those previously authorized. The certificates permit the employment of full-time students at rates of not less than 85 percent of the applicable statutory minimum in the classes of occupations listed, and provide for the indicated monthly limitations on the percentage of full-time student hours of employment at rates below the applicable statutory minimum to total hours of employment of all employees.

Britches, apparel stores, for the occupations of salesclerk, stock clerk, office clerk, ticket writer, cashier, wrapper, clean up, 3 to 8 percent, 11–23–73: 2224 Bessemer Road, Birmingham, Ala.; Eastwood Mall, Birmingham, Ala.; East Town Plaza Shopping Center, Birmingham, Ala.; McFarland Mall, Tuscaloosa, Ala.

Brodnax Jewelers, jewelry store; 304 North 20th Street, Birmingham, Ala.; salesclerk, gift wrapper, office clerk; 15 to 25 percent; 11–5–73.

Burger Chef, restaurants, for the occupation of general restaurant worker, 6 to 37 percent, 11–30–73: 2720 West Nichol Avenue, Anderson, Ind.; 2920 North National Road, Columbus, Ind.; 1824 East Hoffer Street, Kokomo, Ind.

Castle Gift Shop, Inc., gift shop; Route 30 East, Lancaster, Pa.; salesclerk; 0 to 38 percent; 11–14–73.

Catfish Haven, restaurant; Laceys Spring, Ala.; general restaurant worker; 9 to 21 percent; 11–14–73.

Country Manor Nursing Home, nursing home; Route 1, Sauk Rapids, Minn.; nurse's aide, dietary aide; 10 percent; 11–14–73.

Don's Super Market, foodstore; 213 Second Street, Paonia, Colo.; carryout; 16 to 28 percent; 11–14–73.

Edward's, Inc., variety-department stores, for the occupations of salesclerk, stock clerk, checker, lay-a-way clerk, stock handler, pricer, 10 to 14 percent, 11–30–73: S.C. 9 & 57 Bypass, Dillon, S.C.; Bacons Bridge Road, Summerville, S.C.

Kentucky Fried Chicken, restaurant; 408 A Avenue West, Oskaloosa, Iowa; general restaurant worker; 27 to 54 percent; 12–3–73.

S. S. Kresge Co., variety-department stores, for the occupations of salesclerk, stock clerk, office clerk, checker-cashier, 6 to 17 percent, 10–31–73; except as otherwise indicated: No. 4475, Gadsden, Ala. (salesclerk, checker, 11 to 22 percent, 11–14–73); No. 3054, Montgomery, Ala. (salesclerk, checker, 11 to 22 percent); No. 4426, Bettendorf, Iowa; No. 7002, Burlington, Iowa; No. 3049, Fort Dodge, Iowa; No. 3029, Fort Mitchell, Ky. (salesclerk, stock clerk, office clerk, maintenance, 6 to 23 percent, 11–14–73); No. 3064, Jackson, Mich. (salesclerk, stock clerk, office clerk, maintenance, food preparation, 10 percent, 11–14–73); No. 4331, Pontiac, Mich. (salesclerk, stock clerk, office clerk, food preparation, maintenance, 10 percent, 11–14–73); No. 3031, Blaine, Minn. (salesclerk, stock clerk, office clerk, maintenance, checker-cashier, 18 to 30 percent, 11–14–73); No. 3052, Minnetonka, Minn. (salesclerk, stock clerk, maintenance, office clerk, checker-cashier, 18 to 30 percent, 11–14–73); No. 4213, Greenville, Miss. (salesclerk, stock clerk, office clerk, checker-cashier, maintenance, 2 to 15 percent, 11–30–73); No. 3006, Omaha, Nebr. (8 to 14 percent, 11–14–73); No. 4276, Toledo, Ohio (salesclerk, stock clerk, office clerk, food preparation, maintenance, 9 to 10 percent, 11–14–73); No. 3011, Euless, Tex. (salesclerk, 7 to 27 percent, 11–14–73); No. 4447, Richardson, Tex. (salesclerk, 7 to 27 percent, 11–30–73); No. 3062, Sherman, Tex. (salesclerk, 7 to 22 percent, 11–14–73).

Lack's Associate Valley Stores, furniture store; 116 East Jackson, Harlingen, TX, stock clerk; 7 to 12 percent; 11–30–73.

McCrory-McLellan-Green Stores, variety-department stores, for the occupations of salesclerk, stock clerk, office clerk, 11–14–73, except as otherwise indicated: No. 25, Honesdale, Pa., 6 to 19 percent (salesclerk, stock clerk); No. 19, Richboro, Pa., 11 to 26 percent; No. 70, Eagle Pass, Tex., 11 to 15 percent (11–30–73).

McDonald's Hamburger's, restaurant; 12680 Dorsett Road, Maryland Heights, Mo.; general restaurant worker; 8 to 25 percent; 10–31–73.

Magic Mart, Inc., variety-department stores, for the occupations of salesclerk, stock clerk, janitorial, 16 to 69 percent, 11–14–73: Highways 84 and 25, Kennett, Mo.; Highway 25 North, Malden, Mo.

Minyard Food Stores, Inc., foodstore; No. 28, Garland, Tex.; salesclerk, package clerk; 11 to 16 percent; 11–30–73.

Mitchell's Grocery & Market, foodstore; 113 East Union, Wynne, AR; sacker, carryout, stock clerk, maintenance; 22 percent; 11–14–73.

G. C. Murphy Co., variety-department store; No. 352, Richmond, Va.; salesclerk, stock clerk, office clerk, janitorial; 5 to 20 perecent; 11–14–73.

Otasco, automobile supply store; 621 West Park, Greenwood, MS; stock clerk, office clerk; 6 to 19 percent; 11–14–73.

Piggly Wiggly, foodstore; No. 5, Columbus, Ga.; bagger, carry out, stock clerk, janitorial; 10 to 13 percent; 11–14–73.

Randall's, foodstore; No. 106, Houston, Tex.; stock clerk, carryout, 28 percent; 11–30–73.

Regan's, apparel stores, for the occupations of salesclerk, gift wrapper, 0 to 41 percent, 11–30–73: 120 East Main, Henderson, TX; 131 East Tyler, Longview, TX; 1410 McCaan Road, Longview, TX; 3045 Angelina Mall, Lufkin, TX; 28 West Plaza, Paris, TX; 1000 North Street, Texarkana, TX; 1827 Troup Road, Tyler, Tex.; 515 Westview Village, Waco, TX.

Rose's Stores, Inc., variety-department stores, for the occupations of salesclerk, stock clerk, office clerk, checker, 19 to 31 percent, 10-31-73, except as otherwise indicated: No. 224, Bowling Green, Ky. (salesclerk, 3 to 16 percent); No. 227, Belmont, N.C. (salesclerk, 11 to 27 percent); Nos. 218 and 228, Winston-Salem, N.C.

Spurgeon's, variety-department store; Two West Chicago Street, Coldwater, MI; salesclerk, stock clerk, janitorial, receiving clerg, marking clerk, 10 to 15 percent; 11-30-73.

T. G. & Y. Stores Co., variety-department stores, for the occupations of salesclerk, stock clerk, office clerk, 11-30-73, except as otherwise indicated: No. 1320, Kissimee, Kans., 10 to 29 percent (10-31-73); No. 1408, McPherson, Kans., 19 to 30 percent, (11-14-73); No. 9336, Mount Sterling, Ky., 10 to 26 percent; No. 292, Albuquerque, N. Mex., 13 to 24 percent (10-31-73); No. 410, Edmond, Okla., 22 to 30 percent; No. 1022, Sand Springs, Okla., 16 to 30 percent.

Each certificate has been issued upon the representations of the employer which, among other things, were that employment of full-time students at special minimum rates is necessary to prevent curtailment of opportunities for employment, and the hiring of full-time students at special minimum rates will not create a substantial probability of reducing the full-time employment opportunities of persons other than those employed under a certificate. The certificate may be annulled or withdrawn, as indicated therein, in the manner provided in Part 528 of Title 29 of the Code of Federal Regulations. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof on or before April 5, 1973 pursuant to the provisions of 29 CFR 519.9.

Signed at Washington, D.C., this 28th day of February 1973.

ROBERT G. GRONEWALD,
Authorized Representative of the Administrator.

[FR Doc.73-4263 Filed 3-5-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 191]

ASSIGNMENT OF HEARINGS

MARCH 1, 1973.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC 96007 Sub 27, Kenneth Hudson, Inc., Extension-New Hampshire, now assigned March 20, 1973, will be held in Room 418, Fourth Floor, Federal Building, 55 Pleasant Street, Concord, NH.

MC-C-7877, Southeastern Freight Lines, Et Al-V-Pool Freight Lines, Inc., now assigned April 11, 1973, will be held in Room 709, South Carolina Public Service Commission, Owen Building, 1321 Lady Street, Columbia, SC.

MC 109397 Sub 272, Tri-State Motor Transit Co., now assigned April 4, 1973, at Atlanta, Ga., is canceled and application dismissed.

MC-F-11671, Refiners Transport & Terminal Corp.—Purchase—Kendrick Cartage Co., now assigned March 5, 1973, at Washington, D.C., is canceled.

MC-C-7934, Carolina Cartage Co., Inc., Investigation of Operations MC-133937, Sub 7, Carolina Cartage Co., Inc., Extension—Airports, now assigned March 26, 1973, will be held in Room 709, South Carolina Public Service Commission, Owen Building, 1321 Lady Street, Columbia, SC.

MC 123613 Sub 9, Claremont Motor Lines, Inc., now assigned March 12, 1973, at Charlotte, N.C., is postponed to March 19, 1973, will be held in Room DD516, Mart Office Building, 800 Briar Creek Road, Charlotte, NC.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-4239 Filed 3-5-73;8:45 am]

[Notice 223]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before March 26, 1973. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73943. By order of February 9, 1973, the Motor Carrier Board, on reconsideration, approved the transfer to Gold Van Lines, Inc., Gallipolis, Ohio, of a portion of the operating rights in Certificate No. MC-55777 issued to Mills Transfer Co., Gallipolis, Ohio, authorizing the transportation of: New household furniture, and household goods, as defined by the Commission, between specified points and areas in Ohio, Kentucky, Virginia, West Virginia, Pennsylvania, Maryland, Michigan, and the District of Columbia. John M. Friedman, Practitioner, 2930 Putnam Avenue, Hurricane, WV 25526.

No. MC-FC-74074. By order entered February 8, 1973, the Motor Carrier Board approved the transfer to Enterprise Truck Leasing, Inc., Laurel, Miss., of that portion of the operating rights set forth in Certificate No. MC-50242 (Sub-No. 1), issued June 3, 1965, to J. C. Bowman Trucking Co., Natchez, Miss., authorizing the transportation of structural steel, tanks and heavy machinery, except oilfield equipment, materials, and supplies, between points in Louisiana and Mississippi. Harold D. Miller, Jr., Post Office Box 22567, Jackson, MS 39205, attorney for transferee, and Joseph S. Zuccaro, Box 1047, Natchez, MS 39120, attorney for transferor.

No. MC-FC-74122. By order of February 12, 1973, the Motor Carrier Board approved the transfer to Garland Gehrke, Lincoln, Ill., of a portion of the operating rights in Certificate No. MC-48441 (Sub-No. 2) and all of the operating rights in Certificate No. MC-48441 (Sub-No. 6), issued December 15, 1969, and January 22, 1970, respectively, to City Express, Inc., Streator, Ill., authorizing the transportation of glass containers, bottles, or jars, and caps, covers, stoppers, tops, and/or fiberboard boxes, when transported in the same vehicle with glass containers, bottles, or jars, from the plantsite and warehouse facilities of Obear Nestor Glass Co. located at Lincoln, Ill., to points in Indiana, Iowa, Kentucky (except Frankfort, Ky., and points in Franklin, Shelby, Scott, Anderson, and Woodford Counties, Ky.), Michigan, Missouri, Ohio, and Wisconsin, restricted to traffic originating at and destined to the named points of origin and destination; and glass containers and closures and fiberboard boxes, from Lincoln, Ill., to Frankfort, Ky., and points in Shelby, Franklin, Scott, Anderson, and Woodford Counties, Ky. Robert H. Levy, 29 South La Salle Street, Chicago, IL 60603, attorney for applicants.

No. MC-FC-74148. By order entered February 14, 1973, the Motor Carrier Board approved the transfer to Mt. Vernon Transfer Co., a Delaware corporation, Mt. Vernon, Ill., of the operating right set forth in Certificate No. MC-29843, issued December 16, 1965, to Mt. Vernon Transfer Co., an Illinois corporation, Mt. Vernon, Ill., authorizing the transportation of general commodities, with the usual exceptions, between Mt. Vernon, Ill., and St. Louis, Mo., over specified routes, serving the intermediate and off-route points of Ashley, Nashville, Addieville, and Woodlawn, Ill., and points in the St. Louis, Mo.-East St. Louis, Ill., commercial zone. Delmar O. Koebel, 107 West St. Louis, Lebanon, IL 62254, attorney for applicants.

No. MC-FC-74187. By order of February 8, 1973, the Motor Carrier Board approved the transfer to Thibodeau Express, Inc., Windsor, Ontario, Canada, of Certificates Nos. MC-129573 (Sub-No. 1) and MC-129573 (Sub-No. 2) issued July 19, 1968, and December 3, 1968, respectively, to Thibodeau Express Ltd., Windsor, Ontario, Canada, authorizing the transportation of general commodities between points within 8 miles of Detroit, Mich., including Detroit; between Detroit, Mich., and the plantsite

of Ford Motor Co., on Sheldon Road, Plymouth Township, Wayne County, Mich., restricted to shipments originating at or destined to points in Canada; and between Detroit, Mich., and Willow Run Airport at or near Ypsilanti, Mich., restricted to the transportation of shipments originating at or destined to points in Canada and having an immediately prior or immediately subsequent movement by air. Robert D. Schuler, 1 Woodward Avenue, Suite 1700, Detroit, MI 48226, applicants' attorney.

No. MC–FC–74209. By order of February 8, 1973, the Motor Carrier Board approved the transfer to H. & W. Carriers, Inc., Camargo, Ill., of the operating rights in Certificates Nos. MC–125751, MC–125751 (Sub-No. 1), MC–125751 (Sub-No. 2), and MC–125751 (Sub-No. 3) issued November 10, 1964, October 15, 1968, August 11, 1970, and April 4, 1972, repectively, to Harold D. Smith, doing business as Harold D. Smith Trucking Service, Camargo, Ill., authorizing the transportation of various commodities from and to specified points and areas in Illinois and Indiana. Robert T. Lawley, 300 Reisch Building, Springfield, Ill. 62701, attorney for applicants.

No. MC–FC–74228. By order entered February 14, 1973, the Motor Carrier Board approved the transfer to Howard Anderson, Plum City, Wis., of the operating rights set forth in Certificate No. MC–35856, issued August 5, 1959, to Erwin Herbison, Maiden Rock, Wis., authorizing the transportation of livestock, from points in the towns of Pepin and Stockholm, Pepin County, Wis., and the town of Maiden Rock, Pierce County, Wis., to Hastings, Minneapolis, St. Paul, and South St. Paul, Minn.; and general commodities, with the usual exceptions from Hastings, Minneapolis, St. Paul and South St. Paul, Minn., to points in the above-specified Wisconsin towns. F. H. Kroeger, 2288 University Avenue, St. Paul, MN 55114, representative for applicants.

No. MC–FC–74233. By order of February 13, 1973, the Motor Carrier Board approved the transfer to J-Truck Line, Inc., Petersburg, Ill., of the operating rights in Certificate No. MC–118780 issued June 29, 1966, to William F. Juergens, doing business as "J" Truck Line, Petersburg, Ill., authorizing the transportation of various commodities from specified points and areas in Ohio, Iowa, Illinois, Wisconsin, Indiana, and Missouri to specified points and areas in Illinois, Wisconsin, Indiana, and Missouri. Robert T. Lawley, 300 Reisch Building, Springfield, Ill. 62701, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-4240 Filed 3-5-73;8:45 am]

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TUESDAY, MARCH 6, 1973
WASHINGTON, D.C.

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PART II

COST ACCOUNTING STANDARDS BOARD

■

OPERATING POLICIES, PROCEDURES AND OBJECTIVES

COST ACCOUNTING STANDARDS BOARD

COST ACCOUNTING STANDARDS

Statement of Operating Policies, Procedures, and Objectives

The purpose of this statement is to present the operating policies, procedures and objectives within which the Cost Accounting Standards Board is formulating Cost Accounting Standards and related rules and regulations in carrying out its legislative mandate under Public Law 91-379.

This document does not deal with Board regulations related to written disclosures of cost accounting practices; such regulations are contained in 4 CFR Part 351.

The Board intends that this document improve general understanding of the Board's fundamental objectives and concepts and thus provide the basis for productive dialogue with those concerned with the Board's work. Interested members of the public should, on the basis of this Statement, be better able to focus on the complex and difficult issues which the Board faces in promulgating future Cost Accounting Standards. The Statement is not intended to be final or all-encompassing; the Board may from time to time amplify, supplement or modify its views as it proceeds with consideration of individual issuances.

Although not every Board member is in full agreement with every policy, procedure and objective set out in this document, the Board is in agreement that the document provides a useful, overall framework within which it can develop specific Cost Accounting Standards. In the few cases where individual members may have differing views, they may set forth those views and the reasons for them if it becomes appropriate to do so in the context of the Board's consideration of a particular Cost Accounting Standard, rule or regulation.

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OBJECTIVES

A Cost Accounting Standard is a statement formally issued by the Cost Accounting Standards Board that (1) enunciates a principle or principles to be followed, (2) establishes practices to be applied, or (3) specifies criteria to be employed in selecting from alternative principles and practices in estimating, accumulating, and reporting costs of contracts subject to the rules of the Board. A Cost Accounting Standard may be stated in terms as general or as specific as the Cost Accounting Standards Board considers necessary to accomplish its purpose.

With respect to Cost Accounting Standards, the Board's primary goal is to issue clearly stated Cost Accounting Standards to achieve (1) an increased degree of uniformity in accounting practices among Government contractors, and (2) consistency in accounting treatment of costs by individual Government contractors.

Increased uniformity and consistency in accounting are desirable to the extent they improve understanding and communication, reduce the incidence of disputes and disagreements, and facilitate equitable contract settlements.

Uniformity. Uniformity relates to comparison of two or more accounting entities and the Board's objective in this respect is to achieve likeness under like circumstances. The Board recognizes the impossibility of defining or attaining absolute uniformity, largely because of the problems related to defining like circumstances. The Board will, nonetheless, seek ways to attain a practical degree of uniformity in cost accounting.

Uniformity is achieved when contractors with the same circumstances (with respect to a given subject) follow the practice appropriate for those circumstances. Any increase in uniformity will provide more comparability among contractors whose circumstances are similar.

The Board does not seek to establish a single uniform accounting system or chart of accounts for all the complex and diverse businesses engaged in defense contract work. On the other hand, if the Board were to be satisfied that circumstances among all concerned contractors are substantially the same, the Board would not be precluded from establishing a single accounting treatment for use in such circumstances.

Consistency. Consistency pertains primarily to one accounting entity over periods of time. Like uniformity, the attainment of absolute consistency can only be measured when like circumstances can be defined. The Board believes that consistency within an entity, from one time period to another, can be improved, thereby enhancing the usefulness of comparisons between estimates and actuals. It will also improve the comparability of cost reports from one time period to another where there are like circumstances.

Allocability and allowability. Allocability is an accounting concept affecting the ascertainment of contract cost; it results from a relationship between a cost and a cost objective such that the cost objective appropriately bears all or a portion of the cost. To be charged with all or part of a cost, a cost objective should cause or be an intended beneficiary of the cost.

Allowability is a procurement concept affecting contract price and in most cases is expressly provided in regulatory or contractual provisions. An agency's policies on allowability of costs may be derived from law and are generally embodied in its procurement regulations. A contracting agency may include in contract terms or in its procurement regulations a provision that it will refuse to allow certain costs, incurred by contractors, that are unreasonable in amount or contrary to public policy. In accounting terms, those same costs may be allocable to the contract in question.

Cost Accounting Standards should result in the determination of costs which are allocable to contracts and other cost objectives. The use of Cost Accounting Standards has no direct bearing on the allowability of individual items of cost which are subject to limitations or exclusions set forth in the contract or are otherwise specified by the Government or its procuring agency.

It should be emphasized that contract costs, with which Cost Accounting Standards are involved, are only one of several important factors which should be involved in negotiating contracts. Therefore, the promulgation of Cost Accounting Standards, and the determination of contract costs thereunder, cannot be considered a substitute for effective contract negotiation. At the same time, it should be emphasized that, where contract costs are required to be determined and Cost Accounting Standards are applicable, the latter are determinative as to the costs allocable to contracts. It is a contracting agency's prerogative to negotiate the allowability of allocated costs, but not the allocation itself.

The Cost Accounting Standards Board will establish Standards to:

(1) Measure the amount of costs which may be allocated to covered contracts,

(2) Determine the accounting period to which costs are allocable, and

(3) Determine the manner in which allocable costs can be allocated to covered contracts. The resulting cost measurements and allocation determinations are binding on both the contractor and the contracting agency, as indicated above.

Fairness. The Board considers a Cost Accounting Standard to be fair when, in the Board's best judgment, the Standard provides for allocating costs without bias or prejudice to either party to affected contracts.

The results of contract pricing may ultimately be regarded as fair or unfair by either or both parties to that contract. But if the Cost Accounting Standards utilized in the negotiation, administration, and settlement of the contract provided the contracting parties with accounting data which are representative of the facts, the Standards themselves are "fair" regardless of the outcome of the contract.

Materiality. The Board believes that the administration of its rules, regulations, and Cost Accounting Standards should be reasonable and not seek to deal with insignificant amounts of cost. Although this rule of common sense is already practiced by the Government, the Board recognizes that, in particular standards, a specific "materiality" statement may be useful; and, in such cases it will include one.

The Board expects that, in implementing its promulgations, it is appropriate to consider the following criteria in determining whether a transaction or a decision about an accounting practice is material in the context of any Board issuance:

1. *The absolute dollar amount involved.* The larger the dollar amount, the more likely it is that a decision involving it will be material.

2. *The amount of total contract cost compared with the amount under consideration.* The larger the portion of the total contract cost which is represented by the item or the decision under consideration, the more likely it is to be material.

3. *The relationship between a cost item and a cost objective.* Decisions about direct cost items, especially if the amounts are themselves part of a base for distribution of indirect cost, will normally be more material than like decisions about indirect costs.

4. *The impact on Government funding.* Decisions about accounting treatment will

be more material if they influence the distribution of costs between Government and non-Government cost objectives than if all cost objectives have Government financial support.

5. *The relationship to price.* When contract pricing is based upon estimated cost, decisions about cost accounting treatment in estimates are more material than comparable decisions about treatment of actual costs. When contract pricing is based on actual costs, decisions about accounting treatment for actual costs are more material than comparable decisions about estimates.

6. *The cumulative effect of individually immaterial items.* It is appropriate to consider whether individual variances (a) tend to offset one another, or (b) tend to be in the same direction and hence to accumulate into a material amount.

These criteria should be considered together; no one criterion is wholly determinative of immateriality. In particular standards the Board will give consideration to defining materiality in specific dollar amounts and/or specific percentages of impact on operations covered by the entire Standard or any provision thereof whenever it appears feasible and desirable to do so.

Verifiability. Verifiability is generally accepted as a goal for information used in cost accounting. Contract cost accounting systems should provide for verifiability. Contract costs should be auditable by examination of appropriate data and documents supporting such costs or by reference to the facts and assumptions used to assign the costs to the contract. Contractor records of contract costs should be reconcilable with the general books of account.

OPERATING POLICIES

The following descriptions of policies show a number of important considerations which will be relevant to the Board as it seeks the objectives discussed previously.

Relationship to other authoritative bodies. A number of authoritative bodies have been established to issue pronouncements affecting accounting and financial reporting. The Cost Accounting Standards Board views its work as relating directly to the preparation, use, and review of accounting data in the negotiation, administration, and settlement of negotiated defense contracts. The Board is the only body established by law with the specific responsibility to promulgate Cost Accounting Standards. Furthermore, its Cost Accounting Standards have the force and effect of law.

There are many accounting areas of interest to the Board which are also of interest to others for financial and tax accounting purposes, such as: the measurement of costs in general; determination of the amount assigned to a resource to be consumed in operations; allocation of the cost of resources consumed to time periods; and allocation of direct labor, direct material, and factory overhead to the goods and services produced in a period.

Promulgations by the Cost Accounting Standards Board may involve the areas of interest of other authoritative bodies. Contract cost accounting often deals with the same expenditures and the same problems of allocation to time periods as are of interest in financial and income tax accounting.

The Cost Accounting Standards Board seeks to avoid conflict or disagreement with other bodies having similar responsibilities and will through continuous liaison make every reasonable effort to do so. The Board will give careful consideration to the pronouncements affecting financial and tax reporting, and in the formulation of cost Accounting Standards it will take those pronouncements into account to the extent it can do so in accomplishing its objectives. The nature of the Board's authority and its mission, however, is such that it must retain and exercise full responsibility for meeting its objectives.

Nondefense applications. The Board's jurisdiction extends only to certain national defense procurements, pursuant to the Defense Production Act of 1950 (50 U.S.C. App. 2152), as amended. Industry has long advocated uniformity of contract cost principles among all Government agencies; it has criticized nondefense agencies for following cost principles different from those of the Department of Defense alleging that such differences hindered effective contracting and caused added costs to the Government. The Board is gratified that the Federal Procurement Regulations have, through administrative decision, extended Cost Accounting Standards to contracts of nondefense agencies.

The Board is of the opinion that uniformity among all Government agencies in contract costing is a highly desirable objective. It is, therefore, the Board's view that extension of Board pronouncements to nondefense agencies would be markedly beneficial both to the agencies concerned and to their contractors. Companies with a mixture of defense and nondefense contracts will be benefited substantially by having a single set of cost accounting principles applicable to all their Government contracts.

A contractor could have a portion of his work not required to be costed in accordance with Cost Accounting Standards. Not wishing to maintain two or more cost accounting systems, he may choose to follow Cost Accounting Standards for all costing. The Board, in developing and promulgating Cost Accounting Standards, will bear in mind this potential wider application.

Single Government representative. To assure maximum uniformity of interpretation of its promulgations, the Board believes that it is highly desirable to have Federal agencies agree upon a single representative to deal with a given contractor regarding application of the requirements of the Board. Because of its conviction of the merit of such a procedure, the Board recommended that the agencies arrange for a single contracting officer for each contractor, or major component thereof, to be designated to negotiate as needed to achieve consistent practices relating to the standards issued by the Board.

As a result, agencies have established procedures by which a Government contractor may be certain that only one contracting officer will deal with him to resolve issues that may arise under the contractor's Government contracts concerning the application of Cost Accounting Standards, rules, and regulations.

The Board is optimistic about the benefits to be derived by both the Government and contractors from this single-representative system and will continue to encourage and assist Government agencies in assuring that the system matures and functions effectively.

Responsibilities for compliance. The basic responsibility for securing compliance by contractors with Board promulgations rests with the relevant Federal contracting agencies. They are responsible for such things as:

1. Incorporating all applicable CASB promulgations into their procurement regulations;

2. Including the contract clause in all covered contracts;

3. Receiving disclosure statements;

4. Reviewing and approving the adequacy of such statements;

5. Reviewing contractors' records to determine whether or not contractors have (a) followed consistently their disclosed cost accounting practices and (b) complied with promulgated Cost Accounting Standards;

6. Making appropriate contract price adjustments because of changed accounting practices, failure to follow existing standards, or the issuance of new standards; and

7. Evaluating the validity of claims by contractors for exemptions, under criteria established by the Board, or exclusions as established by Public Law 91-379.

It should be noted that section 719(j) of the Act gives to any authorized representative of the head of the agency concerned, of the Board, or of the Comptroller General of the United States, the right to examine and make copies of any documents, papers, or records relating to compliance with Board promulgations.

Another element of compliance concerns the manner in which relevant contracting agencies implement the requirements established by the Board. Special and recurring reviews of agencies' compliance with Board promulgations should be performed by the agencies' internal review staffs and by the U.S. General Accounting Office.

The Board must retain responsibility for evaluating the effectiveness of the standards, rules, and regulations that it promulgates. Most of the Board's evaluative needs can be met by reviewing reports from contracting and audit organizations. To this end, the Board and the major contracting agencies have worked cooperatively to establish reporting requirements which have been embodied in the agencies' procurement regulations.

Interpretations. The Board notes the existence of contractual and administrative provisions for the resolution or settlement of disputes arising under a contract, and the Board will not intervene in or seek to supersede such provisions. When there are widespread and serious questions of the Board's intention or meaning in its promulgations, the Board may at its discretion respond to requests for authoritative interpretations of its rules, regulations, and Cost Accounting Standards. Such interpretations will be published in the FEDERAL REGISTER and will be considered by the Board as an integral part of the rules, regulations, and standards to which the interpretations relate. This formalized procedure does not preclude unofficial consultation between inquirers and the executive secretary and members of the Board's staff.

Exemptions. The Board is authorized by law to grant exemptions to such classes or categories of contractors or contracts as it determines are appropriate and consistent with the purposes sought to be achieved by the Board's basic legislation. The Board has exempted certain classes of contracts and recognizes that individual Cost Accounting Standards may, by their nature, be inapplicable or inappropriate to certain classes or categories of contractors or contracts.

In addition, in recognition of certain unusual circumstances which could require exemptions on a case-by-case basis, the Board has established a mechanism by which exemptions, where justified, can be granted for special classes of contracts and subcontracts.

The Board anticipates that it will grant exemptions only in rare and unusual cases. In reviewing a request for an exemption, the Board would be persuaded that an exemption is justified only if:

1. The administrative burden is grossly disproportionate to the benefits which could be expected, or

2. Failure to grant an exemption will prevent the orderly and economical acquisition on a timely basis of supplies and services essential to the needs of the Government.

The Board notes that the granting of an exemption would reduce the extent to which the primary goals of increased uniformity and consistency are achieved.

THE PROCESS OF DEVELOPIND STANDARDS

Initial development of Board proposals begins with extensive background research. It includes examining Government procurement regulations and authoritative literature on a particular subject under consideration, reviewing pronouncements of other authoritative accounting and regulatory groups, reviewing pertinent Board of Contract Appeals and court cases, and conferring with representatives of various Government agencies, Government contractors, and industry and professional associations.

On the basis of this research and extensive studies of existing contractor practices, a preliminary version of a Board proposal is developed for discussion purposes and distributed to scores of Government agencies, industry and professional associations, individual contractors, and others knowledgeable in cost accounting. The Board conducts field tests of the application of the proposed standard. It holds meetings or exchanges correspondence with all who express interest in providing views on the subject. The views and comments thus obtained are given careful consideration and drafts of proposed material are modified as appropriate.

To obtain the views of as many concerned persons as possible, a draft is published as a proposed standard in the FEDERAL REGISTER for comment. The Board views this initial publication as an integral part of its research program and encourages all interested persons, including members of the general public, to submit comments. The Board, after publication of the proposal, again contacts a number of contractors and Government representatives to further discuss all aspects of the proposed standard, with special emphasis on the anticipated administrative costs of implementation and the probable benefits of adoption of the standard.

Standards, rules, and regulations promulgated by the Board must await the expiration of 60 calendar days of continuous session of the Congress following the date they are sent to the Congress. The Board's promulgations become effective not later than the start of the second fiscal quarter beginning after the expiration of not less than 30 days after a second publication in the FEDERAL REGISTER, unless the Congress passes a concurrent resolution stating in substance that it does not favor the proposed standards, rules, or regulations. The Board's promulgations have the full force and effect of law.

Consideration of existing practices. To be effective, Cost Accounting Standards must have both theoretical validity and practical applicability. So that practical considerations will not be overlooked, the Board seeks reliable information about current practices in a variety of ways. Disclosure statements, questionnaires, intensive discussions with contractors, responses to FEDERAL REGISTER publication of proposed standards, and study of published research results all supply useful information about current practice.

The Board's purpose in this is, first, to establish what practice is; second, to discover the reasons supporting different practices in apparently similar circumstances; and third, to determine the appropriate criteria for the selection of practices in given circumstances. There is no presumption that the most common practice is or is not the most desirable practice.

Comparing costs and benefits. The Congress provided, in section 719(g) of the act which establishes the Board, that in promulgating Cost Accounting Standards "* * * The Board shall take into account the probable costs of implementation compared to the probable benefits."

The Board views costs and benefits in a broad sense. All disruptions of contractors' and agencies' practices and procedures are viewed as costs. Diligent research into current practice is helpful in appraising the probable cost impact of proposed standards. Benefits include anticipated reductions in the number of time-consuming controversies stemming from unresolved aspects of cost allocability. The Board also expects that benefits will be achieved through simplified negotiation, administration, audit, and settlement procedures. Finally, and most importantly, the availability of better cost data stemming from the use of Cost Accounting Standards will permit improved comparability of offers and facilitate better negotiation of resulting contracts.

Prior to making a final promulgation decision, the Board makes specific inquiries into the likely costs of implementing proposed standards, both for contractors and for affected agencies of the Government. In this inquiry, an effort is made to distinguish transitional costs from those that may persist on a recurring basis. The Board then weighs the relative benefits and costs in determining the desirability of promulgation.

The Board is interested in data which will enable it to gage the impact of a proposed standard on the amount of costs that will shift to or from Government contracts as a result of one or more standards. The Board recognizes that a fair Cost Accounting Standard may result in a shift of cost from the Government to contractors or from contractors to the Government. In formulating standards, the Board will not regard such shifts of costs as determinative.

COST ALLOCATION CONCEPTS

The Board's primary goal is increased uniformity and consistency in treatment of costs as they are related to negotiated defense contracts. Set forth herein are discussions of a number of important concepts which the Board will use in developing Cost Accounting Standards.

Cost accounting for negotiated Government contracts has long been on the basis of full allocation of costs, including general and administrative expenses and all other indirect costs. The allocation of all period costs to the products and services of the period is not a common practice either for public reporting or for internal management purposes; yet this has long been the established cost principle for costing defense procurement. The Board will adhere to the concept of full costing wherever appropriate.

A cost objective is "a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc." This definition has been promulgated by the Board.

Cost accounting systems are developed to provide a means for assigning all costs to appropriate cost objectives. Under the full costing concept, all costs initially allocated to intermediate cost objectives are reallocated to final cost objectives. Costs which are identified for special treatment (unreasonable costs, or costs unallowable for other reasons) may be assigned to final cost objectives established for that purpose.

Even with the foregoing concept, there are occasional difficult questions as to whether specified units of an organization or its work should be allocated cost on a full costing basis. The Board will attempt to identify and dispose of such questions in individual Cost Accounting Standards.

Direct identification of costs. As an ideal each item of cost should be assigned to the cost objective which was intended to benefit from the resource represented by the cost or, alternatively, which caused incurrence of the cost. To approach this goal the Board believes in the desirability of direct identification of costs with final cost objectives to the extent practical. The Board recognizes the need for care in application of the concept of direct identification of cost with final cost objectives. Therefore, Cost Accounting Standards developed by the Board will reflect the desire for direct identification of cost and at the same time provide safeguards (such as those of 4 CFR Part 402) to assure consistency and objectivity in allocating costs incurred for the same purpose.

Hierarchy for allocating cost pools. Costs not directly identified with final cost objectives should be grouped into logical and homogeneous expense pools and should be allocated in accordance with a hierarchy of preferable techniques. The costs of like functions have a direct and definitive relationship to the cost objectives for which the functions are performed and the grouping of such costs in homogeneous pools for allocation to benefiting cost objectives results in better identification of cost with cost objectives.

The Board believes there is a hierarchy of preferable allocation techniques for distributing homogeneous pools of cost. The preferred representation of the relationship between the pooled cost and the benefiting cost objectives is a measure of the activity of the function represented by the pool of cost. Measures of the activities of such functions ordinarily can be expressed in such terms as labor hours, machine hours, or square footage. Accordingly, costs of these functions can be allocated by use of a rate, such as a rate per labor hour, rate per machine hour or cost per square foot, unless such measures are unavailable or impractical to ascertain. In these latter cases, the basis for allocation can be a measurement of the output of the supporting function. Output is measured in terms of units of end product produced by the supporting functions, as for example, number of printed pages for a print shop, number of purchase orders processed by a purchasing department, number of hires by an employment office.

Where neither activity nor output of the supporting function can be measured practically, a surrogate for the beneficial or causal relationship should be selected. Surrogates used to represent the relationship are generally measures of the activity of the cost objectives receiving the service. Any surrogate used should be a reasonable measure of the services received and should vary in proportion to the services received.

Pooled costs which cannot readily be allocated on measures of specific beneficial or causal relationship generally represent the cost of overall management activities. These costs should be grouped in relation to the activities managed and the base selected to measure the allocation of these indirect costs to cost objectives should be a base representative of the entire activity being managed. For example, the total cost of plant activities managed might be a reasonable base for allocation of general plant indirect costs. The use of a portion of a total activity, such as direct labor costs or direct material costs only, as a substitute for a total activity base, is acceptable only if the base is a good representative of the total activity being managed.

OTHER CONCEPTS

The Board is interested in all accounting concepts. The Board takes this opportunity to invite interested parties to furnish it with reports of competent research into matters which might be expected to impact contract cost accounting. Three conceptual issues already suggested are described briefly below.

(1) *Going concern and termination.* Most contract costing practices are based on the assumption that the contract is an episode in the continuing business activity of the contractor. When a contract is terminated for the convenience of the Government, there is a need to establish the cost impact of the decision to terminate. Some of the normal cost accounting practices for contractual performance may require modification in the event of termination of a contract.

(2) *Current value accounting.* The accounting profession in the United States has generally used recorded historical costs as the basis for reports of the financial results of operations for given fiscal periods and the financial status at given times. Similarly, recorded historical costs have served as the basis for measuring the cost of performance in negotiated defense contracts.

Many accountants today support the belief that, in periods of continuing inflation or deflation, the reliance on historical costs in the preparation of conventional financial statements can be misleading. Considerable research has been done on the theory and measurement of "real" business income. The Board is interested in all aspects of measurement of cost of contractual performance including concepts of measurement on the basis of current value or price-level accounting.

(3) *Cost-of-capital.* The Board is aware of the well-established Government policy that interest is not an allowable item of cost for determination of price under negotiated defense contracts. This position is exemplified by the provision of the Armed Services Procurement Regulation, ASPR 15-205.17, that "interest on borrowings (however represented), bond discounts, [and] costs of financing and refinancing operation * * * are unallowable * * *". The Board is also aware of the view that effective performance under negotiated defense procurement depends in part on giving explicit consideration to the capital committed to contracts. In this connection, the Board has noted the Defense Department's concern with this issue and in particular that Department's profit-on-capital proposal.

ARTHUR SCHOENHAUT,
Executive Secretary.

MARCH 5, 1973.

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