

FEDERAL REGISTER

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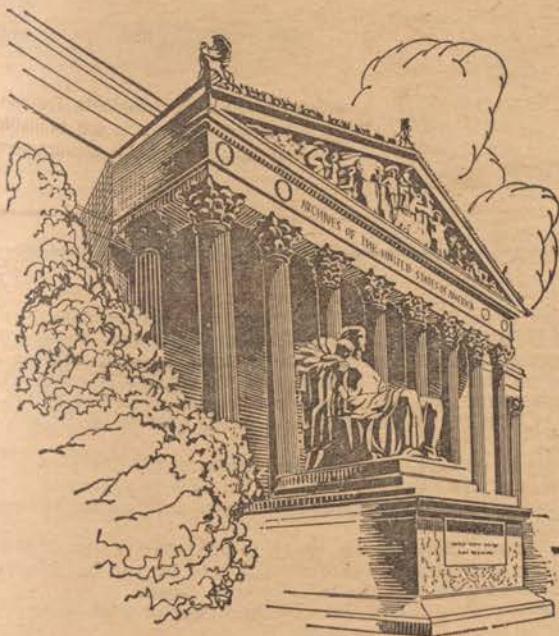
PART I

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Agencies in this issue—

The President
Agricultural Research Service
Agricultural Stabilization and
Conservation Service
Civil Aeronautics Board
Civil Service Commission
Consumer and Marketing Service
Federal Communications Commission
Federal Maritime Commission
Federal Register Administrative
Committee
Federal Trade Commission
Fiscal Service
Fish and Wildlife Service
Food and Drug Administration
Forest Service
Interagency Textile Administrative
Committee
Interior Department
Internal Revenue Service
Interstate Commerce Commission
Land Management Bureau
Maritime Administration
Securities and Exchange Commission
Social and Rehabilitation Service

Detailed list of Contents appears inside.



*5-year Compilation
Presidential Documents*

Code of Federal Regulations

TITLE 3, 1938-1943 COMPILATION

Contains the full text of Presidential Proclamations, Executive orders, reorganization plans, and other formal documents issued by the President and published in the Federal Register during the period June 2, 1938-June 1, 1943. Tabular finding aids and a subject index are included.

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The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements are listed in the first FEDERAL REGISTER issue of each month.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER or the CODE OF FEDERAL REGULATIONS.

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Presidential Documents

Title 3—THE PRESIDENT

Proclamation 3864

"STAY IN SCHOOL"

By the President of the United States of America

A Proclamation

We can be proud that the percentage of school-aged children dropping out of school has decreased steadily in recent years. But too many children still do not complete their high school education. This year, an estimated 800,000 youth will not return to their high school classrooms in the fall.

A high school education is no guarantee of success. But it is an important first step on the road to a fuller life. Unfortunately, those who are most economically disadvantaged are most likely to drop out of school. By doing so they cripple their capacity for escaping the cycle of poverty. The future of the nation itself is mortgaged to higher welfare and dependency costs—and to costly remedial measures that must repair the damage of early failures to stay in school.

While those who abandon their classrooms have much in common, their reasons for leaving are very individual. Our response must be equally personal. A parent, a teacher, a friend, a volunteer, can make all the difference to a lonely or frustrated young person. Schools themselves must make every effort to encourage regular attendance—by making the classroom experience as relevant and interesting to their students as possible.

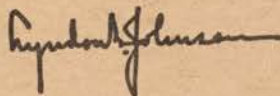
To emphasize the importance of this task, I, LYNDON B. JOHNSON, President of the United States of America, do hereby proclaim a national "Stay in School" campaign.

I call upon the American people to make this campaign successful by ensuring that the schools in their communities are responsive to the needs of all their young people.

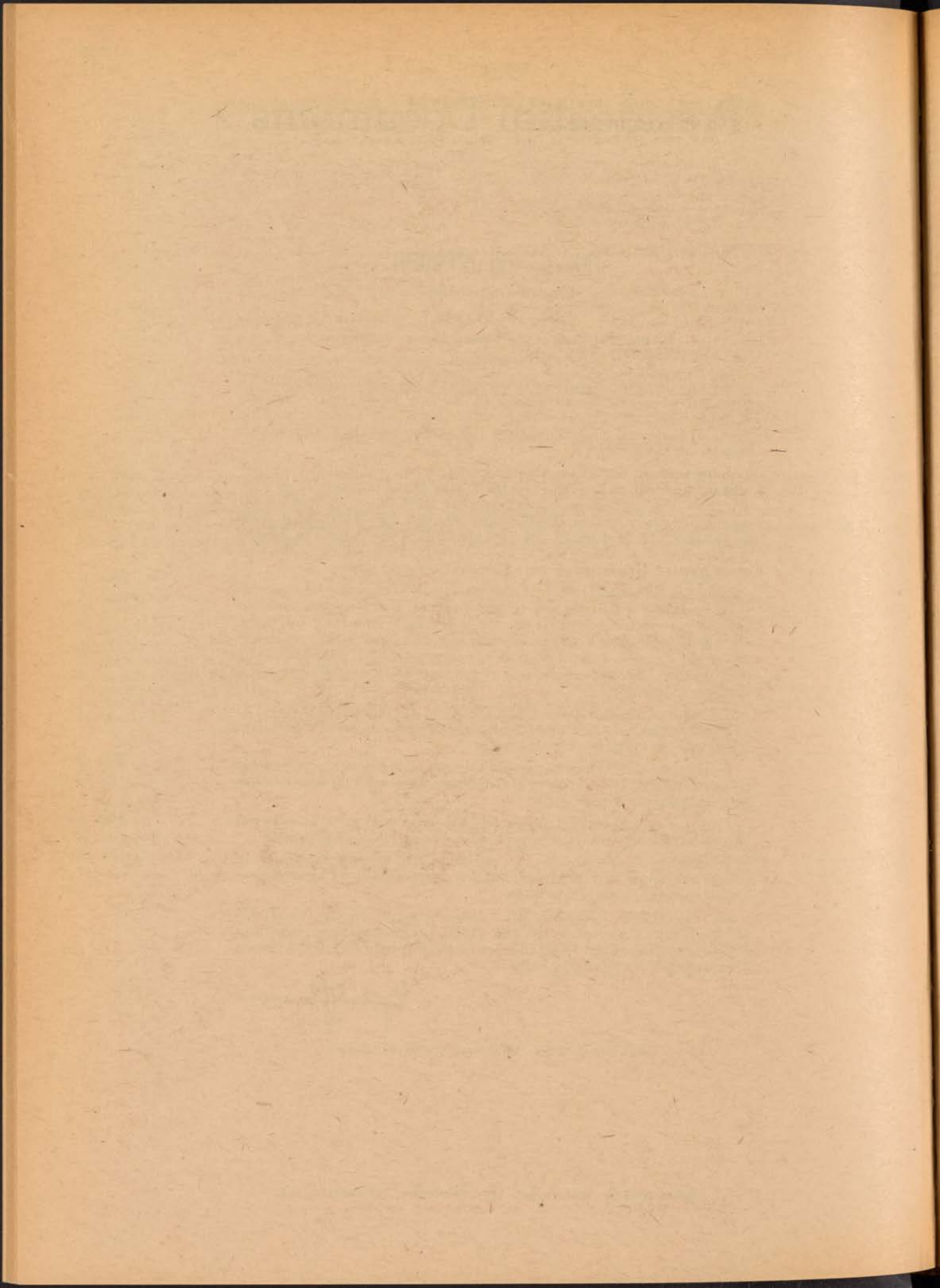
I ask young and old alike to participate personally in this campaign through their schools, their organizations, their local governments.

Whenever any one of us is in a position to help a youngster to stay in school—through individual counsel, encouragement and assistance—I most earnestly urge him to do so.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of August, in the year of our Lord nineteen hundred and sixty-eight, and of the Independence of the United States of America the one hundred and ninety-third.



[F.R. Doc. 68-10736; Filed, Sept. 3, 1968; 9:51 a.m.]



Executive Order 11424

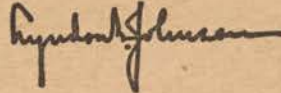
AMENDING EXECUTIVE ORDER NO. 11157 AS IT RELATES TO INCENTIVE
PAY FOR HAZARDOUS DUTY INVOLVING AERIAL FLIGHT

By virtue of the authority vested in me by section 301 (a) and (f) of title 37, United States Code, and as President of the United States and Commander in Chief of the armed forces of the United States, section 101 of Executive Order No. 11157 of June 22, 1964, is amended to read as follows:

"Sec. 101. For the purposes of these regulations:

"(a) The term 'aerial flight' shall be construed to mean flight in an aircraft, glider, or spacecraft; and a flight shall be deemed to begin when the aircraft, glider, or spacecraft takes off from rest at any point of support located on the surface of the earth and to terminate when it next comes to a complete stop at a point of support located on the surface of the earth.

"(b) The term 'aviation accident' shall be construed to mean an accident in which a member who is required to participate frequently and regularly in aerial flight is injured or otherwise incapacitated as the result, as attested by the appropriate medical authority of the uniformed service concerned, of (1) jumping from, being thrown from, or being struck by, an aircraft, glider, or spacecraft, or any part or auxiliary thereof, or (2) participation in any duly authorized aerial flight or other aircraft, glider, or spacecraft operations."



THE WHITE HOUSE,
August 29, 1968.

[F.R. Doc. 68-10717; Filed, Aug. 30, 1968; 3:33 p.m.]

¹ 3 CFR, 1964-1965 Comp., p. 200; 29 F.R. 7973.

Executive Order 11425

STUDY OF UNITED STATES FOREIGN TRADE POLICY

WHEREAS I have directed the Special Representative for Trade Negotiations to conduct a long-range study of United States foreign trade policy (hereinafter referred to as "the study") and to recommend to me such legislative and other measures as may be required;

WHEREAS the policies undertaken as a result of the study will have a significant impact upon the economy as well as upon the international relations of the United States; and

WHEREAS the study will benefit from the views and recommendations of Members of the Congress, representatives of various sectors of the economy of the United States, and other interested agencies of the United States Government:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. *Preparation of study.* (a) In conducting the study and in preparing his final recommendations to the President, the Special Representative for Trade Negotiations (hereinafter referred to as the "Special Representative") shall consider the views and recommendations of Members of the Congress, of the Public Advisory Committee on Trade Policy, and of other interested agencies of the United States Government concerning the future nature and direction of United States foreign trade policy.

(b) The Special Representative shall determine the most effective ways and means of obtaining such views and recommendations in order to render them as useful to the study as possible.

SEC. 2. *Views of Members of Congress.* For purposes of the study, the Special Representative shall review and consider the hearings on foreign trade held by various committees of the House of Representatives and the Senate during the 90th Congress, and shall seek the views and recommendations of the members of the committees of the House of Representatives and the Senate concerned with trade policy.

SEC. 3. *Public Advisory Committee on Trade Policy.* (a) For purposes of the study, there is hereby established a committee to be known as the Public Advisory Committee on Trade Policy, which shall furnish its views and recommendations to the Special Representative.

(b) The Committee shall be composed of not more than 35 members who shall be designated by the President from among appropriately qualified citizens of the United States outside the United States Government, who shall be representative of various sectors of the economy of the United States, and who shall serve without compensation from the United States Government.

(c) The Committee shall meet upon the request of the Special Representative.

SEC. 4. *Participation by other agencies.* (a) For purposes of the study, the Departments of Agriculture, Commerce, Defense, Interior, Labor, State, and Treasury, and such other agencies as the Special Representative may from time to time call upon, shall furnish views and recommendations to him.

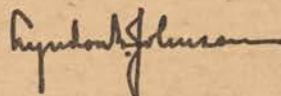
(b) In addition, the agencies referred to in subsection (a) shall, at the request of the Special Representative, assist him in the preparation of the study by all appropriate means.

SEC. 5. *Applicability of Executive Order No. 11007.* (a) The provisions of sections 4, 6(a), 6(b), 6(c), and 6(f) of Executive Order No. 11007 of February 26, 1962, which prescribes regulations for the formation and use of advisory committees, are hereby adapted and made applicable to the Public Advisory Committee on Trade Policy established by section 3 of this Order.

THE PRESIDENT

(b) The Special Representative shall be responsible for assuring compliance with the provisions of Executive Order No. 11007 referred to in subsection (a) in relation to that Committee, and he is authorized to exercise the authority contained in section 6(f) of that Order and to prescribe such additional regulations with respect to that Committee as he may deem necessary.

SEC. 6. *Prior body and orders.* The Public Advisory Committee for Trade Negotiations is hereby abolished, and Executive Order No. 11143 of March 2, 1964, and Executive Order No. 11159 of June 23, 1964, are hereby revoked.



THE WHITE HOUSE,
August 30, 1968.

[F.R. Doc. 68-10730; Filed. Aug. 30, 1968; 4:37 p.m.]

Rules and Regulations

Title 1—GENERAL PROVISIONS

Chapter I—Administrative Committee of the Federal Register

CFR CHECKLIST

1968 Issuances

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the issuance date and price of revised volumes and supplements of the Code of Federal Regulations issued to date during 1968. New units issued during the month are announced on the inside cover of the daily FEDERAL REGISTER as they become available.

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19-100 (Rev.)	.55
101-end (Rev.)	1.50
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General Index (Rev.)	.75

Title 7—AGRICULTURE

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

PART 981—ALMONDS GROWN IN CALIFORNIA

Salable and Surplus Percentages for 1968-69 Crop Year

Notice was published in the August 14, 1968, issue of the FEDERAL REGISTER (33 F.R. 11547) regarding a proposal to establish salable and surplus percentages applicable to California almonds for the 1968-69 crop year beginning July 1, 1968. The percentages are based on the unanimous recommendation of the Almond Control Board and other available information in accordance with the applicable provisions of the marketing agreement, as amended, and Order No. 981, as amended (7 CFR Part 981), regulating the handling of almonds grown in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The notice afforded interested persons opportunity to submit written data, views, or arguments with respect to the proposal. None were submitted within the prescribed time.

After consideration of all relevant matters presented, including those in the notice, the information and recommendations submitted by the Board, and other available information, it is found that to establish salable and surplus percentages as hereinafter set forth will tend to effectuate the declared policy of the act.

Therefore, the salable and surplus percentages for almonds received by handlers for their own accounts during the 1968-69 crop year are established as follows:

§ 981.213 Salable and surplus percentages for almonds during the crop year beginning July 1, 1968.

The salable and surplus percentages during the crop year beginning July 1, 1968, shall be 80 percent and 20 percent, respectively.

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the *FEDERAL REGISTER* (5 U.S.C. 553) in that: (1) The relevant provisions of said amended marketing agreement and this part require that salable and surplus percentages designated for a particular crop year shall be applicable to all almonds received by handlers for their own accounts during such year; and (2) the current crop year began on July 1, 1968, and the percentages established herein will automatically apply to all such almonds beginning with such date.

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

Dated: August 28, 1968.

PAUL A. NICHOLSON,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 68-10608; Filed, Sept. 3, 1968;
8:46 a.m.]

PART 981—ALMONDS GROWN IN CALIFORNIA

Expenses of Almond Control Board and Rate of Assessment for 1968-69 Crop Year

Notice was published in the August 17, 1968, issue of the *FEDERAL REGISTER* (33 F.R. 11715) regarding proposed expenses of the Almond Control Board for the 1968-69 crop year and rate of assessment for that crop year, pursuant to §§ 981.80 and 981.81 of the marketing agreement, as amended, and Order No. 981, as amended (7 CFR Part 981), regulating the handling of almonds grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The notice afforded interested persons an opportunity to submit written data, views, or arguments with respect to the proposal. None were submitted within the prescribed time.

After consideration of all relevant matter presented, including that in the notice, the information and recommendations submitted by the Control Board, and other available information, it is found that the expenses of the Control Board and rate of assessment for the crop year beginning July 1, 1968, shall be as follows:

§ 981.318 Expenses of the Control Board and rate of assessment for the 1968-69 crop year.

(a) *Expenses.* Expenses in the amount of \$70,000 are reasonable and likely to be incurred by the Control Board during the crop year beginning July 1, 1968, for its maintenance and functioning and for such purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate.

(b) *Rate of assessment.* The rate of assessment for said crop year, payable by each handler in accordance with § 981.81, is fixed at 0.10 cent per pound of almonds (kernel weight basis).

It is found that good cause exists for not postponing the effective time of this action until 30 days after publication in the *FEDERAL REGISTER* (5 U.S.C. 553) in that: (1) The relevant provisions of said marketing agreement and this part require that the rate of assessment fixed for a particular crop year shall be applicable to all almonds received by handlers for their own accounts during such crop year; and (2) the current crop year began on July 1, 1968, and the rate of assessment herein fixed will automatically apply to all such almonds beginning with that date.

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

Dated: August 28, 1968.

PAUL A. NICHOLSON,
Deputy Director,
Fruit and Vegetable Division.

[F.R. Doc. 68-10607; Filed, Sept. 3, 1968;
8:46 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 78—BRUCELLOSIS

Subpart D—Designation of Modified Certified Brucellosis Areas, Public Stockyards, Specifically Approved Stockyards and Slaughtering Establishments

MODIFIED CERTIFIED AREAS

Pursuant to § 78.16 of the regulations in Part 78, as amended, Title 9, Code of Federal Regulations, containing restrictions on the interstate movement of animals because of brucellosis, under sections 4, 5, and 13 of the Act of May 29, 1934, as amended; sections 1 and 2 of the Act of February 2, 1903, as amended; and section 3 of the Act of March 3, 1905, as amended (21 U.S.C. 111-113, 114a-1, 120, 121, 125), § 78.13 of said regulations designating modified certified brucellosis areas is hereby amended to read as follows:

§ 78.13 Modified certified brucellosis areas.

The following States, or specified portions thereof, are hereby designated as modified certified brucellosis areas:

Alabama. The entire State;
Alaska. The entire State except Chirikof Island;
Arizona. The entire State;
Arkansas. The entire State;
California. The entire State;
Colorado. The entire State;
Connecticut. The entire State;
Delaware. The entire State;
Florida. Baker, Bay, Bradford, Brevard, Calhoun, Charlotte, Citrus, Clay, Collier, Columbia, Dade, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hendry, Hernando, Holmes, Jack-

son, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Liberty, Madison, Manatee, Monroe, Nassau, Okaloosa, Orange, Osceola, Pasco, Pinellas, Putnam, Santa Rosa, Sarasota, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington Counties;
Georgia. The entire State;
Hawaii. Honolulu, Kauai, and Maui Counties;

Idaho. The entire State;
Illinois. The entire State;
Indiana. The entire State;
Iowa. The entire State;
Kansas. The entire State;
Kentucky. The entire State;
Louisiana. Allen, Ascension, Assumption, Bienville, Claiborne, East Baton Rouge, Iberia, Iberville, Jackson, Jefferson, Lafayette, Lafourche, Lincoln, Livingston, Orleans, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Tensas, Terrebonne, Union, Vernon, Washington, Webster, West Baton Rouge, West Feliciana, and Winn Parishes;

Maine. The entire State;
Maryland. The entire State;
Massachusetts. The entire State;
Michigan. The entire State;
Minnesota. The entire State;
Mississippi. Alcorn, Amite, Attala, Benton, Bolivar, Calhoun, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Coahoma, Copiah, Covington, De Soto, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Humphreys, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, Lincoln, Lowndes, Marion, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibeha, Panola, Pearl River, Perry, Pike, Pontotoc, Prentiss, Quitman, Rankin, Scott, Simpson, Smith, Stone, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Waltham, Washington, Wayne, Webster, Wilkinson, Winston, and Yalobusha Counties;

Missouri. The entire State;
Montana. The entire State;
Nebraska. Adams, Antelope, Arthur, Banner, Boone, Buffalo, Burt, Butler, Cass, Cedar, Chase, Cheyenne, Clay, Colfax, Cuming, Custer, Dakota, Dawson, Deuel, Dixon, Dodge, Douglas, Dundee, Fillmore, Franklin, Frontier, Furness, Gage, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Howard, Jefferson, Johnson, Kearney, Keith, Kimball, Knox, Lancaster, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Saline, Sarpy, Saunders, Seward, Sherman, Sioux, Stanton, Thayer, Thurston, Valley, Washington, Wayne, Webster, Wheeler, and York Counties;

Nevada. The entire State;
New Hampshire. The entire State;
New Jersey. The entire State;
New Mexico. The entire State;
New York. The entire State;
North Carolina. The entire State;
North Dakota. The entire State;
Ohio. The entire State;
Oklahoma. Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Canadian, Carter, Cherokee, Choctaw, Cimarron, Coal, Craig, Creek, Delaware, Dewey, Ellis, Garfield, Garvin, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Johnston, Kay, Kingfisher, Kiowa, Latimer, LeFlore, Lincoln, Logan, McClain, McCurtain, McIntosh, Major, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pontotoc, Pushmataha, Rogers, Seminole, Sequoyah, Texas, Wagoner, Washington, Washita, Woods, and Woodward Counties;

Oregon. The entire State;
Pennsylvania. The entire State;
Rhode Island. The entire State;
South Carolina. The entire State;

South Dakota. Beadle, Bennett, Brookings, Brown, Buffalo, Butte, Campbell, Clark, Clay, Codrington, Corson, Custer, Day, Deuel, Edmonds, Fall River, Faulk, Grant, Haakon, Hamlin, Hand, Hanson, Harding, Jackson, Jerrold, Jones, Kingsbury, Lake, Lawrence, Lincoln, McCook, McPherson, Marshall, Meade, Mellette, Miner, Minnehaha, Moody, Pennington, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Todd, Turner, Union, Walworth, Washabaugh, Yankton and Ziebach Counties; and Crow Creek Indian Reservation;

Tennessee. The entire State;

Texas. Andrews, Archer, Armstrong, Atascosa, Bailey, Bandera, Baylor, Bell, Bexar, Blanco, Borden, Bosque, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Callahan, Cameron, Camp, Carson, Castro, Childress, Cochran, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, El Paso, Erath, Falls, Fisher, Floyd, Foard, Freestone, Gaines, Garza, Gillespie, Glasscock, Gray, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hidalgo, Hockley, Hood, Howard, Hudspeth, Hutchinson, Irion, Jack, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, Lamb, Lampasas, Lee, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Marion, Martin, Mason, Maverick, McCulloch, McLennan, Medina, Menard, Midland, Milam, Mills, Mitchell, Moore, Morris, Motley, Navarro, Newton, Nolan, Ochiltree, Oldham, Orange, Palo Pinto, Parker, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Real, Reeves, Roberts, Runnels, Sabine, San Augustine, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Ward, Washington, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Winkler, Yoakum, Young, Zapata, and Zavala Counties;

Utah. The entire State;
Vermont. The entire State;
Virginia. The entire State;
Washington. The entire State;
West Virginia. The entire State;
Wisconsin. The entire State;
Wyoming. The entire State;
Puerto Rico. The entire area; and
Virgin Islands of the United States. The entire area.

(Secs. 4, 5, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791-792, as amended, sec. 3, 33 Stat. 1265, as amended, sec. 2, 65 Stat. 693; 21 U.S.C. 111-113, 114a-1, 120, 121, 125; 29 F.R. 16210, as amended; 9 CFR 78.16)

Effective date. The foregoing amendment shall become effective upon publication in the FEDERAL REGISTER.

The amendment adds the following additional areas to the list of areas designated as modified certified brucellosis areas because it has been determined that such areas come within the definition of § 78.1(i): Brevard, Charlotte, and Osceola Counties in Florida; Allen Parish in Louisiana; Panola County in Mississippi; Blaine, Carter, Dewey, Garvin, Hughes, Lincoln, and Seminole Counties in Oklahoma; and Marion County in Texas.

The amendment imposes certain restrictions necessary to prevent the spread

of brucellosis in cattle and relieves certain restrictions presently imposed. It should be made effective promptly in order to accomplish its purpose in the public interest and to be of maximum benefit to persons subject to the restrictions which are relieved. Accordingly, under the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 28th day of August 1968.

G. H. Wise,
Acting Director, Animal Health
Division, Agricultural Research Service.

[F.R. Doc. 68-10606; Filed, Sept. 3, 1968; 8:46 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket C-1379]

PART 13—PROHIBITED TRADE PRACTICES

Baldwin-Lima-Hamilton Corp.

Subpart—Discriminating in price under section 5, FTC Act: § 13.892 *Knowingly inducing or receiving discriminating payments.*

(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, Baldwin-Lima-Hamilton Corp., Chicago, Ill., Docket C-1379, July 19, 1968].

Consent order requiring a Chicago, Ill., railroad equipment manufacturer to cease paying secret or confidential rebates in the sale of its railroad specialty products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondent Baldwin-Lima-Hamilton Corp., a corporation, and its officers, agents, representatives, or employees, directly or through any corporate or other device, in connection with the sale of railroad car wheels, axles, springs, or any other railroad specialty products, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for or in behalf of any railroad, anything of value as a secret or confidential rebate, discount, or allowance in connection with the sale of said products to such railroad, or in connection with the sale of said products to

any other buyer for use in the construction, conversion, or repair of railroad cars for such railroad.

(2) Paying, granting, or allowing, directly or indirectly, to any railroad, or to anyone acting for or in behalf of any railroad, anything of value as a refund, rebate, discount, or allowance, in order to induce such railroad to influence railroad car builders to purchase, or contract to purchase said products, unless such refunds, rebates, discounts, or allowances are defensible under subsections (a) or (b) of section 2 of the Clayton Act, as amended.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the 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 it has complied with this order.

Issued: July 19, 1968.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 68-10584; Filed, Sept. 3, 1968; 8:45 a.m.]

[Docket C-1378]

PART 13—PROHIBITED TRADE PRACTICES

Gabriel Abel, Inc., and Gabriel Abel

Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108-45 *Fur Products Labeling Act.* Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-30 *Fur Products Labeling Act;* § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-30 *Fur Products Labeling Act.* Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-35 *Fur Products Labeling Act.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Gabriel Abel, Inc., et al., New York, N.Y., Docket C-1378, July 16, 1968]

In the Matter of Gabriel Abel, Inc., a Corporation, and Gabriel Abel, Individually and as an Officer of Said Corporation

Consent order requiring a New York City manufacturing furrier to cease misbranding and falsely invoicing its fur products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Gabriel Abel, Inc., a corporation, and its officers, and Gabriel Abel, individually and as an officer of said corporation, and respondents' representatives, agents, and em-

employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

2. Representing, directly or by implication, on a label that the fur contained in any fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Setting forth information required under section 4(2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form on a label affixed to such fur product.

4. Failing to set forth on a label the item number or mark assigned to such fur product.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

2. Representing, directly or by implication, on an invoice that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Setting forth information required under section 5(b)(1) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder in abbreviated form.

4. Failing to set forth on an invoice the item number or mark assigned to such fur product.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

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: July 16, 1968.

By the Commission.

[SEAL]

JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 68-10585; Filed, Sept. 3, 1968;
8:45 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

AMPROLIUM, OXYTETRACYCLINE, ZOALENE

No comments were received in response to the notice published in the FEDERAL REGISTER of July 10, 1968 (33 F.R. 9904), proposing that the food additive regulations be amended to revoke certain portions that provide for the use, as specified in the promulgation of August 14, 1963 (28 F.R. 8310), of oxytetracycline in combinations with amprolium and zoalene.

The Commissioner of Food and Drugs concludes that the amendments should be adopted as proposed. Accordingly, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (d), 72 Stat. 1787; 21 U.S.C. 348(d)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 121 is amended:

1. In § 121.207 *Zoalene*, paragraph (c), by deleting from the table items 1c, 2.7g, and 3.4g.

2. In § 121.210 *Amprolium*, paragraph (c), by deleting from table 1 items 1.1h, 2.9l, 3.3l, and 4.3l.

3. In § 121.251 *Oxytetracycline*, paragraph (d), by deleting from table 1 all subitems a and b under items 1 through 12.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(d), 72 Stat. 1787; 21 U.S.C. 348(d))

Dated: August 27, 1968.

J. K. KIRK,
Associate Commissioner
for Compliance.

[F.R. Doc. 68-10630; Filed, Sept. 3, 1968;
8:48 a.m.]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

ANTISTATIC AGENTS IN FOOD-PACKAGING MATERIALS

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 6B1955) filed by I.C.I. Organics, Inc., Post Office Box 1274, Stamford, Conn. 06904, and other relevant material, concludes that the food additive regulations should be amended to provide for the safe use of an additional substance, as set forth below, as an antistatic agent in polyethylene film used in contact with food. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.2527(b) is amended by alphabetically inserting in the list of substances a new item, as follows:

§ 121.2527 Antistatic and/or antifogging agents in food-packaging materials.

(b) List of substances:

	Limitations
<i>a-n-Dodecanol-omega-hydroxypoly (oxyethylene)</i> produced by the condensation of 1 mole of <i>n</i> -dodecanol with an average of 9.5 moles of ethylene oxide to form a condensate having a hydroxyl content of 2.7 to 2.9 percent and having a cloud point of 80° C. to 92° C. in 1 percent by weight aqueous solution.	For use only as an antistatic agent at levels not to exceed 0.2 percent by weight in low-density polyethylene film having an average thickness not exceeding 0.005 inch.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: August 27, 1968.

J. K. KIRK,
Associate Commissioner
for Compliance.

[F.R. Doc. 68-10631; Filed, Sept. 3, 1968;
8:48 a.m.]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

SURFACE LUBRICANTS USED IN MANUFACTURE OF METALLIC ARTICLES

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 8B2276) filed by Harry Miller Corp., Fourth and Bristol Streets, Philadelphia, Pa. 19140, and other relevant material, concludes that the food additive regulations should be amended to provide for the safe use of sodium nitrite as an optional component of surface lubricants used in the manufacture of metallic food-contact articles. Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.2531(a)(2) is amended by alphabetically inserting in the list of substances a new item, as follows:

§ 121.2531 Surface lubricants used in the manufacture of metallic articles.

(a) * * *

(2) * * *

List of substances

Limitations

Sodium nitrite-----	For use only as a rust inhibitor in lubricant formulations provided the total residual sodium nitrite on the metallic article in the form in which it contacts food does not exceed 0.007 milligram per square inch of metallic food-contact surface.
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Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, written objections thereto, preferably in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objection-

able and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on the date of its publications in the FEDERAL REGISTER.

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: August 27, 1968.

J. K. KIRK,
Associate Commissioner
for Compliance.

[F.R. Doc. 68-10632; Filed, Sept. 3, 1968;
8:48 a.m.]

SUBCHAPTER C—DRUGS

PART 141a—PENICILLIN AND PENICILLIN-CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

Change in Sterility Testing for Certain Antibiotic Drugs

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and delegated to the Commissioner of Food and Drugs (21 CFR 2.120), §§ 141a.29(b) and 141a.39(b) are revised to read as follows to provide for a change in the sterility testing for the subject drugs when they contain sodium carboxymethylcellulose (due to a cross-reference, the amendment to § 141a.29 also applies to § 141a.32 Procaine penicillin and buffered crystalline penicillin for aqueous injection):

§ 141a.29 Procaine penicillin for aqueous injection.

(b) **Sterility.** Proceed as directed in § 141.2 of this chapter, using the method described in paragraph (e)(1) of that section, except add sufficient penicillinase to diluting fluid A and swirl the flask to completely solubilize the procaine penicillin before filtration. If the product contains lecithin, use diluting fluid D in lieu of diluting fluid A. If the product contains sodium carboxymethylcellulose, add sufficient sterile carboxymethylcellulase to diluting fluid A or D to completely solubilize the sodium carboxymethylcellulose before filtration. If the preparation contains homogenizers or suspending agents that prevent solubilization, proceed as directed in paragraph (e)(2) of that section, except use medium B in lieu of medium A.

§ 141a.39 Penicillin-streptomycin; penicillin-dihydrostreptomycin veterinary.

(b) **Sterility.** Proceed as directed in § 141.2 of this chapter, using the method

described in paragraph (e)(1) of that section, except if the product contains procaine penicillin add sufficient penicillinase to the diluting fluid to solubilize the procaine penicillin. Use diluting fluid A; if the product contains lecithin, use diluting fluid D instead. Swirl the flask to completely solubilize the procaine penicillin before filtration. If the product contains sodium carboxymethylcellulose, add sufficient sterile carboxymethylcellulase to diluting fluid A or D to completely solubilize the sodium carboxymethylcellulose before filtration. If the preparation contains *l*-ephenamine penicillin, or agents that prevent solubilization, proceed as directed in § 141.2(e)(2) of this chapter, using medium B in lieu of medium A.

This order provides for a change in testing that will assure sterility when the subject drugs contains sodium carboxymethylcellulose and is noncontroversial in nature; therefore, notice and public procedure are unnecessary prerequisites to this promulgation.

Effective date. This order shall become effective 60 days after its date of publication in the FEDERAL REGISTER.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: August 27, 1968.

J. K. KIRK,
Associate Commissioner
for Compliance.

[F.R. Doc. 68-10633; Filed, Sept. 3, 1968;
8:48 a.m.]

PART 148c—COLISTIN

Colistin Sulfate-Neomycin Sulfate-Thonzonium Bromide-Hydrocortisone Acetate Otic Suspension

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and delegated to the Commissioner of Food and Drugs (21 CFR 2.120), § 148c.2 (a)(1) and (b) is revised to read as follows to raise the upper limit allowed for the colistin content of the subject drug to 135 percent of the represented amount and to effect editorial changes:

§ 148c.2 Colistin sulfate-neomycin sulfate-thonzonium bromide-hydrocortisone acetate otic suspension.

(a) **Requirements for certification—**
(1) **Standards of identity, strength, quality, and purity.** Colistin sulfate-neomycin sulfate-thonzonium bromide-hydrocortisone acetate otic suspension is a suspension containing colistin sulfate, neomycin sulfate, thonzonium bromide, and hydrocortisone acetate, and one or more preservatives, dispersing agents, and buffer substances. Each milliliter contains 3.0 milligrams of colistin, 3.3

milligrams of neomycin, 0.5 milligram of thonzonium bromide, and 10 milligrams of hydrocortisone acetate. Its content of colistin is satisfactory if it is not less than 90 percent and not more than 135 percent of the number of milligrams of colistin per milliliter that it is represented to contain. Its content of neomycin is satisfactory if it is not less than 90 percent and not more than 125 percent of the number of milligrams of neomycin per milliliter that it is represented to contain. It is sterile. Its pH is not less than 4.8 and not more than 5.2. The colistin sulfate used conforms to the standards prescribed therefor by § 148c.1(a)(1), except for toxicity. The neomycin sulfate used conforms to the standards prescribed by § 148i.1(a)(1)(i), (v), (vi), and (vii) of this chapter. Each other substance used, if its name is recognized in the U.S.P. or N.F., conforms to the standards prescribed therefor by such official compendium.

(b) *Tests and methods of assay*—(1) *Potency*—(i) *Colistin content*. Proceed as directed in § 148c.1(b)(1), except prepare the sample as follows: Thoroughly mix the sample and transfer an accurately measured aliquot of the sample into a 100-milliliter volumetric flask. Fill the flask to mark with 10 percent potassium phosphate buffer, pH 6.0. Further dilute to the proper estimated concentration in 10 percent potassium phosphate buffer, pH 6.0.

(ii) *Neomycin content*. Proceed as directed in § 148i.1(b)(1) of this chapter, except prepare the sample as follows: Thoroughly mix the sample and transfer an accurately measured aliquot to a 100-milliliter volumetric flask. Fill to mark with 0.1M potassium phosphate buffer, pH 8.0. Further dilute to the proper estimated concentration in pH 8.0 buffer.

(2) *Sterility*. Proceed as directed in § 141.2 of this chapter, using the method described in paragraph (e)(2) of that section, except transfer 0.25 milliliter of sample in lieu of 1 milliliter.

(3) *pH*. Proceed as directed in § 141a.5(b) of this chapter, using the undiluted solution or suspension.

This order effecting technical and editorial changes in the subject antibiotic drug regulation is nonrestrictive and noncontroversial in nature; therefore, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: August 27, 1968.

J. K. KIRK,
Associate Commissioner
for Compliance.

[F.R. Doc. 68-10634; Filed, Sept. 3, 1968;
8:48 a.m.]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter II—Forest Service, Department of Agriculture

PART 213—ADMINISTRATION OF LANDS UNDER TITLE III OF THE BANKHEAD-JONES FARM TENANT ACT BY THE FOREST SERVICE

Authorization to Group, Define, and Name National Grasslands

Part 213, § 213.2 of Chapter II Code of Federal Regulations, is revised as follows:

§ 213.2 Authority for Chief, Forest Service, to group, define, and name national grasslands.

The Chief, Forest Service, is authorized to group the national grasslands into administrative units, define, change or modify their boundaries, and to provide such specific designations therefor as he finds necessary and desirable for effective and economical administration thereof and for public and official reference thereto.

Effective date. This amendment shall become effective on the date of its publication in the FEDERAL REGISTER.

(50 Stat. 525, as amended; 7 U.S.C. 1010-1012)

Done at Washington, D.C., this 28th day of August 1968,

JOHN A. BAKER,
Assistant Secretary of Agriculture.

[F.R. Doc. 68-10609; Filed, Sept. 3, 1968;
8:46 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 18222; FCC 68-881]

PART 73—RADIO BROADCAST SERVICES

Table of Assignments

In the matter of § 73.202 *Table of assignments*, FM Broadcast Stations. (Blairstown Township, N.J., Lexington, Mo., Knox, Ind., North Syracuse, N.Y., Williamsport, Md., Ukiah, Calif., and New Castle, Ind.) Docket No. 18222, RM-1283, RM-1284, RM-1285, RM-1292, RM-1293, RM-1294, RM-1295.

1. *First report and order*. The Commission has before it for consideration its notice of proposed rule making, issued in this proceeding on June 21, 1968 (FCC 68-651), and published in the FEDERAL REGISTER on June 26, 1968 (33 F.R. 9348), inviting comments on a number of changes in the FM Table of Assignments proposed by various interested parties. The following determinations were made after due consideration of all the com-

ments and data filed in the proceeding. Except as noted the proposals were unopposed. All population figures were taken from the 1960 U.S. Census, unless stated otherwise. This decision disposes of all the above-listed matters, except RM-1293, Ukiah, Calif., which will be considered in a subsequent report and order.

2. RM-1284, Blairstown Township, N.J. (Benjamin J. Friedland); RM-1292, Lexington, Mo. (Lexington Broadcasting Co., Inc.); RM-1294, Knox, Ind. (Kankakee Valley Broadcasting Co., Inc.). In these three cases, interested parties are seeking the assignment of a first Class A channel in a community without requiring any other changes in the table. The communities range in size from 1,797 to 4,485 in population, and none are in an urbanized area. We are of the view that the requested assignments are merited and that they would serve the public interest. We are therefore adopting the following assignments.

City	Channel No.
Blairstown Township, N.J.	292A
Lexington, Mo.	292A
Knox, Ind.	257A

3. RM-1283, North Syracuse, N.Y. In a petition for rule making filed March 28, 1968, WSOQ, Inc., licensee of Station WSOQ (AM), North Syracuse, N.Y., requested the assignment of an FM channel to North Syracuse as follows:

City	Channel No.	
	Present	Proposed
North Syracuse, N.Y.		269A

North Syracuse, located about 5 miles north of Syracuse, has a population of 7,412. It is a part of the Syracuse Urbanized Area, which has a total population of 333,286. The Syracuse SMSA has a population of 563,781. North Syracuse has one local AM station and no FM assignments; the AM station, WSOQ, is licensed to the petitioner for daytime-only operation. Syracuse, with a population of 216,038, has been assigned four Class B channels and one Class A, all of which are in operation except for the Class A channel on which a station is under construction. There are seven AM stations operating in the Syracuse Urbanized Area, consisting of five unlimited-time and two daytime-only stations.

4. WSOQ states that the proposed assignment of Channel 269A will comply fully with the technical requirements of the rules. With respect to the important matter of areas which may be precluded from future FM assignments if the proposed channel were assigned, the petitioner's engineering study reveals that Channel 269A would be so involved. The

¹ A site for this assignment will have to be selected about 2 miles north of Blairstown Township in order to conform to the minimum spacing requirements with Station WQAL (FM), Channel 291, Philadelphia, Pa.

precluded area would include eleven communities having populations greater than 2,500. Of these, Watertown (33,306), Oswego (22,155), Fulton (14,261), and Baldwinsville (5,985) presently have one or more AM stations and one FM assignment each. Solvay (8,732), East Syracuse (4,708), and Liverpool (3,487), each located within the Syracuse Urbanized Area, have no FM assignments, but East Syracuse has one daytime-only AM station. The remaining four communities of Carthage (4,216), Lowville (3,616), Camden (2,694), and Clyde (2,693) have neither AM nor FM assignments.

5. In support of its request, WSOQ submits data from various local governmental sources indicating that the townships of Clay and Cicero, with a combined population of 32,485, and of which North Syracuse is a part, are becoming the fastest growing areas within the Syracuse region, whereas the rate of change for the principal city of Syracuse is decreasing. It is contended that the Clay-Cicero Township Area has a totally independent status and that the separately identified communities experiencing increasing growth and development have an independent need for radio service apart from that provided by the Syracuse stations. Petitioner urges that, since North Syracuse is presently limited to a daytime-only outlet, a full-time FM service would offer a much broader range of coverage for the needs and interests of the North Syracuse area and would be a vital source for dissemination of information on public activities, governmental, civic, and social affairs.

6. We stated in the Notice concerning this proceeding that we were not persuaded that the requested assignment should be made in view of the preclusion effect on communities outside of the Syracuse area. In response to our request for comments on the availability of other channels to the seven precluded communities listed above as being without any local FM assignment, the petitioner contends that since the communities of Solvay, East Syracuse, and Liverpool are each within 7 miles of North Syracuse, an application could be filed for any one of the three if the channel were assigned to North Syracuse, with which we agree. It is further claimed that because of the distance between North Syracuse and Carthage, Channel 269A could also be repeated at Carthage if a site just northeast of the center of the community is selected. We also concur with this finding. WSOQ next shows that Channel 280A is available for assignment to Lowville. It is then maintained that Clyde is not within the precluded area; however our further study clearly shows that Clyde would, in fact, be precluded.² Petitioner submits that, in any event, Channel 257A could be assigned to either Clyde or Camden. We do not agree with this, since the petitioner apparently overlooked the recent grant for a new sta-

tion (BPH-6187) for Seneca Falls, N.Y., on Channel 257A, which, because of sub-standard spacings, prevents use of that channel at Clyde and Camden. No other channel meeting the spacing requirements has been submitted as being available to the precluded communities of Clyde and Camden.

7. After careful study of all the comments in this proceeding we are of the view that petitioner's proposal should not be adopted. There are twelve aural outlets authorized for the Syracuse Urbanized Area, consisting of seven AM stations (five unlimited-time), four Class B FM stations, and one Class A FM under construction. It must be assumed that most of these outlets, if not all, provide service to North Syracuse. In our view there has been no compelling showing of need or that the present services available to North Syracuse do not represent a fair and equitable distribution of available aural facilities, especially with regard to the future needs of other communities in the preclusion area. In light of the above, we conclude that we should not use up available frequencies at this time but should wait future developments in the general area.³ (See "Policy to Govern Requests for Additional FM Assignments," public notice, May 12, 1967, FCC 67-577.) Accordingly, we are denying the proposal contained in the petition of WSOQ, Inc., RM-1283.

8. RM-1295, New Castle, Ind. New Castle Broadcasting Corp., a potential FM applicant, filed a petition on April 24, 1968, requesting the addition of a second FM channel to New Castle, Ind., as follows:

City	Channel No.	
	Present	Proposed
New Castle, Ind.	273	232A, 273

New Castle, Ind., located in Henry County, has a population of 20,349 persons. It is the county seat and largest community in the county, which has a population of 48,899. The one existing FM assignment at New Castle is utilized by Station WCTW-FM, which is licensed to the same licensee as is the only AM station in the community, WCTW(AM), unlimited-time. There are no other FM assignments or AM stations in Henry County.

9. The petitioner submits that New Castle and its surrounding environs have experienced a steady growth in population and industry during the 1960's, and urges that a second FM assignment to the area of New Castle, with an estimated population of over 30,000, would serve the public interest. It is stated that the proposed Class A channel is the only

² Our concern is chiefly with the preclusion of assignments in communities not now having FM channels assigned. However, it is also appropriate to consider the possible needs of those other communities within the preclusion area which have one assignment and—being larger and not close to a large urban center as is North Syracuse—might warrant a second before North Syracuse would be entitled to a first.

channel which could be assigned to New Castle meeting all technical requirements and without involving channel changes for at least three operating stations.⁴ A showing is included with the petition indicating that the proposed assignment would not involve any preclusion area on the six adjacent channels. Two small preclusion areas are indicated for the proposed Channel 232A, but no sizable communities are included within either of these areas.

10. In response to our invitation in the notice for comments on the availability of sites where the technical requirements of the rules could be met, the petitioner represents that there are two sites available meeting all spacing requirements. A third available site is described as being 2.7 miles less than the required 65-mile spacing with Station WMER(FM), Celina, Ohio. A copy of a signed agreement between the petitioner and WMER(FM) is furnished indicating that WMER(FM) will not oppose an application by the petitioner for a station at New Castle on the ground that the separation is less than that required by the rules.

11. We are of the view that New Castle is important and large enough to merit the assignment of a second FM channel and that such action would serve the public interest. The assignment would not preclude assignments on the six adjacent channels and the small preclusion areas involving Channel 232A do not contain any community of significant size. It is shown that at least two sites are available from which the separation requirements of the rules can be met, and since Channel 232A is the only one available without disturbing assignments of operating stations in other areas, mixture of Class A and Class B channels appears justified here. We are therefore adopting the petitioner's request to assign Channel 292A to New Castle, Ind. This action is not, however, to be construed as passing on the acceptability of the third alternate site represented by petitioner as not meeting the spacing requirements of the rules. It is expected that any applications filed by prospective applicants for the assignment adopted herein will be in full compliance with all technical requirements of the rules.

12. RM-1285, Williamsport, Md. Michael G. Callas, a resident of Hagerstown, Md., filed a petition on April 1, 1968, for rule making to assign a Class A FM channel to Williamsport, Md., as follows:

City	Channel No.	
	Present	Proposed
Williamsport, Md.		*240A

⁴ A transmitter site about 5.5 miles southwest of New Castle would be necessary in order to meet the required separation of 65 miles with Station WMER(FM), Channel 232A, Celina, Ohio.

⁵ A site about 2 miles from Williamsport would be required in order to satisfy the spacing requirements of the rules.

² It appears that petitioner assumed an incorrect site for Station WNYR-FM, Channel 267, Rochester, N.Y., in making his determination.

Williamsport, population 1,853, is located in Washington County, population 91,219, about 6 miles from Hagerstown, the county seat, with a population of 36,660. Williamsport has no local radio outlet. Washington County has six radio outlets operating: Two Class IV AM and two Class B FM stations at Hagerstown and a daytime-only AM and Class A FM at Halfway. Halfway, with a population of 4,256 persons, is located about midway between Hagerstown and Williamsport.

13. The petitioner shows that the proposed channel will meet the technical requirements of the rules if a site is selected between Williamsport and Hagerstown about 2 miles outside of Williamsport. It is also shown in petitioner's supporting comments that no significant preclusion area would be involved on Channel 240A and that no adjacent channels would be affected in the area. In support of the proposal, the petitioner submits that Williamsport, an incorporated city with a mayor-council form of government, enjoys a significant amount of local industrial activity by various manufacturers, an engineering and research organization, and a large power generating station. The petitioner estimates the current population of Williamsport as 2,000, and lists several community social organizations operating there. It is urged by the petitioner that he determined that need exists for an additional broadcast outlet in the area, specifically in Williamsport, and that he and his associates are prepared to file an application for the proposed channel upon its allocation to Williamsport.

14. In comments filed by Post-Newsweek Stations, Capital Area, Inc., licensee of Television Station WTOP-TV, Washington, D.C., it is pointed out that the second harmonic of Channel 240A (2 × 95.9 MHz = 191.8 MHz) would fall within WTOP-TV's assigned Channel 9 (186-192 MHz). WTOP-TV therefore requests that assignment of Channel 240A to the Williamsport area be conditioned to require action by any future permittee for that channel in accordance with the pertinent provisions of the Commission's public notice concerning "FM Interference to TV Reception," adopted August 30, 1967 (FCC 67-1012).⁶ It is our practice to furnish a copy of the above-noted Public Notice to each new FM station permittee at the time the initial construction permit is issued to insure that each such permittee is made aware of the circumstances which lead to television interference by FM operations. The notice also outlines a test and observation procedure to be followed during equipment tests in those cases where potential interference to television re-

⁶ Mr. Callas states in reply to WTOP-TV's comments that he would propose a site removed from populated areas and interference to television reception, if any, would be minimal in terms of homes affected. It is further urged by Mr. Callas that it would be redundant to condition a channel assignment with respect to the provisions of the Commission's public notice concerning FM interference to TV reception, since technical requirements imposed by the Commission must be met by any applicant.

ception might result from a new FM service. Results of such observations and test data, required to be furnished with the license application, are evaluated by the Commission prior to issuance of program test authority. Since our practice described here, for all intents and purposes, accomplishes the objective sought by WTOP-TV, it is not considered necessary to specifically condition the assignment of Channel 240A to Williamsport in this regard.

15. We are of the opinion that Williamsport merits the assignment of the proposed channel, especially in view of the fact that it is shown that the assignment would not preclude Channel 240A or any of the six adjacent channels from future assignment in the general area. Because of the very restricted area to which the channel may be utilized and meet all separation requirements, it must be assigned to one of the communities of Hagerstown, Halfway, or Williamsport or not at all. Since the first two mentioned have FM stations, its assignment to Williamsport will add to the overall efficiency of the FM allocation plan. Accordingly, we are assigning Channel 240A to Williamsport, Md.

16. Authority for the adoption of the amendments adopted herein is contained in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended.

17. In accordance with the determinations made above: *It is ordered*, That effective October 11, 1968, § 73.202(b) of the Commission's rules, the FM Table of Assignments, is amended to read, insofar as the communities named are concerned, as follows:

City	Channel No.
Indiana:	
Knox	257A
New Castle	232A, 273
Maryland:	
Williamsport	240A
Missouri:	
Lexington	292A
New Jersey:	
Blairstown Township	292A

Adopted: August 28, 1968.

Released: August 29, 1968.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68-10614; Filed, Sept. 3, 1968;
8:46 a.m.]

Title 49—TRANSPORTATION

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 1003]

PART 1033—CAR SERVICE

Illinois Central Railroad Co. Authorized To Operate Over Certain Trackage Abandoned by the Tennessee Central Railway Co.

At a session of the Interstate Commerce Commission, Railroad Service

⁷ Commissioner Wadsworth absent.

Board, held at its office in Washington, D.C., on the 28th day of August 1968.

It appearing, that the Tennessee Central Railway Co., in Finance Docket No. 24964, was authorized by the Commission to abandon its entire line of railroad; that it will cease all operations on August 31, 1968; that the Illinois Central Railroad Co. in Finance Docket No. 25183 has filed an application with the Commission for authority to acquire and operate that portion of the trackage abandoned by the Tennessee Central Railway Co. between the connection of such trackage with the Illinois Central Railroad Co. at Hopkinsville, Tenn., and Tennessee Central Railway Co. mile post 9.30 at Nashville, Tenn., including all interchange, industrial, and other auxiliary tracks connected thereto; that the Commission is of the opinion that there is need for railroad service to industries located on this trackage; that operations by the Illinois Central Railroad Co. over this trackage is necessary to provide railroad services to these industries in the interest of the public and the commerce of the people pending final disposition by the Commission of the application of the Illinois Central Railroad Co. in Finance Docket No. 25183; that notice and public procedure herein are impractical and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1003 Illinois Central Railroad Co. authorized to operate over certain trackage abandoned by the Tennessee Central Railway Co.

(a) The Illinois Central Railroad Co. be, and it is hereby, authorized to operate over that portion of the trackage abandoned by the Tennessee Central Railway Co. between the connection of such trackage with the Illinois Central Railroad Co. at Hopkinsville, Tenn., and Tennessee Central Railway Co. milepost 9.30 at Nashville, Tenn., including all interchange, industrial, and other auxiliary tracks connected thereto.

(b) Application: The provisions of this section shall apply to intrastate and foreign traffic, as well as to interstate traffic.

(c) Rules and regulations suspended: The operation of all rules and regulations, insofar as they conflict with the provisions of this section, is hereby suspended.

(d) Effective date: This section shall become effective at 12:01 a.m. September 3, 1968.

(e) Expiration date: The provisions of this section shall expire at 11:59 p.m., December 31, 1968, unless otherwise modified, changed, or suspended by order of this Commission.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies sec. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2).)

It is further ordered, That copies of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as

agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] H. NEIL GARSON,
Secretary.

[P.R. Doc. 68-10623; Filed, Sept. 3, 1968; 8:47 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 32—HUNTING

Grays Lake National Wildlife Refuge, Idaho

On page 10738 of the FEDERAL REGISTER of July 27, 1968, there was published a notice of a proposed amendment to 50 CFR 32.11 and 32.31. The purpose of this amendment is to provide public hunting of migratory game birds and big game on the Grays Lake National Wildlife Refuge, Idaho, as legislatively permitted.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections with respect to the proposed amendment. No comments, suggestions, or objections have been received. The proposed amendment is hereby adopted without change.

Since this amendment benefits the public by relieving existing restrictions on hunting and fishing, it shall become effective upon publication in the FEDERAL REGISTER.

1. Section 32.11 is amended by the following addition:

§ 32.11 List of open areas; migratory game birds.

IDAHO

Grays Lake National Wildlife Refuge

2. Section 32.31 is amended by the following addition:

§ 32.31 List of open areas; big game.

IDAHO

Grays Lake National Wildlife Refuge.

(Sec. 10, 45 Stat. 1224, 16 U.S.C. 7151, as amended; and sec. 4, 80 Stat. 927, 16 U.S.C. 668dd)

ABRAM V. TUNISON,
Acting Director, Bureau of
Sport Fisheries and Wildlife.

AUGUST 29, 1968.

[P.R. Doc. 68-10599; Filed, Sept. 3, 1968; 8:46 a.m.]

PART 32—HUNTING

Certain Wildlife Refuges in California

The following regulations are issued and are effective on date of publication in the FEDERAL REGISTER. These regulations apply to public hunting on portions of certain National Wildlife Refuges in California.

General conditions. Hunting shall be in accordance with applicable State regulations except for the special conditions indicated. Portions of refuges which are open to hunting are designated by signs and/or delineated on maps. Special conditions applying to individual refuges are listed on the reverse side of the refuge hunting map and/or included herein. Maps are available at refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 730 Northeast Pacific Street, Portland, Oreg. 97208.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Ducks, geese, coots, and gallinules may be hunted on the following refuges:

Colusa National Wildlife Refuge, Box 311, Willows, Calif. 95988.

Delevan National Wildlife Refuge, Box 311, Willows, Calif. 95988.

Kern National Wildlife Refuge, Post Office Box 219, Delano, Calif. 93215.

Merced National Wildlife Refuge, Post Office Box 854, Merced, Calif. 95341.

Modoc National Wildlife Refuge, Alturas, Calif. 96101 (Headquarters: Post Office Box 111, Lakeview, Oreg. 97630).

Salton Sea National Wildlife Refuge, Post Office Box 247, Calipatria, Calif. 92233. (*Special condition.* Open for the taking of doves.)

Sacramento National Wildlife Refuge, Box 311, Willows, Calif. 95988.

San Luis National Wildlife Refuge, Post Office Box 2176, Los Banos, Calif. 93635.

Sutter National Wildlife Refuge, Box 311, Willows, Calif. 95988.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Upland game may be hunted on the following refuge areas:

Colusa National Wildlife Refuge, Box 311, Willows, Calif. 95988.

Delevan National Wildlife Refuge, Box 311, Willows, Calif. 95988.

Kern National Wildlife Refuge, Post Office Box 219, Delano, Calif. 93215.

Merced National Wildlife Refuge, Post Office Box 854, Merced, Calif. 95341.

Sacramento National Wildlife Refuge, Box 311, Willows, Calif. 95988.

San Luis National Wildlife Refuge, Post Office Box 2176, Los Banos, Calif. 93635.

Sutter National Wildlife Refuge, Box 311, Willows, Calif. 95988.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50,

Code of Federal Regulations, Part 32, and are effective through June 30, 1969.

TRAVIS S. ROBERTS,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

AUGUST 27, 1968.

[P.R. Doc. 68-10590; Filed, Sept. 3, 1968; 8:45 a.m.]

PART 32—HUNTING

Wheeler National Wildlife Refuge, Ala.

The following regulations are issued and are effective on date of publication in the FEDERAL REGISTER. These regulations apply to public hunting on the Wheeler National Wildlife Refuge, Ala.

General conditions. Hunting shall be in accordance with all applicable State and Federal regulations. Portions of the refuge which are open to hunting are designated by signs and/or delineated on maps. Maps are available at refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga. 30323.

§ 32.12 Special regulations; migratory game birds; for individual refuge areas.

Geese, ducks, and coots may be hunted in accordance with the following special conditions:

(1) Hunting shall be by permit only. Permits may be obtained from the Refuge Manager under prescribed conditions.

(2) Hunters under 16 years of age must be accompanied by an adult.

(3) Hunting is permitted Wednesday through Saturday, except December 25, with hunting ceasing at noon each hunt day.

(4) Hunters may hunt only from assigned blinds. Guns must be unloaded and encased at all times except when hunter is in an assigned blind.

(5) Each hunter is limited to 12 shells containing shot not larger than No. 2.

(6) Crows and foxes may be shot from blinds.

(7) Hunters are required to check in at check station at close of each day's hunt.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

Quail, rabbits, and squirrels, may be hunted in accordance with the following special conditions:

(1) Hunting shall be by permit only. Permits may be obtained from the Refuge Manager under prescribed conditions.

(2) Crows and foxes (nonprotected species) may be hunted during periods prescribed for other game species.

(3) Foxes may be hunted with dogs at other times of the year under conditions set forth in permits obtained from the Refuge manager.

(4) Quail may be hunted February 1, 3, and 4, 1969.

(5) Rabbits may be hunted February 10 through 15, 1969.

(6) Squirrels may be hunted October 14 through October 19, 1968.

(7) No shooting is permitted within 100 yards of buildings on the refuge or adjoining the refuge boundary.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuges generally which are set forth in Title 50, Code of Federal Regulations, Part 32 and are effective through June 30, 1969.

C. EDWARD CARLSON,
Regional Director.

AUGUST 23, 1968.

[F.R. Doc. 68-10597; Filed, Sept. 3, 1968; 8:46 a.m.]

PART 32—HUNTING

Hart Mountain National Antelope Refuge, Oreg.

The following regulations are issued and are effective on date of publication in the FEDERAL REGISTER:

General conditions. Hunting shall be in accordance with applicable State regulations except that camping will be permitted at designated areas only. Portions of the refuge which are open to hunting are designated by signs and/or delineated on maps. Maps are available at refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 730 Northeast Pacific Street, Portland, Oreg. 97208.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Migratory game birds may be hunted on the following refuge:

Hart Mountain National Antelope Refuge, Post Office Box 111, Lakeview, Oreg. 97630.

§ 32.22 Special regulations; upland game birds; for individual wildlife refuge areas.

Upland game birds may be hunted on the following refuge:

Hart Mountain National Antelope Refuge, Post Office Box 111, Lakeview, Oreg. 97630.

§ 32.32 Special regulations; big game; for individual wildlife areas.

Big game animals may be hunted on the following refuge:

Hart Mountain National Antelope Refuge, Post Office Box 111, Lakeview, Oreg. 97630.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through June 30, 1969.

TRAVIS S. ROBERTS,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

AUGUST 27, 1968.

[F.R. Doc. 68-10591; Filed, Sept. 3, 1968; 8:45 a.m.]

PART 32—HUNTING

Lostwood National Wildlife Refuge, N. Dak.

On page 11118 of the FEDERAL REGISTER of August 6, 1968, there was published a notice of a proposed amendment to 50 CFR 32.21. The purpose of this amendment is to provide public hunting of upland game on Lostwood National Wildlife Refuge, N. Dak., as legislatively permitted.

Interested persons were given 15 days in which to submit written comments, suggestions, or objections with respect to the proposed amendment. No comments, suggestions, or objections have been received. The proposed amendment is hereby adopted without change.

Since this amendment benefits the public by relieving existing restrictions on hunting and fishing, it shall become effective upon publication in the FEDERAL REGISTER.

Section 32.21 is amended by the following addition:

§ 32.21 List of open areas; upland game.

* * * * *
NORTH DAKOTA

Lostwood National Wildlife Refuge.

(Sec. 10, 45 Stat. 1224, 16 U.S.C. 7151 as amended and sec. 4, 80 Stat. 927, 16 U.S.C. 668dd)

A. V. TUNISON,
Acting Director, Bureau of Sport Fisheries and Wildlife.

AUGUST 29, 1968.

[F.R. Doc. 68-10600; Filed, Sept. 3, 1968; 8:46 a.m.]

PART 32—HUNTING

Valentine National Wildlife Refuge, Nebr.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

NEBRASKA

VALENTINE NATIONAL WILDLIFE REFUGE

The public hunting of prairie grouse and pheasants on the Valentine National Wildlife Refuge, Nebr., shall be permitted only on areas designated by signs as open to hunting. The open areas are delineated on maps available at refuge headquarters, Valentine, Nebr. 69201, and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis, Minn. 55408.

Hunting shall be in accordance with all applicable State regulations governing the hunting of prairie grouse and pheasants subject to the following special conditions:

(1) The refuge will be closed to prairie grouse and pheasant hunting during the regular State duck hunting seasons, October 12 through October 20 and November 16 through December 12, 1968.

(2) The split seasons for hunting prairie grouse will begin on September 21 and continue through October 11. The season will reopen on October 21 and continue through November 15, 1968. The open area shall include 40,765 acres or 57 percent of the refuge.

(3) The split seasons for hunting pheasants on the refuge will begin on November 2 and continue through November 15 on 40,765 acres of the refuge. The season will reopen December 13 and continue through January 19, 1969, on 70,085 acres or 98 percent of the refuge.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through the close of the regular State 1968-69 pheasant season.

NED I. PEABODY,
Refuge Manager, Valentine National Wildlife Refuge, Valentine, Nebr.

AUGUST 26, 1968.

[F.R. Doc. 68-10587; Filed, Sept. 3, 1968; 8:45 a.m.]

PART 32—HUNTING

Rice Lake National Wildlife Refuge, Minn.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

MINNESOTA

RICE LAKE NATIONAL WILDLIFE REFUGE

Public hunting of deer on the Rice Lake National Wildlife Refuge is permitted from sunrise to sunset November 9 through November 15, 1968, and with bow and arrow only from sunrise November 30, 1968, to sunset December 21, 1968, inclusive, only on the area designated by signs as open to hunting. This open area comprising 13,000 acres, is delineated on a map available at refuge headquarters, McGregor, Minn., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis, Minn. 55408. Hunting shall be in accordance with all applicable State regulations governing the hunting of deer.

CARL E. POSPICHAL,
Refuge Manager, Rice Lake National Wildlife Refuge, McGregor, Minn.

AUGUST 27, 1968.

[F.R. Doc. 68-10586; Filed, Sept. 3, 1968; 8:45 a.m.]

PART 32—HUNTING

Valentine National Wildlife Refuge, Nebr.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

NEBRASKA

VALENTINE NATIONAL WILDLIFE REFUGE

Public hunting of deer on the Valentine National Wildlife Refuge, Nebr., is permitted only on the area designated by signs as open to hunting. This open area, comprising 70,085 acres, is delineated on maps available at refuge headquarters, Valentine, Nebr., and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis, Minn. 55408.

Hunting shall be in accordance with all applicable State regulations governing the hunting of deer with firearms subject to the following special regulations:

(1) All hunters are requested to obtain a "registration card" and a copy of refuge regulations and map available at no cost at refuge headquarters.

(2) The open season for hunting deer on the refuge will extend from November 9, 1968, through November 17, 1968.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 31, 1968.

NED I. PEABODY,

Refuge Manager, Valentine National Wildlife Refuge, Valentine, Nebr.

JULY 11, 1968.

[F.R. Doc. 68-10588; Filed, Sept. 3, 1968; 8:45 a.m.]

PART 33—SPORT FISHING

Valentine National Wildlife Refuge, Nebr.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual refuge areas.

NEBRASKA

VALENTINE NATIONAL WILDLIFE REFUGE

Sport fishing on the Valentine National Wildlife Refuge, Nebr., is permitted only on the areas designated by signs as open to hunting. This open area, comprising 2,880 acres of water area on the refuge, are delineated on a map available at the refuge headquarters and from the Office of the Regional Director, Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis, Minn. 55408.

Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The open season for sport fishing on the refuge during daylight hours only, from January 1, 1969, through December 31, 1969, in those waters posted as open, except that all fishing is prohibited during the regular migratory duck hunting season.

(2) Hook and line and bow and arrow fishing only are permitted.

(3) Boats are permitted on lakes opened to sport fishing, but the use of motors is prohibited.

(4) The use of minnows, fish, or parts thereof, for bait, or the possession of any seine or net for capturing minnows is prohibited.

The provisions of this special regulation supplement the regulations which govern sport fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 31, 1969.

NED I. PEABODY,

Refuge Manager, Valentine National Wildlife Refuge, Valentine, Nebr.

JULY 10, 1968.

[F.R. Doc. 68-10589; Filed, Sept. 3, 1968; 8:45 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Treatment of Options Acquired in Connection With Loans

Amendments to the regulations under sections 61 and 1232 of the Internal Revenue Code of 1954, dealing with the treatment of options acquired in connection with loans, were proposed by a notice of proposed rule making published in the *FEDERAL REGISTER* for August 25, 1964 (29 F.R. 12078). Notice is hereby given that such proposed regulations are withdrawn.

Further, notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestion pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, within the period of 30 days from the date of publication of this notice in the *FEDERAL REGISTER*.

Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the *FEDERAL REGISTER*. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] **SHELDON S. COHEN,**
Commissioner of Internal Revenue.

In order to provide rules for tax treatment of options acquired in connection with loans, and for certain other purposes, the Income Tax Regulations (26 CFR Part 1) under sections 61, 163, 171, 1012, and 1232 of the Internal Revenue Code of 1954 are amended as follows:

PARAGRAPH 1. Paragraph (c) of § 1.61-12 is amended to read as follows:

§ 1.61-12 Income from discharge of indebtedness.

(c) Issuance and repurchase of corporate bonds. (1) If bonds are issued by

a corporation at their face value, the corporation realizes no gain or loss.

(2) If, subsequent to February 28, 1913, bonds are issued by a corporation at a premium (as defined in subparagraph (4) of this paragraph), the net amount of such premium, excluding any portion thereof which is attributable to a conversion feature of the bond under paragraph (c) of § 1.171-2, is income which should be prorated or amortized over the life of the bonds. If bonds were issued by a corporation prior to March 1, 1913, at a premium, the net amount of such premium was income for the year in which the bonds were issued and should not be prorated or amortized over the life of the bonds.

(3) If bonds are issued by a corporation and are subsequently repurchased by the corporation at a price which is exceeded by the issue price plus any amount of discount already deducted, or (in the case of bonds issued subsequent to Feb. 28, 1913) minus any amount of premium already returned as income, the amount of such excess is income for the taxable year.

(4) For purposes of this paragraph, bond premium equals the excess of the issue price of the bond (as defined in paragraph (b)(2) of § 1.1232-3) over the amount payable at maturity (or in the case of a callable bond, at the earlier call date).

(5) The provisions of this paragraph are illustrated by the following examples:

Example. (i) M Corporation, on January 1, 1946, the beginning of its taxable year, issued for \$115,000, 3 percent bonds, maturing 10 years from the date of issue, with a stated redemption price at maturity of \$100,000. The bonds were convertible into common stock at the option of the holder. The value of the conversion feature of the bonds, as determined under paragraph (c) of § 1.171-2, is \$11,500. The net amount, or amortizable portion, of bond premium which is included in income over the 10-year life of the bonds is \$3,500, computed as follows:

Issue price.....	\$115,000
Less: Redemption price.....	100,000
Premium.....	15,000
Value of conversion feature.....	11,500
Amortizable amount.....	3,500

(ii) On January 1, 1950, M Corporation repurchased all of the bonds for a total price of \$110,000. M Corporation thereby realized income for the taxable year 1950 in the amount of \$3,600, computed as follows:

Issue price.....	\$115,000
Less: Portion of original premium previously amortized, 1946-1949 ($\frac{1}{10} \times \$3,500$).....	1,400
	113,600
Repurchase price.....	110,000
Income.....	3,600

(6) For purposes of this paragraph, a debenture, note, or certificate or other

evidence of indebtedness, issued by a corporation and bearing interest shall be given the same treatment as a bond.

(7) For rules relating to amortization of bond discount and the deduction upon repurchase of bonds at an amount in excess of their issue price, see § 1.163-3.

PAR. 2. Paragraph (b) of § 1.61-15 is amended to read as follows:

§ 1.61-15 Options received as payment of income.

(b) Options to which paragraph (a) does not apply. (1) Paragraph (a) of this section does not apply to:

(i) An option which is subject to the rules contained in section 421; and

(ii) An option which is not granted as the payment of an amount constituting compensation, such as an option which is acquired solely as an investment (including an option which is part of an investment unit described in paragraph (b) of § 1.1232-3). For rules relating to the taxation of options described in this subdivision, see section 1234 and the regulations thereunder.

(2) If a person acquires an option which is not subject to the rules contained in section 421, and if such option has a readily ascertainable fair market value, such person may establish that such option was not acquired as payment of an amount constituting compensation by showing that the amount of money or its equivalent paid for the option equaled the readily ascertainable fair market value of the option. If a person acquires an option which is not subject to the rules contained in section 421, and if such option does not have a readily ascertainable fair market value, then to establish that such option was not acquired as payment of an amount constituting compensation, such person must show that, from an examination of all the surrounding circumstances, there was no reason for the option to have been granted as the payment of an amount constituting compensation. For example, such person must show that he had neither rendered nor was obligated to render substantial services in consideration for the granting of the option. In determining whether an option, such as an option acquired in connection with an obligation as part of an investment unit, has been granted as compensation for services, the ordinary services performed by an investor in his own self-interest in connection with his investing activities will not be treated as the consideration for the grant of the option. For example, if a small business investment company takes an active part in the management of its debtor small business company, the rendering of such management services will not be treated as the consideration for the granting of the option, provided such services

are rendered for an independent consideration, or are merely protective of the small business investment company's investment in the borrower. See paragraph (c) of § 1.421-6 for the meaning of the term "readily ascertainable fair market value."

PAR. 3. There is added immediately following § 1.163-2 the following new section:

§ 1.163-3 Deduction for bond discount.

(a) *Discount upon issuance.* (1) If bonds are issued by a corporation at a discount, the net amount of such discount is deductible and should be prorated or amortized over the life of the bonds. For purposes of this section, the amortizable bond discount equals the excess of the amount payable at maturity (or, in the case of a callable bond, at the earlier call date) over the issue price of the bond (as defined in paragraph (b) (2) of § 1.1232-3).

(2) In the case of a bond issued by a corporation after December 31, 1954, as part of an investment unit consisting of an obligation and an option, the issue price of the bond is determined by allocating the amount received for the investment unit to the individual elements of the unit in the manner set forth in subdivision (ii) (a) of § 1.1232-3(b) (2). Discount with respect to bonds issued by a corporation as part of investment units consisting of obligations and options after December 31, 1954, and before [date of publication of Treasury decision]—

(i) Increased by any amount treated as bond premium which has been included in gross income with respect to such bonds prior to [date of publication of Treasury decision], or

(ii) Decreased by any amount which has been deducted by the issuer as discount attributable to such bonds prior to [date of publication of Treasury decision], and

(iii) Decreased by any amount which has been deducted by the issuer prior to [date of publication of Treasury decision] upon the exercise or sale by investors of options issued in investment units with such bonds,

should be amortized, starting with the first taxable year ending on or after [date of publication of Treasury decision] over the remaining life of such bonds.

(b) *Examples.* The rules in paragraph (a) of this section are illustrated by the following examples:

Example (1). M Corporation, on January 1, 1960, the beginning of its taxable year, issued for \$95,000, 3 percent bonds, maturing 10 years from the date of issue, with a stated redemption price at maturity of \$100,000. M Corporation should treat \$5,000 (\$100,000-\$95,000) as the total amount to be amortized over the life of the bonds.

Example (2). Assume the same facts as example (1), except that the bonds are convertible into common stock of M Corporation. Since the issue price of the bonds includes any amount attributable to the conversion privilege, the result is the same as in example (1).

Example (3). Assume the same facts as example (1), except that the bonds are issued as part of an investment unit consisting of an obligation and an option. Assume further that the issue price of the bonds as determined under the rules of allocation set forth in subdivision (ii) (a) of § 1.1232-3(b) (2) is \$94,000. Accordingly, M Corporation should treat \$6,000 (\$100,000-\$94,000) as the total amount to be amortized over the life of the bonds.

Example (4). Assume in example (3), that prior to [date of publication of Treasury decision] M Corporation had only treated \$5,000 as the bond discount to be amortized and deducted only \$4,000 of this amount. Starting with the first taxable year ending on or after [date of publication of Treasury decision], M Corporation should amortize \$2,000 (\$6,000 discount, less \$4,000 previously deducted) over the remaining life of the bonds.

Example (5). N Corporation, on January 1, 1956, for a consideration of \$102,000, issued 20-year bonds in the face amount of \$100,000, together with options to purchase stock of N Corporation. The issue price of the bonds as determined under the rules of allocation set forth in subdivision (ii) (a) of § 1.1232-3(b) (2) is \$99,000. Until [date of publication of Treasury decision], N Corporation has treated the bond premium, \$2,000, representing the excess of the consideration received for the bond-option investment units over the maturity value of the bonds, and has accordingly prorated and included in income \$1,200 of such amount. Starting with the first taxable year beginning on or after [date of publication of Treasury decision], N Corporation may amortize as a deduction over the remaining life of the bonds the amount of \$2,200 (\$1,000 discount, plus \$1,200 previously included in income).

Example (6). O Corporation, on January 1, 1956, for a consideration of \$100,000, issued 20-year bonds with a \$100,000 face value, together with options to purchase stock of O Corporation, which could be exercised at any time up to 5 years from the date of issue. The issue price of the bonds as determined under the rules of allocation set forth in subdivision (ii) (a) of § 1.1232-3(b) (2) is \$98,000. O Corporation, upon the exercise of the options prior to [date of publication of Treasury decision], had deducted from income their fair market value at the time of exercise, which is assumed for purposes of this example to have been \$3,000. Even though the bonds are considered to have been issued at a discount under paragraph (a) (1) of this section, O Corporation would have no deduction over the remaining life of the bonds, inasmuch as O Corporation, in computing the amount of such deduction, is required under paragraph (a) (2) (iii) of this section to reduce the amount which would otherwise be treated as bond discount, \$2,000 (\$100,000-\$98,000), by the amount deducted from income upon the exercise of the options, in this case, \$3,000.

(c) *Deduction upon repurchase.* If bonds are issued by a corporation and are subsequently repurchased by the corporation at a price in excess of the issue price plus any amount of discount deducted prior to repurchase, or (in the case of bonds issued subsequent to Feb. 28, 1913) minus any amount of premium returned as income prior to repurchase, the excess of the purchase price over the issue price adjusted for amortized premium or discount is a deductible expense for the taxable year, except that, in the case of repurchase of a convertible bond, the deduction is limited to an amount equaling one year's interest at the rate specified in the bond.

(d) *Definition.* For purposes of this section, a debenture, note, certificate or other evidence of indebtedness, issued by a corporation and bearing interest shall be given the same treatment as a bond.

PAR. 4. Paragraph (c) (1) of § 1.171-2 is amended to read as follows:

§ 1.171-2 Determination of bond premium.

(c) *Convertible bonds.* (1) The fact that a bond is convertible into stock does not, in itself, prevent the application of section 171. A convertible bond is within the scope of such section if the option to convert on a date certain specified in the bond rests with the holder thereof. However, for the purpose of determining the amount of amortizable bond premium on a convertible bond for the taxable year, the amount of bond premium shall not include any amount attributable to the conversion features of the bond.

PAR. 5. Section 1.1012-1 is amended by redesignating paragraph (d) as paragraph (e), and by adding thereto a new paragraph (d). The added paragraph reads as follows:

§ 1.1012-1 Basis of property.

(d) *Obligations with options attached.* For purposes of determining the basis of the individual elements of an investment unit consisting of an obligation and an option (to which paragraph (a) of § 1.61-15 does not apply), the cost of such investment unit shall be allocated to such individual elements on the basis of their respective fair market values. In the case of the initial issuance of an investment unit consisting of an obligation and an option, where neither the obligation nor the option has a readily ascertainable fair market value, the portion of the cost of the unit which is allocable to the obligation shall be an amount equal to the issue price of the obligation as determined under subdivision (ii) (a) of § 1.1232-3(b) (2).

PAR. 6. Section 1.1232-3 is amended by revising paragraphs (b) (1), and (2), and (d) thereof. These revised provisions read as follows:

§ 1.1232-3 Gain upon sale or exchange of obligations issued at a discount after December 31, 1954.

(b) *Definition.*—(1) *Original issue discount.* For purposes of section 1232, the term "original issue discount" means the difference between the issue price and the stated redemption price at maturity. The stated redemption price is determined without regard to optional call dates. If the original issue discount is less than one-fourth of 1 percent of the stated redemption price at maturity, multiplied by the number of full years from the date of original issue to maturity, then the discount shall be considered to be zero. For example, a 10-

year bond with a stated redemption price at maturity of \$100 issued at \$98 would be regarded as having an original issue discount of zero. Thus, any gain realized by the holder would be a long-term capital gain if the bond was a capital asset in the hands of the holder and held by him for more than 6 months. However, if the bond were issued at \$97.50 or less, the original issue discount would not be considered zero. The term "stated redemption price at maturity" means the amount fixed by the last modification of the purchase agreement, including dividends payable at that time. Thus, in the case of face-amount certificates, the redemption price at maturity is the price as modified through changes such as extensions of the purchase agreement and includes any dividends which are payable at maturity. In the case of an obligation issued as part of an investment unit consisting of an option (to which paragraph (a) of § 1.61-15 does not apply) and a bond, debenture, note, or certificate or other evidence of indebtedness, the term "stated redemption price at maturity" means the amount payable on maturity in respect of the obligation, and does not include any amount payable in respect of the option under a repurchase agreement or option to buy or sell the option.

(2) *Issue price defined*—(i) *In general*. The term "issue price" in the case of obligations registered with the Securities and Exchange Commission means the initial offering price to the public at which price a substantial amount of such obligations were sold. For this purpose, the term "the public" does not include bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers. Ordinarily, the issue price will be the first price at which the obligations were sold to the public, and the issue price will not change if, due to market developments, part of the issue must be sold at a different price. When obligations are privately placed, the issue price of each obligation is the price paid by the first buyer of the particular obligation, irrespective of the issue price of the remainder of the issue. In the case of an obligation which is convertible into stock or another obligation, the issue price includes any amount paid in respect of the conversion privilege. However, in the case of an obligation issued as part of an investment unit consisting of an option and a bond, debenture, note, or certificate or other evidence of indebtedness, the issue price of the obligation includes only that portion of the initial offering price or price paid by the first buyer properly allocable to the obligation under the rules prescribed in subdivision (ii) of this subparagraph. The terms "initial offering price" and "price paid by the first buyer" include the aggregate payments made by the purchaser under the purchase agreement, including modifications thereof. Thus, all amounts paid by the purchaser under the purchase agreement or a modification of it are included in the issue price (but in

the case of an obligation issued as part of an investment unit, only to the extent allocable to such obligation under subdivision (ii) of this subparagraph), such as amounts paid upon face-amount certificates or installment trust certificates in which the purchaser contracts to make a series of payments which will be returnable with an increment at a later date.

(ii) *Investment units consisting of obligations and options*—(a) *In general*. For purposes of this subparagraph, the initial offering price of an investment unit consisting of an obligation and an option shall be allocated to the individual elements of the unit on the basis of their respective fair market values. However, if the fair market value of the option is not readily ascertainable (within the meaning of paragraph (c) of § 1.421-6), then the portion of the initial offering price or price paid by the first buyer of the unit which is allocable to the obligation issued as part of such unit shall be ascertained as of the time of acquisition of such unit by reference to the assumed price at which such obligation would have been issued had it been issued apart from such unit. The assumed price of the obligation shall be ascertained by comparison to the yields at which obligations of a similar character which are not issued as part of an investment unit are sold in arm's length transactions, and by adjusting the price of the obligation in question to this yield. This adjustment may be made by subtracting from the face amount of the obligation the total present value of the interest foregone by the purchaser as a result of purchasing the obligation at a lower yield as part of an investment unit. In most cases, assumed price may also be determined in a similar manner through the use of standard bond tables. Any reasonable method may be used in selecting an obligation for comparative purposes. Obligations of the same grade and classification shall be used to the extent possible, and proper regard shall be given, with respect to both the obligation in question and the comparative obligation, to the solvency of the issuer, the nature of the issuer's trade or business, the presence and nature of security for the obligation, the geographic area in which the loan is made, and all other factors relevant in the circumstances. An obligation which is convertible into stock or another obligation must not be used as a comparative obligation, since such an obligation would not reflect the yield attributable solely to the obligation element of the investment unit.

(b) *Agreement as to assumed price*. In the case of an investment unit which is privately placed, the assumed price at which the obligation would have been issued had it been issued apart from such unit may be agreed to by the issuer and the purchaser of the investment unit in writing on or before the date of purchase. Alternatively, an agreement between the issuer and purchaser may specify the rates of interest which would have been paid on the obligation if the

transaction were one not involving the issuance of options, and an assumed issue price may be determined (in the manner described in (a) of this subdivision) from such agreed assumed rate of interest. An assumed price based upon such an agreement between the parties will generally be presumed (so long as such agreement is adhered to by both parties) to be the issue price of the obligation: *Provided*, That the agreement was made in arms-length negotiations between parties having adverse interests. *And, provided further*, That such price does not, under the rules stated in (a) of this subdivision, appear to be clearly erroneous. An assumed issue price agreed to by the parties as provided herein will not be considered clearly erroneous if it is not less than the face value adjusted (in the manner described in (a) of this subdivision) to a yield which is one percentage point greater than the actual rate of interest payable on the obligation. Similarly, if the agreement between the parties specifies an agreed assumed rate of interest (in lieu of an agreed assumed issue price) and such agreed rate is not more than one percentage point greater than the actual rate payable on the obligation, an adjusted issue price based upon such agreed assumed rate of interest will not be considered clearly erroneous.

(c) *Cross references*. For rules relating to the deductibility by the issuing corporation of bond discount resulting from an allocation under the rule stated in (a) of this subdivision, see § 1.163-3. For rules relating to the basis of obligations and options acquired in investment units see § 1.1012-1(d). For rules relating to certain reporting requirements with respect to options acquired in connection with evidences of indebtedness and for the tax treatment of such options, see § 1.61-15, and section 1234 and the regulations thereunder. With respect to the tax consequences to the issuing corporation upon the exercise of options issued in connection with evidences of indebtedness to which this section applies, see section 1032 and the regulations thereunder.

(d) *Examples*. The application of the principles set forth in this subdivision (ii) may be illustrated by the following examples:

Example (1). M Corporation is a small manufacturer of electronic components located in the southwestern United States. In consideration for the payment of \$41,500, M issues to X its unsecured note for \$40,000 together with warrants to purchase 3,000 shares of M stock at \$10 per share at any time during the term of the note. The note is payable in 4 years and provides for interest at the rate of 5 percent per year, payable semiannually. The fair market values of the note and the warrants are not readily ascertainable. Assume that companies in the same industry as M Corporation, and similarly situated both financially and geographically, are generally able to borrow money on their unsecured notes at an annual interest rate of 6 percent. Using a present value table, the calculation of the issue price of a 5 percent, 4 year, \$40,000 note, discounted to yield 6 percent compounded semiannually is made as follows:

(1)	(2)	(3)	(2)×(3)
Semiannual interest period	Amount payable at 5%	Factor (3%)	Present value of payment
1	\$1,000	0.9709	\$970.90
2	1,000	.9426	942.60
3	1,000	.9151	915.10
4	1,000	.8885	888.50
5	1,000	.8626	862.60
6	1,000	.8375	837.50
7	1,000	.8131	813.10
8	1,000	.7894	789.40
8	40,000	.7894	31,576.00
Total present value of note discounted at 6%, compounded semiannually--			38,595.70

The same result may be reached through the use of a standard bond table or by the following present value calculation:

Present value of annuity of \$1,000 payable over 8 periods at 3 percent per period = 1000 × 7.0197 =	\$7,019.70
Add: Present value of principal (as calculated above) -----	31,576.00
Total -----	38,595.70

Accordingly, the assumed price at which M's note would have been issued had it been issued without stock purchase warrants, i.e., that portion of the \$41,500 price paid by X which is allocable to M's note, is \$38,596 (rounded). Since the price payable on redemption of M's note at maturity is \$40,000, the original issue discount on M's note is \$1,404 (\$40,000 minus \$38,596). Under the rules stated in § 1.163-3, M is entitled to a deduction, to be prorated or amortized over the life of the note, equal to this original issue discount on the note. The excess of the price for the unit over the portion of such price allocable to the note, \$2,904 (\$41,500 minus \$38,596), is allocable to and is the basis of the stock purchase warrants acquired by X in connection with M's note. Upon the exercise of X's warrants, M will be allowed no deduction and will have no income. Upon maturity of the note X will receive \$40,000 from M, of which \$1,404, the amount of the original issue discount, will be taxable as ordinary income. If X were to transfer the note at its face amount to A 2 years after the issue date, X would realize under the rules of section 1232, ordinary income of \$702 (one-half of \$1,404).

Example (2). (1) N Corporation negotiates with Y, a small business investment company, for a loan in the amount of \$51,500 in consideration of which N Corporation issues to Y its unsecured 5-year note for \$50,000, together with warrants to purchase 2,000 shares of N stock at \$5 per share at any time during the term of the note. The note provides for interest of 6 percent, payable semiannually. The fair market values of the note and warrants are not readily ascertainable. The loan agreement between Y and N contains a provision, agreed to in arm's-length bargaining between the parties, that a rate of 7 percent payable semiannually would have been applied to the loan if warrants were not issued as part of the consideration for the loan. The issue price of the note is \$47,921 (rounded), determined with the use of a standard bond table, or computed in the manner illustrated in Example (1) or in the following alternative manner:

(1)	(2)	(3)	(4)	(5)	(4)×(5)
Interest period	Interest rate differential	Principal	Interest foregone for period (1/2%)	Factor for present value discounted at 3 1/2% per period	Present value of interest foregone
1	1% (7%-6%)	\$50,000	250	0.9662	\$241.55
2	1%	50,000	250	.9335	233.38
3	1%	50,000	250	.9010	225.48
4	1%	50,000	250	.8714	217.85
5	1%	50,000	250	.8420	210.50
6	1%	50,000	250	.8135	203.38
7	1%	50,000	250	.7860	196.50
8	1%	50,000	250	.7594	189.85
9	1%	50,000	250	.7337	183.43
10	1%	50,000	250	.7089	177.23
Total present value of interest foregone -----					\$2,079.15
Principal -----					50,000.00
Less: Total present value of interest foregone -----					2,079.00
Issue price -----					47,921.00

The calculation of present value of interest foregone may also be made as follows:

Present value of annuity of \$250 discounted for 10 periods at 3 1/2 percent per period = \$250 × 8.3166 = \$2,079.15.

The total present value of interest foregone, \$2,079, is also the original issue discount attributable to the note (\$50,000 - \$47,921). Since the agreed assumed rate of interest of 7 percent is not more than 1 percentage point greater than the actual rate payable on the note, determination of the issue price of the note (and original issue discount) based upon such assumed rate will be presumed to be correct and will not be considered clearly erroneous, provided that both N and Y adhere to such determination. Under the rules in § 1.163-3, N is entitled to a deduction, to be prorated or amortized over the life of the note, equal to the original issue discount on the note. The excess of the price paid for the unit over the portion of such price allocable to the note, \$3,579 (\$51,500 minus \$47,921) is allocable to and is the basis of the stock purchase warrants acquired by Y in connection with N's note. Upon the exercise or sale of the warrants by Y, N will be allowed no deduction and will have no income. Upon maturity of the note Y will receive \$50,000 from N, of which \$2,079, the amount of the original issue discount, will be taxable as ordinary income. If Y were to transfer the note at its face value to B 2 1/2 years after the issue date, Y would realize, under the rules of section 1232, ordinary income of \$1,039.50 (one-half of \$2,079).

(2) Assume that instead of the parties agreeing on an assumed interest rate at which the obligation would have been issued without the warrants, the parties agreed

that the obligation at the actual 6 percent rate would have been issued without the warrants at a discounted price of \$48,000. In this situation the agreed assumed issue price is presumed to be correct since it is not less than the face value adjusted (in the manner illustrated in part (1) of this example) to a yield which is one percentage point greater than the actual rate of interest payable on the obligation (\$47,921).

Example (3). O Corporation is a small advertising company located in the north-eastern United States. Z is a tax-exempt organization. In consideration for the payment of \$60,000, O issues to Z, in a transaction not within the scope of section 503(c), its unsecured 5-year note for \$60,000, together with warrants to purchase 6,000 shares of O stock at \$10 per share at any time during the term of the note. The note is subject to quarterly amortization at the rate of \$3,000 per quarter, and provides for interest on the outstanding unpaid balance at an annual rate of 6 percent payable quarterly (1 1/2 percent per quarter). The fair market values of the notes and warrants are not readily ascertainable. The loan agreement between O and Z contains a recital that if the \$60,000 note had been issued without the warrants only \$45,000 would have been paid for it. An examination of relevant facts indicates that companies in the same industry as O Corporation, and similarly situated both financially and geographically, are able to borrow money on their unsecured notes at an annual interest cost of 8 1/2 percent payable quarterly (2 1/4 percent per quarter). By reference to a present value table, it is found that the present value of O's note discounted to yield 8 1/2 percent compounded quarterly is \$56,608 (rounded). The computation is as follows:

(1)	(2)	(3)	(4)	(5)	(6)
Quarterly interest period	Principal payable	Interest payable (1 1/2%)	Total amount payable (2)+(3)	Factor for present value discounted at 2 1/4% per quarter	Present value of total payment (4)×(5)
1	\$3,000	\$900	\$3,900	0.9792	\$3,818.88
2	3,000	855	3,855	.9588	3,696.17
3	3,000	810	3,810	.9389	3,577.21
4	3,000	765	3,765	.9193	3,461.16
5	3,000	720	3,720	.9002	3,348.74
6	3,000	675	3,675	.8815	3,239.51
7	3,000	630	3,630	.8631	3,133.85
8	3,000	585	3,585	.8452	3,030.04
9	3,000	540	3,540	.8276	2,929.70
10	3,000	495	3,495	.8104	2,832.35
11	3,000	450	3,450	.7935	2,737.58
12	3,000	405	3,405	.7770	2,645.69
13	3,000	360	3,360	.7608	2,556.29
14	3,000	315	3,315	.7450	2,469.68
15	3,000	270	3,270	.7295	2,385.47
16	3,000	225	3,225	.7143	2,303.62
17	3,000	180	3,180	.6994	2,224.09
18	3,000	135	3,135	.6849	2,147.16
19	3,000	90	3,090	.6706	2,072.15
20	3,000	45	3,045	.6567	1,999.65
					56,608.91

This amount (\$56,608) is the assumed price at which the note would have been issued had it been issued without stock purchase warrants. The assumed price of \$45,000 agreed to by the parties is not presumed to be correct since it is less than the face value adjusted to a yield which is one percentage point greater than the actual rate of interest payable on the obligation. The parties did not have adverse interests in agreeing upon an assumed price (since an excessively large amount of original issue discount would benefit O, the borrower, without adversely affecting Z, an exempt organization which would pay no tax on original issue discount income), and the price agreed to appears to be clearly erroneous when compared to the \$56,608 assumed issue price determined under the principles of (a) of this subdivision. Since the maturity value of O's note is \$60,000, the original issue discount on O's note is \$3,392 (\$60,000 minus \$56,608). Under the rules in § 1.163-3, O is entitled to a deduction, to be prorated or amortized over the life of the note, equal to this original issue discount on the note. The excess of the price paid for the unit over the portion of such price allocable to the note, \$3,392 (\$60,000 minus \$56,608), is allocable to and is the basis of the stock purchase warrants acquired by Z in connection with O's note. Upon the exercise or sale of the warrants by Z, O will be allowed no deduction and will have no income.

(d) *Exceptions to the general rule.* Section 1232(a)(2)(B) provides that section 1232(a)(2)(A) does not apply (1) to obligations the interest on which is excluded from gross income under section 103 (relating to certain government obligations), or (2) to any holder who purchased an obligation at a premium. For purposes of section 1232 and this section, "premium" means a purchase price which exceeds the stated redemption price of an obligation at its maturity. For purposes of the preceding sentence, if an obligation is acquired as part of an investment unit consisting of an option and a bond, debenture, note, certificate or other evidence of indebtedness, the purchase price of the obligation is that portion of the price paid or payable for the unit which is allocable to the obligation. The price paid for the unit shall be allocated to the individual elements of the unit on the basis of their respective fair market values. However, if the fair market value of the option is not readily ascertainable (within the meaning of paragraph (c) of § 1.421-6), then the price paid for the unit shall be allocated on the basis of the values assigned to the elements of the unit under paragraph (b)(2)(ii) of this section. If, under chapter 1 of the Code, the basis of an obligation in the hands of the holder is the same, in whole or in part, for the purposes of determining gain or loss from a sale or exchange, as the basis of the obligation in the hands of another person who purchased the obligation at a premium, then the holder shall be considered to have purchased the obligation at a premium. Thus, the donee of an obligation purchased at a premium by the donor will be considered a holder who purchased the obligation at a premium.

[F.R. Doc. 68-10562; Filed, Sept. 3, 1968; 8:45 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Part 722]

EXTRA LONG STAPLE COTTON

Transfer of Allotments

Notice is hereby given that pursuant to the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 1347(f), 1375), the Department proposes to issue an amendment to the regulations in the subpart—Acreage allotments for 1966 and succeeding crops of extra long staple cotton, of Part 722—Cotton, which would establish the procedure for transfers of extra long staple cotton farm allotments beginning with the 1969 crop.

It is proposed to issue new sections at the end of the regulations for Acreage Allotments for 1966 and Succeeding Crops of Extra Long Staple Cotton (31 F.R. 6247, as amended) to read as follows:

TRANSFER OF ALLOTMENTS—SALE, LEASE OR BY OWNER

§ 722.526 Authorization for transfer of allotments beginning with the 1969 crop.

Section 347(f) of the act (Public Law 90-475, 82 Stat. 703, approved Aug. 11, 1968), provides as follows:

(f) Notwithstanding any other provision of law, beginning with the 1968 crop of extra long staple cotton, the Secretary, if he determines that it will not impair the effective operation of the program involved, (1) may permit the owner and operator of any farm for which an extra long staple cotton acreage allotment is established to sell or lease all or any part or the right to all or any part of such allotment to any other owner or operator of a farm for transfer to such farm; (2) may permit the owner of a farm to transfer all or any part of such allotment to any other farm owned or controlled by him. No allotment shall be transferred under this subsection to a farm in another State or to a person for use in another State. The Secretary shall prescribe regulations for the administration of this subsection and may prescribe such terms and conditions as he deems necessary.

It is hereby determined that such transfers of allotment, beginning with the 1969 crop of ELS cotton, will not impair the effective operation of the acreage allotment and marketing quota program for 1969 and succeeding crops of ELS cotton. Accordingly, such transfers of allotment shall be permitted upon approval of applications filed with the applicable county committee in accordance with the provisions of this section and §§ 722.527 to 722.531.

§ 722.527 General explanation.

Three types of transfers of ELS cotton allotment are permitted between farms in the same State subject to the terms and conditions prescribed in §§ 722.526 to 722.531. Transfers by sale would be permanent transfers of allotment, related history and farm base acreage from one farm to another in the same State. Transfers by lease would be transfers

between farms in the same State for one or more years, but for each year of the lease the amount of allotment to be transferred would be determined on the basis of the county factor of the county from which the allotment was transferred and upon expiration of the lease the transferred allotment would be considered for purposes of establishing future allotments to have been planted on the farm from which the allotment was transferred. Transfers by an owner to any other farm owned or operated by him in the same State would be either permanent (treated as a sale) or temporary (treated as a lease). All three types of transfers would be subject to productivity adjustments.

§ 722.528 Applications for transfer.

(a) *Persons eligible to file applications for transfer—(1) Sale or lease.* The owner and operator of any old ELS cotton farm, as defined in § 722.504(b)(12), for which an ELS cotton allotment is or will be established for the year in which the transfer by sale or lease is to take effect shall be eligible to file an application for transfer by sale or lease of all or part of such allotment to any other farm in the same county or to any other farm in another county designated for the production of ELS cotton in § 722.509(b) within the same State. If the owner and operator of the farm from which transfer by sale or lease is to be made are different persons, both such persons shall execute the application.

(2) *By owner.* The owner of any old ELS cotton farm, as defined in § 722.504(b)(12), for which an ELS cotton allotment is or will be established for the year in which the transfer is to take effect shall be eligible to file an application for transfer by owner of all or part of such allotment to another farm owned or controlled by such owner in the same county or in another county designated for the production of ELS cotton in § 722.509(b) within the same State. The county committee shall approve a transfer under this subparagraph requested on a nonpermanent basis to a farm controlled but not owned by the applicant only if such applicant will be the operator of the farm to which transfer is to be made for each of the years for which the transfer is requested. However, if the county committee determines that the applicant is prevented from remaining the operator of such farm for which such transfer has been approved due to conditions beyond his control, the transfer shall remain in effect. Conditions beyond his control shall include, but are not limited to, death, illness, incompetency, or bankruptcy of such person.

(b) *When applications to be filed.* Applications shall be filed during the period beginning with the date of mailing of notices of farm acreage allotments in the county for the crop year of ELS cotton for which the transfer is to take effect and ending on March 1 of such crop year, both dates inclusive, or such later date established by the State committee and approved by the Deputy Administrator which shall be not

later than the end of the normal planting period for ELS cotton in the area.

(c) *Where applications to be filed.* Applications shall be filed with the county committee of the county where the farm from which the allotment is to be transferred is located, except that in the case of transfers across county lines the applications may be filed with the county committee of the county where the receiving farm is located and such county committee shall forward a copy of the application to the county committee of the county where the transferring farm is located.

§ 722.529 Amount of allotment transferable.

(a) *Farm allotment.* All or any part of the ELS cotton allotment established for a farm may be transferred as provided under §§ 722.526 to 722.531 except that (1) acreage allotment reapportioned to a farm under section 344 (m) (2) of the act shall not be transferred and (2) no transfer of allotment shall be made from a farm which received a new farm ELS cotton allotment in the current year or within the three immediately preceding crop years.

(b) *Productivity adjustments—(1) Reduction in farm allotments being transferred.* If the finally determined projected yield for the farm to which transfer is made for the year the transfer is to take effect exceeds the projected yield for the farm from which transfer is made for the year the transfer is to take effect by more than 10 percent, the allotment so transferred shall be reduced for differences in farm productivity. If a yield is revised as a result of an appeal after a transfer has been approved, the productivity adjustment shall be redetermined for the current year if the determination is made prior to the end of the normal planting period for the area. The county committee shall determine the amount of allotment to be transferred by sale, lease, and by owner, where productivity adjustment is required under this paragraph as follows: (i) Divide the yield of the receiving farm by the yield of the transferring farm, then (ii) divide the allotment to be transferred by the percentage quotient so obtained. The amount of allotment so transferred from a farm shall be the full amount and the amount of allotment so transferred to a farm shall be the reduced amount. In the case of temporary transfers of allotment for one or more years by lease or by owner, the productivity adjustment and amount of allotment so transferred shall be redetermined by the county committee each year the transfer remains in effect.

(2) *Adjustment in farm history acreage.* The farm history acreage for the immediately preceding 5 years on farms from which and to which permanent transfers of allotment are made shall be adjusted by the county committee for each of the base years to correspond with the amount of allotment transferred between the farms. In the case of temporary transfers of allotment for 1 or more years by lease or owner, there shall be

no reduction in farm history acreage on the farm from which the transfer is made and no farm history acreage shall be transferred to the receiving farm. The net loss in history acreage, if any, resulting from productivity adjustments for transfers in the same county and across county lines shall be determined by the State committee.

(3) *Adjustments in county history acreage.* The county history acreage for the 5-year base period shall be adjusted by the State committee for each of the base years to correspond with the adjustments in farm history acreages under subparagraph (2) of this paragraph.

(4) *Adjustment in State history acreage.* The State committee shall determine the State history acreage for each of the 5 base years by adjusting the totals of previously reported county history acreages to reflect permanent transfers of history acreage, as adjusted under subparagraph (3) of this paragraph, among farms within the same county and from one county to another.

(5) *Acreage regarded as planted to ELS cotton in the State.* For purposes of establishing future State acreage allotments only and not for purposes of establishing future county allotments, the net losses of county history acreage as determined under subparagraph (3) of this paragraph shall be regarded as planted to ELS cotton.

(d) *Sale and lease transfers—limit on amount of acreage transferred.* The total ELS cotton allotment which may be transferred to a farm by sale and lease cumulated for the 1969 and succeeding crops shall not exceed the smaller of (1) the available cropland on the farm, or (2) one hundred acres. The available cropland on the farm for purposes of such transfers shall be the total cropland, as defined in Part 719 of this chapter, on the farm less the total of the allotments, feed grain base, and sugar proportionate shares established for the farm for the current year. Producers wishing to transfer ELS cotton allotment to a farm may choose to reduce the feed grain base, sugar proportionate shares, or other allotments on the farm to the extent necessary to meet the requirements of this section by making written application to the county committee. If the farm to which the allotment is to be transferred is made up of two or more separately owned tracts, each separately owned tract shall be considered a farm for purposes of computing this limitation except where the county committee, with the approval of a representative of the State committee, determines that an owner of a tract has an ownership interest in one or more of the other tracts by reason of ownership of stock in a corporation which owns such other tract, or by reason of membership as a partner in a partnership which owns the other tract, or the owner of a tract is a member of the same family living in the same household and the other tract is owned by another member of the same family.

(e) *Transfer of pooled allotments.* Allotments established for a farm as pooled

allotment under section 378 of the act may be transferred under §§ 722.526 to 722.531 on a permanent basis during the 3-year life of the pooled allotment or for a term of years not to exceed the remaining number of crop years of such 3-year period.

§ 722.530 Additional conditions and limitations.

(a) *Consent of lienholder.* No transfer under §§ 722.526 to 722.531 shall be made from a farm subject to a mortgage or other lien unless the transfer is agreed to in writing by the lienholder, except that such consent of lienholder shall not be required in the case of a temporary transfer for a one year period by lease or by owner.

(b) *No permanent transfers by sale or by owner from farms to which transfer by sale or by owner within 3 years.* No permanent transfer by sale or by owner shall be made from any farm to which allotment was permanently transferred by sale or by owner within the 3 immediately preceding crop years.

(c) *New farm eligibility.* Any farm from which the entire farm allotment is transferred on a permanent basis under §§ 722.526 to 722.531 shall not be eligible for a new cotton farm allotment during the 5 years following the year in which such transfer is made.

(d) *Farms in conservation programs.* Transfer by sale or lease from a farm covered by a conservation reserve contract, cropland conversion agreement, cropland adjustment agreement, or other similar land utilization agreement shall be made subject to an appropriate adjustment in the rates of payment under such contract or agreements but no adjustment shall be made in such contract or agreements on the farm to which transfer by sale or lease is made.

(e) *Subleasing prohibited.* No transfer by lease shall be made from a farm receiving allotment under a transfer by lease for the term of the latter lease.

(f) *Limitation on transfers to and from a farm in the same year.* No transfer of allotment under §§ 722.526 to 722.531 for any year shall be made (1) from a farm receiving allotment by transfer thereunder for such year, or (2) to a farm which has had allotment transferred from it thereunder for such year.

(g) *Transfer of acreage history, farm base, and marketing quota.* Transfer of allotment under §§ 722.526 to 722.531 shall have the effect of transferring the acreage history, farm base, and marketing quota attributable to such allotment, except that in the case of transfer by lease and temporary transfer by owner for a term of years, the amount of allotment so transferred shall be determined for each year of the transfer period on the basis of the county factor of the county from which transferred and upon the expiration of the transfer period the transferred allotment shall be considered for purposes of establishing future allotments to have been planted on the farm from which such allotment is transferred.

(h) *Conserving base requirement on the farm from which a transfer of allotment by owner is made.* The transfer of

PROPOSED RULE MAKING

an allotment by an owner shall be conditioned on the farm from which such transfer is made being in compliance with the conserving base established for such farm for (1) the period of time that compliance with the conserving base is required as a condition of eligibility for participating in a price support or diversion program for ELS cotton, upland cotton, feed grain or wheat, or (2) if shorter, the period of time that the transfer of allotment for a term of years remains in effect.

(i) *Federally owned land.* No transfer by sale or lease under §§ 722.526 to 722.531 shall be made from any land owned by the United States, or any agency or instrumentality wholly owned by the United States.

§ 722.531 County committee action.

(a) *Approval of transfers.* The county committee shall approve transfers of allotment only if it determines that a timely filed application has been received and that the transfer complies with the requirements of §§ 722.526 to 722.530 and this section. If the transfer is made between counties, the approval of both county committees shall be required. No transfer under §§ 722.526 to 722.531 shall be effective until approval as provided under this paragraph is obtained.

(b) *Notice of revised allotments.* The county committee shall issue revised notices of farm allotment for each farm affected by the transfer of allotment.

(c) *Cancellation, withdrawal, or revision of transfer agreements—(1) Cancellation.* If the county committee determines that the conditions applicable to any transfer of allotments under §§ 722.526 to 722.531 have not been met, the county committee shall cancel the transfer and issue revised notices of allotment showing the reasons for cancellation.

(2) *Withdrawal or minor revisions.* Where the county committee determines that it is clearly in the best interest of all the producers and that effective operation of the program will not be impaired, the county committee may permit withdrawal or minor revisions of transfers upon written request by all parties to the transfer: *Provided, That:* (i) Temporary transfers may be withdrawn or revised during any year of the agreement before ELS cotton is planted, and (ii) permanent transfers may be withdrawn or revised only during the first year of the agreement before ELS cotton is planted.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed amendment to the Director, Farmer Programs Division, Agricultural Stabilization and Conservation Service, Washington, D.C. 20250, within 15 days after date of publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR § 1.27(b)).

Signed at Washington, D.C., on August 28, 1968.

E. A. JAENKE,
Acting Administrator, Agricultural
Stabilization and Conservation Service.

[F.R. Doc. 68-10641; Filed, Sept. 3, 1968;
8:49 a.m.]

DEPARTMENT OF COMMERCE

Maritime Administration

[46 CFR Part 284]

RESIDUAL VALUE OF VESSELS

Adjustments for Depreciation; Extension of Time for Comments

In F.R. Doc. 68-8788 (33 F.R. 10459, July 23, 1968), comments were invited to be submitted by close of business on September 30, 1968, relative to the proposed amendment of § 284.2(f) by adding a new subdivision (ii) to subparagraph (1) which would contain a basis for computing depreciation on and after January 1, 1969, as outlined therein.

Notice is hereby given that the time within which comments may be submitted is extended from September 30, 1968, to close of business on October 15, 1968.

Dated: August 30, 1968.

By order of the Acting Maritime Administrator and the Maritime Subsidy Board.

JOHN M. O'CONNELL,
Assistant Secretary.

[F.R. Doc. 68-10663; Filed, Sept. 3, 1968;
8:49 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 19]

PROVOLONE CHEESE, IDENTITY STANDARD

Optional Use of Liquid Smoke Product and Change of Label Declaration

Notice is given that a petition has been filed by National Cheese Institute, Inc., 110 North Franklin Street, Chicago, Ill. 60606, proposing that the standard of identity for provolone cheese, pasta filata cheese (21 CFR 19.590) be amended to permit the optional addition of a substance prepared by condensing or precipitating wood smoke.

The current standard does not require that provolone cheese smoked by direct exposure to wood smoke be labeled to that effect; however, the name of provolone cheese not so smoked is required to include the words "not smoked."

In the event of an affirmative ruling on the proposal to provide for the optional addition of the substance prepared by condensing or precipitating wood smoke,

and in order to avoid confusion among the three categories of provolone cheese that would then exist, the petitioner further proposes that the names of the three resulting products include as part of the name the following:

1. "Smoked" for that which is treated with wood smoke.

2. "With added smoke flavoring," or alternatively "with added _____," the blank being filled in with the common or usual name of the ingredient, for that which has added to it a substance prepared by condensing or precipitating wood smoke.

3. "Not smoked" for that which is neither smoked nor has added to it a substance prepared by condensing or precipitating wood smoke.

Grounds given in the petition in support of the proposal are that experience indicates that provolone cheese made with condensed or precipitated wood smoke has characteristics comparable to those achieved when the cheese is smoked by direct exposure to wood smoke. Also, such standardized cheese products as pasteurized process cheese (21 CFR 19.750), pasteurized process cheese food (21 CFR 19.765), and pasteurized process cheese spread (21 CFR 19.775) are already permitted to contain certain substances prepared by condensing or precipitating wood smoke.

On his own initiative the Commissioner of Food and Drugs proposes, in the event of an affirmative ruling on the proposal as it concerns the optional addition of condensed or precipitated wood smoke, that: (1) The subject ingredient be limited to only the water soluble substance prepared by condensing or precipitating wood smoke in water; (2) the name of the food to which the subject ingredient has been added be immediately followed by the words "with added smoke flavoring"; (3) if the cheese is smoked the name of the food be immediately preceded or followed by the word "smoked"; and (4) the effective date be 6 months after publication of such ruling in the FEDERAL REGISTER. Such an effective date should afford ample time for the supplier to obtain and have available for use a stock of labels that are identifiable with each of the categories of provolone cheese he plans to produce.

Accordingly, it is proposed that § 19.590 *Provolone cheese, pasta filata cheese; identity; label statement of optional ingredients* be amended:

1. In paragraph (b) by changing the sentence "Provolone cheese may be smoked" to read "Provolone cheese may be smoked or it may have added to it a clear aqueous solution prepared by condensing or precipitating wood smoke in water."

2. By revising paragraphs (e) (1) and (3) to read as follows:

(e) (1) The name "provolone cheese" ("pasta filata cheese") may include the common name of the shape of the cheese, such as "salami provolone." If provolone cheese is not smoked, the name includes the words "not smoked." If provolone cheese is smoked, the name is immedi-

ately preceded or followed by the word "smoked" without intervening written, printed, or graphic matter. If a clear aqueous solution prepared by condensing or precipitating wood smoke in water is added to the provolone cheese, the name is immediately followed by the words "with added smoke flavoring" with all words in this phrase of the same type size, style, and color without intervening written, printed, or graphic matter.

(3) Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words and statements prescribed by this section, showing the optional ingredient used, shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter, except for the statements "smoked" or "with added smoke flavoring," as applicable, as set forth in subparagraph (1) of this paragraph.

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and in accordance with the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), all interested persons are invited to submit their views in writing (preferably in quintuplicate) regarding this proposal within 60 days following the date of publication of this notice in the FEDERAL REGISTER. Such views and comments should be addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, and may be accompanied by a memorandum or brief in support thereof.

Dated: August 27, 1968.

J. K. KIRK,
Associate Commissioner,
for Compliance.

[F.R. Doc. 68-10635; Filed, Sept. 3, 1968;
8:48 a.m.]

[21 CFR Part 46]

PACKAGED NUTS

Notice of Proposal To Establish Standards of Identity and Fill of Container

Notice is given that the Commissioner of Food and Drugs, on his own initiative, proposes to establish definitions and standards of identity for mixed nuts without peanuts, mixed nuts, and peanuts with mixed nuts and a standard of fill of container for these and other packaged nut products. Accordingly it is proposed that four new sections be added to Part 46, as follows:

§ 46.51 Mixed nuts without peanuts; identity; label statement of optional ingredients.

(a) Mixed nuts without peanuts is the food consisting of a mixture of five or more optional shelled nut ingredients of the kind and in the quantity prescribed by paragraph (b) of this section. For the

purposes of this section, each kind of nut is an optional ingredient that may be prepared by any suitable method in accordance with good manufacturing practice. The finished food may contain one or more of the optional ingredients provided for in paragraph (c) of this section.

(b) The optional nut ingredients referred to in paragraph (a) of this section are almonds, black walnuts, brazil nuts, cashews, English walnuts, filberts, pecans, and other suitable kinds of tree nuts. Each such kind of nut when used shall be present in a quantity of not less than 2 percent by weight of the mixture.

(c) The food may be dry roasted or cooked in any suitable vegetable oil. The finished food may contain one or more of the following optional ingredients:

- (1) Salt.
- (2) Monosodium glutamate.
- (3) Gum arabic.

(4) Dimethylpolysiloxane, used in accordance with the provisions of § 121.1099 of this chapter, as an antifoaming agent in the oil used.

(5) One or more of the following antioxidant preservatives in a quantity not in excess of that required to accomplish their intended purpose and in accordance with any applicable tolerances and limitations specified in § 121.101 of this chapter. They may be added in admixture with the salt or oil used.

- (i) Citric acid, alone or in a carrier of propylene glycol.
- (ii) Propyl gallate.
- (iii) Butylated hydroxytoluene.
- (iv) Butylated hydroxyanisole.

(d) The name of the food is "mixed nuts without peanuts."

(e) (1) Optional nut ingredients, and optional nonnut ingredients as provided for in paragraph (c) (1), (2), (3), and (4) of this section, used in the food shall be declared by their common names in the order of decreasing predominance by weight. Vegetable oils used shall be declared by words "vegetable oil," or alternatively "_____ oil," the blank being filled in with the name of the vegetable source(s) of the oil.

(2) When antioxidant preservatives from any source are used in the finished food, as provided for by paragraph (c) (5) of this section, the label shall bear the statement "_____ added as a preservative" or "_____ added to inhibit rancidity," the blank being filled in with the name or names of the preservative(s) used.

(f) Statements naming the optional ingredients present as specified in paragraph (e) of this section shall be listed on the principal display panel or panels of the label with such prominence and conspicuousness as to render them likely to be read and understood by the ordinary individual under customary conditions of purchase. Statements naming the optional nut ingredients shall immediately precede or follow the name of the food without intervening written, printed, or graphic matter. If the label bears any pictorial representation of the food, it shall accurately depict the rela-

tive amounts of the nut ingredients of the food.

§ 46.52 Mixed nuts; identity; label statement of optional ingredients.

(a) Mixed nuts is the food consisting of a mixture of one or more of the optional peanut ingredients and four or more of the shelled tree nut ingredients of the kind and in the quantity prescribed by paragraph (b) of this section. For the purposes of this section each kind of nut is an optional ingredient that may be prepared by any suitable method in accordance with good manufacturing practice. The finished food may contain one or more of the optional ingredients provided for in paragraph (c) of this section.

(b) The optional nut ingredients referred to in paragraph (a) of this section and the percent by weight of each in the mixture are as follows:

(1) Peanuts of the runner, Spanish, or Virginia varieties, or any combination of two or all three varieties, in a quantity singly or combined not to exceed 50 percent by weight of the finished food.

(2) Almonds, black walnuts, brazil nuts, cashews, English walnuts, filberts, pecans, and other suitable kinds of tree nuts. Each such kind of nut when used shall be present in a quantity not less than 2 percent by weight of the finished food.

(c) The food may be dry roasted or cooked in any suitable vegetable oil. The finished food may contain one or more of the following optional ingredients:

- (1) Salt.
- (2) Monosodium glutamate.
- (3) Gum arabic.

(4) Dimethylpolysiloxane, used in accordance with the provisions of § 121.1099 of this chapter, as an antifoaming agent in the oil used.

(5) One or more of the following antioxidant preservatives in a quantity not in excess of that required to accomplish their intended purpose and in accordance with any applicable tolerances and limitations specified in § 121.101 of this chapter. They may be added in admixture with the salt or oil used:

- (i) Citric acid, alone or in a carrier of propylene glycol.
- (ii) Propyl gallate.
- (iii) Butylated hydroxytoluene.
- (iv) Butylated hydroxyanisole.

(d) The name of the food is "mixed nuts."

(e) (1) Optional nut ingredients, and optional nonnut ingredients as provided for in paragraph (c) (1), (2), (3), and (4) of this section, used in the food shall be declared by their common names (including the varietal name or names of the peanut ingredient(s)) in the order of decreasing predominance by weight. Vegetable oils used shall be declared by the words "vegetable oil," or alternatively "_____ oil," the blank being filled in with the name of the vegetable source(s) of the oil.

(2) If the peanut ingredient or ingredients, as provided for in paragraph (b) (1) of this section, are unblanched the label shall show that fact by such

statement as "peanuts unblanched (skins left on)."

(3) When antioxidant preservatives from any source are used in the finished food, as provided for by paragraph (c) (5) of this section, the label shall bear the statement "_____ added as a preservative" or "_____ added to inhibit rancidity," the blank being filled in with the names of the preservatives used.

(f) Statements naming the optional ingredients present as specified in paragraph (e) of this section shall be listed on the principal display panel or panels of the label with such prominence and conspicuousness as to render them likely to be read and understood by the ordinary individual under customary conditions of purchase. Statements naming the optional nut ingredients shall immediately precede or follow the name of the food without intervening written, printed, or graphic matter. If the label bears any pictorial representation of the food, it shall accurately depict the relative amounts of the nut ingredients of the food.

§ 46.53 Peanuts with mixed nuts; identity; label statement of optional ingredients.

(a) Peanuts with mixed nuts conforms to the definition and standard of identity and is subject to the requirements for label statement and pictorial representation of optional ingredients, prescribed for mixed nuts by § 46.52, except that the peanut ingredient is present in a quantity of more than 50 percent but not more than 75 percent by weight of the mixture.

(b) The name of the food is "peanuts with mixed nuts."

§ 46.54 Shelled nuts in rigid containers; fill of container; label statement of substandard fill.

(a) The standard of fill for shelled nuts in rigid containers is a fill such that the average volume of nuts is not less than 90 percent of the container volume as determined by the methods in paragraph (b) of this section.

(b) The method for determining the average volume of nuts, the container volume, and the percent of fill is as follows:

(1) For the shelled nuts in each container determine the "loose volume," the "settled volume," and the "average volume" in cubic centimeters. For the purposes of this subparagraph consider volume in milliliters to be numerically equal to volume in cubic centimeters. Open the container and pour the nuts loosely into a graduated cylinder of appropriate size. (If the "loose volume" of the nuts is less than 500 milliliters, use a 500-milliliter cylinder with a diameter of approximately 1 7/8 inches; but if the "loose volume" is 500 milliliters or more, use a 1,000-milliliter cylinder with a diameter of approximately 2 3/8 inches.) Without shaking the cylinder read the volume of the nuts and record as the "loose volume." Then tap the cylinder five times to settle the nuts. Each tap is

done by raising the cylinder 2 inches and letting it drop on a level, firm, but resilient surface. After five taps record the volume. Repeat in successive five-tap increments until the nuts have so settled that the volume decreases less than 2 percent in the last five-tap increment. Record the last volume of the nuts as the "settled volume." The arithmetical average of the "loose volume" and the "settled volume" equals the "average volume" of nuts.

(2) Classify the container by shape and determine its volume in cubic centimeters according to one of the following methods as appropriate:

(i) For rigid containers of irregular shape, including glass jars, follow the general method for water capacity of containers as prescribed in § 10.6(a) of this chapter and determine the container volume, considering the water capacity in grams to be numerically equivalent to volume in cubic centimeters, or the water capacity in ounces (avoirdupois) to be equivalent to 28.35 cubic centimeters per ounce.

(ii) For box-shaped containers (that is, with opposite sides parallel), measure the inside height, width, and depth and calculate the volume as the product of these three dimensions.

(iii) For cylindrical containers, calculate the container volume in cubic centimeters as 12.87 times the product of the height times the diameter squared, both measured in inches; or as 0.7854 times the product of the height times the diameter squared, when measured in centimeters. For containers that do not have indented ends take the inside diameter and height as the dimensions. For containers with indented ends (that is, metal cans with ends attached by double seams) consider the height to be the outside height at the double seam minus three-eighths inch and the diameter to be the outside diameter at the double seam minus one-eighth inch.

(3) Calculate the percent fill of the container as follows: Divide the average volume of nuts found according to subparagraph (1) of this paragraph by the appropriate container volume found according to subparagraph (2) of this paragraph and multiply by 100. The result shall be considered to be the percent fill of the container.

(c) If the fill of the shelled nuts in rigid containers falls below the standard of fill of container prescribed in paragraph (a) of this section, the label shall bear the general statement of substandard fill specified in § 10.7(b) of this chapter, in the manner and form therein specified.

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and in accordance with the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), all interested persons are invited to submit their views in writing (preferably in quintuplicate) regarding this proposal within 60 days following the date of publication of

this notice in the **FEDERAL REGISTER**. Such views and comments should be addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington, D.C. 20201, and may be accompanied by a memorandum or brief in support thereof.

Dated: August 27, 1968.

J. K. KIRK,
Associate Commissioner
for Compliance.

[F.R. Doc. 68-10636; Filed, Sept. 3, 1968;
8:48 a.m.]

**Social and Rehabilitation Service
[42 CFR Part 208]**

**SPECIAL PROJECT GRANTS FOR
FAMILY PLANNING SERVICES**

Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Administrator, Social and Rehabilitation Service, with the approval of the Secretary of Health, Education, and Welfare. The proposed regulations relate to the program of special project grants for family planning services authorized by section 508 of the Social Security Act, 42 U.S.C. 708.

Prior to the adoption of the proposed regulations, consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Administrator, Social and Rehabilitation Service, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington, D.C. 20201, within a period of 30 days from the date of publication of this notice in the **FEDERAL REGISTER**.

The proposed regulations are to be issued under the authority contained in section 1102, 49 Stat. 647, 42 U.S.C. 1302; section 508, 81 Stat. 926, 42 U.S.C. 708.

Dated: August 5, 1968.

[SEAL] MARY E. SWITZER,
Administrator, Social and
Rehabilitation Service.

Approved: August 27, 1968.

WILBUR J. COHEN,
Secretary.

Chapter II of Title 42 of the Code of Federal Regulations is amended by adding a new Part 208.

This part is added to provide regulations for the program of special project grants for family planning services authorized by section 508 of the Social Security Act, 42 U.S.C. 708 (as amended by section 301 of the Social Security Amendments of 1967 (P.L. 90-248)).

Federal financial assistance extended under this part is subject to the Regulations in 45 CFR Part 80, issued by the Secretary of Health, Education, and Welfare, and approved by the President, to effectuate the provisions of section 601 of the Civil Rights Act of 1964 (42 U.S.C. 2000d).

PART 208—SPECIAL PROJECT GRANTS FOR FAMILY PLANNING SERVICES

§ 208.1 Purpose.

In order to provide families the freedom of choice to determine the number and spacing of their children, to promote the health of mothers and children, and to help reduce maternal and infant mortality, the Children's Bureau is authorized to make grants for projects for the provision of family planning services.

§ 208.2 Definitions.

As used in this part:

(a) "State" means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(b) "Department" means the United States Department of Health, Education, and Welfare.

(c) "Bureau" means the Children's Bureau of the Social and Rehabilitation Service.

§ 208.3 Eligibility for grants.

The Bureau is authorized to make grants under this part:

(a) To the State health agency of any State,

(b) With the consent of such agency, to the health agency of any political subdivision of the State, and

(c) To any other public or nonprofit private agency, institution, or organization.

§ 208.4 Application.

(a) Any applicant for a grant under this part may file application therefor with the Regional Commissioner of the Social and Rehabilitation Service, for the region of the Department in which the project is to be conducted, on such forms and containing such information as the Bureau may prescribe. The application shall contain a budget and a narrative plan of the way the applicant intends to conduct the project and carry out the requirements of this part. A revision of the budget and project plan is required whenever there is to be a significant change in the scope of project activities.

(b) The application shall be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of the grant, including this part and the policies and procedures for these grants.

(c) The applicant will be notified of action taken on his application. If a grant is made, the initial award will specify the project period for which support is contemplated if the activity is satisfactorily carried out and Federal funds are available. For continuation support, grantees must make separate application annually.

§ 208.5 Matching requirements.

Federal funds will be granted on the basis of project applications and will not exceed 75 percent of the cost of the project. The non-Federal participation may

be derived from a variety of sources, including (a) new State or local appropriations or other new grantee funds, and (b) existing funds and time of personnel used for the on-going activities of the grantee agency which are made a part of the project. Services or space donated to the project may not be included as a grantee contribution. Grantee funds or services derived from other Federal funds or used for matching any other Federal grant may not be used to match the Federal funds in this program.

§ 208.6 Personnel and facilities standards.

For each position included in the project, the application shall state the requirements of training and experience necessary for employment and an outline of the duties to be performed. Personnel and facilities to be used in the provision of services must (a) be the best available for the attainment of the objectives of the program, (b) assure a high standard of care, and (c) be in accord with national standards accepted by the Social and Rehabilitation Service or with standards prescribed by the Social and Rehabilitation Service. However, if a project is planned for an area in which it is not possible to meet such standards, the best available resources must be used, and steps must be taken to improve the care. The application must include a description of such steps.

§ 208.7 Availability of services.

Services in the project must be available:

(a) Without any requirement for legal residence except that the person or family is currently living in the area served by the project,

(b) Upon referral from any source including the patient's own application,

(c) With respect for the dignity of the individual,

(d) With efficient administrative procedures for registration, avoiding prolonged waiting and multiple visits for registration,

(e) Without regard to race, religion, national origin, or maternity or marital status, and

(f) Only to persons who are of low income or who for other reasons beyond their control could not obtain services comparable to those provided under the project. However, if specific income standards are used, they must be applied flexibly, with due regard for total family needs in the particular case. Determinations of eligibility for services under the project shall be made by the project director or someone on the project staff designated by him, and shall be made in accordance with this section, policies and procedures governing the project, and the project plan and budget as approved.

§ 208.8 Provision of services.

(a) Acceptance of services under the project must be voluntary, and individuals must not be subjected to any coercion to receive services, or to employ or not to employ any particular method

of family planning. Acceptance of family planning services shall not be a prerequisite to eligibility for or receipt of any other services.

(b) Measures must be taken to promote community understanding of the objectives of the program, to make the availability of services known to the community, and to encourage and facilitate attendance in the program.

(c) The project must be coordinated with related services of the local health and welfare departments, hospitals and related voluntary agencies, and health projects supported by the Office of Economic Opportunity. Where appropriate, there should be referral arrangements with local welfare departments for services to persons under the Aid to Families With Dependent Children Program.

(d) The program must include counselling, and interpretation to individuals of the services provided.

(e) Family planning medical services should be under the direction and responsibility of a physician with special training or experience in family planning.

(f) Projects are to be designed to assure comprehensiveness and continuity in the health management and supervision of project patients with respect to family planning services.

(g) A variety of medically approved methods of family planning, including the rhythm method, must be available to persons to whom family planning services are offered and provided.

(h) Diagnostic and treatment services for infertility must be provided for in the family planning project.

§ 208.9 Payment for services.

(a) Project plans shall set forth the methods utilized by the grantee in establishing the rates of payment for medical care, and in substantiating that the rates are reasonable and necessary to maintain standards relating to the provision of services established pursuant to § 208.6. Grantees will maintain a schedule of rates for such services.

(b) All services purchased for project patients must be authorized by the project director or his designee on the project staff.

(c) No charge shall be made to any person or family for services under the project, except for inpatient hospital care and physicians' services rendered in hospitals, and then only to the extent that payment will be made by a third party (including a government agency) which is authorized or is under legal liability to pay such charges.

§ 208.10 Confidentiality of information.

All information as to personal facts and circumstances obtained by the project staff shall constitute privileged communications, shall be held confidential, and shall not be divulged without the individual's consent except as may be necessary to provide services to the individual. Information may be disclosed in summary, statistical, or other form which does not identify particular individuals.

§ 208.11 Project expenditures.

(a) Project funds (Federal and matching) are available for the direct costs of operating and maintaining the project approved in the plan and budget.

(b) Funds may not be used for the following:

- (1) Construction of buildings;
- (2) Depreciation of existing building or equipment;
- (3) Dues to societies, organizations, or federations;
- (4) Entertainment costs;
- (5) General agency overhead;
- (6) Fund raising material or activities;
- (7) Consultants or other personnel paid from other Federal grant funds;
- (8) Any other costs not approved in the plan and budget.

§ 208.12 Interest.

Interest earned on Federal funds must be returned to the Federal government. Any other income from the operation of a project must be divided between the Federal government and the grantee in proportion to the contribution of each to the support of the project.

§ 208.13 Equipment.

Items of equipment purchased with project funds are to be used for the purposes of the project, and the grantee shall maintain complete equipment inventory and adequate property controls.

§ 208.14 Control of project funds or services.

Funds or services made available to the project for project purposes, whether or not utilized to meet the grantee's share of the costs, shall be under the control of the grantee and expended and utilized in accordance with this part, policies and procedures governing the project, and the project plan and budget as approved.

§ 208.15 Effect of State or local law.

Except as otherwise authorized, where the grantee is a public agency the provisions of State or local law applicable to the moneys appropriated to the public agency shall apply to the project funds.

§ 208.16 Termination.

A grant may be terminated in whole or in part at any time at the discretion of the Administrator of Social and Rehabilitation Service. Noncancelable obligations of the grantee properly incurred prior to the receipt of the notice of termination will be honored. The grantee shall be promptly notified of such termination in writing and given the reasons therefor.

§ 208.17 Records and reports.

(a) The grantee shall maintain such records, including medical, fiscal, and other health records, and make such reports, as the Bureau may prescribe.

(b) All fiscal transactions by a grantee relating to grants under this part are subject to audit by the Department to determine whether expenditures have been made in accordance with this part, policies and procedures governing the project, and the project plan and budget as approved.

§ 208.19 Copyright.

The Government of the United States reserves a royalty free, nonexclusive license to use and authorize others to use all copyrightable or copyrighted material resulting from a project.

§ 208.20 Effect of payment.

Neither the approval of a project plan nor any certification of funds or payment to a grantee pursuant thereto shall be deemed to waive the obligation of the grantee to observe before or after such

action any Federal requirements, or to waive the right or duty of the Administrator of Social and Rehabilitation Service to withhold funds for noncompliance with Federal requirements.

Effective date. The regulations in this part shall be effective on the date of their publication in the *FEDERAL REGISTER*.

[F.R. Doc. 68-10637; Filed, Sept. 3, 1968; 8:48 a.m.]

FEDERAL MARITIME COMMISSION

[46 CFR Part 514]

[Docket No. 67-57]

**SIGNIFICANT VESSEL OPERATING
COMMON CARRIERS IN DOMESTIC
OFFSHORE TRADE; REPORTS OF
RATE BASE AND INCOME AC-
COUNT**

**Enlargement of Time for Filing
Answers**

Several requests have been received for extensions of time within which to file answers to Hearing Counsel's reply in this proceeding, currently due August 30, 1968. The requests vary from 30 to 60 days.

The Commission is of the opinion that a certain extension of time is warranted. Accordingly, answers may be filed on or before September 20, 1968. Such an extension gives the parties the same amount of time as Hearing Counsel received to file reply.

By the Commission.

[SEAL]

THOMAS LISI,
Secretary.

[F.R. Doc. 68-10621; Filed, Sept. 3, 1968; 8:47 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1968 Rev., Supp. No. 1]

FARMERS ELEVATOR MUTUAL INSURANCE CO.

Surety Company Acceptable on Federal Bonds

A certificate of authority as an acceptable surety on Federal bonds has been issued by the Secretary of the Treasury to the following company under sections 6 to 13 of title 6 of the United States Code. An underwriting limitation of \$35,000 has been established for the company.

Name of company, location of principal executive office, and State in which incorporated

Farmers Elevator Mutual Insurance Co.
Des Moines, Iowa
Iowa

Certificates of authority expire on June 30 each year, unless sooner revoked, and new certificates are issued on July 1 so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact fidelity and surety business and other information. Copies of the circular, when issued, may be obtained from the Treasury Department, Bureau of Accounts, Audit Staff, Washington, D.C. 20226.

Dated: August 29, 1968.

[SEAL] H. A. RABON,
Deputy Fiscal Assistant Secretary.

[F.R. Doc. 68-10610; Filed, Sept. 3, 1968; 8:46 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial M 8905]

MONTANA

Notice of Classification of Public Lands for Multiple Use Management

AUGUST 26, 1968.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411-18) and the regulations in 43 CFR Parts 2410 and 2411, the public lands within the area described below are hereby classified for multiple-use management. Publication of this notice has the effect of segregating the described lands from appropriation only under the Agricultural Land Laws (43 U.S.C. Parts 7 and 9; 25 U.S.C. sec. 334), and from sales under section 2455 of the Revised Statutes (43 U.S.C. 1171)

and the lands shall remain open to all other applicable forms of appropriation including the mining and mineral leasing laws. As used herein "Public Lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

2. No adverse comments were received following publication of the Notice of Proposed Classification (33 F.R. 8353-8354) or at the public hearing held on June 14, 1968 at Lewistown, Mont. The record showing the comments received and other information is on file and can be examined in the Lewistown District Office, Lewistown, Mont.

3. The public lands affected by this classification are located within the following described area and are shown on a map designated by Serial Number M 8905 in the Lewistown District Office, Bureau of Land Management, Bank Electric Building, Lewistown, Mont. 59457, and in the Land Office, Bureau of Land Management, Federal Building, 316 North 26th Street, Billings, Mont. 59101.

The overall description of the Area is as follows:

PRINCIPAL MERIDIAN, MONTANA IN FERGUS, CHOUTEAU, AND JUDITH BASIN COUNTIES

BLOCK A

- T. 20 N., R. 24 E.,
Secs. 1 to 6 inclusive;
Sec. 12, N $\frac{1}{2}$ NE $\frac{1}{4}$.
- T. 21 N., R. 24 E.,
Secs. 19 to 36 inclusive.
- T. 19 N., R. 25 E.,
Secs. 1, 12.
- T. 20 N., R. 25 E.,
Secs. 1, 4, 5, and 6;
Sec. 13, S $\frac{1}{2}$;
Secs. 24, 25, and 26.
- T. 21 N., R. 25 E.,
Secs. 19 to 36 inclusive.
- T. 18 N., R. 26 E.,
Sec. 4, lots 2, 3, 4;
Sec. 5, lot 1.
- T. 19 N., R. 26 E.,
Secs. 1 to 16 inclusive;
Secs. 20 to 24 inclusive;
Sec. 26, N $\frac{1}{2}$ NW $\frac{1}{4}$;
Secs. 28 to 33 inclusive.
- T. 20 N., R. 26 E.,
Secs. 1 to 16 inclusive;
- T. 19 N., R. 27 E.,
Secs. 6, 7, 18, and 19.
- T. 20 N., R. 27 E.,
Secs. 6, 7, 18, 19, 30, and 31.

The public lands described in this block aggregate approximately 32,505 acres.

BLOCK B

- T. 24 N., R. 8 E.,
That portion situated south of Missouri River.
- T. 24 N., R. 9 E.,
Secs. 2, 3, and 4;
Secs. 8 to 12 inclusive;
Secs. 15 to 19 inclusive;
Sec. 30.

- T. 25 N., R. 9 E.,
Sec. 33.
- T. 24 N., R. 10 E.,
Secs. 4 to 7 inclusive.
- T. 25 N., R. 10 E.,
Secs. 1 to 5 inclusive;
Secs. 8 to 12 inclusive;
Secs. 15 to 22 inclusive;
Secs. 27 to 34 inclusive.
- T. 19 N., R. 11 E.,
Secs. 22 to 27 inclusive.
- T. 25 N., R. 11 E.,
Secs. 6 and 7.
- T. 26 N., R. 11 E.,
Secs. 9 to 17 inclusive;
Secs. 19 to 24 inclusive;
Secs. 28 to 31 inclusive.
- T. 19 N., R. 12 E.,
Secs. 1 to 4 inclusive;
Secs. 9 to 17 inclusive;
Sec. 18, SE $\frac{1}{4}$ NE $\frac{1}{4}$;
Secs. 19 to 22 inclusive;
Secs. 27 to 32 inclusive.
- T. 20 N., R. 12 E.,
Sec. 34, SE $\frac{1}{4}$ SE $\frac{1}{4}$.
- T. 25 N., R. 12 E.,
Sec. 1.
- T. 26 N., R. 12 E.,
Secs. 2 to 5 inclusive;
Secs. 7 to 13 inclusive;
Secs. 18, 19, 24, and 25;
Sec. 35, N $\frac{1}{2}$ NE $\frac{1}{4}$;
Sec. 36.
- T. 19 N., R. 13 E.,
Secs. 1 to 10 inclusive;
Sec. 15, NW $\frac{1}{4}$ NW $\frac{1}{4}$;
Secs. 16 to 18 inclusive.
- T. 20 N., R. 13 E.,
Secs. 11 to 14 inclusive;
Secs. 23 to 26 inclusive;
Secs. 34 to 36 inclusive.
- T. 24 N., R. 13 E.,
Secs. 3, 4, 5, 8, 9, 10, 16, and 17;
Sec. 18, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$;
Secs. 20 to 29 inclusive;
Secs. 32 to 36 inclusive.
- T. 25 N., R. 13 E.,
Secs. 4 to 9 inclusive;
Secs. 16 to 21 inclusive;
Secs. 28 to 34 inclusive.
- T. 26 N., R. 13 E.,
Sec. 17, W $\frac{1}{2}$;
Secs. 18 and 19;
Secs. 29 to 32 inclusive.
- T. 20 N., R. 14 E.,
Secs. 1 to 5 inclusive;
Secs. 7 to 22 inclusive;
Sec. 28, NW $\frac{1}{4}$ NW $\frac{1}{4}$;
Secs. 29 to 31 inclusive.
- T. 21 N., R. 14 E.,
Sec. 1, E $\frac{1}{2}$ NE $\frac{1}{4}$;
Sec. 13;
Sec. 14, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Secs. 23 to 26 inclusive;
Secs. 34 to 36 inclusive.
- T. 22 N., R. 14 E.,
Secs. 1 to 6 inclusive;
Secs. 9 to 14 inclusive;
Secs. 23 to 24.
- T. 23 N., R. 14 E.,
That portion of the following sections situated south of Missouri River:
Secs. 4 to 17 inclusive;
Secs. 20 to 29 inclusive;
Secs. 31 to 36 inclusive.
- T. 24 N., R. 14 E.,
That portion of the following sections situated south of Missouri River:
Secs. 30 and 31.

T. 20 N., R. 15 E.,
Secs. 3 to 10 inclusive;
Secs. 17 and 18;
Sec. 19, NW $\frac{1}{4}$ NW $\frac{1}{4}$.

T. 21 N., R. 15 E.,
Secs. 4 to 9 inclusive;
Secs. 16 to 21 inclusive;
Secs. 28 to 33 inclusive.

Tps. 22 and 23 N., R. 15 E.,
That portion situated south of Missouri River.

T. 20 N., R. 16 E.,
Secs. 1 to 5 inclusive;
Sec. 8, N $\frac{1}{2}$;
Sec. 9, N $\frac{1}{2}$;
Sec. 10, N $\frac{1}{2}$;
Sec. 11, N $\frac{1}{2}$.

T. 21 N., R. 16 E.,
Secs. 1 to 4 inclusive;
Secs. 9 to 16 inclusive;
Secs. 21 to 29 inclusive;
Secs. 31 to 36 inclusive.

Tps. 22 and 23 N., R. 16 E.,
That portion situated south of the Missouri River.

T. 20 N., R. 17 E.,
Secs. 3 to 6 inclusive.

T. 21 N., R. 17 E.,
Secs. 5 to 8 inclusive;
Sec. 9, S $\frac{1}{2}$ SW $\frac{1}{4}$;
Secs. 17 to 21 inclusive;
Sec. 22, SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 27, N $\frac{1}{2}$ NW $\frac{1}{4}$;
Secs. 28 to 33 inclusive.

T. 22 N., R. 17 E.,
Secs. 1 to 34 inclusive.

T. 23 N., R. 17 E.,
That portion situated south of Missouri River.

T. 22 N., R. 18 E.,
Secs. 1 to 30 inclusive.

T. 23 N., R. 18 E.,
That portion situated south of Missouri River.

T. 22 N., R. 19 E.,
Secs. 3 to 7 inclusive;
Secs. 18 and 19;
Sec. 20, W $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 30.

T. 23 N., R. 19 E.,
That portion of the following sections situated south of Missouri River:
Secs. 1, 2, 3, and 9;
Secs. 10 to 17 inclusive;
Secs. 19 to 24 inclusive;
Sec. 26, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$;
Secs. 27 to 34 inclusive.

T. 20 N., R. 20 E.,
Sec. 13, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 22 N., R. 20 E.,
Secs. 1 to 3 inclusive;
Secs. 10 to 12 inclusive.

T. 23 N., R. 20 E.,
That portion of the following sections situated south of Missouri River:
Secs. 1 and 2;
Secs. 5 to 27 inclusive;
Secs. 34 to 36 inclusive.

T. 19 N., R. 21 E.,
Secs. 1 to 3 inclusive;
Sec. 10, N $\frac{1}{2}$.

T. 20 N., R. 21 E.,
Secs. 1 to 3 inclusive;
Sec. 4, S $\frac{1}{2}$ S $\frac{1}{2}$;
Secs. 7 to 28 inclusive;
Secs. 33 to 36 inclusive.

T. 21 N., R. 21 E.,
Secs. 1, 12, and 13;
Sec. 14, SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$;
Sec. 23 to 28 inclusive;
Sec. 33 to 36 inclusive.

T. 22 N., R. 21 E.,
Secs. 1 to 30 inclusive;
Sec. 34, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Secs. 35 and 36.

Tps. 23 and 24 N., R. 21 E.,
That portion south of the Missouri River.

T. 20 N., R. 22 E.,
Secs. 1 to 8 inclusive;
Secs. 12, 17, 18, 19, and 20.
Secs. 29 and 30.

T. 21 N., R. 22 E.,
T. 22 N., R. 22 E.,
T. 23 N., R. 22 E.,
That portion situated south of Missouri River.

T. 20 N., R. 23 E.,
Secs. 1 to 12 inclusive;
Secs. 15 to 21 inclusive.

T. 21 N., R. 23 E.,
Secs. 19 to 36 inclusive.

The public lands described in this block aggregate approximately 192,144 acres.

BLOCK C

T. 20 N., R. 12 E.,
Sec. 19, E $\frac{1}{2}$ E $\frac{1}{2}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 20;
Sec. 21, SW $\frac{1}{4}$;
Sec. 28, W $\frac{1}{2}$;
Secs. 29 and 30.

The public lands described in this block aggregate approximately 1,946 acres.

BLOCK D

T. 18 N., R. 17 E.,
Sec. 13, S $\frac{1}{2}$ S $\frac{1}{2}$;
Sec. 23, E $\frac{1}{2}$ S $\frac{1}{2}$;
Secs. 24 and 25;
Sec. 26, N $\frac{1}{2}$;
Sec. 36.

T. 17 N., R. 18 E.,
Sec. 6, N $\frac{1}{2}$ N $\frac{1}{2}$.

T. 18 N., R. 18 E.,
Sec. 17, S $\frac{1}{2}$ S $\frac{1}{2}$;
Sec. 18, S $\frac{1}{2}$ S $\frac{1}{2}$;
Secs. 19, 20, 29, 30, 31, and 32.

The public lands described in this block aggregate approximately 3,187 acres.

BLOCK E

T. 16 N., R. 17 E.,
Sec. 2, W $\frac{1}{2}$;
Sec. 3;
Sec. 10, N $\frac{1}{2}$ NE $\frac{1}{4}$.

T. 17 N., R. 17 E.,
Sec. 34;
Sec. 35, W $\frac{1}{2}$ W $\frac{1}{2}$.

The public land described in this block aggregate approximately 1,211 acres.

BLOCK F

T. 16 N., R. 19 E.,
Secs. 1 and 2;
Sec. 8, E $\frac{1}{2}$ E $\frac{1}{2}$;
Sec. 9;
Secs. 11 to 26 inclusive;
Sec. 29, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$.

T. 17 N., R. 19 E.,
Secs. 23 to 26 inclusive;
Secs. 35 and 36.

T. 16 N., R. 20 E.,
Secs. 3 to 9 inclusive;
Sec. 10, W $\frac{1}{2}$ W $\frac{1}{2}$;
Sec. 17, W $\frac{1}{2}$ W $\frac{1}{2}$;
Secs. 18 and 19;
Sec. 29, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 30;
Sec. 31, W $\frac{1}{2}$ NW $\frac{1}{4}$.

T. 17 N., R. 20 E.,
Sec. 10, S $\frac{1}{2}$;
Sec. 11, S $\frac{1}{2}$ S $\frac{1}{2}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 12, S $\frac{1}{2}$ S $\frac{1}{2}$;
Secs. 13 to 22 inclusive;
Sec. 23, N $\frac{1}{2}$, SW $\frac{1}{4}$;
Sec. 27, NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$;
Secs. 28 to 33 inclusive.

T. 17 N., R. 21 E.,
Sec. 5, SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 7, S $\frac{1}{2}$ S $\frac{1}{2}$;
Secs. 8 to 10 inclusive;
Sec. 11, SW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 15, W $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 17, NW $\frac{1}{4}$;
Sec. 18, N $\frac{1}{2}$ S $\frac{1}{2}$, N $\frac{1}{2}$.

The public lands described in this block aggregate approximately 21,997 acres.

Total public domain lands within the areas described aggregate approximately 252,990 acres.

4. For a period of thirty (30) days from date of publication of this notice in the FEDERAL REGISTER, interested persons may submit comments to the Secretary of the Interior, LLM 721, Washington, D.C. 20240 (43 CFR 2411.1-2(d)).

HAROLD TYSK,
State Director.

[F.R. Doc. 68-10592; Filed, Sept. 3, 1968;
8:45 a.m.]

[New Mexico 7633]

NEW MEXICO

Notice of Proposed Classification of Public Lands for Multiple-Use Management

AUGUST 27, 1968.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411-18), and to the regulations in 43 CFR Parts 2410 and 2411, it is proposed to classify for multiple-use management, the public lands within the areas described below. Publication of this notice has the effect of segregating the described lands from all forms of appropriation under the public land laws including the general mining but not the mineral leasing laws. As used herein "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for Federal use or purpose.

2. The public lands located within the following described areas are shown on maps designated (1-72 and 1-33) on file in the Albuquerque District Office, Bureau of Land Management, 1304 Fourth Street NW., Albuquerque, N. Mex. 87107, and at the Land Office, U.S. Post Office and Federal Building, Santa Fe, N. Mex. 87501.

The overall description of the areas is as follows:

NEW MEXICO PRINCIPAL MERIDIAN,
NEW MEXICO

RIO GRANDE GORGE RECREATION AREA
SANTA FE PLANNING UNIT (1-72)

T. 24 N., R. 11 E.,
Sec. 2, lot 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$.

T. 25 N., R. 11 E.,
Sec. 1, lots 1 to 8, inclusive and SW $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 12, lots 1 to 8, inclusive and W $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 13, lots 1, 2, 3, 4, and W $\frac{1}{2}$ W $\frac{1}{2}$;
Sec. 23, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 24, lots 1, 2, 3, 4, and W $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 25, lots 1, 2, 3, and 4;
Sec. 26, E $\frac{1}{2}$ E $\frac{1}{2}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$;
Sec. 35, lots 1, 2, 3, N $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 36, lots 1 and 2.

T. 26 N., R. 11 E.,
 Sec. 1, lots 1, 2, 5, 6, 7, SE $\frac{1}{4}$ NW $\frac{1}{4}$,
 NE $\frac{1}{4}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 12, lots 1, 2, 3, and 4;
 Sec. 13, lots 1 and 2;
 Sec. 14, lots 1, 2, NE $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 23, lots 1, 2, 3, 4, and W $\frac{1}{2}$ E $\frac{1}{2}$;
 Sec. 24, lot 1;
 Sec. 25, lots 5, 6, 7, and 8;
 Sec. 26, E $\frac{1}{2}$ E $\frac{1}{2}$;
 Sec. 35, lots 1, 2, and N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 36, lots 5, 6, 7, and 8.
 T. 27 N., R. 11 E.,
 Sec. 36, lots 5, 6, and 7.
 T. 27 N., R. 12 E.,
 Sec. 5, all portions west of Rio Grande;
 Sec. 6, E $\frac{1}{2}$ E $\frac{1}{2}$;
 Sec. 8, all portions in W $\frac{1}{2}$ lying west of Rio Grande;
 Sec. 18, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$, and SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 19, W $\frac{1}{2}$ E $\frac{1}{2}$ and W $\frac{1}{2}$;
 Sec. 30, W $\frac{1}{2}$ E $\frac{1}{2}$ and W $\frac{1}{2}$;
 Sec. 31, lots 1, 2, 3, 4, and N $\frac{1}{2}$ NW $\frac{1}{4}$.

The areas described aggregate 5,453 acres, more or less.

CAMEL TRACKS ANTIQUITIES SITE

LA CIENEGA PLANNING UNIT (1-33)

T. 16 N., R. 8 E.,
 Sec. 17, lots 2 and 3.

The area described contains 63.52 acres.

3. For a period of 60 days from the date of publication of this notice in the FEDERAL REGISTER, all persons who wish to submit comments, suggestions, or objections in connection with the proposed classification may present their views in writing to the Albuquerque District Manager, Bureau of Land Management, 1304 Fourth Street NW., Albuquerque, N. Mex. 87107.

4. All the above lands are found to have high recreational and historical values and require the protection afforded by this proposed classification. In addition, it is necessary to protect the Government's interest in the recreational improvements on these lands. The record of public comments on the proposed classification is on file in the Albuquerque District Office.

MICHAEL T. SOLAN,
Acting State Director.

[FR. Doc. 68-10617; Filed, Sept. 3, 1968;
 8:47 a.m.]

[New Mexico 7634]

NEW MEXICO

Notice of Proposed Classification of Public Lands for Transfer Out of Federal Ownership

AUGUST 27, 1968.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1412) it is proposed to classify the public lands described below for transfer out of Federal ownership under section 8 of the Taylor Grazing Act of June 28, 1934 (43 U.S.C. 315g) as amended or section 2455 of the Revised Statutes (43 U.S.C. 1171).

2. This proposal has been discussed with county and State officials, State and Federal conservation agencies, oil and gas representatives, local grazing associations, and general public. Four

public meetings have been held at Elida, N. Mex.

3. Publication of this notice segregates the affected lands from all forms of disposal under the public land laws, including the mining laws, except the forms of disposal for which it is proposed to classify the lands. However, publication does not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral and vegetative resources other than under the mining laws.

4. The public lands affected by this proposed classification are shown on maps on file and available for inspection in the Roswell District Office, 1902 South Main, Roswell, N. Mex. 88201, and in the Land Office, U.S. Post Office and Federal Building, Santa Fe, N. Mex. 87501. The lands are located in Chaves, Lea, and Roosevelt Counties and are described as follows:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 4 S., R. 26 E.,
 Sec. 19, lots 2, 3, 4, and E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 30, lots 1, 2, and 3;
 Sec. 31, lot 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$.

T. 5 S., R. 26 E.,
 Sec. 8, NW $\frac{1}{4}$ and S $\frac{1}{2}$;
 Sec. 24, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ S $\frac{1}{2}$;
 Sec. 27, SE $\frac{1}{4}$;
 Sec. 34, SW $\frac{1}{4}$.

T. 4 S., R. 27 E.,
 Sec. 24, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 32, NW $\frac{1}{4}$ NW $\frac{1}{4}$.

T. 5 S., R. 27 E.,
 Sec. 3, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 10, W $\frac{1}{2}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 11, SW $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 12, SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, and E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 19, lot 4, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 20, S $\frac{1}{2}$ S $\frac{1}{2}$;
 Sec. 21, S $\frac{1}{2}$ S $\frac{1}{2}$;
 Sec. 22, S $\frac{1}{2}$ S $\frac{1}{2}$;
 Sec. 23, S $\frac{1}{2}$ S $\frac{1}{2}$;
 Sec. 24, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 25;
 Sec. 28, NE $\frac{1}{4}$.

T. 4 S., R. 28 E.,
 Sec. 11, NW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 13, E $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 14, SE $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 21, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 23, E $\frac{1}{2}$ SW $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 26, S $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 27, N $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 28, NE $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 34, N $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 35, NE $\frac{1}{4}$.

T. 5 S., R. 28 E.,
 Sec. 1, lots 1, 2, 3, and N $\frac{1}{2}$ S $\frac{1}{2}$;
 Sec. 5, lots 3 and 4;
 Sec. 7, SE $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 10, SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 11, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
 Sec. 12, E $\frac{1}{2}$ E $\frac{1}{2}$;
 Sec. 13;
 Sec. 14, S $\frac{1}{2}$;
 Sec. 15, NE $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 18, lot 4 and SE $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 22, S $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 23, S $\frac{1}{2}$;
 Sec. 24, S $\frac{1}{2}$;
 Secs. 25 and 26;
 Sec. 27, E $\frac{1}{2}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$;
 Sec. 28, S $\frac{1}{2}$;
 Sec. 29, S $\frac{1}{2}$;
 Sec. 30, lots 3, 4, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;

Sec. 31, lots 1, 2, 4, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, and E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 35, NW $\frac{1}{4}$ SE $\frac{1}{4}$.
 T. 6 S., R. 28 E.,
 Sec. 1, lot 3;
 Sec. 3, lots 1 and 2;
 Sec. 10, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 12, E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 13, E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 14, SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 15, S $\frac{1}{2}$ S $\frac{1}{2}$;
 Secs. 22 and 23;
 Sec. 24, W $\frac{1}{2}$;
 Sec. 25, N $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 26, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 27, S $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 28, E $\frac{1}{2}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and N $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 29, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 35, E $\frac{1}{2}$ E $\frac{1}{2}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$.
 T. 7 S., R. 28 E.,
 Sec. 1, lot 1, SW $\frac{1}{4}$ NW $\frac{1}{4}$, and W $\frac{1}{2}$ SW $\frac{1}{4}$.
 T. 2 S., R. 29 E.,
 Sec. 8, E $\frac{1}{2}$ E $\frac{1}{2}$;
 Sec. 9, W $\frac{1}{2}$ E $\frac{1}{2}$ and W $\frac{1}{2}$.
 T. 4 S., R. 29 E.,
 Sec. 22, W $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 30, N $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 31, SW $\frac{1}{4}$ SW $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$.
 T. 5 S., R. 29 E.,
 Sec. 5, lot 3;
 Sec. 8, S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 9, S $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 15, N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 17, S $\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 18, lot 3, E $\frac{1}{2}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 19, E $\frac{1}{2}$ E $\frac{1}{2}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, and E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 20, NE $\frac{1}{4}$;
 Sec. 21, N $\frac{1}{2}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 22, NE $\frac{1}{4}$;
 Sec. 27, N $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$;
 Sec. 28, S $\frac{1}{2}$;
 Sec. 29, S $\frac{1}{2}$ NW $\frac{1}{4}$ and S $\frac{1}{2}$;
 Sec. 30, lots 3, 4, E $\frac{1}{2}$ W $\frac{1}{2}$, and SE $\frac{1}{4}$;
 Sec. 31, lots 1, 2, 3, 4, E $\frac{1}{2}$, and E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 32, SW $\frac{1}{4}$;
 Sec. 33, S $\frac{1}{2}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$;
 Sec. 34, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$.
 T. 6 S., R. 29 E.,
 Sec. 7, SE $\frac{1}{4}$;
 Sec. 8, S $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$;
 Sec. 13, S $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 17, NW $\frac{1}{4}$;
 Sec. 18, NE $\frac{1}{4}$;
 Sec. 19, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 20, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 25, SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 29, W $\frac{1}{2}$;
 Sec. 30, lot 2, E $\frac{1}{2}$, and E $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 31, lots 3, 4, E $\frac{1}{2}$ SW $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$.
 T. 7 S., R. 29 E.,
 Sec. 5, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 6, lots 1, 2, 3, 4, and S $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 13, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 22, NW $\frac{1}{4}$ SW $\frac{1}{4}$.
 T. 2 S., R. 30 E.,
 Sec. 18, lot 4 and SE $\frac{1}{4}$ SW $\frac{1}{4}$.
 T. 6 S., R. 30 E.,
 Sec. 4, lots 3 and 4;
 Sec. 11, SE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 12, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 13, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, and NE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 14, W $\frac{1}{2}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$;
 Sec. 15, NE $\frac{1}{4}$ and N $\frac{1}{2}$ S $\frac{1}{2}$;
 Sec. 20, SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 21, N $\frac{1}{2}$;
 Sec. 22, S $\frac{1}{2}$ NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 23;
 Sec. 24, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ N $\frac{1}{2}$, and N $\frac{1}{2}$ S $\frac{1}{2}$;
 Sec. 25, E $\frac{1}{2}$ and E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 26, N $\frac{1}{2}$ and SW $\frac{1}{4}$;
 Sec. 27, S $\frac{1}{2}$ NW $\frac{1}{4}$ and S $\frac{1}{2}$;

Sec. 28, S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
 Sec. 29, S $\frac{1}{2}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 30, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$;
 Sec. 31, lots 1, 2, NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 32, W $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 33, E $\frac{1}{2}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 35, S $\frac{1}{2}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$.
 T. 7 S., R. 30 E.,
 Sec. 1, SE $\frac{1}{4}$;
 Sec. 5, SW $\frac{1}{4}$;
 Sec. 7, SE $\frac{1}{4}$;
 Sec. 8, SW $\frac{1}{4}$;
 Sec. 17, NE $\frac{1}{4}$;
 Sec. 18, lots 1, 2, 3, 4, and NE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 19, lot 4 and E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 35, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$.
 T. 8 S., R. 30 E.,
 Sec. 1, lots 1, 2, 4, and SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 5, E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 10, NE $\frac{1}{4}$;
 Sec. 13, W $\frac{1}{2}$;
 Sec. 19, E $\frac{1}{2}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 24, NW $\frac{1}{4}$.
 T. 6 S., R. 31 E.,
 Sec. 7, lots 2, 3, 4, and E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 17, S $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 18, lots 1, 2, 3, 4, SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$, and SE $\frac{1}{4}$;
 Sec. 19, lots 1, 2, 3, 4, E $\frac{1}{2}$, and E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 20, W $\frac{1}{2}$;
 Secs. 29, 30, and 31.
 T. 7 S., R. 31 E.,
 Sec. 6, lots 1, 2, 3, 4, 5, 6, 7, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
 Sec. 7, lots 1, 2, 3, 4, E $\frac{1}{2}$, and E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 8, N $\frac{1}{2}$;
 Sec. 18, lots 1, 2, NE $\frac{1}{4}$, and E $\frac{1}{2}$ NW $\frac{1}{4}$;
 Secs. 30 and 31.
 T. 8 S., R. 31 E.,
 Sec. 6, lots 1, 2, 3, 4, 5, S $\frac{1}{2}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$.
 T. 9 S., R. 31 E.,
 Sec. 22;
 Sec. 23, W $\frac{1}{2}$;
 Sec. 25, SW $\frac{1}{4}$;
 Sec. 26, E $\frac{1}{2}$;
 Sec. 35, N $\frac{1}{2}$.
 T. 10 S., R. 31 E.,
 Sec. 1, S $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 11, E $\frac{1}{2}$;
 Sec. 12, NE $\frac{1}{4}$, W $\frac{1}{2}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$.
 T. 11 S., R. 31 E.,
 Sec. 17, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 33, NW $\frac{1}{4}$ SE $\frac{1}{4}$.
 T. 12 S., R. 31 E.,
 Sec. 22, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 34, W $\frac{1}{2}$ SE $\frac{1}{4}$.
 T. 9 S., R. 32 E.,
 Sec. 19;
 Sec. 22, W $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 29, N $\frac{1}{2}$.
 T. 8 S., R. 33 E.,
 Sec. 7, lots 3, 4, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
 Sec. 17, S $\frac{1}{2}$;
 Sec. 18, lots 1, 2, NE $\frac{1}{4}$, and E $\frac{1}{2}$ NW $\frac{1}{4}$.
 T. 11 S., R. 33 E.,
 Sec. 3, lot 3.
 T. 9 S., R. 36 E.,
 Sec. 35, S $\frac{1}{2}$ S $\frac{1}{2}$.
 T. 10 S., R. 36 E.,
 Sec. 1, SW $\frac{1}{4}$ NW $\frac{1}{4}$.
 T. 11 S., R. 36 E.,
 Sec. 2, S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 11, lot 1 and adjacent area to the west, extending out to the centerline of Ranger Lake.
 T. 9 S., R. 37 E.,
 Sec. 22, NE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 25, NE $\frac{1}{4}$, and N $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 26, N $\frac{1}{2}$ N $\frac{1}{2}$.

The areas described aggregate 44,428 acres.

5. For a period of 60 days from the date of publication of this notice in the FEDERAL REGISTER, all persons who wish to

submit comments, suggestions, or objections in connection with the proposed classification may present their views in writing to the District Manager, Bureau of Land Management, Post Office Box 1397, Roswell, N. Mex. 88201.

MICHAEL T. SOLAN,
Acting State Director.

[F.R. Doc. 68-10618; Filed, Sept. 3, 1968;
8:47 a.m.]

[New Mexico 1624]

NEW MEXICO

Notice of Proposed Classification of Public Lands for Multiple-Use Management; Amendment

AUGUST 27, 1968.

1. Pursuant to the act of September 19, 1964 (43 U.S.C. 1411-18) and to the regulations in 43 CFR Parts 2410 and 2411, it is proposed to classify for multiple-use management the public lands described below. Publication of this notice has the effect of further segregating the described lands from all forms of appropriation under the public land laws, including the general mining laws. By notice of classification NM 1624 published in the June 20, 1967 FEDERAL REGISTER (32 F.R. 8768-8772) as Document No. 67-6883, the lands were previously segregated from appropriation under the agricultural land laws (43 U.S.C. Part 7, 43 U.S.C. Part 9, and 25 U.S.C. 334) and from sale under section 2455 of the Revised Statutes (43 U.S.C. 1171).

2. All the lands involved in this proposed notice are found to have high recreational values and require the protection afforded by this classification. Some of the lands are within the proposed Wild Rivers designation along the Rio Grande Gorge and should be protected pending passage of the proposed legislation. In addition, this classification is necessary to protect the Government's interest in recreational developments on these lands.

3. The lands involved are described as follows:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

RIO GRANDE GORGE RECREATION AREA—UPPER RIO GRANDE PLANNING UNIT (1-01)

T. 28 N., R. 12 E.,
 Sec. 2, S $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ north of the Red River, NW $\frac{1}{4}$ SE $\frac{1}{4}$ north of the Red River;
 Sec. 3, SE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 4, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 5, SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 6, lots 2 to 7, inclusive, SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 7, E $\frac{1}{2}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 8;
 Sec. 9, those portions west of the Red River excluding NE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, and NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 10, those portions north of Red River excluding Mineral Survey 1150;
 Sec. 16, those portions west of Red River;
 Sec. 17, N $\frac{1}{2}$, SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ and those portions of S $\frac{1}{2}$ SE $\frac{1}{4}$ lying north of the Red River;
 Sec. 18, W $\frac{1}{2}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$;
 Sec. 19, E $\frac{1}{2}$;
 Sec. 20, those portions of W $\frac{1}{2}$ W $\frac{1}{2}$ lying west of Rio Grande and those portions of NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ and W $\frac{1}{2}$ NW $\frac{1}{4}$ lying north of Red River;

Sec. 29, those portions of W $\frac{1}{2}$ W $\frac{1}{2}$ lying west of Rio Grande;
 Sec. 30, those portions of E $\frac{1}{2}$ lying west of Rio Grande;
 Sec. 31, those portions of E $\frac{1}{2}$ lying west of Rio Grande;
 Sec. 32, those portions of SW $\frac{1}{4}$ lying west of Rio Grande.

T. 29 N., R. 12 E.,
 Sec. 5, lots 2, 3, 4, SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 6, lot 1;
 Sec. 8, lots 1, 6, E $\frac{1}{2}$ SE $\frac{1}{4}$, and N $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 9, lots 3, 4, 5, 6, SW $\frac{1}{4}$;
 Sec. 17, lots 2, 3, 4, 6 to 10, inclusive, and E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 20, lots 1, 2, 3, 4, 6, 7, 8, NW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, and NE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 29, lots 1, 5 and W $\frac{1}{2}$;
 Sec. 30, E $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 31, lots 3, 4, E $\frac{1}{2}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$.
 T. 30 N., R. 12 E.,
 Sec. 6, lots 3 to 7, inclusive, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 7, lots 1, 2, 3, W $\frac{1}{2}$ E $\frac{1}{2}$, and E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 17, W $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 18, E $\frac{1}{2}$ E $\frac{1}{2}$ and NW $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 19, E $\frac{1}{2}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 20, W $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 29, N $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 30, NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 31, E $\frac{1}{2}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ NE $\frac{1}{4}$.
 T. 31 N., R. 12 E.,
 Sec. 30, lot 4 and SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 31, lots 1, 2, 3, 4, and E $\frac{1}{2}$ W $\frac{1}{2}$.
 T. 31 N., R. 11 E.,
 Sec. 1, lots 4, 5, and 6;
 Sec. 2, lots 7, 8, and 9;
 Sec. 11, lots 2 to 8, inclusive, and SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 12, lot 6 and W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 13, W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 14, E $\frac{1}{2}$;
 Sec. 23, NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 24, W $\frac{1}{2}$ W $\frac{1}{2}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 25, SE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, and N $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 26, E $\frac{1}{2}$ NE $\frac{1}{4}$.
 T. 32 N., R. 11 E.,
 Sec. 24, lots 5, 6, 9, and 10;
 Sec. 25, lots 5, 6, 7, 8, and E $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 36, lots 5 to 9, inclusive, and NE $\frac{1}{4}$ SW $\frac{1}{4}$.

The area described aggregates approximately 11,635 acres.

SAN ANTONIO MOUNTAIN CAMPGROUND SITE— UPPER RIO GRANDE PLANNING UNIT (1-01)

T. 31 N., R. 9 E.,
 Sec. 28, S $\frac{1}{2}$ S $\frac{1}{2}$;
 Sec. 33, N $\frac{1}{2}$ N $\frac{1}{2}$.
 The area described aggregates 320 acres.

SANTA CRUZ LAKE RECREATION AREA—OJO CALIENTE PLANNING UNIT (1-02)

T. 20 N., R. 10 E.,
 Sec. 4, E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 7, lots 3, 4, 5, 8, E $\frac{1}{2}$ E $\frac{1}{2}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, and E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 8, lots 1, 2, 3, and 4;
 Sec. 9, lots 1 to 9, inclusive, E $\frac{1}{2}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 17, lots 1 to 7, inclusive, NW $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 18, lot 1, S $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$.
 The area described aggregates 1,365.21 acres.

ANGEL PEAK RECREATION AREA—HUERFANO PLANNING UNIT (1-03)

T. 26 N., R. 10 W.,
 Sec. 3, lots 3, 4, and S $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 4, lots 1, 2, 3, 4, S $\frac{1}{2}$ N $\frac{1}{2}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 5;
 Sec. 6, lot 1.
 T. 27 N., R. 10 W.,
 Sec. 23;
 Sec. 24, W $\frac{1}{2}$;

Sec. 25, W $\frac{1}{4}$;
 Sec. 26;
 Sec. 34, W $\frac{1}{4}$ and NE $\frac{1}{4}$;
 Sec. 35, NW $\frac{1}{4}$.

The area described aggregates 3,840.31 acres.

4. The lands proposed for classification in this notice are shown on maps on file and available for inspection in the Land Office, Bureau of Land Management, U.S. Post Office and Federal Building, Santa Fe, N. Mex. 87501, and in the Albuquerque District Office, 1304 Fourth Street NW., Albuquerque, N. Mex. 87107. The record of public comments on the additional segregation is on file in the Albuquerque District Office.

5. For a period of 60 days from the date of publication of this notice in the FEDERAL REGISTER, all persons who wish to submit comments, suggestions or objections in connection with the proposed classification may present their views in writing to the District Manager, Bureau of Land Management, 1304 Fourth Street NW., Albuquerque, N. Mex. 87107.

MICHAEL T. SOLAN,
Acting State Director.

[F.R. Doc. 68-10619; Filed, Sept. 3, 1968;
 8:47 a.m.]

[R 369]

CALIFORNIA

Notice of Offering of Land for Sale AUGUST 27, 1968.

Pursuant to the Public Land Sale Act of September 19, 1964 (78 Stat. 988; 43 U.S.C. 1421-27) and 43 CFR Subpart 2243, there is to be offered for sale to the city of Barstow, Calif., on October 9, 1968, a tract of public land in San Bernardino County, described as SE $\frac{1}{4}$ SW $\frac{1}{4}$, sec. 10, T. 9 N., R. 1 W., SBM, containing 40 acres, at the appraised fair market value of \$10,000 plus \$10.75, the cost of publication of this notice in a qualified newspaper. The land will be sold subject to a reservation to the United States pursuant to the Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945, of a right-of-way thereon for ditches or canals constructed by the authority of the United States. All minerals will be reserved to the United States and withdrawn, by operation of law, from appropriation under the public land laws.

Inquiries regarding this proposed sale may be addressed to: Manager, Riverside District and Land Office, Bureau of Land Management, 1414 University Avenue, Post Office Box 723, Riverside, Calif. 92502.

WALTER F. HOLMES,
*Chief, Division of Adjudication
 and Records Services.*

[F.R. Doc. 68-10638; Filed, Sept. 3, 1968;
 8:48 a.m.]

Office of the Secretary COMMISSIONER, BUREAU OF RECLAMATION

Delegation of Authority

The delegation of authority to the Commissioner of Reclamation previously

published in the FEDERAL REGISTER (30 F.R. 14533 and 31 F.R. 3426) is amended to read as set forth below.

The following material is a portion of the Departmental Manual and the numbering system is that of the Manual.

PART 255—BUREAU OF RECLAMATION

CHAPTER 1—GENERAL PROGRAM DELEGATION

255.1.1 *Delegation—Commissioner of Reclamation.* The Commissioner of Reclamation is authorized, except as provided in 200 DM 1.4 and 1.5 and in 255 DM 1.2, to:

A. Perform the functions and exercise the authority now or hereafter vested in the Secretary of the Interior, or in the Department of the Interior, by:

(1) The act of June 17, 1902 (32 Stat. 388; 43 U.S.C. 391 et seq.), and acts amendatory thereof or supplementary thereto;

(2) The Water Conservation and Utilization Act of August 11, 1939 (53 Stat. 1418; 16 U.S.C. 590y et seq.), as amended;

(3) The Warren Act of February 21, 1911 (36 Stat. 925; 43 U.S.C. 523 et seq.);

(4) The Columbia Basin Project Act of May 27, 1937 (50 Stat. 208; 16 U.S.C. 835 et seq.) as amended;

(5) The Fort Peck Project Act of May 18, 1938 (52 Stat. 403; 16 U.S.C. 833 et seq.), as amended;

(6) The Hungry Horse Dam Act of June 5, 1944 (58 Stat. 270; 43 U.S.C. 593a et seq.);

(7) The Colorado River Front Work and Levee System Act of January 21, 1927 (44 Stat. 1010, 1021), as amended;

(8) The Falcon Dam Act of June 18, 1954 (68 Stat. 255), as amended (77 Stat. 475);

(9) The act of August 31, 1954 (68 Stat. 1045);

(10) Coulee Dam Community Act of 1957 (71 Stat. 524);

(11) Land and Water Conservation Act of 1965 (78 Stat. 897) and Executive Order 11200 (30 F.R. 2645). The authorities of the Commissioner under this Act and Executive Order shall be restricted to the following:

(a) The authority to designate areas under his jurisdiction at which recreation fees will be charged as specified by sections 1, 2, and 3 of Executive Order 11200;

(b) The authority to post such designated areas as specified by section 4 of Executive Order 11200;

(c) The authority to select from the fees established by 43 CFR 13 (30 FR 3265) the specific fees to be charged at the designated areas in accordance with section 5(a) of Executive Order 11200;

(12) Section 7 of the Federal Water Project Recreation Act of July 9, 1965 (79 Stat. 213) for areas under his jurisdiction, subject to review and coordination of outdoor recreation plans by the Bureau of Outdoor Recreation; and

(13) Sections 5 and 8 of the Flood Control Act of 1944 (58 Stat. 887) for areas under his jurisdiction;

B. Act on behalf of the Secretary of the Interior in carrying out the provisions of contracts heretofore or hereafter

executed pursuant to any of the foregoing acts.

2 *Limitations.* Excepted from 255 DM 1 is authority to:

A. Take action in matters for which authority has been delegated on a functional basis in 205 DM;

B. Acquire any interest in property by condemnation;

C. Make the findings authorizing construction of a new project, new division of a project, or supplemental works on a project, in accordance with subsection (a) of section 9 of the Reclamation Project Act of 1939 (53 Stat. 1187, 1193; 43 U.S.C. 485h(a));

D. Act for the Secretary of the Interior in approving and adopting project feasibility reports as the Secretary's proposed reports or as his reports to the President and to the Congress;

E. Certify for the Secretary of the Interior as to the adequacy of soil surveys and land classification, and as to the productivity of land, as a condition precedent to the initiation of construction, in accordance with the Interior Department Appropriation Act, 1954 (67 Stat. 261, 266; 43 U.S.C. 390a);

F. Execute and issue Public Notices opening lands to homestead entry and Public Announcements offering lands for sale; however, this limitation shall not prohibit the amendment of such Public Notices or Public Announcements and their publication in the FEDERAL REGISTER by the Commissioner of Reclamation when, in his judgment, adjustments in the provisions thereof are in the best interest of sound project development and such adjustments do not modify the basic requirements for homestead entry on public lands of the United States;

G. Promulgate rate schedules or fix rates for the sale of electric power and energy;

H. Market available surplus electric power and energy generated at: Grand Coulee Dam, Columbia Basin Project; Hungry Horse Dam, Hungry Horse Project; Chandler Power Plant, Kennewick Division, Yakima Project; Roza Power Plant, Roza Division, Yakima Project; all Federal reclamation projects in the Snake River Basin;

I. Take the following actions under the act of August 31, 1954 (68 Stat. 1045):

(1) Approve and execute the contract with the Palo Verde Irrigation District required by section 2 of said act;

(2) Make the loan or loans to the Palo Verde Irrigation District authorized by section 4(c) of said act;

(3) Grant to the United States the interests in land within the Colorado River Indian Reservation referred to in section 4(d) of said act;

J. Act for the Secretary of the Interior under section 7(c) of the Coulee Dam Community Act of 1957 (71 Stat. 524);

K. Withdraw public lands.

3 *Redelegation.* The Commissioner of Reclamation may, in writing, redelegate to officers and employees of the Bureau the authority granted in 255 DM 1.1, and he may authorize written redelegations of such authority.

4 *Exercise of authority.* The following administrative instructions, additional to those elsewhere prescribed, shall be observed by officers and employees of the Bureau of Reclamation in the exercise of the legal authority delegated by 255 DM 1 or redelegated pursuant to it.

A. *Lands.* (1) The concurrence of the Bureau of Land Management shall be obtained before final action is taken to:

(a) Survey, subdivide, or sell public lands withdrawn for townsite purposes; and

(b) Effect exchanges involving public lands, except public lands within the Columbia Basin Project and the Gila Project.

(2) Prior Secretarial approval shall be obtained for the issuance of any license for the construction or operation of lines of a voltage of more than 100 kilovolts for the distribution of electric power and energy on public lands under reclamation withdrawal or lands acquired for reclamation purposes.

B. *Contracts.* Before contracts of the following types, or amendments thereof or supplements thereto, are executed, each contract must have Secretarial approval as to form:

(1) Repayment contracts and water-service contracts for irrigation, municipal, domestic, or industrial water, except:

(a) Contracts for payment of construction charges for lands acquired by States for use as highway rights-of-way, and

(b) Contracts to furnish water from Columbia Basin Project works for municipal supply or miscellaneous purposes in accordance with proviso numbered (2) of subsection (c) of section 9 of the Reclamation Project Act of 1939 (53 Stat. 1187, 1194; 43 U.S.C. 485h(c)).

(2) Contracts for the transfer of the care, operation, and maintenance of irrigation works and facilities to water users' organizations;

(3) Recordable contracts covering excess lands;

(4) Contracts for the sale, interchange, purchase of wheeling of electric power and energy, including contracts for the sale of energy in falling water to be used in the generation of hydroelectric power and energy, when the proposed contracts:

(a) Are with privately owned public utilities or with Federal agencies; or

(b) Contain provisions which do not conform to standard contract articles approved by the Secretary of the Interior, provided that minor variations in form shall not be regarded as nonconformity; and

(5) Repayment contracts for development of recreation at existing Reclamation reservoirs in accordance with section 7 of the Federal Water Project Recreation Act of 1965 (79 Stat. 213).

DAVID S. BLACK,
Acting Secretary of the Interior.

AUGUST 27, 1968.

[F.R. Doc. 68-10593; Filed, Sept. 3, 1968; 8:45 a.m.]

LEROY J. SCHULTZ

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b) (6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

- (1) None.
- (2) None.
- (3) None.
- (4) None.

This statement is made as of August 23, 1968.

Dated: August 23, 1968.

LEROY J. SCHULTZ.

[F.R. Doc. 68-10640; Filed, Sept. 3, 1968; 8:49 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 20047]

ALOHA AIRLINES, INC.

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a public hearing in the above-entitled proceeding will be held before the undersigned Examiner on September 25, 1968, at 10 a.m., e.d.s.t., in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the prehearing conference report 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., August 28, 1968.

[SEAL]

RICHARD A. WALSH,
Hearing Examiner.

[F.R. Doc. 68-10622; Filed, Sept. 3, 1968; 8:47 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 18301; FCC 68-857]

BAY VIDEO, INC. (WBVI-TV)

Memorandum Opinion and Order Designating Application for Hearing on Stated Issues

In re application of Bay Video, Inc. (WBVI-TV), Panama City, Fla., Docket No. 18301, File No. BMPCT-5724; for modification of construction permit.

1. The Commission has before it for consideration the application (BMPCT-5724) filed March 6, 1962, by Bay Video, Inc. (Bay Video), for an extension of time to construct the authorized facilities of television broadcast station

WBVI-TV, channel 13, Panama City, Fla.; a "Motion to Dismiss, filed June 22, 1964, by The Herald Publishing Co. (Herald), licensee of television broadcast station WJHG-TV, channel 7, Panama City, Fla.; a "Joint Petition to Deny," filed May 31, 1966, by Herald, and by John H. Phipps (Phipps), licensee of television broadcast station WCTV, channel 6, Tallahassee, Fla., Thomasville, Ga.; and related pleadings.¹

2. Under sections 309(d) (1), 309(b), and 309(c) (2) (D) of the Communications Act of 1934, as amended, a petition to deny does not lie against an application for an extension of time within which to complete construction. Accordingly, the petitions to deny now under consideration must be dismissed to the extent that they pertain to Bay Video's extension application (BMPCT-5724). However, in view of the period that has elapsed since the grant of the construction permit, about 7½ years, we raise the question of Bay Video's diligence in constructing Station WBVI-TV on our own motion.

3. Bay Video's application (BPCT-2635) for a construction permit was granted February 6, 1961. The construction permit specified a site about ½ of a mile east of Frink, Fla., which met all the Commission's spacing requirements. On September 8, 1961, Bay Video filed an extension application (BMPCT-5663), which was granted September 25, 1961. On March 6, 1962, the extension application (BMPCT-5724) now under consideration was filed. Bay Video then filed an application (BTC-4497) for transfer of control on February 11, 1964. On the same date, an application (BMPCT-5947) was filed to change facilities and to specify a site near Panama City Beach, Fla. This application was later amended, on May 7, 1964, to specify a site 7 miles south of Youngstown, Fla. By memorandum opinion and order, John S. Thompson et al., FCC 65-429, 5 R.R. 2d 448, the Commission dismissed this transfer application (BTC-4497) and the modification application (BMPCT-5947), as amended. This was followed by a letter from the Commission, dated May 19, 1965, warning that the extension application would be dismissed for failure to prosecute unless plans for expeditious construction of Station WBVI-TV were submitted within 30 days. (Later extended to Aug. 18, 1965.) In response, Bay Video filed another transfer application (BTC-4884) on August 18, 1965.² Subsequently, on September 3, 1965, Bay Video filed an application (BMPCT-6157) contingent upon a grant of the pending transfer application, to change the antenna

¹ The related pleadings are: "Opposition to Motion to Dismiss," filed July 6, 1964, by Bay Video; "Reply to Opposition," filed July 14, 1964, by Herald; "Opposition to Joint Petition," filed June 30, 1966, by Bay Video; and "Joint Reply to Opposition," filed July 20, 1966, by Herald and Phipps.

² We shall not consider the pending transfer application (BTC-4497) prior to the resolution of the issues which we have raised in regard to the pending extension application.

site to a point about 3.8 miles north of Orange, Fla. The Orange site was disapproved by the FAA and another application (BMPCT-6268) was filed to specify a site approximately 5.5 miles southeast of Bristol, Fla. The Bristol site was short-spaced to cochannel Station WMAZ-TV, channel 13, Macon, Ga., giving rise to the filing of informal objections and petitions to deny. A subsequent application (BMPCT-6623) was filed September 14, 1967, that specified a site approximately 8 miles west of Clarksville, Fla. This last site has been approved by the FAA and meets all the Commission's technical requirements, including spacing.

4. We can not determine, on the basis of information on file with the Commission, whether this series of applications and the concomitant delay were caused by the applicant's individual economic considerations, or whether the applications and delay were created by causes not under the applicant's control.

Accordingly, it is ordered, That the application (BMPCT-5724) of Bay Video, Inc., is designated for hearing, at a time and place specified in a subsequent order, on the following issues:

1. To determine, pursuant to section 319(b) of the Communications Act of 1934, as amended, and § 1.534(a) of the Commission's rules:

(a) Whether the failure to construct Station WBVI-TV has been due to causes not under the control of Bay Video, Inc.

(b) Whether there are other matters sufficient to justify a further extension of time to construct Station WBVI-TV.

2. To determine, in the light of the preceding issue, whether a grant of the application (BMPCT-5724) of Bay Video, Inc., for an extension of time within which to construct Station WBVI-TV, would serve the public interest, convenience and necessity.

It is further ordered, That the petitions to deny or dismiss filed by The Herald Publishing Co. and John H. Phipps, insofar as they pertain to the extension application (BMPCT-5724) of Bay Video, Inc., are dismissed.

It is further ordered, That The Herald Publishing Co. and John H. Phipps, are made parties to this proceeding.

It is further ordered, That to avail themselves of the opportunity to be heard, Bay Video, Inc., The Herald Publishing Co. and John H. Phipps, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall within twenty (20) days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issue specified in this order.

It is further ordered, That Bay Video, Inc., shall, pursuant to section 311(a) (2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in that rule, and shall advise the

Commission of the publication of the notice as required by § 1.594(g) of the rules.

Adopted: August 21, 1968.

Released: August 29, 1968.

FEDERAL COMMUNICATIONS
COMMISSION,²

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68-10615; Filed, Sept. 3, 1968;
8:46 a.m.]

[Docket No. 18303; FCC 68-865]

CITY OF CAMDEN AND McLENDON CORP.

Order Designating Application for Hearing on Stated Issues

In reapplication of city of Camden (assignor) and the McLendon Corp. (assignee), Docket No. 18303, File No. BAL-6343; for assignment of license of Station WCAM, Camden, N.J.

1. The Commission has before it the above-referenced application for consent to the voluntary assignment of the license of Station WCAM, Camden, N.J., from the city of Camden to the McLendon Corp. On July 24, 1968, the Commission informed the McLendon Corp. that its proposal to acquire the license for Station WCAM could not be approved without a hearing on the issue of whether the McLendon Corp., either directly, or indirectly through its predecessors and affiliated or subsidiary corporations, had engaged in trafficking.

2. The McLendon Corp. has informed the Commission that it desires to prosecute its application for the WCAM license through the hearing process.

Accordingly, it is ordered, That the application is designated for hearing, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine whether the McLendon Corp., directly, or indirectly through its predecessors, affiliated corporations, or subsidiary corporations, has engaged in trafficking in broadcast authorizations; and

2. To determine whether the proposed program plans of the McLendon Corp. are realistically designed to meet the needs of Camden, N.J., or Philadelphia, Pa.

It is further ordered, That to avail itself of the opportunity to be heard, the McLendon Corp., pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

It is further ordered, That such hearing shall be expedited by the Hearing Examiner and by the Review Board if exceptions are taken to the initial decision.

² Commissioner Lee concurring in result and Commissioner Wadsworth absent.

It is further ordered, That the applicants shall, pursuant to section 311(a) (2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: August 21, 1968.

Released: August 28, 1968.

FEDERAL COMMUNICATIONS
COMMISSION,¹

[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 68-10616; Filed, Sept. 3, 1968;
8:46 a.m.]

FEDERAL MARITIME COMMISSION

[Docket No. 68-31]

GULF PUERTO RICO LINES, INC.

Increased Rates on Lard, in Packages From Gulf Coast Ports to Puerto Rico; Denying Motion To Dismiss

By order served June 18, 1968, we instituted this investigation to determine the lawfulness of certain increased rates on lard filed by Gulf Puerto Rico Lines, Inc. (respondent).

Respondent has petitioned the Commission to vacate the order of investigation and to dismiss the proceeding. In support of its petition, respondent maintains that the rates under investigation are not unjust, unreasonable, or otherwise unlawful inasmuch as they are less than present rates on comparable staple commodities, do not meet the carrier's out-of-pocket costs for handling, do not compare with retail price increases, and are necessary to improve the carrier's overall profit and loss picture.

We feel that an evidentiary hearing on the matter is warranted to fully explore the facts alleged by respondent. This is especially true with respect to respondent's allegation that the rates under investigation do not meet out-of-pocket costs of handling. While the information submitted by respondent reflects on the overall per ton cost of handling cargo, it gives no information about out-of-pocket costs allocated to the specific commodity under investigation.

Now therefore, it is ordered, That respondent's petition to vacate the order of investigation and to dismiss the proceeding is hereby denied.

It is further ordered, That this order shall be published in the FEDERAL REGISTER and that a copy of this order shall be served upon all parties of record in this proceeding.

By the Commission.

[SEAL] THOMAS LISI,
Secretary.

[F.R. Doc. 68-10620; Filed, Sept. 3, 1968;
8:47 a.m.]

¹ Commissioner Lee dissenting and Commissioner Wadsworth absent.

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRO- DUCED OR MANUFACTURED IN MALAYSIA

Entry and Withdrawal From Ware- house for Consumption

AUGUST 29, 1968.

On August 27, 1968, the U.S. Government, in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles, done at Geneva on February 9, 1962, including Article 6(c) thereof relating to nonparticipants, informed the Government of Malaysia that it was renewing for an additional 12-month period beginning August 30, 1968, and extending through August 29, 1969, the restraint on imports into the United States of cotton textile products in Category 45, produced or manufactured in Malaysia. Pursuant to Annex B, paragraph 3, of the Long-Term Arrangement the level of restraint for this 12-month period is 5 percent greater than the level of restraint applicable to this category for the preceding 12-month period.

There is published below a letter of August 28, 1968, from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs, directing that the amount of cotton textile products in Category 45, produced or manufactured in Malaysia, which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning August 30, 1968, be limited to the designated level.

STANLEY NEHMER,
Chairman, Interagency Textile
Administrative Committee,
and Deputy Assistant Secretary
for Resources.

SECRETARY OF COMMERCE

PRESIDENT'S CABINET TEXTILE ADVISORY
COMMITTEE

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226

AUGUST 28, 1968.

DEAR MR. COMMISSIONER: Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, including Article 6(c) thereof relating to nonparticipants, and in accordance with the procedures outlined in Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, you are directed to prohibit, effective August 30, 1968, and for the 12-month period extending through August 29, 1969, entry into the United States for consumption and withdrawal from warehouse for consumption, of cotton textile products in Category 45 produced or manufactured in Malaysia, in excess of a level of restraint for the period of 83,973 dozen.

In carrying out this directive, entries of cotton textile products in Category 45 produced or manufactured in Malaysia, which

have been exported to the United States from Malaysia prior to August 30, 1968, shall, to the extent of any unfilled balances, be charged against the level of restraint established for such goods during the period August 30, 1967, through August 29, 1968. In the event that the above level of restraint has been exhausted by previous entries, such goods shall be subject to the directives set forth in this letter.

A detailed description of Category 45 in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 17, 1968 (33 F.R. 582), and amendments thereto on March 15, 1968 (33 F.R. 4600).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Malaysia and with respect to imports of cotton textiles and cotton textile products from Malaysia have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553 (Supp. II, 1965-66). This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

C. R. SMITH,
Secretary of Commerce, Chairman,
President's Cabinet, Textile Advisory
Committee.

[F.R. Doc. 68-10628; Filed, Sept. 3, 1968;
8:48 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-3468]

MOUNTAIN STATES DEVELOPMENT CO.

Order Suspending Trading

AUGUST 28, 1968.

The common stock, 1 cent par value, of Mountain States Development Co. being listed and registered on the Salt Lake Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Mountain States Development Co. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the Salt Lake Stock Exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period August 28, 1968, through September 6, 1968, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 68-10594; Filed, Sept. 3, 1968;
8:45 a.m.]

[File No. 1-2879]

ROYSTON COALITION MINES, LTD. Order Suspending Trading

AUGUST 28, 1968.

The capital stock 1 cent par value of Royston Coalition Mines, Ltd., being listed and registered on the Salt Lake Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Royston Coalition Mines, Ltd., being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the Salt Lake Stock Exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period August 29, 1968, through September 7, 1968, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 68-10595; Filed, Sept. 3, 1968;
8:46 a.m.]

ROVER SHOE CO.

Order Suspending Trading

AUGUST 28, 1968.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Rover Shoe Co., Bushnell, Fla., and stock purchase warrants of Rover Shoe 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 August 29, 1968, through September 7, 1968, both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DuBOIS,
Secretary.

[F.R. Doc. 68-10596; Filed, Sept. 3, 1968;
8:46 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 680]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

AUGUST 28, 1968.

The following are notices of filing of applications for temporary authority un-

der section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 340) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protest must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 30837 (Sub-No. 357 TA), filed August 23, 1968. Applicant: KENOSHA AUTO TRANSPORT CORPORATION, 4200 39th Avenue, Kenosha, Wis. 53140. Applicant's representative: Albert P. Barber (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Snowmobiles (sno-jets) and parts thereof*, from the port of entry on the international boundary line between the United States and Canada at Derby Line, Vt., to Rockford, Mich., Alexandria and Roseau, Minn., Salt Lake City, Utah, Seattle, Wash., and Sacramento, Calif., for 150 days. Supporting shipper: Glaxton Boat Co., 9108 Redi Drive, Post Office Box 9447, Austin, Tex. 78756. Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 59488 (Sub-No. 29 TA), filed August 26, 1968. Applicant: SOUTHWESTERN TRANSPORTATION COMPANY, a corporation, 733 South Poydras, Post Office Box 6187, Dallas, Tex. 75222. Applicant's representative: Lloyd M. Roach, Southwestern Transportation Co., 1517 West Front Street, Tyler, Tex. 75702. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, serving the Cities Service Oil Co. plant site near Myrtle Springs, Tex., as an off-route point in connection with applicant's authority between Dallas, and Tyler, Tex. NOTE: Applicant states it intends to tack with existing authority, for 180 days. Supporting shipper: The Ortloff Corp., V&J Tower, Modland, Tex. 79701. Send protests to: E. K. Willis, Jr., District Supervisor, Bureau of Operations, Interstate Com-

merce Commission, 513 Thomas Building, 1314 Wood Street, Dallas, Tex. 75202.

No. MC 116858 (Sub-No. 8 TA), filed August 26, 1968. Applicant: J. & M. CARRIERS CORP., 43-06 54th Road, Maspeth, N.Y. 11378. Applicant's representative: Morton E. Kiel, 140 Cedar Street, New York, N.Y. 10006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are manufactured, sold or distributed by persons engaged in the manufacture of medical and pharmaceutical articles (including affiliates or divisions thereof), and *materials, supplies and equipment* used by such persons in the conduct of its business, between points in Edison Township, N.J., on the one hand, and on the other, points in Connecticut on and west of the Connecticut River, points in Kent and New Castle Counties, Del., points in Pennsylvania on and east of U.S. Highway 15, and points in Cumberland County, Pa., Baltimore City, Md., and points in Baltimore, Cecil, and Harford Counties, Md., points in New Jersey, points in Broome, Columbia, Delaware, Dutchess, Greene, Nassau, Orange, Putnam, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties, N.Y., and New York, N.Y., for 180 days. Supporting shipper: Travenol Laboratories, Inc., Morton Grove, Ill. 60053. Send protests to: E. N. Carignan, Interstate Commerce Commission, District Supervisor, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 120442 (Sub-No. 2 TA) (Amendment), filed July 1, 1968, published FEDERAL REGISTER issues of July 10, July 24, and July 31, 1968, and republished as amended this issue. Applicant NICK TOTONI & SONS, INC., 1373 West Hubbard Street, Chicago, Ill. 60622. Applicant's representative: Benjamin J. Schultz, 1 North La Salle Street, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (with the usual exception); between the plantsites of the Dole Valve Co., Morton Grove, Ill., Dole Distribution Center, Bensenville, Ill., Dole Electric Products Co., Batavia, Ill., Dole Electric Products Co., Rochelle, Ill., Assembly Techniquet, Inc., Geneva, Ill., Valves & Controls, Inc., Savannah, Ill., and Control-O-Temp Corp., Lenark, Ill., on the one hand, and, on the other, the Chicago, Ill., commercial zone as defined by the Commission, for 180 days. NOTE: Applicant intends to tack the authority applied for to other authority held by it in MC-120442 and also to interline with other carriers. The purpose of this republication is to show the authority requested as amended. Supporting Shipper: Dole Valve Co., 6201 Oakton Street, Morton Grove, Ill. Send protests to: Andrew J. Montgomery, District Supervisor, Interstate Commerce Commission, Bureau of Operations, U.S. Courthouse and Federal Office Building, Room 1086, 219 South Dearborn Street, Chicago, Ill. 60604.

No. MC 128375 (Sub-No. 23 TA), filed August 26, 1968. Applicant: CRETE

CARRIER CORPORATION, Post Office Box 249, 15th and Main, Crete, Nebr. 68333. Applicant's representative: Acklie and Peterson, 521 South 14th, Post Office Box 806, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Animal food, ingredients, materials and supplies* used in the manufacture and production of animal food, between Cleveland, Ohio, and points in its commercial zone, on the one hand, and, on the other, points in California, Arizona, Utah, Colorado, New Mexico, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, North Carolina, South Carolina, Tennessee, Kentucky, Virginia, West Virginia, Maryland, Delaware, New Jersey, Pennsylvania, Indiana, Illinois, Wisconsin, Michigan, New York, and Massachusetts under contract with Allen Products Co., Inc., for 180 days. Supporting shipper: Allen Products Co., Inc., Allentown, Pa. Send protests to: District Supervisor, Max H. Johnston, Interstate Commerce Commission, Bureau of Operations, 315 Post Office Building, Lincoln, Nebr. 68508.

No. MC 133110 TA, filed August 26, 1968. Applicant: BARRON TRUCKING COMPANY, INC., Route 31 North, Washington, N.J. 07882. Applicant's representative: Herman B. J. Weckstein, 60 Park Place, Newark, N.J. 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sauerkraut, pickles, and tomatoes*, fresh packed, not canned, in refrigerated vehicles, from North Norwich, N.Y., to points in California, Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, and Wisconsin, under a continuing contract with REA-D-Pack Foods, Inc., of North Norwich, N.Y., for 150 days. Supporting shipper: REA-D-PACK FOODS, INC., North Norwich, N.Y. 13815. Send protests to: District Supervisor, Joel Morrows, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, N.J. 07102.

No. MC 133111 TA, filed August 26, 1968. Applicant: J O T TRANSPORT, INC., 7990 National Highway, Pennsauken, N.J. 08110. Applicant's representative: Charles E. Creager, 5507 Sarri Road, Baltimore, Md. 21206. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except Classes A and B explosives, household goods and articles in bulk, from Pennsauken, N.J., to points in the District of Columbia, Delaware, Maryland, New Jersey, Pennsylvania, Virginia, and New York, for 180 days. Supporting shipper: Malloy Warehouse & Distribution Corp., 8290 National Highway, Post Office Box 218, Pennsauken, N.J. 08110. Send protests to: Raymond T. Jones, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 410 Post Office Building, Trenton, N.J. 08608.

MOTOR CARRIER OF PASSENGERS

No. MC 129768 (Sub-No. 3 TA), filed August 26, 1968. Applicant: EDWARD S. JOHNSON, doing business as JOHN-SON'S LIMOUSINE SERVICE, Post Office Box 215, Frederica, Del. 19946. Applicant's representative: F. D. Hammond, Post Office Box 53, Dover, Del. 19901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, limited to transportation of not more than 11 passengers in any one vehicle, in special operations, between points in Kent County, Del., on the one hand, and, on the other, Philadelphia, Pa., Baltimore, Md., Washington, D.C., and New York, N.Y., for 180 days. Supporting shippers: There are approximately 28 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 206 Old Post Office Building, Salisbury, Md. 21891.

By the Commission.

[SEAL]

H. NEIL GARSON,
Secretary.

[F.R. Doc. 68-10624; Filed, Sept. 3, 1968;
8:47 a.m.]

[Notice 681]

MOTOR CARRIER TEMPORARY
AUTHORITY APPLICATIONS

AUGUST 29, 1968.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 340) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protest must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 263 (Sub-No. 184 TA), filed August 26, 1968. Applicant: GARRETT FREIGHTLINES, INC., 2055 Garrett Way, Post Office Box 4048, Pocatello, Idaho 83201. Applicant's representative:

Maurice H. Greene, Post Office Box 1554, Boise, Idaho 83701. Authority sought to operate as a *common carrier*, by vehicle, over regular routes, transporting: *Rugs, carpeting, and materials* used in manufacture of rugs and carpeting, serving the plantsite of Big Horn Carpet Mills, Inc., at or near Crow Agency, Mont., in connection with applicant's present existing regular route authority between Billings, Mont., and St. Paul, Minn., over U.S. Highway 10. It does intend to tack the authority applied for, to existing authority at Billings, Mont., for 180 days. Supporting shipper: Big Horn Carpet Mills, Inc., Post Office Box 355, Crow Agency, Mont. 59022. Send protests to: C. W. Campbell, District Supervisor, 455 Federal Building and U.S. Courthouse, 550 West Fort Street, Boise, Idaho 83702.

No. MC 107403 (Sub-No. 752 TA), filed August 27, 1968. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Landsdowne, Pa. 19050. Applicant's representative: John Nelson (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Silica gel catalyst*, in bulk, in tank vehicles, from Cincinnati, Ohio, to Scottsbluff, Nebr., for 180 days. Supporting shipper: W. R. Grace & Co., Davison Chemical Division, Baltimore, Md. 21203. Send protests to: Ross A. Davis, District Supervisor, Interstate Commerce Commission, 900 U.S. Customhouse, Second and Chestnut Streets, Philadelphia, Pa. 19106.

No. MC 110420 (Sub-No. 571 TA), filed August 26, 1968. Applicant: QUALITY CARRIERS, INC., 100 South Calumet Street, Burlington, Wis. 53105. Applicant's representative: Fred H. Figge (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, in tank vehicles, from Janesville, Wis., to Muscatine, Iowa, for 180 days. Supporting shipper: Armstrong Chemical Co., 1530 South Jackson Street, Janesville, Wis. 53546 (Leonard J. Armstrong, President). Send protests to: District Supervisor, Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 111231 (Sub-No. 161 TA), filed August 26, 1968. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, Ark. 72764. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, from the plantsite of Garnett Wood Products Co., Inc., Brandsville, Mo., plantsite of Trask Lumber Co., Trask, Mo., plantsite of Voyles Pallet Mill at Winona, Mo., to points in Kansas, Iowa, Illinois, Indiana, Ohio, Tennessee, and Wisconsin, for 180 days. Supporting shippers: Trask Lumber Co., Mountain View, Mo. 65548; Garnett Wood Products Co., Inc., Box 525, Brandsville, Mo. 65442. Send protests to: District Supervisor, William H. Land, Jr., 2519 Federal Office Building, Little Rock, Ark. 72201.

No. MC 111401 (Sub-No. 263 TA), filed August 26, 1968. Applicant: GROEN-DYKE TRANSPORT, INC., 2510 Rock Island Boulevard, Post Office Box 632, Enid, Okla. 73701. Applicant's representative: Victor R. Comstock (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feeds, animal feed supplements and ingredients*, in bulk, between Liberal, Kans., and points in Alabama, Arizona, Arkansas, Colorado, Georgia, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, for 180 days. Supporting shipper: Pro-Vit-Al, Inc., Box 1173, Liberal, Kans. 67901. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 350, American General Building, 210 Northwest Sixth, Oklahoma City, Okla. 73102.

No. MC 111729 (Sub-No. 271 TA), filed August 27, 1968. Applicant: AMERICAN COURIER CORPORATION, 222-17 Northern Boulevard, De Bevoise Building, Bayside, N.Y. 11361. Applicant's representative: Gerard L. Peace (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities moving in express service*. (1) *Exposed and processed film and prints, complimentary replacement film, incidental dealer handling supplies and advertising literature moving therewith* (excluding motion picture film used primarily for commercial theater and television exhibition); (a) between Atlanta, Ga., on the one hand, and, on the other, the commercial zone of Jacksonville, Fla., (b) between Findlay, Ohio, on the one hand, and, on the other, points in Noble County, Ind. (2) *Cameras, projectors, electronic flash units, light meters, and other electronic components for repair*, between Findlay, Ohio, on the one hand, and, on the other, points in Noble County, Ind. (3) *Radio-pharmaceuticals, radioactive drugs, and medical isotopes*, having an immediately prior or subsequent movement by air; (a) between New Orleans, La., on the one hand, and, on the other, points in Mississippi on and south of Highway No. 80; points in Mobile and Baldwin Counties, Ala.; and Pensacola, Fla.; (b) between Jackson, Miss., on the one hand, and, on the other, points in Mississippi, for 150 days. Supporting shippers: Eastman Kodak Co., Rochester, N.Y., 14650; B & J Photo Service, 525 North Main Street, Post Office Box 675, Findlay, Ohio, 45840; Mallinckrodt/Nuclear, Box 10172, Lambert Field, St. Louis, Mo. 63145. Send protests to: Anthony Chiusano, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10017.

No. MC 112750 (Sub-No. 260 TA), filed August 27, 1968. Applicant: AMERICAN COURIER CORPORATION, 222-17 Northern Boulevard, Devoise Building, Bayside, N.Y. 11361. Applicant's representative: Gerard L. Peace (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over

irregular routes, transporting: *Commercial papers, documents, written instruments, and business records* (except currency and negotiable securities) as are used in the business of banks and banking institutions, on behalf of The Farmers and Mechanics National Bank, Frederick, Md., and Central Pennsylvania Computer Center, York, Pa., between York, Pa., on the one hand, and, on the other, points in Maryland, for 150 days. Supporting shippers: Farmers and Mechanics National Bank, Frederick, Md.; Central Pennsylvania Computer Center, 128 South George Street, York, Pa. 17401. Send protests to: E. N. Carignan, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 26 Federal Plaza, New York, N.Y. 10017.

No. MC 113678 (Sub-No. 324 TA), filed August 26, 1968. Applicant: CURTIS, INC., 770 East 51st Avenue, Post Office Box 16004, Denver, Colo. 80216. Applicant's representative: Oscar Mandel (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except frozen foods), from Waterloo, Red Creek, Rushville, Egypt, Pen Yan, Lyons, Newark, and Fairport, N.Y., to points in Wisconsin, Minnesota, North Dakota, South Dakota, Nebraska, Iowa, Missouri, and Illinois, for 180 days. Supporting shipper: Comstock-Greenwood Foods, Division of The Borden Co., Newark, N.Y. 14513. Send protests to: District Supervisor, Herbert C. Ruoff, Interstate Commerce Commission, 2022 Federal Building, Denver, Colo. 80202.

No. MC 113855 (Sub-No. 184 TA), filed August 26, 1968. Applicant: INTERNATIONAL TRANSPORT, INC., South Highway 52, Rochester, Minn. 55901. Applicant's representative: Michael E. Miller, 502 First National Bank Building, Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Farm machinery and farm implements and parts and attachments* when moving with said farm machinery, from the plant site of the Hesston Corp. in Cache County, Utah, to points in the United States (except Alaska and Hawaii), for 180 days. Supporting shipper: Hesston Corp., Hesston, Kans. 67062. Send protests to: A. N. Spath, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 448 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minn. 55401.

No. MC 119531 (Sub-No. 90 TA), filed August 26, 1968. Applicant: DIECKBRADER EXPRESS, INC., 5391 Wooster Road, Cincinnati, Ohio 45226. Applicant's representative: H. R. Arnold (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pulpboard boxes, fillers, liners, or partitions, corrugated, and pulpboard sheets, corrugated*, from Fremont, Ohio, to Bay City, Dundee, Flint, Tecumseh, and Wayne, Mich., and Columbia City, Connersville, and Fort Wayne, Ind., for 150 days. Supporting

shipper: Fremont Container Co., Commerce Drive, Fremont, Ohio 43420. Send protests to: Emil P. Schwab, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 1010 Federal Building, 550 Main Street, Cincinnati, Ohio 45202.

No. MC 128860 (Sub-No. 1 TA), filed August 26, 1968. Applicant: BEN LARRY, doing business as LARRY'S EXPRESS, 720 Lake Street, Tomah, Wis. 54660. Applicant's representative: Ed Solie, Executive Building, Suite 100, 4513 Vernon Boulevard, Madison, Wis. 53715. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and related advertising materials, and premiums, and malt beverage dispensing equipment* in mixed load with malt beverages, from New York, N.Y., and Newark, N.J., to points in Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin, for 180 days. Supporting shipper: Van Munching & Co., Inc., 51 West 51st Street, at Rockefeller Center, New York, N.Y. 10019. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, 444 West Main Street, Room 11, Madison, Wis. 53703.

No. MC 129701 TA, (Republication), filed February 12, 1968, published FEDERAL REGISTER issue of February 21, 1968, and republished this issue. Applicant: JASPER FURNITURE FORWARDING, INC., South River Road, Post Office Box 43, Jasper, Ind. 47546. Applicant's representative: William Croft, 1815 H Street NW., Washington, D.C. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, between points in Dubois, Orange, Crawford, Vanderburgh, Perry, Spencer, Warrick, and Pike Counties, Ind., on the one hand, and, on the other, points in Indiana, Kentucky, Ohio, Illinois, and Missouri, for 180 days. The purpose of this republication is to show applicant has requested return movements and interline privileges. Supporting shippers: Paoli Chair Co., Paoli, Ind. 47454, Hossier Desk Co., Jasper, Ind. 47546, Indiana Chair Co., Jasper, Ind. 47546, Jofco, Jasper, Ind. 47546, Indiana Desk Co., Inc., Jasper, Ind. 47546, Jasper Seating Co., Jasper, Ind. 47546, Indiana Cabinet Co., Inc., Jasper, Ind. 47546, Ferdinand Furniture Co. Inc., Ferdinand, Ind., Styleline Corp., Huntingburg, Ind. 47542, Wood Design, French Lick, Ind., The Fischer Chair Co., Tell City, Ind., Jasper Desk Co., Jasper, Ind. 47546, Goebel Furniture Co. Inc., 1511 North Garvin Street, Evansville, Ind., Jasper Novelty Furniture Co., Inc., Jasper, Ind. 47546, Marble Imperial, Evansville, Ind., Best Charis, Inc., Ferdinand, Ind. 47532, Dolly Madison Industries, Huntingburg and Ferdinand, Ind., and Bolin Industries, Paoli, Ind. Send protests to: District Supervisor, Bureau of Operations, Interstate Commerce Commission, 802 Century Building, 36 South Pennsylvania Street Indianapolis, Ind. 46204.

No. MC 133070 (Sub-No. 1 TA), filed August 26, 1968. Applicant: TRANS-AIR

SERVICE, INC., Post Office Box 230, Buffalo, N.Y. 14225. Applicant's representative: Earl Rhoney, 887 Niagara Street, Buffalo, N.Y. 14213. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicle radiators, heaters and air conditioner parts, unfinished steel, and mill supply equipment*, from Lockport, N.Y., to the Greater Buffalo International Airport, Cheektowaga, N.Y., and from Buffalo, N.Y., to Lockport, N.Y., for 150 days. Supporting shipper: Harrison Radiator Division, General Motors Corp., Lockport, N.Y. 14094. Send protests to: George M. Parker, District Supervisor, 121 Ellicott Street, Room 518, Buffalo, N.Y. 14203.

No. MC 133072 (Sub-No. 1 TA), filed August 26, 1968. Applicant: VITO PALUMBO, doing business as WILLIAM PALUMBO TRUCKING, 67 Greenwich Street, New York, N.Y. 10006. Applicant's representative: William D. Traub, 10 East 40th Street, New York, N.Y. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Business forms*, from plant site of Uarco, Inc., Carlstadt, N.J., to New York, N.Y., for 150 days. Supporting shipper: Uarco, Inc., 15 Triangle Boulevard, Carlstadt, N.J. 07072. Send protests to: Paul W. Assenza, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, N.Y. 10007.

No. MC 133114 TA, filed August 26, 1968. Applicant: UNITED TOWING SERVICE, INC., 11530 Ryerson Avenue, Downey, Calif. 90241. Applicant's representative: Ernest D. Salm, 3846 Evans Street, Los Angeles, Calif. 90027. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: 1. *Wrecked and otherwise disabled commercial motor vehicles*, in towaway service, from points in Arizona, Colorado, Idaho, Nevada, New Mexico, Oregon, Texas, and Utah, to points in Los Angeles and Orange Counties, Calif. 2. *Commercial motor vehicles* to be used as replacements for those described in paragraph 1, from points in Los Angeles and Orange Counties, Calif., to points in Arizona, Colorado, Idaho, Nevada, New Mexico, Oregon, Texas, and Utah, for 180 days. Supporting shippers: Al's Towing Service, 12301 East Wardman Street, Whittier, Calif. 90602, DC International, Inc., 4500 East Bandini Boulevard, Los Angeles, Calif. 90022, ICX, Post Office Box 231, South Gate, Calif. 90280, Vernon Motor Parts & Service Co., 2947 Leonis Boulevard, Los Angeles, Calif. 90058. Send protests to: Robert G. Harrison, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 7708, Federal Building, 300 North Los Angeles Street, Los Angeles, Calif. 90012.

No. MC 133118 TA, filed August 26, 1968. Applicant: PHIL CARLSON, INC. (Oregon Corporation), 6045 Southwest 179th Avenue, Beaverton, Ore. 97005. Applicant's representative: Earle V. White, 2400 Southwest Fourth Avenue, Portland, Ore. 97201. Authority sought to operate as a *common carrier*, by motor

vehicle, over irregular routes, transporting: *Shakes and shingles*, from points in Lincoln and Tillamook Counties, Oreg., to points in California in and south of the counties of Sonoma, Napa, Yolo, Sacramento, and Placer, for 180 days. Supporting shipper: Lewis Shingle Co., Post Office Box 95, Wheeler, Oreg. 97147. Send protests to: A. E. Odoms, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 450 Multnomah Building, Portland, Oreg. 97204.

By the Commission.

[SEAL]

H. NEIL GARSON,
Secretary.

[F.R. Doc. 68-10625; Filed, Sept. 3, 1968;
8:47 a.m.]

[Notice 200]

MOTOR CARRIER TRANSFER PROCEEDINGS

AUGUST 28, 1968.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. 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-70650. By order of August 23, 1968, the Transfer Board approved the transfer to KenZ Steel Transport, Inc., Owensboro, Ky., of the operating rights in certificate No. MC-118610 (Sub-No. 1), issued August 14, 1964, to L. & B. Express, Inc., Owensboro, Ky., authorizing the transportation of iron and steel, and iron and steel articles, from points in Alleghany, Beaver, Mercer, Washington, and Westmoreland Counties, Pa., and Warren, Ohio, to points in Kentucky and Tennessee (ex-

cept from Warren, Ohio, to Ashland, Ky., and points in the Ashland, Ky., commercial zone). Fred F. Bradley, 213 St. Clair Street, Frankfort, Ky. 40601, attorney for applicants.

No. MC-FC-70669. By order of August 23, 1968, the Transfer Board approved the transfer to Walter F. Peters, doing business as Peters Truck Lines, Yreka, Calif., of certificate of registration No. MC-99723 (Sub-No. 1) issued to Johnson Trucking Service, Inc., Yreka, Calif., evidencing a right to engage in interstate or foreign commerce within the State of California. Robert C. Marks, 3755 Alhambra Avenue, Martinez, Calif. 94553, attorney for applicants.

No. MC-FC-70720. By order of August 23, 1968, the Transfer Board approved the transfer to Burton L. Strid, doing business as Webb's Deluxe Delivery Service, Danbury, Conn., of the operating rights in permit No. MC-50847 issued November 2, 1962, to N. Lyman Keeler and Burton L. Strid, a partnership, doing business as Webb's Deluxe Delivery Service, Danbury, Conn., authorizing the transportation of general commodities, between Danbury, Conn., and points in New York within 25 miles of Danbury, Conn. Sidney L. Goldstein, 109 Church Street, New Haven, Conn. 06510, attorney for applicants.

[SEAL]

H. NEIL GARSON,
Secretary.

[F.R. Doc. 68-10626; Filed, Sept. 3, 1968;
8:47 a.m.]

[Notice 201]

MOTOR CARRIER TRANSFER PROCEEDINGS

AUGUST 29, 1968.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. 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-70664. By order of August 12, 1968, the Transfer Board approved the transfer to Fred Tamasco, doing business as Fred's Delivery Service, Irvington, N.J., of the operating rights in certificate No. MC-123810, issued August 25, 1964, to Metropolitan Freight Carriers, Inc., Elizabeth, N.J., authorizing the transportation of: General commodities, with the usual exceptions, between New York, N.Y., on the one hand, and, on the other, Newark and Harrison, N.J. James J. Farrell, 201 Montague Place, South Orange, N.J. 07079, practitioner for applicants.

No. MC-FC-70473. By order of August 23, 1968, the Transfer Board, on reconsideration, approved the transfer to Sioux City Refrigerated Express, Inc., Lincoln, Nebr., of the operating rights in permits Nos. MC-52598 and MC-52598 (Sub-No. 1) issued April 2, 1951, and October 9, 1963, respectively, to Don Sadler, Sioux City, Iowa, authorizing the transportation of: Fresh meats and packing house products, meats, meat products, and byproducts, and articles distributed by meat packinghouses, and supplies and equipment used therein, between Sioux City, Iowa, West Point, Nebr., and Chicago, Ill. Donald E. Leonard, Box 2028, Lincoln, Nebr. 68501, attorney for applicants.

No. MC-FC-70688. By order of August 23, 1968, the Transfer Board approved the transfer to Granddad Bread, Inc., Auburn, Wash., of the operating rights in certificate No. MC-127725 (Sub-No. 1) issued December 15, 1966, to George T. Vail and Gary J. Sandland, a partnership, doing business as Vail & Sandland Distributors, Auburn, Wash., authorizing the transportation of bakery goods, from Seattle, Wash., to the port of entry on the United States-Canada boundary line at or near Sumas, Wash. Robert Kuvara, 116 North Central Avenue, Kent, Wash. 98031, attorney for applicants.

[SEAL]

H. NEIL GARSON,
Secretary.

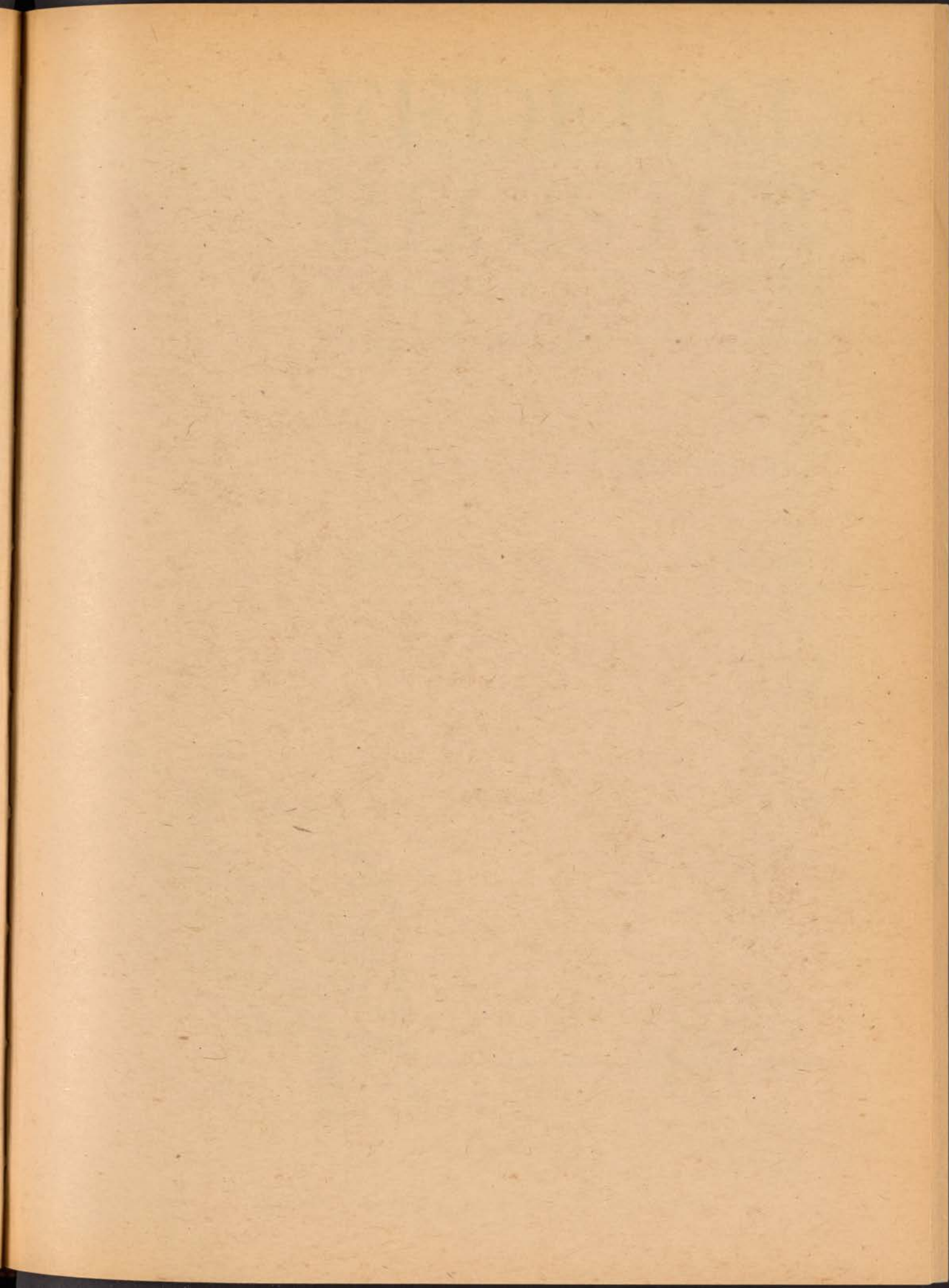
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8:47 a.m.]

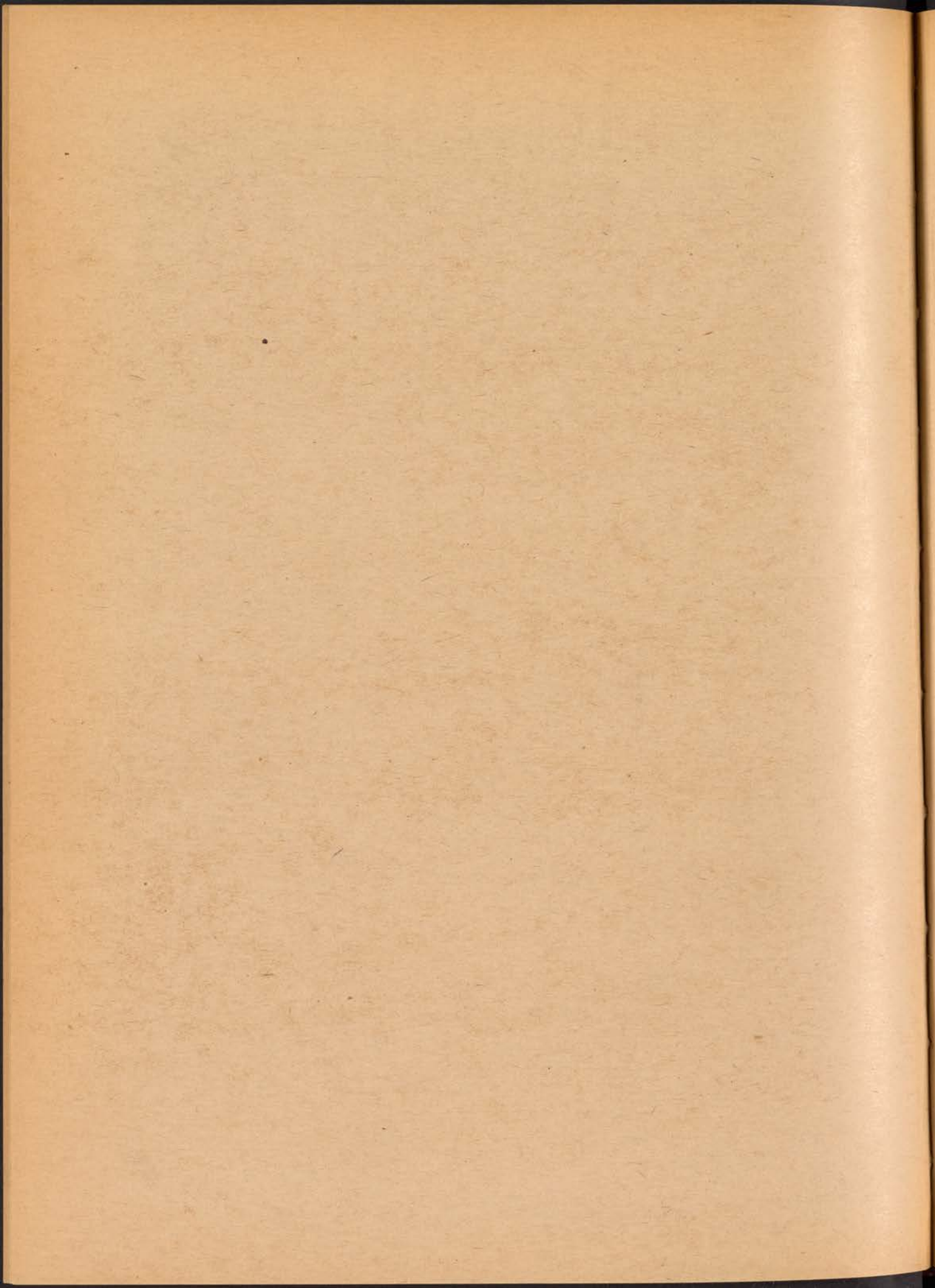
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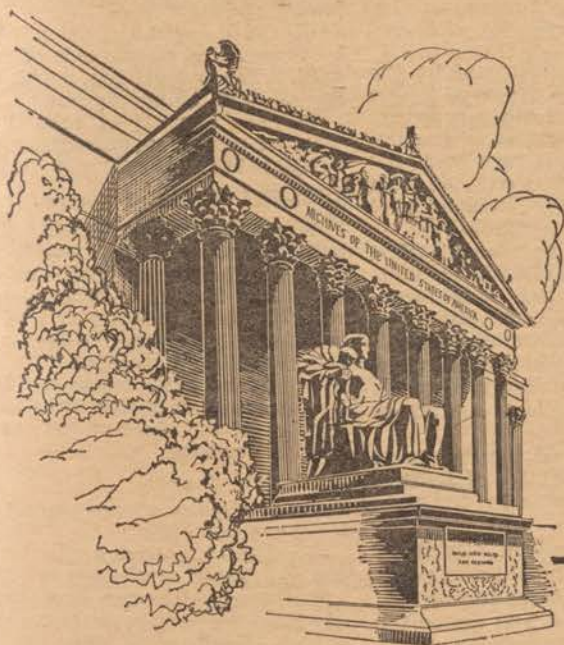
Wednesday, September 4, 1968 • Washington, D.C.

PART II

Civil Service Commission

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REVISION OF REGULATIONS



Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

SUBCHAPTER B—CIVIL SERVICE REGULATIONS

REVISION OF REGULATIONS

Subchapter B (other than Part 213) of chapter 1 of title 5 is revised to conform citations and terminology to title 5, United States Code, as recodified by Public Law 89-554. This revision of the civil service regulations makes no substantive changes in the regulations.

PART 12—STANDBY REGULATIONS FOR USE IN A NATIONAL EMERGENCY DISASTER

§ 12.101 Agency authority to take personnel actions in a national emergency disaster.

(a) The Commission hereby authorizes agencies to carry out whatever personnel activities may be necessary to the effective functioning of their organizations during a period of disaster in a national emergency without regard to any regulation or instruction of the Commission, except those specifically designated as applicable to disaster conditions. This authority applies only to actions over which the Commission has jurisdiction.

(b) Actions taken under this section shall be consistent with affected regulations and instructions as far as possible under the circumstances and shall be discontinued as soon as conditions permit the reapplication of the affected regulations and instructions.

(c) In no event shall an employee acquire a competitive civil service status by virtue of any action taken under this section.

(d) Actions taken, and authority to take actions, under this section may be adjusted or terminated in whole or in part by an official of the Commission acting under proper authority.

(e) Agencies shall maintain records of the actions taken under this section.

(5 U.S.C. 3301, 3302)

PART 151—POLITICAL ACTIVITY OF STATE EMPLOYEES: RULES OF PRACTICE

Sec.	
151.101	Purpose.
151.102	The Commission.
151.103	Executive officer.
151.104	Service.
151.105	Appearance.
151.106	Documents.
151.107	Letter of charges.
151.108	Answer.
151.109	Notice of hearing.
151.110	Motions.
151.111	Continuances and extensions of time.
151.112	Hearings on complaints.
151.113	Hearing examiners.
151.114	Subpenas.
151.115	Witnesses.
151.116	Evidence.
151.117	Depositions.

Sec.	
151.118	Admissions of fact and genuineness of documents.
151.119	Hearing examiner's preliminary report.
151.120	Briefs.
151.121	Hearing examiner's final report.
151.122	The decision.
151.123	Judicial review.
151.124	Withholding orders.

AUTHORITY: The provisions of this Part 151 issued under 5 U.S.C. 1302.

§ 151.101 Purpose.

The purpose of this part is to provide the procedures to be followed in making adjudications of whether an individual who is subject to chapter 15 of title 5, United States Code, has engaged in political activities prohibited by that chapter.

§ 151.102 The Commission.

(a) *Offices.* The principal office of the Commission is at Washington, D.C. Communications to the Commission shall be addressed to United States Civil Service Commission, Washington, D.C. 20415, Attention, General Counsel, unless otherwise specifically directed.

(b) *Hours.* The office is open on each business day from 8:15 a.m. to 4:45 p.m.

(c) *Proceedings.* The Commission may conduct any inquiry or hearing necessary to its duties in any part of the United States by one or more of its members or by such hearing examiner as it may designate.

§ 151.103 Executive officer.

The Executive Director is the executive officer of the Commission and has legal custody of its papers, records, and property. The Executive Director, or other individual authorized by the Commission, shall sign the orders of the Commission.

§ 151.104 Service.

(a) An individual authorized by the Commission shall serve copies of letters of charges, orders, and other processes of the Commission by registered or certified mail, return receipt requested, addressed to the individual charged with the violation and to the State or local agency employing the individual.

(b) When service is not accomplished by registered or certified mail, an individual authorized by the Commission, may serve letters of charges, orders, or other processes of the Commission by:

(1) Delivering a copy of the document to the individual to be served or to an officer of the State or local agency or both; or

(2) Leaving a copy of the document at the principal office or place of business of the individual to be served or the State or local agency or both.

(c) The post office return receipt for a document mailed as provided in paragraph (a) of this section, or the verified return by the individual who served the document as provided in paragraph (b) of this section setting forth the manner of service, is proof of the service of the document.

§ 151.105 Appearance.

(a) An individual who is a party to a proceeding before the Commission may appear for himself or by an attorney. A State or local agency may appear or be represented by an attorney.

(b) An attorney who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any State or territory or possession of the United States, or of the District of Columbia, and who is not under an order of any court suspending, enjoining, restraining, disbaring, or otherwise restricting him in the practice of law, may represent others before the Commission.

(c) When an attorney appears in person or signs a paper in practice before the Commission, his personal appearance or signature constitutes a representation to the Commission that under this part and the law he is authorized and qualified to represent the particular party in whose behalf he acts. The Commission may require further proof of an attorney's authority to act in a representative capacity.

(d) A former officer or employee of the Commission may not appear as an attorney for a party in any proceeding resulting from an investigation the files of which came to his personal attention during his service with the Commission.

§ 151.106 Documents.

(a) Each document required to be filed with the Commission in a proceeding shall be filed with the General Counsel of the Commission.

(b) Each document shall show clearly the docket number and title of the proceeding.

(c) Five copies of each document other than correspondence shall be filed, except as otherwise specifically required by this part.

(d) Each document not printed shall be typewritten on one side of the paper only, letter or legal size, double or triple spaced, with ample margin.

(e) The original of each document, whether printed or typewritten, shall be signed in ink by the party or his attorney.

§ 151.107 Letter of charges.

When the Commission has reason to believe that there is a violation of the law over which it has jurisdiction, it shall serve the individual charged with the violation and the State or local agency employing him with a notice summarizing the alleged violation. This notice, which is referred to as the letter of charges, shall be accompanied by a notification of the right of hearing on the letter of charges.

§ 151.108 Answer.

(a) A respondent may answer the letter of charges within:

(1) Fifteen calendar days from the day the letter of charges is served; or
(2) Thirty calendar days from that day if the respondent or the local agency is in a territory or possession of the United States.

Failure of the respondent to answer within the time limit is deemed to au-

thorize the Commission to proceed in regular course on the letter of charges without further notice to the respondent.

(b) In the answer, the respondent shall:

(1) State concisely the facts that constitute his defense; and

(2) Specifically admit, deny, or explain each of the facts alleged in the letter of charges unless he states he is without knowledge.

The respondent or his attorney shall sign and submit to the Commission the original and five copies of the answer. The answer shall show the office and post office address of the signer.

(c) Instead of the statements required by paragraph (b) of this section, the respondent may state in his answer that he admits the truth of all material allegations of fact in the letter of charges and waives a hearing. By this answer respondent is deemed to authorize the Commission to proceed in regular course to adjudicate his case. The Commission shall notify the officer or employee and the appropriate State or local agency of its determination.

(d) On written application made at the time respondent files an answer in accordance with paragraph (c) of this section, the Commission, in its discretion, may hear him, on brief, in oral argument, or both, on the sole question as to whether the facts admitted constitute the violation alleged in the letter of charges.

§ 151.109 Notice of hearing.

After the respondent files his answer or other appropriate response, the Commission shall fix a time and place for a hearing and shall send, by registered or certified mail, a notice of the time and place of the hearing to the respondent and to the State or local agency employing him.

§ 151.110 Motions.

(a) The party making a motion before the Commission or a hearing examiner shall:

(1) Include in the motion a brief statement of its purpose; and

(2) File with and clearly refer to in the motion any supporting affidavit, record, or other paper, except one filed previously.

(b) In a proceeding before a hearing examiner, the party making a motion which relates to the introduction or striking of evidence shall make it to the hearing examiner. An exception to the ruling of the hearing examiner on the motion is not necessary to preserve an objection before the Commission or appellate courts.

§ 151.111 Continuances and extensions of time.

The Commission or the hearing examiner, for cause shown, may extend the prescribed time limit for filing any paper, except the time limit for filing an appeal which is fixed by statute, and may continue or adjourn any hearing. A hearing before a hearing examiner shall begin at the time and place fixed by the Com-

mission, and thereafter the Commission or the hearing examiner may adjourn the hearing from time to time. The party seeking a continuance or an extension of time shall make application therefor before the end of the time prescribed by this part, and shall file with that application an affidavit showing exceptional circumstances.

§ 151.112 Hearings on complaints.

(a) The hearing before the Commission or the hearing examiner on the letter of charges is public unless the Commission orders otherwise.

(b) The official reporter of the Commission shall report the hearing stenographically and shall make a transcript which shall be a part of the record of the proceeding. The record made shall be the sole official record. The official reporter shall supply the respondent or the public with a transcript at a rate not in excess of the maximum rate fixed by the contract between the Commission and the reporter.

§ 151.113 Hearing examiners.

(a) The Commission may designate a hearing examiner to take evidence in any proceeding on a letter of charges.

(b) The hearing examiner shall:

(1) Complete the taking of evidence with all due dispatch;

(2) Conduct a fair and impartial hearing;

(3) Maintain order in a manner consistent with the dignity of the Commission; and

(4) Note on the record any disregard by counsel of his rulings on matters of order or procedure and make a special written report thereon to the Commission when he considers it necessary.

(c) If counsel is guilty of disrespectful, disorderly, or contemptuous language or conduct in connection with a proceeding, the hearing examiner may suspend the proceeding and submit to the Commission a report and recommendation for appropriate action. The hearing examiner shall furnish a copy of his report to counsel on whose language or conduct the report is made.

§ 151.114 Subpenas.

(a) The Commission or a member of the Commission may issue subpenas requiring the attendance of witnesses from any place in the United States at any designated place of hearing. The party seeking the subpoena shall make application therefor in writing either to the General Counsel or the hearing examiner.

(b) The Commission or the hearing examiner may issue subpenas for the production of documentary evidence. The party seeking the subpoena shall make application therefor in writing to the Commission or the hearing examiner. The application shall name as exactly as possible the documents desired, and show their relevancy and materiality. An application by a respondent shall be verified by oath or affirmation.

(c) In case of disobedience to a subpoena, the Commission may invoke the aid of any court of the United States in

requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or disobedience to a subpoena issued to a person, any of the district courts of the United States within the jurisdiction of which the inquiry is carried on, may issue an order requiring the person to appear before the Commission, to produce documentary evidence if so ordered, or to give evidence touching the matter in question. The court may punish any failure to obey its order as a contempt thereof.

§ 151.115 Witnesses.

(a) Witnesses shall be examined orally, except that for good and exceptional cause the Commission may permit their testimony to be taken by a deposition.

(b) The party at whose instance a witness appears shall pay the witness the same fees and mileage as are paid witnesses in the courts of the United States. The party at whose instance a deposition is taken shall pay the witness, and the person who takes the deposition, the same fees as are paid for like service in the courts of the United States.

§ 151.116 Evidence.

(a) *Documentary.* When relevant and material matters offered in evidence are included in a document containing other matters not material or relevant and not intended to be put in evidence, the immaterial or irrelevant parts are excluded and segregated insofar as practicable.

(b) *Objections.* The party making an objection to evidence before the Commission or a hearing examiner shall make it in short form and shall state the ground of the objection relied on. The transcript shall include the ruling on any objection, but shall not include argument or debate on an objection unless the Commission or the hearing examiner so orders. An exception to a ruling is not necessary to preserve the right of the party before the Commission or appellate courts.

§ 151.117 Depositions.

(a) The Commission may order evidence to be taken by deposition at any stage of a proceeding or investigation pending before the Commission. A deposition may be taken before any person who has the power to administer oaths and is designated by the Commission. Unless notice is waived, a deposition shall not be taken except after reasonable notice to the parties.

(b) The party desiring to take the deposition of a witness shall make application therefor in writing to the Commission. The application shall state the reason why the deposition should be taken; the name and post office address of the witness; and the subject matter or matters concerning which the witness is expected to testify.

(c) When good cause is shown, the Commission shall make and have served on the parties or their attorneys an order in which the Commission names the witness whose deposition is to be taken. The order shall specify the time when,

the place where, and the person before whom the witness is to testify, but that time, place, and person may or may not be the same as those stated in the application for the deposition.

(d) The person before whom the deposition is taken or a person under his direction shall reduce the testimony of the witness to writing. The deposition shall be typewritten on one side of the paper only, letter or legal size, left margin 1½ inches, right margin 1 inch. The person before whom the deposition is taken shall have the witness subscribe to the deposition; certify to the deposition in the usual form; and forward the certified deposition (together with four copies thereof) in an envelope under seal to the Commission at its principal office.

(e) The Commission, unless it orders otherwise for good cause shown, shall have the deposition filed in the record in the proceeding and shall have a copy thereof supplied to the party on whose application the deposition was taken or to his attorney.

§ 151.118 Admissions of fact and genuineness of documents.

(a) At any time after answer has been filed, the Commission may serve on a respondent, or a respondent may serve on the Commission, a written request for admission of:

- (1) The genuineness of any relevant documents described therein; or
- (2) The truth of any relevant matters of fact set forth in the documents.

The party making the request shall furnish with it a copy of each document described therein unless a copy has been furnished previously.

(b) The party served is deemed to make the admission requested unless he serves on the party making the request a sworn statement either denying specifically the matters of which the admission is requested, or setting forth in detail the reason why he can neither truthfully admit nor deny those matters, within:

- (1) The period designated in the request which may not be less than 10 days after service of the request; or
- (2) Such further period as the Commission or the hearing examiner allows on motion and notice.

(c) (1) The attorney for the Commission may make the service on a respondent required by this section by mailing, by registered or certified mail, or delivering the documents to be served to the respondent or his attorney or by leaving the documents at the office or place of business of either.

(2) The respondent or his attorney may make the service on the Commission required by this section by mailing, by registered or certified mail, or delivering the documents to be served to the attorney for the Commission.

§ 151.119 Hearing examiner's preliminary report.

(a) Except as provided in paragraph (b) of this section, the hearing examiner shall make a preliminary report on the evidence as promptly as practicable

after his receipt of the stenographic transcript of the hearing. The hearing examiner shall send a copy of the preliminary report to each attorney who appeared in the hearing and to any respondent not represented by an attorney.

(b) For good cause stated at the conclusion of the hearing, the hearing examiner may eliminate the filing and service of a preliminary report. Any party may apply in writing to the Commission for modification of the hearing examiner's ruling concerning the preliminary report.

(c) The preliminary report of the hearing examiner is not a report of finding of the Commission, but is advisory only and is not binding on the Commission.

§ 151.120 Briefs.

When a party desires to submit a brief at the conclusion of a hearing, the hearing examiner shall prescribe the time and other directions for filing briefs. The hearing examiner shall calculate the time within which initial briefs may be filed from the date of service of the hearing examiner's preliminary report on the parties. A party may apply in writing to the Commission for modification of the hearing examiner's ruling concerning the filing of briefs.

§ 151.121 Hearing examiner's final report.

(a) After expiration of the time for filing briefs, the hearing examiner shall reexamine the record, including any briefs filed, and shall make a final report to the Commission as promptly as practicable.

(b) The final report of the hearing examiner is not a report of finding of the Commission, but is advisory only and is not binding on the Commission.

(c) On receipt of the hearing examiner's final report, the Commission may:

- (1) Refer the case back to the hearing examiner for the purpose of obtaining additional evidence if the circumstances warrant that action; or
- (2) Order and provide for a further hearing if it considers that the recommendations in the final report vary from the tentative recommendations in the preliminary report to the extent that the parties should have further opportunity to be heard.

§ 151.122 The decision.

On receipt of the hearing examiner's final report, the Commission shall review that report and make its own findings and determination on whether or not a violation has occurred and whether the violation warrants the removal of the individual charged with the violation. The Commission shall notify the individual and the State or local agency employing him of its determination by registered or certified mail.

§ 151.123 Judicial review.

Judicial review is provided for in section 1508 of title 5, United States Code. This section is as follows:

SEC. 1508. *Judicial review.* A party aggrieved by a determination or order of the

Civil Service Commission under section 1504, 1505, or 1506 of this title may, within 30 days after the mailing of notice of the determination or order, institute proceedings for review thereof by filing a petition in the United States District Court for the district in which the State or local officer or employee resides. The institution of the proceedings does not operate as a stay of the determination or order unless—

- (1) the court specifically orders a stay; and
- (2) the officer or employee is suspended from his office or employment while the proceedings are pending.

A copy of the petition shall immediately be served on the Commission, and thereupon the Commission shall certify and file in the court a transcript of the record on which the determination or order was made. The court shall review the entire record including questions of fact and questions of law. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that the additional evidence may materially affect the result of the proceedings and that there were reasonable grounds for failure to adduce this evidence in the hearing before the Commission, the court may direct that the additional evidence be taken before the Commission in the manner and on the terms and conditions fixed by the court. The Commission may modify its findings of fact or its determination or order in view of the additional evidence and shall file with the court the modified findings, determination, or order; and the modified findings of fact, if supported by substantial evidence, are conclusive. The court shall affirm the determination or order, or the modified determination or order, if the court determines that it is in accordance with law. If the court determines that the determination or order, or the modified determination or order, is not in accordance with law, the court shall remand the proceeding to the Commission with directions either to make a determination or order determined by the court to be lawful or to take such further proceedings as, in the opinion of the court, the law requires. The judgment and decree of the court are final, subject to review by the appropriate United States Court of Appeals as in other cases, and the judgment and decree of the court of appeals are final, subject to review by the Supreme Court of the United States on certiorari or certification as provided by section 1254 of title 28. If a provision of this section is held to be invalid as applied to a party by a determination or order of the Commission, the determination or order becomes final and effective as to that party as if the provision had not been enacted.

§ 151.124 Withholding orders.

When it is necessary to issue an order requiring the withholding of funds from a State or local agency, the Commission shall make and serve a withholding order on the appropriate Federal agency in conformity with this part and the following specific provisions:

(a) On learning that circumstances exist requiring the issuance of a withholding order, the General Counsel shall file a petition for a withholding order with the hearing examiner. The petition shall recite the circumstances which require the issuance of a withholding order, and shall be accompanied by evidence of the circumstances.

(b) After consideration of the petition, the hearing examiner shall issue an interlocutory order and cause the

same to be served on the State or local agency from which funds are to be withheld. This interlocutory order and any accompanying documents shall notify the State or local agency of the nature of the proceeding and shall afford a reasonable time of not less than 15 days for answer.

(c) If the State or local agency files a reply to the petition, the hearing examiner shall make appropriate provision for the presentation of evidence and argument by the agency and the General Counsel, orally or in writing.

(d) After consideration of the evidence and argument presented by the State or local agency and the General Counsel, the hearing examiner shall make a report to the Commission.

(e) If the Commission finds that a withholding order should issue, it shall make and certify to the appropriate Federal agency an order requiring the withholding of funds.

PART 177—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

- Sec.
- 177.101 Scope of regulations.
- 177.102 Administrative claim; when presented; appropriate Commission office.
- 177.103 Administrative claim; who may file.
- 177.104 Investigations.
- 177.105 Administrative claim; evidence and information to be submitted.
- 177.106 Authority to adjust, determine, compromise, and settle.
- 177.107 Limitations on authority.
- 177.108 Referral to Department of Justice.
- 177.109 Final denial of claim.
- 177.110 Action on approved claim.

AUTHORITY: The provisions of this Part 177 issued under 28 U.S.C. 2672; 28 CFR 14.11.

§ 177.101 Scope of regulations.

This part applies only to claims asserted under the Federal Tort Claims Act, as amended, accruing on or after January 18, 1967, for money damages against the United States for injury to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an officer or employee of the Commission (referred to in this part as an "employee") while acting within the scope of his office or employment.

§ 177.102 Administrative claim; when presented; appropriate Commission office.

(a) For the purpose of this part, a claim is deemed to have been presented when the Commission receives, at a place designated in paragraph (b) or (c) of this section, an executed "Claim for Damage or Injury", Standard Form 95, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, for personal injury, or for death alleged to have occurred by reason of the incident. A claim which should have been presented to the Commission, but which was mistakenly addressed to or filed with another Federal agency, is deemed to be presented to the Commission as of the date that the claim

is received by the Commission. If a claim is mistakenly addressed to or filed with the Commission, the Commission shall forthwith transfer it to the appropriate Federal agency, if ascertainable, or return it to the claimant.

(b) Except as provided in paragraph (c) (1) of this section, a claimant shall mail or deliver his claim to the Office of the General Counsel, U.S. Civil Service Commission, 1900 E Street NW., Washington, D.C. 20415.

(c) (1) When a claim is for \$200 or less and does not involve a personal injury, the claimant shall mail or deliver it to the Director of the Commission's Regional Office in which the Commission employee whose negligence or wrongful act or omission is alleged to have caused the loss or injury complained of is employed. In these cases, the address of the appropriate Regional Director is one of the following:

- Atlanta Region—Atlanta Merchandise Mart, 240 Peachtree Street NW., Atlanta, Ga. 30303.
- Boston Region—Post Office and Courthouse Building, Boston, Mass. 02109.
- Chicago Region—Main Post Office Building, 433 West Van Buren Street, Chicago, Ill. 60607.
- Dallas Region—1114 Commerce Street, Dallas, Tex. 75202.
- Denver Region—Building 20, Denver Federal Center, Denver, Colo. 80225.
- New York Region—News Building, 220 East 42d Street, New York, N.Y. 10017.
- Philadelphia Region—Customhouse, Second and Chestnut Streets, Philadelphia, Pa. 19106.
- St. Louis Region—1256 Federal Building, 1520 Market Street, St. Louis, Mo. 63103.
- San Francisco Region—Federal Building, Box 36010, 450 Golden Gate Avenue, San Francisco, Calif. 94102.
- Seattle Region—302 Federal Office Building, First Avenue and Madison Street, Seattle, Wash. 98104.

(2) If the Commission employee's office of employment is the Central Office of the Commission or is not known and not reasonably ascertainable, the claimant shall mail or deliver his claim to the Office of the General Counsel, United States Civil Service Commission, 1900 E Street NW., Washington, D.C. 20415.

§ 177.103 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property interest which is the subject of the claim, his authorized agent, or his legal representative.

(b) A claim for personal injury may be presented by the injured person, his authorized agent, or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. When an insurer presents a claim

asserting the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 177.104 Investigations.

The Commission may investigate, or may request any other Federal agency to investigate, a claim filed under this part.

§ 177.105 Administrative claim; evidence and information to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support on the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent on him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering before death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the amount of damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the Commission or another Federal agency. The Commis-

sion shall make available to the claimant a copy of the report of the examining physician on written request by the claimant, if he has, on request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to the Commission any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full- or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership of the property interest which is the subject of the claim.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 177.106 Authority to adjust, determine, compromise, and settle.

(a) The General Counsel of the Commission, or his designee, is delegated authority to consider, ascertain, adjust, determine, compromise, and settle claims under the provisions of section 2672 of title 28, United States Code, and this part.

(b) Notwithstanding the delegation of authority in paragraph (a) of this section, a Regional Director is delegated authority, to be exercised in his discretion, to consider, ascertain, adjust, determine, compromise, and settle under the provisions of section 2672 of title 28, United States Code, and this part any claim for \$200 or less which is based on the alleged negligence or wrongful act or omission of an employee of his Region, except when:

(1) There are personal injuries to either Government personnel or individuals not employed by the Government; or

(2) All damage to Government property or to property being used for the Commission, or both, is more than \$200, or all damage to non-Government property being used by individuals not employed by the Government is more than \$200.

§ 177.107 Limitations on authority.

(a) An award, compromise, or settlement of a claim under this part in excess of \$25,000 may be effected only with the advance written approval of the Attorney General or his designee. For the purpose of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled under this part only after consultation with the Department of Justice when, in the opinion of the General Counsel of the Commission, or his designee:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and the Commission is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed \$25,000.

(c) An administrative claim may be adjusted, determined, compromised, or settled under this part only after consultation with the Department of Justice when the Commission is informed or is otherwise aware that the United States or an employee, agent, or cost-type contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 177.108 Referral to Department of Justice.

When Department of Justice approval or consultation is required under § 177.107, the referral or request shall be transmitted to the Department of Justice by the General Counsel of the Commission or his designee.

§ 177.109 Final denial of claim.

Final denial of an administrative claim under this part shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the Commission action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

§ 177.110 Action on approved claim.

(a) Payment of a claim approved under this part is contingent on claimant's execution of (1) a "Claim for Damage or Injury", Standard Form 95, (2) a claims settlement agreement, and

(3) a "Voucher for Payment", Standard Form 1145, as appropriate. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees, and the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) Acceptance by the claimant, his agent, or legal representative, of an award, compromise, or settlement made under section 2672 or 2677 of title 28, United States Code, is final and conclusive on the claimant, his agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and constitutes a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

PART 179—CLAIMS COLLECTION STANDARDS

Sec.

179.101 General collection standards.

179.102 Delegation of authority.

AUTHORITY: The provisions of this Part 179 issued under sec. 3, 80 Stat. 309, 31 U.S.C. 952.

§ 179.101 General collection standards.

The general standards and procedures governing the collection, compromise, termination, and referral to the Department of Justice of claims for money and property that are prescribed in the regulations issued jointly by the General Accounting Office and the Department of Justice pursuant to the Federal Claims Collection Act of 1966 (4 CFR Part 101 et seq.), apply to the administrative claim collection activities of the Commission.

§ 179.102 Delegation of authority.

The Director of the Bureau of Retirement and Insurance shall act on claims that arise under Subchapter III of Chapter 83, Chapter 87 and Chapter 89 of title 5, United States Code, the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Panama Canal Construction Annuity Act (58 Stat. 257), and the Lighthouse Service Widow's Annuity Act (64 Stat. 465). The General Counsel shall act on all other claims.

PART 180—EMPLOYEES' PERSONAL PROPERTY CLAIMS

Sec.

180.101 Purpose.

180.102 Definitions.

180.103 Decision on claim.

180.104 Who may file claim.

180.105 Time limits for filing.

180.106 Principal types of claims allowable.

180.107 Principal types of claims not allowable.

180.108 Computation of award and finality of settlement.

AUTHORITY: The provisions of this Part 180 issued under sec. 3, 78 Stat. 767, as amended; 241.

§ 180.101 Purpose.

This part prescribes regulations under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, for the settlement of a claim against the United States made by an officer or employee of the Commission for damage to,

or loss of, personal property incident to his service.

§ 180.102 Definitions.

As used in this part:

(a) "Act" means the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240-243).

(b) "Employee" means an officer or employee of the Commission.

(c) "Settle" means consider, ascertain, adjust, determine, and dispose of any claim, whether by full or partial allowance or disallowance.

§ 180.103 Decision on claim.

The General Counsel of the Commission shall settle any claim filed under this part.

§ 180.104 Who may file claim.

A claim may be filed by an employee, by his spouse in his name as authorized agent, or by any other authorized agent or legal representative of the employee. If the employee is dead, his (a) spouse, (b) child, (c) father or mother, or both, or (d) brother or sister, or both, may file the claim and is entitled to payment in that order.

§ 180.105 Time limits for filing.

(a) A claim under this part may be considered only if:

(1) The damage or loss occurred after August 31, 1964; and

(2) Except as provided in paragraph (b) of this section, the claim is filed in writing within 2 years after accrual or, if the claim accrued more than 21 months before publication of this part in the FEDERAL REGISTER, within 3 months of the date of publication.

(b) A claim that cannot be filed within the time limits of paragraph (a) of this section because of circumstances attendant on a war or armed conflict involving one of the armed forces of the United States that exists at the time the claim accrues or within the 2-year period after the claim accrued, may be considered if filed in writing within 2 years after the circumstances permit filing or within 2 years after the end of the war or armed conflict, whichever is earlier.

§ 180.106 Principal types of claims allowable.

(a) In general, a claim may be allowed only for tangible personal property of a type and quantity that was reasonable, useful, or proper for the employee to possess under the circumstances at the time of the loss or damage.

(b) Claims that will ordinarily be allowed include, but are not limited to, cases in which the loss or damage occurred:

(1) In quarters assigned or provided in kind, by the Government, wherever situated;

(2) In quarters outside the 50 States and the District of Columbia whether or not assigned or provided in kind by the Government, unless the claimant is a local or native resident;

(3) In a place officially designated for storage of property such as a warehouse, office, hospital, or other storage place;

(4) In a marine, rail, aircraft, or other common disaster or a natural disaster such as a fire, flood, hurricane;

(5) When the property, including personal clothing and vehicles, was subjected to extraordinary risks in the performance of duty, such as in connection with civil disturbances, public disorder, common or natural disaster, or efforts to save Government property or human life;

(6) When the property was used for the benefit of the Government at the direction of a superior; and

(7) When the property was money deposited with an authorized Government agent for safekeeping.

§ 180.107 Principal types of claims not allowable.

(a) Claims that will ordinarily not be allowed include, but are not limited to, claims for:

(1) Losses or damages totaling less than \$10 or more than \$6,500;

(2) Money or currency except when deposited with an authorized Government agent for safekeeping or except when lost incident to a marine, rail, aircraft, or other common disaster or a natural disaster such as a fire, flood, or hurricane;

(3) Transportation losses involving baggage, household goods, or other shipments which could have been insured;

(4) Articles of extraordinary value;

(5) Articles being worn (unless allowable under § 180.106);

(6) Intangible property such as bank books, checks, notes, stock certificates, money orders, or travelers checks;

(7) Property owned by the United States unless the employee is financially responsible for it to another Government agency;

(8) Claims for loss or damage to motor vehicles or trailers (unless allowable under § 180.106);

(9) Losses of insurers and subrogees;

(10) Losses recoverable from insurer and carriers;

(11) Losses in quarters within the United States not assigned or otherwise provided in kind by the Government;

(12) Losses recovered or recoverable pursuant to contract;

(13) Claims for damage or loss caused, in whole or in part, by the negligent or wrongful act of the employee or his agent;

(14) Property used for business or profit;

(15) Theft from the possession of the employee unless due care was used to protect possession; or

(16) Property acquired, possessed or transported in violation of law, or regulations.

§ 180.108 Computation of award and finality of settlement.

(a) Some governing computation principles. The amount awarded on any items of property may not exceed the adjusted cost, based either on the price paid or value at the time of acquisition. The amount normally payable for property damaged beyond economical repair is found by determining its depreciated

value immediately before loss or damage, less any salvage value. If the cost of repair is less than the depreciated value, it will be considered to be economically repairable and only the cost of repair will be allowable.

(b) Finality of settlement. Notwithstanding any other provision of law, settlement of a claim under the Act and this part is final and conclusive.

(c) Attorney's fee. Under the terms of the Act, no more than 10 percent of the amount paid in settlement of a claim submitted and settled under this part may be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim, any contract to the contrary notwithstanding; any person violating this or any other provision of the Act is guilty of a misdemeanor and on conviction shall be fined not to exceed \$1,000.

PART 210—BASIC CONCEPTS AND DEFINITIONS (GENERAL)

Subpart A—Applicability of Regulations; Definitions

Sec.

210.101 Applicability of various parts of regulations.

210.102 Definitions.

AUTHORITY: The provisions of this Part 210 issued under 5 U.S.C. 1302, 3301, 3302, E.O. 10577, 3 CFR, 1954-1958 Comp., p. 218.

Subpart A—Applicability of Regulations; Definitions

§ 210.101 Applicability of various parts of regulations.

(a) General. In most parts, the applicability of the part is stated specifically in the part or is otherwise apparent from the substance of the part.

(b) Parts 315 through 339. Parts 315 through 339 of this chapter apply to all positions in the competitive service and to all incumbents of those positions; and, except as specified by or in an individual part, these parts do not apply to positions in the excepted service or to incumbents of those positions.

§ 210.102 Definitions.

(a) The definitions in paragraph (b) of this section apply throughout this chapter, except when a defined term is specifically modified in or specifically defined for the purpose of a particular part.

(b) In this chapter:

(1) "Appointing officer" means a person having power by law, or by lawfully delegated authority, to make appointments to positions in the service of the Federal Government or the government of the District of Columbia.

(2) "Commission" means the U.S. Civil Service Commission.

(3) "Days", unless otherwise defined or limited, means calendar days and not workdays. In computing a period of time prescribed in this chapter, the day of the action or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday in which event the period

runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday.

(4) "Demotion" means a change of an employee, while serving continuously within the same agency:

(i) To a lower grade when both the old and the new positions are under the General Schedule or under the same type graded wage schedule; or

(ii) To a position with a lower rate of pay when both the old and the new positions are under the same type ungraded wage schedule, or are in different pay method categories.

(5) "Eligible" means an applicant who meets the minimum requirements for entrance to an examination and is rated 70 or more in the examination by the Commission.

(6) "Employee" means a civilian officer or employee.

(7) "Metropolitan area of Washington, D.C.", means the District of Columbia; Alexandria, and Falls Church Cities, Va.; Arlington, and Fairfax Counties, Va.; and Montgomery and Prince Georges Counties, Md.

(8) "Noncompetitive action" means a promotion, demotion, reassignment, transfer, reinstatement, or an appointment based on prior service.

(9) "Overseas" means outside the continental United States, but does not include Alaska, Guam, Hawaii, the Isthmus of Panama, Puerto Rico, or the Virgin Islands.

(10) "Position change" means a promotion, demotion, or reassignment.

(11) "Promotion" means a change of an employee, while serving continuously within the same agency:

(i) To a higher grade when both the old and the new positions are under the General Schedule or under the same type graded wage schedule; or

(ii) To a position with a higher rate of pay when both the old and the new positions are under the same type ungraded wage schedule, or are in different pay method categories.

(12) "Reassignment" means a change of an employee, while serving continuously within the same agency, from one position to another without promotion or demotion.

(13) "Reemployed annuitant" means an employee whose annuity under subchapter III of chapter 83 of title 5, United States Code, was continued on reemployment in an appointive position on or after October 1, 1956.

(14) "Register" means a list of qualified applicants compiled in order of relative standing for certification.

(15) "Reinstatement" means the non-competitive reemployment for service as a career or career-conditional employee of a person formerly employed in the competitive service who had a competitive status or was serving probation when he was separated from the service.

(16) "Status quo employee" means an employee who failed to acquire a competitive status when the position in which he was serving was placed in the competitive service by a statute, Executive order, or Civil Service rule, which per-

mitted his retention without the acquisition of status.

(17) "Tenure" means the period of time an employee may reasonably expect to serve under his current appointment. It is granted and governed by the type of appointment under which an employee is currently serving without regard to whether he has a competitive status or whether his appointment is in a competitive position or in an excepted position.

(18) "Transfer" means a change of an employee, without a break in service of 1 full workday, from a position in one agency to a position in another agency.

PART 211—VETERAN PREFERENCE

Subpart A—Definitions

§ 211.101 Definitions.

In this chapter, "preference eligible" has the meaning given that term by section 2108 of title 5, United States Code. (5 U.S.C. 1302)

PART 212—COMPETITIVE SERVICE AND COMPETITIVE STATUS

Subpart A—Competitive Service

Sec.

212.101 Definitions.

212.102 Authority to make determinations.

Subpart B—[Reserved]

Subpart C—Competitive Status

212.301 Competitive status defined.

Subpart D—Effect of Competitive Status on Position

212.401 Effect of competitive status on position.

AUTHORITY: The provisions of this Part 212 issued under 5 U.S.C. 1302, 3301, 3302, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218.

Subpart A—Competitive Service

§ 212.101 Definitions.

In this chapter:

(a) "Competitive service" has the meaning given that term by section 2102 of title 5, United States Code, and includes:

(1) All civilian positions in the executive branch of the Federal Government not specifically excepted from the civil service laws by or pursuant to statute, by the President, or by the Commission under section 6.1 or section 9.20 of the Civil Service rules (Subchapter A of this chapter), including postmaster positions whether or not filled by Presidential nomination and Senate confirmation; and

(2) All positions in the legislative and judicial branches of the Federal Government and in the government of the District of Columbia specifically made subject to the civil service laws by statute.

(b) "Competitive position" means a position in the competitive service.

§ 212.102 Authority to make determinations.

The Commission determines finally whether a position is in the competitive service.

Subpart B—[Reserved]

Subpart C—Competitive Status

§ 212.301 Competitive status defined.

In this chapter, competitive status means an individual's basic eligibility for noncompetitive assignment to a competitive position. Competitive status is acquired by completion of a probationary period under a career-conditional or career appointment or under a career executive assignment following open competitive examination, or by statute, Executive order, or the Civil Service rules, without open competitive examination. An individual with competitive status may be, without open competitive examination, reinstated, transferred, promoted, reassigned, or demoted, subject to conditions prescribed by the civil service rules and regulations.

Subpart D—Effect of Competitive Status on Position

§ 212.401 Effect of competitive status on position.

(a) An employee is in the competitive service when he has competitive status and is in a competitive position under a nontemporary appointment.

(b) An employee in the competitive service at the time his position is first listed under Schedule A, B, or C remains in the competitive service while he occupies that position.

PART 213—EXCEPTED SERVICE

NOTE: Part 213 is republished annually in December.

PART 230—ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT

Subpart A—[Reserved]

Subpart B—Exercise of Agency Authority To Take Personnel Actions

Sec.

230.201 Standards and requirements for agency personnel actions.

230.202 Withdrawal of agency authority.

AUTHORITY: The provisions of this Part 230 issued under 5 U.S.C. 1302, 3301, 3302, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218.

Subpart A—[Reserved]

Subpart B—Exercise of Agency Authority To Take Personnel Actions

§ 230.201 Standards and requirements for agency personnel actions.

In taking a personnel action authorized by this chapter, each agency shall comply with the qualification standards issued by the Commission, the instructions published by the Commission in the Federal Personnel Manual, and the regulations in this chapter.

§ 230.202 Withdrawal of agency authority.

The Commission may suspend or withdraw any authority granted by this chapter to an agency when it finds that the agency has not complied with the qualification standards issued by the Commission, the instructions published by the Commission in the Federal Personnel Manual, or the regulations in this chapter, or that the suspension or withdrawal is in the interest of the service for any other reason.

PART 293—PERSONNEL RECORDS AND FILES

Subpart A—[Reserved]

Subpart B—Official Personnel Folder

- Sec.
- 293.201 Applicability of regulations.
- 293.202 Establishment of Official Personnel Folder.
- 293.203 Ownership of folder.
- 293.204 Maintenance and content of folder.
- 293.205 Type of folder to be used.
- 293.206 Use of existing folders upon transfer or reemployment.
- 293.207 Disposition of folders upon movement to another agency.
- 293.208 Disposition of folders of former Federal employees.
- 293.209 Removal of temporary records from folder.

AUTHORITY: The provisions of this Part 293 issued under sec. 4, E.O. 10561; 3 CFR, 1954-1958 Comp., p. 205.

Subpart A—[Reserved]

Subpart B—Official Personnel Folder

§ 293.201 Applicability of regulations.

This part applies to, and within this part "agency" means, each executive department and independent establishment of the Federal Government, including (a) each corporation wholly owned or controlled by the United States, and (b) with respect to positions subject to the Civil Service rules and regulations, the legislative and judicial branches of the Federal Government and the Government of the District of Columbia.

§ 293.202 Establishment of Official Personnel Folder.

Each agency shall establish an Official Personnel Folder for each employee occupying a position subject to this part, except as provided in § 293.206. Only one Official Personnel Folder may be maintained for each employee.

§ 293.203 Ownership of folder.

The Official Personnel Folder of each employee in a position subject to the Civil Service rules and regulations is under the jurisdiction and control of, and is part of the records of, the Commission.

§ 293.204 Maintenance and content of folder.

The head of each agency shall maintain in the Official Personnel Folder the reports of selection and other personnel actions named in section 2951 of title 5, United States Code. The folder shall also contain permanent and temporary records affecting the employee's status and service as required by the Commission's instructions.

§ 293.205 Type of folder to be used.

Each agency shall use Official Personnel Folders procurable from Federal Supply Service contracts or stock for the folders required by this part.

§ 293.206 Use of existing folders upon transfer or reemployment.

When an agency hires a person who has served on or after April 1, 1947, in a position subject to this part, it shall re-

quest the transfer of the Official Personnel Folder pertaining to the person's employment. The folder so obtained shall be used in lieu of establishing a new Official Personnel Folder.

§ 293.207 Disposition of folders upon movement to another agency.

When a person for whom an Official Personnel Folder has been established transfers from one agency to another or is reappointed in an agency, the last employing agency or the General Services Administration, Federal Records Center, whichever has possession of the folder, shall, on request, transfer the folder to the new employing agency.

§ 293.208 Disposition of folders of former Federal employees.

When a person for whom an Official Personnel Folder has been established is separated from an agency, the agency shall retain the folder for 30 days after the separation and then transfer it to the General Services Administration, Federal Records Center, St. Louis, Mo.

§ 293.209 Removal of temporary records from folder.

The employing agency having possession of an Official Personnel Folder shall remove records of temporary value from the folder and dispose of them in accordance with General Schedule 1 promulgated by the General Services Administration before the folder is transferred to another agency or to the Federal Records Center.

PART 294—AVAILABILITY OF OFFICIAL INFORMATION

Subpart A—General Provisions

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- 294.801 Agency administrative appeals.
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Subpart I—Retirement

- 294.901 Retirement.

Subpart J—Classified Information

- 294.1001 Classified information.

AUTHORITY: The provisions of this Part 294 issued under 5 U.S.C. 552, 1104.

Subpart A—General Provisions

§ 294.101 Purpose.

The purpose of this part is to set forth the basic policies of the Commission in regard to the availability or disclosure of information in the possession of or controlled by the Commission.

§ 294.102 Definitions.

In this part:

(a) "Information" means books, papers, manuals, records, photographs, and other documentary materials, regardless of physical form or characteristics, made in or received by or under the control of the Commission in pursuance of law or in connection with the discharge of official business;

(b) "Information available to the public" means information which, on request, may be examined or copied, or of which copies may be obtained in accordance with this part by the public or representatives of the press regardless of interest and without specific justification; and

(c) "Disclose" or "disclosure" means making information available, on request, for examination or copying, or furnishing a copy thereof.

§ 294.103 General policy.

Because the major functions of the Commission relate to the internal personnel rules and practices of the Government the disclosure of information relative to these functions is exempted from the disclosure requirements in section 552 of title 5, United States Code, by subsection (b) of that section. Notwithstanding this exemption, it is the general policy of the Commission to make information available to the public unless the disclosure thereof would constitute a clearly unwarranted invasion of personal privacy or is prohibited under law or Executive order or relates to internal memoranda, letters, or manuals the disclosure of which would interfere with the performance of the functions of the Commission. The Commission reserves the right to make exceptions to the general policy in a particular instance giving due weight to the right of the public to know and the particular governmental or individual interest involved.

§ 294.104 Service charges for information.

(a) The Commission furnishes a member of the public free of charge reasonable quantities of information that has been printed or otherwise reproduced for the purpose of making it available to the public without charge.

(b) The Commission furnishes to a member of the public free of charge information that is requested and is not restricted from disclosure when the information is readily available and can be furnished by the Commission either without cost or at nominal cost.

(c) The Federal Personnel Manual and any other Commission publication or information that is offered for sale may be purchased from the Superintendent of

Documents, Government Printing Office, Washington, D.C. 20402.

(d) When a request for information not provided under paragraphs (a) through (c) of this section is received, the Commission furnishes a copy of it at a fair and equitable fee when it is available to the public. In determining the fair and equitable fee under this paragraph the Commission ascertains all costs necessary to recover the full cost to the Government including, but not limited to, costs of employee services relating to research, reproduction, assembly, and authentication. The fee will be based on these costs. The Commission will not undertake to furnish copies of information under this paragraph until the fee for the information is paid, except when the fee cannot be determined in advance in which case an estimated fee shall be paid with appropriate adjustment at time of delivery. A fee shall be paid by check or money order payable to the U.S. Treasury.

§ 294.105 Places where information may be obtained.

(a) A request for information should be directed to the bureau or staff office of the Commission, 1900 E Street NW., Washington, D.C. 20415, which is responsible for the subject matter concerned as indicated in this paragraph:

Subject matter	Bureau of staff office
Policy and Interpretations.	Bureau of Policies and Standards.
Medical information.	Medical Division, Bureau of Retirement and Insurance.
Examinations and related subjects.	Bureau of Recruiting and Examining.
Investigations -----	Bureau of Personnel Investigations.
Official Personnel Folder.	Bureau of Policies and Standards.
Appeals -----	Do.
Retirement, Health Benefits, and Insurance.	Bureau of Retirement and Insurance.

The bureau or staff office concerned will advise where information that may be disclosed can be examined or copied or copies thereof obtained. A request for information on a subject matter not specifically referred to in this paragraph should be directed to the Public Information Office, 1900 E Street NW., Washington, D.C. 20415, which will assist the press and advise other inquirers where contact for the information should be made.

(b) In the event of a difference between an employee of the Commission and a member of the public concerning the availability or disclosure of information under this part, the matter shall be referred by the head of the bureau or staff office concerned, through the Public Information Officer, to the Executive Director. The decision of the Executive Director shall be in writing and shall state the reasons for the decision. That decision is the only administrative appeal within the Commission and the obtaining of that decision constitutes the exhaustion of the administrative remedy within the Commission.

(c) Information available to the public is, as far as practical considerations

permit, available from each of the following regional and branch offices of the Commission:

REGIONAL OFFICES

Atlanta Merchandise Mart, 240 Peachtree Street NW., Atlanta, Ga. 30303.
Post Office and Courthouse Building, Boston, Mass. 02109.
Main Post Office Building, 433 West Van Buren Street, Chicago, Ill. 60607.
1114 Commerce Street, Dallas, Tex. 75202.
Building 20, Denver Federal Center, Denver, Colo. 80225.
News Building, 220 East 42d Street, New York, N.Y. 10017.
Customhouse, Second and Chestnut Streets, Philadelphia, Pa. 19106.
302 Federal Office Building, First Avenue and Madison Street, Seattle, Wash. 98104.
Federal Building, Post Office Box 36010, 450 Golden Gate Avenue, San Francisco, Calif. 94102.
1256 Federal Building, 1520 Market Street, St. Louis, Mo. 63103.

BRANCH OFFICES

Room 802, Federal Building South, 600 South Street, New Orleans, La. 70112.
Federal Office Building, Anchorage, Alaska 99501.
714 West Olympic Boulevard, Los Angeles, Calif. 90015.
Veterans Administration Building 57, Fort Snelling, Minn. 55111.

§ 294.106 Time for obtaining information.

A request for information under this part may be made in writing or orally during business hours on a regular business day. When information to be furnished is not readily available, the employee responsible for obtaining the information shall make it available within a reasonable time.

§ 294.107 Identification of information requested.

A member of the public who requests information under this part shall provide a reasonably specific description of the information sought so that it may be located without undue search or inquiry. Information that is not identified by a reasonably specific description is not an identifiable record, and the request for that information may be declined. A member of the public who requests information from an appeal or complaint file under Subpart H of this part must identify by name the individual from whose appeal or complaint file the information is sought.

§ 294.108 Custody of information; subpoenas.

(a) The Executive Assistant to the Commissioners has official custody of the official records of the Commission. A subpoena or other judicial order for an official record from the Commission should be served on the Executive Assistant to the Commissioners, 1900 E Street NW., Washington, D.C. 20415.

(b) If a subpoena or other judicial order for an official record is served on an employee of the Commission other than the Executive Assistant to the Commissioners, the employee shall immediately inform the General Counsel of the Commission who shall advise the employee accordingly.

(c) (1) If a subpoena or other judicial order for information contained in an Official Personnel Folder in the physical custody of a Government agency other than the Commission is served on a Government employee responsible for the Folder, he shall disclose such information as is allowed under this part. However, he should retain custody of the information and, as necessary, request permission of counsel or the court to furnish a certified copy for inclusion in the court record.

(2) In an unusual situation or a situation in which information not available under this part is sought, the Government employee who received the subpoena shall immediately forward it and the Official Personnel Folder containing the information sought to the General Counsel, U.S. Civil Service Commission, Washington, D.C. 20415. When this is done, the Government employee shall inform the person who applied for the subpoena that the subpoena and the information sought have been sent to the Commission pursuant to this subparagraph and, if necessary, request a postponement of the scheduled appearance.

Subpart B—The Public Information Function

§ 294.201 Public information policy.

(a) In addition to the basic policies of the Commission relative to the disclosure of information when requested by a member of the public, the Commission has a positive public information policy under which, on its own initiative, the Commission brings information to the attention of the public. Under this policy the Commission will bring to the attention of the public, through news releases, publications of the Commission, or other methods, information concerning the operations of the merit system and the functions of the Commission as a Federal agency; employment opportunities in Government; the contributions of persons employed by the Government to good and efficient Government operations; and an accounting of the developments in, and an explanation of the policies regarding, the programs administered by the Commission.

(b) The Public Information Officer is responsible for the furtherance of the public information policy of the Commission. In addition, each employee of the Commission shall cooperate in carrying out this policy in accordance with the Administrative Manual of the Commission.

Subpart C—Commission Operations

§ 294.301 Policy and interpretations.

(a) Statements of Commission policy and interpretations of the laws and regulations administered by the Commission which have been adopted by the Commission, whether or not published in the Federal Personnel Manual or the Federal Register, are information available to the public.

(b) Memoranda, correspondence, opinions, data, staff studies, information received in confidence, and similar documentary material prepared for the pur-

pose of internal communication within the Commission or between the Commission and other organizations or persons generally are not information available to the public.

(c) Administrative manuals and other instructions for the staff of the Commission are not information available to the public when they contain confidential instructions to the staff of the Commission which must be protected from disclosure in order to be effective in carrying out the work of the Commission.

Subpart D—Medical Information

§ 294.401 Medical information.

(a) Medical information about an applicant, employee, or annuitant is not made available to the public by the Commission or other Government agency.

(b) Medical information about an applicant, employee, or annuitant may be disclosed by the Commission or other Government agency to the applicant, employee, or annuitant, or a representative designated in writing, except that medical information concerning a mental or other condition of such a nature that a prudent physician would hesitate to inform a person suffering from it of its exact nature and probable outcome may be disclosed only to a licensed physician designated in writing for that purpose by the individual or his designated representative.

Subpart E—Examinations and Related Subjects

§ 294.501 Examinations.

(a) The Commission makes information available to the public that will assist members of the public in understanding the purpose of, and in preparing for, civil service examinations. It makes information available to the public relative to the types of questions and the categories of knowledge or skill pertinent to a particular examination. Test material is not available to the public. The test papers of a competitor may be disclosed to him only during his examination. Each employee entrusted with test material has a positive duty to protect the confidentiality of that material and to assure that it is released only as required to conduct an examination authorized by the Commission.

(b) The names of applicants for civil service positions or eligibles on civil service registers or their ratings or relative standings are not information available to the public. However, information of that type may be disclosed to Members of Congress and the press under the specific conditions prescribed in the Administrative Manual of the Commission.

Subpart F—Investigations

§ 294.601 Investigative reports.

(a) The Commission or other Government agency will disclose to the parties concerned any report of investigation under its control in a proceeding under Part 352, 353, 771, or 772 of this chapter and the report of investigation or the

written summary thereof in a proceeding under Part 713 of this chapter, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy or violate the proscription against the disclosure of medical information in § 294.401. For the purpose of this paragraph, the "parties concerned" means the Government employee or former Government employee involved in the proceeding, his representative designated in writing, and the representative of the agency involved in the proceeding.

(b) The Commission, in suitability rating actions under Part 731 of this chapter, will disclose to an applicant, eligible, or appointee, or a representative designated in writing, such information from reports of investigation as the Commission determines is sufficient to enable him to respond to an interrogatory or other question without revealing the source of information given in confidence. The Commission will furnish a report of investigation to the Government agency concerned.

(c) The Commission or other Government agency does not make a report of investigation or information from a report under its control available to the public, to witnesses, or, except as provided in paragraphs (a) and (b) of this section, to the parties concerned in the investigation.

Subpart G—Official Personnel Folder

§ 294.701 Coverage.

This subpart applies to the disclosure of information contained in the Official Personnel Folder established under Subpart B of Part 293 of this chapter. Information disclosed under this subpart may be made available by the Commission or a Federal agency having custody of the Folder.

§ 294.702 Availability of information.

(a) The name, position title, grade, salary, and duty station of a Government employee is information available to the public, except when:

(1) The release of that information is prohibited under law or Executive order in the interest of national defense or foreign policy;

(2) The information is sought for the purpose of commercial or other solicitation; or

(3) There is reason to believe that the information is sought for purposes which may violate the political activity prohibitions in subchapter III of chapter 73 of title 5, United States Code, or which may violate other law.

(b) In addition to the information that may be made available under paragraph (a) of this section, the following information may be made available to a prospective employer of a Government employee or former Government employee:

- (1) Tenure of employment;
- (2) Civil service status;
- (3) Length of service in the agency and the Government; and

(4) When separated, the date and reason for separation shown on the Notification of Personnel Action, Standard Form 50.

§ 294.703 Access to folder.

(a) The Official Personnel Folder of a Government employee or former Government employee shall be disclosed to him, or to his representative designated in writing, in the presence of a representative of the agency having physical custody of the Folder. However, before disclosure the following information shall be removed from the folder:

(1) Medical information the disclosure of which is proscribed by § 294.401;

(2) Test material the disclosure of which is proscribed by § 294.501; and

(3) Investigative reports the disclosure of which is proscribed by § 294.601.

(b) On official request, an Official Personnel Folder shall be disclosed to a Member of Congress, a representative of a Congressional committee, or an official of the legislative or judicial branch or of the government of the District of Columbia. However, before disclosure all material that relates to loyalty or security under Executive Order 9835 or 10450 or any other authority shall be removed from the folder.

(c) An Official Personnel Folder shall be disclosed to an official of the executive branch who has a need for the information in the performance of his official duties.

Subpart H—Appeals

§ 294.801 Agency administrative appeals.

(a) An appeal file established under § 771.208 of this chapter or a complaint file established under § 713.220 of this chapter shall be disclosed to the parties concerned, subject to the proscription against the disclosure of medical information in § 294.401. For the purpose of this section, "the parties concerned" means the Government employee or former Government employee involved in the proceeding, his representative designated in writing, and the representatives of the agency or the Commission involved in the proceeding.

(b) The agency having custody of an appeal or complaint file, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from such a file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the case;

(3) The decision on the case;

(4) The nature of the action appealed or the subject of the complaint; and

(5) With the consent of the parties concerned, other specifically identified information from the file.

(c) The agency having custody of an appeal or complaint file may fix reasonable times and places for disclosure under this section.

§ 294.802 Commission appeals.

(a) The Commission will make the following information available to the public:

(1) The record in a proceeding under chapter 15 of title 5, United States Code, concerning the political activity of certain State and local employees; and

(2) The record in a proceeding involving a hearing examiner under section 7521 of title 5, United States Code, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy or violate the proscription against the disclosure of medical information in § 294.401.

(b) The Commission will disclose to the parties concerned the information contained in an appeal or complaint file in proceedings under Part 352, 353, 713, or 772 of this chapter, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy or violate the proscription against the disclosure of medical information in § 294.401. For the purpose of this section, "the parties concerned" means the Government employee or former Government employee involved in the proceeding, his representative designated in writing, and the representative of the agency or the Commission involved in the proceeding.

(c) The Commission, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal or complaint file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

- (1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;
- (2) The status of the case;
- (3) The decision on the case;
- (4) The nature of the action appealed or the subject of the complaint; and
- (5) With the consent of the parties concerned, other specifically identified information from the file.

Subpart I—Retirement**§ 294.901 Retirement.**

The Commission will disclose information from retirement files and records in accordance with § 831.106 of this chapter.

Subpart J—Classified Information**§ 294.1001 Classified information.**

The Commission will not disclose information classified under Executive Order 10501 of November 5, 1953, as amended or other Executive order, except to individuals authorized access to it under the terms of that authority.

PART 300—EMPLOYMENT (GENERAL)**Subpart A—[Reserved]****Subpart B—[Reserved]****Subpart C—Commission Approval in Filling Positions in GS-16 and Above**

Sec. 300.301 Commission approval in filling positions in GS-16 and above.

Subpart D—Ceiling on Permanent Employees

300.401 Limitations on career appointments and conversions.

Subpart E—Obligated Positions

300.501 Definitions.

300.502 Restriction on filling obligated position on permanent basis.

Subpart F—Time-in-Grade Restrictions

300.601 Applicability.

300.602 Restrictions.

300.603 Exceptions to restrictions.

300.604 Periods of creditable service.

300.605 Other time restrictions.

Subpart G—[Reserved]**Subpart H—[Reserved]****Subpart I—Employment of Substitutes in the Field Service of the Post Office Department**

300.901 Temporary appointment of substitutes in the postal field service.

300.902 Change of substitutes to regulars in the postal field service.

AUTHORITY: The provisions of this Part 300 issued under 5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 213, unless otherwise noted. §§ 300.601 to 300.605 interpret and apply 5 U.S.C. 3101 note.

Subpart A—[Reserved]**Subpart B—[Reserved]****Subpart C—Commission Approval in Filling Positions in GS-16 and Above****§ 300.301 Commission approval in filling positions in GS-16 and above.**

An agency, unless excepted from this requirement by law, may fill a competitive or excepted position classified in GS-16, GS-17, or GS-18, only by a person whose qualifications for the position have been approved by the Commission.

(5 U.S.C. 3324)

Subpart D—Ceiling on Permanent Employees**§ 300.401 Limitations on career appointments and conversions.**

The Commission may not permit an agency to make an initial career appointment or a conversion to career employment which would increase the number of permanent personnel of the Federal Government above the total number of permanent employees permitted by the Whitten Amendment.

(5 U.S.C. 3101 note)

Subpart E—Obligated Positions**§ 300.501 Definitions.**

In this subpart:

(a) "Active military duty" means active duty in full pay status in the Armed Forces of the United States, including an initial period of active duty for training.

(b) "Obligated position" means a position to which an employee has a statutory restoration right based on active military duty or a reemployment right based on Subpart B of Part 352 of this Chapter.

§ 300.502 Restriction on filling obligated position on permanent basis.

An agency may fill an obligated position on a permanent basis, only:

(a) By reassignment through reduction in force to or below a grade (or level) permanently held by the employee before September 1, 1950; or

(b) By demotion to or below a grade (or level) permanently held by the employee before September 1, 1950.

(5 U.S.C. 3101 note)

Subpart F—Time-in-Grade Restrictions**§ 300.601 Applicability.**

(a) This subpart applies to any advancement from a competitive or excepted position that is subject to the General Schedule to a competitive position that is subject to the General Schedule, by:

- (1) Promotion;
- (2) Transfer to a higher grade; or
- (3) Any type of appointment under this chapter (including reemployment and reinstatement) made within 1 year after separation from a nontemporary appointment.

(b) This subpart does not apply:

- (1) When the position from which the advancement is made is outside the competitive service and in the legislative or judicial branch; or
- (2) When the position from which the advancement is made is not subject to the General Schedule, unless the employee advanced held a position subject to the General Schedule within the preceding year.

§ 300.602 Restrictions.

(a) *Advancement to positions at GS-12 or above.* An agency may advance an employee to a position at GS-12 or above only after he has served 1 year at the next lower grade.

(b) *Advancement to positions at GS-6 through GS-11.* An agency may advance an employee to a position at GS-6 through GS-11 only after he has served:

- (1) One year in a position two grades lower, when the position to which he is advanced is in a line of work properly classified at two-grade intervals; or
- (2) One year at the next lower grade, when the position to which he is advanced is in a line of work properly classified at one-grade intervals.

(c) *Advancement to positions at GS-5 or below.* An agency may advance an employee to a position at GS-5 or below which is not more than two grades above the lowest grade he held within the preceding year under a nontemporary appointment.

§ 300.603 Exceptions to restrictions.

(a) Section 300.602 does not prevent the advancement of an employee when:

- (1) The advancement is in accordance with a training agreement which has been approved by the Commission; however, an agency may not make promotions of more than two grades in 1 year solely on the basis of a training agreement or series of training agreements;
- (2) The advancement is to any grade or level up to that from which the employee has ever been demoted or separated by any agency because of a reduction in force;

(3) The employee is within reach on a register for competitive appointment to the position to be filled; or

(4) The Commission, on request of the head of the agency, authorizes the advancement to avoid undue hardship or inequity, in an individual case of meritorious nature.

(b) Section 300.602 (a) and (b) do not prevent the advancement of an employee who has 1 year of service in a position two grades lower than the position to be filled if there is no position in the normal line of promotion that is one grade lower than the position to be filled.

(c) Section 300.602 (c) does not prevent the advancement of an employee to a position at GS-5 or below which he held previously or to which he could have been advanced previously under that paragraph.

§ 300.604 Periods of creditable service.

(a) The periods of service required by § 300.602 (a) and (b) and § 300.603 (b) include all service at the appropriate or higher grade or level in positions in the Federal or District of Columbia civilian service regardless of whether or not the positions were subject to the General Schedule.

(b) When two periods of service in positions subject to the General Schedule are interrupted for less than 1 year by service in a position not subject to the General Schedule, the latter service is counted as a continuation of the prior service in the position subject to the General Schedule.

(c) Except as provided in paragraph (b) of this section, service in a position not subject to the General Schedule is counted at the equivalent General Schedule grade in effect when the service was performed. The equivalent General Schedule grade is that grade the minimum rate of which was equivalent to or higher than the base pay rate of the service not subject to the General Schedule. However, when the base pay rate of the service not subject to the General Schedule was not more than one within-grade step below the minimum rate of a General Schedule grade, that General Schedule grade is the equivalent General Schedule grade.

§ 300.605 Other time restrictions.

The time-in-grade restrictions in this subpart are in addition to the time-after-competitive-appointment restriction contained in § 330.501 of this chapter.

Subpart G—[Reserved]

Subpart H—[Reserved]

Subpart I—Employment of Substitutes in the Field Service of the Post Office Department

§ 300.901 Temporary appointment of substitutes in the postal field service.

When a quota of substitutes in the postal field service is filled and the Post Office Department has authorized the appointment of additional substitutes for temporary work of indefinite duration, the appointing officer may fill those positions by either of the following methods:

(a) The appointment of former Federal employees with eligibility for reinstatement. A person so appointed does not gain career status from the appointment.

(b) The selection of eligibles from a certificate furnished by the Commission on request of the appointing officer. The appointing officer shall make selection from a certificate in accordance with §§ 332.404 through 332.407 of this chapter. A person so appointed does not obtain a competitive status from the appointment.

§ 300.902 Change of substitutes to regulars in the postal field service.

(a) General. When a vacant regular position in the postal field service is to be filled, the appointing officer may fill it by:

(1) Changing a substitute to regular, if the substitute is eligible for and will accept the regular position; or

(2) Position change, reinstatement, or transfer of a person with competitive status in accordance with this chapter.

(b) Order in which changes are made.

(1) An appointing officer shall change substitutes to regulars in the order of their original appointments. An appointing officer shall change substitutes who were appointed on the same day to regulars in the order in which their names appeared on the register from which they were appointed.

(2) When corrective action on an appointment is taken to comply with the requirements of Subpart D of Part 332 of this chapter, "order of original appointment" means the order in which appointment would have been made had the correct action been taken originally.

(5 U.S.C. 3364)

PART 301—OVERSEAS EMPLOYMENT

Subpart A—[Reserved]

Subpart B—Overseas Limited Appointment

Sec.	
301.201	Authorizations of appointment.
301.202	Appointment of United States citizens recruited overseas.
301.203	Appointment of citizens recruited outside overseas areas.
301.204	Duration of appointment.
301.205	Status and trial period.
301.206	Requirements and restrictions.
301.207	Within-grade increases.

AUTHORITY: The provisions of this Part 301 issued under 5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, as amended by E.O. 10641; 3 CFR, 1954-1958 Comp., p. 274.

Subpart A—[Reserved]

Subpart B—Overseas Limited Appointment

§ 301.201 Authorizations of appointment.

When the Commission finds that overseas limited appointments without competitive examination are in the public interest, it may authorize an agency to make these appointments to overseas positions.

§ 301.202 Appointment of United States citizens recruited overseas.

Subject to prior agreement between an agency and the Commission, the

agency may give an overseas limited appointment to a United States citizen recruited overseas, unless there is an adequate and appropriate register resulting from an examination held in the locality where the vacancy exists.

§ 301.203 Appointment of citizens recruited outside overseas areas.

When the Commission determines that unusual or emergency conditions make it infeasible to appoint from a register, it may authorize an agency to give an overseas limited appointment to a United States citizen recruited in an area where an overseas limited appointment is not authorized.

§ 301.204 Duration of appointment.

(a) An appointment under this subpart is of indefinite duration unless otherwise limited.

(b) An agency may make overseas limited term appointment for a period not in excess of 5 years when a time limitation is imposed as a part of a general program for rotating career and career-conditional employees between overseas areas and the United States after specified periods of overseas service.

(c) Under conditions published by the Commission in the Federal Personnel Manual, an agency may make overseas limited appointment for 1 year or less to meet administrative needs for temporary employment. An agency may extend an appointment made for a period of 1 year or less under this paragraph, under conditions published by the Commission in the Federal Personnel Manual.

§ 301.205 Status and trial period.

(a) An overseas limited employee does not acquire a competitive status on the basis of his overseas limited appointment. He is required to serve a trial period of 1 year when given an overseas limited appointment of indefinite duration or an overseas limited term appointment.

(b) The agency may terminate an overseas limited employee at any time during the trial period. The employee is entitled to the procedures set forth in § 315.804 or § 315.805 of this chapter as appropriate.

§ 301.206 Requirements and restrictions.

The requirements and restrictions in Subpart F of Part 300 and Part 333 of this chapter apply to appointments under this subpart.

§ 301.207 Within-grade increases.

An employee serving under an overseas limited appointment of indefinite duration or an overseas limited term appointment in a position subject to the General Schedule, is eligible for within-grade increases in accordance with Subpart D of Part 531 of this chapter.

PART 302—EMPLOYMENT IN THE EXCEPTED SERVICE

Subpart A—General Provisions

Sec.	
302.101	Positions covered by regulations.
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- Sec.
302.103 Applicability of regulations to applicants and employees.
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Subpart B—Eligibility Standards

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Subpart C—Accepting, Rating, and Arranging Applications

- 302.301 Receipt of applications.
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302.303 Maintenance of employment lists.
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Subpart D—Selection and Appointment; Reappointment; and Qualifications for Promotion

- 302.401 Selection and appointment.
302.402 Reappointment.
302.403 Qualifications for promotion.

AUTHORITY: The provisions of this Part 302 issued under 5 U.S.C. 1302, 3301, 3302, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, unless otherwise noted.

Subpart A—General Provisions

§ 302.101 Positions covered by regulations.

(a) *Positions covered.* This part applies to each position in the executive branch of the Federal Government and in the government of the District of Columbia which is not in the competitive service as defined in § 212.101(a) of this chapter.

(b) *Positions not covered.* This part does not apply to a position or appointment which by the Congress is required to be confirmed by, or made with, the advice and consent of the Senate, or to a position of policeman or fireman in the government of the District of Columbia.

(c) *Positions exempt from appointment procedures.* In view of the circumstances and conditions surrounding employment in the following classes of positions, an agency is not required to apply the appointment procedures of this part to them, but each agency shall follow the principles of veteran preference as far as administratively feasible and, on request of a qualified and available preference eligible, shall furnish him with the reasons for his nonselection:

(1) Positions filled by persons appointed without pay or at a pay of \$1 a year;

(2) Positions outside the continental United States and outside the State of Hawaii and the Commonwealth of Puerto Rico when filled by persons resident in the locality, and positions in the State of Hawaii and the Commonwealth of Puerto Rico when paid in accordance with the prevailing wage rates;

(3) Positions which the exigencies of the national defense program demand be filled immediately before lists of qualified applicants can be established or used, but appointments to these positions shall be temporary appointments not to exceed 1 year which may be renewed for 1 additional year at the discretion of the agency;

(4) Positions filled by appointees serving on an irregular or occasional basis

whose hours or days of work are not based on a prearranged schedule and who are paid only for the time when actually employed or for services actually performed;

(5) Positions paid on a fee basis;

(6) Positions included in Schedule A (see Subpart C of Part 213 of this chapter) and similar types of positions when the Commission agrees with the agency that the positions should be included hereunder;

(7) Positions included in Schedule C (see Subpart C of Part 213 of this chapter);

(8) Student Trainee positions when filled under Schedule B (see Subpart C of Part 213 of this chapter); and

(9) Positions filled by noncareer executive assignment (see Subpart F of Part 305 of this chapter).

§ 302.102 Method of filling positions and status of incumbent.

(a) To the extent permitted by statute and this chapter, each appointment, position change, and removal in the excepted service shall be made in accordance with any regulations or practices that the head of the agency concerned finds necessary.

(b) Except as authorized under paragraph (c) of this section, a person appointed to an excepted position does not acquire a competitive status by reason of the appointment.

(c) Upon a finding by the Commission that in a particular situation the action will be in the interest of good administration, the Commission may authorize an agency to make appointments to specified positions in the excepted service in the same manner as to positions in the competitive service. Persons given career-conditional or career appointments pursuant to a specific authorization by the Commission under this paragraph may acquire a competitive status as provided in Part 315 of this chapter.

§ 302.103 Applicability of regulations to applicants and employees.

Each agency shall follow the provisions of this part relating to examination, rating, and selection for appointment of an applicant when a qualified preference eligible applies for appointment to a position covered by this part. Each agency, in its discretion, may follow these provisions in making an appointment when no preference eligible applies.

§ 302.104 Special agency plans.

An agency having a position subject to this part may submit to the Commission a system for making appointments which will result in granting to a person the preference referred to in section 1302(c) of title 5, United States Code, but which does not conform to all the procedural requirements set forth in this part. However, an agency may not put such a system into effect until it has received the prior approval of the Commission.

Subpart B—Eligibility Standards

§ 302.201 Persons entitled to veteran preference.

In actions subject to this part, each agency shall grant 5-point preference to preference eligibles under section 2108(3) (A) and (B) of title 5, United States Code, and 10-point preference to preference eligibles under section 2108(3) (C)-(G) of that title.

§ 302.202 Qualification requirements.

Before making an appointment to a position covered by this part, each agency shall establish qualification standards such as those relating to experience and training, citizenship, age, physical condition, etc., which shall relate to the duties to be performed. An agency may delegate the establishment of standards relating to a group of positions or a specific position to the appropriate administrative level or subdivision of the agency and that level or subdivision may amend or modify the standards in accordance with the needs of the locality in which the position is located, but the agency shall determine that each standard established is in conformity with this part. Each agency shall make its standards a matter of record in the appropriate office of the agency, and shall furnish information concerning the standards for a position to an applicant on his request. Each agency shall apply the standards for a position uniformly to all applicants, except for such waivers as are provided in this part for a preference eligible. An agency shall not include a minimum educational requirement in qualification standards, except for a scientific, technical, or professional position the duties of which the agency decides cannot be performed by a person who does not have a prescribed minimum education. Each agency shall make a part of its records the reasons for its decision under this section, and shall furnish those reasons to an applicant on his request. The qualification standards shall include:

(a) A provision for waiver by the agency of requirements as to age, height, and weight for each preference eligible when the requirements are not essential to the performance of the duties of the position; and

(b) A provision for waiver by the agency of physical requirements for each preference eligible when the agency, after giving due consideration to the recommendation of an accredited physician, finds that the applicant is physically able to discharge the duties of the position.

§ 302.203 Disqualifying factors.

The qualification standards established by an agency or by an administrative level or subdivision of an agency may provide that certain reasons disqualify an applicant for appointment. The following, among others, may be included as disqualifying reasons:

(a) Dismissal from employment for delinquency or misconduct;

(b) Criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct;

(c) Intentional false statement or deception or fraud in examination or appointment;

(d) Habitual use of intoxicating beverages to excess;

(e) Reasonable doubt as to the loyalty of the person involved to the Government of the United States;

(f) Any legal or other disqualification which makes the individual unfit for the service; or

(g) Lack of United States citizenship.

An agency may not disqualify an applicant solely because of his retired status.

Subpart C—Accepting, Rating, and Arranging Applications

§ 302.301 Receipt of applications.

(a) Each agency shall establish definite rules regarding the acceptance of applications for employment in positions covered by this part and shall make these rules a matter of record.

(b) Each agency shall apply its rules uniformly to all applicants who meet the conditions of the rules and shall furnish information concerning the rules to an applicant on his request.

§ 302.302 Examination of applicants.

(a) *Rating.* An agency may provide for an evaluation of the qualifications of applicants for a position who are available under §§ 302.202, 302.203, and 302.301 at any time before appointment is made to the position. Numerical ratings shall be assigned on a scale of 100 and each applicant rated 70 or more is eligible for appointment. Numerical ratings are not required when all qualified applicants will be offered immediate appointment. When there is an excessive number of applicants (1) numerical ratings are required only for a sufficient number of the highest qualified applicants to meet the anticipated needs of the agency within a reasonable period of time, and (2) the agency shall adopt procedures to insure the consideration of all preference eligibles in the order in which they would have been considered if all applicants had been assigned numerical ratings. Each agency shall add to the earned numerical ratings of applicants who make a passing grade:

(i) Five points for applicants who are preference eligibles under section 2108(3) (A) and (B) of title 5, United States Code; and

(ii) Ten points for applicants who are preference eligibles under section 2108(3) (C)-(G) of that title.

An agency shall furnish a notice of the rating assigned to an applicant on his request.

(b) *Nonpreference applicants for certain positions.* An agency may not consider or rate an application for the position of elevator operator, messenger, guard, or custodian submitted by a nonpreference eligible as long as at least three qualified preference eligibles are available for the position.

(c) *Evaluating experience.* When experience is a factor in determining eligibility, an agency shall credit a preference eligible (1) with time spent in the mili-

tary service of the United States if the position for which he is applying is similar to the position he held immediately before his entrance into the military service; and (2) with all valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

§ 302.303 Maintenance of employment lists.

(a) *Establishment.* An agency shall enter the names of applicants assigned an eligible numerical rating under § 302.302(a) on either (1) the appropriate reemployment list, or (2) the appropriate regular employment list in accordance with their numerical ratings, except that the names of:

(i) Preference eligibles shall be entered in accordance with their augmented ratings and ahead of others having the same rating; and

(ii) Preference eligibles who have a compensable service-connected disability of 10 percent or more shall be entered at the top of the register in the order of their ratings unless the register is for professional or scientific positions in GS-9 and above and in comparable pay levels under other pay-fixing authorities.

(b) *Reemployment list.* The reemployment list shall consist of the names of former employees of the agency who are to be considered for future employment, and shall, in any case, include the following:

(1) The name of each former employee of the agency who (i) is a preference eligible, (ii) has been furloughed or separated without delinquency or misconduct, and (iii) applies for reemployment; and

(2) The name of each former employee of the agency who is a preference eligible and who, as the result of an appeal under Part 752 of this chapter, is found by the Commission to have been unjustifiably dismissed from the agency.

(c) *Regular employment list.* The regular employment list shall consist of the names of eligible applicants who have been assigned numerical ratings and whose names are not on the agency reemployment list.

§ 302.304 Arrangement of ratings.

(a) *Order of consideration.* Except as provided in paragraph (d) of this section, an agency shall consider the names of applicants who have been assigned eligible numerical ratings for a given position in either order A or order B set forth in paragraphs (b) and (c) of this section.

(b) *Order A.* (1) The name of each qualified preference eligible who has a compensable service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency reemployment list, in the order of his numerical rating.

(2) The name of each other qualified preference eligible who has a compensable service-connected disability of 10 percent or more and is entitled to 10-

point preference under section 3309 of title 5, United States Code, in the order of his numerical rating.

(3) The name of each other qualified applicant on the agency reemployment list in the order of his numerical rating.

(4) The name of each other qualified applicant in the order of his numerical rating.

(c) *Order B.* (1) The name of each qualified preference eligible who has a compensable service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, and whose name appears on the agency reemployment list, in the order of his numerical rating.

(2) The name of each other qualified applicant on the agency reemployment list in the order of his numerical rating.

(3) The name of each other qualified preference eligible who has a compensable service-connected disability of 10 percent or more and is entitled to 10-point preference under section 3309 of title 5, United States Code, in the order of his numerical rating.

(4) The name of each other qualified applicant, in the order of his numerical rating.

(d) *Professional order.* An agency shall consider the names of applicants who have been assigned eligible numerical ratings for professional and scientific positions in GS-9 and above in the following order:

(1) The name of each applicant on the agency reemployment list, in the order of his numerical rating.

(2) The name of each other applicant, in the order of his numerical rating.

Subpart D—Selection and Appointment; Reappointment; and Qualifications for Promotion

§ 302.401 Selection and appointment.

(a) *Selection.* When making an appointment from an employment list, an agency shall select for appointment to each vacancy from not more than the highest three names available for appointment in the order provided in § 302.304, except that an agency is not required to:

(1) Accord an applicant on the agency reemployment list the preference consideration required by § 302.304 if the reemployment list does not contain the names of at least three preference eligibles; or

(2) Consider an applicant who has previously been considered three times or a preference eligible if consideration of his name has been discontinued for the position as provided in paragraph (b) of this section.

(b) *Passing over a preference applicant.* When an agency, in making an appointment as provided in paragraph (a) of this section, passes over the name of a preference eligible who is entitled to prior consideration under § 302.304 and selects a nonpreference eligible, it shall record its reasons for so doing, and shall furnish a copy of those reasons to

the preference eligible or his representative on request. An agency may discontinue consideration of the name of a preference eligible for a position if on three occasions the agency has considered him for the position and has passed over his name and recorded its reasons for so doing.

§ 302.402 Reappointment.

An agency may reappoint a former employee of the executive branch of the Federal Government or the government of the District of Columbia who is a preference eligible to a position covered by this part without regard to the names of qualified applicants on the agency reemployment list or regular employment list.

§ 302.403 Qualifications for promotion.

In determining qualifications for promotion with respect to an employee who is a preference eligible, an agency shall waive:

(a) Requirements as to age, height and weight unless the requirement is essential to the performance of the duties of the position; and

(b) Physical requirements if, in the opinion of the agency, after considering the recommendation of an accredited physician the preference eligible is physically able to perform efficiently the duties of the position for which the promotion is proposed.

PART 305—EXECUTIVE ASSIGNMENT SYSTEM

Subpart A—General Provisions

- Sec.
305.101 Applicability of other regulations.
305.102 Coverage.
305.103 Responsibilities for administration.

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—Career Executive Assignments

- 305.501 Filling positions covered by the executive assignment system.
305.502 Career executive assignments of Federal employees.
305.503 Career executive assignments from outside the competitive service.
305.504 Tenure and status of persons given career executive assignments.
305.505 Position change.
305.506 Transfer.
305.507 Assignment of persons not serving with career or career-conditional tenure.
305.508 Probationary period.
305.509 Limited executive assignments.
305.510 Change of limited executive assignment to another type of appointment.

Subpart F—Noncareer Executive Assignments

- 305.601 Positions filled by noncareer executive assignments.
305.602 Review of noncareer executive assignments.
305.603 Status and tenure.
305.604 Removal.

Subpart G—Transitional Provisions

- 305.701 Change of indefinite or TAPER employment to another type of appointment.

AUTHORITY: The provisions of this Part 305 issued under 5 U.S.C. 1302, 3301, 3302, 3324,

E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, E.O. 11315; 3 CFR, 1966 Comp., p. 165.

Subpart A—General Provisions

§ 305.101 Applicability of other regulations.

Except as otherwise provided in this part, Subchapter B of this chapter applies to employment under the executive assignment system.

§ 305.102 Coverage.

(a) *Positions.* The executive assignment system applies to positions in GS-16, 17, and 18 in the executive branch except:

(1) Positions excluded from the coverage of section 3324(a) of title 5, United States Code, by paragraphs (1), (2), and (4) thereof;

(2) Positions in the excepted schedules in Part 213 of this chapter;

(3) Positions excepted from the competitive service by statute; and

(4) Positions of hearing examiner.

(b) *Persons.* The executive assignment system applies to all persons who are assigned to positions under the system.

§ 305.103 Responsibilities for administration.

(a) *Commission responsibilities.* The Commission is responsible for effectively implementing and administering the executive assignment system.

(b) *Responsibilities of the agencies.* Periodically, under such conditions as the Commission may specify, the head of each agency in which there are positions covered by the executive assignment system shall review with the Commission his plans for executive staffing upper level positions. The head of a newly established agency in which there are such positions shall initially review with the Commission his plans for executive staffing as soon as practicable after the establishment of the agency. The head of each agency shall cooperate fully with the Commission in establishing needed staffing facilities.

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—Career Executive Assignments

§ 305.501 Filling positions covered by the executive assignment system.

An agency, in filling a position subject to the executive assignment system, shall make a career executive assignment unless the Commission authorizes a limited executive assignment under § 305.509, or a noncareer executive assignment under § 305.601.

§ 305.502 Career executive assignments of Federal employees.

(a) Except as provided in paragraph (b) of this section, in making a career executive assignment, the agency shall first consider fully (1) qualified employees under its merit promotion program and (2) qualified and available Federal employees of other agencies.

(b) This section does not apply when the Commission authorizes (1) the movement of an employee serving under career executive assignment to a career executive assignment at the same or lower grade under § 305.505(a) or § 305.506(a) or (2) the promotion, in the same position, of an employee whose position is reclassified upward without material change in duties.

§ 305.503 Career executive assignments from outside the competitive service.

(a) *Recruitment.* Subject to § 305.502, an agency may recruit from outside the competitive service for career executive assignment under such standards of merit and through such facilities as the Commission may prescribe.

(b) *Order on list.* When an assignment is to be made under this section, the names of eligibles are entered on the appropriate list of eligibles in accordance with their numerical ratings except that the names of:

(1) Preference eligibles are listed in accordance with their augmented ratings and ahead of others having the same rating; and

(2) Preference eligibles who have a compensable service-connected disability of 10 percent or more are entered at the top of the list in the order of their ratings unless the vacancy is in a professional or scientific position. An agency is furnished a certificate from the top of the list containing the names of a sufficient number of eligibles to permit consideration of three eligibles in connection with each vacancy.

(c) *Selection.* An agency, with sole regard to merit and fitness, shall select an eligible from the highest three eligibles on the certificate who are available for appointment.

§ 305.504 Tenure and status of persons given career executive assignments.

(a) *Tenure.* A person given a career executive assignment is a career employee if he has completed, or is excepted from, the service requirement for career tenure. If he has not completed, or is not excepted from, the service requirement for career tenure he is a career-conditional employee.

(b) *Status.* A person given a career executive assignment who is required to serve or complete a probationary period by § 305.508 acquires a competitive status automatically on completion of probation.

§ 305.505 Position change.

(a) *Reassignment or demotion.* Subject to prior approval by the Commission of the qualifications of the employee and, when applicable, to the provisions of Part 752 of this chapter, an agency may reassign or demote an employee serving under career executive assignment to another career executive assignment without regard to § 305.502.

(b) *Promotion.* Subject to § 305.502 and to prior approval by the Commission of the qualifications of the employee, an agency may promote a career or career-conditional employee to an initial career

executive assignment, or from one career executive assignment to another.

§ 305.506 Transfer.

(a) *To the same or lower grade.* Subject to prior approval by the Commission of the qualifications of the employee, an agency may transfer to a career executive assignment an employee who is serving under career executive assignment at the same or higher grade without regard to § 305.502.

(b) *To a higher grade.* Subject to § 305.502 and to prior approval by the Commission of the qualifications of the employee, an agency may transfer to a career executive assignment an employee who is serving with career or career-conditional tenure at a lower grade.

§ 305.507 Assignment of persons not serving with career or career-conditional tenure.

(a) *Coverage.* This section applies to present and former employees who have basic eligibility for noncompetitive appointment conferring career or career-conditional tenure under a law, executive order, or civil service rule or regulation, but who are not serving with that tenure.

(b) *Authority.* Subject to § 305.502 (except for legislative and judicial employees eligible for appointment under section 3304(c) of title 5, United States Code), and subject to prior approval by the Commission of the qualifications of the person, an agency may fill a position by career executive assignment of a person covered by this section.

§ 305.508 Probationary period.

An employee serving under career executive assignment serves or completes a probationary period of 1 year if a career or career-conditional employee is required by § 315.801 of this chapter to serve or to complete a probationary period under like circumstances. An agency may terminate an employee at any time during his probationary period. The employee is entitled to the procedures and the right of appeal set forth in §§ 315.804 to 315.807 of this chapter, as appropriate.

§ 305.509 Limited executive assignments.

(a) *Authorization.* The Commission may authorize an agency to fill a position by limited executive assignment when:

(1) The position is expected to be of limited duration, or

(2) The agency establishes an unusual need for urgent staffing that cannot adequately be met under the procedures required for career executive assignments.

(b) *Time limit.* The Commission shall specify a time limit within which an agency may use an authority for limited executive assignment, and may revoke the authority at any time.

(c) *Trial period.* The first year of service under a limited executive assignment is a trial period, except that an employee is not subject to a trial period if he (1) has basic eligibility for noncompetitive appointment on account of previous service during which he completed a proba-

tionary period or (2) previously served with competitive status under an appointment which did not require him to serve a probationary period. An agency may terminate an employee at any time during his trial period. The employee is entitled to the procedures and the right of appeal set forth in §§ 315.804 to 315.807 of this chapter, as appropriate.

(d) *Tenure and status.* (1) An employee may serve a maximum of 5 continuous years and does not acquire competitive status under limited executive assignment.

(2) Subject to Part 752 of this chapter, an agency may separate an employee from a limited executive assignment when, in its judgment, the purpose of the assignment has been served or conditions warrant discontinuance of the assignment, or the employee has completed 5 years of continuous service as referred to in § 305.509(d).

(e) *Eligibility for within-grade increases.* An employee serving under a limited executive assignment is eligible for within-grade increases in accordance with Subpart D of Part 531 of this chapter.

§ 305.510 Change of limited executive assignment to another type of appointment.

If an employee completes 5 years of continuous service in an agency under limited executive assignment, the agency shall:

(a) Convert the limited executive assignment to a career executive assignment in the same position and grade;

(b) Subject to prior approval by the Commission of the qualifications of the employee, assign him to another position at the same or lower grade under career executive assignment or noncareer executive assignment, as appropriate;

(c) Give the employee a career appointment to a continuing position in the competitive service at GS-15 or below; or

(d) Separate him from the service.

Subpart F—Noncareer Executive Assignments

§ 305.601 Positions filled by noncareer executive assignments.

(a) When, after consulting the agency concerned, the Commission determines that the requirements of this section are met, it may authorize an agency to fill a position by noncareer executive assignment in the excepted service without following the procedures required for making career executive assignments.

(b) To qualify to be filled by noncareer executive assignment, a position must be one whose incumbent will:

(1) Be deeply involved in the advocacy of Administration programs and support of their controversial aspects;

(2) Participate significantly in the determination of major political policies of the Administration; or

(3) Serve principally as personal assistant to or adviser of a Presidential appointee or other key political figure.

(c) A position does not qualify to be filled by noncareer executive assignment

if its principal responsibility is the internal management of an agency, or if it involves long-standing recognized professional duties and responsibilities resting on a body of knowledge essentially politically neutral in nature.

(d) In determining the positions to be filled by noncareer executive assignment under paragraph (a) of this section the Commission shall:

(1) Limit the number of positions excepted to a relatively small proportion of the positions in the agency in GS-16, 17, and 18, taking into consideration the size of the agency and the nature of its program; and

(2) Define the area of the agency's activity in which noncareer executive assignments would be appropriate and specify organizational levels, as distinguished from grade levels, below which noncareer executive assignment would be inappropriate.

§ 305.602 Review of noncareer executive assignments.

The Commission shall review periodically the positions filled by noncareer executive assignments under § 305.601. After consulting the agency concerned, it shall revoke the authorization to fill a position by noncareer executive assignment when it finds that the position no longer meets the qualifying criteria. Sections 315.701 and 316.702 of this chapter do not apply when the authorization for noncareer executive assignment is revoked under this section.

§ 305.603 Status and tenure.

An employee serving under a noncareer executive assignment is in the excepted service and does not acquire a competitive status on the basis of that service. A noncareer executive assignment is made without condition or limitation.

§ 305.604 Removal.

Subject to the provisions of Part 752 of this chapter, an appointing officer shall remove a person from a noncareer executive assignment when the qualifications or relationships required for the assignment change or cease to exist.

Subpart G—Transitional Provisions

§ 305.701 Change of indefinite or TAPER employment to another type of appointment.

If an employee was serving under indefinite or TAPER appointment when his position was made subject to the executive assignment system and he subsequently completes 5 years of continuous indefinite or TAPER employment in the agency, the agency shall:

(a) Convert the indefinite or TAPER employment to a career executive assignment in the same position and grade;

(b) Subject to prior approval by the Commission of the qualifications of the employee, assign him to another position at the same or lower grade under career executive assignment or noncareer executive assignment, as appropriate;

(c) Give the employee a career or career-conditional appointment to a con-

tinuing position in the competitive service in GS-15 or below; or

(d) Separate him from the service.

PART 307—TRANSITIONAL APPOINTMENTS

Sec.

- 307.101 Definitions.
- 307.102 Basic eligibility.
- 307.103 Appointment authority.
- 307.104 Approved education or training program.
- 307.105 Conditions of employment.

AUTHORITY: The provisions of this Part 307 issued under 5 U.S.C. 3301, 3302, E.O. 11397; 3 CFR, 1968 Comp.

§ 307.101 Definitions.

In this part:

(a) "Veteran" means veteran and disabled veteran as these terms are defined in section 2108 (1), (2) of title 5, United States Code.

(b) "Vietnam era" is the period beginning August 5, 1964, and ending on a date to be determined by Presidential proclamation or concurrent resolution of the Congress.

(c) "Transitional appointment" is an excepted appointment made under the conditions named in this part to a position otherwise in the competitive service of a veteran who served during the Vietnam era.

§ 307.102 Basic eligibility.

(a) Subject to the limitation in paragraph (b) of this section, a veteran is eligible to receive a transitional appointment if he:

(1) Served on active duty in the armed forces of the United States during the Vietnam era;

(2) Has completed less than 1 year of education beyond graduation from high school, or the equivalent; and

(3) Agrees in writing that during his employment under the appointment he will pursue a program of education or training approved under § 307.104.

(b) A veteran may be given a transitional appointment only within the period ending (1) 1 year after either his separation from the armed forces or his release from hospitalization or treatment immediately following separation from the armed forces, or (2) February 8, 1969, whichever is later.

§ 307.103 Appointment authority.

An agency may appoint by transitional appointment a veteran eligible under § 307.102 to a position at GS-5 or below, or the equivalent, for which he is qualified. The appointment is subject to investigation by the Commission. A law, Executive order, or regulations which disqualifies a person for appointment in the competitive service also disqualifies him for a transitional appointment.

§ 307.104 Approved education or training program.

(a) An approved program of education or training shall provide for not less than 1 school year, or the equivalent, of full-time education or training. For a veteran who has not completed a high school education, or the equivalent, the

program shall provide for 2 school years of full-time education or training, or the equivalent, except that education or training in excess of 1 year shall not be required after graduation from high school, or the equivalent.

(b) The Commission shall establish and publish in the Federal Personnel Manual guidelines for the approval of a program of education or training.

§ 307.105 Conditions of employment.

An employee holding a transitional appointment serves subject to satisfactory performance of assigned duties and satisfactory progress in the program of education or training approved for him. The agency shall separate an employee who does not meet these conditions, following the procedures in Part 752 of this chapter if the employee has completed 1 year of current continuous employment.

PART 310—EMPLOYMENT OF RELATIVES

Subpart A—Restrictions on the Employment of Relatives

Sec.

- 310.101 Coverage.
- 310.102 Definitions.
- 310.103 Restrictions.

Subpart B—Emergency Exceptions

- 310.201 Coverage.
- 310.202 Exceptions.

Subpart A—Restrictions on the Employment of Relatives

AUTHORITY: The provisions of this Subpart A issued under 5 U.S.C. 3302, 7301, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, E.O. 11222; 3 CFR, 1964-1965 Comp., p. 306.

§ 310.101 Coverage.

This subpart applies to appointment, employment, promotion, or advancement in (a) the competitive service; and (b) the excepted service in the executive branch.

§ 310.102 Definitions.

In this subpart:

(a) "Relative" means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b) "Public official" means an officer, a member of the uniformed services, an employee, and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement.

(c) "Chain of command" is the line of supervisory personnel that runs from a public official to the head of his agency.

§ 310.103 Restrictions.

(a) A public official shall not advocate one of his relatives for appointment, employment, promotion, or advancement to

a position in his agency or in an agency over which he exercises jurisdiction or control.

(b) A public official shall not appoint, employ, promote, or advance to a position in his agency or in an agency over which he exercises jurisdiction or control:

(1) One of his relatives; or

(2) The relative of a public official of his agency, or of a public official who exercises jurisdiction or control over his agency, if the public official has advocated the appointment, employment, promotion, or advancement of that relative.

(c) For the purpose of this section, a public official who recommends a relative, or refers a relative for consideration by a public official standing lower in the chain of command, for appointment, employment, promotion, or advancement is deemed to have advocated the appointment, employment, promotion, or advancement of the relative.

(d) This section does not prohibit the appointment in the competitive service of a preference eligible if (1) his name is within reach for selection from an appropriate certificate of eligibles and (2) an alternative selection cannot be made from the certificate without passing over the preference eligible and selecting an individual who is not a preference eligible.

Subpart B—Emergency Exceptions

AUTHORITY: The provisions of this Subpart B issued under 5 U.S.C. 3110.

§ 310.201 Coverage.

This subpart applies to an office, agency, or other establishment in the executive, legislative, or judicial branch of the Federal Government, and in the government of the District of Columbia.

§ 310.202 Exceptions.

When necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property, an agency may employ relatives to meet those needs without regard to the restrictions in section 3110 of title 5, United States Code, and this part. Appointments under these conditions are temporary not to exceed 1 month, but may be extended for a second month if the emergency need still exists. Extensions beyond one month in the competitive service may be made only with the prior approval of the Commission.

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

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315.807 Agency action when Commission recommends restoration or other corrective action.

AUTHORITY: The provisions of this Part 315 issued under 5 U.S.C. 1302, 3301, 3302, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, unless otherwise noted. §§ 315.605 and 315.801(a) (6) also issued under E.O. 11103; 3 CFR, 1959-1963 Comp., p. 762, §§ 315.201(c) (3), 315.601 and 315.801(a) (3) interpret and apply 76 A Stat. 18; 2 C.Z.C. 149(c) (2), E.O. 9830; 3 CFR, 1943-1948 Comp., p. 606.

Subpart A—[Reserved]

Subpart B—The Career-Conditional Employment System

- § 315.201 Service requirement for career tenure.

(a) *Service requirement.* Except as provided in paragraph (c) of this section, 3 years of creditable service are re-

quired for an employee to become a career employee.

(b) *Creditable service.* The Commission shall publish in the Federal Personnel Manual the conditions under which service may be credited in meeting the service requirement in paragraph (a) of this section.

(c) *Exceptions from service requirement.* The service requirement for career tenure does not apply to:

(1) An appointment to a position paid under chapter 45 of title 39, United States Code, or required by law to be filled on a permanent basis, or a conversion under this part while the employee is serving in either type of position;

(2) An appointment from a register of a person who once completed the service requirement for career tenure;

(3) An appointment under § 315.601 of a former Canal Zone Merit System employee who completed the service requirement for career tenure under that system; or

(4) The reinstatement of a person who once completed the service requirement for career tenure.

§ 315.202 Conversion from career-conditional to career tenure.

A career-conditional employee becomes a career employee automatically on completion of the service requirement for career tenure.

Subpart C—Career or Career-Conditional Employment From Registers

§ 315.301 Tenure on appointment from register.

(a) Except as provided in paragraph (b) of this section, an eligible appointed from a register for other than temporary or term employment becomes a career-conditional employee.

(b) An eligible appointed from a register for other than temporary or term employment becomes a career employee when he is excepted from the service requirement for career tenure by § 315.201(c).

§ 315.302 Acquisition of competitive status.

An employee appointed as provided in § 315.301 acquires a competitive status automatically on completion of probation.

Subpart D—Career or Career-Conditional Employment by Reinstatement

§ 315.401 Reinstatement.

(a) *Agency authority.* An agency may reinstate a person who had a competitive status or was serving probation when he was separated.

(b) *Time limit.* There is no time limit on the reinstatement of a preference eligible or a person who completed the service requirement for career tenure. An agency may reinstate a nonpreference eligible who has not completed the service requirement for career tenure only within 3 years following the date of his separation.

§ 315.402 Tenure on reinstatement.

(a) Except as provided in paragraph (b) of this section, a person who is re-

instated becomes a career-conditional employee.

(b) A person who is reinstated becomes a career employee when he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

§ 315.403 Acquisition of competitive status.

A person who was serving probation when he was separated and who is reinstated under § 315.401 acquires a competitive status automatically on completion of probation.

Subpart E—Career or Career-Conditional Employment by Transfer

§ 315.501 Agency authority.

An agency may appoint by transfer a career or career-conditional employee of another agency.

§ 315.502 Tenure on transfer.

(a) *General rule.* Except as provided in paragraph (b) of this section, a career employee who transfers remains a career employee and a career-conditional employee who transfers remains a career-conditional employee.

(b) *Exceptions.* (1) A career-conditional employee who transfers to a position paid under chapter 45 of title 39, United States Code, or required by law to be filled on a permanent basis becomes a career employee.

(2) A career employee who transfers from a position paid under chapter 45 of title 39, United States Code, or required by law to be filled on a permanent basis to a position under the career-conditional employment system becomes a career-conditional employee unless he has completed the service requirement for career tenure.

§ 315.503 Acquisition of competitive status.

An employee who was serving probation when he was appointed under § 315.501 acquires a competitive status automatically on completion of probation.

Subpart F—Career or Career-Conditional Appointment Under Special Authorities

§ 315.601 Appointment of former employees of Canal Zone Merit System.

(a) *Agency authority.* An agency may appoint noncompetitively, for other than temporary or term employment, a person separated from a career or career-conditional appointment under the Canal Zone Merit System.

(b) *Service requirement.* An agency may appoint a former employee under this section only when he served continuously under a nontemporary appointment in the Canal Zone Merit System for at least 1 year immediately before his separation.

(c) *Time limit.* There is no time limit on the appointment under this section of a preference eligible or a person who completed the service requirement for career tenure under the Canal Zone Merit System. An agency may appoint

under this section a nonpreference eligible who did not complete the service requirement for career tenure under the Canal Zone Merit System only within 3 years following the date of his separation from that system.

(d) *Tenure on appointment.* (1) On appointment under paragraph (a) of this section, a former career employee of the Canal Zone Merit System becomes a career employee.

(2) On appointment under paragraph (a) of this section, a former career-conditional employee of the Canal Zone Merit System becomes a career-conditional employee, except that when he is excepted from the service requirement for career tenure by § 315.201(c) he becomes a career employee.

(e) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section automatically acquires a competitive status:

(1) On appointment, when he satisfactorily completed a 1-year probationary period under the Canal Zone Merit System; or

(2) On satisfactory completion of probation in accordance with § 315.801(a)

(3) when he did not complete a 1-year probationary period under the Canal Zone Merit System.

§ 315.602 Appointment based on service in the Office of the President or on the White House Staff.

(a) *Agency authority.* Subject to the prior approval of the Commission, an agency may appoint noncompetitively a person who has served at least 2 years in the immediate office of the President or on the White House Staff.

(b) *Tenure on appointment.* (1) Except as provided in subparagraph (2) of this paragraph, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee when he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* A person appointed under paragraph (a) of this section acquires a competitive status automatically on appointment.

§ 315.603 Appointment based on former incumbency of a position brought into the competitive service.

(a) *Agency authority.* (1) *Employee in military service.* Subject to the prior approval of the Commission, an agency may appoint a former incumbent of a permanent excepted position who was serving under an appointment not limited to 1 year or less, or of a position in public or private enterprise when the position was brought into the competitive service on a continuing basis and who left his position after June 30, 1950, to perform active military service when:

(i) The position was brought into the competitive service before or during his military service or during the period in which he had restoration rights thereto, and he left the position to enter military service before the end of the time limits set forth in § 315.701(c);

(ii) He has been released from military service under honorable conditions;

(iii) The agency submits a recommendation for his appointment to the Commission within 6 months after release from military service under honorable conditions or after hospitalization continuing after release for not more than 1 year; and

(iv) He performed 6 months of satisfactory service immediately before the date his position was brought into the competitive service, in a position or positions brought into the competitive service, or in the civilian executive branch of the Government, unless the Commission has excepted his particular type of case from this requirement by a provision of the Federal Personnel Manual.

(2) *Employee separated.* Subject to the prior approval of the Commission, an agency may appoint a former incumbent of a permanent excepted position under an appointment not limited to 1 year or less or of a position in public or private enterprise when the position was brought into the competitive service on a continuing basis, and who was separated thereafter, when:

(i) The agency submits a recommendation for his appointment to the Commission within the time limits set forth in § 315.701(c); and

(ii) He performed 6 months of satisfactory service immediately before the date his position was brought into the competitive service, in a position or positions brought into the competitive service or in the civilian executive branch of the Government, unless the Commission has excepted his particular type of case from this requirement by a provision of the Federal Personnel Manual.

(b) *Review of disapproved recommendations.* When the Commission disapproves a recommendation for appointment under this section, the agency or former incumbent concerned may request the Commission to review its action within 6 months after the date of the Commission's disapproval.

(c) *Tenure on appointment.* (1) Except as provided in subparagraph (2) of this paragraph, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee when he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(d) *Acquisition of competitive status.*

(1) A person appointed under paragraph (a) of this section acquires a competitive status automatically on appointment.

(2) A person appointed under paragraph (a) of this section acquires a competitive status automatically on completion of probation.

§ 315.604 Employment of disabled veterans who have completed a training course under chapter 31 of title 38, United States Code.

(a) *Agency authority.* When a disabled veteran completes a course of training prescribed by the Administrator of Veterans' Affairs under chapter 31 of

title 38, United States Code, an agency may appoint him noncompetitively to the position for which he was trained when the Commission determines that the training is adequate for the performance of the duties of the position.

(b) *Recommendation for conversion.* An agency may recommend to the Commission that the employment of a person appointed under paragraph (a) of this section be converted to career or career-conditional employment.

(c) *Disqualifications.* Any law, Executive order, or civil service rule or regulation which would disqualify an applicant for appointment also disqualifies him for conversion of his employment to career or career-conditional employment under this section.

(d) *Tenure on approval of recommendation.* When the Commission approves the agency's recommendation submitted under paragraph (b) of this section, the employee becomes:

(1) A career-conditional employee, except as provided in subparagraph (2) of this paragraph;

(2) A career employee when he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(e) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

§ 315.605 Appointment of former Peace Corps volunteers.

(a) *Agency authority.* Subject to the prior approval of the Commission, an agency in the executive branch may appoint noncompetitively, for other than temporary employment, a person whom the Director of the Peace Corps certifies as having served satisfactorily as a volunteer or volunteer leader under the Peace Corps Act (22 U.S.C. 2501 et seq.).

(b) *Time limit.* An agency in the executive branch may make an appointment under this section only within 1 year after the person completes service under the Peace Corps Act. However, an agency may extend the period for 2 more years to a total of 3 years if the person, after his Peace Corps service, is:

(1) In the military service;

(2) Studying at a recognized institution of higher learning; or

(3) In another activity which, in an agency's view, warrants extension.

(c) *Conditions.* Any law, Executive order, or regulation that disqualifies an applicant for appointment also disqualifies an applicant for appointment under this section.

(d) *Tenure on appointment.* (1) Except as provided in subparagraph (2) of this paragraph, a person appointed under paragraph (a) of this section becomes a career-conditional employee.

(2) A person appointed under paragraph (a) of this section becomes a career employee when he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(e) *Acquisition of competitive status.* A person appointed under paragraph (a)

of this section acquires a competitive status automatically on completion of probation.

§ 315.606 Noncompetitive appointment of certain present and former Foreign Service officers and employees.

Subject to the conditions prescribed by the Commission in the Federal Personnel Manual, an agency may appoint noncompetitively a present or former career officer or employee of the Foreign Service who was appointed under authority of the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.), or legislation that supplements or replaces that Act, if:

(a) He qualifies under the requirements set forth in Executive Order 11219, and

(b) The Commission has concurred in his present or former agency's plan, and substantive changes thereto, for noncompetitive entry of civil service employees into the Foreign Service positions of that agency.

(E.O. 11219; 3 CFR 1964-1965 Comp., p. 303)

Subpart G—Conversion to Career or Career-Conditional Employment From Other Types of Employment

§ 315.701 Incumbents of positions brought into the competitive service.

(a) *Employee coverage.* This section applies to an employee retained under §§ 316.701 and 316.702 of this chapter who:

(1) Was serving in a permanent excepted position under an appointment not limited to 1 year or less, or in a public or private enterprise in a position which the agency determines to be a continuing one, at the time his position was brought into the competitive service; and

(2) Performed 6 months of satisfactory service immediately before the date his position was brought into the competitive service, in a position or positions brought into the competitive service, or in the civilian executive branch of the Government, unless the Commission has excepted his particular type of case from this requirement by a provision in the Federal Personnel Manual.

(b) *Recommendation by agency.* An agency, within the time limits set forth in paragraph (c) of this section, may recommend that the employment of an employee covered by paragraph (a) of this section be converted to career or career-conditional employment.

(c) *Time limits on recommendation.* An agency may submit a recommendation for conversion under paragraph (b) of this section only within 6 months after the position is brought into the competitive service, except that:

(1) When it is necessary for the Commission to determine that § 316.701 or § 316.702 applies to a group of positions, the recommendation shall be submitted within 6 months after the Commission advises the agency of its determination; and

(2) In its discretion the Commission may extend the time limits prescribed in this paragraph on a showing by the

agency that circumstances beyond its control prevented it from recommending the person within these time limits.

(d) *Tenure on approval of recommendation.* When the Commission approves the agency's recommendation submitted under paragraph (b) of this section, the employee becomes:

(1) A career-conditional employee, except as provided in subparagraph (2) of this paragraph;

(2) A career employee when he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(e) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on completion of probation.

(f) *Review of disapproved recommendations.* When the Commission disapproves a recommendation for conversion under this section, the agency or the employee concerned may request the Commission to review its action within 6 months after the date of the Commission's disapproval.

§ 315.702 Employees serving without competitive examination in rare cases.

(a) *Recommendation by agency.* An agency may recommend to the Commission that the employment of an employee who has completed at least 1 year of satisfactory service under § 316.601 be converted to career or career-conditional employment.

(b) *Tenure on approval of recommendation.* When the Commission approves the agency's recommendation submitted under paragraph (a) of this section, the employee becomes:

(1) A career-conditional employee, except as provided in subparagraph (2) of this paragraph;

(2) A career employee when he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

§ 315.703 Employees formerly reached on a register.

(a) *Recommendation by agency.* An agency may recommend to the Commission that the employment of an employee who was serving when his name was within reach for career or career-conditional appointment on a register appropriate for the position in which he was serving be converted to career or career-conditional employment when:

(1) The register was being used for career and career-conditional appointments when he was reached;

(2) He has been continuously employed since he was reached;

(3) The agency in which he was employed when he was reached recommends the conversion either before the expiration of the register or during a period of

continuous service since he was reached; and

(4) The agency, when the employee is a nonpreference eligible who was first reached after February 1, 1955, furnishes reasons satisfactory to the Commission for passing over any preference eligible who preceded him on the register when he was reached and who is still within reach and available for appointment.

(b) *Tenure on approval of recommendation.* When the Commission approves the agency's recommendation submitted under paragraph (a) of this section, the employee becomes:

(1) A career-conditional employee, except as provided in subparagraph (2) of this paragraph;

(2) A career employee when he has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* An employee whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on completion of probation.

§ 315.703a Conversion to career employment from indefinite or temporary employment.

(a) *General.* An employee serving after February 7, 1968, in a competitive position under an indefinite appointment or a temporary appointment pending establishment of a register or as a status quo employee acquires competitive status and is entitled to have his employment converted to career employment when:

(1) He completes a total of at least 3 years of service in such a position under one or more such appointments without a break in service of more than 30 calendar days or without an interruption by nonqualifying service of more than 30 calendar days;

(2) The appointing authority (i) recommends to the Commission that his employment be converted to career employment and (ii) certifies to the Commission that his work performance for the past 12 months has been satisfactory;

(3) He passes a suitable noncompetitive examination; and

(4) He meets Commission qualification requirements for the position and is otherwise eligible for career employment.

This paragraph does not apply to an employee serving under an overseas limited appointment, in the postal field service, or above GS-15.

(b) *Postal field service.* An employee serving after February 7, 1968, in a competitive position in the postal field service under a temporary appointment without a definite time limitation acquires competitive status and is entitled to have his employment converted to career employment when:

(1) In each year of the 3-year period immediately preceding the date of the recommendation for conversion, he was paid for not less than 700 hours of work in a position in the postal field service

under an appointment without a definite time limitation;

(2) The appointing authority (i) recommends to the Commission that his appointment be converted to career employment and (ii) certifies to the Commission that his work performance for the past 12 months has been satisfactory; however, the conversion of the appointment of a substitute postal field service employee may be effected only as a career substitute vacancy is available under section 3302 of title 39, United States Code;

(3) He passes a suitable noncompetitive examination; and

(4) He meets Commission qualification requirements for the position and is otherwise eligible for career appointment.

This paragraph does not apply to an employee serving in a position of postmaster or rural carrier.

(c) *Creditable service.* (1) In computing creditable service under paragraph (a) or (b) of this section for an employee who left a competitive position in which he was serving under a qualifying appointment covered in paragraph (a) or (b) of this section to enter the armed forces and who is reemployed in such a position within 120 calendar days after separation under honorable conditions, the period from the date he left his position to the date he is reemployed is creditable.

(2) The Commission shall publish in the Federal Personnel Manual the conditions under which full-time, part-time, and intermittent employment is creditable in meeting the service requirement under paragraph (a) of this section.

(d) *Termination after failure to meet conversion requirements.* An employing agency shall terminate an employee covered by paragraph (a) of this section not later than 90 days after he completes the 3-year service requirement referred to in paragraph (a)(1) of this section, if he has not met the requirements and conditions of paragraph (a)(2) through (4) of this section before the end of the 90-day period. For an employee who has completed the 3-year service requirement before February 8, 1968, the 90-day period begins on February 8, 1968. For an employee who is reemployed after intervening service in the armed forces, the 90-day period begins on the date of reemployment if his combined civilian and military service satisfies the 3-year service requirement on that date.

(e) *Administrative error.* When an employee has met the service requirement under paragraph (a)(1) or (b)(1) of this section but a timely recommendation has not been made for conversion of his appointment under this section, the Commission may, within its discretion, on a showing that the employing agency failed to recommend him because of administrative error or oversight, authorize the employing agency to recommend him for conversion as of the date on which he met the service requirement.

(5 U.S.C. 3304a, 39 U.S.C. 3303)

§ 315.703b Employees serving under transitional appointment.

(a) *Agency action.* An agency shall convert the employment of an employee who has served continuously under a transitional appointment for at least 1 year to career or career-conditional employment within 90 calendar days after he completes the program of education or training approved for him under § 307.104 of this chapter.

(b) *Tenure.* Upon conversion of his employment, the employee becomes:

(1) A career-conditional employee, except as provided in subparagraph (2) of this paragraph;

(2) A career employee if he has completed the service requirement for career tenure or is expected from it by § 315.201(c).

(c) *Acquisition of competitive status.* An employee whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

§ 315.704 Disqualifications.

Any law, Executive order, or civil service rule or regulation which would disqualify an applicant for appointment shall also disqualify an employee for conversion of his employment to career or career-conditional employment under this subpart.

Subpart H—Probation

§ 315.801 Probationary period; when required.

(a) The first year of service of an employee who is given a career or career-conditional appointment under this part is a probationary period when the employee:

(1) Was appointed from a register;

(2) Was reinstated under § 315.401, unless during any period of service which affords a current basis for reinstatement, the employee completed a probationary period or served with competitive status under an appointment which did not require him to serve a probationary period;

(3) Was appointed under § 315.601(a) as a former employee of the Canal Zone Merit System, unless he satisfactorily completed a 1-year probationary period under that system;

(4) When appointed under § 315.603 (a)(2) on the basis of his former incumbency of a position brought into the competitive service;

(5) Has had his employment converted under § 315.701 or § 315.703 from another type of employment; or

(6) Was appointed under § 315.605 as a former Peace Corps volunteer or volunteer leader.

(b) A person who is:

(1) Transferred under § 315.501; or

(2) Promoted, demoted, or reassigned, before he completed probation is required to complete the probationary period in the new position.

(c) A person who is reinstated from the Reemployment Priority List to a position in the same agency and the same commuting area does not have to serve a new probationary period, but, if sepa-

rated during probation, is required to complete the probationary period in the new position.

§ 315.802 Length of probationary period.

(a) The probationary period required by § 315.801 is 1 year.

(b) The Commission shall publish in the Federal Personnel Manual a statement of the conditions under which prior service is counted toward completion of a probationary period.

§ 315.803 Agency action during probationary period (general).

The agency shall utilize the probationary period as fully as possible to determine the fitness of the employee and shall terminate his services during this period if he fails to demonstrate fully his qualifications for continued employment.

§ 315.804 Termination of probationers for unsatisfactory performance or conduct.

When an agency decides to terminate an employee serving a probationary or trial period because his work performance or conduct during this period fails to demonstrate his fitness or his qualifications for continued employment, it shall terminate his services by notifying him in writing as to why he is being separated and the effective date of the action. The information in the notice as to why the employee is being terminated shall, as a minimum, consist of the agency's conclusions as to the inadequacies of his performance or conduct.

§ 315.805 Termination of probationers for conditions arising before appointment.

When an agency proposes to terminate an employee serving a probationary or trial period for reasons based in whole or in part on conditions arising before his appointment, the employee is entitled to the following:

(a) *Notice of proposed adverse action.* The employee is entitled to an advance written notice stating the reasons, specifically and in detail, for the proposed action.

(b) *Employee's answer.* The employee is entitled to a reasonable time for filing a written answer to the notice of proposed adverse action and for furnishing affidavits in support of his answer. If the employee answers, the agency shall consider the answer in reaching its decision.

(c) *Notice of adverse decision.* The employee is entitled to be notified of the agency's decision at the earliest practicable date. The agency shall deliver the decision to the employee at or before the time the action will be made effective. The notice shall be in writing, inform the employee of the reasons for the action, inform the employee of his right of appeal to the appropriate office of the Commission, and inform him of the time limit within which the appeal must be submitted as provided in § 315.806(d).

§ 315.806 Appeal rights to the Commission.

(a) *Right of appeal.* An employee is entitled to appeal to the Commission in writing from the agency's decision to terminate him under § 315.804 or § 315.805 only as provided in this section. The Commission's review does not include any matter except as provided in paragraphs (b) and (c) of this section.

(b) *On discrimination.* An employee whose termination is subject to the provisions of § 315.804 or § 315.805 may appeal on the ground that the action taken was based on political reasons not required by statute, or resulted from discrimination because of sex or marital status, or from improper discrimination because of physical handicap. When an appeal is based on any of these grounds, the appellant shall submit an affidavit setting forth the facts and circumstances on which the appeal is based.

(c) *On improper procedure.* A probationer whose termination is subject to § 315.805 may appeal on the ground that his termination was not effected in accordance with the procedural requirements of that section.

(d) *Time limits.* An employee may submit an appeal at any time after receipt of the notice of adverse decision, but not later than 15 calendar days after the termination has been effected. The Commission may extend the time limit in this paragraph when the appellant shows that he was not notified of the time limit and was not otherwise aware of it, or that he was prevented by circumstances beyond his control from appealing within the time limit.

§ 315.807 Agency action when Commission recommends restoration or other corrective action.

(a) It is mandatory that the agency take all corrective action recommended in the Commission's initial decision on an appeal unless it makes a timely appeal to the Board of Appeals and Review.

(b) The decision of the Board is final and compliance with its recommendation for corrective action is mandatory.

PART 316—TEMPORARY AND INDEFINITE EMPLOYMENT

Subpart A—[Reserved]

Subpart B—TAPER Employment

- Sec.
316.201 Purpose and duration.
316.202 Eligibility of TAPER employees for within-grade increases.

Subpart C—Term Employment

- 316.301 Purpose and duration.
316.302 Selection of term employees.
316.303 Tenure of term employees.
316.304 Trial period.
316.305 Eligibility for within-grade increases.

Subpart D—Temporary Limited Employment

- 316.401 Purpose and duration.
316.402 Authorities for temporary appointments.

Subpart E—Indefinite Employment

- Sec.
316.501 Authorities for indefinite appointment; restrictions on.
316.502 Trial period.
316.503 Tenure of indefinite employees.
316.504 Eligibility of indefinite employees for within-grade increases.

Subpart F—Appointment Without Competitive Examination in Rare Cases

- 316.601 Appointment without competitive examination in rare cases.

Subpart G—Retention of Incumbents of Positions Brought Into the Competitive Service

- 316.701 Public or private enterprise taken over by Government.
316.702 Excepted positions brought into the competitive service.
316.703 Effect on tenure of position change of status quo employees.

Subpart H—Separation of Temporary and Indefinite Employees

- 316.801 Displacement of temporary and indefinite employees.

AUTHORITY: The provisions of this Part 316 issued under 5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—TAPER Employment

§ 316.201 Purpose and duration.

The Commission may authorize an agency to fill a vacancy by a temporary appointment pending establishment of a register ("TAPER" appointment) when there are insufficient eligibles on a register appropriate for filling the vacancy in a position that will last for a period of more than 1 year and the public interest requires that the vacancy be filled before eligibles can be certified. TAPER employment may continue only for the period necessary to make an appointment through certification.

§ 316.202 Eligibility of TAPER employees for within-grade increases.

A TAPER employee serving in a position subject to the General Schedule is eligible for within-grade increases in accordance with Subpart D of Part 531 of this chapter.

Subpart C—Term Employment

§ 316.301 Purpose and duration.

The Commission may authorize an agency to make a term appointment for a period of more than 1 year on request of the agency and after determination by the Commission that the needs of the service so require and that the employment need is for a limited period of 4 years or less.

§ 316.302 Selection of term employees.

(a) Except as provided in paragraphs (b) and (c) of this section, when making a term appointment an agency shall select an eligible from a register.

(b) The Commission may authorize an agency to make term appointments outside a register when there are insufficient eligibles on the appropriate register.

(c) When the Commission has authorized an agency to make term appointments, the agency may give a term appointment to a person with eligibility for reinstatement, without regard to the existence of an appropriate register.

§ 316.303 Tenure of term employees.

(a) A term employee does not acquire a competitive status on the basis of his term appointment.

(b) The employment of a term employee ends automatically on the expiration of his term appointment unless he has been separated earlier in accordance with this chapter.

§ 316.304 Trial period.

(a) The first year of service of a term employee is a trial period.

(b) The agency may terminate a term employee at any time during the trial period. The employee is entitled to the procedures set forth in § 315.804 or § 315.805 of this chapter as appropriate.

§ 316.305 Eligibility for within-grade increases.

A term employee serving in a position subject to the General Schedule is eligible for within-grade increases in accordance with Subpart D of Part 531 of this chapter.

Subpart D—Temporary Limited Employment

§ 316.401 Purpose and duration.

The Commission may authorize an agency to make a temporary limited appointment to meet an administrative need for temporary employment, such as to fill a temporary position or a continuing position for a temporary period. An agency may make a temporary limited appointment only for a definite period of 1 year or less.

§ 316.402 Authorities for temporary appointments.

(a) *General rule.* An agency may make and extend a temporary limited appointment only with specific authorization from the Commission, except under the conditions published by the Commission in the Federal Personnel Manual or as provided in paragraph (b) of this section.

(b) *Noncompetitive temporary limited appointments.* An agency may give a temporary limited appointment, without regard to the existence of an appropriate register, to:

(1) A person with eligibility for reinstatement;

(2) A person eligible for career or career-conditional appointment under § 315.601 of this chapter;

(3) A person who meets the requirements for indefinite appointment under § 316.501;

(4) A former temporary employee of the agency who was originally appointed from a register, subject to the conditions published by the Commission in the Federal Personnel Manual; and

(5) A person eligible for career or career-conditional appointment under § 315.605 of this chapter.

(76A Stat. 18; 2 C.Z.C. 149(c) (2); E.O. 9830; 3 CFR 1943-1948 Comp., p. 606; E.O. 11103; 3 CFR, 1959-1963 Comp., p. 762)

Subpart E—Indefinite Employment

§ 316.501 Authorities for indefinite appointment; restrictions on.

(a) An agency may give an indefinite appointment to a person without competitive status who last served as an indefinite employee in a competitive position when:

(1) He has received a notice of separation because of reduction in force and is selected not later than 90 days after his separation because of reduction in force;

(2) He is unable to move with his office to a different locality and is selected after receiving notification that his office is to move but not later than 90 days after his separation because of inability to move with his office; or

(3) He entered the military service while serving under an indefinite appointment and is selected not later than 90 days after his honorable separation from the military service.

(b) An agency may not make an indefinite appointment to a position for which an initial overseas limited appointment is authorized under Subpart B of Part 301 of this chapter.

§ 316.502 Trial period.

(a) Except as provided in paragraphs (b) and (c) of this section, the first year of service is a trial period in the case of a person:

(1) Who is given an indefinite appointment; or

(2) Who at the time of separation from indefinite appointment was serving a trial period and was appointed after a break in service of at least 1 workday.

(b) A person who at the time of separation from indefinite appointment was serving a trial period and was appointed without a break in service of 1 workday, is required to complete the trial period in the new position.

(c) A person who has satisfactorily completed a trial period of 1 year is not required to serve a trial period when he is given an indefinite appointment.

(d) The agency may terminate an indefinite employee at any time during the trial period. The employee is entitled to the procedures set forth in § 315.804 or § 315.805 of this chapter, as appropriate.

§ 316.503 Tenure of indefinite employees.

(a) An indefinite employee does not acquire a competitive status on the basis of his indefinite appointment.

(b) An agency may retain an indefinite employee on an indefinite basis, subject to his displacement under § 316.801.

§ 316.504 Eligibility of indefinite employees for within-grade increases.

An indefinite employee serving in a position subject to the General Schedule

is eligible for within-grade increases in accordance with Subpart D of Part 531 of this chapter.

Subpart F—Appointment Without Competitive Examination in Rare Cases

§ 316.601 Appointment without competitive examination in rare cases.

(a) The Commission may authorize an agency to make an appointment without competitive examination when the Commission:

(1) Finds that the duties and compensation of the position are such, or that qualified persons are so rare, that in the interest of good civil service administration the position cannot be filled through open competitive examination; and

(2) Receives satisfactory evidence of the qualifications of the person to be appointed.

(b) A person appointed under paragraph (a) of this section does not acquire a competitive status on the basis of that appointment.

(c) When a position filled under paragraph (a) of this section becomes vacant, the agency may fill the vacancy by another appointment under paragraph (a) of this section only with the express prior approval of the Commission in accordance with this section.

Subpart G—Retention of Incumbents of Positions Brought Into the Competitive Service

§ 316.701 Public or private enterprise taken over by Government.

(a) When the Commission finds that the Federal Government has taken over a public or private enterprise, or an identifiable unit thereof, and that a position has thereby been brought into the competitive service, the agency may retain the incumbent of the position.

(b) (1) When an agency retains an employee under paragraph (a) of this section in a position which it determines to be a continuing one, the agency shall decide on a timely basis whether it will recommend that his employment be converted to career or career-conditional under § 315.701 of this chapter.

(2) When an agency decides not to recommend conversion under § 315.701 of this chapter, or recommends the conversion but the conversion fails, the agency, in its discretion, may retain the employee as a status quo employee.

(c) When an agency retains an employee under paragraph (a) of this section in a position which it determines to be a noncontinuing one, the agency shall give the employee a temporary limited appointment under the conditions prescribed by the Commission in the Federal Personnel Manual.

§ 316.702 Excepted positions brought into the competitive service.

(a) When the Commission finds that an excepted position has been brought into the competitive service by statute, Executive order, or the revocation of an

exception under Civil Service Rule VI (§ 6.6 of this chapter), or is otherwise made subject to competitive examination, the agency may retain the incumbent of the position.

(b) (1) When an agency retains an employee under paragraph (a) of this section who was serving in a permanent excepted position under an appointment not limited to 1 year or less, the agency shall decide on a timely basis whether it will recommend that his employment be converted to career or career-conditional under § 315.701 of this chapter.

(2) When an agency decides not to recommend conversion under § 315.701 of this chapter, or recommends the conversion but the conversion fails, the agency, in its discretion, may retain the employee as a status quo employee.

(c) An employee retained under paragraph (a) of this section who was serving in an excepted position under an appointment limited to 1 year or less is permitted to serve temporarily under the conditions prescribed by the Commission in the Federal Personnel Manual.

§ 316.703 Effect on tenure of position change of status quo employees.

(a) A status quo employee who is promoted, demoted, or reassigned becomes:

(1) An indefinite employee when the position change occurs while he is not serving overseas; or

(2) An overseas limited employee when the position change occurs while he is serving overseas.

(b) An employee referred to in paragraph (a) of this section who is changed back to his status quo position becomes a status quo employee.

Subpart H—Separation of Temporary and Indefinite Employees

§ 316.801 Displacement of temporary and indefinite employees.

(a) An agency shall separate employees serving under the following types of appointments in response to a specific displacement order by the commission or to comply with the provisions of the Commission's displaced employee program:

(1) Temporary pending establishment of a register;

(2) Overseas limited of indefinite duration; and

(3) Indefinite.

(b) An agency may separate an employee serving under one of the types of appointments named in paragraph (a) of this section in order to create a vacancy for a career or career-conditional employee who has received a reduction-in-force notice or who, after declining to transfer with his function to another commuting area, has been officially notified by the employing agency that he will not be placed in another position in his competitive area.

(c) When an agency separates employees under this section, it shall follow the order of displacement published by the Commission in the Federal Personnel Manual.

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

Subpart A—Discretion in Filling Vacancies

Sec.
330.101 Methods of filling vacancies.

Subpart B—Appointment From Reemployment Priority List

330.201 Priority in filling vacancies.
330.202 Reemployment priority list appeals.
330.203 Time limit on appeal.
330.204 Agency action when Commission recommends corrective action.

Subpart C—Displaced Employee Program

330.301 Acceptance of applications from displaced employees.
330.302 Order of displaced employees on registers.
330.303 Entry of names of displaced employees on special registers.

Subpart D—Positions Restricted to Preference Eligibles

330.401 Competitive examination.
330.402 Direct recruitment.
330.403 Noncompetitive actions.

Subpart E—Time-After-Competitive Appointment Restriction

330.501 General restriction.
330.502 Persons within reach on registers.
330.503 Promotion to postmaster positions.

Subpart F—Prohibited Practices

330.601 Withdrawal from competition.

Subpart G—Placement Program for Employees' Compensation Beneficiaries

330.701 Acceptance of applications.
330.702 Order of entry on registers.
330.703 Entry of names on special registers.

AUTHORITY: The provisions of this Part 330 issued under 5 U.S.C. 1302, 3301, 3302, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, unless otherwise noted.

Subpart A—Discretion in Filling Vacancies

§ 330.101 Methods of filling vacancies.

An appointing officer may fill a position in the competitive service by any of the methods authorized in this chapter. He shall exercise his discretion in each personnel action solely on the basis of merit and fitness and without the discrimination prohibited in Part 713 of this chapter.

Subpart B—Appointment From Reemployment Priority List

§ 330.201 Priority in filling vacancies.

(a) When a qualified person is available on the agency's reemployment priority list, the agency may not fill a competitive position by:

(1) A new appointment, unless the person appointed is a qualified 10-point preference eligible;

(2) Transfer; or,

(3) Reemployment of a person not on the reemployment priority list unless the person is a preference eligible or is restored under Part 353 of this chapter.

(b) Paragraph (a) of this section does not apply when all qualified persons on the reemployment priority list decline or fail to respond to offers of reemployment.

(c) In selection from a reemployment priority list, an agency shall give prefer-

ence to tenure group I employees over tenure group II employees and to qualified preference eligibles over nonpreference eligibles within each tenure group.

(d) An agency may make an exception to this section and appoint a person not on the reemployment priority list or a person on the list with lower standing than others on the list only when it is necessary to obtain an employee for duties that cannot be taken over without undue interruption to the agency by a person on the list or a person on the list with higher standing than the person appointed. The agency shall notify each person adversely affected by an appointment under this paragraph of the reasons for the exception and of his right of appeal to the Commission.

§ 330.202 Reemployment priority list appeals.

An employee or former employee who thinks his reemployment priority rights under this subpart have been violated may appeal in writing to the Commission by presenting factual information that he was improperly denied reemployment because of the employment of another person.

§ 330.203 Time limit on appeal.

Although there is no specific time limit on the filing of a reemployment priority list appeal, an employee or former employee shall exercise due diligence in appealing under § 330.202.

§ 330.204 Agency action when Commission recommends corrective action.

(a) It is mandatory that the agency take all corrective action recommended in the Commission's initial decision on an appeal unless it makes a timely appeal to the Board of Appeals and Review.

(b) The decision of the Board is final and compliance with its recommendation for corrective action is mandatory.

Subpart C—Displaced Employee Program

§ 330.301 Acceptance of applications from displaced employees.

Subject to the time limits and other conditions published by the Commission in the Federal Personnel Manual, a career or career-conditional employee may apply for examination for any competitive position, except postmaster and rural carrier, whether the examination is open or there is an existing register or a register about to be established, when (a) the employee has received a reduction-in-force notice and the employing agency determines that he cannot be placed in another position in his competitive area or (b) the employee declines to transfer with his function to another commuting area or to accept new assignment to another commuting area, and the employing agency determines that he will not be placed in another position in his competitive area.

§ 330.302 Order of displaced employees on registers.

The Commission shall enter the names of employees applying under § 330.301 on the appropriate register at the top of the

appropriate group in the order of their ratings. For professional and scientific positions in GS-9 and above and in comparable pay levels under other pay-fixing authorities, all eligibles are in one group. For all other positions, preference eligibles with a compensable service-connected disability of 10 percent or more are in one group and all other eligibles in another.

§ 330.303 Entry of names of displaced employees on special registers.

When there is no appropriate existing register the Commission may establish special registers containing the names of employees applying under § 330.301, together with the names of eligibles described in §§ 330.703, 332.311, and 332.322 of this chapter, and use these registers for certification to fill appropriate vacancies.

Subpart D—Positions Restricted to Preference Eligibles

§ 330.401 Competitive examination.

In each entrance examination for the positions of custodian, elevator operator, guard, and messenger (referred to hereinafter in this subpart as restricted positions), the Commission shall restrict competition to preference eligibles as long as preference eligibles are available.

(5 U.S.C. 3310)

§ 330.402 Direct recruitment.

In direct recruitment by an agency under delegated authority, the agency shall fill each restricted position by the appointment of a preference eligible as long as preference eligibles are available.

§ 330.403 Noncompetitive actions.

An agency may fill a restricted position by the appointment by noncompetitive action of a nonpreference eligible only in particular types of cases as determined by the Commission. The Commission shall publish in the Federal Personnel Manual a statement of the circumstances under which a restricted position may be filled by noncompetitive action.

Subpart E—Time-After-Competitive Appointment Restriction

§ 330.501 General restriction.

Except as provided in § 330.503, an agency may promote an employee or reassign him to a different line of work, or to a different geographical area, and it may transfer a present employee or reinstate a former employee of the same or another agency to a higher grade or different line of work, or to a different geographical area, only after 3 months have elapsed since the employee's latest nontemporary competitive appointment. The Commission may waive the restriction against movement to a different geographical area when it is satisfied that the waiver is consistent with the principle of open competition.

§ 330.502 Persons within reach on registers.

The time-after-competitive-appointment restriction of § 330.501 does not apply to a person who is within reach on

a register for competitive appointment to the position to be filled.

§ 330.503 Promotion to postmaster positions.

A postal employee may be promoted to a postmaster position at a post office of the first, second, or third class only after he has served 1 year under career appointment in the postal service.

Subpart F—Prohibited Practices

§ 330.601 Withdrawal from competition.

An applicant for competitive examination, an eligible on a register, and an officer or employee in the executive branch of the Government shall not persuade, induce, or coerce, or attempt to persuade, induce, or coerce, directly or indirectly, a prospective applicant to withhold filing application, or an applicant or eligible to withdraw from competition or eligibility, for a position in the competitive service, for the purpose of improving or injuring the prospects of an applicant or eligible for appointment. The Commission shall cancel the application or eligibility of an applicant or eligible who violates this section, and shall impose such other penalty as it considers appropriate.

Subpart G—Placement Program for Employees' Compensation Beneficiaries

AUTHORITY: The provisions of this Subpart G issued under 5 U.S.C. 8315a.

§ 330.701 Acceptance of applications.

(a) Subject to the conditions published by the Commission in the Federal Personnel Manual, a present or former employee receiving compensation under subchapter I of chapter 81 of title 5, United States Code, who has not served with career or career-conditional tenure may apply for examination by the Commission for any position, except postmaster and rural carrier, for which there is a register established or about to be established under open competitive examination.

(b) Subject to the conditions published by the Commission in the Federal Personnel Manual, a present or former career or career-conditional employee receiving compensation under subchapter I of chapter 81 of title 5, United States Code, may apply for examination for any competitive position, except postmaster and rural carrier, whether the examination is open or there is an existing register or a register about to be established.

§ 330.702 Order of entry on registers.

(a) The Commission shall enter the names of employees applying under § 330.701(a) on the appropriate register in the order provided in § 332.401 of this chapter.

(b) The Commission shall enter the names of employees applying under § 330.701(b) on the appropriate register with the same priority afforded by § 330.302 for displaced employees.

§ 330.703 Entry of names on special registers.

When there is no appropriate existing register the Commission may establish special registers containing the names of employees applying under § 330.701(b), together with the names of eligibles described in §§ 330.303, 332.311, and 332.322 of this chapter, and use these registers for certification to fill appropriate vacancies.

PART 332—RECRUITMENT AND SELECTION THROUGH COMPETITIVE EXAMINATION

Subpart A—General Provisions

- Sec.
332.101 General policy of competition.
332.102 Definitions.
332.103 Filling certain postmaster positions.

Subpart B—[Reserved]

Subpart C—Period of Competition and Eligibility

GENERAL

- 332.301 Termination of eligibility.
ACCEPTANCE OF APPLICATIONS AFTER CLOSING DATE OF EXAMINATIONS

- 332.311 Quarterly examinations.
332.312 Applicants in military or overseas service.
332.313 Preference eligibles separated from competitive positions.

RESTORATION OF ELIGIBILITY

- 332.321 Preference eligibles who resigned from competitive positions.
332.322 Persons who lost eligibility because of military service.
332.323 Employees separated during probation.

Subpart D—Consideration for Appointment

- 332.401 Order on registers.
332.402 Regular order of certification for appointment.
332.403 Selective certification.
332.404 Order of selection from certificates.
332.405 Three considerations for appointment.
332.406 Objections to eligibles.
332.407 Passing over preference eligibles.

AUTHORITY: The provisions of this Part 332 issued under 5 U.S.C. 1302, 3301, 3302, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, unless otherwise noted.

Subpart A—General Provisions

§ 332.101 General policy of competition.

(a) Examinations for entrance into the competitive service shall be open competitive, except that the Commission may authorize noncompetitive examinations when sufficient competent persons do not compete.

(b) An examination for promotion, demotion, reassignment, transfer, or reinstatement may be a noncompetitive examination.

§ 332.102 Definitions.

In this part:

(a) "Certificate" means a list of eligibles from a register submitted to an appointing officer so that he may consider the eligibles for appointment.

(b) "Active military duty" means active duty in full pay status in the Armed Forces of the United States, including an initial period of active duty for training.

§ 332.103 Filling certain postmaster positions.

(a) When a vacancy occurs or is about to occur in a postmaster position in a fourth-class post office having fewer than 30 revenue units for pay purposes, a representative of the Post Office Department shall visit the locality and, after due public notice has been given, accept applications from interested persons. The representative shall establish a register based on the qualifications and suitability of each applicant and on his ability to provide proper facilities for transacting the business of the office. The Post Office Department shall submit to the Commission for post-audit one copy of the representative's report showing the qualifications of all applicants, the basis for ranking the eligibles, and the selection of an eligible from the register. The report shall be accompanied by the applications of all applicants. A person selected for appointment from such a register may be appointed after the date the office is determined to have 30 or more revenue units for pay purposes only with the prior approval of the Commission.

(b) When making an appointment from a register established under paragraph (a) of this section, the appointing officer shall select an eligible in accordance with §§ 332.404 through 332.407.

(c) When the Commission, after holding two examinations, is unable to secure a complete certificate of three eligibles for offices having 30 or more revenue units for pay purposes, it may authorize the establishment of a register and selection therefrom in accordance with paragraphs (a) and (b) of this section.

Subpart B—[Reserved]

Subpart C—Period of Competition and Eligibility

GENERAL

§ 332.301 Termination of eligibility.

(a) Except as provided in paragraph (b) of this section, a person's eligibility on a register is terminated when:

(1) He accepts a career or career-conditional appointment from the register; or

(2) The Commission terminates the eligibility of all persons on the register.

(b) The Commission may determine that in particular types of cases eligibility may not be terminated in less than 1 year. The Commission shall publish in the Federal Personnel Manual the conditions under which eligibility may not be terminated in less than 1 year.

ACCEPTANCE OF APPLICATIONS AFTER CLOSING DATE OF EXAMINATIONS

§ 332.311 Quarterly examinations.

(a) A 10-point preference eligible is entitled to file an application at any time for an examination for any position he may name for which there is an existing register or a register about to be established. He is also entitled to file an application for any position to which a career or career-conditional appointment has been made from a register within 3 years preceding the date of his

application. For the purpose of this paragraph the Commission shall hold an examination not later than the quarterly period succeeding that in which the application is filed.

(b) When there is no appropriate existing register, the Commission may establish special registers containing the names of eligibles from the quarterly examinations authorized by paragraph (a) of this section, together with the names of eligibles described in §§ 332.322, 330.303, and 330.703 of this chapter, and use these registers for certification to fill appropriate vacancies.

§ 332.312 Applicants in military or overseas service.

Subject to the time limits and other conditions published by the Commission in the Federal Personnel Manual, the following persons are entitled to file applications for open competitive examinations after the closing date for receipt of applications when there is an existing register or a register about to be established:

(a) A person who could not file an application during the filing period, or appear for an assembled examination, because of military service, or hospitalization continuing for 1 year or less following discharge from military service;

(b) An employee of the Federal Government who, as a member of a reserve unit of the military service, could not file an application during the filing period, or appear for an assembled examination, because of active duty beyond 15 days with the military service even though the duty is designated for training purposes; and

(c) A United States citizen who could not file an application during the filing period, or appear for an assembled examination, because of overseas service with a Federal agency or with an international organization in which the United States Government participates.

§ 332.313 Preference eligibles separated from competitive positions.

The following persons are entitled to have their names entered on an appropriate existing register in the order prescribed by § 332.401 if they were last employed under career or career-conditional appointments:

(a) A preference eligible who is declared eligible thereafter after appeal from furlough or discharge; and

(b) A preference eligible who has been furloughed or separated without delinquency or misconduct and who applies within 90 days after furlough or separation.

RESTORATION OF ELIGIBILITY

§ 332.321 Preference eligibles who resigned from competitive positions.

A qualified preference eligible who resigned without delinquency or misconduct from career or career-conditional employment is entitled to have his name reentered on each register on which his name formerly appeared (or on a successor register) if he applies within 90 days after separation.

§ 332.322 Persons who lost eligibility because of military service.

(a) A person who lost a period of eligibility on a register because he has served on active military duty since June 30, 1950, is entitled to have his name restored to that register or a successor register when he meets the following conditions:

(1) He has not served more than four years following the date of his entrance on active military duty, exclusive of any additional service imposed pursuant to law. The date of entrance on duty means the first date between June 30, 1950, and July 1, 1971, on which he began a new period of active military duty, whether it was by original entry, reentry or extension.

(2) He is honorably separated from active military duty.

(3) He applies for restoration of eligibility within 90 days after discharge from active military duty or from hospitalization continuing for 1 year or less following separation from active military duty.

(4) He is still qualified to perform the duties of the position for which the register is used.

(b) When a person is entitled to have his name restored to a register under paragraph (a) of this section, the Commission shall enter his name at the top of the appropriate group on the register if another eligible standing lower on the register on which his name formerly appeared was given a career or career-conditional appointment from that register. For professional and scientific positions in GS-9 and above and in comparable pay levels under other pay-fixing authorities, all eligibles are in one group. For all other positions, preference eligibles with a compensable service-connected disability of 10 percent or more are in one group and all other eligibles in another.

(c) When there is no appropriate existing register, the Commission may establish special registers containing the names of persons entitled to priority of certification under paragraph (b) of this section, together with the names of eligibles described in §§ 332.311, 330.303, and 330.703 of this chapter, and use these registers for certification to fill appropriate vacancies.

§ 332.323 Employees separated during probation.

An employee who is separated (voluntarily or involuntarily) without delinquency or misconduct during his probationary period is entitled to have his name restored to the register of eligibles from which he was appointed, if he applies for restoration while the register is still in use.

Subpart D—Consideration for Appointment

§ 332.401 Order on registers.

Subject to apportionment, residence, and other requirements of law and this chapter, the Commission shall enter the names of eligibles on the appropriate

register in accordance with their numerical ratings, except that the names of:

(a) Preference eligibles shall be entered in accordance with their augmented ratings and ahead of others having the same rating; and

(b) Preference eligibles who have a compensable service-connected disability of 10 percent or more shall be entered at the top of the register in the order of their ratings unless the register is for professional or scientific positions in GS-9 and above and in comparable pay levels under other pay-fixing authorities.

§ 332.402 Regular order of certification for appointment.

When the Commission receives a request for certification of eligibles, it shall prepare a certificate from the top of the appropriate register containing the names of a sufficient number of eligibles to permit the appointing officer to consider three eligibles in connection with each vacancy.

§ 332.403 Selective certification.

When there is no register appropriate as a whole for the certification of eligibles for a particular position, the Commission may prepare a certificate from the most nearly appropriate existing register by the selective certification of eligibles qualified for the particular position in the order of their ranking on the register. Special overseas selection factors may also be used as a basis for selective certification from a register used for filling overseas positions. When appropriate, the Commission may re-rate the eligibles on the register on the basis of the particular requirements of the position.

§ 332.404 Order of selection from certificates.

An appointing officer, with sole regard to merit and fitness, shall select an eligible for:

(a) The first vacancy from the highest three eligibles on the certificate who are available for appointment; and

(b) The second and each succeeding vacancy from the highest three eligibles on the certificate who are unselected and available for appointment.

§ 332.405 Three considerations for appointment.

An appointing officer is not required to consider an eligible who has been considered by him for three separate appointments from the same or different certificates for the same position.

§ 332.406 Objections to eligibles.

An appointing officer is not required to consider an eligible to whose certification for the particular position he makes an objection that is sustained by the Commission for any of the reasons stated in § 339.101 or § 731.201 of this chapter or for other reasons considered by the Commission to be disqualifying for the particular position. The Commission may also sustain an objection to certification of an otherwise qualified eligible for an overseas position on the basis of special overseas selection factors.

§ 332.407 Passing over preference eligibles.

(a) When an appointing officer passes over a preference eligible and tentatively selects a nonpreference eligible, he shall submit his reasons for not selecting the preference eligible to the Commission for a finding as to their sufficiency. The appointing officer shall withhold further action on the appointment of the nonpreference eligible until he receives the Commission's finding. If the Commission finds that the reasons are sufficient, the appointing officer may then appoint the nonpreference eligible. If the Commission finds that the reasons are not sufficient, the appointing officer may not pass over the preference eligible and appoint the nonpreference eligible. The appointing officer shall follow the procedure for passing over a preference eligible published by the Commission in the Federal Personnel Manual.

(b) When the Commission has on three occasions found that appointing officers had sufficient reasons for passing over a preference eligible, it may discontinue certifying his name for appointment after notice of that action is sent to the preference eligible.

PART 333—RECRUITMENT AND SELECTION FOR TEMPORARY AND TERM APPOINTMENTS OUTSIDE THE REGISTER

Subpart A—General Provisions

Sec.

- 333.101 Standards for temporary and term appointments outside the register.
- 333.102 Preference in temporary and term appointments outside the register.

AUTHORITY: The provisions of this Part 333 issued under 5 U.S.C. 1302, 3301, 3302, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218.

Subpart A—General Provisions

- § 333.101 Standards for temporary and term appointments outside the register.

Except as the Commission may otherwise specify in the Federal Personnel Manual, an agency, in making a temporary or term appointment outside the register, shall determine that the applicant meets the qualification standards issued by the Commission and that he is not disqualified for any of the reasons listed in §§ 339.101 and 731.201 of this chapter.

- § 333.102 Preference in temporary and term appointments outside the register.

In making temporary and term appointments outside the register, an agency shall give preference to preference eligibles as follows:

(a) For professional and scientific positions in GS-9 and above and in comparable pay levels under other pay-fixing authorities preference shall be given to preference eligibles without regard to type of preference.

(b) For other positions, preference shall be given first to preference eligibles with compensable service-connected dis-

ability of 10 percent or more, and second to other preference eligibles.

PART 335—PROMOTION AND INTERNAL PLACEMENT

Subpart A—General Provisions

Sec.

- 335.101 Effect of position change on status and tenure.
- 335.102 Agency authority to promote, demote, or reassign.
- 335.103 Agency promotion programs.

AUTHORITY: The provisions of this Part 335 issued under 5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954-1958 Comp. p. 218.

Subpart A—General Provisions

- § 335.101 Effect of position change on status and tenure.

(a) *Status.* A position change authorized by § 335.102 does not change the competitive status of an employee.

(b) *Tenure.* Except as provided in paragraph (c) of this section and § 318.703 of this chapter, a position change authorized by § 335.102 does not change the tenure of an employee.

(c) *Exceptions.* (1) A career-conditional employee who is promoted, demoted, or reassigned to a position paid under chapter 45 of title 39, United States Code, or required by law to be filled on a permanent basis becomes a career employee.

(2) A career employee who is promoted, demoted, or reassigned from a position paid under chapter 45 of title 39, United States Code, or required by law to be filled on a permanent basis to a position under the career-conditional employment system becomes a career-conditional employee unless he has completed the service requirement for career tenure.

- § 335.102 Agency authority to promote, demote, or reassign.

Subject to § 335.103 and, when applicable, to §§ 305.502 and 305.505 of this chapter, an agency may:

(a) Promote, demote, or reassign a career or career-conditional employee or an employee serving under career executive assignment;

(b) Reassign an employee serving under a temporary appointment pending establishment of a register to a position to which his original assignment could have been made by the same appointing officer from the same recruiting list under the same order of consideration;

(c) Promote, demote, or reassign an employee serving under an overseas limited appointment of indefinite duration or an overseas limited term appointment to another position to which an initial appointment under § 301.201, § 301.202, or § 301.203 of this chapter is authorized;

(d) Promote, demote, or reassign (1) a status quo employee and (2) an employee serving under an indefinite appointment in a competitive position, except that this authority may not be used to move an employee;

(e) From a position in which an initial overseas limited appointment is authorized to another position; or

(ii) To a position in which an initial overseas limited appointment is authorized from another position; and

(e) Promote, demote, or reassign a term employee serving on a given project to another position within the project which the agency has been authorized to fill by term appointment.

(f) (1) Temporarily promote an employee to meet a temporary need for a definite period of 1 year or less and extend such a promotion for a definite period not to exceed 1 additional year. At the end of the period for which the agency temporarily promoted the employee, or when the agency determines that it no longer needs the employee in the position, the agency shall return the employee to the position from which it temporarily promoted him, except when it reassigns or demotes him, without time limitation and with his consent, to a different position. The return of an employee to the position from which the agency temporarily promoted him under this subparagraph or his reassignment or demotion to a different position that is not at a lower grade or level than the position from which he was temporarily promoted is not subject to Part 315, 752, 771, or 772 of this chapter.

(2) This paragraph applies to a career, career-conditional, status quo, indefinite, or term employee and to an employee serving under a career executive assignment, an overseas limited appointment of indefinite duration, or an overseas limited term appointment.

- § 335.103 Agency promotion programs.

Except as otherwise specifically authorized by the Commission, an agency may make promotions under § 335.102 only to positions for which the agency has adopted and is administering a program designed to insure a systematic means of selection for promotion according to merit. The promotion program shall conform with the standards and instructions of the Commission and shall include:

(a) Guidelines stating how promotion plans are established and operated; and

(b) Plans for the selection of employees for promotion.

PART 337—EXAMINING SYSTEM

Subpart A—General Provisions

- § 337.101 Rating applicants.

(a) The Commission shall prescribe the relative weights to be given subjects in an examination, and shall assign numerical ratings on a scale of 100. Except as provided in § 930.203(a) of this chapter, each applicant who meets the minimum requirements for entrance to an examination and is rated 70 or more in the examination is eligible for appointment.

(b) The Commission shall add to the earned numerical ratings of applicants who make a passing grade:

(1) Five points for applicants who are preference eligibles under section 2108(3) (A) and (B) of title 5, United States Code; and

(2) Ten points for applicants who are preference eligibles under section 2108(3)(C)-(G) of that title.

(c) When experience is a factor in determining eligibility, the Commission shall credit a preference eligible with:

(1) Time spent in the military service as an extension of time spent in the position in which he was employed immediately before his entrance into the military service, or (ii) on the basis of actual duties performed in the military service, or (iii) as a combination of both methods. The Commission shall credit time spent in the military service according to the method that will be of most benefit to the preference eligible.

(2) All valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

(5 U.S.C. 1302, 3301, 3302, E.O. 10577; 3 CFR 1954-1958 Comp., p. 218)

PART 338—QUALIFICATION REQUIREMENTS (GENERAL)

Subpart A—Citizenship Requirements

Sec.
338.101 Citizenship.

Subpart B—Members-of-Family Requirement

338.201 Restriction on members of family.
338.202 Restriction on sons and daughters.

Subpart C—Apportionment and Residence Requirements

338.301 Apportionment.

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—Age Requirements

338.601 Prohibition of maximum-age requirements.

AUTHORITY: The provisions of this Part 338 issued under 5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, unless otherwise noted.

Subpart A—Citizenship Requirements

§ 338.101 Citizenship.

(a) A person may be admitted to competitive examination only if he is a citizen of or owes permanent allegiance to the United States.

(b) A person may be given appointment only if he is a citizen of or owes permanent allegiance to the United States. However, a noncitizen may be given (1) a limited executive assignment under section 305.509 of this chapter in the absence of qualified citizens or (2) an appointment in rare cases under section 316.601 of this chapter, unless the appointment is prohibited by statute.

(c) Paragraph (b) of this section applies to reinstatement and transfer as well as to other noncompetitive appointments, and to conversion to career or career-conditional employment.

Subpart B—Members-of-Family Requirement

§ 338.201 Restriction on members of family.

(a) When two or more members of a family are already serving under career

or career-conditional appointments, another member of that family, except a preference eligible, is not eligible for:

(1) Career or career-conditional appointment;

(2) Reinstatement; or

(3) Conversion to career or career-conditional employment under Subpart G of Part 315 of this chapter.

(b) The members-of-family restriction does not apply to:

(1) A temporary, term, or indefinite appointment or an appointment in rare cases, under Part 316 of this chapter;

(2) An overseas limited appointment under Part 301 of this chapter; or

(3) A conversion from career-conditional to career employment under § 315.202 of this chapter.

(5 U.S.C. 3319)

§ 338.202 Restriction on sons and daughters.

(a) An agency (including a military department) may appoint the son or daughter of a civilian employee of that agency, or the son or daughter of a member of its uniformed service, for summer or student employment within the United States only when (1) the position is filled from a list of eligibles established under a Commission examination, (2) there is no other available eligible with the same or higher rating, and (3) the appointment is not prohibited by section 3110 of title 5, United States Code, or Part 310 of this chapter relating to the employment of relatives.

(b) Paragraph (a) of this section shall not apply to the appointment of persons who are eligible for placement assistance under the Commission's Displaced Employee (DE) Program, nor shall it apply when the appointment is necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property.

(c) In this section "summer employment" means any employment beginning after May 12 which will end before October 1 of the same year. "Student employment" means the employment of persons who are enrolled or who have been accepted for enrollment, on a substantially full-time basis, as resident students of a secondary school or of an institution of higher learning; a resident student, for this purpose, is a student in actual physical attendance at a school, as distinguished from a correspondence student.

Subpart C—Apportionment and Residence Requirements

§ 338.301 Apportionment.

(a) Except as provided in paragraph (c) of this section, the Commission shall certify for career or career-conditional appointment in agency headquarters offices in the metropolitan area of Washington, D.C., so as to maintain the apportionment of appointments among the States, territories, and possessions of the United States, and the District of Columbia on the basis of population.

(b) Except as provided in paragraph (c) of this section, apportionment applies to the career and career-conditional employment in agency headquarters

offices, in the metropolitan area of Washington, D.C., by promotion, demotion, reassignment, transfer, reinstatement appointment under § 315.601 of this chapter or conversion under § 315.703 of this chapter.

(c) Apportionment does not apply to a:

(1) Preference eligible.

(2) Temporary, term, or indefinite appointment or an appointment in rare cases, under Part 316 of this chapter.

(3) A person, position, agency, or employment which the Commission excepts from the apportionment requirement in the interest of good administration. The Commission shall publish in the Federal Personnel Manual (i) a list of the agencies and positions excepted from apportionment and (ii) the conditions under which persons or employments are excepted from apportionment.

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—Age Requirements

§ 338.601 Prohibition of maximum-age requirements.

A maximum-age requirement may not be applied in either competitive or non-competitive examinations for positions in the competitive service.

PART 339—QUALIFICATION REQUIREMENTS (MEDICAL)

Subpart A—General Provisions

§ 339.101 Medical disqualifications.

Subject to Subpart C of Part 731 of this chapter, the Commission may deny an applicant examination, deny an eligible appointment, and instruct an agency to remove an appointee by reason of physical or mental unfitness for the position for which he has applied or to which he has been appointed.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218)

PART 351—REDUCTION IN FORCE

Subpart A—[Reserved]

Subpart B—General Provisions

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Subpart I—Appeals and Corrective Action

- 351.901 Initial appeals.
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 351.903 Correction by agency.

Subpart J—Establishment and Maintenance of Reemployment Priority List

- 351.1001 Establishment of list.

AUTHORITY: The provisions of this Part 351 issued under 5 U.S.C. 1302, 3502, unless otherwise noted.

Subpart A—[Reserved]**Subpart B—General Provisions****§ 351.201 Use of regulations.**

(a) Each agency shall follow this part when it releases a competing employee from his competitive level by separation, demotion, furlough for more than 30 days, or reassignment requiring displacement, when the release is required because of lack of work, shortage of funds, reorganization, reclassification due to change in duties, or the exercise of reemployment rights or restoration rights.

(b) This part does not require an agency to fill a vacant position. However, when an agency, in its discretion, chooses to fill a vacancy by an employee who has been reached for release from his competitive level for one of the reasons named in paragraph (a) of this section, this part shall be followed.

(c) This part does not apply to the change of an employee from regular to substitute in the same pay level in the Post Office Department field service.

(d) An agency authorized to administer alien employee programs under section 444 of the Foreign Service Act of 1946, as amended (22 U.S.C. 889), may include special plans for reduction in force in its alien employee programs. In these special plans an agency may give effect to the labor laws and practices of the locality of employment by supplementing the selection factors in Subparts D and E of this part to the extent consistent with the public interest. Subpart I of this part does not apply to actions taken under the special plans authorized by this paragraph.

(e) This part does not apply to the termination of a temporary promotion or to

the return of an employee to the position from which he was temporarily promoted or his reassignment or demotion to a different position that is not at a lower grade or level than the position from which he was temporarily promoted.

§ 351.202 Coverage.

(a) Except as provided in paragraph (b) of this section, this part applies to each civilian employee in:

(1) The executive branch of the Federal Government.

(2) Those parts of the Federal Government outside the executive branch which are subject by statute to the competitive service requirements.

(3) The civil service of the government of the District of Columbia.

(b) This part does not apply to an employee:

(1) In a position in or under the legislative or judicial branch of the Federal Government, except an employee in a position subject by statute to the competitive service requirements, or

(2) Whose appointment is required by Congress to be confirmed by, or made with, the advice and consent of the United States Senate, except a postmaster.

§ 351.203 Definitions.

In this part:

(a) "Competing employee" means an employee in tenure group I, II, or III.

(b) "Days" means calendar days.

(c) "Function" means all or a clearly identifiable segment of an agency's mission (including all integral parts of that mission), regardless of how it is performed.

(d) "Local commuting area" means the geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and reasonably can be expected to travel back and forth daily in their usual employment.

(e) "Obligated position" has the meaning given it in Part 300 of this chapter.

(f) "Performance rating" means the current official performance rating under a performance rating plan approved by the Commission.

(g) "Reorganization" means the planned elimination, addition, or redistribution of functions or duties in an organization.

(h) "Representative rate" means the fourth step of the grade for a position subject to the General Schedule, the prevailing rate for a position under a wage-board or similar wage-determining procedure, and for other positions, the rate designated by the agency as representative of the position.

(i) "Transfer of function" means the transfer of the performance of a continuing function from one competitive area and its addition to one or more other competitive areas, or the movement of the competitive area in which the function is performed to another commuting area.

Subpart C—Transfer of Function**§ 351.301 Transfer of employees.**

Before a reduction in force is made in connection with the transfer of any or all of the functions of an agency to another continuing agency, each competing employee in a position identified with the function or functions shall be transferred to the continuing agency without change in the tenure of his employment. An employee whose position is transferred solely for liquidation, and who is not identified with an operating function specifically authorized at the time of transfer to continue in operation more than 60 days is not a competing employee for other positions in the receiving agency.

Subpart D—Scope of Competition**§ 351.401 Determining retention standing.**

Each agency shall determine the retention standing of each competing employee on the basis of the selection factors in this subpart and in Subpart E of this part.

§ 351.402 Competitive area.

(a) Each agency shall establish competitive areas in which employees compete for retention under this part.

(b) The standard for a competitive area is that it include all or that part of an agency in which employees are assigned under a single administrative authority. A competitive area in the departmental service meets this standard when it covers a primary subdivision of an agency in the local commuting area. A competitive area in the field service meets this standard when it covers a field installation in the local commuting area.

(c) An agency may establish a competitive area larger than one that meets the standard named in paragraph (b) of this section. In exceptional circumstances, and with the prior approval of the Commission, an agency may establish a competitive area smaller than one that meets the standard named in paragraph (b) of this section.

(d) An agency may combine two or more competitive areas for initial competition in an enlarged competitive level or levels without correspondingly combining the areas for assignments between competitive levels. When an agency combines areas for initial competition only, it may limit competition for assignments between competitive levels to (1) the enlarged area, (2) a single competitive area, or (3) an area larger than a single area but smaller than the enlarged area.

§ 351.403 Competitive level.

(a) Each agency shall establish competitive levels consisting of all positions in a competitive area and in the same grade or occupational level which are sufficiently alike in qualification requirements, duties, responsibilities, pay schedules, and working conditions, so that an agency readily may assign the

incumbent of any one position to any of the other positions without changing the terms of his appointment or unduly interrupting the work program. Sex may not be a basis for assigning a position to a competitive level, except for a position for which restriction of certification of eligibles by sex is found justified by the Commission.

(b) Each agency shall establish separate competitive levels for competitive positions as distinguished from excepted positions. Among competitive positions and among excepted positions, each agency shall establish separate competitive levels for positions:

- (1) Under different pay schedules;
- (2) Filled on a seasonal basis;
- (3) Filled on a part-time basis;
- (4) Filled on an intermittent basis.

In addition, among excepted positions, each agency shall establish separate competitive levels for positions filled under different appointment authorities.

§ 351.404 Retention register.

(a) Each agency shall establish a separate retention register from the current retention records of employees in, and employees temporarily promoted from, each competitive level affected when a competing employee is to be released from a competitive level under this part.

(b) The agency shall enter on the retention register in the order of his retention standing the name of each competing employee in, and each competing employee temporarily promoted from, a competitive level (whether in duty, leave, or furlough status), except an employee on military duty with a restoration right.

(c) The agency shall enter on a list apart from the retention register the name and expiration date of the appointment or promotion of each employee serving in a position in the competitive level under specifically limited temporary appointment or temporary promotion followed by the name of each employee serving in a position in the competitive level with a performance rating of less than "Satisfactory".

Subpart E—Retention Standing

§ 351.501 Tenure groups and subgroups—competitive service.

(a) Each agency shall classify the competing employees on a retention register who occupy positions in the competitive service in the following groups and subgroups on the basis of tenure of employment and veteran preference. The descending order of retention standing:

- (1) By groups is group I, group II, group III;
- (2) Within each group is subgroup A, subgroup B; and
- (3) Within each subgroup begins with the earliest service date.

(b) Group I includes each career employee who is not serving a probationary period. A career employee in an obligated position is in group I only when competing for positions at and below the grade in which he last served on a permanent basis.

(c) Group II includes each employee serving a probationary period, each career-conditional employee, and each career employee in an obligated position.

(d) Group III includes each indefinite employee, each employee serving under a temporary appointment pending establishment of register, each employee in status quo, and each employee serving under other nonstatus nontemporary appointment.

(e) Subgroup A includes each preference eligible employee.

(f) Subgroup B includes each non-preference eligible employee.

§ 351.502 Tenure groups and subgroups—excepted service.

Each agency shall classify the competing employees on a retention register who occupy positions in the excepted service by groups and subgroups that correspond to those for employees who occupy positions in the competitive service having similar tenure of employment and veteran preference, except that an employee who completes 1 year of current continuous service under a temporary appointment is in tenure group III.

§ 351.503 Length of service.

(a) Each agency shall establish a service date for each competing employee.

(b) An employee's service date is whichever of the following dates reflects his total creditable service and the performance rating credit in § 351.504: (1) his date of entrance on duty, when he has no previous creditable service; (2) the date obtained by subtracting his total creditable previous service from the date he last entered on duty; or (3) the date obtained by subtracting from (1) or (2) the service equivalent allowed for a performance rating above "Satisfactory." Each agency shall adjust the service date for each employee to withhold credit for noncreditable time.

§ 351.504 Performance rating.

(a) Each agency shall credit each employee who has an "Outstanding" performance rating with 4 years of service added to his creditable service.

(b) Each agency shall credit each employee who has a performance rating between "Satisfactory" and "Outstanding," which has been authorized under a Performance Rating Plan approved by the Commission, with 2 years of service added to his creditable service.

§ 351.505 Records.

Each agency shall maintain the current, correct records needed to determine the retention standing of its competing employees. The agency shall allow the inspection of its retention registers and related records by:

- (a) A representative of the Commission; and
- (b) An employee of the agency to the extent that the registers and records have a bearing on his case.

The agency shall preserve intact all registers and records relating to an employee for at least 1 year from the date the employee is issued a specific notice.

§ 351.506 Effective date of retention standing.

Except for the correction of an administrative error:

(a) The retention standing of each employee released from his competitive level in the order prescribed in § 351.602 is determined as of the date he is so released.

(b) The retention standing of each employee temporarily retained in his competitive level under § 351.608 is determined as of the date he would have been released from his competitive level had temporary retention action under § 351.608 not been taken. The retention standing of each employee so retained remains fixed until the completion of the reduction-in-force action which resulted in his temporary retention.

Subpart F—Release From Competitive Level

§ 351.601 General.

An agency may not release a competing employee from a competitive level while retaining in that level an employee with a specifically limited temporary appointment, a specifically limited temporary promotion, or an "Unsatisfactory" performance rating. It may not release a competing employee from a competitive level while retaining in that level an employee with lower retention standing, except as required under § 351.606 or § 351.806 or as permitted under § 351.607 and § 351.608.

§ 351.602 Order of release from competitive level.

Each agency shall select competing employees for release from a competitive level under this part in the inverse order of retention standing, beginning with the employee with the lowest retention standing on the retention register. When employees in the same retention subgroup have identical service dates and are tied for release from a competitive level, the agency may select any tied employee for release.

§ 351.603 Actions.

Subject to Subpart G of this part, when an agency selects an employee for release from his competitive level, it shall:

- (a) Assign him with his consent to a position for which he is qualified which will last at least 3 months;
- (b) Furlough him; or
- (c) Separate him.

§ 351.604 Use of furlough.

(a) An agency may furlough a competing employee only when it intends to recall him within 1 year to duty in the position from which furloughed.

(b) An agency may not separate a competing employee under this part while an employee with lower retention standing in the same competitive level is on furlough.

(c) An agency may not furlough a competing employee for more than 1 year.

(d) When an agency recalls employees to duty in the competitive level from which furloughed, it shall recall them in the order of their retention standing, beginning with the highest-standing employee.

§ 351.605 Liquidation provisions.

When an agency will abolish all positions in a competitive area within 3 months it shall release employees in subgroup order but may release them regardless of retention standing within a subgroup, except as provided in § 351.606. When an agency releases an employee under this section, the notice to the employee shall so state and also shall give the date the liquidation will be completed. An agency may apply §§ 351.607 and 351.608 in liquidation.

§ 351.606 Mandatory exceptions.

(a) When an agency applies § 351.602 or § 351.605, it shall give the following special retention priorities:

(1) Each group I or II preference eligible employee entitled under section 9 of the Military Selective Service Act of 1967, as amended (50 U.S.C., App. 459), to retention for 1 year after restoration shall be retained over other employees in his subgroup for the retention period; and

(2) Each group I or II nonpreference eligible employee entitled under section 9 of the Military Selective Service Act of 1967, as amended (50 U.S.C., App. 459), to retention for either 6 months or 1 year after restoration shall be retained over other employees in his subgroup for the retention period.

(b) Each agency shall record on the retention register, for inspection by each employee, the reasons for any deviation from the regular order of selection required by paragraph (a) of this section.

§ 351.607 Permissive continuing exceptions.

An agency may make exception to the selection sequence in § 351.602 and to the action provisions of § 351.603 when needed to retain an employee on duties that cannot be taken over within 90 days and without undue interruption to the activity by an employee with higher retention standing. The agency shall notify in writing each higher-standing employee reached for release from the same competitive level of the reasons for the exception.

§ 351.608 Permissive temporary exceptions.

An agency may make exception for not more than 90 days to the selection sequence in § 351.602 and to the action provisions of § 351.603 when needed to retain an employee for 90 days or less after the effective date of release from the same competitive level of a higher-standing employee to continue an activity without undue interruption, or to satisfy a Government obligation to the retained employee, or when the temporary retention of the lower-standing employee does not adversely affect the rights of any higher-standing employee

who is released ahead of him. The temporary retention of a lower-standing employee on sick leave as a permissive exception may exceed 90 days but may not exceed the date of exhaustion of his sick leave. When the agency retains an employee for more than 30 days after the effective date of release from the same competitive level of a higher-standing employee, it shall notify in writing each higher-standing employee of the reasons for the exception and the date the lower-standing employee's retention will end. When the agency retains a lower-standing employee for 30 days or less it shall list opposite his name on the retention register the reasons for the exception and the date his retention will end.

Subpart G—Assignment Rights

§ 351.701 Qualifications for assignment.

(a) Except as provided in § 351.702, an employee is qualified for assignment under § 351.603 if he:

(1) Meets the Commission's standards and requirements for the position, including any minimum educational requirement;

(2) Is physically qualified for the duties of the position;

(3) Meets any special qualifying condition which the Commission has approved for the position; and

(4) Has the capacity, adaptability, and any special skills needed to satisfactorily perform the duties and responsibilities of the position without undue interruption to the activity.

(b) An agency may not consider the sex of an employee as a factor in determining the employee's qualification for a position, except when the position is one for which restriction of certification of eligibles by sex is found justified by the Commission.

§ 351.702 Exception to qualifications.

An agency may assign an employee under § 351.201(b) or § 351.603 without regard to the Commission's standards and requirements for the position if:

(a) He meet any minimum education requirement for the position; and

(b) The agency determines that the employee has the capacity, adaptability, and special skills needed to satisfactorily perform the duties and responsibilities of the position.

§ 351.703 Assignment involving displacement.

An agency shall assign under § 351.603 a group I or II employee in a position in the competitive service, rather than furlough or separate him, to a position in the competitive service in another competitive level in his competitive area which requires no reduction, or the least possible reduction, in representative rate when a position in the other competitive level is held by an employee:

(a) In a lower subgroup; or
(b) With lower retention standing in a position from which the group I or II employee was promoted or an essentially identical position.

§ 351.704 Rights and prohibitions.

(a) An agency may satisfy an employee's right to assignment under § 351.703 by assignment under § 351.201 (b) or § 351.705 to a position having a representative rate equal to that to which he would have been entitled under § 351.703.

(b) Section 351.703 does not:

(1) Require an agency to assign an employee to a position having a higher representative rate; or

(2) Authorize or permit an agency to displace a full-time employee by other than a full-time employee.

§ 351.705 Administrative assignment.

(a) An agency may, in its discretion, adopt provisions which:

(1) Provide for assignments across competitive areas;

(2) Permit a competing employee to displace an employee with lower retention standing in the same subgroup when it cannot make an equally reasonable assignment by displacing an employee in a lower subgroup;

(3) Permit an employee in subgroup III-A to displace an employee in subgroup III-B; or

(4) Provide competing employees in the excepted service with assignment rights similar to those in § 351.703 and in subparagraphs (1), (2), and (3) of this paragraph.

(b) Provisions adopted by an agency under paragraph (a) of this section:

(1) Shall be consistent with this part;

(2) Shall be uniformly and consistently applied in any one reduction in force;

(3) May not provide for the assignment of a less-than-full-time employee to a full-time position;

(4) May not provide for the assignment of an employee in a competitive position to a position in the excepted service; and

(5) May not provide for the assignment of an excepted employee to a position in the competitive service.

Subpart H—Notice to Employee

§ 351.801 Notice period.

(a) Each competing employee selected for release from his competitive level under this part is entitled to a written notice at least 30 full days, but not more than 90 full days, before the effective date of his release, except as required to comply with this part.

(b) (1) When an agency retains an employee under § 351.606 or § 351.608 it may give him more than the maximum notice period referred to in paragraph (a) of this section, but it may not continue the notice period beyond the employee's retention period. The notice to the employee shall cite the date on which the retention period ends as the effective date of the employee's release from his competitive level.

(2) An agency may extend the maximum notice period referred to in paragraph (a) of this section for not more than 90 additional days if it establishes that the extension will protect employee

rights or avoid administrative hardship, and if the Commission grants prior approval to the request for the extension.

§ 351.802 Content of notice.

Except as provided in § 351.803, the notice required by § 351.801 shall state specifically the action to be taken and its effective date; the employee's competitive area, competitive level, subgroup, and service date; the place where the employee may inspect the regulations and records pertinent to his case; the reasons for retaining a lower-standing employee in the same competitive level under § 351.607; the reasons for retaining a lower-standing employee in the same competitive level for more than 30 days under § 351.608; and the employee's appeal rights, including the time limit for appeal and the location of the Commission office to which an appeal should be sent.

§ 351.803 General and specific notices.

When an agency cannot determine specifically all individual actions at the start of the notice period, it may issue general notices which shall be supplemented by specific notices. The combined contents of the general and specific notices shall meet the requirements in § 351.802. When an agency issues a general notice, the notice period begins the day after the employee receives the general notice. An agency may cancel an unexpired general notice, or may renew it for additional periods within the maximum notice period referred to in § 351.801. A general notice expires as stated therein unless, on or before the expiration date, the employee receives a renewal of the general notice or a specific notice. A general notice expires no later than at a time that will allow 5 days before the end of the maximum notice period. When a general notice is supplemented by a specific notice, an agency may not release an employee from his competitive level until at least 5 days after the employee's receipt of the specific notice.

§ 351.804 Content of general notice.

A general notice shall inform the employee that action under this part may be necessary but that the agency has determined no specific action in his case. The notice shall state that as soon as the agency determines what action, if any, will be taken under this part the employee will receive specific notice of the action to be taken. The general notice shall state that it will expire as stated therein unless, on or before the expiration date, it is renewed or supplemented by a specific notice. A general notice shall inform the employee that he should not appeal to the Commission before he receives a specific notice, and it may include any other information specified in § 351.802.

§ 351.805 Expiration of notice.

A general notice expires as provided in § 351.803. A specific notice expires except when followed by the action specified, or by action less severe than specified, in the notice or in an amendment

made to the notice before the agency takes the action. The agency may not take the action before the effective date specified in the specific notice. An action taken after the specified date in the specific notice shall not be ruled invalid for that reason except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for reduction in force as a result of the action or except when it results in a notice period longer than the maximum allowed.

§ 351.806 New notice required.

An employee is entitled to a new written notice of at least 30 full days if the agency decides to take an action more severe than first specified.

§ 351.807 Status during notice period.

When possible, the agency shall retain the employee on active duty during the notice period, but it may place him on annual leave with or without his consent, on leave without pay with his consent, or in a nonpay status without his consent when in an emergency the agency lacks work or funds for all or part of the notice period. The Commission, on request by an employee during an appeal, reviews the reasons for any time in a nonpay status during the notice period.

Subpart I—Appeals and Corrective Action

§ 351.901 Initial appeals.

(a) An employee who has received a notice of specific action and who believes this part has not been correctly applied may appeal to the Commission. He may appeal any time after he receives a notice of specific action, but not more than 15 calendar days after the effective date of the action.

(b) The Commission may extend the time limit in paragraph (a) of this section when the appellant shows that he was not notified of the time limit and was not otherwise aware of it, or that he was prevented by circumstances beyond his control from appealing within the time limit.

(c) An appeal shall (1) be in writing, (2) identify the appellant, the agency, and the nature and effective date of the action appealed, and (3) state why the appellant believes the action appealed is improper.

§ 351.902 Agency action when Commission recommends corrective action.

(a) It is mandatory that the agency take all corrective action recommended in the Commission's initial decision on an appeal, except when the agency makes a timely appeal to the Board of Appeals and Review.

(b) The decision of the Board of Appeals and Review is final and compliance with its recommendation for corrective action is mandatory.

§ 351.903 Correction by agency.

When an agency decides that an action under this part was unjustified or unwarranted and restores an individual to his former grade or rate of pay or to an intermediate grade or rate of pay, it shall

make the restoration retroactively effective to the date of the improper action.

Subpart J—Establishment and Maintenance of Reemployment Priority List

§ 351.1001 Establishment of list.

(a) Each agency shall establish and maintain a reemployment priority list for each commuting area in which it separates group I or II employees from competitive positions under this part. The agency shall enter the name of each of these employees on the list for all competitive positions in the commuting area for which he qualifies and is available, except as provided in paragraph (b) of this section. A group I employee's name remains on the list for 2 years, and a group II employee's name for 1 year, from the date he was separated. The agency may delete an employee's name from the list on his written request; when he accepts a nontemporary, full-time, competitive position; or when he declines a nontemporary, full-time, competitive position with a representative rate the same as or higher than that of the position he was separated from under this part.

(b) When an agency separates a group I or II employee from a competitive position overseas or in Alaska, it shall enter his name on the reemployment priority list for the area in which the position is located, except (1) when he leaves that area or (2) when the agency has a general program for rotating employees between overseas areas and the United States, and the employee's immediately preceding overseas service or residence combined with prospective overseas service under available appointments exceeds the maximum duration of an overseas duty tour in the agency's rotation program. On the request of an employee who leaves the area, the agency shall enter his name on its reemployment priority list for the commuting area from which he was employed for overseas or Alaskan service or for another area (except overseas or Alaska) mutually acceptable to him and the agency. An agency may delete an employee's name from the list for one of the reasons in paragraph (a) of this section, and shall delete it from an overseas or Alaskan list when he leaves the area covered by that list or becomes disqualified for overseas appointment because of his previous service or residence.

PART 352—REEMPLOYMENT RIGHTS

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Subpart A—[Reserved]

Subpart B—Reemployment Rights Based on Movement Between Executive Agencies During Emergencies

AUTHORITY: The provisions of this Subpart B issued under 5 U.S.C. 3101 note; 3301, 3302, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218.

§ 352.201 Letter of Authority.

(a) *Definition.* A Letter of Authority is an authorization from the Commission to an agency appointing officer to grant reemployment rights.

(b) *Scope of authority.* A Letter of Authority shall specify the conditions under which it may be used, including the types of positions covered and the organizational and geographic areas to which it is restricted.

(c) *Time limit of authority.* A Letter of Authority shall remain in force for one year from date of issuance unless earlier revoked by the Commission. Renewals or extensions will not be issued unless justified by exceptional circumstances.

§ 352.202 Request for Letter of Authority.

When an agency believes that an emergency situation is so critical as to justify offers of reemployment rights, it may request the Commission to issue a Letter of Authority. In submitting the request the agency shall present its justification in terms of the standards provided in § 352.203.

§ 352.203 Standards for issuing Letters of Authority.

The Commission will determine the standards to be used in issuing Letters of Authority, which shall include the following:

(a) The positions to be filled must be related to emergency situations for which the usual recruiting methods are inadequate.

(b) The positions must be a part of a specific program immediately essential to the national interest.

(c) The positions must be essential to the functioning of the program.

(d) There must be substantial basis for the belief that reemployment rights will be a significant and reasonable aid in meeting the emergency situation.

§ 352.204 Basic eligibility for reemployment rights.

(a) *Employees eligible.* The following employees in the executive branch of the Government are eligible to be granted reemployment rights when they are hired by another executive agency without break in service of a full workday by transfer or reinstatement, or by excepted appointment, in a position which the agency is currently authorized to fill with reemployment rights:

(1) An employee serving in a competitive position under a career or career-conditional appointment;

(2) A nontemporary excepted employee.

(b) *Employees not eligible.* The following employees are not eligible to be granted reemployment rights:

(1) An employee serving a trial or probationary period;

(2) An employee serving in an obligated position;

(3) An employee serving with reemployment rights granted under this subpart;

(4) An employee who has received a notice of involuntary separation because of reduction in force or otherwise; or

(5) An employee who has already submitted a resignation.

§ 352.205 Appeal of losing agency.

An appointing officer who intends to employ with reemployment rights an employee of another executive agency shall give the losing agency written notice at least 15 calendar days before the effective date of the proposed action. If the losing agency believes the grant of reemployment rights would be detrimental to the public interest, it may appeal the proposed grant to the Commission within 15 calendar days after receipt of the notice. The losing agency, at the same time, shall furnish a copy of the appeal to the prospective appointing officer, who shall withhold the proposed grant pending decision on the appeal. The Commission shall determine whether the employee will be given reemployment rights and notify both agencies accordingly. If the losing agency does not appeal within 15 calendar days, the employee shall be granted reemployment rights.

§ 352.206 Expiration of reemployment rights.

Reemployment rights granted under a Letter of Authority expire at the end of 2 years following the date of the personnel action, unless exercised or otherwise terminated before that time, except that the reemployment rights of an employee serving outside the continental United States extend for an additional period of 3 months.

§ 352.207 Exercise or termination of reemployment rights.

(a) *Exercise.* The time limits for application for reemployment under this subpart are:

(1) Within 30 calendar days before the expiration of the term of reemployment rights;

(2) Within 30 calendar days after receipt of notice of involuntary separation;

(3) At least 30 calendar days in advance of the person's scheduled entry into active military duty. In this case he shall be reemployed and separated furloughed, or granted leave of absence for military service by the reemploying agency; or

(4) At any time before the expiration of the term of reemployment rights with the written consent of the current employing agency if application for reemployment is made within 30 days after date of separation, or after receipt of advance notice of proposed demotion by the current employing agency.

(b) *Termination.* An employee's reemployment rights terminate if:

(1) He fails to apply within the time limits stated in paragraph (a) of this section;

(2) He resigns without the written consent of the current employing agency; or

(3) Within 10 calendar days, he fails to accept an offer of reemployment made under § 352.208 which is determined to be a proper offer of reemployment by the reemploying agency or by the Commission on appeal.

§ 352.208 Agency's obligation to reemploy.

(a) *Employee's right to reemployment.* An employee is entitled to be reemployed by the reemploying agency as promptly as possible, but not more than 30 calendar days after receipt of his application. The employee is entitled to reemployment in the occupational field and at the same grade or level and in the same geographical area as the position which the employee last held in that agency. If the reemployment would cause the separation or demotion of another employee, the applicant shall then be considered an employee for the purpose of applying the reduction-in-force regulations to determine to what, if any, position he is entitled.

(b) *Reemployment in a higher grade.* The reemploying agency may reemploy the employee in a position of higher grade than that to which he is entitled, but not if this reemployment would cause the displacement of another employee.

(c) *Seniority in postal service.* On re-employment in the postal service, the employee is entitled to the seniority he would have attained had he remained in the postal service.

(d) *Basis for agency refusal to re-employ.* An agency may refuse to re-employ under this section only when the employee was last separated for serious cause evidencing his unsuitability for reemployment.

§ 352.209 Employee appeals to the Civil Service Commission.

When an agency denies reemployment to a person claiming reemployment rights under this subpart, the agency shall inform him of that denial by a written notice. In the same notice, the agency shall inform him of his right to appeal to the Commission within 15 calendar days after receipt of the notice. The Commission may extend this time limit on a showing by the person that circumstances beyond his control prevented him from filing his appeal within the time limit. The Commission shall make the final decision of his right to reemployment.

Subpart C—Detail and Transfer of Federal Employees to International Organizations

AUTHORITY: The provisions of this Subpart C issued under 5 U.S.C. 3584, E.O. 10804; 3 CFR, 1959-1963 Comp., p. 328.

§ 352.301 Purpose.

The purpose of this subpart is to carry into effect the objective of sections 3343 and 3581-3584 of title 5, United States Code, which is to encourage and authorize details and transfers of employees for service with international organizations.

§ 352.302 Definitions.

In this subpart:

(a) "Agency," "employee," "international organization," and "transfer" have the meanings given them by section 3581 of title 5, United States Code;

(b) "Detail" has the meaning given it by section 3343 of title 5, United States Code; and

(c) "Term of employment" means not more than (1) 3 consecutive years of employment, or (2) the period of less than 3 years specified at the time of consent to transfer, beginning with entrance on duty in the international organization.

§ 352.303 Effective date of regulations.

The regulations in this subpart are effective August 28, 1958, and as of that date revoke and supersede the regulations of Part 26 of this chapter in effect immediately prior thereto. However, such revocation shall not adversely affect any rights and benefits which were vested in an employee by the former regulations prior to their revocation.

§ 352.304 Organizations to which this subpart applies.

An agency, without the prior approval of the Commission, may detail or transfer an employee under this subpart to an organization which the Commission has

designated in the Federal Personnel Manual as an international organization. An agency may detail or transfer an employee under this subpart to another public international organization or international organization preparatory commission only with the prior approval of the Commission.

§ 352.305 Eligibility for detail.

An employee is eligible to be detailed to an international organization with the rights provided for in, and in accordance with, section 3343 of title 5, United States Code, and this subpart.

§ 352.306 Length of details.

No single detail may exceed 3 years. Similarly, all time spent on any series of successive details shall be considered in the aggregate and not allowed to exceed a total of 3 years. As used in this section "successive details" are those details of an employee to an international organization which follow one another within less than 30 calendar days.

§ 352.307 Eligibility for transfer.

An employee is eligible for transfer to an international organization with the rights provided for in, and in accordance with, sections 3581-3584 of title 5, United States Code, and this subpart, except the following:

(a) A presidential appointee (other than a postmaster or a Foreign Service officer), regardless of whether his appointment was made by and with the advice and consent of the Senate.

(b) A person serving in the executive branch in a confidential or policy-determining position excepted from the competitive service under Schedule C of Part 213 of this chapter.

(c) A person serving under a temporary appointment pending establishment of a register.

(d) A person serving under an appointment specifically limited to one year or less.

(e) A person serving on a seasonal, intermittent, or part-time basis.

§ 352.308 Effecting employment by transfer.

(a) *Authority to approve transfers.* On written request by an international organization for the services of an employee, the agency may authorize the transfer of the employee to the organization for any period not to exceed 3 years. Refusal to authorize the transfer is not reviewable by or appealable to the Commission.

(b) *Letter of consent.* When the agency consents to the transfer of an employee with the benefits provided in this subpart, the agency shall give its consent to the international organization in writing and shall furnish the employee with a copy of the consent.

(c) *Effective date.* The agency and the international organization shall establish the effective date of transfer by mutual agreement.

(d) *Recording requirement.* The agency shall furnish the employee with a statement of his leave account when he is separated for transfer. In addition,

the agency shall include on the personnel action form effecting the employee's separation for transfer, (1) identification of the international organization to which he transfers and (2) a clear statement of the period during which he has reemployment rights in the agency under section 3582 of title 5, United States Code, and this subpart, and of the legal and regulatory conditions for his reemployment.

§ 352.309 Retirement, group health benefits, and insurance.

(a) *Group health benefits.* An employee who transfers or has transferred under section 3582 of title 5, United States Code, and this subpart is entitled to enroll or to continue his enrollment in a health benefits plan provided by chapter 89 of title 5, United States Code, and Part 890 of this chapter. This entitlement continues throughout the period provided by section 3582(c) of title 5, United States Code, including the reemployment period described in that section, and is subject to the provisions of Part 890 of this chapter. For purposes of exercising this entitlement, a transferring employee is considered an employee of the United States. Provisions of section 3582 of title 5, United States Code, that relate to retirement and insurance are also applied to group health benefits so as to assure a transferring employee of the benefits provided by chapter 89 of title 5, United States Code.

(b) *Agency and employee action.* At the time of consent to an employee's transfer, the agency shall notify the employee in writing that he will retain coverage with resulting rights and benefits under the retirement group health benefits, and insurance systems only if (1) employee payments made by him, and (2) agency contributions made by him, by the agency, or by the international organization, are currently deposited in the respective funds. The written notice shall state whether the agency contributions will be paid by the agency. The employee shall acknowledge, in writing, his receipt of the notice and state whether or not he wishes to retain his Federal retirement, group health benefits, and life insurance by continuing all required payments.

(c) *Agency responsibility.* A transferred employee is deemed to remain an employee of the agency from which transferred for retirement, group health benefits, and insurance purposes, except that it is not mandatory for the agency to continue to use its appropriations to make agency retirement, group health benefits, and insurance contributions for the employee during his absence. Accordingly, the agency is responsible for determining the applicable rate of pay in accordance with the provisions of section 3583 of title 5, United States Code, for acting as employing officer under Part 890 of this chapter, and for collecting, accounting for, and depositing in the respective funds all retirement, group health benefits, and insurance employee payments and agency contributions required to be made for the purpose of protecting the rights of the employee so

transferred. This responsibility includes furnishing the employee, and the international organization when appropriate, with specific information as to how, when, and where the payments and contributions shall be submitted.

(d) **Coverage.** Employee payments and agency contributions are currently deposited if received by the agency before, during, or within one month after the end of the pay period covered thereby. Failure to deposit the payments and contributions currently terminates a transferred employee's retirement, group health benefits, and insurance coverage on the last day of the pay period for which payments and contributions were currently deposited, subject to a 31-day extension of life insurance and group health benefits coverage as provided in Parts 870 and 890 of this chapter and to the conversion benefits provided in Parts 870 and 890 of this chapter. Coverage so terminated may not attach again before the employee actually enters on duty on his first day in a pay status in an agency. However, terminated civil service retirement, group health benefits, and insurance coverage shall be reinstated retroactively when, in the judgment of the Commission, the failure to make the required current deposit was due to circumstances beyond the control of the employee and the required payments and contributions were deposited at the first opportunity.

§ 352.310 Reemployment.

A transferred employee (except a congressional employee) is entitled to be reemployed in his former position or one of like seniority, status, and pay within 30 days of his application for reemployment if he meets the following conditions:

(a) He is separated, either voluntarily or involuntarily, within his term of employment; and

(b) He applies for reemployment to his former agency or its successor not later than 90 days after his separation.

§ 352.311 When to apply.

An employee may apply for reemployment either before or after separation by the international organization. If he applies before separation, the 30-day period prescribed in § 352.310 begins either with the date of the application or 30 days before the employee's date of separation, whichever is later.

§ 352.312 Failure to reemploy and right of appeal.

(a) When an agency fails to reemploy an employee within 30 days of his application, it shall notify him in writing of the reasons and of his right to appeal within 15 calendar days to the U.S. Civil Service Commission, Washington, D.C. 20415. The employee may file his

appeal with the Commission not later than 15 calendar days after receipt of notice denying reemployment. The Commission may extend this time limit on a showing by the employee that he was not notified of the applicable time limit, and was not otherwise aware of the limit, or that circumstances beyond his control prevented him from filing an appeal within the prescribed time limit.

(b) If the agency fails to reach and issue a decision to the employee within 30 days from his application for reemployment, the employee is entitled to appeal the agency's failure to the Commission within a reasonable time thereafter.

(c) An appeal alleging that the agency has failed to comply with any of the other provisions of sections 3343 and 3581-3584 of title 5, United States Code, or of this subpart may be submitted to the Commission only within a reasonable time after the alleged violation occurred.

(d) The Commission's decision on appeal is final and the agency shall effect the action finally ordered by the Commission. Decisions favorable to the appellant may be made retroactively effective to the expiration of the agency's 30-day time limit for effecting restoration.

(e) When an appeal under this subpart is filed properly before the death of an appellant, the Commission shall process it to completion and adjudicate it. The Commission, in recommending corrective action in the decision on such an appeal, may provide for amendment of the agency's records to show retroactive restoration and the appellant's continuance on the rolls in an active duty status to the date of death.

§ 352.313 Consideration for promotion.

(a) Each agency shall consider each employee detailed or transferred to an international organization for all promotions for which he would be considered were he not absent. A promotion based on this consideration is effective on the date it would have been made if the employee were not absent.

(b) When the position of an employee absent on detail or transfer to an international organization is regraded upward during his absence, his agency shall place him in the regraded position.

Subpart D—Employment of Presidential Appointees and Elected Officers by the International Atomic Energy Agency

AUTHORITY: The provisions of this Subpart D issued under sec. 6(c), 71 Stat. 455; 22 U.S.C. 2025(c), E.O. 10774; 3 CFR, 1954-1958 Comp., p. 418, as amended by E.O. 10804; 3 CFR, 1959-1963 Comp., p. 328.

§ 352.401 Purpose.

The purpose of this subpart is to implement section 6(b) of the International Atomic Energy Agency Participation Act of 1957 and Executive Order 10774 as amended by Executive Order 10804 to protect the civil service rights and privileges, wherever appropriate, of Presidential appointees and elected officers who leave their positions and within 90

days enter employment with the International Atomic Energy Agency.

§ 352.402 Coverage.

This subpart applies to all officers, as defined in § 352.403(b), of any branch of the Federal Government.

§ 352.403 Definitions.

In this subpart:

(a) "Agency" means the International Atomic Energy Agency;

(b) "Officer" means any Presidential appointee or elected officer who leaves his position after August 27, 1957, and within 90 days enters employment with the agency;

(c) "Term of employment" means not more than 3 consecutive years of employment beginning with entrance on duty in the agency.

§ 352.404 Retirement and insurance.

(a) **Coverage.** (1) To obtain retirement benefits for a term of employment with the agency, an officer covered by subchapter III of chapter 83 of title 5, United States Code, within 90 days after the date he is separated from the agency, shall pay to the Commission all necessary employee deductions and agency contributions for coverage under that subchapter for his term of employment with the agency. Interest shall not be charged an officer on any payment of necessary employee deductions and agency contributions. The amount of the employee deductions so paid shall be added to the officer's lump-sum credit in the Civil Service Retirement and Disability Fund.

(2) To retain coverage under chapter 87 of title 5, United States Code, during his term of employment with the agency, an officer covered by that chapter shall currently pay employee deductions and agency contributions necessary for coverage under that chapter for his term of employment with the agency. Collections may be made under procedures which may be determined in accordance with written agreements reached between accounting representatives of the Commission and the agency.

(3) All retirement and insurance benefits and obligations shall be computed in the same manner as if the rate of basic pay the officer was receiving on the last day he was in his Federal position before employment with the agency had continued without change.

(4) An officer not covered by either subchapter III of chapter 83, or chapter 87, of title 5, United States Code, in the Federal position which he last held or from which he separates to enter employment with the agency does not acquire coverage or benefits under these statutes based on employment with the agency.

(b) **Death coverage.** An officer who dies during his term of employment or within 90 days of his separation therefrom is deemed to have died in the Federal service.

§ 352.405 Resumption of Federal service.

(a) **Pay increase.** An officer who is reemployed in the Federal position which

he left or one of like seniority, status, and pay within 90 days of his separation from the agency following a term of employment is entitled to the rate of basic pay to which he would have been entitled had he remained in the Federal service.

(b) *Sick leave account.* An officer shall have any sick leave account which he may have had in his last Federal position reestablished for credit or charge, if he returns to an appropriate leave system within 52 calendar weeks after the date he is separated from his term of employment with the agency.

(c) *Service credit for agency employment.* An officer who is reemployed in the Federal service within 90 days after completion of his term of employment with the agency is entitled to credit as Federal service for his term of employment with the agency. However, the Commission shall give service credit for subchapter III of chapter 83 of title 5, United States Code, purposes only if the officer complies with the requirements of § 352.404(a) (1).

Subpart E—Reinstatement Rights After Service Under Section 625(b) of the Foreign Assistance Act of 1961

AUTHORITY: The provisions of this Subpart E issued under sec. 625, 75 Stat. 449; 22 U.S.C. 2385, E.O. 10973; 3 CFR 1959-1963 Comp., p. 493.

§ 352.501 Purpose.

This subpart governs reinstatements authorized by section 625(b) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2385(b)).

§ 352.502 Coverage.

This subpart applies to any of the following serving in a position in the Federal Government:

- (a) A person serving in the competitive service under a career or career-conditional appointment.
- (b) A person serving in the excepted service under an appointment without a specific time limitation.
- (c) A person appointed or assigned under authority of the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.).

§ 352.503 Definitions.

In this subpart:

- (a) "Act" means the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 et seq.); and
- (b) "Former position" means the position that an employee was occupying at the time of his appointment to a position under authority of section 625(b) of the Act.

§ 352.504 Basic entitlement.

Subject to the conditions specified in this subpart, an employee who is appointed to a position under authority of section 625(b) of the Act is entitled, on termination of that appointment for any reason other than his own misconduct or delinquency, to be reinstated in his former position or in one of like seniority, status, and pay in the same agency, if the functions with which the employee's

former position was identified have been transferred to another agency, the employee's right to reinstatement is in the gaining agency.

§ 352.505 Proposed termination.

At least 45 days before termination of the appointment of an employee entitled to reinstatement, the agency terminating the employee shall notify the employee and his former agency in writing of the proposed termination. However, notification under this section is not required when:

- (a) The termination is at the employee's own request; or
- (b) The employee is reinstated without a break in service under an arrangement made between the agencies concerned.

§ 352.506 Application for reinstatement.

An employee who desires reinstatement shall apply for reinstatement, in writing, no later than 30 days after his appointment under authority of section 625(b) of the Act is terminated, unless arrangement has been made for his reinstatement without a break in service under § 352.505(b).

§ 352.507 Reinstatement.

An employee eligible for reinstatement is entitled to be reinstated as soon as possible after his application for reinstatement, filed in accordance with § 352.506, is received. In any event, he is entitled to be reinstated (a) within 30 days after his application for reinstatement is received, or (b) on termination of the appointment made under authority of section 625(b) of the Act, whichever is later.

§ 352.508 Appeals to the Commission.

(a) *Right to appeal.* (1) If an agency determines that an employee who has applied for reinstatement is not eligible for reinstatement, it shall notify the employee as promptly as possible of its decision, of the basis therefor, and of the employee's appeal rights under this subpart. The employee is entitled to appeal the decision to the Commission within 15 calendar days after he receives notice of the decision.

(2) If an agency fails to reinstate an employee within the time limits specified in section 352.507, the employee is entitled to appeal to the Commission within 15 calendar days after the applicable time limit expires.

(3) If an employee considers that his reinstatement is not in accordance with the act and this subpart, he is entitled to appeal to the Commission within 15 calendar days after his reinstatement becomes effective.

(b) *Where initial appeals are filed.* Initial appeals under this subpart are to be filed with the Chief, Appeals Examining Office, U.S. Civil Service Commission, Washington, D.C. 20415.

(c) *Finality of initial appeal decisions.* Unless further appealed under paragraph (d) of this section, an appeal decision by the Chief, Appeals Examining Office, is final.

(d) *Right to further appeal.* An initial appeal decision by the Chief, Appeals Examining Office, may be further appealed to the Board of Appeals and Review, U.S. Civil Service Commission, Washington, D.C. 20415 within 15 calendar days after receipt of the decision. The further appeal shall be in writing and contain the reasons for disagreement with the initial decision.

(e) *Finality of decisions by Board of Appeals and Review.* A decision by the Board of Appeals and Review is final. There is further right of appeal.

(f) *General provisions governing appeals.* (1) *Delayed appeals.* The Commission may extend the time limits in paragraphs (a) and (d) of this section on a showing by the appellant that he was not notified of the applicable time limit, and was not otherwise aware of the limit, or that circumstances beyond his control prevented him from filing an appeal within the prescribed time limit.

(2) *Appeal decisions.* The Commission shall submit its decisions on an appeal in writing to each appellant and to each agency concerned. An appeal decision may order that the reinstatement of an appellant be made retroactive to the date on which the applicable time limit specified in § 352.507 expired.

(3) *Cancellation of appeals.* The Commission shall cancel an appeal, and the appellant and his agency will be so notified, on receipt of the appellant's written request for cancellation or upon failure of the appellant to furnish information requested by the Commission.

(4) *Death of appellant.* When an appeal under this subpart is filed properly before the death of an appellant, the Commission shall process it to completion and adjudicate it. The Commission, in recommending corrective action in the decision on such an appeal, may provide for amendment of the agency's records to show retroactive restoration and the appellant's continuance on the rolls in an active duty status to the date of death.

(g) *The Commissioners.* The Commissioners may, in their discretion, reopen and reconsider any appeal decision made under this subpart.

PART 353—RESTORATION AFTER MILITARY DUTY

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Subpart H—Military Duty Performed by Temporary and Indefinite Employees

- 353.801 Rights of temporary and indefinite employees performing military duty.

AUTHORITY: The provisions of this Part 353 issued under sec. 9, 62 Stat. 614, as amended; 50 U.S.C. App. 459. § 353.801 issued under 5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218.

Subpart A—General Provisions

§ 353.101 Scope.

This part sets forth rights and obligations of employees and agencies in connection with military duty subject to the provisions of section 9 of the Military Selective Service Act of 1967, as amended (50 U.S.C. App. 459).

§ 353.102 Definitions.

In this part:

(a) "Act" means the Military Selective Service Act of 1967, as amended (50 U.S.C. App. 451 et seq.).

(b) "Agency" means (1) any department, independent establishment, agency, or corporation in the executive branch of the Federal Government; and (2) the government of the District of Columbia.

(c) "Leave of absence" means military leave, annual leave, leave without pay, or any combination of these.

(d) "Military duty" means a period of (1) active duty for training or for service in the Armed Forces of the United States, (2) inactive duty training in the Armed Forces of the United States, and (3) active duty in the Public Health Service that is covered by section 9(g)(2) of the Act. For the purpose of this paragraph, full-time training or other full-time duty performed by a member of the National Guard under 32 U.S.C. 316, 503, 504, or 505 is considered active duty for training in the Armed Forces of the United States, and inactive duty training performed by a member of the National Guard under 32 U.S.C. 502 or 37 U.S.C. 206(a) or 1002(a) is considered inactive duty training in the Armed Forces of the United States.

§ 353.103 Employees covered.

(a) Subparts A through G of this part cover each employee of an agency who enters on military duty from:

(1) A career or career-conditional appointment in a position in the competitive service; or

(2) An appointment without time limitation in a position outside the competitive service.

(b) Subpart H of this part covers each employee who enters on military duty from an indefinite appointment in the competitive service that is not limited to 1 year or less.

§ 353.104 Agency action at time employee enters on military duty.

Each employee who enters on active duty with restoration rights under section 9(b) or section 9(g) (1), (2), or (3) of the Act shall be either separated or furloughed, at the option of his agency, when he enters on military duty, except that an agency may elect to place a member of a reserve component of the Armed Forces or a member of the National Guard on leave of absence, instead.

§ 353.105 Notification of rights and obligations.

When an employee is separated, furloughed, or given leave of absence for military duty in accordance with the Act and this part, his agency shall notify him of all rights and obligations relating to his Government employment that are affected by that military duty.

§ 353.106 Maintenance of records.

Each agency shall identify for the record the position that an employee leaves to enter on military duty. It shall also maintain such records as are necessary to assure that the benefits granted by the Act and this part are preserved to each employee who enters on military duty.

Subpart B—[Reserved]

Subpart C—Agency Action in Employee's Absence

§ 353.301 Consideration for promotion.

(a) Each agency shall consider every employee absent on military duty for all promotions for which he would be considered were he not absent. A promotion based on this consideration is effective on the date it would have been made if the employee were not absent.

(b) When the position of an employee absent on military duty is regraded upward during his absence, his agency shall place him in the regraded position.

§ 353.302 Prohibition against demotion.

An agency may not demote an employee absent on military duty during his absence.

§ 353.303 Abolishment of position.

If the position of an employee absent on military duty is abolished, the agency concerned shall reassign the employee to another position of like seniority, status, and pay.

§ 353.304 Transfer of function to another agency.

If the function with which an employee absent on military duty was associated at the time he left for military duty is transferred to another agency and if the employee would have been transferred with the function under Part 351 of this

chapter if he were not absent, the gaining agency shall retain the employee in his position or assign him to a position of like seniority, status, and pay. It shall also assume the obligation to restore the employee in accordance with the Act and this part. If the employee would not have been transferred with the function, the losing agency shall assign the employee to another position of like seniority, status, and pay.

§ 353.305 Abolishment of agency.

If an agency is abolished and its functions are not transferred to another agency, it shall furnish the Commission a list of its employees absent on military duty. For each employee, the list shall state the employee's name, date of birth, position, grade, and pay, and the name of the organizational unit in which his position was located. The agency shall note in each employee's Official Personnel Folder that notification was made under this section.

Subpart D—Agency Obligation To Restore

§ 353.401 Extent of agency's obligation and how discharged.

When an employee is entitled to restoration under section 9(b) or section 9(g) (1), (2), or (3) of the Act, the agency shall restore him in accordance with this subpart.

§ 353.402 Time limit for restoration.

An employee is entitled to be restored as soon as possible after his application for restoration, filed in accordance with the Act, is received in the agency. In any event, he is entitled to be restored within 30 days after his application is received.

§ 353.403 Position to which restored.

An employee is entitled to be restored to employment in the following order, unless the position is occupied by an employee in a higher retention subgroup under Part 351 of this chapter:

(a) To the position to which promoted while he was on military duty, or, if that position is not available, to a position of like seniority, status, and pay.

(b) To the position he left to enter military duty, or, if that position is not available, to a position of like seniority, status, and pay.

(c) To the next best available position for which he is qualified. For purposes of this paragraph, the next best available position is one that most nearly approximates in seniority, status, and pay the position to which an employee is entitled under either paragraph (a) or (b) of this section.

§ 353.404 Physical disqualification.

A returning employee who becomes disqualified because of disability sustained during military duty for a position to which he has restoration rights, is entitled to be restored to another position in the agency for which he is qualified that will provide him like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in his case.

§ 353.405 Conflicting rights.

If two or more employees are entitled to be restored to the same position, the employee who left his position first is entitled to the prior right of restoration. Each other employee is entitled to be restored in accordance with the provisions of §§ 353.403 and 353.404.

§ 353.406 Notice of right of appeal.

When an agency refuses to restore, or determines that it is not feasible to restore, an employee under the provisions of the Act and this part, it shall notify him in writing of the reasons for its decision, of his right to appeal to the Commission, and of the time limit applicable to the filing of an appeal. The agency shall forward a copy of the notice to the Commission.

Subpart E—[Reserved]

Subpart F—[Reserved]

Subpart G—Appeals to the Commission

§ 353.701 Initial appeals to the Commission.

(a) *Executive branch and District of Columbia employees.* (1) An employee who left an agency with right to restoration under section 9(b) or section 9(g) (1), (2), or (3) of the Act may appeal to the Commission in furtherance of this right, as follows:

(i) *Failure of restoration.* If the agency concerned fails to restore an employee within 30 days after receipt of his application for restoration, filed in accordance with the Act, he may appeal to the Commission not later than 15 calendar days after the 30-day period has expired.

(ii) *Not feasible to restore.* If the agency concerned decides that it is not feasible to restore an employee, he may appeal this decision to the Commission not later than 15 calendar days after receipt of notice from the agency.

(iii) *Refusal of restoration.* If the agency concerned refuses to restore an employee, he may appeal to the Commission not later than 15 calendar days after receipt of notice from the agency.

(iv) *Improper restoration.* If an employee considers that he has been improperly restored, he may appeal to the Commission not later than 15 calendar days after his restoration.

(v) *Former agency abolished.* If the agency in which an employee was employed when he left for military duty is abolished and its functions are not transferred to another agency, the employee may appeal to the Commission not later than 15 calendar days after expiration of the period specified in the Act for applying for restoration.

(2) An employee who left a position in an agency with right to return to his position under section 9(g) (4) or section 9(g) (5) of the Act may appeal to the Commission in furtherance of his right to return to work in accordance with the provisions of section 9(g) (4) or section 9(g) (5) of the Act and this part.

(b) *Legislative employees.* An employee of the legislative branch who is

entitled to appeal to the Commission under section 9(e) (2) of the Act may appeal not later than 15 calendar days after expiration of the period specified in the Act for applying for restoration.

§ 353.702 Where initial appeals are filed.

Initial appeals under this subpart are to be filed with the appropriate office of the Commission, as prescribed in the Federal Personnel Manual.

§ 353.703 Finality of initial appeal decision.

Unless further appeal is filed in accordance with this subpart, the decision rendered by the Commission office handling the initial appeal is final.

§ 353.704 Further appeals to the Commission.

An appeal decision rendered by a Commission office designated to handle initial appeals may be appealed to the Board of Appeals and Review, U.S. Civil Service Commission, Washington, D.C. 20415, within 15 calendar days after receipt of the decision on the initial appeal. The further appeal shall be in writing and shall contain the reasons for disagreeing with the initial decision.

§ 353.705 Finality of decision by Board of Appeals and Review.

A decision by the Board of Appeals and Review is final. There is no further right of appeal.

§ 353.706 General provisions governing appeals.

(a) *Delayed appeals.* The Commission may extend the time limits in §§ 353.701 and 353.704 when the appellant shows that he was not notified of these limits, and was not otherwise aware of them, or that circumstances beyond his control prevented him from filing an appeal within the prescribed limits.

(b) *Ascertainment of facts.* Each appellant shall submit in writing all facts that he considers pertinent to his appeal. The Commission may also conduct such appropriate investigations as it considers necessary.

(c) *Notification of appeal decisions.* The Commission shall submit its decision on an appeal in writing to each appellant and to each agency concerned.

(d) *Cancellation of appeals.* The Commission shall cancel an appeal, and the appellant and the agency concerned will be so notified on receipt of the appellant's written request for cancellation, or on failure of the appellant to furnish information requested by the Commission.

(e) *Death of appellant.* When an appeal under this subpart is filed properly before the death of an appellant, the Commission shall process it to completion and adjudicate it. The Commission, in recommending corrective action in the decision on such an appeal, may provide for amendment of the agency's records to show retroactive restoration and the appellant's continuance on the rolls in an active duty status to the date of death.

§ 353.707 The Commissioners.

The Commissioners may, in their discretion, reopen and reconsider any appeal decision made under this subpart.

Subpart H—Military Duty Performed by Temporary and Indefinite Employees

§ 353.801 Rights of temporary and indefinite employees performing military duty.

(a) *General.* Subject to the exceptions set forth in paragraph (b) of this section:

(1) An employee (i) serving in a position in the competitive service under a temporary appointment pending establishment of a register under § 316.201 of this chapter (other than an employee serving in the postal field service, or in GS-16, GS-17, or GS-18), or (ii) serving in a position in the competitive service in the postal field service under a temporary appointment without a definite time limitation (other than an employee serving in a position of postmaster or rural carrier), (referred to in this subpart as a temporary employee); and

(2) An employee serving in a position in the competitive service under an indefinite appointment made under the indefinite appointment system (referred to in this subpart as an indefinite employee);

are entitled to rights equivalent to those provided for employees covered by section 9 (b) and (g) of the Act, and Subparts A through G of this part apply to a temporary or an indefinite employee.

(b) *Exceptions.* (1) Sections 353.305 and 353.701(a) (1) (v) do not apply to a temporary or an indefinite employee.

(2) The right of restoration of a temporary or an indefinite employee is restricted to the geographical area in which the installation he left to enter military duty is located.

(3) The prohibitions in section 9(c) (1) and section 9(g) (3) of the Act against discharging employees without cause within 1 year or 6 months respectively, after restoration do not apply to a temporary or an indefinite employee; restoration of a temporary or an indefinite employee may not cause his employment to extend beyond the date it would otherwise be terminated.

(4) A temporary or an indefinite employee who cannot be restored in his former agency does not have the right to restoration in another agency that non-temporary employees have under section 9(e) (1) of the Act.

PART 410—EMPLOYEE DEVELOPMENT

Subpart A—General Provisions

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- 410.701 Scope.
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Subpart H—[Reserved]**Subpart I—Reports and Interchange of Training Information**

- 410.901 Reports.
410.902 Interchange of training information.

AUTHORITY: The provisions of this Part 410 issued under 5 U.S.C. 4118, E.O. 11348; 3 CFR, 1967 Comp., p. 275.

Subpart A—General Provisions**§ 410.101 Definitions.**

In this part:

(a) "Government," "agency," "employee," "training," "Government facility," and "non-Government facility" have the meanings given to these terms by section 4101 of title 5, United States Code.

(b) *Training by, in, or through Government facilities* means training that is conducted (1) by civilian or military personnel of the Government acting in their official capacities, and (2) on property owned or substantially controlled by the Government. All other training is "training by, in, or through non-Government facilities."

Subpart B—Determining Training Needs**§ 410.201 Review of training needs.**

(a) In conducting the reviews of training needs required by section 4113 of title 5, United States Code, and by Executive Order 11348, each agency shall consider:

(1) Pertinent information available through existing management records such as inspection reports, management audits, and production and staffing studies; and

(2) The needs of all categories of employees.

(b) Reviews shall be conducted in such manner and with such frequency as the agency finds best to meet the requirements of chapter 41 of title 5, United States Code, Executive Order 11348, and this part, and to provide sound bases for planning the training to be provided under that chapter.

Subpart C—Establishing Training Programs**§ 410.301 Scope and general conduct of training programs.**

(a) The head of each agency shall determine, and shall make known in writing, the policies which are to govern the training of employees of the agency. These policies shall include a statement of the broad purposes for which training will be given and of the assignment of responsibilities for seeing that these purposes are achieved.

(b) The head of each agency also shall take such administrative action as is necessary to ensure that:

(1) The agency's organizational and administrative provisions for training are as adequate as needs justify and circumstances permit; and

(2) Information with respect to the general conduct of the agency's training program is available to enable the Commission, the President, and Congress to discharge their respective responsibilities under chapter 41 of title 5, United States Code.

(c) Training programs established by the agencies under authority of chapter 41 of title 5, United States Code, shall, to the maximum extent feasible:

(1) Be based on actual needs, existing or reasonably foreseeable;

(2) Meet as many of these needs as possible, priority considered; and

(3) Be integrated with other personnel management and operating activities.

§ 410.302 Selection and assignment of trainees.

(a) The head of each agency shall establish such procedures as are necessary to ensure eligible employees reasonable opportunity for consideration in selection for training which is to result in promotion. Merit promotion programs established under § 335.103 of this chapter shall be followed in selecting career or career-conditional employees for training that is given primarily to prepare trainees for advancement and that is required for promotion.

(b) With respect to selection and assignment of employees to training by, in, and through non-Government facilities, the head of each agency shall provide that:

(1) Authority to authorize this training of more than 40 hours' duration be held at a sufficiently high administrative level to insure that the policies and viewpoints of the agency head are reflected in each decision; and

(2) Each assignment of an employee who is stationed within the continental limits of the United States to training outside these limits be approved by a specifically designated official at the headquarters level of the agency.

(c) The head of each agency shall prescribe such procedures as are necessary to assure that in the selection of employees for training there shall be no discrimination because of race, creed, color, national origin, or sex.

§ 410.303 Utilization of trainees.

Each agency, in effecting position changes within the agency, shall consider significant training and self-development activities undertaken by its employees.

§ 410.304 Evaluation of training.

Each agency shall provide for evaluation of the results and effects of training provided under chapter 41 of title 5, United States Code. This evaluation shall be conducted in such manner and with such frequency as the agency head considers most appropriate to the agency.

Subpart D—Interagency Training**§ 410.401 Utilization of other Government facilities.**

(a) An agency is not required to make its training programs or facilities available to others if it needs the full capacity of its facilities for the training of its own employees or if, in its judgment, the participation of others would be incompatible with the effective conduct of its own training programs or other activities.

(b) Each agency is responsible for determining whether training programs or facilities offered by other agencies in any branch of the Government are suitable, timely, reasonably available, and adequate to meet its training needs.

Subpart E—Training Through Non-Government Facilities**§ 410.501 Determination of need to utilize non-Government facilities.**

Training of employees by, in, or through a non-Government facility may be authorized only after the head of the agency concerned determines that adequate training for his employees by, in, or through a Government facility is not reasonably available and that appropriate consideration has been given to the then existing or reasonably foreseeable availability and utilization of fully trained employees.

§ 410.502 Selection of non-Government facilities for training.

(a) Each agency shall use as the principal criterion for selection of non-Gov-

ernment training facilities the ability of the facilities to meet the agency's training needs effectively, economically, and in timely fashion.

(b) An agency shall not select for training any non-Government facility that discriminates because of race, creed, color, or national origin in the admission or in the subsequent treatment of students.

§ 410.503 General prohibitions, training through non-Government facilities.

Training of an employee by, in, or through a non-Government facility for the purpose of filling a position by promotion is prohibited if there is in the agency concerned another employee of equal ability and suitability who is fully qualified to fill the position and is available at, or within a reasonable distance from, the place or places where the duties of the position are to be performed. The head of each agency shall establish such policies or procedures relating to areas of consideration and to determinations concerning ability, suitability, availability, qualification, and geographic location as he considers reasonable and necessary to assure adherence to this prohibition.

§ 410.504 Prohibition of training through non-Government facilities advocating overthrow of the Government by force or violence.

(a) With respect to training by, in, or through an organization, the requirements of section 4107 of title 5, United States Code, are met if it is ascertained that the organization is not included in the list of organizations designated by the Attorney General pursuant to section 12 of Executive Order 10450.

(b) With respect to training conducted by an individual with whom contractual or other arrangements are made directly, the requirements of section 4107 of title 5, United States Code, are met if both of the following conditions are met:

(1) It is ascertained that the investigative files of the Commission contain no record that a determination has been made that a reasonable doubt exists concerning the individual's loyalty to the Government of the United States. Search of the investigative files of the Commission shall be made before contracting with or otherwise arranging for the services of individuals for training, except that in emergency situations, the search shall be made as soon as possible.

(2) Subject to the exceptions stated in this subparagraph, the individual executes an affidavit, certificate, or express contractual warranty that he does not teach or advocate the overthrow of the Government of the United States by force or violence. This condition does not apply (i) to an individual who performs training under oral or other informal arrangements for periods of 16 hours or less within a single program; or (ii) to an individual who performs training without pay by the Government (whether or not the Government provides payment or reimbursement for travel and subsistence incident to the training).

§ 410.505 Continuous civilian service.

For the purpose of applying section 4106(a) (2) and (3) of title 5, United States Code, continuous civilian service includes periods of service in a nonpay status.

§ 410.506 Waiver of limitations on training of employees through non-Government facilities.

(a) Subject to other provisions of chapter 41 of title 5, United States Code, and this part, an employee having less than 1 year of current, continuous civilian service in the Government is eligible for training by, in, or through non-Government facilities on a finding by the head of his agency that postponement of the training until the employee has completed 1 year of current continuous civilian service in the Government would be contrary to the public interest.

(b) To the extent he considers justified, the head of each agency may waive the limitations contained in section 4106(a) (1) and (3) of title 5, United States Code, for:

(1) An employee assigned to training by, in, or through a non-Government facility that does not exceed 40 hours within a single program;

(2) An employee receiving training provided by a manufacturer as a part of the normal service incident to initial purchase or lease of its products under procurement contract; and

(3) An employee receiving training through a correspondence course.

(c) To the extent he considers justified, the head of each agency may waive the limitation contained in section 4106(a) (3) of title 5, United States Code, for each employee serving in a work-study program when all of the following conditions are met:

(1) The employee is serving under career or career-conditional appointment, or under appointment authorized by § 213.3202(a) of Schedule B of this chapter;

(2) The employee is working in the field of natural or mathematical science or engineering;

(3) The employee's expenses of college training are being paid in the programs concerned only because the agency has found that the programs cannot operate successfully without that payment;

(4) The employee's expenses of college training are being paid only to the extent the agency deems necessary to attract and retain the employee; and

(5) The employee's expenses of college training that are being paid are limited to the expenses covered by section 4109(a) (2) of title 5, United States Code.

(d) To the extent he considers justified, the head of each agency may also waive the limitation in section 4106(a) (3) of title 5, United States Code, for an employee in a professional position in the field of natural or mathematical science or engineering when all of the following conditions are met:

(1) The employee is serving under a career or career-conditional appointment or under an excepted appointment without time limitation;

(2) Postponement of the training until the employee completes the current 10-year period of service prescribed by section 4106(a) (3) of title 5, United States Code, would be detrimental to the development of skills, abilities, or knowledges needed by the employee for the performance of official duties; and

(3) The training would not cause the total of training by, in, or through non-Government facilities to exceed 2 years in the current 10-year period of the employee's service.

§ 410.507 Computing time in training through non-Government facilities.

For the purpose of chapter 41 of title 5, United States Code, and this part:

(a) An employee assigned to full-time training by, in, or through a non-Government facility is counted as being in training the same number of hours he is in a pay status during the training assignment, up to a maximum of 8 hours a day or 40 hours a week. If the employee is not in pay status during the training, he is counted as being in training the same number of hours as are in the period of any leave granted for the purpose of the training.

(b) An employee assigned to training by, in, or through a non-Government facility on less than a full-time basis is counted as being in training the same number of hours he spends in class or with the instructor in the facility.

(c) The Commission may authorize such other procedures for the counting of time in training as it considers appropriate.

§ 410.508 Agreements to continue in service.

(a) For the purpose of administering section 4108 of title 5, United States Code:

(1) The period of time an employee is required to agree to continue in the service of the agency begins on the first workday after the end of the training covered by the agreement, and

(2) "Additional expenses incurred by the Government in connection with his training" means expenses of training paid under section 4109(a) (2) of title 5, United States Code, but not salary, pay, or compensation.

(b) An employee selected for training by, in, or through a non-Government facility that involves no expense to the Government other than his pay is excepted from the requirement in section 4108(a) of title 5, United States Code, for entering into a written agreement.

(c) To the extent he considers justified the head of the agency may except from the requirement in section 4108(a) of title 5, United States Code, for entering into a written agreement:

(1) An employee selected for training provided by a manufacturer as a part of the normal service incident to initial purchase or lease of a product under a procurement contract;

(2) An employee selected for training by, in, or through a non-Government facility that does not exceed 80 hours within a single program; and

(3) An employee selected for training which is given through a correspondence course.

(d) When an agency pays only the expenses of an employee's training that are authorized by section 4109(a) (2) of title 5, United States Code, the head of the agency may reduce to 1 month or to a period equal to the length of the training period covered by the payment, whichever is greater, the period of time the employee is required by section 4108(a) of that title to agree to continue in the service of his agency.

§ 410.509 Failure to fulfill agreements to continue in service.

(a) (1) Each written agreement under section 4108(a) of title 5, United States Code, shall provide that the employee covered thereby give his agency at least 10 workdays' notice if he intends to enter the service of another agency in any branch of the Government before the expiration of the period for which he agrees to continue in the service of his agency. Each agreement shall also provide that if the employee fails to give this advance notice and enters the service of another agency in any branch of the Government, he must repay the Government the amount of the additional expenses incurred by the Government in connection with the training covered by the agreement. The head of the agency which has authorized the training may waive in whole or in part the obligation under the agreement when he finds that repayment would be against equity, good conscience, or the public interest.

(2) The prior notice to be given by the head of an agency under section 4108(b) of title 5, United States Code, shall be given as soon as practicable after the employee informs the agency of his intention to enter the service of another agency in any branch of the Government.

(b) (1) The head of an agency, or a representative especially designated by him for this purpose, may waive in whole or in part any right of recovery under section 4108(c) of title 5, United States Code, when he finds that recovery would be against equity and good conscience or against the public interest.

(2) Delegation of authority to act for the head of an agency under subparagraph (1) of this paragraph shall be held to as high an administrative level as practicable to ensure that the policies of the head of the agency are reflected in each decision.

Subpart F—Payment of Training Expenses

§ 410.601 Determination of necessary expenses of training.

The head of each agency shall determine which expenses constitute necessary training expenses under section 4109 of title 5, United States Code.

§ 410.602 Prohibition on payment of premium pay.

(a) Except as provided by paragraph (b) of this section, no funds appropriated or otherwise available to an agency may be used for the payment of premium

pay to an employee engaged in training by, in, or through Government facilities or non-Government facilities.

(b) The following are excepted from the provisions in paragraph (a) of this section prohibiting the payment of premium pay:

(1) An employee given training during a period of duty for which he is already receiving premium pay for overtime, night, holiday, or Sunday work, except that this exception does not apply to an employee assigned to full-time training at institutions of higher learning;

(2) An employee given training at night because situations which he must learn to handle occur only at night;

(3) An employee given training on overtime, on a holiday, or on a Sunday because the costs of the training, premium pay included, are less than the costs of the same training confined to regular work hours; and

(4) An employee given training during periods of temporary assignment covered by § 550.162(c) of this chapter.

(c) An employee who is excepted under paragraph (b) of this section is eligible to receive premium pay in accordance with the pay authorities applicable to him.

§ 410.603 Protection of Government's interests, incomplete training.

The head of each agency shall establish such procedures as he considers necessary to protect the Government's interests when employees fail to complete training for which the agency pays the expenses.

§ 410.604 Records of training expenses.

Each agency shall maintain records of payments made for travel, tuition and fees, and other necessary expenses of training by, in, or through non-Government facilities.

Subpart G—Acceptance of Contributions, Awards, and Payments From Non-Government Organizations

§ 410.701 Scope.

(a) This subpart relates to contributions, awards, and payments made to employees, or on their behalf, by non-Government organizations in connection with training that the employees receive in non-Government facilities, or meetings that they attend, either (1) partially or wholly within periods when they are on duty; or (2) at such other times as their agencies pay the expenses of training or of attendance at meetings in whole or in part.

(b) This subpart does not limit the authority of a head of an agency to establish such procedures as he considers appropriate concerning the acceptance of contributions, awards, and payments in connection with any training and meetings that are outside the scope of this subpart.

§ 410.702 Authority of agencies to authorize acceptance.

The head of an agency or a representative designated by him for this pur-

pose under § 410.703 may authorize in writing an employee of his agency to accept a contribution or award (in cash or in kind) incident to training in non-Government facilities or to accept payment (in cash or in kind) of travel, subsistence, and other expenses incident to attendance at meetings if the contribution, award, or payment is made either by an organization determined by the Secretary of the Treasury to be an organization described in section 501(c) (3) of title 26, United States Code, which is exempt from taxation under section 501 (a) of that title, or by an organization to which the prohibitions in section 209 of title 18, United States Code, do not apply, and if, in the judgment of the head of the agency or his designated representative, the following two conditions are met:

(a) The contribution, award, or payment is not a reward for services to the organization prior to the training or meeting; and

(b) Acceptance of the contribution, award, or payment:

(1) Would not reflect unfavorably on the ability of the employee to carry out his official duties in a fair and objective manner;

(2) Would not compromise the honesty and integrity of Government programs or of Government employees and their official actions or decisions;

(3) Would be compatible with the Code of Ethics for Government Service expressed in House Concurrent Resolution 175, 85th Congress, 2d Session; and

(4) Would otherwise be proper and ethical for the employee concerned under the circumstances in his particular case.

§ 410.703 Delegation of authority to authorize acceptance.

The head of an agency may designate a representative to act for him in authorizing the acceptance of contributions, awards, and payments under § 410.702. Delegations of authority to act in this matter shall be held to as high an administrative level as practicable to ensure that the policies of the agency head are reflected in each decision, and that there is full evaluation of the circumstances of each case in the light of the conditions set forth in § 410.702.

§ 410.704 Acceptance of contributions, awards, and payments.

An employee may accept a contribution, award, or payment (whether made in cash or in kind) that falls within the scope of this subpart only with specific written authorization granted under § 410.702.

§ 410.705 Identification of organization when more than one participates.

When more than one non-Government organization participates in making a single contribution, award, or payment, the "organization" referred to in this subpart is considered to be the one that selects the recipient and administers the funds from which the contribution, award, or payment is made.

§ 410.706 Records.

Each agency shall maintain, in such form and manner as the head of the agency considers appropriate, the following records in connection with each contribution, award, or payment made and accepted under authority of this subpart: the name of the recipient; the name of the organization; the amount and nature of the contribution, award, or payment and the purpose for which it is to be used; and a copy of the written authorization required by § 410.702.

Subpart H—[Reserved]

Subpart I—Reports and Interchange of Training Information

§ 410.901 Reports.

(a) The reports required by section 4113(b) of title 5, United States Code, and by this section shall be prepared for each fiscal year. Each agency shall submit a consolidated report to the Commission not later than September 1 of the succeeding fiscal year.

(b) The consolidated report shall include:

(1) A brief narrative statement:
(i) Outlining in the first report to the Commission under this section, the agency's training policies and overall program and, in each subsequent report, any major changes in policy, shifts in program emphasis, or other significant developments;

(ii) Assessing generally the value of training to the agency and the extent to which economies and improved operations have resulted; and

(iii) Summarizing the agency's estimated expenditures for all training by, in, or through non-Government facilities (including training incident to initial procurement of equipment when information on the costs of this training is available), presenting separate totals for (a) tuition and related fees, (b) travel, and (c) per diem;

(2) An attachment, Standard Form 10, containing special information required by section 4113(b)(2) of title 5, United States Code, regarding employees (other than students participating in work-study programs) receiving training by, in, or through non-Government facilities for more than 120 days;

(3) An attachment, Standard Form 11, containing special information regarding employees who, under authority of section 4111(a) of title 5, United States Code, receive from non-Government sources contributions or awards incident to training in non-Government facilities; and

(4) An attachment, in triplicate, containing the names of employees failing to fulfill their obligations under section 4108 of title 5, United States Code, together with a brief account of the reason for the failure and of any action taken to recover additional expenses incurred by the Government in connection with their training.

(c) The Commission may grant exceptions to the requirements stated in paragraphs (a) and (b) of this section.

§ 410.902 Interchange of training information.

Each agency, at such time and in such manner as it considers appropriate, shall inform the Commission, or such other agencies as it believes may be especially concerned, of new, different, or particularly successful training practices or materials which it develops or acquires, which it considers of probable interest to others, and which it is able to share with others.

PART 430—PERFORMANCE EVALUATION

Subpart A—General Provisions

Sec. 430.101 Definitions.

Subpart B—[Reserved]

Subpart C—Boards of Review

430.301 Establishment and jurisdiction of boards.

430.302 Members of boards.

Subpart D—Appeals

430.401 Appeals.
430.402 Hearings.
430.403 Board decision.
430.404 Effect of decision.

AUTHORITY: The provisions of this Part 430 issued under 5 U.S.C. 4308.

Subpart A—General Provisions

§ 430.101 Definitions.

In this part:

(a) "Agency" and "employee" have the meanings given them by section 4301 of title 5, United States Code;

(b) "Board" means Performance Rating Board established under Subpart C of this part; and

(c) "Days" means calendar days and not workdays.

Subpart B—[Reserved]

Subpart C—Boards of Review

§ 430.301 Establishment and jurisdiction of boards.

The head of each agency shall establish, with the approval of the Commission, one or more boards to consider and pass on the merits of performance ratings under rating plans established under chapter 43 of title 5, United States Code. The jurisdiction of each board shall be specific and exclusive of that of any other board.

§ 430.302 Members of boards.

(a) *Designation.* Each board shall be composed of a chairman designated by the Commission, an employee member designated in a manner approved by the Commission, and an agency member designated by authority of the agency head. One or more alternate members shall be provided for each agency member, each alternate being designated in the same manner as his principal.

(b) *Branch of Government.* Members and alternate members of boards serving agencies in the executive branch of the Government shall be officers or employees of that branch. Members and alternate members of boards (except chairmen and alternate chairmen) serv-

ing agencies outside the executive branch shall be designated from the branch to which those agencies respectively belong.

Subpart D—Appeals

§ 430.401 Appeals.

(a) *Unsatisfactory rating.* An employee with an unsatisfactory rating may obtain within his agency the one impartial review provided by law, or may appeal directly to the appropriate board, or may appeal to the board after obtaining the impartial review.

(b) *Satisfactory or better rating.* An employee with a satisfactory or better performance rating may obtain either within his agency the one impartial review provided by law, or he may appeal to the appropriate board, but not both.

(c) *Time limits on appeals.* An appeal to a board shall be made to the chairman of the board. The appeal shall be in writing and shall be submitted within:

(1) Thirty days after the employee receives notice of his rating; or

(2) Fifteen days after the employee withdraws his request for the impartial review within his agency, when more than 30 days have elapsed since he received notice of his rating; or

(3) Thirty days after the employee receives his agency's decision on the impartial review of an unsatisfactory rating.

(d) *Extension of time limit.* Boards may waive the time limits in paragraph (c) of this section for good and sufficient reasons.

§ 430.402 Hearings.

(a) *Oral hearing.* The chairman or alternate chairman of a board shall preside at an oral hearing held to obtain information needed to determine the merits of an appealed rating, and shall rule on questions arising at the hearing.

(b) *Conduct of hearing.* The appellant and his representative, and representatives designated under authority of the agency head, may attend the hearing. These parties may submit any information the board finds pertinent; and may hear, examine, and reply to information received by the board. The board shall find pertinent the record of any prior review of an appealed rating.

(c) *Stenographic report.* A stenographic report of an oral hearing shall be required only when the board unanimously votes it necessary to the best interests of the Government and the employee.

(d) *Hearing waived.* With the appellant's consent, the board may consider his appeal on the basis of written information submitted by both parties without oral hearing.

§ 430.403 Board decision.

(a) *The decision.* The board shall consider the pertinent facts in an appeal and by majority vote either (1) increase the appealed rating, or (2) sustain the appealed rating without change.

(b) *Notice of decision.* The board's decision shall be in writing and shall contain a summary statement of the facts on which it based its decision. The

board shall send a copy of the decision to the appellant, to the head of the agency, and to the Commission.

§ 430.404 Effect of decision.

When an agency receives notice of a board's increase in an employee's rating, the agency shall correct all records of the original rating, shall reconsider any and all administrative actions based on the original rating, and insofar as possible under the law and regulations and in the public interest, redetermine and adjust those administrative actions to conform to the corrected rating.

PART 451—INCENTIVE AWARDS

Subpart A—General Provisions

Sec.

- 451.101 Purpose.
- 451.102 Policy.
- 451.103 Definitions.

Subpart B—Agency Plans

- 451.201 Agency plans.
- 451.202 Awards, promotions, and recognition.
- 451.203 Stimulating participation.
- 451.204 Prompt action on contributions.
- 451.205 Documentation of action.
- 451.206 Report.

Subpart C—Awards

- 451.301 Basic requirements.
- 451.302 Cash award, tangible benefits.
- 451.303 Cash award, intangible benefits.
- 451.304 Effect of an award on pay.
- 451.305 Honorary award.
- 451.306 Group awards.
- 451.307 Presidential award.
- 451.308 Interagency award.
- 451.309 Interagency referral.
- 451.310 Award by other benefiting agency.

AUTHORITY: The provisions of this Part 451 issued under 5 U.S.C. 4506.

Subpart A—General Provisions

§ 451.101 Purpose.

The Government Employees' Incentive Awards Program is established to improve Government operations and to recognize civilian employees by incentive awards. Awards under this program are designed to:

- (a) Encourage employees to participate in improving the efficiency and economy of Government operations;
- (b) Recognize and reward employees, individually or in groups, for their suggestions, inventions, superior accomplishments, or other personal efforts that contribute to efficiency, economy, or other improvements in Government operations; and
- (c) Recognize and reward employees, individually or in groups, who perform special acts or services in the public interest in connection with or related to their official employment.

§ 451.102 Policy.

The policy of the Commission in administering chapter 45 of title 5, United States Code, is to:

- (a) Establish broad principles and standards for the administration of the Incentive Awards Program;
- (b) Delegate to heads of agencies authority to establish and operate in-

centive awards plans consistent with these principles and standards;

(c) Help agency officials develop effective programs;

(d) Encourage exchange of contributions among agencies; and

(e) Review operation of agency plans to strengthen the Government Employees' Incentive Awards Program.

§ 451.103 Definitions.

In this part:

(a) "Agency," "employee," and "Government" have the meanings given to these terms by section 4501 of title 5, United States Code.

(b) "Plan" means a written statement giving effect to chapter 45 of title 5, United States Code, this part, and the instructions of the Commission concerning the incentive awards program, which has been approved by the head of an agency issuing the plan.

(c) "Contribution" means:

(1) An employee's suggestion, invention, superior accomplishment, or other personal effort contributing to the efficiency, economy, or other improvement of Government operations; and

(2) An employee's special act or service in the public interest, connected with or related to his official employment.

(d) "Incentive award or award" means either a cash award, an honorary award, or both.

(e) "Honorary award" means an incentive award granted by the head of an agency in the form of a certificate, emblem, pin, or other item the employee can wear or display.

(f) "Agency award" means an incentive award granted by the head of an agency for an approved contribution from an employee of that agency.

(g) "Interagency award" means an incentive award granted by the head of an agency for an approved contribution from an employee or employees of another agency.

(h) "Presidential award" means an award granted by the President under section 4504 of title 5, United States Code.

Subpart B—Agency Plans

§ 451.201 Agency plans.

(a) *Establishment and change.* The head of each agency shall establish and operate a plan to use incentive awards as an integral part of supervision and management, and shall submit any new plan or a change in a plan to the Commission within 30 days of the effective date of the plan or the change.

(b) *Authority for awards.* The head of an agency may grant an agency or interagency award for a contribution, to an employee, a former employee, or the estate of a deceased employee.

(c) *Agency administration.* Each plan must provide for:

(1) Central administrative direction and review;

(2) Delegation to bureaus, offices, and field units, of authority and responsibility adequate to ensure maximum compliance with the purposes of chapter 45

of title 5, United States Code, and with this part;

(3) Consideration of the applicability of employee contributions throughout the agency; and

(4) Referral to the appropriate agency or to the Commission of contributions that may apply to other agencies.

§ 451.202 Awards, promotions, and recognition.

The head of each agency shall provide that:

(a) Due weight be given to incentive awards granted under the Incentive Awards Program when qualifying and selecting for promotion employees who meet the Commission's requirements for promotion; and

(b) Recognition be given to supervisors for the extent of their success in motivating their employees' interests and participation in the Incentive Awards Program.

§ 451.203 Stimulating participation.

To obtain maximum value from the Incentive Awards Program, the head of each agency shall emphasize to supervisors and employees the need for their active participation in improving Government operations.

§ 451.204 Prompt action on contributions.

The head of each agency shall provide for prompt action on contributions to encourage maximum employee participation, and to obtain all possible benefit to the Government.

§ 451.205 Documentation of action.

The head of each agency shall provide that action on a contribution be adequately documented.

§ 451.206 Report.

The head of each agency shall submit to the Commission by September first of each year a report on the operation of the agency's Incentive Awards Program during the preceding fiscal year.

Subpart C—Awards

§ 451.301 Basic requirements.

An agency may not grant an incentive award before the contribution has been approved by the benefiting agency. The contribution must have been made while the contributor was a Government employee, and must be described in writing.

§ 451.302 Cash award, tangible benefits.

(a) *The award.* An agency may grant an employee a cash award of \$15 or more for a contribution that exceeds job requirements and that results in tangible benefits of \$50 or more. The amount of the award is based usually on the estimated net money benefit for the first year the contribution is used and is determined by the table in paragraph (b) of this section, except that an agency head for special reasons may decide a different amount is justified. He must document his reasons in support of the different amount.

(b) *Award scale.* The amount of a cash award must be based on the following table except when a different amount is justified for special reasons:

Tangible Benefits	Amount of Award
\$50-\$300-----	\$15.
\$301-\$10,000-----	\$15 for the first \$300 in benefits, \$5 for each additional \$100 or fraction thereof.
\$10,001-\$20,000---	\$500 for the first \$10,000 in benefits and \$5 for each additional \$200 or fraction thereof.
\$20,001-\$100,000--	\$750 for the first \$20,000 in benefits and \$5 for each additional \$1,000 or fraction thereof.
\$100,001 or more--	\$1,150 for the first \$100,000 in benefits and \$5 for each additional \$5,000 or fraction thereof.

(c) *Award over \$5,000.* An agency head may not grant a cash award above \$5,000 without prior approval of the Commission. The maximum cash award is \$25,000.

§ 451.303 Cash award, intangible benefits.

(a) *The award.* An agency may grant a cash award for a contribution that results in intangible benefits not susceptible to appraisal on the basis of measurable benefits, or for a contribution that involves a combination of tangible and intangible benefits.

(b) *Amount of award.* The amount of a cash award under this section shall be based on the benefit or value of the contribution to Government operations, considering the extent and scope of the contribution, its significance, and the importance of the programs it affects. An agency may grant the minimum cash award of \$15 when the contribution compares favorably with one that meets the minimum requirement in § 451.302.

(c) *Agency guides on intangible benefits.* The head of each agency shall provide as part of his plan, guidelines and criteria on which to base the amounts of awards for contributions under this section.

(d) *Award above \$5,000.* An agency head may not grant a cash award above \$5,000 without prior approval of the Commission. The maximum cash award is \$25,000.

§ 451.304 Effect of an award on pay.

(a) *Pay.* A cash award under this part is in addition to the regular pay of the recipient.

(b) *Further claim.* The acceptance of a cash award under this part constitutes an agreement that the use by the Government of a contribution, idea, method or device for which an incentive award is made does not form the basis of a further claim of any nature against the Government by the employee, his heirs, or his assigns.

§ 451.305 Honorary award.

An agency may grant an honorary award for a contribution. An honorary award may be granted in addition to a cash award.

§ 451.306 Group awards.

(a) *The award.* When a contribution is made by more than one employee, each contributing employee, including a supervisor, may share in the award.

(b) *Cash award shares.* An agency may grant the employees a cash award in equal shares, or in shares proportionate to each employee's participation in the contribution.

(c) *Amount of cash award.* The total amount of a cash award to a group may not exceed the amount that would be authorized if the contribution had been made by one individual, except that an agency head for special reasons may decide a different amount is justified. He must document his reasons in support of the different amount.

§ 451.307 Presidential award.

Each agency shall submit any recommendation for a Presidential award in accordance with instructions issued by the Distinguished Civilian Service Awards Board.

§ 451.308 Interagency award.

The head of an agency in which a contribution originates may grant an incentive award for a contribution that also may benefit another agency. The initial award is based on the benefit to the originating agency before consideration of additional benefits to another agency.

§ 451.309 Interagency referral.

(a) *Originating agency.* The head of each agency in which a contribution originates shall establish a procedure that requires that the contribution be referred to other agencies which may benefit from it. The referral to other agencies shall be made only after consideration of the applicability of the contribution in the originating agency.

(b) *Referral to one agency.* When the agency in which a contribution originates determines that only one other agency is responsible for acting on the contribution, it shall refer the contribution to that agency. The agency to which the contribution is referred shall notify the originating agency of the action on the contribution and shall send a copy of the notification to the Commission.

(c) *Referral to Commission.* When the originating agency determines that more than one other agency is responsible for acting on the contribution, it shall refer the file to the Commission, with information on the activities in other agencies that may benefit from the contribution.

§ 451.310 Award by other benefiting agency.

(a) *Contribution approved.* When the head of an agency approves a contribution which originated in another agency, he shall report the approval to either the originating agency or the Commission, whichever referred the contribution.

(b) *The report.* The approving agency shall report its approval as soon as possible and not later than 6 months after receipt of the referral except that the

report may be made at a later date with prior approval of the Commission. The report shall state the estimated first year net tangible benefits, if any; the intangible benefits, if any; and the incentive award it will grant, under this part.

(c) *Funds for award.* (1) When the head of an agency approves a contribution referred by another agency, he shall arrange with the originating agency for transfer of funds necessary to pay the incentive award.

(2) When more than one agency benefits from a contribution, the Commission shall determine the total interagency first year net measurable benefits, and the total intangible benefits, and recommend to the appropriate benefiting agencies their proportionate share of the award.

(3) Within 30 days after receipt of the recommendation referred to in subparagraph (2) of this paragraph, each benefiting agency shall notify the Commission in writing of its action on the recommendation.

PART 511—POSITION CLASSIFICATION UNDER THE CLASSIFICATION SYSTEM

Subpart A—General Provisions

Sec.

511.101 Definitions.

Subpart B—Coverage of the Classification System

511.201 Coverage of and exclusions from the Classification System.

511.202 Authority of agency.

511.203 Exercise of authority.

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—Appeals

511.601 Applicability of regulations.

511.602 Notification of classification decision.

511.603 Right of appeal.

511.604 Filing appeal.

511.605 Time limits.

511.606 Form and contents of appeal.

511.607 Ascertainment of facts.

511.608 Notification of appeal decision.

511.609 Cancellation of employee appeal.

511.610 Finality of decision.

511.611 Bureau of Inspections.

511.612 The Commissioners.

Subpart G—Effective Dates of Position Classification Actions or Decisions

511.701 Effective dates generally.

511.702 Agency's or Commission's classification decision on appeal.

511.703 Retroactive effective date.

AUTHORITY: The provisions of this Part 511 issued under 5 U.S.C. 5115, 5338, 5351, unless otherwise noted.

Subpart A—General Provisions

§ 511.101 Definitions.

In this part:

(a) "Agency" and "employee" have the meanings given them by section 5102 of title 5, United States Code.

(b) "Class" means all positions which are sufficiently similar as to (1) kind or subject-matter of work, (2) level of difficulty and responsibility, and (3) the

qualification requirements of the work, to warrant similar treatment in personnel and pay administration.

(c) "Classification" means the analysis and identification of a position and placing it in a class under the position-classification plan established by the Commission under chapter 51 of title 5, United States Code.

(d) "Grade" means all classes of positions which (although different with respect to kind or subject-matter of work) are sufficiently equivalent as to (1) level of difficulty and responsibility, and (2) level of qualification requirements of the work, to warrant their inclusion within one range of rates of basic pay.

(e) "Position" means the work, consisting of the duties and responsibilities, assigned by competent authority for performance by an employee.

Subpart B—Coverage of the Classification System

§ 511.201 Coverage of and exclusions from the Classification System.

(a) *Coverage.* This part and chapter 51 of title 5, United States Code, apply to all positions in the agencies except those specifically excluded by section 5102 of title 5, United States Code, and by paragraph (b) of this section.

(b) *Exclusions.* In addition to the positions specifically excluded by section 5102 of title 5, United States Code, the following positions are excluded from this part and chapter 51 of title 5, United States Code:

Auxiliary medical therapy students, Department of Health, Education, and Welfare, as follows: vocational guidance counselors (student); recreation leaders (student); occupational therapists (student); vocational rehabilitation advisers (student); teachers (student) (educational administration and supervision); teachers (student) (business training); teachers (student) (music); teachers (student) (art); and chaplains (student), approved training after a minimum of one year college level training.

Bacteriological interns, Department of Health, Education, and Welfare, approved postgraduate training during program for the Master of Science degree.

Chaplain interns, Department of Health, Education, and Welfare, first year approved clinical training following completion of three or more years approved postgraduate theological training.

Chaplain residents, Department of Health, Education, and Welfare, fifteen months approved clinical training following completion of four or more years approved postgraduate theological training.

Chaplain students, Department of Health, Education, and Welfare, third year approved clinical training following completion of five or more years approved postgraduate theological training.

Clinical psychology interns, Department of Health, Education, and Welfare, second, third, and fourth years approved postgraduate training (predoctoral).

Clinical psychological interns, Government of the District of Columbia, third and fourth years approved postgraduate training (predoctoral).

Clinical psychology interns, Department of the Navy, third year approved postgraduate training (predoctoral).

Clinical psychology residents, Department of Health, Education, and Welfare, first and second years approved postgraduate training.

Clinical psychology residents, Government of the District of Columbia, first year approved postgraduate training.

Clinical psychology students, Department of Health, Education, and Welfare, first year approved postgraduate training.

Counseling psychology interns, Department of Health, Education, and Welfare, approved postgraduate training during program for graduate degree.

Dental hygiene students, Department of Health, Education, and Welfare, approved training during clinical affiliation.

Dental hygiene students, Department of the Navy, approved training during clinical affiliation.

Dental student interns, Department of Health, Education, and Welfare, approved training after a minimum of 1 year dental school training.

Dietetic residents, second year approved postgraduate training.

Hospital administration interns, Department of Health, Education, and Welfare, first year approved postgraduate training.

Hospital administration residents, second year approved postgraduate training.

Hospital administration residents, Department of Health, Education, and Welfare, third year approved postgraduate training.

Hospital administration residents, Veterans Administration, first, third, and fourth years approved postgraduate training.

Hospital recreation students, Department of Health, Education, and Welfare, approved training after a minimum of three years' college level training.

Medical record interns, Department of Health, Education, and Welfare, one year approved training after a minimum of three years college level training.

Medical record students, Department of Health, Education, and Welfare, one year approved training after two years college level training.

Medical record students, Department of Health, Education, and Welfare, approved training during the first year of college level training, and, approved training after a minimum of 1 year college level training.

Medical student interns, approved training during third and fourth years of medical school.

Medical technology interns, Department of the Navy, 1 year approved training after a minimum of 3 years college level training.

Occupational therapy students, Department of the Army, approved training after a minimum of two years college level training.

Pharmaceutical interns, Department of Health, Education, and Welfare, one year approved postgraduate training.

Physical therapy students, Department of the Army, approved training after a minimum of two years college level training.

Psychiatric nurse interns (postgraduate student nurses), Department of Health, Education, and Welfare, one year approved postgraduate training.

Psychiatric nurse students, Department of Health, Education, and Welfare, approved training, undergraduate level.

Psychodrama interns, Department of Health, Education, and Welfare, first, second, and third years approved postgraduate training.

Psychodrama residents, Department of Health, Education, and Welfare, fourth year approved postgraduate training, and fifth year approved postgraduate training or first year approved postdoctoral training.

Psychology student trainees, Department of the Navy, approved postgraduate training

in a practicum after attainment of the bachelor's degree.

Public Health nurse interns, Department of Health, Education, and Welfare, approved training after a minimum of three years college level training.

Recreation interns, Department of Health, Education, and Welfare, one year approved postgraduate training.

Social worker interns (student social workers) Department of Health, Education, and Welfare, approved postgraduate training during program for Master of Science degree.

Sociological interns, Department of Health, Education, and Welfare, approved training in a degree program after a minimum of 1 or 2 years of college level training.

Sociological interns, Department of Health, Education, and Welfare, approved training after a minimum of 3 years college level training.

Sociology interns, Department of Health, Education, and Welfare, approved postgraduate training during program for graduate degree.

Speech pathology and audiology students, Department of Health, Education, and Welfare: Approved postgraduate training during program for graduate degree.

Speech therapy interns, Department of Health, Education, and Welfare, approved postgraduate training during program for graduate degree.

Student dental assistants, Department of Health, Education, and Welfare, approved training during clinical affiliation.

Student dental technicians, Department of Health, Education, and Welfare, approved training during clinical affiliation.

Student dietitians, Department of the Army and Department of Health, Education, and Welfare, approved training after a minimum of three years college level training.

Student educational therapists, Department of Health, Education, and Welfare, approved training after a minimum of two years college level training.

Student food service administration trainees, Department of Health, Education, and Welfare, approved training during clinical affiliation.

Student hospital administration interns, Department of Health, Education, and Welfare, approved training prior to first year postgraduate training in hospital administration.

Student laboratory assistants, Department of Health, Education, and Welfare, approved training after a minimum of two years high school level training.

Student laboratory technicians, Department of the Army and Department of Health, Education, and Welfare, one year approved training after a minimum of two years college level training.

Student manual arts therapists, Department of Health, Education, and Welfare, approved training after a minimum of two years college level training.

Student medical librarians, first and second years approved postgraduate training during program for Master of Science degree.

Student medical technologists (interns), Department of the Army and Department of Health, Education, and Welfare, one year approved training after a minimum of three years college level training.

Student medical typists, Department of Health, Education, and Welfare, approved training for a 90-day period.

Student nurse anesthetists, Department of Health, Education, and Welfare, eighteen months approved postgraduate training.

Student nursing assistants, Department of Health, Education, and Welfare, eighteen weeks approved clinical training.

Student pharmacists, Department of Health, Education, and Welfare, approved

training after a minimum of three years college level training.

Student practical nurses, D.C. General Hospital and Department of Health, Education, and Welfare, approved training during clinical affiliation.

Student practical nurses, Department of Health, Education, and Welfare, one year approved training.

Student practical nurses, Department of the Navy, approved training during clinical affiliation.

Student public health nutritionists, Department of Health, Education, and Welfare, approved training during program for graduate degree.

Student social workers, Department of the Navy, approved training during program for a graduate degree.

Student speech pathologists, Department of the Navy, approved training during program for a graduate degree.

Student X-ray technicians, Department of Health, Education, and Welfare, twenty-four months approved training.

(5 U.S.C. 5102)

§ 511.202 Authority of agency.

Subject to the provisions of Subpart F of this part and § 511.203, an agency may determine whether a position is subject to, or is excluded from, chapter 51 of title 5, United States Code, by section 5102(c) (7) and (8) thereof.

§ 511.203 Exercise of authority.

An agency may exercise the authority under § 511.202 only in accordance with guidelines and standards issued by the Commission.

Subpart C—[Reserved]

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—Appeals

§ 511.601 Applicability of regulations.

This subpart applies to an appeal from an employee or an agency for the Commission to review the classification of a position subject to chapter 51 of title 5, United States Code, or for the Commission to determine whether a position is subject to that chapter.

§ 511.602 Notification of classification decision.

The incumbent of a position who suffers a loss of grade or pay which is based in whole or in part on a classification decision is entitled to a prompt written notice of the decision from the agency. This notice shall also inform him:

(a) Of his right to appeal the classification decision to the agency or to the Commission as provided in this subpart; and

(b) Of the time limits within which he must appeal in order to preserve any retroactive benefits under § 511.703.

§ 511.603 Right of appeal.

(a) *Employee appeal.* An employee, or his representative designated in writing, may appeal and request a Commission decision as to:

(1) The appropriate class or grade of his position.

(2) The inclusion under or exclusion from chapter 51 of title 5, United States

Code, of his position by his agency or the Commission, except in the case of the incumbent of a position in the Office of the Architect of the Capitol.

(b) *Agency appeal.* The head of an agency or his authorized representative may appeal any classification decision made by the Commission with respect to any position in the agency.

§ 511.604 Filing appeal.

(a) *Employee.* An employee may file an appeal with the Commission directly or through his agency.

(b) *Referral of employee appeal to the Commission.* An agency shall forward, within 30 calendar days of its receipt in the agency, an employee appeal filed through it to the Commission when:

(1) The agency chooses to refer the appeal without action to the Commission;

(2) The employee has directed his appeal to the Commission and the agency does not act favorably on it; or

(3) The agency is not authorized to act on the employee appeal.

§ 511.605 Time limits.

An employee or an agency may submit a classification appeal at any time. However, the time limits of § 511.703 must be met in order to receive the benefits of that section.

§ 511.606 Form and contents of appeal.

(a) *Employee appeal.* An employee's appeal shall be in writing and shall contain the reasons why he believes his position is erroneously classified, or should be brought under or excluded from chapter 51 of title 5, United States Code. The agency, when forwarding the appeal of an employee or when requested by the Commission, shall furnish the Commission with all relevant facts concerning the position and the agency's justification for its decision. The agency shall also comment on the information submitted by the appellant.

(b) *Agency appeal.* An agency's appeal shall be in writing, and shall contain its reasons and justification for requesting a review of the Commission's decision.

(c) *Inspection of appeal file.* The employee and the agency will be permitted to inspect the appeal file on request.

§ 511.607 Ascertainment of facts.

The employee and the agency shall furnish such facts as may be requested by the Commission. These facts shall be in writing when so requested. The Commission, in its discretion, may investigate or audit the position.

§ 511.608 Notification of appeal decision.

The Commission shall notify the appellant and the agency in writing of its decision.

§ 511.609 Cancellation of employee appeal.

An employee appeal shall be canceled and the employee so notified in the following circumstances:

(a) On receipt of the appellant's written request.

(b) On failure to prosecute, when the appellant does not furnish requested information and duly proceed with the advancement of his appeal. In lieu of cancellation for failure to prosecute, an appeal may be adjudicated if the information is sufficient for that purpose. The Commission may reopen a canceled appeal in its discretion on a showing that circumstances beyond the control of the appellant prevented him from prosecuting the appeal.

(c) On notice that the appellant has left the position, except where he would be entitled to the retroactive benefits of § 511.703, including an appeal pending at the death of an appellant.

§ 511.610 Finality of decision.

An appeal decision made by the Commission is final. There is no further right to appeal. The appeal decision shall constitute a certificate which is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government.

§ 511.611 Bureau of Inspections.

The Commission's Bureau of Inspections may, in its discretion, reopen and reconsider any appeal decision made by a Commission regional office under this subpart.

§ 511.612 The Commissioners.

The Commissioners may, in their discretion, reopen and reconsider any previous decision.

Subpart G—Effective Dates of Position-Classification Actions or Decisions

§ 511.701 Effective dates generally.

(a) *Agency's classification action.* The effective date of a classification action taken by an agency is the date the action is approved in the agency or a subsequent date specifically stated.

(b) *Commission's classification decision.* The effective date of a classification decision made by means of a certificate issued by the Commission is not earlier than the date of receipt of the certificate in the agency and not later than the beginning of the fourth pay period following the receipt of the certificate in the agency, unless a subsequent date is specifically stated in the certificate. The filing of an appeal from such a decision does not delay its effective date.

§ 511.702 Agency's or Commission's classification decision on appeal.

Subject to § 511.703, the effective date of a change in the classification of a position resulting from an appeal to either an agency or the Commission is not earlier than the date of decision on the appeal and not later than the beginning of the fourth pay period following the date of decision, unless a subsequent date is specifically stated in the decision by the agency or the Commission.

§ 511.703 Retroactive effective date.

(a) *Downgrading or loss of pay.* The effective date of a classification action

resulting from an appeal decision reversing in whole or part either a downgrading or other classification action that resulted in a reduction of pay shall be made retroactive to the date of adverse action when the initial appeal to either the agency or the Commission was submitted not later than 15 calendar days after the effective date of the action taken as a result of the classification decision. However, when the appeal decision raises the grade of the position above its grade immediately preceding the downgrading, retroactivity will apply only to the extent of restoration to the grade immediately preceding the downgrading. The right to a retroactive effective date provided by this section is preserved on subsequent appeal from an agency classification decision to the Commission when the appeal is filed not later than 15 calendar days following receipt of written notification of final administrative decision or 15 calendar days after the effective date of the action taken as a result of the classification decision, whichever is later.

(b) *Grade change based on new duties and responsibilities.* Retroactivity may be based only on duties and responsibilities existing at the time of downgrading or loss of pay and not on duties and responsibilities later assigned.

(c) *Retroactivity when time limits are extended.* The right to a retroactive effective date provided by this section may be preserved, in the discretion of the Commission, on a showing by the employee that he was not notified of the applicable time limit and was not otherwise aware of the limit or that circumstances beyond his control prevented him from filing an appeal within the prescribed time limit.

PART 530—PAY RATES AND SYSTEMS (GENERAL)

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—Special Rates for Recruitment and Retention

Sec.	
530.301	Entitlement.
530.302	Applicability.
530.303	Definitions.
530.304	Establishing special rates.
530.305	Determining employee rates.
530.306	Discontinuing special rates.
530.307	Effect of statutory pay increase.

AUTHORITY: The provisions of this Part 530 issued under 5 U.S.C. 5303, E.O. 11073; 3 CFR, 1959-1963 Comp., p. 637, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—Special Rates for Recruitment and Retention

§ 530.301 Entitlement.

A department or agency may pay a special rate established under section 5303 of title 5, United States Code, only in accordance with that section, Executive Order 11073, and this subpart.

§ 530.302 Applicability.

This subpart applies to departments and agencies having employees occupy-

ing positions paid under (a) section 5332(a) of title 5, United States Code, (b) part III of title 39, United States Code, relating to personnel in the postal field service, (c) the pay scales for physicians, dentists, and nurses in the Department of Medicine and Surgery of the Veterans' Administration under chapter 73 of title 38, United States Code, or (d) sections 412 and 415 of the Foreign Service Act of 1946, as amended (22 U.S.C. 867 and 870).

§ 530.303 Definitions.

In this subpart:

(a) "Area" means a geographical subdivision which can be described in terms of boundaries, such as the metropolitan limits of a city, the area within 20 miles of the city limits, county, several counties, a State, the United States.

(b) "Executive Order" means Part III, Special Rates for Recruitment and Retention, of Executive Order 11073, issued January 2, 1963.

(c) "Location" means a specific place of employment within an area, such as a particular shipyard or airbase.

(d) "Numerical rank" means (1) a numbered rate of a grade of the General Schedule; (2) a numbered rate of a level of the Postal Field Service Schedule; (3) a numbered step or rate within the minimum and maximum pay scale for a position of physician, dentist, or nurse in the Department of Medicine and Surgery of the Veterans' Administration; or (4) a rate within a class for a position under the Foreign Service Act; and, (5) a similar numbered rate or step within a special rate range established under any of the enumerated pay systems.

(e) "Special rate range" means a range of rates established by the Commission under section 5303 of title 5, United States Code.

(f) "Special rates" mean rates within the special rate range, and include "special minimum rate" which is the first rate of the special rate range.

§ 530.304 Establishing special rates.

(a) The Commission establishes special rates in one or more areas or locations to the extent it considers necessary to overcome significant handicaps in the recruitment and retention of well-qualified personnel when these handicaps result from pay rates in private enterprise being substantially above the pay rates of the statutory pay schedules.

(b) The department or agency initiating a request for special rates is responsible for submitting complete supporting data including, upon the specific request by the Commission, a survey of prevailing pay rates in private enterprise in the area.

§ 530.305 Determining employee rates.

(a) (1) Except as provided in subparagraph (2) of this paragraph, when an employee is in a position to which a special rate range becomes applicable, the department or agency shall fix his rate in the special rate range at the numerical rank in the special rate range for his grade or level which corresponds to his existing numerical rank in the rate range for his grade level.

(2) When an employee receiving a retained rate under section 5337 of title 5, United States Code, or under section 3560 of title 39, United States Code, relating to personnel in the postal field service, is in a position to which a special rate range becomes applicable, the department or agency shall fix his rate in the special rate range under subparagraph (1) of this paragraph without regard to the retained rate. If his retained rate is higher than the rate in the special rate range, he is entitled to receive the retained rate until it is appropriately terminated. At this time the department or agency shall fix his rate under applicable regulations.

(b) (1) When an employee is reassigned at the same grade or level under the same pay system to a position to which a special rate range applies, the department or agency shall fix his rate in the special rate range at the numerical rank in the special rate range for his grade or level which corresponds to his existing numerical rank in the rate range for his grade or level.

(2) When an employee in a position to which a special rate range does not apply is promoted to a position to which a special rate range applies, the department or agency shall determine first his numerical rank in the higher grade or level without regard to the special rate range and then shall fix his rate at the corresponding numerical rank in the special rate range for the position to which promoted.

(3) When an employee not entitled to a retained rate under appropriate statutory authority is demoted to a position to which a special rate range applies, the department or agency shall determine first his numerical rank in the lower grade without regard to the special rate range and then shall fix his rate at the corresponding numerical rank in the special rate range for the position to which demoted.

(4) Except as provided in subparagraphs (1), (2), and (3) of this paragraph, all other actions of promotion, demotion, transfer, or reassignment are governed by the pay-fixing rules established for the appropriate pay system to which, or in which, the personnel action is taken.

(c) The department or agency shall determine the rate of basic pay for an individual receiving an initial appointment (including an appointment after a break in service of at least one work day) to a position to which a special rate range applies in the grade or level of the position under the regulations governing the pay system under which appointed without regard to the special rate range and shall use the numerical rank thus determined to fix the employee's rate at the corresponding numerical rank in the special rate range.

§ 530.306 Discontinuing special rates.

(a) The Commission and each affected department or agency are responsible for initiating action to discontinue or revise special rates when these rates are no longer needed for recruitment and retention. No employee shall have his pay reduced because of that action.

(b) When the special rates for a position are discontinued, the department or agency shall determine the rate of basic pay for an employee in the position as follows:

(1) If the employee is receiving a rate of basic pay equal to one of the rates in the regular rate range for his grade or level, the department or agency shall fix his basic pay at that rate.

(2) If the employee is receiving a rate of basic pay at a rate between two rates in the regular rate range of his grade or level, the department or agency shall fix his basic pay at the higher of the two rates.

(3) If the employee is receiving a rate of basic pay at a rate in excess of the maximum rate for the regular rate range for his grade or level, the department or agency shall fix his basic pay at his existing rate, and the employee shall be entitled to this rate as long as he remains in the same position or until he becomes entitled to a higher rate.

§ 530.307 Effect of statutory pay increase.

(a) A statutory revision of the pay schedule of the pay system for which special rates are authorized under section 5303 of title 5, United States Code, automatically changes the special minimum rate (if more than the minimum rate for the new pay schedule for the grade or level concerned) to the nearest rate in the new pay schedule which does not result in a decrease and the other special rates for the special rate range are changed to similar rates in the new schedule adjusted on the basis of the new special minimum rate.

(b) When an employee was receiving a special rate immediately before the effective date of a statutory pay increase, he shall receive on that effective date the rate of basic pay for:

(1) The numerical rank in the new special rate range for his grade or level that corresponds with the numerical rank of the special rate he was receiving immediately before that effective date; or

(2) If there is no new special rate range, the numerical rank in the new statutory pay schedule for his grade or level that corresponds with the numerical rank of the special rate he was receiving immediately before that effective date.

PART 531—PAY UNDER THE CLASSIFICATION SYSTEM

Subpart A—[Reserved]

Subpart B—Determining Rate of Basic Pay

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531.201	Applicability.
531.202	Definitions.
531.203	General provisions.
531.204	Special provisions.

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531.301	Authority of agency.
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Subpart D—Within-Grade Increases

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531.409	Authority—quality increase.
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Subpart E—Salary Retention

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531.512	Retention period—reassignment.
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531.516	

AUTHORITY: The provisions of this Part 531 issued under 5 U.S.C. 5115, 5338. §§ 531.501 to 531.516 also issued under 5 U.S.C. 5337.

Subpart A—[Reserved]

Subpart B—Determining Rate of Basic Pay

§ 531.201 Applicability.

This subpart and sections 5333 and 5334 of title 5, United States Code, apply in fixing and adjusting rates of basic pay of each employee subject to the General Schedule.

§ 531.202 Definitions.

In this subpart:

(a) "Demotion" means a change of an employee, while continuously employed, from:

(1) One General Schedule grade to a lower General Schedule grade, with or without reduction in pay; or

(2) A higher rate paid under authority other than subchapter III of chapter 53 of title 5, United States Code, to a lower rate within a General Schedule grade.

(b) "Agency" has the meaning given that word by section 5102 of title 5, United States Code.

(c) "Employee" means an employee of an agency to whom this subpart applies.

(d) "Existing rate of basic pay" means the rate received immediately before the effective date of a transfer, promotion, demotion, or within-grade increase.

(e) "Higher grade" means a General Schedule grade above the last previous General Schedule grade or its equivalent held by the employee.

(f) "Highest previous rate" means the highest rate of basic pay previously paid

to an individual while employed in a position in a branch of the Federal Government (executive, legislative, or judicial), a mixed ownership corporation, or the government of the District of Columbia, irrespective of whether or not the position was subject to the General Schedule.

(g) "New appointment" means the first appointment, regardless of tenure, as an employee of the Federal Government or the government of the District of Columbia.

(h) "Promotion" means a change of an employee, while continuously employed, from:

(1) One General Schedule grade to a higher General Schedule grade; or

(2) A lower rate paid under authority other than subchapter III of chapter 53 of title 5, United States Code, to a higher rate within a General Schedule grade.

(i) "Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

(j) "Reassignment" means a change of an employee, while serving continuously in the same agency, from one position to another without promotion or demotion.

(k) "Reemployment" means an employment, including reinstatement or another type of appointment, after a break in service of at least 1 full workday.

(l) "Transfer" means a change of an employee, without a break in service of 1 full workday, from one branch of the Federal Government (executive, legislative, or judicial) to another or from one agency to another.

§ 531.203 General provisions.

(a) *New appointments.* Except as provided by section 5333(a) of title 5, United States Code, and paragraph (b) of this section, a new appointment is made at the minimum rate of the grade, or when the minimum rate of the grade of a position has been set under Part 530 of this chapter, a new appointment to that position is made at the minimum rate set under Part 530 of this chapter.

(b) *Superior qualifications appointments.* (1) A "superior qualifications appointment" means an appointment to a position in Grade 11 or above of the General Schedule at a rate above the minimum rate of the appropriate grade under authority of section 5333 of title 5, United States Code, and with the prior approval of the Commission (except for positions in the Library of Congress), because of the superior qualifications of the candidate.

(2) An agency may make a superior qualifications appointment by new appointment or by reemployment except that when made by reemployment, the candidate must have a break in service of at least 90 calendar days from his last period of Federal employment or employment with the government of the District of Columbia (other than (1) employment under an appointment as an

expert or consultant under section 3109 of title 5, United States Code, (ii) employment under a temporary appointment effected primarily in furtherance of a postdoctoral research program or effected as a part of a predoctoral or postdoctoral training program during which the employee receives a stipend, or (iii) employment as a member of the Commissioned Corps of the Environmental Science Services Administration or the Commissioned Corps of the Public Health Service).

(c) *Position or appointment changes.* Subject to §§ 531.204, 531.515, 539.201 of this chapter, and section 5334(a) of title 5, United States Code, when an employee is reemployed, transferred, reassigned, promoted, or demoted, the agency may pay him at any rate of his grade which does not exceed his highest previous rate; however, if his highest previous rate falls between two rates of his grade, the agency may pay him at the higher rate. When an employee's type of appointment is changed in the same position, the agency may continue to pay him at his existing rate or may pay him at any higher rate of his grade which does not exceed his highest previous rate; however, if his highest previous rate falls between two rates of his grade, the agency may pay him at the higher rate.

(d) *Computation of highest previous rate.* (1) The highest previous rate is based on a regular tour of duty at that rate under an appointment not limited to 90 days or less, or for a continuous period of not less than 90 days under one or more appointments without a break in service.

(2) The highest previous rate may not be based on (1) a rate received for an appointment as an expert or consultant under section 3109 of title 5, United States Code, or (ii) except as provided in subparagraph (3) of this paragraph, a rate of basic pay established under section 5303 of title 5, United States Code.

(3) When an employee's rate of basic pay is one established under section 5303 of title 5, United States Code (referred to in this subparagraph as a special rate), the employee's highest previous rate is the rate to which he would have been entitled had the special rate not applied to him. However, with the prior approval of the Commission, an agency may use the special rate as the highest previous rate when:

(i) The employee is reassigned to a position for which no special rate, or a lesser special rate, has been established; and

(ii) The agency head, or an employee specifically designated by him for that purpose, determines that the need for the services of the employee, and his contribution to the program of the agency, will be greater in the position to which he is being reassigned.

The reasons for the determinations required by this subparagraph shall be submitted in writing to the Commission with the request for prior approval.

(4) If the highest previous rate was earned in a General Schedule position, it

is increased by subsequent amendments of the General Schedule. If the highest previous rate was earned in a position not subject to the General Schedule, it is computed as follows:

(i) The actual rate earned at the time of service computed on an annual basis is compared to the annual rates under the General Schedule as of the time of service to select an equivalent annual rate. When the actual rate is the same as a rate under the General Schedule, the rate under the General Schedule is the equivalent annual rate. When the actual rate is the same as a rate under the General Schedule and that rate occurs within two or more grades under the General Schedule, the rate which gives the employee the maximum benefit when it is converted under subdivision (ii) of this subparagraph is the equivalent annual rate. When the actual rate falls between two rates under the General Schedule, the higher rate is the equivalent annual rate. When the actual rate falls between two rates within the range of two or more grades under the General Schedule, the rate which gives the employee the maximum benefit when it is converted under subdivision (ii) of this subparagraph is the equivalent annual rate.

(ii) The equivalent annual rate determined under subdivision (i) of this subparagraph is converted to the equivalent rate under the current General Schedule and that rate is the employee's highest previous rate.

(e) *Agency classification action.* When an agency regrades a position to a grade higher than the one to which the position had been classified by Commission action, and when subsequent to the regrading, the Commission again classifies the position to the grade which it had originally assigned the position, the rate attained by the employee in the higher grade may not be used as his highest previous rate.

(f) *Simultaneous actions.* When a position or appointment change and entitlement to a higher rate of pay occur at the same time, the higher rate of pay is deemed an employee's existing rate of basic pay. If the employee is entitled to two pay benefits at the same time, the agency shall process the changes in the order which gives the employee the maximum benefit.

§ 531.204 Special provisions.

(a) *Promotions and transfers.* The requirements of section 5334(b) of title 5, United States Code, apply only (1) to a transfer from one General Schedule position to a higher General Schedule position, and (2) to a promotion from one General Schedule grade to a higher General Schedule grade.

(b) *Classification decisions.* When a classification decision is made effective retroactively under Part 511 of this chapter, the agency shall treat the corrective personnel action affecting the employee concerned as a cancellation or correction, as the case may be, of the original action of demotion, and the employee is entitled to retroactive pay in accordance with the terms of the corrective action.

Subpart C—Pay Adjustments for Supervisors

§ 531.301 Authority of agency.

This subpart authorizes an agency to make a special adjustment in the pay of a supervisor in a General Schedule position who regularly has responsibility for supervision over one or more wage board employees. In making this pay adjustment, an agency is governed by section 5333(b) of title 5, United States Code, and this subpart.

§ 531.302 Definitions.

In this subpart:

(a) "Wage board employee" means an employee whose pay is fixed and adjusted from time to time by a wage board or similar administrative authority as nearly as in consistent with the public interest in accordance with prevailing rates or in accordance with prevailing rates and practices in the maritime industry.

(b) "Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

§ 531.303 Use of authority.

In determining whether to use the authority under section 5333(b) of title 5, United States Code, and this subpart, an agency shall consider (a) the relative rate-ranges of the supervisor and the wage board employee supervised by him as well as the specific rate either is receiving at the time, and (b) the equities among supervisors in the same organizational entity as well as the equities between the supervisor and the wage board employee supervised by him.

§ 531.304 Requirements for entitlement.

(a) *Basic.* Before an agency may adjust the pay of a supervisor under section 5333(b) of title 5, United States Code, and this subpart, it must find that (1) the supervisor regularly has responsibility for supervision (which must include supervision over the technical aspects of the work concerned) over one or more wage board employees, and (2) the rate of basic pay for the supervisor is less than the rate of basic pay for the wage board employee supervised by him.

(b) *Regular responsibility.* A supervisor regularly has responsibility for supervision when this responsibility is a continuing assignment as reflected in his official position description.

(c) *Responsibility for supervision.* A supervisor has responsibility for supervision (including supervision over the technical aspects of the work concerned) when he has relatively frequent personal contact with the wage board employees in the unit in connection with assigned work and when he personally or through an intermediate wage board supervisor:

- (1) Determines assignments or duties for individual wage board employees;
- (2) Makes reviews of work products of individual wage board employees

when the reviews require a substantial subject matter or technical knowledge;

(3) Plans and organizes work with primary emphasis on distribution of assignments, workloads of individual wage board employees, work item priorities, and schedules for timely completion of work items, projects, or cases;

(4) Provides advice, assistance, counsel, or instructions to individual wage board employees;

(5) Evaluates the performance of individual wage board employees; and

(6) Serves as the focal point for discussion of problems arising from, or associated with, specific work products of the unit.

(d) *Rate of basic pay.* (1) In comparing the rate of basic pay for a supervisor with the rate of basic pay for a wage board employee supervised by him, an agency shall exclude from the wage board employee's rate (i) any irregular prevailing rate, such as a retained rate not related to his current position, and (ii) night differential.

(2) When an agency excludes an irregular prevailing rate for the wage board employee from comparison, the agency shall consider the highest rate of the regular prevailing rate for the position occupied by the wage board employee.

§ 531.305 Adjustment of rates.

(a) *Rate payable to supervisor.* (1) Except as provided in subparagraph (2) of this paragraph, when an agency decides to adjust the rate of pay for a supervisor under section 5333(b) of title 5, United States Code, and this subpart, it shall adjust his rate of pay to the nearest rate (but not above the maximum rate) of his grade which exceeds the highest rate of basic pay (excluding night differential) paid to any wage board employee for whom the supervisor regularly has responsibility for supervision.

(2) When a supervisor is in an area in which he receives a cost-of-living allowance or post differential based on hardship, and the wage board employee he supervises does not receive a separately stated cost-of-living allowance or post differential, the agency shall add to the supervisor's rate of basic pay his cost-of-living allowance or post differential and use the total to adjust his rate of pay under subparagraph (1) of this paragraph.

(b) *Documentation.* The agency shall record the basis for the determination of the supervisor's adjusted rate in his Official Personnel Folder.

(c) *Effective date.* The adjustment of a supervisor's rate of pay under this subpart is effective on the first day of the first pay period following the date on which the agency determines to make the adjustment under section 5333(b) of title 5, United States Code, and this subpart.

(d) *Equivalent increase.* An adjustment in pay under section 5333(b) of title 5, United States Code, and this subpart is an equivalent increase in pay under section 5335 of title 5, United States Code.

Subpart D—Within-Grade Increases

§ 531.401 Scope.

(a) *Applicability.* Within-grade increases provided in sections 5335 and 5336 of title 5, United States Code, apply to both full-time and non-full-time employees who occupy permanent positions subject to the General Schedule and who are paid on an annual basis.

(b) *Entitlement.* An agency shall determine an employee's entitlement to within-grade increases in accordance with sections 5335 and 5336 of title 5, United States Code, and this subpart.

§ 531.402 Definitions.

In this subpart:

(a) "Agency" has the meaning given that word by section 5102 of title 5, United States Code.

(b) "Employee" means an employee of an agency to whom this subpart applies.

(c) "Maximum rate" means the top rate for the grade of the General Schedule position.

(d) "Permanent position" means one filled on a permanent basis, that is by an appointment not designated as temporary by law and not having a definite time limitation.

(e) "Quality increase" means an additional within-grade increase in accordance with section 5336 of title 5, United States Code, and this subpart in recognition of high quality performance above that ordinarily found in the type of position concerned.

(f) "Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

(g) "Waiting period" means the minimum time requirement of creditable service to become eligible for consideration for a within-grade increase.

(h) "Within-grade increase" means an increase in an employee's rate of basic pay from one rate of his grade to the next in accordance with section 5335 of title 5, United States Code, and this subpart, and is synonymous with the term "step increase" as used in sections 5335 and 5336 of title 5, United States Code.

§ 531.403 Within-grade increases—waiting period.

(a) (1) For a full-time employee, and for a non-full-time employee with a prearranged regularly scheduled tour of duty, the waiting periods for advancement to the following rates in all grades are:

(i) Rates 2, 3, and 4—52 calendar weeks of creditable service.

(ii) Rates 5, 6, and 7—104 calendar weeks of creditable service.

(iii) Rates 8, 9, and 10—156 calendar weeks of creditable service.

(2) For a non-full-time employee without a prearranged regularly scheduled tour of duty, the waiting periods for advancement to the following rates in all grades are:

(i) Rates 2, 3, and 4—260 days of creditable service in a pay status over a period of not less than 52 calendar weeks.

(ii) Rates 5, 6, and 7—520 days of creditable service in a pay status over a period of not less than 104 calendar weeks.

(iii) Rates 8, 9, and 10—780 days of creditable service in a pay status over a period of not less than 156 calendar weeks.

(b) A waiting period begins:

(1) On a new appointment as an employee of the Federal Government or the government of the District of Columbia;

(2) After a break in service or a non-pay status in excess of 52 calendar weeks; or

(3) On receiving an equivalent increase.

(c) For purposes of this section, a calendar week is a period of any 7 calendar days.

§ 531.404 Creditable service—waiting period.

(a) Continuous civilian employment in any branch of the Federal Government (executive, legislative, or judicial) or in the government of the District of Columbia is creditable service in the computation of a waiting period. Service credit is given during this employment for periods of annual, sick, and other leave with pay; advanced annual and sick leave; service under a temporary appointment; and service paid for at a daily or hourly rate. The waiting period is not interrupted by nonworkdays intervening between an employee's last regularly scheduled workday in one position and his first regularly scheduled workday in a new position.

(b) For a full-time employee, and a non-full-time employee with a prearranged regularly scheduled tour of duty, time in a nonpay status, except as provided in § 531.405(b), is creditable service in the computation of a waiting period when it does not exceed, in the aggregate:

(1) Two workweeks in the waiting period for rates 2, 3, and 4;

(2) Four workweeks in the waiting period for rates 5, 6, and 7; and

(3) Six workweeks in the waiting period for rates 8, 9, and 10. When an employee has time in a nonpay status in excess thereof, he shall make it up with creditable service before his next within-grade increase is effected.

(c) Leave of absence granted to an employee because of an injury for which compensation is payable under subchapter I of chapter 81 of title 5, United States Code, is creditable service in the computation of a waiting period.

(d) Service with the Armed Forces during a period of war or national emergency is creditable service in the computation of a waiting period when an employee leaves his civilian position to enter the Armed Forces and he is (1) reemployed in a position subject to the General Schedule not later than 52 calendar weeks after separation from active military duty, or (2) restored to his civilian position after separation from active military duty or hospitalization continuing thereafter as provided by law.

(e) The period from the date of an employee's separation with a reemploy-

ment right granted by law, Executive order, or regulation to the date of his return to duty through the exercise of that right is creditable service in the computation of a waiting period.

(f) Service in essential non-Government civilian employment in the public interest during a period of war or national emergency is creditable service in the computation of a waiting period when it interrupts otherwise creditable service.

§ 531.405 Noncreditable service—waiting period.

The following is not creditable service in the computation of a waiting period:

(a) Service at overtime rates;
(b) Service before a single nonpay period or a break in service when the nonpay period or break in service exceeds 52 calendar weeks, and any part of a nonpay period of more than 52 calendar weeks;

(c) A period of separation from a civilian position except as provided in § 531.404; or

(d) The period between the date an employee leaves his civilian position to enter the Armed Forces and the date of his reemployment in a position subject to the General Schedule when his reemployment is not within 52 continuous calendar weeks from the date of his discharge from the Armed Forces, except in instances of restoration provided by law.

§ 531.406 Equivalent increase.

(a) Except as otherwise provided in this section, equivalent increase, as used in section 5335 of title 5, United States Code, and this subpart, is an increase or increases in an employee's rate of basic pay equal to or greater than the amount of the within-grade increase for the grade in which the employee is serving.

(b) When an employee has served in more than one grade during the waiting period under consideration and it is necessary to determine whether he received an equivalent increase in a prior grade, an equivalent increase is an increase or increases in his rate of basic pay equal to or greater than the amount of the within-grade increase for the prior grade.

(c) When an employee receives more than one increase in his rate of basic pay during the waiting period under consideration, no one of which is an equivalent increase, the first and subsequent increases are added until they amount to an equivalent increase, at which time he is deemed to have received an equivalent increase.

(d) For the purpose of paragraphs (b) and (c) of this section, the waiting period under consideration is the waiting period immediately preceding an employee's current entry into the rate of the grade in which he is serving.

§ 531.407 Work of an acceptable level of competence.

(a) *Responsibility.* (1) The head of an agency is responsible for determining what constitutes an acceptable level of competence and for determining which

employees are performing at an acceptable level of competence.

(2) The head of an agency may delegate this authority to the appropriate supervisory level in his agency.

(b) *Communication.* An agency shall establish procedures that ensure:

(1) That supervisors keep their employees currently advised of their performance, and

(2) That at least 60 days in advance of the date on which an employee will complete his waiting period, his supervisor shall inform him of any factor that raises a question about the employee's work being of an acceptable level of competence. However, a failure to inform or timely inform an employee under this paragraph does not delay or otherwise affect the determination required to be made under section 5335 of title 5, United States Code, and this section.

(c) *Determination.* (1) In making his determinations, the head of an agency or his designee shall make effective use of this authority to stimulate optimum performance among his employees and:

(i) Shall not award within-grade increases to employees who do not clearly meet the statutory standard for such award, recognizing that for these increases performance must be of sufficient level to merit a pay increase, not just adequate for retention on the job; and

(ii) Shall award within-grade increases to employees when they do clearly meet that standard and meet the other requirement of this subpart.

(2) The head of the agency or his designee in determining whether an employee's work is of an acceptable level of competence shall:

(i) Base his determination on the essential requirements of the employee's position;

(ii) Make the determination as of the completion of the waiting period;

(iii) Base his determination on the employee's performance during the waiting period; and

(iv) Record the determination in writing.

(3) When the head of an agency or his designee determines that an employee's work is not of an acceptable level of competence (hereinafter referred to as a "negative determination") under subparagraph (2) of this paragraph, he shall inform the employee in writing, not later than the completion of the waiting period:

(i) Of the basis for the negative determination; and

(ii) Of the employee's right to secure reconsideration of the negative determination as provided by paragraph (d) of this section and of the time limits within which the employee may request reconsideration.

(4) Failure to inform an employee of a negative determination as required by subparagraph (3) of this paragraph may not be the basis for changing a negative determination.

(5) When the head of an agency or his designee makes a negative determina-

tion without informing the employee 60 days in advance as provided by paragraph (b) of this section, he shall make another determination not later than 60 days after the date on which the employee completed the waiting period.

(d) *Reconsideration.* (1) The agency shall give the employee an opportunity to secure reconsideration of the negative determination when the employee makes a request in writing within 15 calendar days of his receipt of the notice of the agency's negative determination. The agency shall extend this time limit when it finds that the employee:

(i) Was not notified of the time limit and was not otherwise aware of it, or

(ii) Was prevented by circumstances beyond his control from requesting reconsideration within the time limit.

(2) An agency, in processing a request for reconsideration of a negative determination, shall use a uniform procedure that ensures:

(i) A prompt decision in writing by a higher level in the organization, where that exists, which took no part, formally or informally, in the original decision;

(ii) The right of the employee to have a representative of his own choosing in presenting his request;

(iii) The opportunity for the employee to contest, personally and in writing, the basis for the negative determination;

(iv) The freedom of the employee and his representative from restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of the request; and

(v) A reasonable amount of official time by the employee and his representative in presenting the request.

(3) When the decision on the employee's request for reconsideration sustains the original negative determination, the notice of decision shall inform the employee of his right to appeal that decision to the Commission and of the time limits within which he may file his appeal.

(4) When an employee files a request for reconsideration, the agency shall establish an employee reconsideration file which shall contain all pertinent documents relating to the negative determination and the request for reconsideration, including copies of the written negative determination and the basis therefor; the employee's written request for reconsideration; the report of investigation when an investigation was made; the written summary or transcript of any personal presentation made; and the agency's decision on the request for reconsideration. The file shall not contain any document that has not been made available to the employee or his representative with an opportunity to submit a written exception to any summary of the employee's personal presentation.

(e) *Appeal to the Commission.* (1) An employee may appeal to the Commission the decision by his agency sustaining the negative determination by writing to the Board of Appeals and Review, U.S. Civil Service Commission, Washington, D.C. 20415 (hereinafter referred to as the "Board") not later than 15 calendar

days after his receipt of the decision. The Board may extend this time limit when it finds that the employee:

(i) Was not notified of the time limit and was not otherwise aware of it, or

(ii) Was prevented by circumstances beyond his control from appealing within the time limit.

(2) The Board shall make its decision on the record established in the reconsideration proceedings in the agency.

(3) The decision of the Board is final and compliance with its recommendations for corrective action is mandatory.

(4) The Commissioners may, in their discretion, when in their judgment such action appears warranted by the circumstances, reopen and reconsider any previous decision.

(f) *Effect of change of a negative determination.* When a negative determination is changed under this section either after reconsideration or appeal to the Commission, the change supercedes the negative determination and the effective date of the within-grade increase for which he thus becomes eligible is the date on which the within-grade increase otherwise became due.

(g) *Subsequent determination.* When a determination is made that an employee's work is not of an acceptable level of competence and this determination is final, the head of the agency, or his designee, shall make a new determination within 52 calendar weeks of the end of the waiting period to which the negative determination applied. If the new determination is favorable to the employee the effective date of the within-grade increase for which he thus becomes eligible is the first day of the first pay period that begins on or after the date of the new determination. If the new determination is again negative, the employee is entitled to the notice and the right to reconsideration by his agency and the right to appeal to the Commission from this determination as provided by this section.

(h) *Administrative oversight, error, or delay.* When a determination by an agency prescribed by this section is not made on a timely basis through administrative oversight, error, or delay, the determination when made:

(1) Shall be based on the employee's performance during the period that would have been covered had the determination been timely made; and

(2) Is considered to have been made as of the date it would have been made were it not for the administrative oversight, error, or delay.

(i) *Waiver of requirement for determination.* The requirement for a determination as prescribed by paragraph (a) of this section is waived for periods of service which are counted as creditable service toward a waiting period under § 531.404 (c), (d), (e), or (f).

(j) *Waiver in retroactive correction cases.* The requirement for a determination as prescribed by paragraph (a) of this section is waived when (1) the waiting period is completed during a

period for which the employee is entitled to back pay under Subpart H of Part 550 of this chapter and (2) the employee had 60 days or less of service during that waiting period because of an unjustified or unwarranted personnel action.

§ 531.408 Effective date—within-grade increase.

(a) A within-grade increase is effective on the first day of the first pay period following completion of the required waiting period and compliance with the other conditions of eligibility.

(b) When the effective date of a within-grade increase and the effective date of a personnel action occur at the same time, the agency shall process the actions in the order that gives the employee the maximum benefit.

§ 531.409 Corrective action—within-grade increase.

(a) When a within-grade increase is delayed beyond its proper effective date through administrative oversight, error, or delay, the agency shall make the increase effective as of the date it was properly due.

(b) When an improper personnel action is corrected in accordance with a mandatory statutory or regulatory requirement, the waiting period is not extended and begins on the date it would have begun had the improper action not occurred.

§ 531.410 Authority—quality increase.

The head of an agency, or a person authorized to act in his behalf, may grant a quality increase in accordance with section 5336 of title 5, United States Code, and this subpart.

§ 531.411 Quality of performance required.

(a) A supervisory recommendation for a quality increase shall be in writing and shall show why performance can be characterized as high quality performance above that ordinarily found in the type of position concerned.

(b) Before a quality increase may be granted, the head of an agency, or a person authorized to act in his behalf, shall find that (1) the employee concerned has been performing the most important functions of his position in a manner that substantially exceeds normal requirements so that when viewed as a whole the employee's work performance is of a high level of effectiveness, and (2) the employee's high level of effectiveness has been sustained to the extent that it may be considered characteristic of his performance.

§ 531.412 Agency plans—quality increase.

Each agency shall establish a plan for granting quality increases. The plan shall include standards and procedures to provide for the granting of quality increases with reasonable consistency throughout the agency and with fairness to all employees.

§ 531.413 Reports—quality increase.

The Commission, from time to time, may request agencies to report on the use of the authority to grant quality increases.

Subpart E—Salary Retention

§ 531.501 Purpose.

The purpose of this subpart is to provide the regulations necessary to administer section 5337 of title 5, United States Code, and carry out the intent of Congress in establishing salary retention benefits for General Schedule employees whose demotions are without personal cause, not at their own request, and not in a reduction in force due to lack of funds or curtailment of work.

§ 531.502 Entitlement.

An employee who is demoted from one General Schedule grade to another and qualifies under section 5337 of title 5, United States Code, and this subpart is entitled to salary retention.

§ 531.503 Definitions.

In this subpart:

(a) "Agency" has the meaning given that word by section 5102 of title 5, United States Code.

(b) "Employee" means an employee in a General Schedule position.

(c) "Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

(d) "Salary retention" means an employee's entitlement to be paid at a rate fixed under subchapter III of chapter 53 of title 5, United States Code, and this subpart, and includes those rates preserved by section 2 of the Act of August 23, 1958, Public Law 85-737, 72 Stat. 830.

(e) "Salary retention period" means the period of not to exceed 2 continuous years during which an employee is entitled to salary retention under section 5337 of title 5, United States Code.

§ 531.504 Documentation.

When an employee is granted the benefits of this subpart, the agency concerned shall:

(a) Notify him of the action taken and the effective date thereof; and

(b) Make a written record of the action which becomes a permanent part of the employee's Official Personnel Folder even though no salary change occurs at the time of demotion.

§ 531.505 Equivalent tenure.

(a) *Excepted service.* When an agency has established an employment system for its excepted service on a basis comparable to the career-conditional or career employment system in the competitive service, the agency shall determine which excepted employees have tenure equivalent to career-conditional or career employees in the competitive service. When an agency has not established such a system, each excepted employee having an appointment not limited to 1 year or less is deemed to have

tenure equivalent to a career-conditional or career employee in the competitive service.

(b) *Status quo employment.* When an employee had an appointment in the excepted service of tenure equivalent to that held by a career-conditional or career appointee in the competitive service, and he continues to serve under the same appointment as a status quo employee, he continues as a status quo employee to have tenure equivalent to a career-conditional or career appointee in the competitive service in determining his entitlement to salary retention under this subpart.

§ 531.506 Demotion for personal cause.

A demotion or other personnel action for personal cause is an action based on conduct, character, or inefficiency of the employee.

§ 531.507 Demotion at employee's request.

The reference in section 5337(a)(3) of title 5, United States Code, to the demotion of an employee "at his own request," includes a demotion to which he has consented in lieu of a proposed adverse action for personal cause, and one that he personally requests for another reason. The employee's consent to, or personal request for, a demotion shall be in writing and signed by the employee.

§ 531.508 Demotion in a reduction in force.

Salary retention does not apply to a demotion in a reduction in force due to (a) a lack of funds for personal services in the competitive area when that lack of funds results from a limitation imposed on an agency or a military department by outside authority, or (b) a curtailment of the number of man hours required to perform the current work of the agency or department in the competitive area.

§ 531.509 Continuous service.

The period of 2 continuous years of service immediately prior to a demotion required by section 5337(a)(4) of title 5, United States Code, must be served in a General Schedule position or in a position covered by § 539.201 of this chapter. This period includes any period or periods of nonpay status occurring in the 2-year period. Similarly, the salary retention period after demotion includes any period or periods in a nonpay status.

§ 531.510 Transfer of functions.

The movement of an employee with his function in a transfer of function between agencies does not terminate or defeat the employee's eligibility for salary retention in determining whether he remained "in the same agency," as required by section 5337(a)(4) of title 5, United States Code.

§ 531.511 Work performance.

An employee who has not received an official rating of less than satisfactory covering any part of the 2-year period required to be served immediately prior

to a demotion is eligible for salary retention.

§ 531.512 Rate determination.

(a) At the time of an employee's demotion, the agency shall select a rate in the grade to which he is demoted which would have been the employee's rate of basic pay if he were not entitled to a retained rate. When the agency does not select a higher rate under § 531.203(c), it shall determine the rate, subject to the provisions of paragraph (b) of this section, as follows:

(1) When the employee's retained rate is equal to a rate in the grade to which he is demoted, that rate shall be selected.

(2) When the employee's retained rate falls between two rates of the grade to which he is demoted, the lower of the two rates shall be selected.

(3) When the employee's retained rate is above the maximum rate of the grade to which he is demoted, the maximum rate shall be selected.

(b) When the employee's retained rate is a rate established under section 5303 of title 5, United States Code, the agency shall determine what the employee's rate in the grade from which demoted would have been if the rate established by section 5303 had not applied to him and this rate shall be considered to be the employee's retained rate for the purpose of selecting a rate under the provisions of subparagraph (1), (2), or (3) of paragraph (a) of this section.

(c) At the time of the employee's demotion, the agency shall (1) record in the employee's Official Personnel Folder the rate selected in accordance with paragraph (a) of this section, and (2) shall make all determinations of within-grade increases, in accordance with Subpart D of this part, on this rate during the salary retention period and record these determinations in the employee's Official Personnel Folder.

§ 531.513 Retention period—reassignment.

(a) When an employee is reassigned to another position at his current grade level, the reassignment does not terminate his retained rate, except as provided in paragraph (b) of this section.

(b) When an employee is reassigned to another position at his current grade level for personal cause, at his own request, or in a reduction in force due to lack of funds or curtailment of work, the reassignment terminates his retained rate.

(c) An employee receiving a retained rate under section 2 of the act of August 23, 1958, Public Law 85-737, 72 Stat. 830, holds that retained rate without time limitation in accordance with that section. However, if the employee is reassigned, the agency shall terminate his retained rate and adjust his rate of basic pay in a manner comparable to that provided in § 531.515.

(d) When an employee's retained rate is terminated by reassignment, the agency shall furnish him with a written notification of the effective date of the termination of the retained rate and of his right to appeal under § 531.516.

§ 531.514 Within-grade increases.

An employee with a retained rate is eligible for within-grade increase, only in the grade in which he is serving and on the rate selected under § 531.512.

§ 531.515 Pay adjustment.

When an employee's retained rate is terminated because of the expiration of the salary retention period, the agency shall adjust his rate of basic pay within the grade in which he is serving to the rate previously selected in accordance with § 531.512(a) together with any within-grade increases to which the employee became entitled during the salary retention period.

§ 531.516 Appeals to the Commission.

(a) *General.* An employee who is reduced in grade or pay, or reassigned during his salary retention period, may appeal to the Commission from a decision of the agency that (1) he is not entitled to salary retention, or (2) will terminate or adversely affect the salary retention he is currently receiving. This right of appeal does not in any way restrict an employee's entitlement to appeal to the Commission under another part of this chapter or under statute.

(b) *Agency notification to employee.* When an employee is reduced in grade or pay, or reassigned during a salary retention period, the agency shall inform him in writing whether or not he is entitled to salary retention, or the salary retention he is currently receiving will be terminated or adversely affected. When an agency decides that (1) an employee is not entitled to salary retention, or (2) the salary retention an employee is currently receiving will be terminated, the agency shall inform him in writing of his right of appeal to the Commission under this section.

(c) *Time limit.*—(1) *General.* Except as provided in subparagraph (2) of this paragraph, an employee may submit an appeal to the Commission at any time after his receipt of a decision to deny or terminate salary retention but not later than 15 calendar days after his demotion or reassignment has been effected.

(2) *Exceptions.* When an employee appeals a decision to deny or terminate salary retention to the agency under established procedures, other than those based on Subpart B of Part 771 of this chapter, the time limit on an appeal to the Commission is not later than 15 calendar days after receipt of the notice of final decision on the appeal to the agency. The Commission may extend the time limits in this paragraph when the employee shows that he was not informed of his right of appeal or of the applicable time limit and was not otherwise aware of that right or that time limit, or that he was prevented by circumstances beyond his control from appealing within the time limit.

(d) *How submitted.* The appeal shall be in writing and shall set forth the employee's reasons why he considers the agency's decision erroneous, with such offer of proof and evidence as he is able to submit.

(e) *Agency action when Commission recommends corrective action.* (1) It is mandatory that the agency take all corrective action recommended in the Commission's initial decision on an appeal unless it makes a timely appeal to the Board of Appeals and Review.

(2) The decision of the Board is final and compliance with its recommendation for corrective action is mandatory.

PART 532—PAY UNDER PREVAILING RATE SYSTEMS

Subparts A—F—[Reserved]

Subpart G—Appeals

- Sec.
532.701 Applicability.
532.702 Agency responsibility.
532.703 Appeal to the Commission.

AUTHORITY: The provisions of this Part 532 issued under 5 U.S.C. 5345.

Subparts A—F—[Reserved]

Subpart G—Appeals

§ 532.701 Applicability.

This subpart applies to an employee in a trades, crafts, or labor occupation who is subject to section 5341(a) of title 5, United States Code (referred to in this subpart as an employee) and to an agency in which such an employee is employed.

§ 532.702 Agency responsibility.

(a) Each agency shall establish a system for processing an application by an employee for a review of the correctness of the classification of his position (referred to in this subpart as an application), including the title or series when appropriate.

(b) In establishing the system required by this section, an agency, as a minimum, shall provide that:

(1) The provisions of the system shall be published and its employees shall be informed where a published copy is available for review.

(2) An application shall be in writing and contain the reasons the employee believes his position is erroneously classified.

(3) An application may be filed at any time. However, when an application involves a downgrading or other classification action which resulted in a reduction in grade or level of pay, in order to be entitled to retroactive corrective action the application must be filed:

(i) Within the time limits of and as an appeal under the agency appeals system established under Part 771 of this chapter; or

(ii) If the employee is not covered by Part 771, within 15 calendar days of the effective date of the downgrading or other classification action.

(4) An employee may select a representative of his own choosing and the employee (and his representative when the representative is also employed by the agency) shall be granted a reasonable time in presenting his application, and shall be assured freedom from restraint, interference, coercion, or reprisal in presenting his application. An employee's representative does not have

a right to be present during a desk audit conducted by the Commission.

(5) The application shall be processed and decided promptly, with a provision that when a decision has not been issued within 60 days of the date the employee filed the application, he may request the next higher level in the agency with classification authority to assume jurisdiction of his application and the next higher level will promptly process and decide it.

(6) An employee shall promptly furnish such facts as may be requested by the agency.

(7) An application shall be canceled and the employee so notified in the following circumstances:

(i) On receipt of a written request by an employee;

(ii) On failure to prosecute when an employee does not furnish requested information and duly proceed with the advancement of his application; however, instead of cancellation for failure to prosecute, the application may be adjudicated if the information is sufficient for that purpose; or

(iii) On notice that an employee has left the position, except when he would be entitled to retroactive benefits including benefits allowable after the death of an employee.

(8) No more than one level of review may be established within an agency before a final decision may be issued, and that level of review, when possible, must be above the level of classification authority which classified the position.

(9) When an employee not subject to Part 771 of this chapter requests a review of a downgrading or other classification action that resulted in a reduction of pay and the decision of an agency reverses in whole or in part the downgrading or other classification action, the effective date of that decision shall be retroactive to the effective date of the action being reviewed when the initial application to the agency was submitted not later than 15 calendar days after the effective date of the action taken as a result of the classification decision. However, when the agency decision raises the grade or level of the position above its grade or level immediately preceding the downgrading, retroactivity will apply only to the extent of restoration to the grade or level immediately preceding the downgrading.

(10) The right of a retroactive effective date is preserved when an agency finds that an employee was not notified of the applicable time limit for review and was not otherwise aware of the limit, or that circumstances beyond his control prevented him from filing his application within the prescribed time limit.

(11) The effective date of a change in the classification of a position shall be specified in the agency decision and, unless otherwise required by this subpart, may not be earlier than the date of the decision but in no case may it be later than the beginning of the first pay period which begins after the 60th day from the date the application was filed. How-

ever, when the agency decision will result in a downgrading or other classification action that will reduce the pay of the incumbent of the position, the effective date may not be earlier than the time required to effect the decision in accordance with procedures required by applicable law and regulation.

(12) When an application has been properly filed before the death of an employee and a favorable decision would entitle the employee to retroactive corrective action, it shall be processed to completion after his death and any appropriate corrective action made by amendment of the records of the agency.

(13) The decision on an application shall (i) be based on the record, (ii) be in writing, (iii) inform the employee either in the decision or as an attachment to the decision of the reasons for the decision, including an analysis of the classification of the position (i.e., a comparison of the position with the standard appropriate to the position), and (iv) inform the employee of his right to appeal the decision to the Commission and of the time limits within which the appeal must be filed.

(c) The agency is responsible for compiling and maintaining a classification review file which shall constitute the record and which shall not contain any document or information which the employee has not been given an opportunity to review.

§ 532.703 Appeal to the Commission.

(a) An employee may appeal the classification of his position to the Bureau of Inspections of the Commission only (1) after the agency has issued a decision under the system established under § 532.702, and (2) if he files the appeal with the Commission within 15 calendar days after receipt of the decision of the agency. The Commission may extend this time limit on a showing by the employee that he was not notified of the applicable time limit and was not otherwise aware of the limit, or that circumstances beyond his control prevented him from filing an appeal within the prescribed time limit.

(b) An employee shall make his appeal in writing and shall identify specifically the portions of the decision or classification analysis of the agency with which he disagrees.

(c) The Commission shall base its decision on the record established in the agency, except that when the Commission investigates or audits the position it may take the results of the investigation or audit into consideration.

(d) The Commission shall notify the employee and the agency in writing of its decision.

(e) The appeal of an employee shall be canceled and the employee so notified in the following circumstances:

(1) On receipt of his written request;

(2) On failure to prosecute, when the employee does not furnish requested information and duly proceed with the advancement of his appeal; however, instead of cancellation for failure to prosecute, an appeal may be adjudicated if the information is sufficient for that purpose.

The Commission may reopen a canceled appeal on a showing that circumstances beyond the control of the employee prevented him from prosecuting the appeal, or

(3) On notice that the employee has left the position, except when he would be entitled to the retroactive benefits, including benefits allowable after the death of an appellant.

(f) An appeal decision made by the Commission is final. There is no further right to appeal. The appeal decision constitutes a certificate which is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the Government.

(g) The Commissioners may, in their discretion, when in their judgment such action appears warranted by the circumstances, reopen and reconsider any previous decision.

PART 534—PAY UNDER OTHER SYSTEMS

Subpart A—[Reserved]

Subpart B—Trainees in Government Hospitals

- Sec.
- 534.201 Exclusions from statutory pay provisions.
- 534.202 Maximum stipends.
- 534.203 Stipends of trainees assigned to Federal hospitals as affiliates.
- 534.204 Agency requests for additional exclusions.
- 534.205 Extent of regulations.

MAXIMUM STIPENDS PRESCRIBED, EFFECTIVE JANUARY 14, 1968

Code symbol	Academic level of approved training program	Maximum stipends ^{1,2}		
		Per year	Per month	Per week
L-A	Below high school graduation	\$3,398	\$283	\$65
L-1	First year college undergraduate	3,697	308	71
L-2	Second year college undergraduate	4,019	334	77
L-3	Third year college undergraduate	4,317	359	83
L-4	Fourth year college undergraduate	4,663	388	89
L-5	First year postgraduate predoctoral	5,007	417	96
L-6	Second year postgraduate predoctoral; Third year medical school	6,059	504	116
L-7	Third year postgraduate predoctoral; Fourth year medical school	7,247	603	139
L-8	Fourth year postgraduate predoctoral; Medical or dental internship	7,939	661	152
L-9	Fifth year postgraduate without doctorate; First year postdoctoral (Ph. D.); First year medical or dental residency	8,691	724	167
L-10	Second year postdoctoral (Ph. D.); Second year medical or dental residency	10,315	859	198
L-11	Third year medical or dental residency	11,461	955	220
L-12	Fourth year medical or dental residency	12,157	1,013	233
L-13	Fifth year medical residency	14,257	1,188	274

¹ Includes overtime pay, maintenance allowances, and other payments in money or kind.

² Subject to adjustment for lesser periods.

(b) Each category of position is assigned a code symbol, which determines the applicable maximum stipend, as follows:

Auxiliary medical therapy students, Department of Health, Education, and Welfare, as follows: Vocational guidance counselors (student), recreation leaders (student), occupational therapists (student), vocational rehabilitation advisers (student), teachers (student) (educational administration and supervision), teachers (student) (business training), teachers (student) (music), teachers (student) (art), chaplains (student): Approved training after a minimum of one year college level training. L-2

Bacteriological interns, Department of Health, Education, and Welfare: Ap-

proved postgraduate training during program for the Master of Science degree L-5

Chaplain interns, Department of Health, Education, and Welfare: First year approved clinical training following completion of three or more years approved postgraduate theological training. L-8

Chaplain residents, Department of Health, Education, and Welfare: Fifteen months approved clinical training following completion of four or more years approved postgraduate theological training. L-9

Chaplain residents, Department of Health, Education, and Welfare: Third year approved clinical training following completion of five or more years approved postgraduate theological training. L-10

Subpart C—Scientific and Professional Positions Requiring Specially Qualified Personnel

- Sec.
- 534.301 Approval of agency pay determinations and adjustments.

AUTHORITY: The provisions of this Part 534 issued under 5 U.S.C. 5351, 5352, 5353, 5341, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Trainees in Government Hospitals

- § 534.201 Exclusions from statutory pay provisions.

In addition to the positions specifically excluded by sections 5102 and 5541 of title 5, United States Code, the positions named in § 511.201(b) of this chapter are excluded from chapter 51, subchapter III of chapter 53, subchapter V of chapter 55, and sections 5504 and 6101 of title 5, United States Code.

- § 534.202 Maximum stipends.

(a) Maximum stipends (including overtime pay, maintenance allowances, and other payments in money or kind) are prescribed according to the academic levels of the approved training for which the positions are excluded from chapter 51, subchapter III of chapter 53, subchapter V of chapter 55, and sections 5504 and 6101 of title 5, United States Code.

Chaplain student interns, Department of Health, Education, and Welfare and Government of the District of Columbia: Approved training during second year approved postgraduate theological training. L-6

Clinical psychology interns, Department of Health, Education, and Welfare and Government of the District of Columbia: Second year approved postgraduate training (predoctoral). L-6

Department of Health, Education, and Welfare, Department of the Navy, and Government of the District of Columbia: Third year approved postgraduate training (predoctoral). L-7

Department of Health, Education, and Welfare and Government of the District of Columbia: Fourth year approved postgraduate training (predoctoral). L-8

Clinical psychology residents, Department of Health, Education, and Welfare and Government of the District of Columbia: First year approved postdoctoral training. L-9

Department of Health, Education, and Welfare: Second year approved postdoctoral training. L-10

Clinical psychology students, Department of Health, Education, and Welfare: First year approved postgraduate training. L-5

Counseling psychology interns, Department of Health, Education, and Welfare: Approved postgraduate training during program for graduate degree. L-5

Dental hygiene students, Department of Health, Education, and Welfare: Approved training during clinical affiliation. L-4

Dental hygiene students, Department of the Navy: Approved training during clinical affiliation. L-1, L-2

Dental interns: Approved internship. L-8

Dental residents:

First year approved residency. L-9

Second year approved residency. L-10

Third year approved residency. L-11

Fourth year approved residency. L-12

Dental student interns, Department of Health, Education, and Welfare: Approved training after a minimum of 1 year dental school training. L-5

Dietetic interns (student dietitians): One year approved postgraduate training. L-5

Dietetic residents: Second year approved postgraduate training. L-6

Hospital administration interns, Department of Health, Education, and Welfare: First year approved postgraduate training. L-5

Hospital administration residents, Second year approved postgraduate training. L-6

Hospital administration residents, Department of Health, Education, and Welfare: Third year approved postgraduate training. L-7

Hospital administration residents, Veterans Administration:

First year approved postgraduate training. L-5

Third year approved postgraduate training. L-7

Fourth year approved postgraduate training. L-8

Hospital recreation students, Department of Health, Education, and Welfare: Approved training after a minimum of 3 years' college level training. L-4

Medical interns: Approved internship. L-8

Medical residents:

First year approved residency. L-9

Second year approved residency. L-10

Third year approved residency-----	L-11	postgraduate training during program for Master of Science degree-----	L-5	training in a degree program, after a minimum of two years college level training-----	L-3
Fourth year approved residency-----	L-12	Sociological interns, Department of Health, Education, and Welfare: Approved training in a degree program after a minimum of 1 year of college level training-----	L-2	Student nurses, Department of Health, Education, and Welfare: Approved training during clinical affiliation-----	L-1
Fifth year approved residency-----	L-13	Approved training in a degree program after a minimum of 2 years of college level training-----	L-3	Approved training after a minimum of 1 year college level training-----	L-2
Medical record interns, Department of Health, Education, and Welfare: One year approved training after a minimum of three years college level training-----	L-4	Approved training after a minimum of 3 years college level training-----	L-4	Approved training in a degree program, after a minimum of 2 years college level training-----	L-3
Medical record students, Department of Health, Education, and Welfare: One year approved training after two years college level training-----	L-3	Sociology interns, Department of Health, Education, and Welfare: Approved postgraduate training during program for graduate degree-----	L-5	Approved training in a degree program, after a minimum of 3 years college level training-----	L-4
Medical record students, Department of Health, Education, and Welfare: Approved training during the first year college level training-----	L-1	Speech pathology and audiology students, Department of Health, Education, and Welfare: Approved postgraduate training during program for graduate degree-----	L-5	Student nursing assistants, Department of Health, Education, and Welfare: Eighteen weeks approved clinical training-----	L-A
Approved training after a minimum of 1 year college level training-----	L-2	Speech therapy interns, Department of Health, Education, and Welfare: Approved postgraduate training during program for graduate degree-----	L-5	Student pharmacists, Department of Health, Education, and Welfare: Approved training after a minimum of three years college level training-----	L-4
Medical student interns: Approved training during third year of medical school-----	L-6	Student dental assistants, Department of Health, Education, and Welfare: Approved training during clinical affiliation-----	L-1	Student practical nurses, D.C. General Hospital, Department of Health, Education, and Welfare, and Department of the Navy: Approved training during clinical affiliation-----	L-A
Approved training during fourth year of medical school-----	L-7	Student dental technicians, Department of Health, Education, and Welfare: Approved training during clinical affiliation-----	L-2	Department of Health, Education, and Welfare: One year approved training-----	L-A
Medical technology interns, Department of the Navy: One year approved training after a minimum of 3 years college level training-----	L-4	Student dietitians, Department of the Army, and Department of Health, Education, and Welfare: Approved training after a minimum of three years college level training-----	L-4	Student public health nutritionists, Department of Health, Education, and Welfare: Approved training during program for graduate degree-----	L-5
Occupational therapy interns (student occupational therapists): Approved clinical training in affiliation with an approved school of occupational therapy-----	L-4	Student educational therapists, Department of Health, Education, and Welfare: Approved training after a minimum of two years college level training-----	L-3	Student social workers, Department of the Navy: Approved training during program for a graduate degree-----	L-5
Occupational therapy students, Department of the Army: Approved training after a minimum of two years college level training-----	L-3	Student food service administration trainees, Department of Health, Education, and Welfare: Approved training during clinical affiliation-----	L-1	Student speech pathologists, Department of the Navy: Approved training during program for a graduate degree-----	L-5
Pharmaceutical interns, Department of Health, Education, and Welfare: One year approved postgraduate training-----	L-5	Student hospital administration interns, Department of Health, Education, and Welfare: Approved training prior to first year postgraduate training in hospital administration-----	L-4	Student X-ray technicians, Department of Health, Education, and Welfare: Twenty-four months approved training-----	L-1
Physical therapy interns (student physical therapists): Approved clinical training in affiliation with an approved school of physical therapy-----	L-4	Student laboratory assistants, Department of Health, Education, and Welfare: Approved training after a minimum of two years high school level training-----	L-A	First twelve months-----	L-1
Physical therapy students, Department of the Army: Approved training after a minimum of two years college level training-----	L-3	Student laboratory technicians, Department of the Army and Department of Health, Education, and Welfare: One year approved training after a minimum of two years college level training-----	L-3	Second twelve months-----	L-2
Psychiatric nurse interns (postgraduate student nurses), Department of Health, Education, and Welfare: One year approved postgraduate training-----	L-5	Student manual arts therapists, Department of Health, Education, and Welfare: Approved training after a minimum of two years college level training-----	L-3		
Psychiatric nurse students, Department of Health, Education, and Welfare: Approved training, undergraduate level-----	L-4	Student medical librarians: First and second years approved postgraduate training during program for Master of Science degree-----	L-5, L-6		
Psychodrama interns, Department of Health, Education, and Welfare: First year approved postgraduate training-----	L-5	Student medical technologists (interns), Department of the Army and Department of Health, Education, and Welfare: One year approved training after a minimum of three years college level training-----	L-4		
Second year approved postgraduate training-----	L-6	Student medical typists, Department of Health, Education, and Welfare: Approved training for a 90-day period-----	L-A		
Third year approved postgraduate training-----	L-7	Student nurse anesthetists, Department of Health, Education, and Welfare: Eighteen months approved postgraduate training-----	L-5, L-6		
Psychodrama residents, Department of Health, Education, and Welfare: Fourth year approved postgraduate training-----	L-8	Student nurses: Three years approved training (diploma course). L-1, L-2, L-3			
Fifth year approved postgraduate training or first year approved post-doctoral training-----	L-9	Department of the Army: Approved			
Psychology student trainees, Department of the Navy: Approved postgraduate training in a practicum following attainment of the bachelor's degree-----	L-5				
Public Health nurse interns, Department of Health, Education, and Welfare: Approved training after a minimum of three years college level training-----	L-4				
Recreation interns, Department of Health, Education, and Welfare: One year approved postgraduate training-----	L-5				
Social worker interns (student social workers), Department of Health, Education, and Welfare: Approved					

(c) Maximum stipends for positions in the Public Health Service (a constituent agency of the Department of Health, Education, and Welfare) in which duty requires intimate contact with persons afflicted with leprosy are increased above the rates prescribed in paragraph (a) of this section to the same extent that additional pay is provided by Public Health Service Regulations (42 CFR 22.1) for employees subject to the General Schedule.

(5 U.S.C. 5102)

§ 534.203 Stipends of trainees assigned to Federal hospitals as affiliates.

A trainee at a non-Federal hospital assigned to a Federal hospital as an affiliate for part of his training may not receive a stipend from the Federal hospital other than any maintenance provided.

§ 534.204 Agency requests for additional exclusions.

An agency may request the Commission to:

(a) Exclude from chapter 51, subchapter III of chapter 53, subchapter V of chapter 55, and sections 5504 and 6101 of title 5, United States Code, positions in addition to those referred to in § 534.201 which are filled by student-employees who are assigned or attached to a hos-

pital, clinic, or medical or dental laboratory; and

(b) Prescribe maximum stipends for such positions.

The agency shall submit each request to the Commission with full supporting information, including complete identification of the positions concerned.

§ 534.205 Extent of regulations.

Maximum stipends provided in § 534.202 apply to any hospital, clinic, or medical or dental laboratory, operated by any department, agency, or instrumentality of the Federal Government or by the District of Columbia, unless rates of pay are otherwise provided by law.

Subpart C—Scientific and Professional Positions Requiring Specially Qualified Personnel

§ 534.301 Approval of agency pay determinations and adjustments.

Each rate of pay fixed for a scientific or professional position requiring specially qualified personnel under section 5361 of title 5, United States Code, or a similar statute, is subject to the prior approval of the Commission. The prior approval of the Commission is required for both original and subsequent appointments to these positions, and for the pay adjustment for an incumbent of such a position. When an agency requests the approval of the Commission for a rate of pay or a pay adjustment, it shall submit adequate supporting information.

(5 U.S.C. 5361)

PART 539—CONVERSIONS BETWEEN PAY SYSTEMS

Subpart A—[Reserved]

Subpart B—Conversions to Classification Pay System

Sec.

- 539.201 Applicability.
- 539.202 Definitions.
- 539.203 Rate of basic pay in conversion actions.

AUTHORITY: The provisions of this Part 539 issued under 5 U.S.C. 5115, 5334, 5338.

Subpart A—[Reserved]

Subpart B—Conversions to Classification Pay System

§ 539.201 Applicability.

This subpart applies in fixing the rate of basic pay of each employee initially brought into a position subject to the General Schedule by converting his position to a position subject to the General Schedule.

§ 539.202 Definitions.

In this subpart:

(a) "Agency" has the meaning given that word by section 5102 of title 5, United States Code.

(b) "Employee" means an employee of an agency to whom this subpart applies.

(c) "Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an

employee before any deductions and exclusive of additional pay of any kind.

§ 539.203 Rate of basic pay in conversion actions.

When an employee occupies a position not subject to the General Schedule and the employee and his position are initially brought under the General Schedule pursuant to a reorganization plan or other legislation, an Executive order, a decision of the Commission under section 5103 of title 5, United States Code, or an action by an agency under authority of § 511.202 of this chapter, the agency shall determine the employee's rate of basic pay as follows:

(a) When the employee is receiving a rate of basic pay below the minimum rate of the grade in which his position is placed, his pay shall be increased to the minimum rate.

(b) When the employee is receiving a rate of basic pay equal to a rate in the grade in which his position is placed, his pay shall be fixed at that rate.

(c) When the employee is receiving a rate of basic pay that falls between two rates of the grade in which his position is placed, his pay shall be fixed at the higher of the two rates.

(d) When the employee is receiving a rate of basic pay above the maximum rate of the grade in which his position is placed, he is entitled to retain his former rate as long as he remains continuously in the same position or in a position of higher grade in the same agency, or until he receives a higher rate of basic pay by operation of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, and Part 531 of this chapter. The employee may retain his former rate on subsequent reassignment as defined in § 531.202(m) of this chapter. If the employee is subsequently demoted to a position subject to the General Schedule, the agency shall determine his rate of basic pay in accordance with § 531.203(c) or Subpart E of Part 531 of this chapter, as appropriate.

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

GENERAL PROVISIONS

- Sec.
- 550.101 Coverage and exemptions.
- 550.102 Entitlement.
- 550.103 Definitions.
- 550.105 Maximum limitation.

OVERTIME PAY

- 550.111 Authorization of overtime pay.
- 550.112 Computation of overtime work.
- 550.113 Computation of overtime pay.
- 550.114 Compensatory time off for irregular or occasional overtime work.

NIGHT PAY

- 550.121 Authorization of night pay differential.
- 550.122 Computation of night pay differential.

PAY FOR HOLIDAY WORK

- 550.131 Authorization of pay for holiday work.
- 550.132 Relation to overtime, night, and Sunday pay.

REGULARLY SCHEDULED STANDBY DUTY PAY

Sec.

- 550.141 Authorization of premium pay on an annual basis.
- 550.142 General restrictions.
- 550.143 Bases for determining positions for which premium pay under § 550.141 is authorized.
- 550.144 Rates of premium pay payable under § 550.141.

ADMINISTRATIVELY UNCONTROLLABLE WORK

- 550.151 Authorization of premium pay on an annual basis.
- 550.152 General restrictions.
- 550.153 Bases for determining positions for which premium pay of 15 percent under § 550.151 is authorized.
- 550.154 Rates of premium pay payable under § 550.151.

GENERAL RULES GOVERNING PAYMENTS OF PREMIUM PAY ON AN ANNUAL BASIS

- 550.161 Responsibilities of the agencies.
- 550.162 Payment provisions.
- 550.163 Relationship to other payments.
- 550.164 Construction and computation of existing aggregate rates.

PAY FOR SUNDAY WORK

- 550.171 Authorization of pay for Sunday work.
- 550.172 Relation to overtime, night, and holiday pay.

Subpart B—[Reserved]

Subpart C—Allotments and Assignments From Federal Employees

- 550.301 Definitions.
- 550.302 Authority of Federal agency.
- Sec.
- 550.303 Authorized allotments.
- 550.304 Circumstances under which allotments are permitted.
- 550.305 Purposes for which allotments may be made.
- 550.306 Authorized allottees.
- 550.307 Limitations on allotments.
- 550.308 Discontinuance of allotment.
- 550.309 Fee for service.

Subpart D—Payments During Evacuation

- 550.401 Purpose.
- 550.402 Applicability.
- 550.403 Employee coverage.
- 550.404 Definitions.
- 550.405 Limitations.
- 550.406 Approval of agency regulations.
- 550.407 Payment to employees of other agencies.

Subpart E—Pay From More Than One Position

- 550.501 Scope.
- 550.502 Definitions.
- 550.503 Exceptions in emergencies.
- 550.504 General exceptions.
- 550.505 Specific exceptions.
- 550.506 Prior approval.
- 550.507 Report to the Commission.

Subpart F—Reduction-in-Retired-Pay Provisions of the Dual Pay Statute

- 550.601 Scope.
- 550.602 Definitions.
- 550.603 Prior approval.

Subpart G—Severance Pay

- 550.701 Coverage.
- 550.702 Entitlement.
- 550.703 Definitions.
- 550.704 General provisions.
- 550.705 Failure to accompany activity.
- 550.706 Resignation in lieu of involuntary separation.
- 550.707 Postponement of payments.
- 550.708 Service with county committees.

Subpart H—Back Pay

- Sec.
550.801 Scope.
550.802 Definitions.
550.803 Determining entitlement.
550.804 Corrective action.

Subpart I—Pay for Irregular or Intermittent Duty Involving Physical Hardship or Hazard

- 550.901 Purpose.
550.902 Definitions.
550.903 Establishment of hazard pay differentials.
550.904 Authorization of hazard pay differential.
550.905 Payment of hazard pay differential.
550.906 Termination of hazard pay differential.
550.907 Relationship to additional pay payable under other statutes.

Appendix A—Schedule 1 of pay differentials authorized for irregular or intermittent hazardous duty under Subpart I.

Schedule 2 of pay differentials authorized under authority of § 550.904(a) and (b).

Appendix A-1—Windchill Chart.

Subpart A—Premium Pay

GENERAL PROVISIONS

AUTHORITY: The provisions of this Subpart A issued under 5 U.S.C. 5548, unless otherwise noted, §§ 550.141 to 550.164 also issued under 5 U.S.C. 5545.

GENERAL PROVISIONS

§ 550.101 Coverage and exemptions.

(a) *Employees to whom this subpart applies.* (1) This subpart applies to each employee in or under an Executive agency as defined by section 105 of title 5, United States Code, except those named in paragraph (b) of this section.

(2) The sections in this subpart incorporating special provisions for certain types of work (§§ 550.141 to 550.164, inclusive) apply also to each employee of the judicial branch, legislative branch, and the government of the District of Columbia who is subject to subchapter V of chapter 55 of title 5, United States Code.

(b) *Employees to whom this subpart does not apply.* This subpart does not apply to:

- (1) An elected official;
- (2) The head of a department;
- (3) An employee in the postal field service;
- (4) An employee whose basic pay is fixed and adjusted from time to time in accordance with prevailing rates by a wage board or similar administrative authority serving the same purpose, except that § 550.113(d) is applicable to such an employee whose rate of basic pay is fixed on an annual or monthly basis;
- (5) An employee outside the continental United States or in Alaska who is paid in accordance with local prevailing wage rates for the area in which employed;
- (6) An employee of the Tennessee Valley Authority;
- (7) An employee of the Central Intelligence Agency (sec. 10, 63 Stat. 212, as amended; 50 U.S.C. 403j);
- (8) A seaman to whom section 1(a) of the act of March 24, 1943 (57 Stat. 45; 50 U.S.C. App. 1291(a)) applies;

(9) A member of the U.S. Park Police or the White House Police;

(10) An officer or member of the crew of a vessel, whose pay is fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and practices in the maritime industry (30 Comp. Gen. 158);

(11) A civilian keeper of a lighthouse, or a civilian employed on a lightship or another vessel of the Coast Guard (14 U.S.C. 432(f));

(12) A physician, dentist, nurse, or any other employee in the Department of Medicine and Surgery, Veterans Administration, whose pay is fixed under chapter 73 of title 38, United States Code;

(13) A student-employee as defined by section 5351 of title 5, United States Code;

(14) An employee of the Environmental Science Services Administration engaged in the conduct of meteorological investigations in the Arctic region (62 Stat. 286; 15 U.S.C. 327);

(15) An employee of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives; or

(16) A "teacher" or an individual holding a "teaching position" as defined by section 901 of title 20, United States Code.

(c) *Services to which this subpart does not apply.* This subpart does not apply to overtime, night, or holiday services for which additional pay is provided by the act of:

(1) February 13, 1911, as amended (36 Stat. 899, as amended; 19 U.S.C. 261, 267), involving inspectors, storekeepers, weighers, and other customs officers and employees;

(2) July 24, 1919 (41 Stat. 241; 7 U.S.C. 394), involving employees engaged in enforcement of the Meat Inspection Act;

(3) June 17, 1930, as amended (46 Stat. 715, as amended; 19 U.S.C. 1450, 1451, 1452), involving customs officers and employees;

(4) March 2, 1931 (46 Stat. 1467; 8 U.S.C. 1353a), involving inspectors and employees, Immigration and Naturalization Service;

(5) May 27, 1936, as amended (49 Stat. 1380, as amended; 46 U.S.C. 382b), involving local inspectors of steam vessels and assistants, U.S. shipping commissioners, deputies, and assistants, and customs officers and employees;

(6) March 23, 1941 (55 Stat. 46; 47 U.S.C. 154(f) (3)), involving certain engineers of the Federal Communications Commission;

(7) June 3, 1944 (58 Stat. 269; 19 U.S.C. 1451a), involving customs officers and employees;

(8) August 4, 1949 (63 Stat. 495; 7 U.S.C. 349a), involving employees of the Bureau of Animal Industry who work at establishments which prepare virus, serum, toxin, and analogous products for use in the treatment of domestic animals; or

(9) August 28, 1950 (64 Stat. 561; 7 U.S.C. 2260), involving employees of the Department of Agriculture performing

inspection or quarantine services relating to imports into and exports from the United States.

§ 550.102 Entitlement.

A department (and for the purpose of §§ 550.141 to 550.164, inclusive, a legislative or judicial agency and the government of the District of Columbia) shall determine an employee's entitlement to premium pay in accordance with subchapter V of chapter 55 of title 5, United States Code, and this subpart.

§ 550.103 Definitions.

In this subpart:

(a) "Department" means an executive agency and a military department as defined by sections 105 and 102 of title 5, United States Code.

(b) "Agency" means (1) a department as defined in paragraph (a) of this section, (2) the government of the District of Columbia, and (3) a legislative or judicial agency which has positions that are subject to subchapter V of chapter 55 of title 5, United States Code.

(c) "Employee" means an employee to whom this subpart applies.

(d) "Head of a department" means the head of a department and, except for the purpose of § 550.101(b) (2), an official who has been delegated authority to act for the head of a department in the matter concerned.

(e) "Night pay differential" means the additional pay authorized by section 5545 (a) and (b) of title 5, United States Code, for nightwork.

(f) "Irregular or occasional overtime work" means overtime work which is not regularly scheduled.

(g) "Regular overtime work" means overtime work which is regularly scheduled.

(h) "Overtime work" has the meaning given that term by paragraphs (a) and (d) of § 550.111, and includes irregular or occasional overtime work and regular overtime work.

(i) "Premium pay" means additional pay authorized by subchapter V of chapter 55 of title 5, United States Code, and this subpart for overtime, night, holiday, or Sunday work, and standby duty.

(j) "Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

(k) "Tour of duty" means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that are scheduled in advance and during which an employee is required to perform work on a regularly recurring basis.

(l) "Administrative workweek" means a period of 7 consecutive calendar days designated in advance by the head of a department under section 6101(a) of title 5, United States Code.

(m) "Basic workweek," for full-time employees, means the 40-hour workweek established in accordance with § 610.111 of this chapter.

(n) "Regularly scheduled administrative workweek," for full-time employees,

means the period within an administrative workweek established in accordance with § 610.111 of this chapter within which these employees are required to be on duty regularly. For part-time employees, it means the officially prescribed days and hours within an administrative workweek during which these employees are required to be on duty regularly.

(c) "Sunday work" means all work during a regularly scheduled tour of duty within a basic workweek when any part of that work is performed on Sunday.

§ 550.105 Maximum limitation.

An employee may be paid premium pay under this subpart only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS-15.

OVERTIME PAY

§ 550.111 Authorization of overtime pay.

(a) Except as provided by paragraph (d) of this section, overtime work means each hour of work in excess of 40 hours in an administrative workweek or in excess of 8 hours in a day, whichever is the greater number of overtime hours, that is:

- (1) Officially ordered or approved; and
- (2) Performed by an employee.

(b) Except as otherwise provided in this subpart, a department shall pay for overtime work at the rates provided in § 550.113.

(c) Overtime work in excess of any included in a regularly scheduled administrative workweek may be ordered or approved only in writing by an officer or employee to whom this authority has been specifically delegated.

(d) For an employee for whom the first 40 hours of duty in an administrative workweek is his basic workweek under § 610.111(b) of this chapter, overtime work means each hour of work in excess of 40 hours in an administrative workweek that is:

- (1) Officially ordered or approved, and
- (2) Performed by an employee,

when the employee's basic pay exceeds the minimum rate for GS-10 or when the employee is engaged in professional or technical engineering or scientific activities. For purposes of this section and section 5542(a) of title 5, United States Code, an employee is engaged in professional or technical engineering or scientific activities when he is assigned to perform the duties of a professional or support technician position in the physical, mathematical, natural, medical, or social sciences or engineering or architecture.

(e) Notwithstanding paragraphs (a) and (d) of this section, when an employee's basic workweek includes a daily tour of duty of more than 8 hours and his hourly rate of basic pay exceeds the hourly rate of overtime pay provided by § 550.113, the department shall pay him at his basic rate of pay for each hour of his daily tour of duty within his basic workweek.

§ 550.112 Computation of overtime work.

The computation of the amount of overtime work of an employee is subject to the following conditions:

(a) *Leave with pay.* An employee's absence from duty on authorized leave with pay under subchapter I of chapter 61 of title 5, United States Code, during the time when he would otherwise have been required to be on duty during a basic workweek (including authorized absence on a legal holiday, on a non-workday established by Executive or administrative order, and on compensatory time off as provided in § 550.114) is deemed employment and does not reduce the amount of overtime pay to which the employee is entitled during an administrative workweek. Leave of absence with pay under subchapter I of chapter 61 of title 5, United States Code, is charged only for an absence that occurs during a basic workweek.

(b) *Leave without pay.* For a period of leave without pay in an employee's basic workweek, an equal period of service performed outside the basic workweek, but in the same administrative workweek, shall be substituted and paid for at the rate applicable to his basic workweek before any remaining period of service may be paid for at the overtime rate.

(c) *Absence during overtime periods.* Except as provided by paragraph (a) of this section, as expressly authorized by statute, or to the extent authorized while the employee is in a travel status, a period is counted as overtime work only when the employee actually performs work during the period or is taking compensatory time off as provided in § 550.114.

(d) *Night or holiday work.* Hours of night or holiday work are included in determining for overtime pay purposes the total number of hours of employment in the same administrative workweek.

(e) *Time in travel status.* Time in travel status away from the official duty-station of an employee is deemed employment only when:

(1) It is within his regularly scheduled administrative workweek, including regular overtime work; or

(2) The travel (i) involves the performance of actual work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under such arduous and unusual conditions that the travel is inseparable from work, or (iv) results from an event which could not be scheduled or controlled administratively.

(f) *Call-back overtime work.* Irregular or occasional overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment, is deemed at least 2 hours in duration for the purpose of premium pay, either in money or compensatory time off.

§ 550.113 Computation of overtime pay.

(a) For each employee whose rate of basic pay does not exceed the minimum

rate for GS-10 the overtime hourly rate is $1\frac{1}{2}$ times his hourly rate of basic pay.

(b) For each employee whose rate of basic pay exceeds the minimum rate for GS-10 the overtime hourly rate is $1\frac{1}{2}$ times the hourly rate of basic pay at the minimum rate for GS-10.

(c) An employee is paid for overtime work performed on a Sunday or a holiday at the same rate as for overtime work performed on another day.

(d) An employee whose rate of basic pay is fixed on an annual or monthly basis and adjusted from time to time in accordance with prevailing rates by a wage board or similar administrative authority serving the same purpose is entitled to overtime pay in accordance with the provisions of section 5544 of title 5, United States Code. The rate of pay for each hour of overtime work of such an employee is computed as follows:

(1) If the rate of basic pay of the employee is fixed on an annual basis, divide the rate of basic pay by 2,080 and multiply the quotient by one and one-half; and

(2) If the rate of basic pay of the employee is fixed on a monthly basis, multiply the rate of basic pay by 12 to derive an annual rate of basic pay, divide the annual rate of basic pay by 2,080 and multiply the quotient by one and one-half.

Rates are computed in full cents, counting a fraction of a cent as the next higher cent.

§ 550.114 Compensatory time off for irregular or occasional overtime work.

(a) At the request of an employee, the head of a department may grant him compensatory time off from his tour of duty instead of payment under § 550.113 for an equal amount of irregular or occasional overtime work.

(b) The head of a department may provide that an employee whose rate of basic pay exceeds the maximum rate for GS-10 shall be paid for irregular or occasional overtime work with an equivalent amount of compensatory time off from his tour of duty instead of payment under § 550.113.

(c) The head of a department may fix a time limit for an employee to request or take compensatory time off and may provide that an employee who fails to take compensatory time off to which he is entitled under paragraph (a) or (b) of this section before the time limit fixed, shall lose his right both to compensatory time off and to overtime pay unless his failure is due to an exigency of the service beyond his control.

NIGHT PAY

§ 550.121 Authorization of night pay differential.

(a) Except as provided by paragraph (b) of this section, nightwork is regularly scheduled work between the hours of 6:00 p.m. and 6:00 a.m. Subject to § 550.122, and except as otherwise provided in this subpart, an employee is entitled to pay for nightwork at his rate of basic pay plus a night pay differential amounting to 10 percent of his rate of basic pay.

(b) The head of a department may designate a time after 6:00 p.m. and a time before 6:00 a.m. as the beginning and end, respectively, of nightwork for the purpose of paragraph (a) of this section, at a post outside the United States where the customary hours of business extend into the hours of nightwork provided by paragraph (a) of this section. Times so designated as the beginning or end of nightwork shall correspond reasonably with the end or beginning, respectively, of the customary hours of business in the locality.

§ 550.122 Computation of night pay differential.

(a) *Absence on holidays or in travel status.* An employee is entitled to a night pay differential for a period when he is excused from nightwork on a holiday or other nonworkday and for night hours of his tour of duty while he is in an official travel status, whether performing actual duty or not.

(b) *Absence on leave.* An employee is entitled to a night pay differential for a period of paid leave only when the total amount of that leave in a pay period, including both night and day hours, is less than 8 hours.

(c) *Relation to overtime and holiday pay.* Night pay differential is in addition to overtime or holiday pay payable under this subpart and it is not included in the rate of basic pay used to compute the overtime or holiday pay. An employee earns the same amount of night pay differential during a night overtime period, whether he is paid in money or granted compensatory time off for the overtime work.

(d) *Temporary assignment to different tour of duty.* An employee is entitled to a night pay differential for nightwork performed when he is assigned temporarily to a tour of duty other than his own.

PAY FOR HOLIDAY WORK

§ 550.131 Authorization of pay for holiday work.

(a) Except as otherwise provided in this subpart, an employee who performs work on a holiday is entitled to pay at his rate of basic pay plus premium pay at a rate equal to his rate of basic pay for that holiday work which is not:

- (1) In excess of 8 hours; or
- (2) Overtime work.

(b) An employee is entitled to pay for overtime work on a holiday at the same rate as for overtime work on other days.

(c) An employee who is assigned to duty on a holiday is entitled to pay for at least 2 hours of holiday work.

§ 550.132 Relation to overtime, night, and Sunday pay.

(a) Premium pay for holiday work is in addition to overtime pay or night pay differential, or premium pay for Sunday work payable under this subpart and is not included in the rate of basic pay used to compute the overtime pay or night pay differential or premium pay for Sunday work.

(b) Notwithstanding premium pay for holiday work, the number of hours of

holiday work are included in determining for overtime pay purposes the total number of hours of work performed in the administrative workweek in which the holiday occurs.

(c) The number of regularly scheduled hours of duty on a holiday that fall within an employee's basic workweek on which the employee is excused from duty are part of the basic workweek for overtime pay computation purposes.

REGULARLY SCHEDULED STANDBY DUTY PAY

§ 550.141 Authorization of premium pay on an annual basis.

An agency may pay premium pay on an annual basis, instead of the premium pay prescribed in this subpart for regularly scheduled overtime, night, holiday, and Sunday work, to an employee in a position requiring him regularly to remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work. Premium pay under this section is determined as an appropriate percentage, not in excess of 25 percent, of that part of the employee's rate of basic pay which does not exceed the minimum rate of basic pay for GS-10.

§ 550.142 General restrictions.

An agency may pay premium pay under § 550.141 only if that premium pay, over a period appropriate to reflect the full cycle of the employee's duties and the full range of conditions in his position, would be:

(a) More than the premium pay which would otherwise be payable under this subpart for the hours of actual work customarily required in his position, excluding standby time during which he performs no work; and

(b) Less than the premium pay which would otherwise be payable under this subpart for the hours of duty required in his position, including standby time during which he performs no work.

§ 550.143 Bases for determining positions for which premium pay under § 550.141 is authorized.

(a) The requirement for the type of position referred to in § 550.141 that an employee regularly remain at, or within the confines of, his station must meet all the following conditions:

(1) The requirement must be definite and the employee must be officially ordered to remain at his station. The employee's remaining at his station must not be merely voluntary, desirable, or a result of geographic isolation, or solely because the employee lives on the grounds.

(2) The hours during which the requirement is operative must be included in the employee's tour of duty. This tour of duty must be established on a regularly recurring basis over a substantial period of time, generally at least a few months. The requirement must not be occasional, irregular, or for a brief period.

(3) The requirement must be associated with the regularly assigned duties of the employee's job, either as a continuation of his regular work which includes standby time, or as a requirement to stand by at his post to perform his regularly assigned duties if the necessity arises.

(b) The words "at, or within the confines of, his station", in § 550.141 mean one of the following:

(1) At an employee's regular duty station.

(2) In quarters provided by an agency, which are not the employee's ordinary living quarters, and which are specifically provided for use of personnel required to stand by in readiness to perform actual work when the need arises or when called.

(3) In an employee's living quarters, when designated by the agency as his duty station and when his whereabouts is narrowly limited and his activities are substantially restricted. This condition exists only during periods when an employee is required to remain at his quarters and is required to hold himself in a state of readiness to answer calls for his services. This limitation on an employee's whereabouts and activities is distinguished from the limitation placed on an employee who is subject to call outside his tour of duty but may leave his quarters provided he arranges for someone else to respond to calls or leaves a telephone number by which he can be reached should his services be required.

(c) The words "longer than ordinary periods of duty" in § 550.141 mean more than 40 hours a week.

(d) The words "a substantial part of which consists of remaining in a standby status rather than performing work" in § 550.141 refer to the entire tour of duty. This requirement is met:

(1) When a substantial part of the entire tour of duty, at least 25 percent, is spent in a standby status which occurs throughout the entire tour;

(2) If certain hours of the tour of duty are regularly devoted to actual work and others are spent in a standby status, that part of the tour of duty devoted to standing by is at least 25 percent of the entire tour of duty; or

(3) When an employee has a basic workweek requiring full-time performance of actual work and is required, in addition, to perform standby duty on certain nights, or to perform standby duty on certain days not included in his basic workweek.

(e) An employee is in a standby status, as referred to in § 550.141, only at times when he is not required to perform actual work and is free to eat, sleep, read, listen to the radio, or engage in other similar pursuits. An employee is performing actual work, rather than being in a standby status, when his full attention is devoted to his work, even though the nature of his work does not require constant activity (for example, a guard on duty at his post and a technician continuously observing instruments are engaged in the actual work of their positions). Actual work includes both work performed during regular work periods

and work performed when called out during periods ordinarily spent in a standby status.

§ 550.144 Rates of premium pay payable under § 550.141.

(a) An agency may pay the premium pay on an annual basis referred to in § 550.141, to an employee who meets the requirements of that section, at one of the following percentages of that part of the employee's rate of basic pay which does not exceed the minimum rate of basic pay for GS-10:

(1) A position with a tour of duty of the 24 hours on duty, 24 hours off duty type and with a schedule of: 60 hours a week—5 percent, unless 25 or more hours of actual work is customarily required, in which event—10 percent; 72 hours a week—15 percent, unless 24 or more hours of actual work is customarily required, in which event—20 percent; 84 hours or more a week—25 percent.

(2) A position with a tour of duty requiring the employee to remain on duty during all daylight hours each day, or for 12 hours each day, or for 24 hours each day, with the employee living at his station during the period of his assignment to his tour, and with a schedule of: 5 days a week—5 percent, unless 25 or more hours of actual work is customarily required, in which event—10 percent; 6 days a week—15 percent, unless 30 or more hours of actual work is customarily required, in which event 20 percent; 7 days a week—25 percent.

(3) A position in which the employee has a basic workweek requiring full-time performance of actual work, and is required, in addition, to remain on standby duty: 14 to 18 hours a week on regular workdays, or extending into a nonworkday in continuation of a period of duty within the basic workweek—15 percent; 19 to 27 hours a week on regular workdays, or extending into a nonworkday in continuation of a period of duty within the basic workweek—20 percent; 28 or more hours a week on regular workdays, or extending into a nonworkday in continuation of a period of duty within the basic workweek—25 percent; 7 to 9 hours on one or more of his regular weekly nonworkdays—15 percent; 10 to 13 hours on one or more of his regular weekly nonworkdays—20 percent; 14 or more hours on one or more of his regular weekly nonworkdays—25 percent.

(4) When an agency pays an employee one of the rates authorized by subparagraph (1), (2), or (3) of this paragraph, the agency shall increase this rate by adding (1) 2½ percent to the rate when the employee is required to perform Sunday work on an average of 20 to 40 Sundays over a year's period or (2) 5 percent to the rate when the employee is required to perform Sunday work on an average of 41 or more Sundays over a year's period but the rate thus increased may not exceed 25 percent.

(b) If an employee is eligible for premium pay on an annual basis under § 550.141, but none of the percentages in paragraph (a) of this section is applicable, or unusual conditions are present which seem to make the applicable rate

unsuitable, the agency may propose a rate of premium pay on an annual basis for the Commission's approval. The proposal shall include full information bearing on the employee's tour of duty; the number of hours of actual work required; and how it is distributed over the tour of duty; the number of hours in a standby status required and the extent to which the employee's whereabouts and activities are restricted during standby periods; the extent to which the assignment is made more onerous by night, holiday, or Sunday duty or by hours of duty beyond 8 in a day or 40 in a week; and any other pertinent conditions.

ADMINISTRATIVELY UNCONTROLLABLE WORK

§ 550.151 Authorization of premium pay on an annual basis.

An agency may pay premium pay on an annual basis, instead of other premium pay prescribed in this subpart except premium pay for regular overtime work, to an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular or occasional overtime work and work at night, on Sundays, and on holidays with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty. Premium pay under this section is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent of that part of the employee's rate of basic pay which does not exceed the minimum rate of basic pay for GS-10.

§ 550.152 General restrictions.

An agency may pay premium pay under § 550.151 only if that premium pay, over a period appropriate to reflect the full cycle of the employee's duties and the full range of conditions in his position, would be less than the premium pay which would otherwise be payable under this subpart for the hours of duty required in his position, exclusive of regular overtime work.

§ 550.153 Bases for determining positions for which premium pay of 15 percent under § 550.151 is authorized.

(a) The requirement in § 550.151 that a position be one in which the hours of duty cannot be controlled administratively is inherent in the nature of such a position. A typical example of a position which meets this requirement is that of an investigator of criminal activities whose hours of duty are governed by what criminals do and when they do it. He is often required to perform such duties as shadowing suspects, working incognito among those under suspicion, searching for evidence, meeting informers, making arrests, and interviewing persons having knowledge of criminal or alleged criminal activities. His hours on duty and place of work depend on the behavior of the criminals or suspected criminals and cannot be controlled administratively. In such a situation, the hours of duty cannot be

controlled by such administrative devices as hiring additional personnel; rescheduling the hours of duty (which can be done when, for example, a type of work occurs primarily at certain times of the day); or granting compensatory time off duty to offset overtime hours required.

(b) In order to satisfactorily discharge the duties of a position referred to in § 550.151, an employee is required to perform "substantial amounts of irregular or occasional" overtime work and work at night, on Sundays, and on holidays. In regard to this requirement:

(1) A "substantial amount" of irregular or occasional overtime work means an average of at least 3 hours a week of that overtime work.

(2) The irregular or occasional overtime work is a continual requirement, generally averaging more than once a week.

(3) There must be a definite basis for anticipating that the irregular or occasional overtime work will continue over an appropriate period with a duration and frequency sufficient to meet the minimum requirements under subparagraphs (1) and (2) of this paragraph, and that night, Sunday, and holiday work will be performed from time to time.

(c) The words in § 550.151 that an employee is generally "responsible for recognizing, without supervision, circumstances which require him to remain on duty" mean that:

(1) The responsibility for an employee remaining on duty when required by circumstances must be a definite, official, and special requirement of his position.

(2) The employee must remain on duty not merely because it is desirable, but because of compelling reasons inherently related to continuance of his duties, and of such a nature that failure to carry on would constitute negligence.

(3) The requirement that the employee is responsible for recognizing circumstances does not include such clear-cut instances as, for example, when an employee must continue working because a relief fails to report as scheduled.

(d) The words "circumstances which require him to remain on duty" as used in § 550.151 mean that:

(1) The employee is required to continue on duty in continuation of a full daily tour of duty or that after the end of his regular workday, the employee resumes duty in accordance with a prearranged plan or an awaited event. Performance of only call-back overtime work referred to in § 550.112(f) does not meet this requirement.

(2) The employee has no choice as to when or where he may perform the work when he remains on duty in continuation of a full daily tour of duty. This differs from a situation in which an employee has the option of taking work home or doing it at the office; or doing it in continuation of his regular hours of duty or later in the evening. It also differs from a situation in which an employee has such latitude in his working hours, as when in a travel status, that he may de-

cide to begin work later in the morning and continue working later at night to better accomplish a given objective.

§ 550.154 Rates of premium pay payable under § 550.151.

(a) An agency may pay the premium pay on an annual basis referred to in § 550.151 to an employee who meets the requirements of that section, at one of the following percentages of that part of the employee's rate of basic pay which does not exceed the minimum rate of basic pay for GS-10:

(1) A position which requires an average of at least 3 but not more than 5 hours a week of irregular or occasional overtime work—10 percent;

(2) A position which requires an average of over five but not more than 7 hours a week of irregular or occasional overtime work—15 percent;

(3) A position which requires an average of over seven but not more than 9 hours a week of irregular or occasional overtime work—20 percent;

(4) A position which requires an average of over 9 hours a week of irregular or occasional overtime work—25 percent.

(b) If an agency proposes to pay an employee premium pay on an annual basis under § 550.151 but unusual conditions seem to make the applicable rate in paragraph (a) of this section unsuitable, the agency may propose a rate of premium pay on an annual basis for the Commission's approval. The proposal shall include full information bearing on the frequency and duration of the irregular or occasional overtime work and the night and holiday, and Sunday work required; the nature of the work which prevents hours of duty from being controlled administratively; the necessity for the employee's being generally responsible for recognizing, without supervision, circumstances which require him to remain on duty; and any other pertinent conditions.

GENERAL RULES GOVERNING PAYMENTS OF PREMIUM PAY ON AN ANNUAL BASIS

§ 550.161 Responsibilities of the agencies.

The head of each agency, or an official who has been delegated authority to act for the head of an agency in the matter concerned, is responsible for:

(a) Fixing tours of duty; ordering employees to remain at their stations in a standby status; and placing responsibility on employees for remaining on duty when required by circumstances.

(b) Determining, in accordance with section 5545(c) of title 5, United States Code, and this subpart, which employees shall receive premium pay on an annual basis under § 550.141 or § 550.151. These determinations may not be retroactive.

(c) Determining the number of hours of actual work to be customarily required in positions involving longer than ordinary periods of duty, a substantial part of which consists of standby duty. This determination shall be based on consideration of the time required by regular, repetitive operations, available records of the time required in the past by other activities, and any other information bearing on the number of hours of actual work which may reasonably be expected to be required in the future.

(d) Determining the number of hours of irregular or occasional overtime work to be customarily required in positions which require substantial amounts of irregular or occasional overtime work, and work at night and on holidays with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty. This determination shall be based on consideration of available records of the hours of irregular or occasional overtime work required in the past, and any other information bearing on the number of hours of duty which may reasonably be expected to be required in the future.

(e) Determining the rate of premium pay fixed by the Commission under § 550.144 or § 550.154 which is applicable to each employee paid under § 550.141 or § 550.151; or, if no rate fixed under § 550.144 or § 550.154 is considered applicable, proposing a rate of premium pay on an annual basis to the Commission.

(f) Reviewing determinations under paragraphs (b), (c), (d) and (e) of this section at appropriate intervals, and discontinuing payments or revising rates of premium pay on an annual basis in each instance when that action is necessary to meet the requirements of section 5545(c) of title 5, United States Code, and this subpart.

§ 550.162 Payment provisions.

(a) Except as otherwise provided in this section, an employee's premium pay on an annual basis under § 550.141 or § 550.151 begins on the date that he enters on duty in the position concerned for purposes of basic pay, and ceases on the date that he ceases to be paid basic pay in the position.

(b) When an employee is in a position in which conditions warranting premium pay on an annual basis under § 550.141 or § 550.151 exist only during a certain period of the year, such as during a given season, an agency may pay the employee premium pay on an annual basis only during the period he is subject to these conditions.

(c) An agency may continue to pay an employee premium pay on an annual basis under § 550.141 or § 550.151:

(1) For a period of not more than 10 consecutive prescribed workdays on temporary assignment to other duties in which conditions do not warrant payment of premium pay on an annual basis, and for a total of not more than 30 workdays in a calendar year while on such a temporary assignment.

(2) For an aggregate period of not more than 60 prescribed workdays on temporary assignment to a formally approved program for advanced training duty directly related to duties for which premium pay on an annual basis is payable.

An agency may not continue to pay an employee premium pay on an annual basis under this paragraph for more than 60 workdays in a calendar year.

(d) When an employee is not entitled to premium pay on an annual basis under § 550.141 or § 550.151, he is entitled to be paid for overtime, night, holiday, and Sunday work in accordance with the other sections of this subpart.

(e) An agency shall continue to pay an employee premium pay on an annual basis under § 550.141 or § 550.151 while he is on leave with pay during a period in which premium pay on an annual basis is payable under paragraphs (a), (b), and (c) of this section.

§ 550.163 Relationship to other payments.

(a) An employee receiving premium pay on an annual basis under § 550.141 may not receive premium pay for regular overtime work or work at night or on a holiday or on Sunday under any other section of this subpart. An agency shall pay the employee in accordance with §§ 550.113 and 550.114 for irregular or occasional overtime work.

(b) An employee receiving premium pay on an annual basis under § 550.151 may not receive premium pay for irregular or occasional overtime work or work at night or on a holiday or on Sunday under any other section of this subpart. An agency shall pay the employee in accordance with other sections of this subpart for regular overtime work.

(c) Overtime, night, holiday, or Sunday work paid under any statute other than subchapter V of chapter 55 of title 5, United States Code, is not a basis for payment of premium pay on an annual basis under § 550.141 or § 550.151.

(d) Premium pay on an annual basis under § 550.141 or § 550.151 is not base pay and is not included in the base used in computing retirement deductions, foreign and nonforeign allowances and differentials, or any other benefits or deductions that are computed on base pay alone.

§ 550.164 Construction and computation of existing aggregate rates.

(a) Pursuant to section 208(b) of the act of September 1, 1954 (68 Stat. 1111), nothing in this subpart relating to the payment of premium pay on an annual basis may be construed to decrease the existing aggregate rate of pay of an employee on the rolls of an agency immediately before the date section 5545(c) of title 5, United States Code, is made applicable to him by administrative action.

(b) When it is necessary to determine an employee's existing aggregate rate of pay (referred to in this section as existing aggregate rate), an agency shall determine it on the basis of the earnings the employee would have received over an appropriate period (generally 1 year) if his tour of duty immediately before the date section 5545(c) of title 5, United States Code, is made applicable to him had remained the same. In making this determination, basic pay and premium pay for overtime, night, holiday, and Sunday work are included in the earnings the employee would have received. Premium pay for irregular or occasional overtime work may be in-

cluded only if it was of a significant amount in the past and the conditions which required it are expected to continue.

(c) An agency shall recompute an employee's rate of pay based on premium pay on an annual basis when he received subsequent increases in his rate of basic pay in order to determine whether or not the employee should continue to receive an existing aggregate rate or be paid premium pay on an annual basis.

(d) Except as otherwise provided by statute, an agency may not use subsequent increases in an employee's rate of basic pay to redetermine or increase the employee's existing aggregate rate. However, these increases shall be used for other pay purposes, such as the computation of retirement deductions and annuities, payment of overseas allowances and post differentials, and determination of the highest previous rate under Part 531 of this chapter.

(e) When an agency elects to pay an employee premium pay on an annual basis, he is entitled to continue to receive hourly premium pay properly payable under sections 5542, 5543, 5545 (a) and (b), and 5546 of title 5, United States Code, until his base pay plus premium pay on an annual basis equals or exceeds his existing aggregate rate. When this occurs, the agency shall pay the employee his base pay plus premium pay on an annual basis.

(f) Except when terminated under paragraph (e) of this section, an agency shall continue to pay an employee an existing aggregate rate so long as:

(1) He remains in a position to which § 550.141, § 550.151, or § 550.162(c) is applicable;

(2) His tour of duty does not decrease in length; and

(3) He continues to perform equivalent night, holiday, and irregular or occasional overtime work.

(g) If an employee who is entitled to an existing aggregate rate moves from one position to another in the same agency, both of which are within the scope of section 5545(c) of title 5, United States Code, he is entitled to be paid an existing aggregate rate in the new position such as he would have received had he occupied that position when the agency elected to make section 5545(c) applicable to it.

PAY FOR SUNDAY WORK

§ 550.171 Authorization of pay for Sunday work.

An employee is entitled to pay at his rate of basic pay plus premium pay at a rate equal to 25 percent of his rate of basic pay for each hour of Sunday work not in excess of 8 hours.

§ 550.172 Relation to overtime, night, and holiday pay.

Premium pay for Sunday work is in addition to premium pay for holiday work, overtime pay, or night pay differential payable under this subpart and is not included in the rate of basic pay used to compute the pay for holiday work, overtime pay, or night pay differential.

Subpart B—[Reserved]

Subpart C—Allotments and Assignments From Federal Employees

AUTHORITY: The provisions of this Subpart C issued under 5 U.S.C. 5527, E.O. 10982; 3 CFR, 1959-1963 Comp., p. 502.

§ 550.301 Definitions.

In this subpart:

(a) "Allottee" means the person or institution to whom an allotment is made payable.

(b) "Allotter" means the employee from whose pay an allotment is made.

(c) "Allotment" means (1) an allotment or assignment of a definite amount of pay to be paid to an allottee, and (2) an authorization by the allotter to deduct for the payment of income taxes as authorized by § 550.304(a) (4), and (3) an authorization by an allotter to deduct an amount certified by an appropriate official of an employee organization as the amount of the dues for the employee organization.

(d) "Pay" means the net pay due an employee after all deductions authorized by law (such as retirement or social security deductions, Federal withholding tax, and others, when applicable) have been made.

(e) "Agency" means an Executive agency as defined by section 105 of title 5, United States Code.

(f) "Employee" means an employee of an agency.

(g) "Continental United States" means the several States and the District of Columbia, but excluding Alaska and Hawaii.

(h) "Dues" means the regular, periodic amount required to maintain the member in good standing in the employee organization.

(i) "Employee organization" means an employee organization as defined by section 2 of Executive Order 10988 of January 17, 1962.

(j) "Combined Federal Campaign" means an organization of voluntary health and welfare agencies authorized to solicit charitable contributions in a local area in accordance with arrangements prescribed by the Chairman of the Civil Service Commission under Executive Order 10927.

§ 550.302 Authority of Federal agency.

(a) An agency may permit allotments under section 5525 of title 5, United States Code, only in accordance with subchapter III of chapter 55 of title 5, United States Code, and this subpart.

(b) The head of an agency may prescribe such additional regulations governing allotments, not inconsistent with subchapter III of chapter 55 of title 5, United States Code, and this subpart, as he considers necessary.

(c) Subject to the provisions of paragraphs (a) and (b) of this section, allotments for the payment of dues to an employee organization as authorized by § 550.304(a) (5) and allotments for charitable contributions to a Combined Federal Campaign as authorized by § 550.304(a) (6) may be permitted only in accordance with instructions pub-

lished by the Civil Service Commission in the Federal Personnel Manual. However, allotments for contributions to the Department of Defense Overseas Combined Federal Campaign may be permitted in accordance with a special agreement between the Commission and the Department of Defense which may contain any necessary exceptions to the provisions in this subpart.

§ 550.303 Authorized allottees.

(a) Except as provided by paragraphs (b) and (c) of this section, only an employee who is serving under an appointment not limited to six months or less may make an allotment.

(b) An employee regardless of tenure may be permitted to make an allotment for the payment of income taxes as authorized by § 550.304(a) (4) or for the payment of dues to an employee organization as authorized by § 550.304(a) (5).

(c) Only an employee serving under an appointment not limited to one year or less may make an allotment to a Combined Federal Campaign as authorized by § 550.304(a) (6).

§ 550.304 Circumstances under which allotments are permitted.

(a) An agency may permit an employee to make an allotment on a current basis when he is:

(1) Assigned to a post of duty outside the continental United States;

(2) Working on an assignment away from his regular post of duty when the assignment is expected to continue for 3 months or more;

(3) Serving as an officer or member of a crew of a vessel under the control of the Federal Government;

(4) Employed outside of, but is a resident in, a State or the District of Columbia with which the Secretary of the Treasury has entered into an agreement to withhold income taxes from the pay of employees under sections 5516 and 5517 of title 5, United States Code;

(5) A member of an employee organization which the head of an agency has determined to be eligible for formal or exclusive recognition under Executive Order 10988 and with which an agency has agreed in writing to deduct allotments for the payment of dues to the employee organization and to recover the costs of making the deduction.

(6) Employed in an area in which a Combined Federal Campaign is established.

(b) An agency may permit an employee to authorize an allotment to be effective on the issuance of an order of evacuation under section 5522 or 5523 of title 5, United States Code. Payment of such an allotment may not be made until the issuance of the order.

§ 550.305 Purposes for which allotments may be made.

(a) An agency may permit an employee to make an allotment for any of the following purposes:

(1) The support of relatives or dependents of the allotter;

(2) Savings;

(3) Payment of commercial insurance premiums on the life of the allotter;

(4) Payment of U.S. Government Insurance or National Service Life Insurance;

(5) Payment of State or District of Columbia income taxes as authorized by § 550.304(a) (4);

(6) Payment of dues on or after January 1, 1964, to an employee organization of which the employee is a member.

(7) Charitable contribution to a Combined Federal Campaign;

(8) Any other purpose, not otherwise prohibited, when approved by the head of the agency or his authorized representative.

(b) An agency may not permit an employee to make an allotment for any of the following purposes:

(1) Payment of indebtedness, except when the head of the agency specifically provides otherwise;

(2) Contribution to charity except as authorized by § 550.304(a) (6);

(3) Payment of dues to civic, fraternal, or other organizations except as authorized by § 550.304(a) (5).

§ 550.306 Authorized allottees.

(a) An employee may make an allotment to an individual, a corporation, a financial institution, an agency, a State or the District of Columbia, or an employee organization when the allotment is for one of the purposes permitted by § 550.305(a).

(b) The allotter shall designate the allottee specifically and in writing.

§ 550.307 Limitations on allotments.

(a) An allotment shall be disbursed on one of the employee's regularly designated paydays and in accordance with the conditions of the allotment, except when the agency and allotter agree on a later date.

(b) An employee may have only one allotment payable to the same allottee at the same time.

(c) The total number of allotments may not exceed the pay due the allotter for a particular period.

(d) A change in the amount of an allotment for the payment of dues to an employee organization may not be made more frequently than once each twelve months.

(e) An allotment for the payment of dues to an employee organization may be revoked by the allotter only as provided by § 550.308(e).

(f) An allotment to a Combined Federal Campaign shall be:

(1) For a term of one year beginning with the first pay period which begins in January and ending with the last pay period which begins in December; and

(2) Of an equal amount to be deducted each pay period, which amount may not be less than 50 cents for an employee paid biweekly or semi-monthly or \$1.00 for an employee paid monthly.

(g) During the term of an allotment to a Combined Federal Campaign the allotter may not change the amount to be deducted each pay period, but he

may voluntarily discontinue the allotment at any time.

§ 550.308 Discontinuance of allotment.

An agency shall discontinue paying an allotment when:

(a) The allotter dies, retires, is separated from the Federal service, transfers between agencies (except that an allotment to a Combined Federal Campaign shall be transferred with the employee upon his transfer between agencies), or in the case of an allotment for the payment of dues as authorized by § 550.304(a) (5), moves or is reassigned within the agency to an organizational segment having a different payroll office or to an organizational segment for which the employee organization has not been accorded formal or exclusive recognition;

(b) The allottee dies or his whereabouts are unknown;

(c) Except as provided by paragraph (e) of this section, a written notice to discontinue is given by an allotter or an authorized official of the agency concerned;

(d) Except as provided by paragraph (e) of this section, the circumstances under which an allotment is permitted under § 550.304 no longer exist;

(e) The written revocation of an allotment for the payment of dues as authorized by § 550.304(a) (5) is received in the employee's payroll office either by March 1 or September 1 of any calendar year. In this case the agency will discontinue the allotment at the beginning of the first full pay period for which a deduction would otherwise be made either after March 1 or September 1, as appropriate; or

(f) The one year term for an allotment to a Combined Federal Campaign expires.

§ 550.309 Fee for service.

An agency shall charge the employee organization or the Combined Federal Campaign a fee in the amount of \$0.02 for each deduction from an employee's salary.

Subpart D—Payments During Evacuation

AUTHORITY: The provisions of this Subpart D issued under 5 U.S.C. 5527, E.O. 10982; 3 CFR, 1959-1963 Comp., p. 502.

§ 550.401 Purpose.

The purpose of this subpart is to provide the authority necessary for an agency to administer subchapter III (except section 5525) of chapter 55 of title 5, United States Code, by establishing an efficient, orderly, and equitable procedure for the payment of pay, allowances, and differentials in the event of an emergency evacuation of employees or their dependents, or both, from or within United States areas for military reasons or because of imminent danger to their lives.

§ 550.402 Applicability.

This subpart applies to agencies which exercise the authority under subchapter III of chapter 55 of title 5, United States

Code, and Executive order to provide for payments for their employees who are located in United States areas.

§ 550.403 Employee coverage.

This subpart applies to:

(a) Employees of an agency who are U.S. citizens or who are U.S. nationals;

(b) Employees of an agency who are not citizens or nationals of the United States but who were recruited with a transportation agreement which provides return transportation to the area from which recruited; and

(c) Alien employees of an agency hired within the United States.

§ 550.404 Definitions.

In this subpart:

(a) "Agency" means an Executive agency as defined by section 105 of title 5, United States Code.

(b) "Employee" means an employee of an agency.

(c) "Executive order" means Executive Order No. 10982 issued December 25, 1961.

(d) "United States area" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and any territory or possession of the United States, but excluding the Trust Territory of the Pacific Islands.

§ 550.405 Limitations.

An agency may not provide an authority in its regulations to make payments under subchapter III of chapter 55 of title 5, United States Code, and this subpart when evacuations are occasioned by a natural disaster within the 48 contiguous States or the District of Columbia.

§ 550.406 Approval of agency regulations.

(a) *Advance approval.* The Commission has prescribed, and published in the Federal Personnel Manual, agency regulations for adoption by an agency as the regulations authorized by section 5527(c) of title 5, United States Code, to be issued by the head of an agency to carry out sections 5522 and 5523 of that title. When the head of an agency proposes to exercise the authority given him under sections 5522 and 5523, he may adopt these agency regulations for use in United States areas; or for use in specifically designated localities within these areas. When the agency regulations are adopted without change as published in the Federal Personnel Manual, regulations so adopted have the prior approval of the Commission as required by section 4(b) of the Executive order. If an agency adopts the agency regulations, it shall notify the Commission of the date of adoption and of the areas in which the agency regulations will be applied.

(b) *Request for prior approval.* When an agency proposes to issue regulations which deviate from the agency regulations published in the Federal Personnel Manual, prior approval as required by section 4(b) of the Executive order must be secured from the Commission before the regulations may be made effective.

(c) *Revision of agency regulations.* When the Commission revises the agency regulations provided for in paragraph (a) of this section, agencies which have previously adopted those agency regulations shall adopt the revisions or within 30 days request approval from the Commission to retain the regulations without change.

(d) *Supplemental regulations.* When an agency has regulations which have been approved under paragraph (a) or (b) of this section, the agency may issue any supplemental regulations or instructions, not inconsistent with its approved regulations, deemed necessary for internal operations.

§ 550.407 Payment to employees of other agencies.

The Commission shall publish in the Federal Personnel Manual a list containing the name of each agency which has approved agency regulations and the areas to which the approved agency regulations apply. When this information is published in the Federal Personnel Manual, any agency (whether or not it has approved agency regulations) may make payments in an evacuation situation to an employee (and his dependents and designated representative) of an agency which has approved agency regulations who is assigned to a post of duty within the areas covered by the approved agency regulations. When a payment is made under this subpart by other than the employee's agency, the agency making the payment shall immediately report the amount and date of the payment to the employee's agency in order that prompt reimbursement may be made.

Subpart E—Pay From More Than One Position

AUTHORITY: The provisions of this Subpart E issued under 5 U.S.C. 5533.

§ 550.501 Scope.

(a) *Applicability.* (1) This subpart and section 5533 of title 5, United States Code, apply in determining an employee's entitlement to receive pay from more than one position.

(2) This subpart and section 5533(a) of title 5, United States Code, apply only to an employee holding more than one position when the aggregate number of hours worked during a week exceeds 40.

(b) *Coverage.* This subpart and section 5533(a) of title 5, United States Code, apply to each department and agency (including each corporation owned or controlled by the Government of the United States and including non-appropriated fund instrumentalities under the jurisdiction of the armed forces) in the legislative (except as provided in section 5533(c) of that title), judicial, and executive branches of the Government of the United States and to the government of the District of Columbia.

§ 550.502 Definitions.

In this subpart:

(a) "Employee" means a person holding a position.

(b) "Pay" means pay paid for services in a position but excludes fees paid on other than a time basis.

(c) "Position" has the meaning given that term by section 5531 of title 5, United States Code.

(d) "Week" means the period of 7 calendar days from Sunday through Saturday.

§ 550.503 Exceptions in emergencies.

Section 5533(a) of title 5, United States Code, does not apply to pay from a position for services performed under emergency conditions relating to health, safety, protection of life or property, or national emergency.

§ 550.504 General exceptions.

When appropriate authority in a department, agency, or the government of the District of Columbia, or person to whom he has delegated the authority, determines that personal services otherwise cannot be readily obtained, section 5533(a) of title 5, United States Code, does not apply to:

(a) Pay for part-time or intermittent employment in positions for which the Commission has established special minimum pay rates under section 5303 of title 5, United States Code; or

(b) Pay for part-time or intermittent employment as a foreign language instructor, translator, interpreter, or in any other capacity which requires a knowledge and use of one or more foreign languages in the position to which appointed.

§ 550.505 Specific exceptions.

When appropriate authority in the department or agency concerned, or in the government of the District of Columbia, or person to whom he has delegated the authority, determines that personal services otherwise cannot be readily obtained, section 5533(a) of title 5, United States Code, does not apply to:

(a) Pay for part-time or intermittent employment as an instructor in an adult-education program provided by the Department of the Air Force for its military members and their dependents in overseas areas;

(b) Pay for part-time or intermittent employment as a relief engineer for the relief of a ship's engineering officer assigned to the Military Sea Transportation Service when his ship is in port on a weekend;

(c) Pay for part-time or intermittent employment by the Department of Corrections in the government of the District of Columbia of a teacher who is regularly employed in the public schools of the District of Columbia;

(d) (1) Pay for part-time or intermittent employment of the teachers, custodial, and other employees necessary to keep in operation and to conduct therein appropriate phases of the recreation program in the Department of Recreation of the government of the District of Columbia as authorized by the Act of April 29, 1942 (56 Stat. 261); and

(2) Pay for a 90-day period for full-time, part-time, or intermittent employ-

ment of the referees, umpires, swimming-pool guards and attendants, gymnasium and playground supervisors, and other similar special employees necessary to carry out the recreation program in the Department of Recreation of the government of the District of Columbia as authorized by the Act of April 29, 1942 (56 Stat. 261);

(e) Pay for part-time or intermittent employment for the District of Columbia Armory Board as needed to supplement the regular workforce in connection with specific events held at the District of Columbia Armory or the District of Columbia Stadium;

(f) Pay for intermittent employment as a detention guard by the Juvenile Court of the District of Columbia;

(g) Pay for part-time or intermittent employment by the Department of the Navy at the U.S. Naval Base, Guantanamo Bay, Cuba;

(h) Pay for part-time or intermittent employment as a teacher in the public schools of the District of Columbia;

(i) Pay for employment as a cafeteria manager in connection with the summer food programs of the public schools of the District of Columbia of a person employed in that capacity in those schools during the regular school year;

(j) Pay for employment by the Department of Transportation in multiple-designation appointments in the train and engine service of The Alaska Railroad;

(k) Pay for intermittent employment as a test monitor by the Commission;

(l) Pay for part-time or intermittent employment by the Department of the Navy in connection with nonappropriated fund activities at the U.S. Naval Station, Midway Island;

(m) Pay for part-time or intermittent employment by the Department of the Navy in connection with nonappropriated fund activities at the U.S. Naval Communication Station, Northwest Cape, Australia; or

(n) Pay for part-time or intermittent employment as a counselor in connection with summer youth opportunity programs in the Washington, D.C., metropolitan area.

§ 550.506 Prior approval.

When it is difficult for a department, agency, or the government of the District of Columbia to obtain employees because of section 5533(a) of title 5, United States Code, it may request the Commission to approve an exception from that section either on an individual basis or for a general employment situation. In submitting its request for an exception, the department, agency, or the government of the District of Columbia must establish to the satisfaction of the Commission that personal services cannot otherwise be readily obtained.

§ 550.507 Report to the Commission.

The Commission may require a department, agency, or the government of the District of Columbia to submit a periodic report on its use of the exceptions from section 5533(a) of title 5, United States Code.

Subpart F—Reduction-in-Retired-Pay Provisions of the Dual Pay Statute

AUTHORITY: The provisions of this Subpart F issued under 5 U.S.C. 5532.

§ 550.601 Scope.

(a) **Applicability.** This subpart and section 5532 of title 5, United States Code, apply in determining the entitlement of a retired officer of any regular component of the uniformed services to retired or retirement pay when employed in a position.

(b) **Coverage.** This subpart and section 5532 of title 5, United States Code, apply to each department and agency (including each corporation owned or controlled by the Government of the United States and including nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces) in the legislative (except that this subpart does not apply to the Senate, House of Representatives, and Office of the Architect of the Capitol), judicial, and executive branches of the Government of the United States and to the government of the District of Columbia.

§ 550.602 Definitions.

In this subpart:

(a) "Position" has the meaning given that term by section 5531 of title 5, United States Code.

(b) "Uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, Environmental Science Services Administration, and Public Health Service.

(c) "Armed Forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(d) "Officer" means commissioned or warrant officer.

§ 550.603 Prior approval.

When a department, agency, or the government of the District of Columbia has special or emergency employment needs which cannot be readily met because of the restrictions in section 5532 (b) of title 5, United States Code, it may request the Commission to approve an exception to the restrictions. In submitting its request for an exception, the department, agency, or the government of the District of Columbia must establish to the satisfaction of the Commission that the employment needs cannot otherwise be readily met.

Subpart G—Severance Pay

AUTHORITY: The provisions of this Subpart G issued under 5 U.S.C. 5595, E.O. 11257; 3 CFR 1964-1965 Comp., p. 357.

§ 550.701 Coverage.

(a) **Agencies.** This subpart applies to (1) an Executive agency as defined by section 105 of title 5, United States Code; (2) the Library of Congress; (3) the Government Printing Office; and (4) the government of the District of Columbia.

(b) **Employees.** (1) Except as provided by this paragraph and section 5595(a) (2) of title 5, United States Code, this subpart applies to each full-time and part-time employee of an agency, with a regularly prescheduled tour of duty within

each administrative workweek, to each seasonal employee with a regularly prescheduled tour of duty within each administrative workweek during the season for which he is employed, and to each hourly employee in the postal field service, who is serving (i) under a career or career-conditional appointment in the competitive service or under their equivalent in the excepted service; (ii) under an indefinite appointment in the competitive service made under the indefinite-appointment system that preceded the career-conditional appointment system; (iii) under an indefinite appointment without time limitation in the excepted service; (iv) under an overseas limited appointment without time limitation; (v) as a status quo employee including one who becomes an indefinite employee upon promotion, demotion, or reassignment; (vi) under a time-limited appointment in the Foreign Service to which the employee was assigned under a statutory authority that entitled him to reemployment in his former agency, but whose right of reemployment has expired.

(2) This subpart does not apply to an employee who, at the time of separation from the service, is offered and declines to accept an equivalent position in his agency in the same commuting area, including an agency to which the employee with his function is transferred in a transfer of functions between agencies. For purposes of this subparagraph, an equivalent position is one of like seniority, tenure, and pay other than a retained rate.

(3) This subpart does not apply to an employee in the government of the District of Columbia who, at the time of separation from the service, has fulfilled the requirements for an immediate annuity under the Policemen and Firemen's Retirement and Disability Amendments of 1957 (secs. 4-521 through 4-538, D.C. Code, 1967 ed.), the Act for the Retirement of Public School Teachers in the District of Columbia (secs. 31-701 through 31-745, D.C. Code, 1967 ed.) or the District of Columbia Judges Retirement Act of 1964 (sec. 11-1701, D.C. Code, 1967 ed.).

(4) This subpart does not apply to an employee who is offered an opportunity to transfer with his agency or part thereof when it is transferred to or merged with a non-Federal organization, when the statute effecting the transfer or merger includes provisions to assure that (i) the pay level of an employee who transfers will not be reduced, (ii) an employee who transfers will be regarded as continuing in the employ of the United States for the purposes of subchapter III of chapter 83 and chapter 87 of title 5, United States Code, and (iii) the receiving organization will deposit currently in the Civil Service Retirement and Disability Fund provided for in section 8348 of title 5, United States Code, the employee deductions and agency contributions required by subchapter III of chapter 83 of title 5, and in the Employees' Group Life Insurance Fund provided for in section 8714 of title 5, United States Code, the employee deductions and agency contri-

butions required by chapter 87 of title 5, United States Code.

(5) This subpart does not apply to an employee of an agency or a subdivision thereof who, when the agency or a subdivision thereof is replaced by a public non-Federal organization created in whole or in part pursuant to an Act of Congress, is offered employment comparable to his employment in the agency at the time of replacement, or within 90 days of the date of replacement accepts any employment, with the successor public non-Federal organization.

(6) This subpart does not apply to an employee who, as the result of the transfer of the operation and maintenance responsibilities for a Federal project to a private organization, is offered comparable employment with the private organization or within 90 days of the date of transfer accepts any employment with the private organization.

(7) This subpart does not apply to an employee who, at the time his activity is transferred to a Federal instrumentality the employees of which are subject to section 2105(c) of title 5, United States Code, because the Federal instrumentality is supported by nonappropriated funds, is offered comparable employment with the Federal instrumentality or accepts any employment with the Federal instrumentality within 90 days from the date of separation.

§ 550.702 Entitlement.

This subpart and section 5595 of title 5, United States Code, apply to the computation and payment of severance pay to an employee who is involuntarily separated from the service, not by removal for cause on charges of misconduct, delinquency, or inefficiency.

§ 550.703 Definitions.

In this subpart:

(a) "Agency" means an agency to which this subpart applies under § 550.701(a).

(b) "Basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee at the time of separation, including premium pay for standby duty paid to an employee on an annual basis under § 550.141, but excluding other additional pay.

(c) "Employee" means an employee to whom this subpart applies and includes the recipient of severance pay under section 5595 of title 5, United States Code, and this subpart.

(d) "Severance pay fund" means the total severance pay to which an employee is entitled under section 5595 of title 5, United States Code.

(e) "Total severance pay" means the amount of severance pay payable to the employee as computed under section 5595(c) of title 5, United States Code.

§ 550.704 General provisions.

(a) **Payment of severance pay.** (1) Except as provided in subparagraph (2) of this paragraph, on an employee's separation, the agency shall compute his severance pay fund, and shall pay him at the same pay period intervals as if still employed the same amount as his basic

pay for the pay period immediately before separation until the severance pay fund is exhausted, except that the final payment shall consist only of that portion of the severance pay fund remaining.

(2) For a postal substitute, the basic pay for the pay period immediately before separation as required in subparagraph (1) of this paragraph, is the average number of hours in a pay status per pay period for the 26 pay periods immediately before separation, or 80 hours, whichever is less, times the hourly rate of pay in effect at the time of separation.

(b) *Computation of severance pay.*

(1) In computing an employee's civilian service under section 5595(c) of title 5, United States Code, the agency shall include all service that is creditable for annual leave accrual purposes under section 6303 of title 5, United States Code, except that military service shall not be counted unless it interrupts otherwise creditable civilian service. For the purpose of this subparagraph, military service is considered to interrupt civilian service when an employee with a statutory restoration right leaves civilian service creditable for annual leave accrual rate purposes to enter military service, returns to civilian service creditable for annual leave accrual rate purposes within the time limit prescribed for the exercise of the restoration right, and is regarded as having been on furlough or leave of absence during the period of military service.

(2) In computing an employee's total years of creditable civilian service under subparagraph (1) of this paragraph, the agency shall credit him with each full year and with 25 percent of a year for each 3 months of creditable civilian service that exceeds 1 or more full years.

(3) In computing an employee's years of age over 40 for the age adjustment allowance under section 5595(c) of title 5, United States Code, the agency shall credit him with 25 percent of a year for each 3 months that his age exceeds 40.

(4) (i) For entitlement to severance pay under section 5595(a) (2) (ii) of title 5, United States Code, the appointment without time limitation must be one of the appointments specified in section 550.701(b) (1) and the termination from that appointment must have resulted from an involuntary separation not by removal for cause on charges of misconduct, delinquency, or inefficiency. (ii) If an employee retains entitlement to severance pay under section 5595(a) (2) (ii) of that title, "basic pay at the rate received immediately before separation" under section 5595(c) of that title is that basic rate received immediately before the termination of the appointment without time limitation. (iii) An employee is considered to be serving under an appointment with a definite time limitation for purposes of section 5595(a) (2) (ii) of that title, when (a) he accepts an appointment without time limitation in an agency which is scheduled by law or Executive order to be terminated within 5 years of the date of his appointment,

and (b) the scheduled date of termination for the agency has not been extended beyond 5 years of the date of appointment at the time of the employee's separation.

(5) The basic pay received immediately before separation for an employee who is in a nonpay status at the time of separation is that basic pay he would receive had he been in a pay status at the time of separation.

(c) *Recredit of service.* When an employee is reemployed and entitled to a recredit of service under section 5595(d) of title 5, United States Code, the agency which reemploys him need only record the number of weeks of severance pay hitherto received. Should the employee become entitled to severance pay upon a subsequent separation, the agency shall compute his severance pay fund at the time of the subsequent separation on the basis of all his creditable service and his current age and shall deduct from the number of weeks it will take to exhaust the severance pay fund, as recomputed at the time of his subsequent separation, the number of weeks for which the employee previously received severance pay.

(d) *Determination of 12 months continuous service.* The requirement of section 5595(b) of title 5, United States Code, is met if the employee on the date of separation has been on the rolls of one or more agencies under one or more appointments without time limitation, or temporary appointments that precede or follow an appointment without time limitation, without any break in service of more than 3 calendar days for at least the preceding 12 calendar months.

§ 550.705 Failure to accompany activity.

The separation of an employee by an agency when the employee declines to accompany his position when it is moved to another commuting area because of a transfer function is deemed to be an involuntary separation not by removal for cause on charges of misconduct, delinquency, or inefficiency, for purposes of entitlement to severance pay.

§ 550.706 Resignation in lieu of involuntary separation.

(a) Except as provided for in paragraph (b) of this section, an employee who is separated because of resignation is deemed to have been involuntarily separated for purposes of entitlement to severance pay, if he has not declined an offer of an equivalent position under § 550.701(b) (2), when he is separated because of resignation (i) after receiving a specific notice in writing by his agency that he is to be involuntarily separated not by removal for cause on charges of misconduct, delinquency, or inefficiency, (ii) after receipt of a general notice of reduction in force by his agency which announces that all positions in his competitive area will be abolished or transferred to another commuting area and his resignation is effective on a date which is not more than 1 year before the abolition or transfer, and (iii) after receipt of a notice by his agency proposing to separate him for declining to accom-

pany his position when it is to be moved to another commuting area because of a transfer of function and when all positions in his competitive area are to be abolished or transferred to another commuting area within a period of not more than 1 year.

(b) When the facts and circumstances available to an agency show that a resignation under paragraph (a) of this section is unrelated to the issuance of one of the notices specified in that paragraph, separation of the employee by resignation is a voluntary separation under section 5595 of title 5, United States Code.

§ 550.707 Postponement of payments.

(a) When, after a break in service of more than 3 days, an employee who is entitled to severance pay accepts one or more temporary appointments of 1 year or less (including any authorized temporary extensions thereof), the agency which separated him shall suspend the payment of severance pay for the duration of the appointment and shall, at the termination of the appointment, continue the payment of the severance pay fund as prescribed by this subpart and section 5595 of title 5, United States Code. The period of service covered by such an appointment is not creditable for purposes of computing the severance pay it interrupts.

(b) When, without a break or after a break in service of 3 days or less, an employee who is entitled to severance pay accepts one or more temporary part-time or temporary intermittent appointments (including any authorized temporary extensions thereof), the agency which separated him shall suspend and then continue the payment of severance pay exactly as prescribed by paragraph (a) of this section.

§ 550.708 Service with county committees.

For purposes of computation, payment, and termination of severance pay under section 5595 of title 5, United States Code, and this subpart, service by persons as employees of the county committees established pursuant to section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) is considered to be service with an agency.

Subpart H—Back Pay

AUTHORITY: The provisions of this Subpart H issued under 5 U.S.C. 5596.

§ 550.801 Scope.

(a) *Coverage.* This subpart applies to (1) agencies as defined in § 550.802(a), and (2) employees as defined in § 550.802(b).

(b) *Applicability.* This subpart and section 5596 of title 5, United States Code, apply to the computation, payment, and restoration of pay, allowances, differentials, and employment benefits for the purpose of making an employee whole when the employee, on the basis of an administrative determination or a timely appeal, is found to have undergone an unjustified or unwarranted personnel action.

§ 550.802 Definitions.

In this subpart:

(a) "Agency" means (1) an Executive agency (other than the Tennessee Valley Authority) as defined by section 105 of title 5, United States Code; (2) the Administrative Office of the U.S. Courts; (3) the Library of Congress; (4) the Government Printing Office; and (5) the government of the District of Columbia.

(b) "Employee" means an employee of an agency, including a former employee.

§ 550.803 Determining entitlement.

(a) The requirement for an administrative determination referred to in the phrase "on the basis of an administrative determination or a timely appeal" in section 5596 of title 5, United States Code, is met when an appropriate authority in an agency makes a decision on its own initiative in a case involving an unjustified or unwarranted personnel action. The decision may be oral but shall be confirmed in writing.

(b) The requirement for a timely appeal referred to in the phrase "on the basis of an administrative determination or a timely appeal" in section 5596 of title 5, United States Code, is met when an employee or his authorized representative initiates an appeal under an appeals system or procedure established by law, Executive order, or regulation and that appeal is accepted as timely filed by the Government authority administering the appeals system or procedure concerned.

(c) The appropriate authority referred to in section 5596 of title 5, United States Code, and this subpart is the agency, office or official in an agency, or court authorized under applicable law or regulation to correct, or to direct the correction of, the unjustified or unwarranted personnel action.

(d) To be unjustified or unwarranted, a personnel action must be determined to be improper or erroneous on the basis of either substantive or procedural defects after consideration of the equitable, legal, and procedural elements involved in the personnel action.

(e) A personnel action referred to in section 5596 of title 5, United States Code, and this subpart is any action by an authorized official of an agency which results in the withdrawal or reduction of all or any part of the pay allowances, or differentials of an employee and includes, but is not limited to, separations for any reason (including retirement), suspensions, furloughs without pay, demotions, reductions in pay, and periods of enforced paid leave whether or not connected with an adverse action covered by Part 752 of this chapter.

§ 550.804 Corrective action.

(a) When an appropriate authority corrects an unjustified or unwarranted personnel action, the agency shall recompute for the period covered by the corrective action the pay, allowances, differentials, and leave account (limiting the accumulation to the maximum prescribed by law or regulation for the employee) of the employee as if the unjusti-

fied or unwarranted personnel action had not occurred and the employee shall be deemed for all purposes to have rendered service in the agency for the period covered by the corrective action. In making its computation under this paragraph, an agency shall not include as allowances any amount which represents reimbursement for expenses which would have been incurred by an employee in the performance of his job if the unjustified or unwarranted personnel action had not occurred but which were not incurred because of the unjustified or unwarranted personnel action but shall include other allowances which are a form of remuneration to the employee for services that otherwise would have been rendered in the job.

(b) In recomputing the pay, allowances, differentials, and leave account of an employee under paragraph (a) of this section, the agency shall include the following:

(1) Premium pay which the employee would have received had it not been for the unjustified or unwarranted personnel action;

(2) Changes in pay rates by reason of wage surveys, administrative action, law, or other changes of general application;

(3) Changes in allowance or differential rates;

(4) Within-grade or step increases or other periodic increases which would otherwise have become due;

(5) Changes in pay caused by changes in assigned working shifts;

(6) Changes in the employee's leave earning rate; and

(7) Any other changes which would affect the amount of pay, allowances, differentials or leave which the employee would have earned had it not been for the unjustified or unwarranted personnel action.

(c) Subject to the provisions of paragraph (d) of this section, the period for which recomputation is required under paragraph (a) of this section is the period covered by the unjustified or unwarranted personnel action which is corrected and may not extend (1) beyond the date of the employee's death, or (2) beyond the date on which the employee was properly separated from the rolls of his agency such as by resignation, retirement, removal, reduction in force, expiration of appointment, or transfer to another agency, when the employee continued on the rolls of the agency beyond the date on which the unjustified or unwarranted personnel action was taken and the separation would have been effected even though the unjustified or unwarranted personnel action had not been taken.

(d) In computing the amount of back pay under this section and section 5596 of title 5, United States Code, the agency may not (1) include any period during which the employee was not ready and able to perform his job because of incapacitating illness, except that the agency shall grant upon the request of the employee any sick or annual leave to his credit to cover the period of incapacity by reason of illness, or (2) include any period during which the employee was

unavailable for the performance of his job and his unavailability was not related to, or caused by, the unjustified or unwarranted personnel action.

(e) In computing the amount of back pay due an employee under this section and section 5596 of title 5, United States Code, the agency shall deduct the amounts earned by the employee from other employment during the period covered by the corrected personnel action. The agency shall include as other employment only that employment engaged in by the employee to take the place of the employment from which the employee was separated by the unjustified or unwarranted personnel action.

(f) In computing the amount of back pay due an employee under this section and section 5596(b) of title 5, United States Code, if the employee has been restored within 1 year after his erroneous separation, the agency may not delete any period from computation on the basis that the employee was under obligation to make an effort to secure other employment during the period covered by the unjustified or unwarranted personnel action.

Subpart I—Pay for Irregular or Intermittent Duty Involving Physical Hardship or Hazard

AUTHORITY: The provisions of this Subpart I issued under 5 U.S.C. 5545(d), 5548(b).

§ 550.901 Purpose.

This subpart prescribes the regulations required by sections 5545(d) and 5548 (b) of title 5, United States Code, for the payment of differentials for irregular or intermittent duty involving unusual physical hardship or hazard to employees.

§ 550.902 Definitions.

In this subpart:

(a) "Agency" means an agency as defined in section 5102(a) of title 5, United States Code.

(b) "Duty involving physical hardship" means a duty which may not in itself be hazardous but which causes extreme physical discomfort or distress and which is not adequately alleviated by protective or mechanical devices, such as a duty requiring exposure to extreme temperatures for a long period of time; a duty involving arduous physical exertion, such as a duty which must be performed in cramped conditions; a duty involving exposure to fumes, dust, or noise which causes nausea, skin, eye, ear, or nose irritation.

(c) "Employee" means an employee of an agency who is covered by chapter 51 of title 5, United States Code.

(d) "Hazardous duty" means a duty performed under circumstances in which an accident could result in serious injury or death, such as a duty performed on a high structure where protective facilities are not used, or on an open structure where adverse conditions such as darkness, lightning, steady rain, or high wind velocity exist.

(e) "Hazard pay differential" means additional pay for the performance of ir-

regular or intermittent hazardous duty or duty involving physical hardship.

§ 550.903 Establishment of hazard pay differentials.

(a) A schedule of hazard pay differentials, the hazardous duties or duties involving physical hardship for which they are payable, and the period during which they are payable is set out as Appendix A to this subpart and incorporated in and made a part of this section.

(b) Amendments to Appendix A may be made by the Commission on its own motion or at the request of an agency. An agency shall submit with its request for an amendment of the appendix information about the hazardous duty or duty involving physical hardship showing (1) the nature of the duty, (2) the degree to which the employee is exposed to hazard or physical hardship, (3) the length of time during which the duty will continue to exist and (4) the degree to which control may be exercised over the physical hardship or hazard, and may recommend the rate of hazard pay differential to be established.

§ 550.904 Authorization of hazard pay differential.

(a) An agency shall pay the hazard pay differential listed in Appendix A to an employee who is assigned to and performs any of the duties listed in the Appendix, except when the duty (1) is an inherent part of his position, (2) has been taken into account in the classification of his position or (3) is regularly assigned to him.

(b) The Commission may direct payment of a hazard pay differential in situations where the differential is not payable under paragraph (a) of this section, when it finds that the circumstances are so unusual that a hazard pay differential is equitably justified and the duties have not been taken into account in the classification of the position.

§ 550.905 Payment of hazard pay differential.

When an employee performs duty for which hazard pay differential is authorized, the agency shall pay him the hazard differential for the hours in a pay status on the day (calendar day or, to avoid problems involving uncommon tours of duty, and when designated by the agency, a 24-hour period) on which the duty is performed. For purposes of this section hours in a pay status for work performed during a continuous period extending over 2 days shall be considered to have been performed on the day on which the work began and allowable differential shall be charged to that day.

§ 550.906 Termination of hazard pay differential.

An agency shall discontinue payment of hazard pay differential to an employee when one or more of the conditions requisite for such payment ceases to exist in his case.

§ 550.907 Relationship to additional pay payable under other statutes.

Hazard pay differential is in addition to any additional pay or allowances payable

under other statutes. It shall not be considered part of the employee's rate of basic pay in computing additional pay or allowances payable under other statutes.

APPENDIX A

SCHEDULE 1 OF PAY DIFFERENTIALS AUTHORIZED FOR IRREGULAR OR INTERMITTENT HAZARDOUS DUTY UNDER SUBPART I

HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

Irregular or intermittent duty	Rate of hazard pay differential	Duration payable	Effective date
	Percent		
<i>High Work.</i> Working on any structure of at least 50 feet above the base level, ground, deck, floor, roof, etc., under open conditions, if the structure is unstable or if scaffolding guards or other suitable protective facilities are not used, or if performed under adverse conditions such as darkness, lightning, steady rain, or high wind velocity.	25	Indefinite	First pay period beginning after January 15, 1967.
<i>Flying.</i> Participating in (1) test flights of a new or repaired aircraft or modified aircraft when the modification may affect the flight characteristics of the aircraft.	25	do	Do.
(2) Flights to test performance of aircraft under adverse conditions (such as in low altitude or severe weather conditions, maximum load limits or overload).	25	do	Do.
(3) Flights deliberately undertaken in extreme weather conditions (such as flying into a hurricane to secure weather data);	25	do	Do.
(4) Flights to deliver aircraft which has been prepared for one time flight without being test flown prior to delivery flight;	25	do	Do.
(5) Flights for pilot proficiency training in aircraft new to the pilot under simulated emergency conditions which parallel conditions encountered in performing flight tests; and	25	do	Do.
(6) Low level flights in small aircraft at altitude of 500 feet and under in daylight and 1000 feet and under at night when the flights are over mountainous terrain.	25	do	Do.
(7) Reduced gravity flight testing in an aircraft flying a parabolic flight path and providing a testing environment ranging from weightlessness up through +2 gravity conditions.	25	Indefinite	First pay period beginning after December 30, 1967.
<i>Exposure to hazardous weather or terrain.</i> (1) When working on cliffs, narrow ledges, or near vertical mountainous slopes where a loss of footing would result in serious injury or death, or when working in areas where there is danger of rock falls or avalanches.	25	do	First pay period beginning after June 20, 1967.
(2) When travel over secondary or unimproved roads to isolated mountain top installations is required at night, or under adverse weather conditions (such as snow, rain, or fog) which limits visibility to less than 100 feet, when there is danger of rock, mud, or snow slides.	25	do	Do.
(3) When travel in the wintertime, either on foot or by means of vehicle, over secondary or unimproved roads or snow trails, in sparsely settled or isolated areas to isolated installations is required when there is danger of avalanches, or during "whiteout" phenomenon which limits visibility to less than 10 feet.	25	do	Do.
(4) When work or travel in sparsely settled or isolated areas results in exposure to temperatures and/or wind velocity shown to be of considerable danger, or very great danger, on the windchill chart (Appendix A-1), and shelter (other than temporary shelter) or assistance is not readily available.	25	do	Do.
<i>Work in fuel storage tanks.</i> When inspecting, cleaning or repairing fuel storage tanks where there is no ready access to an exit, under conditions requiring a breathing apparatus because all or part of the oxygen in the atmosphere has been displaced by toxic vapors or gas, and failure of the breathing apparatus would result in serious injury or death within the time required to leave the tank.	25	do	Do.
<i>Underwater duty.</i> (1) Duty aboard a submarine when it submerges	25	do	Do.
(2) Participating in exploratory trip under the polar ice caps when the submarine is submerged beneath the ice;	25	do	Do.
(3) Official duty aboard a Deep Research Vehicle when it submerges;	25	do	Do.
(4) [Reserved]	25	do	Do.
(5) Participating as a test subject underwater in a mock-up component undergoing an underwater space simulation study, as a technician assembling underwater mock-up components, or as an underwater observer to an underwater space simulation study.	25	do	Do.
<i>Firefighting.</i> Participating as emergency member of a firefighting crew in fighting fires of Government equipment, installations, or buildings.	25	do	Do.
<i>Work in open trenches.</i> Work in an open trench 15 feet or more deep until proper shoring has been installed.	25	do	Do.
<i>Exposure to hazardous agents.</i> Work with, or in close proximity to, (1) explosive or incendiary materials which are unstable and highly sensitive;	25	do	Do.
(2) Toxic chemical materials when there is a possibility of leakage or spillage;	25	do	Do.
(3) Materials of micro-organic nature which when introduced into the body are likely to cause serious disease or fatality and for which protective devices do not afford complete protection.	25	do	Do.
<i>Land impact or pad abort of space vehicle.</i> Actual participation in dearming and safing explosive ordnance, toxic propellant and high pressure vessels on vehicles that have landed or on vehicles on the launch pad that have reached a point in the countdown where no remote means are available for returning the vehicle to a safe condition.	25	do	Do.
<i>Simulated altitude chamber subjects/observers.</i> Participating in simulated altitude studies ranging from 18,000 to 150,000 feet either as subject or as observer exposed to the same conditions as the subject.	25	do	Do.
<i>Centrifuge Subjects.</i> Actually participating as subject in centrifuge studies involving a combination of reduced atmospheric pressure and elevated G forces above the level of 5 G's.	25	do	Do.
<i>Experimental landing/recovery equipment tests.</i> Participating in tests of experimental or prototype landing and recovery equipment where personnel are required to serve as test subjects in spacecraft being dropped into the sea or laboratory tanks.	25	do	Do.

SCHEDULE 2 OF PAY DIFFERENTIALS AUTHORIZED UNDER AUTHORITY OF § 550.904 (a) AND (b)

Duty	Rate of hazard pay differential	Duration payable	Effective date
Firefighting. (1) Participating as a member of a firefighting crew in fighting forest and range fires on the fireline.	25	Indefinite	First pay period beginning after June 20, 1967.
(2) Participating as a member of a SCUBA (Self-Contained Breathing Apparatus) Diving Emergency Unit engaged in rescue and recovery operations, or training in such operations, when visibility is restricted or currents are strong.	25	do	First pay period beginning after December 30, 1967.
(3) Participating in in-water under pier firefighting operations (involving hazards beyond those normally encountered in firefighting on land, e.g., strong currents, cold water temperature, etc.).	25	do	Do.
Flying. Participating in (1) low level flights as a pilot or observer in an aircraft flying at altitudes of 200 feet and under while conducting wildlife surveys and law enforcement activities, animal predation abatement and making agricultural applications.	25	do	Do.
(2) Test missions for collection of measurement data where two or more aircraft are involved and flight procedures require formation flying and/or rendezvous at various altitudes and aspect angles.	25	do	First pay period beginning after April 26, 1968.
(3) Flights (fixed wing aircraft) involving maneuver (tactical pattern) flights at altitudes of 500 feet or less in daylight over water or land in a small or large aircraft or 1,000 feet or less at night.	25	do	Do.
(4) Flights involving launch and recovery aboard an aircraft carrier.	25	do	Do.
(5) Low-level helicopter flights under 500 feet altitude involving tactical pattern and hovering flights over water.	25	do	Do.
Sea duty aboard deep research vessels. Participating in sea tests of experimental equipment wherein the team (to the raise, lower, and adjust) on or over the side of the research vessel when sea state is high (3 feet or above) and the work is done on deck in relatively unsheltered areas.	25	do	Do.
Centrifuge subjects. Participating as subject in centrifuge studies involving elevated G forces above the level of 5 G's whether or not at reduced atmospheric pressure.	25	do	Do.
Participating in liquid missile propulsion tests and certain solid propulsion operations. (1) Tanking or detanking operations of a missile or the test stand "run" bottles with liquid propellants.	25	do	Do.
(2) Hoisting a tanked missile or a solid propellant propulsion system to and/or over the test stand.	25	do	Do.
(3) Pressure tests on loaded missiles, missile tanks, or run bottles during prefire preparations.	25	do	Do.
(4) Test stand operations on loaded missiles under environmental conditions where the high or low temperatures could cause a failure of a critical component.	25	do	Do.
(5) Disassembly and breakdown of a contaminated missile system or test stand plumbing after test.	25	do	Do.
(6) Working on any test stand above the 50-foot level or any stand work while the system is in a "go" condition.	25	do	Do.
(7) Arming, darning, or the installation and/or removal of any squib, explosive device, or a component thereof connected to, or part of, any live or potentially expended liquid or solid propulsion system.	25	do	Do.
(8) Demolition, hazards classification, or destruct type tests where the specimen is nonstandard and/or unproven, and the test techniques do not conform to standard or proven procedures.	25	do	Do.
Rotational flight simulator subject. Participating as a subject in a Rotational Flight Simulator in studies involving continuous rotation in one axis through 360° or in a combination of any axes through 360° at rotation rates greater than 15 r.p.m. for periods exceeding 3 minutes.	25	do	First pay period beginning after December 30, 1967.
Underwater duty. (1) Diving required in scientific and engineering pursuits, or for inspection, maintenance, or repair of underwater facilities, at a depth of 20 feet or more below the surface, or when visibility is restricted.	25	do	Do.
(2) Participating as a subject in diving research tests which seek to establish limits for safe pressure profiles by working in a pressure chamber simulating diving or, as an observer to the test or as a technician assembling underwater mock-up components for the test, when the observer or technician	25	do	Do.

SCHEDULE 2 OF PAY DIFFERENTIALS AUTHORIZED UNDER AUTHORITY OF § 550.904 (a) AND (b)—CON.

Duty	Rate of hazard pay differential	Duration payable	Effective date
is exposed to high pressure gas piping systems, gas cylinders, and pumping devices which are susceptible to explosive ruptures.	25	Indefinite	First pay period beginning after December 30, 1967.
(3) Participating in weapons systems trials conducted on submarines at sea under submerged conditions.	25	do	Do.
(4) Participating in full-scale trial programs under submerged conditions on all classes of submarines at different operational stages including trials of newly launched submarines, overhaul and postoverhaul trials of repaired or modified submarines.	25	do	Do.
Underground work. Work underground performed in the construction of tunnels and shafts, and the inspection of such underground construction, until the necessary lining of the shaft or tunnel has eliminated the hazard.	25	do	Do.
Exposure to Hazardous agents. Work with unknown explosive ordnance when the unknown ordnance is manually manipulated, or when new or unevaluated mechanical or explosive techniques are applied to explosive ordnance.	25	do	Do.
Specialized Physical and Performance Testing. (1) Conducting tests on fire retardant materials when the tests are performed in ventilation restricted rooms where the atmosphere is continuously contaminated by obnoxious odors and smoke which causes irritation to the eyes and respiratory tract.	25	do	Do.
(2) Conducting tests to evaluate the ballistic properties of materials when it involves the preparation of cartridges which necessitate the handling of gun powder.	25	do	Do.

(5 U.S.C. 5545(d))

APPENDIX A-1—WINDCHILL CHART

WINDCHILL CHART											
Wind Speed (MPH)		Local Temperature (°F)									
		32	23	14	5	-4	-13	-22	-31	-40	-58
Calm	5	32	23	14	5	-4	-13	-22	-31	-40	-58
	10	29	20	10	1	-9	-18	-28	-37	-47	-65
	15	18	7	-4	-15	-26	-37	-48	-59	-70	-92
	20	13	-1	-13	-25	-37	-49	-61	-73	-85	-109
	25	7	-6	-19	-32	-44	-57	-70	-83	-96	-121
30	3	3	-10	-24	-37	-50	-64	-77	-90	-104	-130
	1	1	-13	-27	-41	-54	-68	-82	-97	-109	-137
	-1	-1	-15	-29	-43	-57	-71	-85	-99	-113	-142
	-3	-3	-17	-31	-45	-59	-74	-87	-102	-116	-145
	-5	-5	-18	-32	-46	-61	-75	-89	-104	-118	-147
50	-4	-4	-18	-33	-47	-62	-76	-91	-105	-120	-148
For Properly Clothed Persons		Little Danger		Considerable Danger		Very Great Danger					
		Danger From Freezing of Exposed Flesh									

PART 591—ALLOWANCES AND DIFFERENTIALS PAYABLE IN NON-FOREIGN AREAS

Subpart A—Definitions

Sec.

591.101 Definitions.

Subpart B—Establishment and Maintenance of Allowances and Differentials

591.201 Areas covered.

591.202 Places and rates at which allowances shall be paid.

591.203 Places and rates at which differentials shall be paid.

591.204 Establishment of rates for additional places.

591.205 Periodic review.

591.206 Deductions from allowances.

Subpart C—Agencies and Employees Affected

591.301 Agencies and employees covered.

591.302 Exclusion of certain employees.

591.303 Eligibility for differential.

591.304 Coordination of allowances and differentials.

Subpart D—Payment of Allowances and Differentials

591.401 Payment of allowances and differentials.

AUTHORITY: The provisions of this Part 591 issued under 5 U.S.C. 5941, sec. 202, E.O. 10000; 3 CFR, 1943-1948 Comp., p. 794, E.O. 10636; 3 CFR, 1954-1958 Comp., p. 268.

Subpart A—Definitions

§ 591.101 Definitions.

In this part:

(a) "Date of arrival" means the beginning of business on the workday of the employee's arrival at the post, or other place designated. When the employee's arrival is on a nonworkday, "date of arrival" means the beginning of business on the first workday following arrival.

(b) "Date of departure" means the close of business on the workday of the employee's departure from the post or other place designated. When the employee's departure is on a nonworkday, "date of departure" means the close of business on the last workday preceding departure.

(c) "Day or calendar day" means any day of the year. Fractional days are considered whole days.

(d) "Detail" means the temporary assignment or temporary duty of an employee away from his post of regular assignment, including all periods of leave while serving at the post of detail.

(e) "Non-foreign allowance" or "allowance" means a cost-of-living allowance payable under section 5941 of title 5, United States Code, at a post in a non-foreign area where living costs are substantially higher than in the District of Columbia.

(f) "Non-foreign area" means the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, territories and possessions of the United States, and such additional areas located outside the continental United States as the Secretary of State shall designate as being within the scope of Part II of Executive Order 10000, as amended.

(g) "Non-foreign differential" or "differential" means an allowance payable

under section 5941 of title 5, United States Code, at a post in a nonforeign area when conditions of environment differ substantially from conditions of environment in the States and warrant its payment as a recruitment incentive.

(h) "On assignment" or "on transfer" at a post of duty means officially occupying a position located at the post, geographically and organizationally, and having official headquarters at the post for travel and other administrative purposes.

(i) "Rate of basic pay" means the rate of pay fixed by statute for the position held by an individual, before any deductions and exclusive of additional pay of any kind, such as overtime pay, night differential, extra pay for work on holidays, or allowances and differentials.

Subpart B—Establishment and Maintenance of Allowances and Differentials

§ 591.201 Areas covered.

The following areas are subject to this part:

Alaska (including all the Aleutian Islands east of longitude 167 degrees east of Greenwich).

American Samoa (including the Island of Tutuila, the Manua Islands, and all other islands of the Samoan group east of longitude 171 degrees west of Greenwich, together with Swains Island).

Canton and Enderbury Islands.

Commonwealth of Puerto Rico.

Guam.

Hawaii (including Ocean or Kure Island).

Howland, Baker, and Jarvis Islands.

Johnston or Cornwallis Island, and Sand Island.

Kingman Reef.

Midway Islands.

Navassa Island.

Palmyra Island.

Swan Islands.

Virgin Islands of the United States.

Wake Island.

Any small guano islands, rocks, or keys which, in pursuance of action taken under the Act of Congress, August 18, 1856, are considered as appertaining to the United States.

Any other islands to which the United States Government reserves claim, such as Christmas Island.

§ 591.202 Places and rates at which allowances shall be paid.

In accordance with section 5941 of title 5, United States Code, and section 205 of Executive Order 10000, as amended, and in consideration of relative consumer price levels in the area and in the District of Columbia, and differences in goods and services available and the manner of living of persons employed in the area concerned in positions comparable to those of U.S. employees in the area, allowances are established at the following places and rates:

Alaska (including all the Aleutian Islands east of longitude 167 degrees east of Greenwich): 25 percent of rate of basic pay.

Commonwealth of Puerto Rico: 5 percent of rate of basic pay.

Hawaii (excluding Ocean or Kure Island): 15 percent of rate of basic pay.

Virgin Islands of the United States: 5 percent of rate of basic pay.

§ 591.203 Places and rates at which differentials shall be paid.

In accordance with section 5941 of title 5, United States Code, and section 202 of Executive Order 10000, as amended, and based on (a) extraordinarily difficult living conditions, (b) excessive physical hardship, or (c) notably unhealthy conditions, differentials are established at the following places and rates:

American Samoa (including the Island of Tutuila, the Manua Islands, and all other islands of the Samoan group east of longitude 171 degrees west of Greenwich, together with Swains Island): 25 percent of rate of basic pay.

Canton Island: 25 percent of rate of basic pay.

Christmas Island: 25 percent of rate of basic pay.

Guam: 25 percent of rate of basic pay. Johnston or Cornwallis Island, and Sand Island: 25 percent of rate of basic pay.

Midway Islands: 25 percent of rate of basic pay.

Swan Islands: 25 percent of rate of basic pay.

Wake Island: 25 percent of rate of basic pay.

§ 591.204 Establishment of rates for additional places.

The department or agency concerned shall submit to the Commission in writing requests for the establishment of rates of allowances or differentials for places for which they have not been established by this subpart.

§ 591.205 Periodic review.

The Commission shall review from time to time, but at least annually, the places designated, the rates fixed, and the regulations in this part, which are prescribed for payment of allowances and differentials, with a view to making those changes therein as will insure that payment thereof shall continue only during the continuance of conditions justifying payment of allowances and differentials, and shall not in any instance exceed the amount justified.

§ 591.206 Deductions from allowances.

In accordance with the provisions of section 205(b)(2) of Executive Order 10000, as amended, deductions from allowances of the following classes of employees shall be made at the following places and rates: None.

Subpart C—Agencies and Employees Affected

§ 591.301 Agencies and employees covered.

(a) In accordance with section 5941 of title 5, United States Code, Part II of Executive Order 10000, as amended, and this part, each executive department, independent establishment, and wholly owned Government corporation shall pay (1) an allowance to each of its employees whose rate of basic pay is fixed by statute, who is located at a place for which an allowance has been established, and who is otherwise eligible to receive allowance payments; and (2) a differential to each of its employees whose rate of basic pay is fixed by statute,

who is located at a place for which a differential has been established, and who is otherwise eligible to receive differential payments.

(b) Section 5941 of title 5, United States Code, Part II of Executive Order 10000, as amended, and this part apply to employees of the United States whose rates of basic pay are fixed by statute.

§ 591.302 Exclusion of certain employees.

(a) Section 5941 of title 5, United States Code, Part II of Executive Order 10000, as amended, and this part do not apply to employees in the Panama Canal Zone whose rates of basic pay are fixed by statute, or to any other groups of employees for whom allowances and differentials for service outside the continental United States or in Alaska are otherwise specifically authorized by statute.

(b) Governors of territories. A department or agency shall not pay an allowance or differential to a governor of a territory in a nonforeign area, except that on the specific request of the department or agency concerned, the Commission may authorize the payment of a differential to a governor whose pay is fixed under chapter 51 and subchapter III of chapter 53 of title 5, United States Code, if he is otherwise eligible to receive a differential and the Commission determines that payment is warranted in the circumstances.

§ 591.303 Eligibility for differential.

(a) The department or agency concerned shall determine eligibility to receive a differential of any person not included in a class enumerated in paragraph (c) of this section in accordance with paragraph (b) of this section.

(b) In order for an employee to be eligible to receive a differential, (1) he shall be a citizen or national of the United States; (2) his residence in the area to which the differential applies, at the time of receipt thereof, shall be fairly attributable to his employment by the United States; and (3) his residence in the area over an appropriate prior period of time must not be fairly attributable to reasons other than employment by the United States or by United States firms, interests, or organizations.

(c) Subject to paragraph (b) of this section, the classes of persons eligible to receive differentials include but are not limited to:

(1) Persons recruited or transferred from outside the area to which the differential concerned is applicable, except that the department or agency concerned shall exclude from those eligible to receive a differential the spouse of an individual who is stationed, employed, or resident in the differential area when the department or agency determines that the spouse is there primarily to be near the individual.

(2) Persons employed in the area to which the differential concerned is applicable but (1) who were originally recruited from outside the area and have been in substantially continuous em-

ployment by other Federal agencies, contractors of Federal agencies, or international organizations in which the United States Government participates, and whose conditions of employment provide for their return transportation to places outside the differential area concerned; or (ii) who were at the time of employment temporarily present in the differential area concerned for purposes of travel or formal study and maintained residence outside the area during the period so present.

(3) Persons who are not normally residents of the area to which the differential concerned is applicable and who are discharged from the military service of the United States in the area to accept employment therein with an agency of the Federal Government.

§ 591.304 Coordination of allowances and differentials.

An employee eligible to receive an allowance at a post for which both an allowance and a differential have been established shall receive the full allowance otherwise payable to him under this part. When both an allowance and a differential are authorized at one post, the eligible employee shall be paid the full allowance first, and in addition, so much of the differential as will not cause the total amount for allowances and differentials to exceed a rate of 25 percent of his rate of basic pay.

Subpart D—Payment of Allowances and Differentials

§ 591.401 Payment of allowances and differentials.

(a) Payment of an allowance or a differential shall not be made for any time for which an employee does not receive basic pay.

(b) The total amount of allowances and differentials paid under authority of section 5941 of title 5, United States Code, and this part shall not exceed in any instance 25 percent of the rate of basic pay.

(c) Payment of an allowance or a differential shall begin as of the date of arrival at the post of duty on regular assignment or transfer, or on the date of entrance on duty in the case of local recruitment. Payment of an allowance or a differential shall cease on separation, or as of the date of departure on transfer to a new post of regular assignment.

(d) An allowance or a differential shall not be included in the base used in computing overtime pay, night differential, holiday pay, retirement deductions, or any other additional pay, allowance, or pay differential.

(e) Payment of an allowance or a differential is not an "equivalent increase" in pay within the meaning of section 5335 of title 5, United States Code.

(f) When an employee who is en route to, or returning from, his post of regular assignment is required to perform work in an area where payment of allowances or differentials is authorized, he shall be paid the allowances or differentials for his post of regular assignment while he is performing this work.

(g) Payment of an allowance at the rate prescribed for the post of regular assignment shall continue for all periods of temporary absence from the post on leave, including transit time. Payment of a differential at the rate prescribed for the post of regular assignment shall continue for the first 42 consecutive days of temporary absence from the post on leave, including transit time. Payment of allowances and differentials under this paragraph is authorized only if the employee returns to a post of regular assignment in a foreign or non-foreign area, unless

(1) The department or agency concerned determines that it is in the public interest not to return the employee to a post of regular assignment, or

(2) The department or agency concerned determines that the employee's failure to return to a post of regular assignment was due to compelling personal reasons, such as the health of the employee or his family, or to circumstances over which the employee has no control.

(h) (1) Payment of an allowance at the rate prescribed for the post of regular assignment shall continue for all periods of detail from the post including transit time, except that when an employee detailed to a foreign area post receives a differential authorized by the Department of State under section 5925 of title 5, United States Code, the payment of the allowance under this subpart will be reduced to a rate which when added to the foreign post differential rate will not result in a total rate of more than 25 percent.

(2) Payment of a differential at the rate prescribed for the post of regular assignment shall continue for the first 42 consecutive calendar days on detail from the post including transit time, except that when the employee is detailed to a foreign area post for which the Department of State has authorized a differential under section 5925 of title 5, United States Code, but the employee may not be paid the differential because he is detailed from a post of regular assignment which is not in one of the several States or District of Columbia, the department or agency shall pay him the differential prescribed for his post of regular assignment for the entire period of detail (including the periods of leave granted during the period of detail). When an employee other than an employee covered by the exception in the preceding sentence has aggregated 42 days in a pay status at a differential post, he shall thereafter be paid the differential prescribed for each post of detail, but not for any time in transit. In any case the total amount of allowances and differentials payable under this part is restricted to 25 percent of the employee's basic pay as specified in section 5941 of title 5, United States Code, § 591.304, and paragraph (b) of this section. When an employee detailed to a foreign area post receives a differential authorized by the Department of State under section 5925 of title 5, United States Code, the payment of the differential under this subpart will be reduced to a rate which when added to the foreign post differen-

tial rate will not result in a total rate of more than 25 percent.

(i) Except as provided by paragraph (h) of this section, when an employee is temporarily absent from his post of regular assignment on leave and detail, payment of the differential for his post of regular assignment is limited to the first 42 consecutive calendar days of the temporary absence, including transit time.

(j) Payment of an allowance or differential to an employee serving on a part-time basis shall be prorated to cover only those periods of time for which the employee receives basic pay.

PART 610—HOURS OF DUTY

Subpart A—Weekly and Daily Scheduling of Work

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Subpart A—Weekly and Daily Scheduling of Work

AUTHORITY: The provisions of this Subpart A issued under 5 U.S.C. 6101, unless otherwise noted.

§ 610.101 Coverage.

This subpart applies to each employee to whom Subpart A of Part 550 applies.

§ 610.102 Definitions.

In this subpart:

(a) "Administrative workweek" means a period of 7 consecutive calendar days designated in advance by the head of an agency under section 6101 of title 5, United States Code.

(b) "Regularly scheduled administrative workweek," for full-time employees, means the period within an administrative workweek, established in accordance with § 610.111, within which these employees are required to be on duty regularly. For part-time employees, it means the officially prescribed days and hours within an administrative workweek during which these employees are required to be on duty regularly.

(c) "Basic workweek," for full-time employees, means the 40-hour workweek established in accordance with § 610.111.

(d) "Agency" means an Executive agency and a military department as defined by sections 105 and 102 of title 5, United States Code.

(e) "Head of agency" means the head of an agency or an official who has been

delegated the authority to act for the head of the agency in the matter concerned.

(f) "Employee" means an employee of an agency to whom this subpart applies.

WORKWEEK

§ 610.111 Establishment of workweeks.

(a) The head of each agency, with respect to each group of full-time employees to whom this subpart applies, shall establish by regulation:

(1) A basic workweek of 40 hours which does not extend over more than 6 of any 7 consecutive days. Except as provided in paragraphs (b) and (c) of this section, the regulation shall specify the calendar days constituting the basic workweek and the number of hours of employment for each calendar day included within the basic workweek.

(2) A regularly scheduled administrative workweek which consists of the 40-hour basic workweek established in accordance with subparagraph (1) of this paragraph, plus the period of overtime work, if any, regularly required of each group of employees. Except as provided in paragraphs (b) and (c) of this section, the regulation, for purposes of leave and overtime pay administration, shall specify by calendar days and number of hours a day the periods included in the regularly scheduled administrative workweek which do not constitute a part of the basic workweek.

(b) When it is impracticable to prescribe a regular schedule of definite hours of duty for each workday of a regularly scheduled administrative workweek, the head of an agency may establish the first 40 hours of duty performed within a period of not more than 6 days of the administrative workweek as the basic workweek, and additional hours of officially ordered or approved duty within the administrative workweek are overtime work.

(c) (1) When an employee is paid additional pay under section 5545(c) (1) of title 5, United States Code, his regularly scheduled administrative workweek is the total number of regularly scheduled hours of duty a week.

(2) When an employee has a tour of duty which includes a period during which he remains at or within the confines of his station in a standby status rather than performing actual work his regularly scheduled administrative workweek is the total number of regularly scheduled hours of duty a week, including time in a standby status except that allowed for sleep and meals by regulation of the agency.

WORK SCHEDULES

§ 610.121 Establishment of work schedules.

Except when the head of an agency determines that the agency would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he shall provide that:

(a) Assignments to tours of duty are scheduled in advance over periods of not less than 1 week;

(b) The basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive;

(c) The working hours in each day in the basic workweek are the same;

(d) The basic nonovertime workday may not exceed 8 hours;

(e) The occurrence of holidays may not affect the designation of the basic workweek; and

(f) Breaks in working hours of more than 1 hour may not be scheduled in a basic workday.

§ 610.122 Variations in work schedules for educational purposes.

(a) Notwithstanding § 610.121, the head of an agency may authorize a special tour of duty of not less than 40 hours to permit an employee to take one or more courses in a college, university, or other educational institution when it is determined that:

(1) The courses being taken are not training under chapter 41 of title 5, United States Code;

(2) The rearrangement of the employee's tour of duty will not appreciably interfere with the accomplishment of the work required to be performed;

(3) Additional costs for personal services will not be incurred; and

(4) Completion of the courses will equip the employee for more effective work in the agency.

(b) The agency may not pay to the employee any premium pay solely because the special tour of duty authorized under this section causes the employee to work on a day, or at a time during the day, for which premium pay would otherwise be payable.

(c) The Commission may from time to time request an agency to report on the use of this authority.

§ 610.123 Travel on official time.

Insofar as practicable travel during nonduty hours shall not be required of an employee. When it is essential that this be required and the employee may not be paid overtime under § 550.112(e) of this chapter the official concerned shall record his reasons for ordering travel at those hours and shall, upon request, furnish a copy of his statement to the employee concerned.

Subpart B—Holidays

AUTHORITY: The provisions of this Subpart B issued under 5 U.S.C. 6101.

§ 610.201 Identification of holidays.

In this subpart, "holiday" has the same meaning given that word in section 2(a) of Executive Order 10358.

§ 610.202 Determining the holiday.

For purposes of pay and leave, the day to be treated as a holiday is determined as follows:

(a) Except as provided in paragraph (c) of this section, when a holiday falls on a workday in an employee's basic workweek (as defined in § 610.102(c)), that workday is his holiday.

(b) When a holiday falls on a non-workday outside an employee's basic

workweek, the day to be treated as his holiday is determined in accordance with section 6103(b) of title 5, United States Code, and Executive Order 10358, as amended by Executive Orders 11226 and 11272.

(c) When an employee's basic workweek includes both Sunday and Monday and a holiday falls on Sunday, either day, as determined by the head of the agency, but not both days, may be treated as his holiday.

Subpart C—Administrative Dismissals of Daily, Hourly, and Piecework Employees

AUTHORITY: The provisions of this Subpart C issued under 5 U.S.C. 6104, E.O. 10552; 3 CFR, 1954-1958 Comp., p. 201.

§ 610.301 Purpose.

The purpose of this subpart is to provide uniform and equitable standards under which regular employees paid at daily, hourly, or piecework rates may be relieved from duty with pay by administrative order.

§ 610.302 Policy statement.

The authority in this subpart may be used only to the extent warranted by good administration for short periods of time not generally exceeding 3 consecutive work days in a single period of excused absence. This authority may not be used in situations of extensive duration or for periods of interrupted or suspended operations such as ordinarily would be covered by the scheduling of leave, furlough, or the assignment of other work. Insofar as practicable, each administrative order issued under this subpart shall provide benefits for regular employees paid at daily, hourly, or piecework rates similar to those provided for employees paid at annual rates.

§ 610.303 Definitions.

In this subpart:

(a) "Administrative order" means an order issued by an authorized official of a department or agency relieving regular employees from active duty without charge to leave or loss of pay.

(b) "Regular employees" means employees paid at daily, hourly, or piecework rates who have a regular tour of duty, and whose appointments are not limited to 90 days or less or who have been currently employed for a continuous period of 90 days under one or more appointments without a break in service.

§ 610.304 Coverage.

This subpart applies to regular employees of the Federal Government paid at daily, hourly, or piecework rates. This subpart does not apply to experts and consultants.

§ 610.305 Standards.

An administrative order may be issued under this subpart when:

- Normal operations of an establishment are interrupted by events beyond the control of management or employees;
- For managerial reasons, the closing of an establishment or portions thereof is required for short periods; or
- It is in the public interest to relieve employees from work to participate

in civil activities which the Government is interested in encouraging.

(d) The circumstances are such that an administrative order under paragraph (a), (b), or (c) of this section is not appropriate and the department or agency under its regulations excuses, or is authorized to excuse, without charge to leave or loss of compensation, employees paid on an annual basis.

§ 610.306 Supplemental regulations.

Each department and agency is authorized to issue supplemental regulations not inconsistent with this subpart.

PART 630—ABSENCE AND LEAVE

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Subpart B—Definitions and General Provisions for Annual and Sick Leave

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AUTHORITY: The provisions of this Part 630 issued under 5 U.S.C. 6311, unless otherwise noted.

Subpart A—General Provisions

§ 630.101 Responsibility for administration.

The head of an agency to which subchapter I of chapter 63 of title 5, United States Code, applies is responsible for the proper administration of that sub-

chapter and this part so far as they pertain to employees under his jurisdiction, and for maintaining an account of leave for each employee in accordance with methods prescribed by the General Accounting Office.

Subpart B—Definitions and General Provisions for Annual and Sick Leave

§ 630.201 Definitions.

(a) In section 6301(2)(iii) of title 5, United States Code, the term "temporary employee engaged in construction work at an hourly rate" means an employee hired on a temporary basis solely for the purpose of work on a specific construction project and paid at an hourly rate.

(b) In this part:

(1) "Accrued leave" means the leave earned by an employee during the current leave year that is unused at any given time in that leave year.

(2) "Accumulated leave" means the unused leave remaining to the credit of an employee at the beginning of a leave year.

(3) "Contagious disease" means a disease which is ruled as subject to quarantine, requires isolation of the patient, or requires restriction of movement by the patient for a specified period as prescribed by the health authorities having jurisdiction.

(4) "Employee" means an employee to whom subchapter I of chapter 63 of title 5, United States Code, applies.

(5) "Leave year" means the period beginning with the first day of the first complete pay period in a calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year.

(6) "Medical certificate" means a written statement signed by a registered practicing physician or other practitioner certifying to the incapacitation, examination, or treatment, or to the period of disability while the patient was receiving professional treatment.

(7) "United States" means the several States and the District of Columbia.

§ 630.202 Full biweekly pay period; leave earnings.

(a) *Full-time employees.* A full-time employee earns leave during each full biweekly pay period while in a pay status or in a combination of a pay status and a nonpay status.

(b) *Part-time employees; hourly postal field service employees.* Hours in a pay status in excess of an agency's basic working hours in a pay period are disregarded in computing the leave earnings of a part-time employee, except that an hourly employee in the field service of the Post Office Department earns leave to the annual maximum in accordance with his actual number of hours in a pay status.

§ 630.203 Pay periods other than biweekly.

An employee paid on other than a biweekly pay period basis earns leave on a pro rata basis for a full pay period.

§ 630.204 Fractional pay periods.

When an employee's service is interrupted by a non-leave-earning period, he earns leave on a pro rata basis for each fractional pay period that occurs within the continuity of his employment.

§ 630.205 Change in length of day.

When the number of hours of duty in a full-time employee's workday is permanently changed, the leave to his credit is converted to the proper number of hours based upon the new workday.

§ 630.206 Minimum charge.

(a) The minimum charge for leave is 1 hour, and additional charges are in multiples thereof. If an employee is unavoidably or necessarily absent for less than 1 hour, or tardy, the agency, for adequate reason, may excuse him without charge to leave.

(b) When an employee is charged with leave for an unauthorized absence or tardiness, the agency may not require him to perform work for any part of the leave period charged against his account.

§ 630.207 Travel time.

The travel time granted an employee under section 6303(d) of title 5, United States Code, is inclusive of the time necessarily occupied in traveling to and from his post of duty and (a) the United States, or (b) his place of residence, which is outside the area of employment, in the Commonwealth of Puerto Rico or the territories or possessions of the United States. The employee shall designate his place of residence in his request for leave under section 6303(d) of title 5, United States Code.

§ 630.208 Reduction in leave credits.

(a) When the number of hours in a nonpay status in a full-time employee's leave year equals the number of base-pay hours in a pay period, the agency shall reduce his credits for leave by an amount equal to the amount of leave the employee earns during the pay period. When the employee's number of hours of nonpay status does not require a reduction of leave credits, the agency shall drop those hours at the end of the employee's leave year. For the purpose of determining the reduction of leave credits under this paragraph when an employee has one or more breaks in service during a leave year, the agency shall include all hours in a nonpay status (other than nonpay status during a fractional pay period when no leave accrues) for each period of service during the leave year in which annual leave accrued.

(b) An employee who is in a nonpay status for his entire leave year does not earn leave.

(c) When a reduction in leave credits results in a debit to an employee's annual leave account at the end of a leave year, the agency shall:

(1) Carry the debit forward as a charge against the annual leave to be earned by the employee in the next leave year; or

(2) Require the employee to refund the amount paid him for the period covering the excess leave that resulted in the debit.

(d) A period covered by an employee's refund for unearned advanced leave is deemed not a nonpay status under this section.

§ 630.209 Refund for unearned leave.

(a) When an employee who is indebted for unearned leave is separated, the agency shall:

(1) Require him to refund the amount paid him for the period covering the leave for which he is indebted; or

(2) Deduct that amount from any pay due him.

An employee who enters active military service with a right of restoration is deemed not separated for the purpose of this paragraph.

(b) This section does not apply when an employee:

(1) Dies;

(2) Retires for disability; or

(3) Resigns or is separated because of disability which prevents him from returning to duty or continuing in the service, and which is the basis of the separation as determined by his agency on medical evidence acceptable to it.

§ 630.210 Uncommon tours of duty.

An agency having employees who work 24-hour shifts or other uncommon tours of duty may prescribe supplemental regulations consistent with subchapter I of chapter 63 of title 5, United States Code, and this part for administering leave for these employees.

Subpart C—Annual Leave**§ 630.301 Ninety-day qualifying period.**

(a) An employee begins the 90-day qualifying period required by section 6303(b) of title 5, United States Code, when:

(1) He initially enters a position subject to subchapter I of chapter 63 of title 5, United States Code;

(2) He moves from a position not under a leave system to one subject to that subchapter;

(3) He returns from service with the Armed Forces without the exercise of a restoration right; or

(4) He has a break in service of 1 workday or more.

(b) An employee does not begin another 90-day qualifying period solely because:

(1) Nonworkdays, including leave without pay, occur during the 90-day period;

(2) The hours of duty in his tour change; or

(3) He transfers from a different leave system.

(c) When an employee completes the 90-day qualifying period, he is entitled to credit for the annual leave earned during that period.

(d) Annual leave credited on completion of a 90-day qualifying period may not be substituted for leave without pay granted during that period.

§ 630.302 Maximum annual leave accumulation—forty-five day limitation.

(a) The effective date on which an employee (otherwise eligible thereunder)

becomes subject to section 6304(b) of title 5, United States Code, is the:

(1) Date of his entry on duty when he is employed locally;

(2) Date of his arrival at a post of regular assignment for duty; or

(3) Date on which he begins to perform duty in an area outside the United States and the area of recruitment or from which transferred, when the employee is required to perform duty en route to his post of regular assignment for duty.

(b) Subject to section 6304(c) of title 5, United States Code, the maximum amount of annual leave that may be carried forward into the next leave year by an employee who is transferred or reassigned to a position in which he is no longer subject to section 6304(b) of that title is determined as follows:

(1) When, on the date prescribed by paragraph (c) of this section, the amount of an employee's accumulated and accrued annual leave is 30 days or less, he may carry forward the amount prescribed by section 6304(a) of title 5, United States Code;

(2) When, on the date prescribed by paragraph (c) of this section, the amount of an employee's accumulated and accrued annual leave is more than 30 days but not more than 45 days, he may carry forward the full amount thereof that is unused at the end of the current leave year;

(3) When, on the date prescribed by paragraph (c) of this section, the amount of an employee's accumulated and accrued annual leave is more than 45 days, he may carry forward the amount of unused annual leave to his credit at the end of the current leave year that does not exceed:

(i) 45 days, if he is not entitled to a greater accumulation under section 6304(c) of title 5, United States Code; or

(ii) The amount he is entitled to accumulate under section 6304(c) of that title, if that amount is greater than 45 days.

(c) For the purposes of paragraph (b) of this section, an agency shall determine the amount of an employee's accumulated and accrued annual leave at the end of the pay period which includes:

(1) The date on which the employee departs from his post of regular assignment for transfer or reassignment, except that when the employee is required to perform duty en route in an area in which he would be subject to section 6304(b) of title 5, United States Code, if assigned there, it is the date on which he ceases to perform the duty; or

(2) The date on which final administrative approval is given to effect a change in the employee's duty station when he is on detail or leave in the United States, or in an area (the Commonwealth of Puerto Rico or a territory or possession of the United States) from which he was recruited or transferred.

§ 630.303 Part-time employees; earnings.

A part-time employee for whom there has been established in advance a regular tour of duty on 1 or more days dur-

ing each administrative workweek, and an hourly employee in the field service of the Post Office Department earn annual leave as follows:

(a) An employee with less than 3 years of service earns 1 hour of annual leave for each 20 hours in a pay status.

(b) An employee with 3 but less than 15 years of service earns 1 hour of annual leave for each 13 hours in a pay status.

(c) An employee with 15 years or more of service earns 1 hour of annual leave for each 10 hours in a pay status.

§ 630.304 Accumulation limitation for part-time employees.

A part-time employee may accumulate not more than 240 or 360 hours' annual leave on the same basis that a full-time employee may accumulate not more than 30 or 45 days' annual leave.

Subpart D—Sick Leave

§ 630.401 Grant of sick leave.

An agency shall grant sick leave to an employee when the employee:

(a) Receives medical, dental, or optical examination or treatment;

(b) Is incapacitated for the performance of duties by sickness, injury, or pregnancy and confinement;

(c) Is required to give care and attendance to a member of his immediate family who is afflicted with a contagious disease; or

(d) Would jeopardize the health of others by his presence at his post of duty because of exposure to a contagious disease.

§ 630.402 Application for sick leave.

An employee shall file a written application for sick leave within such time limits as the agency may prescribe. An employee shall request advance approval for sick leave for medical, dental, or optical examination.

§ 630.403 Supporting evidence.

An agency may grant sick leave only when supported by evidence administratively acceptable. Regardless of the duration of the absence, an agency may consider an employee's certification as to the reason for his absence as evidence administratively acceptable. However, for an absence in excess of 3 workdays, or for a lesser period when determined necessary by an agency, the agency may also require a medical certificate, or other administratively acceptable evidence as to the reason for the absence.

§ 630.404 Limitation on advance sick leave.

When an employee is serving under a limited appointment or one which will be terminated on a specified date, an agency may advance sick leave to him up to the total sick leave which he would otherwise earn during the term of his appointment. For the purposes of this section, an employee serving a probationary or trial period is not serving under a limited appointment.

§ 630.405 Sickness during annual leave.

When sickness occurs within a period of annual leave, an agency may grant sick leave for the period of sickness.

§ 630.406 Part-time employees; earnings.

A part-time employee earns 1 hour of sick leave for each 20 hours in a pay status.

Subpart E—Recredit of Leave

§ 630.501 Annual leave recredit.

(a) When an employee transfers between positions under subchapter I of chapter 63 of title 5, United States Code, the agency from which he transfers shall certify his annual leave account to the employing agency for credit or charge.

(b) When annual leave is transferred between different leave systems under section 6308 of title 5, United States Code, or is recredited under a different leave system as the result of a refund under section 5551 of that title, 7 calendar days of annual leave are deemed equal to 5 workdays of annual leave.

(c) An employee who transfers to a position under a different leave system to which he can transfer only a part of his annual leave is entitled to a recredit of the untransferred annual leave if he returns to the leave system under which it was earned, without a break in service of more than 52 continuous calendar weeks.

(d) An employee who transfers to a position (other than a position excepted from subchapter I of chapter 63 of title 5, United States Code, by section 6301(2)(ii), (iii), (vi), or (vii) of that title) to which he cannot transfer his annual leave because the position is not under an annual leave system is entitled to a recredit of the untransferred annual leave if he returns to the leave system under which it was earned, without a break in service of more than 52 continuous calendar weeks.

§ 630.502 Sick leave recredit.

(a) When an employee transfers between positions under subchapter I of chapter 63 of title 5, United States Code, the agency from which he transfers shall certify his sick leave account to the employing agency for credit or charge.

(b) (1) Except as provided in subparagraph (2) of this paragraph, an employee who is separated from the Federal Government or the government of the District of Columbia is entitled to a recredit of his sick leave if he is reemployed in the Federal Government or the government of the District of Columbia, without a break in service of more than 3 years.

(2) An employee who is employed by the Appalachian Regional Commission established under section 101 of title 40, App. A, United States Code, or one of the Regional Commissions established under section 3182 of title 42, United States Code, within 4 calendar days after separation from the Federal Government or the government of the District of Colum-

bia is entitled to a recredit of his sick leave if he is reemployed by the Federal Government or the government of the District of Columbia within 6 months after separation from a continuous period of employment with one or more of the Regional Commissions established under section 101 of title 40, App. A, United States Code, or section 3182 of title 42, United States Code, that exceeds 2 years and 6 months without a break in service of more than 3 calendar days.

(c) When sick leave is transferred between different leave systems under section 6308 of title 5, United States Code, 7 calendar days of sick leave are deemed equal to 5 workdays of sick leave.

(d) An employee who transfers to a position under a different leave system to which he can transfer only a part of his sick leave is entitled to a recredit of the untransferred sick leave if he returns to the leave system under which it was earned, without a break in service of more than 3 years.

(e) An employee who transfers to a position to which he cannot transfer his sick leave is entitled to a recredit of the untransferred sick leave if he returns to the leave system under which it was earned, without a break in service of more than 3 years.

§ 630.503 Leave from former leave systems.

An employee who earned leave under the leave acts of 1936 or any other leave system merged under subchapter I of chapter 63 of title 5, United States Code, is entitled to a recredit of that leave under that subchapter if he would have been entitled to recredit for it on reentering the leave system under which it was earned. However, this section does not revive leave already forfeited.

§ 630.504 Reestablishment of leave account after military service.

When an employee leaves his civilian position to enter the military service, the agency shall certify his leave account for credit or charge. When the employee is:

(a) Restored in accordance with a right of restoration after separation from active military duty or hospitalization continuing thereafter as provided by law, or in accordance with the mandatory provisions of a statute, Executive order, or regulation; or

(b) Reemployed in a position under subchapter I of chapter 63 of title 5, United States Code, not more than 3 years after his separation from active military duty;

the agency in which he is restored or reemployed shall reestablish the certified leave account as a credit or charge.

§ 630.505 Restoration after appeal.

When an employee is restored to an agency as a result of an appeal, the agency shall reestablish his leave account as a credit or charge as it was at the time of separation.

Subpart F—Home Leave

AUTHORITY: The provisions of this Subpart F issued under sec. 2(e) of E.O. 10530;

3 CFR 1954-1958 Comp., p. 191, as added by sec. 2(2) of E.O. 10903; 3 CFR 1959-1963 Comp., p. 434.

§ 630.601 Definitions.

In this subpart:

(a) "Home leave" means leave authorized by section 6305(a) of title 5, United States Code, and earned by service abroad for use in the United States, in the Commonwealth of Puerto Rico, or in the territories or possessions of the United States.

(b) "Month" means a period which runs from a given day in 1 month through the date preceding the numerically corresponding day in the next month.

(c) "Service abroad" means service on and after September 6, 1960, by an employee at a post of duty outside the United States and outside the employee's place of residence if his place of residence is in the Commonwealth of Puerto Rico or a territory or possession of the United States.

§ 630.602 Coverage.

An employee who meets the requirements of section 6304(b) of title 5, United States Code, for the accumulation of a maximum of 45 days of annual leave earns and may be granted home leave in accordance with section 6305(a) of that title and this subpart.

§ 630.603 Computation of service abroad.

For the purpose of this subpart, service abroad:

(a) Begins on the date of the employee's arrival at a post of duty outside the United States, or on the date of his entrance on duty when recruited abroad;

(b) Ends on the date of the employee's departure from the post for separation or for assignment in the United States, or on the date of his separation from duty when separated abroad; and

(c) Includes (1) absence in a nonpay status up to a maximum of 2 workweeks within each 12 months of service abroad, (2) authorized leave with pay, (3) time spent in the Armed Forces of the United States which interrupts service abroad and (4) a period of detail.

In computing service abroad, full credit is given for the day of arrival and the day of departure.

§ 630.604 Earning rates.

(a) For each 12 months of service abroad, an employee earns home leave at the following rate:

(1) An employee who accepts an appointment to, or occupies, a position for which the agency has prescribed the requirement that the incumbent accept assignments anywhere in the world as the needs of the agency dictate—15 days.

(2) An employee who is serving with a U.S. mission to a public international organization—15 days.

(3) An employee who is serving at a post for which payment of a foreign or nonforeign (but not a tropical) differential of 20 percent or more is authorized by law or regulation—15 days.

(4) An employee not included in subparagraph (1), (2), or (3) of this paragraph who is serving at a post for which payment of a foreign or territorial (but not a tropical) differential of at least 10 percent but less than 20 percent is authorized by law or regulation—10 days.

(5) An employee not included in subparagraph (1), (2), (3), or (4) of this paragraph—5 days.

(b) An agency shall credit home leave to an employee's leave account, as earned, in multiples of 1 day.

§ 630.605 Computation of home leave.

(a) For each month of service abroad, an employee earns home leave under the rates fixed by § 630.604(a) in the amounts set forth in the following table:

HOME LEAVE-EARNING TABLE

Months of service abroad	Earning rate (days for each 12 months)		
	15	10	5
1	1	0	0
2	2	1	0
3	3	2	1
4	4	3	1
5	5	4	2
6	6	5	2
7	7	6	3
8	8	7	3
9	9	8	4
10	10	9	4
11	11	10	5
12	12	11	5

(b) When an employee moves between different home leave-earning rates during a month of service abroad, or when a change in the differential during a month of service abroad results in a different home leave-earning rate, the agency shall credit the employee with the amount of home leave for the month at the rate to which he was entitled before the change in his home leave-earning rate.

§ 630.606 Grant of home leave.

(a) *Entitlement.* Except as otherwise authorized by statute, an employee is entitled to home leave only when he has completed a basic service period of 24 months of continuous service abroad. This basic service period is terminated by (1) a break in service of 1 or more workdays, or (2) an assignment (other than a detail) to a position in which an employee is no longer subject to section 6305(a) of title 5, United States Code.

(b) *Agency authority.* A grant of home leave is at the discretion of an agency. An agency may grant home leave in combination with other leaves of absence in accordance with established agency policy.

(c) *Limitations.* An agency may grant home leave only:

(1) For use in the United States, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and

(2) During an employee's period of service abroad, or within a reasonable period after his return from service abroad when it is contemplated that he

will return to service abroad immediately or on completion of an assignment in the United States.

Home leave not granted during a period named in subparagraph (2) of this paragraph may be granted only when the employee has completed a further substantial period of service abroad. This further substantial period of service abroad may not be less than the tour of duty prescribed for the employee's post of assignment, except when the agency determines that an earlier grant of home leave is warranted in an individual case.

(d) *Charging of home leave.* The minimum charge for home leave is 1 day and additional charges are in multiples thereof.

(e) *Refund for home leave.* An employee is indebted for the home leave used by him when he fails to return to service abroad after the period of home leave, or after the completion of an assignment in the United States. However, a refund for this indebtedness is not required when (1) the employee has completed not less than 6 months' service in an assignment in the United States following the period of home leave; (2) the agency determines that the employee's failure to return was due to compelling personal reasons of a humanitarian or compassionate nature, such as may involve physical or mental health or circumstances over which the employee has no control; or (3) the agency which granted the home leave determines that it is in the public interest not to return the employee to his overseas assignment.

§ 630.607 Transfer and recredit of home leave.

An employee is entitled to have his home leave account transferred or recredited to his account when he moves between agencies or is reemployed without a break in service of more than 90 days.

Subpart G—Shore Leave

AUTHORITY: The provisions of this Subpart G issued under 5 U.S.C. 6305.

§ 630.701 Coverage.

This subpart applies to an employee as defined in section 6301 of title 5, United States Code, who is regularly assigned to duties aboard an oceangoing vessel. An employee is considered to be regularly assigned when his continuing duties are such that all or a significant part of them require that he serve aboard an oceangoing vessel. Temporary assignments of a shore-based employee, such as for limited work projects or for training, do not constitute a regular assignment.

§ 630.702 Definitions.

(a) "Oceangoing vessel" means a vessel in use on the high seas or the Great Lakes; but does not include a vessel which operates primarily on rivers, other lakes, bays, sounds or within the 3-nautical-mile limit of the coastal area of the 48 contiguous States, except when used in mapping, charting, or surveying operations or when in or sailing to or from foreign, territorial, Hawaiian, or

Alaskan waters, or waters outside its normal area of operations or outside the 3-nautical-mile limit.

(b) "Voyage" means the sailing of an oceangoing vessel from one port and its return to that port or the final port of discharge.

(c) "Extended voyage" means a voyage of not less than 7 consecutive calendar days duration.

(d) "Shore leave" means leave authorized by section 6305(c) of title 5, United States Code, and this subpart.

§ 630.703 Computation of shore leave.

(a) An employee earns shore leave at the rate of 1 day of shore leave for each 15 calendar days of absence on one or more extended voyages.

(b) (1) For an employee who is an officer or crewmember, a voyage begins either on the date he assumes his duties aboard an oceangoing vessel to begin preparation for a voyage or on the date he comes aboard when a voyage is in progress. The voyage terminates on the date he ceases to be an officer or crewmember of the oceangoing vessel or on the date on which he is released from assignment of his duties relating to that voyage aboard the oceangoing vessel at the port of origin or port of final discharge, whichever is earlier.

(2) For an employee other than an officer or crewmember, a voyage begins on the date of sailing and terminates on the date the oceangoing vessel returns to a port at which the employee will disembark in completion of his assignment aboard the vessel, or on the date he is released from his assignment aboard the vessel, whichever is earlier.

(c) In computing days of absence, an agency shall include (1) the beginning date of a voyage and the termination date of a voyage; (2) the days an employee spends traveling to join an oceangoing vessel to which assigned when the vessel is at a place other than the port of origin; (3) the days an employee spends traveling between oceangoing vessels when the employee is assigned from one vessel to another; (4) the period representing the number of days within which an employee is reasonably expected to return to the port of origin when his oceangoing vessel's voyage is terminated, or his employment as an officer or crewmember is terminated, at a port other than the port of origin; (5) for an employee who is an officer or crewmember, the days on which he is on sick leave when he becomes sick during a voyage (whether or not continued as a member of the crew) but not beyond the termination date of the voyage of the oceangoing vessel or his repatriation to the port of origin, whichever is earlier; (6) for an employee other than an officer or crewmember, the days on which he is carried on sick leave but not beyond the date on which he returns to the port of origin or the termination date of the voyage, whichever is earlier; and (7) the days of approved leave from a vessel (paid or unpaid) during a voyage.

§ 630.704 Granting shore leave.

(a) *Authority.* (1) An employee has an absolute right to use shore leave, sub-

ject to the right of the head of the agency to fix the time at which shore leave may be used.

(2) Shore leave may be granted during a voyage only when requested by an employee.

(3) An employee shall submit his request for shore leave in writing and whenever an employee's request for shore leave is denied, the denial shall be in writing.

(b) *Accumulation.* Shore leave is in addition to annual leave and may be accumulated for future use without limitation.

(c) *Charge for shore leave.* The minimum charge for shore leave is one day and additional charges are in multiples thereof.

(d) *Lump-sum payment.* Shore leave may not be the basis for lump-sum payment on separation from the service.

(e) *Terminal leave.* (1) Except as provided by subparagraph (2) of this paragraph, an agency shall not grant shore leave to an employee as terminal leave. For the purpose of this paragraph terminal leave is approved absence immediately before an employee's separation when an agency knows the employee will not return to duty before the date of his separation.

(2) An agency shall grant shore leave as terminal leave when the employee's inability to use shore leave was due to circumstances beyond his control and not due to his own act or omission.

(f) *Forfeiture of shore leave.* Shore leave not granted before (1) separation from the service, or (2) official assignment (other than by temporary detail) to a position in which the employee does not earn shore leave, is forfeited. When an official assignment will result in forfeiture of shore leave, the agency to the extent administratively practicable shall give an employee an opportunity to use the shore leave he has to his credit either before the reassignment or not later than 6 months after the date of his reassignment when the agency is unable to grant the shore leave before the reassignment.

PART 713—EQUAL OPPORTUNITY

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713.401	Equal opportunity without regard to politics, marital status, or physical handicap.
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AUTHORITY: The provisions of this Part 713 issued under 5 U.S.C. 1301, 3301, 3302, 7151-7154, 7301, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, E.O. 11222, E.O. 11246; 3 CFR, 1964-1965 Comp., pp. 306, 339, E.O. 11375; 3 CFR, 1967 Comp., p. 320.

Subpart A—[Reserved]

Subpart B—Equal Opportunity Without Regard to Race, Color, Religion, Sex, or National Origin

GENERAL PROVISIONS

§ 713.201 Purpose and applicability.

(a) *Purpose.* This subpart sets forth the regulations under which an agency shall establish a program for equal opportunity in employment and personnel operations without regard to race, color, religion, sex, or national origin and under which the Commission will review an agency's program and entertain an appeal from a person dissatisfied with an agency's processing of his complaint of discrimination on grounds of race, color, religion, sex, or national origin.

(b) *Applicability.* (1) This subpart applies (i) to Executive agencies and military departments as defined by sections 105 and 102 of title 5, United States Code, and to the employees thereof including employees paid from nonappropriated funds, and (ii) to those portions of the legislative and judicial branches of the Federal Government and of the government of the District of Columbia having positions in the competitive service and to the employees in these positions.

(2) This subpart does not apply to aliens employed outside the limits of the United States.

§ 713.202 General policy.

It is the policy of the Government of the United States and of the government of the District of Columbia to provide equal opportunity in employment for all qualified persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive, continuing program in each agency.

§ 713.203 Agency program.

The head of an agency shall exercise personal leadership in establishing,

maintaining, and carrying out a positive, continuing program designed to promote equal opportunity in every aspect of agency employment policy and practice. Under the terms of its program, an agency shall:

(a) Conduct a continuing campaign to eradicate every form of prejudice or discrimination based upon race, color, religion, sex or national origin from the agency's personnel policies and practices and working conditions;

(b) Reappraise job structure and employment practices and adopt positive and special recruitment, training, job design, and other measures needed in order to insure genuine equality of opportunity to participate fully in all organizational units, occupations, and levels of responsibility in the agency;

(c) Communicate the agency's equal employment opportunity policy and program and its employment needs to sources of qualified applicants without regard to race, color, religion, sex, or national origin, and solicit their recruitment assistance on a continuing basis;

(d) Participate at the community level with other employers, with schools and universities, and with other public and private groups in cooperative action to improve employment opportunities and community conditions that affect employability;

(e) Review and control managerial and supervisory performance in such a manner as to insure a positive application and vigorous enforcement of the policy of equal opportunity;

(f) Inform its employees and recognized employee organizations of the positive equal employment opportunity policy and program and enlist their cooperation; and

(g) Provide for careful consideration and a just and expeditious disposition of complaints involving issues of discrimination on grounds of race, color, religion, sex, or national origin.

§ 713.204 Implementation of agency program.

To implement the program established under this subpart, an agency shall:

(a) Develop the plans, procedures, and regulations necessary to carry out its program established under this subpart;

(b) Appraise its personnel operations at regular intervals to assure their conformity with the policy in § 713.202 and its program established in accordance with § 713.203;

(c) Designate an Equal Employment Opportunity Officer, and such Deputy Equal Employment Opportunity Officers as may be necessary, to assist the head of the agency to carry out the functions described in the regulations in this subpart in all organizational units and locations of the agency. The Equal Employment Opportunity Officer shall be under the immediate supervision of the head of his agency, and shall be given the authority necessary to enable him to carry out his responsibilities under the regulations in this subpart;

(d) Assign to the Equal Employment Opportunity Officer the functions of:

(1) Advising the head of his agency with respect to the preparation of plans,

procedures, regulations, reports, and other matters pertaining to the policy in § 713.202 and the agency program required to be established under § 713.203;

(2) Evaluating from time to time the sufficiency of the total agency program for equal employment opportunity and reporting thereon to the head of the agency with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities;

(3) When authorized by the head of the agency, making changes in programs and procedures designed to eliminate discriminatory practices and improve the agency's program for equal employment opportunity;

(4) Providing for the receipt and investigation of complaints of alleged discrimination in personnel matters within the agency, including complaints of general discrimination by organizations unrelated to a specific complaint under § 713.212;

(5) When authorized by the head of the agency, making final decision for the head of the agency on complaints of discrimination and ordering such corrective measures as he may consider necessary; and

(6) When not authorized to make final decision on complaints of discrimination, reviewing, at his discretion, the record on any complaint before final decision is made under § 713.219 and making such recommendations to the head of the agency or his designee as he considers desirable;

(e) Publicize to its employees:

(1) The name and address of the Equal Employment Opportunity Officer; and

(2) Where appropriate, the name and address of a Deputy Equal Employment Opportunity Officer; and

(f) Make readily available to its employees a copy of its regulations issued to carry out its program of equal employment opportunity.

§ 713.205 Commission review of agency program.

The Commission shall review periodically an agency's equal employment opportunity program and operations. When it finds that an agency's program or operations are not in conformity with the policy set forth in § 713.202 and the regulations in this subpart, the Commission shall require improvement or corrective action to bring the agency's program or operations into conformity with this policy and these regulations.

AGENCY REGULATIONS FOR PROCESSING COMPLAINTS OF DISCRIMINATION

§ 713.211 General.

An agency shall insure that its regulations governing the processing of complaints of discrimination on grounds of race, color, religion, sex, or national origin comply with the principles and requirements in §§ 713.212 through 713.220.

§ 713.212 Coverage.

The agency shall provide in its regulations for the acceptance of a complaint from any aggrieved employee or qualified applicant for employment who believes that he has been discriminated against because of race, color, religion, sex, or national origin. A complaint may also be filed by an organization for the aggrieved employee or applicant and with his consent.

§ 713.213 Filing and presentation of complaint.

(a) *Time limit.* An agency shall require that a complaint be submitted in writing by the complainant or his representative within 30 calendar days of the date of the action giving rise to the complaint or, if a personnel action, within 30 calendar days of its effective date, except that when the complaint is made in connection with an adverse action covered by § 771.205 of this chapter, the agency shall require that the complaint be submitted in writing by the complainant or his representative not later than 15 calendar days after the adverse action has been effected. The agency shall extend the prescribed time limit for good cause shown by the complainant. A complaint concerned with a continuing discriminatory practice having a material bearing on employment may be filed at any time.

(b) *Presentation of complaint.* In presenting a complaint, the complainant shall be free from restraint, interference, coercion, discrimination, or reprisal and shall have the right to be accompanied, represented, and advised by a representative of his own choosing. If the complainant is an employee of the agency, he shall have a reasonable amount of official time to present his complaint if he is otherwise in an active duty status. If the complainant is an employee of the agency and he designates another employee of the agency as his representative, the representative shall be free from restraint, interference, coercion, discrimination, or reprisal, and shall have a reasonable amount of official time, if he is otherwise in an active duty status, to present the complaint.

§ 713.214 Investigation.

The Equal Employment Opportunity Officer or his designated representative shall promptly investigate the complaint. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his complaint as compared with the treatment of other employees in the organizational segment in which the alleged discrimination occurred, and any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant. When gross data collected under Subpart C of this part will not provide the specific information needed to resolve a complaint of discrimination on the basis of race, creed, color, or national origin, the Equal Employment Opportunity Officer or his rep-

representative may collect the required data by asking each employee concerned to provide the information voluntarily; he shall not require or coerce an employee to provide this information. The agency shall furnish the complainant and his representative opportunity to review the investigative file or shall furnish the complainant and his representative a written summary which contains all the information in the investigation material to the resolution of the complaint.

§ 713.215 Informal adjustment of complaint.

The agency shall provide an opportunity for adjustment of the complaint on an informal basis after the complainant has reviewed the investigative file or a written summary of the investigation.

§ 713.216 Hearing.

(a) *Offer of hearing.* When the complaint is not adjusted on an informal basis, the agency shall offer the complainant an opportunity for a hearing in connection with his complaint to be held at a convenient time and place.

(b) *Hearing officer or committee.* The hearing may be held, in the discretion of the agency, by either (1) a hearing committee of three members, one of whom shall be chosen by the agency, one by the complainant, and the third, who shall be chairman, by joint selection of the first two or (2) a hearing officer who shall be an employee specially selected and trained by the agency to conduct hearings. The hearing committee or the hearing officer shall be fair, impartial, and objective. Neither the hearing officer nor a member of the hearing committee shall be a person who investigated the complaint or a person who took or reviewed an action or decision giving rise to the complaint.

(c) *Conduct of hearing.* The hearing officer or committee shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the hearing officer or committee shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the complaint or an employment policy or practices relevant to the complaint shall be received in evidence. The complainant, his representative, and the representatives of the agency at the hearing shall be given the opportunity to cross-examine witnesses who appear and testify. Testimony shall be under oath or affirmation.

(d) *Witnesses at hearing.* The agency shall make its employees available as witnesses at a hearing on a complaint, upon a showing satisfactory to the hearing officer or committee of reasonable necessity therefor, when the complainant makes such a request and it is administratively practicable to comply with the request. Reasons for the denial of a request for the appearance of employees as witnesses shall be documented in the record of the complaint. Employees of the agency shall be in a duty status during the time they are made available as witnesses. Witnesses shall be free from

restraint, interference, coercion, discrimination, or reprisal in presenting their testimony.

(e) *Record of hearing.* (1) The agency shall record the hearing on a verbatim basis or shall prepare a written summary of the hearing. When the hearing is recorded by a voice-recording machine and the agency does not furnish the complainant a transcript, the agency shall give the complainant and his representative an opportunity to listen to the recording together with a copy of the summary of the hearing. When the hearing is summarized, the summary of the hearing shall, as a minimum, identify each witness and summarize his testimony. The agency shall include with the verbatim transcript or written summary of the hearing all documents submitted to and accepted by the hearing officer or committee. The agency shall give the complainant a copy of the transcript when the hearing is transcribed on a verbatim basis or a copy of the summary of the hearing. If a summary of a hearing is made, the parties shall be entitled to submit written exceptions to the summary, and any exceptions so submitted shall be made part of the record of the hearing.

(2) The hearing officer or committee shall transmit the record of the hearing, together with appropriate findings thereon, to the official who will make the final decision on the complaint.

§ 713.217 Relationship to other agency appellate procedures.

When a complainant makes a written allegation of discrimination on grounds of race, color, religion, sex, or national origin in connection with an action that would otherwise be processed under the agency's grievance or other internal appeal procedure, the agency may process the allegation of discrimination under its grievance or other internal appeal procedure when that procedure meets the principles and requirements in §§ 713.212 through 713.218 and the head of the agency, or his designee, makes the final decision on the issue of discrimination. That decision on the issue of discrimination shall be incorporated in and become a part of the decision on the grievance or other internal appeal.

§ 713.218 Avoidance of delay.

(a) The complaint shall be resolved expeditiously. To this end, both the complainant and the agency shall proceed with the complaint without undue delay so that the complaint is resolved, except in unusual circumstances, within 60 calendar days after its receipt in the agency when no hearing is held or within 90 calendar days after its receipt when a hearing is held. When the complaint has not been resolved within these time limits, the complainant may appeal to the Commission for a review of the reasons for the delay in the processing of his complaint. Upon review of this appeal, the Commission may require the agency to take special measures to insure the expeditious processing of the complaint or may accept the appeal for consideration under § 713.224.

(b) The head of the agency or his designee may cancel a complaint if the complainant fails to prosecute the complaint without undue delay. However, instead of cancelling for failure to prosecute, the complaint may be adjudicated if sufficient information for that purpose is available.

§ 713.219 Final decision.

(a) *Decision by head of agency or designee.* The head of the agency, or his designee, shall make the final decision on a complaint and that decision shall be in writing. That decision shall resolve the issue of discrimination raised by the complainant and shall require any remedial action determined to be necessary or desirable to effectuate the resolution of this issue and to promote the policy of equal opportunity. Copies of the decision shall be sent to the complainant and his representative. When a designee makes a decision for the head of the agency on a complaint, the head of the agency may reopen and reconsider that decision.

(b) *Advice concerning right to appeal to Commission.* The agency shall advise the complainant of his right to appeal to the Commission any final decision by the agency on his complaint with which he is not satisfied and of the time limit within which he must file the appeal.

§ 713.220 Complaint file.

The agency shall establish a complaint file containing all documents pertinent to the complaint. The complaint file shall include, as a minimum, copies of (a) the complaint, (b) the investigative file (if the complainant was given an opportunity to review that file) or a written summary of the investigation, (c) if a hearing was held, the record of the hearing, (d) if the Equal Employment Opportunity Officer is not the designee, the recommendations, if any, made by him to the head of the agency or his designee, (e) the decision of the head of the agency or his designee, and (f) in the event the complaint is reopened by the head of the agency, the decision of the head of the agency showing the reconsideration given the complaint. The complaint file shall not contain any document that has not been made available to the complainant.

APPEAL TO THE COMMISSION

§ 713.221 Entitlement.

(a) Except as provided by paragraph (b) of this section, a complainant may appeal to the Commission if the head of the agency, or his designee, has made a final decision:

(1) To reject his complaint because (i) it was not timely filed, or (ii) it was not within the purview of the agency's regulations; or

(2) To cancel his complaint (i) because of the complainant's failure to prosecute his complaint, or (ii) because of the complainant's voluntary separation which is not related to his complaint; or

(3) On the merits of the complaint but the decision does not resolve the

complaint to the complainant's satisfaction.

(b) A complainant may not appeal to the Commission under paragraph (a) of this section when the issue of discrimination giving rise to the complaint is being considered, or has been considered, in connection with any other appeal by the complainant to the Commission.

§ 713.222 Where to appeal.

The complainant shall file his appeal in writing, either personally or by mail, with the Board of Appeals and Review, U.S. Civil Service Commission, Washington, D.C. 20415.

§ 713.223 Time limit.

(a) Except as provided in paragraph (b) of this section, a complainant may file an appeal at any time after receipt of his agency's notice of final decision on his complaint but not later than 15 calendar days after receipt of that notice.

(b) The time limit in paragraph (a) of this section may be extended in the discretion of the Board of Appeals and Review, upon a showing by the complainant that he was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his control prevented him from filing an appeal within the prescribed time limit.

§ 713.224 Appellate procedures.

The Board of Appeals and Review shall review the agency's complaint file and all relevant written representations made to the board. The board may remand a complaint to the agency for further investigation or a rehearing if it considers that action necessary or have additional investigation conducted by Commission personnel. There is no right to a hearing before the board. The board shall issue a written decision and shall send copies thereof to the complainant, his designated representative, if any, and the agency. When corrective action is ordered, the agency shall report promptly to the board that the corrective action has been taken. The decision of the board is final, and there is no further right to appeal. The Commissioners may, in their discretion, reopen and reconsider a previous decision of the board when in their judgment such action appears warranted by the circumstances.

§ 713.225 Relationship to other appeals.

When the basis of the complaint of discrimination because of race, color, religion, sex, or national origin involves an action which is otherwise appealable to the Commission, the case, including the issue of discrimination, will be processed under the regulations appropriate to that appeal when the complainant makes a timely appeal in accordance with those regulations.

REPORTS TO THE COMMISSION

§ 713.231 Reporting disposition of complaints to the Commission.

Within 10 calendar days of the close of a complaint each agency shall report to the Commission the disposition of the

complaint whether the complaint was closed because of a rejection or cancellation of the complaint or a decision on the merits of the complaint. For each closed complaint there shall be submitted a separate report, consisting of the following information:

(a) The name of the complainant (in the event of a group appeal, the name of one complaint selected to identify the group);

(b) Title and grade of complainant's position or of the complainant's position selected to identify the group;

(c) The date on which the complaint was received;

(d) A description of the action, decision, or condition giving rise to the complaint;

(e) The nature of the complaint (kind of discrimination alleged);

(f) The name and location of the employing activity;

(g) The nature of the closing action (including the reasons for any rejection or cancellation) and a description of any corrective action resulting from the complaint;

(h) The date of the closing action;

(i) The name and title of the official taking the closing action;

(j) A statement as to whether or not the complainant has appealed the closing action to the Commission, when known; and

(k) As attachments to the report, a copy of the complaint, a description of any additional allegations of discrimination made during the investigation or hearing, and a copy of the agency's notice of final action on the complaint.

§ 713.232 Reporting status of complaints on hand to the Commission.

Within 15 calendar days of the close of each month each agency shall report to the Commission the following information:

(a) The number of complaints on hand at the beginning of the month;

(b) The number of complaints received during the month;

(c) The number of complaints closed during the month, whether the complaint was closed because of a rejection or cancellation of the complaint or a decision on the complaint;

(d) The number of complaints on hand at the close of the month; and

(e) A brief description of the status of each complaint on hand at the close of the month which had been in process in the agency for over 60 calendar days when no hearing is requested or 90 calendar days when a hearing is requested (including for each such complaint, the name of the complainant, the number of days in process, the stage of processing reached by the complaint, a description of any special factors contributing to a delay in processing the complaint, and an estimate as to the date of closing action).

Subpart C—Minority Group Statistics System

§ 713.301 Applicability.

(a) This subpart applies (1) to Executive agencies and military departments

as defined by sections 105 and 102 of title 5, United States Code, and to the employees thereof including employees paid from nonappropriated funds, and (2) to those portions of the legislative and judicial branches of the Federal Government and of the government of the District of Columbia having positions in the competitive service and to the employees in these positions.

(b) This subpart does not apply to aliens employed outside the limits of the United States.

§ 713.302 Agency systems.

(a) Each agency shall establish a system which provides statistical employment information by race or national origin.

(b) Data shall be collected only by visual survey and only in the form of gross statistics. An agency shall not collect or maintain any record of the race or national origin of individual employees.

(c) Each system is subject to the following controls:

(1) Only those categories of race and national origin prescribed by the Commission may be used;

(2) Only the specific procedures for the collection and maintenance of data that are prescribed or approved by the Commission may be used;

(3) The Commission shall review the operation of the agency system to insure adherence to Commission procedures and requirements. An agency may make an exception to the prescribed procedures and requirements only with the advance written approval of the Commission.

(d) The agency may use the data only in studies and analyses which contribute affirmatively to achieving the objectives of the equal employment opportunity program. An agency shall not establish a quota for the employment of persons on the basis of race or national origin.

(e) An agency shall report to the Commission on employment by race and national origin in the form and at such times as the Commission may require.

Subpart D—Equal Opportunity Without Regard to Politics, Marital Status, or Physical Handicap

§ 713.401 Equal opportunity without regard to politics, marital status, or physical handicap.

(a) In appointments and position changes. In determining the merit and fitness of a person for competitive appointment or appointment by noncompetitive action to a position in the competitive service, an appointing officer shall not discriminate on the basis of the person's political affiliations, except when required by statute, or marital status, nor shall he discriminate on the basis of a physical handicap with respect to any position the duties of which may be efficiently performed by a person with the physical handicap.

(b) In adverse actions and terminations of probationers. An agency may not take an adverse action against an employee covered by Part 752 of this chapter, nor effect the termination of a

probationer under Part 315 of this chapter, (1) for political reasons, except when required by statute, (2) that is based on discrimination because of marital status, or (3) for physical handicap with respect to any position the duties of which may be efficiently performed by a person with the physical handicap.

PART 715—NONDISCIPLINARY SEPARATIONS, DEMOTIONS, AND FURLOUGHS

Subpart A [Reserved]

Subpart B—Voluntary Separations

Sec.
715.201 Applicability.
715.202 Resignation.

Subpart A [Reserved]

Subpart B—Voluntary Separations

AUTHORITY: The provisions of this Subpart B issued under 5 U.S.C. 1302, 3301, 3302, 7301, E.O. 10577; 3 CFR 1954-1958 Comp., p. 218; E.O. 11222; 3 CFR, 1964-1965 Comp., p. 306.

§ 715.201 Applicability.

This subpart applies to separation actions requested by employees in the executive departments and independent establishments of the Federal Government, including Government-owned or controlled corporations, and in those portions of the legislative and judicial branches of the Federal Government and the government of the District of Columbia having positions in the competitive service.

§ 715.202 Resignation.

(a) *General.* An employee is free to resign at any time, to set the effective date of his resignation, and to have his reasons for resigning entered in his official records.

(b) *Withdrawal of resignation.* A resignation is binding on an employee once he has submitted it, except that the agency, in its discretion, may permit the employee to withdraw his resignation at any time before it has become effective.

PART 731—SUITABILITY

Subpart A—[Reserved]

Subpart B—Suitability Disqualifications

Sec.
731.201 Reasons for disqualification.

Subpart C—Suitability Rating Actions

731.301 Jurisdiction.
731.302 Actions against employees by the Commission.
731.303 Debarment.

Subpart D—Appeals and Reemployment Eligibility

731.401 Reemployment eligibility of certain former Federal employees.

AUTHORITY: The provisions of this Part 731 issued under 5 U.S.C. 3301, 3302, 7301, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218; E.O. 11222; 3 CFR, 1964-1965 Comp., p. 306, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Suitability Disqualifications

§ 731.201 Reasons for disqualification.

Subject to Subpart C of this part, the Commission may deny an applicant

examination, deny an eligible appointment, and instruct an agency to remove an appointee for any of the following reasons:

(a) Dismissal from employment for delinquency or misconduct;
(b) Criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct;

(c) Intentional false statement or deception or fraud in examination or appointment;

(d) Refusal to furnish testimony as required by § 5.3 of this chapter;

(e) Habitual use of intoxicating beverages to excess;

(f) Reasonable doubt as to the loyalty of the person involved to the Government of the United States; or

(g) Any legal or other disqualification which makes the individual unfit for the service.

Subpart C—Suitability Rating Actions

§ 731.301 Jurisdiction.

(a) *Appointments subject to investigation.* (1) In order to establish an appointee's qualifications and suitability for employment in the competitive service, every appointment to a position in the competitive service is subject to investigation by the Commission, except:

(i) Promotion;
(ii) Demotion;
(iii) Reassignment;
(iv) Conversion from career-conditional to career tenure;

(v) Appointment, or conversion to an appointment, made by an agency of an employee of that agency who has been serving continuously with that agency for at least one year in one or more positions in the competitive service under an appointment subject to investigation;

(vi) Reinstatement effected within one year from the date of separation from Federal civilian employment or from honorable separation from military service, provided the one-year, subject-to-investigation period applied to the previous appointment has expired; and
(vii) Transfer, provided the one-year, subject-to-investigation period applied to the previous appointment has expired.

(2) Appointments are subject to investigation to continue the Commission's jurisdiction to investigate the qualifications and suitability of an applicant after appointment and to authorize the Commission to require removal when it finds the appointee is disqualified for Federal employment. The subject-to-investigation condition may not be construed as requiring an employee to serve a new probationary or trial period or as extending the probationary or trial period of an employee.

(b) *Duration of condition.* The subject-to-investigation condition expires automatically at the end of 1 year after the effective date of appointment, except in a case involving intentional false statement or deception or fraud in examination or appointment.

§ 731.302 Actions against employees by the Commission.

(a) For a period of 1 year after the effective date of an appointment subject

to investigation under § 731.301, the Commission may instruct an agency to remove an appointee when it finds that he is not qualified or is unsuitable for any of the reasons cited in § 731.201. Part 754 of this chapter does not apply to this action.

(b) Thereafter, the Commission may require the removal of an employee on the basis of intentional false statement or deception or fraud in examination or appointment. Part 754 of this chapter applies to this action.

(c) An action to remove an appointee or employee taken pursuant to an instruction by the Commission is not subject to Part 752 of this chapter. Part 752 of this chapter applies when removal or other disciplinary action covered by that part is initiated by an agency.

§ 731.303 Debarment.

When a person is disqualified for any reason named in § 731.201, the Commission, in its discretion, may deny that person examination for and appointment to a competitive position for a period of not more than 3 years from the date of determination of disqualification. On expiration of the period of debarment, the person who has been debarred may not be appointed to any position in the competitive service until his fitness for appointment has been redetermined by the Commission.

Subpart D—Appeals and Reemployment Eligibility

§ 731.401 Reemployment eligibility of certain former Federal employees.

(a) *Request for suitability determination.* When an employee has been removed by an agency on charges (other than security or loyalty) or has resigned on learning the agency planned to prefer charges, or while charges were pending, the former employee may request the Commission to determine his eligibility for further employment in the competitive service, insofar as his suitability and fitness are concerned. The Commission shall consider the request only if the former employee:

(1) Has completed any required probationary period;

(2) Has basic eligibility for reinstatement; and,

(3) Includes a sworn statement with the request which sets forth fully and in detail the facts surrounding his removal or resignation.

(b) *Action by Commission.* (1) After appropriate consideration, including such investigation as the Commission considers necessary, the Commission shall inform the former employee whether it has found him suitable for further employment in the competitive service.

(2) If the former employee is found unsuitable and has had an opportunity to comment on the reasons for this finding, or has furnished them to the Commission, it may cancel his reinstatement eligibility if that eligibility resulted from his last Federal employment and was obtained through fraud. In addition, the Commission may prescribe a period of debarment from the competitive service not to exceed 3 years.

(c) *Time limits for submitting requests.* The Commission may consider a case under this section only if it is submitted to the Commission within 6 months after the date of separation, or 60 calendar days after the date of the last adverse decision as a result of an appeal, whichever is later. The Commission may extend this time limit on a showing by the former employee that circumstances beyond his control prevented him from filing his request within the prescribed period.

PART 732—PERSONNEL SECURITY AND RELATED PROGRAMS

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—Security and Related Determinations

§ 732.401 Reemployment eligibility of certain former Federal employees.

(a) *Request.* A former employee who was terminated, or who resigned while suspended or while charges were pending, from a department or agency of the Government under a statute or executive order authorizing termination in the interest of national security, in the interest of the United States, or on grounds relating to loyalty, and authorizing the Commission to determine his eligibility for employment in another department or agency of the Government, may request the Commission in writing to determine whether he is eligible for employment in another department or agency of the Government.

(b) *Action by the Commission.* (1) The Commission shall determine, and will notify the former employee, after appropriate consideration of his case, including such investigation as it considers necessary, whether he may be employed in another department or agency of the Government.

(2) If a former Federal employee found unsuitable under this section has had an opportunity to comment on the reasons for the action, or has furnished them to the Commission or to his former employing agency, the Commission may also cancel his reinstatement eligibility if the eligibility resulted from his last Federal employment and was obtained through fraud, or the Commission may prescribe a period of debarment from the competitive service, not to exceed 3 years, or both.

(5 U.S.C. 3301, 3302, 7312, 50 U.S.C. 403, E.O. 10450; 3 CFR, 1949–1953 Comp., p. 936, E.O. 10577; 3 CFR, 1954–1958 Comp., p. 218)

PART 733—POLITICAL ACTIVITIES OF FEDERAL EMPLOYEES AND OF ENROLLEES OF THE JOB CORPS

Subpart A—General Provisions

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733.101 Purpose.
733.102 Penalties.

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733.602 Investigation.
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733.603 Notification of closing action or charges.
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733.703 Charge and answer.
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Subpart H—Procedures for the Job Corps

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733.803 Notification of closing action or charges.
733.804 Answer.
733.805 Initial decision.
733.806 Hearing; procedure.
733.807 Waiver of hearing.
733.808 Final decision.

AUTHORITY: The provisions of this Part 733 issued under 5 U.S.C. 1302, 3301, 3302, 7301, 7324, 7325, 7327, 42 U.S.C. 2729, E.O. 10577; 3 CFR, 1954–1958 Comp., p. 218, E.O. 11222; 3 CFR, 1964–1965 Comp., p. 306.

Subpart A—General Provisions

§ 733.101 Purpose.

The purpose of this part is to provide the procedures to be followed in determining whether an employee or enrollee who is subject to:

(a) Section 7324 of title 5, United States Code, has engaged in political activities prohibited by that section;

(b) Civil Service Rule IV (Part 4 of this chapter), referred to in this part as the rule, has engaged in political activities prohibited by the rule; or

(c) Section 118 of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2729), has engaged in political discrimination or political activities prohibited by that section.

§ 733.102 Penalties.

(a) A person violating section 7324 of title 5, United States Code, shall be removed from the position or office held by him; however, if the Commission finds by unanimous vote that the violation does not warrant removal, a lesser penalty shall be imposed by the Commission, but in no case may the penalty be less than 30 days' suspension.

(b) The penalties for violation of the rule are imposed in accordance with section 7325 of title 5, United States Code.

(c) The penalties for violation of section 118 of the Economic Opportunity Act of 1964 are discipline or dismissal or

other corrective action as may be determined by the Commission.

(d) An agency may not employ a person removed for violation of section 7324 of title 5, United States Code, in a position or office the pay of which is payable under the same appropriation as the position or office from which the person was removed. In addition, when it is found that an employee has engaged in political discrimination or prohibited political activity, the Commission may consider the matter from a suitability standpoint and establish a definite period during which the employee is debarred from employment in the competitive service.

(e) An employee or enrollee suspended under this part for violation of section 7324 of title 5, United States Code, or section 118 of the Economic Opportunity Act of 1964 is not eligible for employment in another position or office subject to section 7324 of title 5, United States Code, or section 118 of the Economic Opportunity Act of 1964 during the period of his suspension.

Subpart B—[Reserved]

Subpart C—Privileged Localities

§ 733.301 Grant of privilege to residents of certain localities.

(a) Under section 7327 of title 5, United States Code, the Commission has excepted employee residents of certain municipalities and political subdivisions from the prohibitions of section 7324 of that title, subject to the following conditions:

(1) An employee shall not neglect his official duties or engage in nonlocal partisan political activities.

(2) An employee shall not run for local office as a candidate representing a political party or become involved in political management in connection with the campaign of a party candidate for office.

(3) An employee who is a candidate for local elective office shall run as an independent candidate.

(4) An employee elected or appointed to an elective local office requiring full-time service shall resign his position that is subject to section 7324 of title 5, United States Code. If an employee is elected or appointed to an elective local office requiring only part-time service, he may accept and hold that office without relinquishing his position that is subject to section 7324 if the holding of the part-time office does not conflict or interfere with his duties in the position that is subject to section 7324. The agency in which the employee is employed is the sole judge of whether or not the holding of the part-time office conflicts or interferes with his duties in the position that is subject to section 7324.

(5) The Commission may suspend or withdraw the exception granted employee residents of a particular municipality or political subdivision when the Commission considers that the activities resulting from the exception are or may become detrimental to the public interest or inimical to the proper enforcement of

section 7324 of title 5, United States Code, and the rule.

(b) The exceptions referred to in paragraph (a) of this section are effective for employee residents in each municipality and political subdivision named in this paragraph, from and after the date specified.

IN MARYLAND

Annapolis (May 16, 1941).
Berwyn Heights (June 15, 1944).
Bethesda (Feb. 17, 1943).
Bladensburg (Apr. 20, 1942).
Bowie (Apr. 11, 1952).
Brentwood (Sept. 26, 1940).
Capitol Heights (Nov. 12, 1940).
Cheverly (Dec. 18, 1940).
Chevy Chase, sections 1 and 2 (Mar. 4, 1941).
Chevy Chase, section 3 (Oct. 8, 1940).
Chevy Chase, section 4 (Oct. 2, 1940).
Martin's Additions 1, 2, 3, and 4 to Chevy Chase (Feb. 13, 1941).
Chevy Chase View (Feb. 26, 1941).
College Park (June 13, 1945).
Cottage City (Jan. 15, 1941).
District Heights (Nov. 2, 1940).
Edmonston (Oct. 24, 1940).
Fairmont Heights (Oct. 24, 1940).
Forest Heights (Apr. 22, 1949).
Garrett Park (Oct. 2, 1940).
Glenarden (May 21, 1941).
Glen Echo (Oct. 22, 1940).
Greenbelt (Oct. 4, 1940).
Hyattsville (Sept. 20, 1940).
Kensington (Nov. 8, 1940).
Landover Hills (May 5, 1945).
Montgomery County (Apr. 30, 1964).
Morningside (May 19, 1949).
Mount Rainier (Nov. 22, 1940).
North Beach (Sept. 20, 1940).
North Brentwood (May 6, 1941).
North Chevy Chase (July 22, 1942).
Northwest Park (Feb. 17, 1943).
Prince Georges County (June 19, 1962).
Riverdale (Sept. 26, 1940).
Rockville (Apr. 15, 1948).
Seat Pleasant (Aug. 31, 1942).
Somerset (Nov. 22, 1940).
Takoma Park (Oct. 22, 1940).
University Park (Jan. 18, 1941).
Washington Grove (Apr. 5, 1941).

IN VIRGINIA

Alexandria (Apr. 15, 1941).
Arlington County (Sept. 9, 1940).
Clifton (July 14, 1951).
Fairfax County (Nov. 10, 1949).
Town of Fairfax (Feb. 9, 1954).
Falls Church (June 6, 1941).
Herndon (Apr. 7, 1945).
Vienna (Mar. 18, 1946).
Portsmouth (Feb. 27, 1958).
Prince William County (Feb. 14, 1967).

OTHER MUNICIPALITIES

Bremerton, Wash. (Feb. 27, 1946).
Port Orchard, Wash. (Feb. 27, 1946).
Elmer City, Wash. (Oct. 28, 1947).
Anchorage, Alaska (Dec. 29, 1947).
Benicia, Calif. (Feb. 20, 1948).
Warner Robins, Ga. (Mar. 19, 1948).
Norris, Tenn. (May 6, 1959).
Sierra Vista, Ariz. (Oct. 5, 1955).
New Johnsonville, Tenn. (Apr. 26, 1956).
Huachuca City, Ariz. (Apr. 9, 1959).
Crane, Ind. (Aug. 3, 1967).

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart F—Procedures for the Competitive Service

§ 733.601 Applicability.

This subpart applies to each employee in the competitive service.

§ 733.602. Investigation.

(a) The Commission shall investigate allegations of prohibited political activity on the part of an employee without a pledge of confidence. The Commission shall notify the agency in which the employee is employed of the investigation, and shall afford the agency an opportunity to participate in the investigation.

(b) During the course of the investigation, the Commission shall afford the employee an opportunity to make a statement concerning the substance of any political activity disclosed by the investigation and to furnish the names of any witnesses he wishes to have interviewed.

§ 733.603 Notification of closing action or charges.

(a) The General Counsel of the Commission may close a case when he decides, after reviewing the report of investigation, that violation of section 7324 of title 5, United States Code, and the rule has not been established. The General Counsel shall notify the employee and the employing agency of his decision to close the case.

(b) The General Counsel shall notify the employee in writing when he decides that the report of investigation indicates that section 7324 of title 5, United States Code, and the rule have been violated. The notice shall set forth the charges of alleged prohibited political activity specifically and in detail, and shall inform the employee of the penalty under section 7325 of that title. The employee is entitled to at least 30 full days' advance notice of the proposed action, and is entitled to be retained in an active-duty status during the notice period.

§ 733.604 Employee's answer.

The employee may answer the charges within 15 days from the date of receipt of the notice. He may answer personally or in writing, or both personally and in writing, and may furnish affidavits in support of his answer.

§ 733.605 Initial decision.

When the General Counsel decides, after reviewing the employee's answer and any affidavits submitted therewith, that a violation of section 7324 of title 5, United States Code, and the rule has been established, he shall so notify the employee. The notification to the employee shall state the reasons for the decision and inform the employee of his right to a personal appearance, referred to in this subpart as a hearing.

§ 733.606 Hearing; procedure.

(a) The Commission shall determine the time and place for the hearing after giving due consideration to the request of the employee as to time and place. The employee is entitled to notice of the hearing at least 10 calendar days in advance of the date fixed for the hearing.

(b) The hearing shall be held before an examiner designated by the Commission. Testimony at the hearing shall be under oath or affirmation. The parties may introduce affidavits and other documentary evidence. The employee or his representative may review all state-

ments, affidavits, and documents which are to be considered as evidence.

(c) The employee may be represented by counsel of his own choice. The employee and the counsel of the Commission may produce witnesses who are subject to cross-examination. The employee and the counsel of the Commission are responsible for securing the attendance of their respective witnesses. There is no power of subpoena in these cases.

(d) The Commission shall arrange for the hearing to be reported stenographically by a reporter on behalf of the Commission, unless the parties agree to a summary of the testimony. When the hearing is not reported stenographically, the examiner shall prepare or direct the preparation of a summary of the testimony. The Commission shall furnish, without cost, to each party a copy of the transcript or summary of the hearing. The parties may file written exceptions to the summary. The examiner shall certify the summary and any exceptions thereto which then become part of the record. The examiner may permit and fix the time for the filing of briefs.

(e) The examiner shall submit the record, including the report or summary of the hearing, to the Commissioners with his recommended decision as to the violation found by the General Counsel and any penalty to be imposed.

§ 733.607 Waiver of hearing.

If the employee waives a hearing and the General Counsel agrees to the waiver, the General Counsel shall refer the record to an examiner. The examiner shall submit the record to the Commissioners with his recommended decision as to the violation found by the General Counsel and any penalty to be imposed.

§ 733.608 Final decision.

The Commissioners shall make the final decision. The Commission shall notify the employee and the employing agency of the final decision. When the final decision is adverse to the employee, the Commission shall set forth in the notification to the employee the reasons on which the decision is based and the penalty to be imposed. The employing agency shall take action in accordance with the final decision.

Subpart G—Procedures for the Excepted Service

§ 733.701 Applicability.

This subpart applies to each employee in the excepted service.

§ 733.702 Investigation.

The employing agency shall investigate allegations of prohibited political activity on the part of an employee without a pledge of confidence.

§ 733.703 Charge and answer.

The employing agency shall issue to the employee a notice of proposed removal when the report of investigation indicates that section 7324 of title 5, United States Code, has been violated. The notice shall set forth the charges of alleged prohibited political activity specifically and in detail. The employee

may answer the notice within 15 calendar days from the date of receipt of the notice. He may answer personally or in writing, or both personally and in writing, and may furnish affidavits in support of his answer. The employee is entitled to at least 30 full days' advance notice of the proposed action, and is entitled to be retained in an active-duty status during the notice period.

§ 733.704 Agency decision.

On receipt of the employee's answer, or if he fails to answer within the time set, the employing agency shall make the decision on the entire record and notify the employee thereof in writing. When the decision is adverse to the employee, the notice of decision shall:

(a) Set forth, specifically and in detail, the charges on which the decision is based;

(b) Set forth the effective date of the proposed removal; and

(c) Advise the employee of his right to appeal to the Commission, the time within which the appeal may be filed, and the place where the appeal may be filed.

§ 733.705 Appeal.

An employee may appeal to the Commission from a decision of the employing agency that his removal is warranted for violation of section 7324 of title 5, United States Code. An appeal to the Commission shall be in writing; addressed to the U.S. Civil Service Commission, Washington, D.C. 20415; and state whether the employee wishes a hearing. The appeal shall be filed within 15 calendar days after the employee's receipt of the agency's notice of decision. The Commission may extend the time limit when an employee shows that circumstances beyond his control prevented him from filing the appeal within the time limit.

§ 733.706 Retention of employee pending decision on appeal.

When an employee has filed a timely appeal with the Commission, the employing agency may not remove him but shall retain him in an active-duty status until a final decision is made by the Commissioners. When an employee does not file a timely appeal with the Commission, the decision made by the employing agency becomes final.

§ 733.707 Hearing on appeal to the Commission.

(a) Each employee who appeals under § 733.705 is entitled to a personal appearance, referred to in this subpart as a hearing. The Commission shall determine the time and place for the hearing after giving due consideration to the request of the employee as to time and place. The employee is entitled to notice of the hearing at least 10 calendar days in advance of the date fixed for the hearing.

(b) The hearing shall be held before an examiner designated by the Commission. Testimony at the hearing shall be under oath or affirmation. The parties may introduce affidavits and other documentary evidence. The employee or his representative may review all state-

ments, affidavits, and documents which are to be considered as evidence.

(c) The employee may be represented by counsel of his own choice. The employee and the representative of the employing agency may produce witnesses who are subject to cross examination. The employee and the representative of the employing agency are responsible for securing the attendance of their respective witnesses. There is no power of subpoena in these cases.

(d) The Commission shall arrange for the hearing to be reported stenographically by a reporter on behalf of the Commission, unless the Commission or the examiner directs otherwise. When the hearing is not reported stenographically, the examiner shall prepare or direct the preparation of a summary of the testimony. The Commission shall furnish, without cost, to each party a copy of the transcript or summary of the hearing. The parties are entitled to file written exceptions to the summary. The examiner shall certify the summary and any exceptions thereto which then become part of the record.

(e) The examiner may permit and fix the time for the filing of briefs.

§ 733.708 Examiner's recommendation.

The examiner shall submit the record, including the report or summary of the hearing, to the Commissioners with his recommended decision as to the violation found by the employing agency and any penalty to be imposed.

§ 733.709 Waiver of hearing.

If the employee waives a hearing, the examiner shall submit the record to the Commissioners with his recommended decision as to the violation found by the employing agency and any penalty to be imposed.

§ 733.710 Final decision.

The Commissioners shall make the final decision. The Commission shall notify the employee and the employing agency of the final decision. The Commission shall set forth in the notification of decision the reasons on which the decision is based and any penalty to be imposed and shall send the notification to the employee. The employing agency shall take action in accordance with the final decision.

Subpart H—Procedures for the Job Corps

§ 733.801 Applicability; definition.

This subpart applies to each employee of the Job Corps occupying either a competitive or an excepted position, and to each enrollee of the Job Corps. In this subpart, "Job Corps" means the Job Corps established by section 102 of the Economic Opportunity Act of 1964 (42 U.S.C. 2712).

§ 733.802 Investigation.

(a) The Commission shall investigate allegations of political discrimination or prohibited political activity on the part of an employee or enrollee without a pledge of confidence. The Commission

shall notify the Director, Office of Economic Opportunity, of the investigation and shall afford the Director or his designee an opportunity to participate in the investigation.

(b) During the course of the investigation, the Commission shall afford the employee or enrollee an opportunity to make a statement concerning the substance of any political discrimination or political activity disclosed by the investigation and to furnish the names of any witnesses he wishes to have interviewed.

§ 733.803 Notification of closing action or charges.

(a) The General Counsel of the Commission may close a case when he decides, after reviewing the report of investigation, that violation of section 118 of the Economic Opportunity Act of 1964 has not been established. The General Counsel shall notify the employee or enrollee and the Director, Office of Economic Opportunity, of his decision to close the case.

(b) The General Counsel shall notify the employee or enrollee in writing when he decides that the report of investigation indicates that section 118 of the Economic Opportunity Act of 1964 has been violated. The notice shall set forth the charges of alleged prohibited political discrimination or political activity specifically and in detail, and shall inform the employee or enrollee of the penalty under that section. The employee or enrollee is entitled to at least 30 full days' advance notice of the proposed action and is entitled to be retained in an active-duty status during the notice period.

§ 733.804 Answer.

The employee or enrollee may answer the charges within 15 days from the date of receipt of the notice. He may answer personally or in writing, or both personally and in writing, and may furnish affidavits in support of his answer.

§ 733.805 Initial decision.

When the General Counsel decides, after reviewing the answer of the employee or enrollee, and any affidavits submitted therewith, that a violation of section 118 of the Economic Opportunity Act of 1964 has been established, he shall so notify the employee or enrollee. The notification to the employee or enrollee shall state the reasons for the decision and inform the employee or enrollee of his right to a personal appearance, referred to in this subpart as a hearing.

§ 733.806 Hearing; procedure.

(a) The Commission shall determine the time and place for the hearing after giving due consideration to the request of the employee or enrollee as to time and place. The employee or enrollee is entitled to notice of the hearing at least 10 calendar days in advance of the date fixed for the hearing.

(b) The hearing shall be held before an examiner designated by the Commission. Testimony at the hearing shall be under oath or affirmation. The parties

may introduce affidavits and other documentary evidence. The employee, enrollee, or his representative may review all statements, affidavits and documents which are to be considered as evidence.

(c) The employee or enrollee may be represented by counsel of his own choice. The employee or enrollee and the General Counsel of the Commission may produce witnesses who are subject to cross examination. The employee or enrollee and the General Counsel of the Commission are responsible for securing the attendance of their respective witnesses. There is no power of subpoena in these cases.

(d) The Commission shall arrange for the hearing to be reported stenographically by a reporter on behalf of the Commission, unless the parties agree to a summary of the testimony. When the hearing is not reported stenographically the examiner shall prepare or direct the preparation of a summary of the testimony. The Commission shall furnish, without cost, to each party a copy of the transcript or summary of the hearing. The parties may file written exceptions to the summary. The examiner shall certify the summary and any exceptions thereto which then become part of the record. The examiner may permit and fix the time for the filing of briefs.

(e) The examiner shall submit the record, including the transcript or summary of the hearing, to the Commissioners with his recommended decision as to the violation found by the General Counsel and any penalty to be imposed.

§ 733.807 Waiver of hearing.

If the employee or enrollee waives a hearing and the General Counsel agrees to the waiver, the General Counsel shall refer the record to an examiner. The examiner shall submit the record to the Commissioners with his recommended decision as to the violation found by the General Counsel, and any penalty to be imposed.

§ 733.808 Final decision.

The Commissioners shall make the final decision whether the employee or enrollee has violated section 118 of the Economic Opportunity Act of 1964 and certify the facts to the Director, Office of Economic Opportunity, with specific instructions as to discipline or dismissal or other corrective actions. The Commission shall notify the employee or enrollee of the final decision. When the final decision is adverse to the employee or enrollee the Commission shall set forth in the notification to the employee or enrollee the reasons on which the decision is based.

PART 735—EMPLOYEE RESPONSIBILITIES AND CONDUCT

NOTE: Part 1001 added to this chapter, 31 F.R. 873, January 22, 1966 and revised 32 F.R. 11113, Aug. 1, 1967 supplements this Part 735.

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AUTHORITY: The provisions of this Part 735 issued under secs. 602, 701, 702, E.O. 11222; 3 CFR, 1964-1965, Comp., p. 306.

Subpart A—General Provisions

§ 735.101 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is

indispensable to the maintenance of these standards. To accord with these concepts, this part sets forth the Commission's regulations under which each agency head shall issue regulations covering the agency's employees and special Government employees, prescribing standards of conduct and responsibilities, and governing statements reporting employment and financial interests.

§ 735.102 Definitions.

In this part:

(a) "Agency" means an Executive agency (other than the General Accounting Office) as defined by section 105 of title 5, United States Code.

(b) "Employee" means an employee of an agency, but does not include a special Government employee or a member of the uniformed services.

(c) "Executive order" means Executive Order 11222 of May 8, 1965.

(d) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(e) "Special Government employee" means a "special Government employee" as defined in section 202 of title 18, United States Code, who is employed in the executive branch, but does not include a member of the uniformed services.

(f) "Uniformed services" has the meaning given that term by section 2101 of title 5, United States Code.

§ 735.103 Applicability to members of the uniformed services.

This part, except this section, is not applicable to members of the uniformed services. Each agency having jurisdiction over members of the uniformed services shall issue regulations covering those members and regulating their ethical and other conduct and the reporting of employment and financial interests in a manner consistent with the Executive order and this part.

§ 735.104 Issuance, approval, and publication of agency regulations.

(a) Except as provided in paragraph (f) of this section, each agency head shall prepare, and submit to the Commission for approval, regulations in accordance with this part that:

(1) Implement the requirements of law, the Executive order, and this part; and

(2) Prescribe additional standards of ethical and other conduct and reporting requirements that are appropriate to the particular functions and activities of the agency and are not inconsistent with law, the Executive order, and this part.

(b) After Commission approval each agency head shall:

(1) Submit the agency's regulations to the FEDERAL REGISTER for publication;

(2) Furnish each employee and special Government employee a copy of the appropriate agency regulations (or a comprehensive summary thereof) within 90 days after approval;

(3) Furnish each new employee and special Government employee a copy of the appropriate agency regulations (or a

comprehensive summary thereof) at the time of his entrance on duty;

(4) Bring the appropriate agency regulations to the attention of each employee and special Government employee annually, and at such other times as circumstances warrant;

(5) Assure the availability of counseling to each employee and special Government employee as provided in § 735.105; and

(6) Have available for review by employees and special Government employees, as appropriate, copies of laws, the Executive order, agency regulations, and pertinent Commission regulations and instructions relating to ethical and other conduct.

(c) Agency regulations issued under this part are effective only after approval by the Commission and publication in the FEDERAL REGISTER.

(d) Requests for approval of agency regulations to be issued under this part shall be directed to the United States Civil Service Commission, Office of the General Counsel, Washington, D.C. 20415.

(e) This section applies to any amendment of agency regulations issued under this part.

(f) An agency head who does not consider it feasible to prepare agency regulations under this part because of the small number of his employees, or for another reason acceptable to the Commission, may adopt the regulations in this part for application, as appropriate, to the employees and special Government employees of his agency if:

(1) He obtains the approval of the Commission for that adoption; and

(2) After obtaining that approval, he submits a notice to the FEDERAL REGISTER announcing the applicability of this part to his employees.

§ 735.105 Interpretation and advisory service.

(a) Each agency head shall designate a top-ranking employee of his agency who has appropriate experience, preferably legal, and in whom he has complete personal confidence, to be the counselor for the agency and to serve as the agency's designee to the Commission on matters covered by this part. The counselor shall be made responsible for coordination of the agency's counseling services provided under paragraph (b) of this section and for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by this part are available to deputy counselors designated under paragraph (b) of this section.

(b) Each agency head shall designate deputy counselors for the agency's employees and special Government employees. Deputy counselors designated under this section shall be qualified and in a position to give authoritative advice and guidance to each employee and special Government employee who seeks advice and guidance on questions of conflicts of interest and on other matters covered by this part.

(c) Each agency shall notify its employees and special Government employees of the availability of counseling

services and of how and where these services are available. This notification shall be made within 90 days after approval of the agency regulations to be issued under this part, and periodically thereafter. In the case of a new employee or special Government employee appointed after this notification, notification shall be made at the time of his entrance on duty.

§ 735.106 Reviewing statements and reporting conflicts of interest.

(a) Agency regulations issued under this part shall establish a system for the review of statements of employment and financial interests submitted under Subpart D of this part. The system of review shall be designed to disclose conflicts of interest or apparent conflicts of interest on the part of employees and special Government employees.

(b) The system of review established under paragraph (a) of this section shall provide that, when a statement submitted under Subpart D of this part or information from other sources indicates a conflict between the interests of an employee or special Government employee and the performance of his services for the Government and when the conflict or appearance of conflict is not resolved at a lower level in the agency, the information concerning the conflict or appearance of conflict shall be reported to the agency head through the counselor for the agency.

(c) The employee or special Government employee concerned shall be provided an opportunity to explain the conflict or appearance of conflict.

§ 735.107 Disciplinary and other remedial action.

(a) Agency regulations issued under this part shall provide that a violation of the agency regulations by an employee or special Government employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(b) When, after consideration of the explanation of the employee or special Government employee provided by § 735.106, the agency head decides that remedial action is required, he shall take immediate action to end the conflicts or appearance of conflicts of interest. Remedial action may include, but is not limited to:

- (1) Changes in assigned duties;
- (2) Divestment by the employee or special Government employee of his conflicting interest;
- (3) Disciplinary action; or
- (4) Disqualification for a particular assignment.

Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

Subpart B—Agency Regulations Governing Ethical and Other Conduct and Responsibilities of Employees

§ 735.201 Specific provisions of agency regulations.

Agency regulations issued under this subpart, as a minimum, shall contain

provisions covering the standards of and governing the ethical and other conduct of its employees set forth in §§ 735.202 through 735.210.

§ 735.201a Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

- (a) Using public office for private gain;
- (b) Giving preferential treatment to any person;
- (c) Impeding Government efficiency or economy;
- (d) Losing complete independence or impartiality;
- (e) Making a Government decision outside official channels; or
- (f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 735.202 Gifts, entertainment, and favors.

(a) Except as provided in paragraphs (b) and (f) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

- (1) Has, or is seeking to obtain, contractual or other business or financial relations with his agency;
- (2) Conducts operations or activities that are regulated by his agency; or
- (3) Has interests that may be substantially affected by the performance or nonperformance of his official duty.

(b) Agency regulations implementing paragraph (a) of this section may provide for such exceptions as may be necessary and appropriate in view of the nature of the agency's work and the duties and responsibilities of the employees. Appropriate exceptions which may be made by an agency include, but are not limited to, those that:

- (1) Govern obvious family or personal relationships (such as those between the parents, children, or spouse of the employee and the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;
- (2) Permit acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;
- (3) Permit acceptance of loans from banks or other financial institutions on customary terms of finance proper and usual activities of employees, such as home mortgage loans; and
- (4) Permit acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal intrinsic value.

(c) [Reserved]

(d) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving

less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(e) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in section 7342 of title 5, United States Code.

(f) Neither this section nor § 735.203 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B-128527 of the Comptroller General dated March 7, 1967 (46 Comp. Gen. 689).

§ 735.203 Outside employment and other activity.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment which tends to impair his mental or physical capacity to perform his Government duties and responsibilities in an acceptable manner.

(b) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government (18 U.S.C. 209).

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, this part, or the agency regulations. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Commission or Board of Examiners for the Foreign Service, that depends on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the agency head gives written authorization for use of non-public information on the basis that the use is in the public interest. In addition, an employee who is a Presidential appointee covered by section 401(a) of the order shall not receive compensation or

anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of his agency, or which draws substantially on official data or ideas which have not become part of the body of public information.

(d) [Reserved]

(e) This section does not preclude an employee from:

(1) [Reserved]

(2) Participation in the activities of national or State political parties not proscribed by law.

(3) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

(4) Outside employment permitted under the regulations of his agency issued under this part.

§ 735.204 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, the Executive order, this section, or the agency regulations.

§ 735.205 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him.

§ 735.206 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in § 735.203(c), directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

§ 735.207 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For the purpose of this section, a "just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner

which the agency determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt.

§ 735.208 Gambling, betting, and lotteries.

An employee shall not participate while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 3 of Executive Order 10927 and similar agency-approved activities.

§ 735.209 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 735.210 Miscellaneous statutory provisions.

Each employee shall acquaint himself with each statute that relates to his ethical and other conduct as an employee of his agency and of the Government. An agency shall direct the attention of its employees, by specific reference in the agency regulations issued under this part, to each statute relating to the ethical and other conduct of employees of that agency and to the following statutory provisions:

(a) House Concurrent Resolution 175, 85th Congress, 2d session, 72A Stat. B12, the "Code of Ethics for Government Service".

(b) Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 793, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel

action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643); and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(q) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

Subpart C—Agency Regulations Governing Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 735.301 Specific provisions of agency regulations.

Agency regulations issued under this subpart, as a minimum, shall contain provisions covering the standards of and governing the ethical and other conduct of its special Government employees as set forth in §§ 735.302 through 735.306. In addition, to the extent considered appropriate by the agency head, the agency regulations issued under this subpart shall require its special Government employees to adhere to the standards of conduct made applicable to employees by the agency regulations issued under Subpart B of this part.

§ 735.302 Use of Government employment.

A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

§ 735.303 Use of inside information.

(a) A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. For the purpose of this section, "inside information" means information obtained under Government authority which has not become part of the body of public information.

(b) Agency regulations implementing paragraph (a) of this section may provide that special Government employees may teach, lecture, or write in a manner not inconsistent with § 735.203(c) in regard to employees.

§ 735.304 Coercion.

A special Government employee shall not use his Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he has family, business, or financial ties.

§ 735.305 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee, while so employed or in connection with his employment, shall not receive or solicit from a person having business with his agency anything of value as a gift, gratuity, loan, entertainment, or favor for himself or another person, particularly one with whom he has family, business, or financial ties.

(b) Agency regulations implementing paragraph (a) of this section may provide for exceptions for special Government employees that are not inconsistent with the exceptions authorized for their employees under § 735.202(b).

§ 735.306 Miscellaneous statutory provisions.

Each special Government employee shall acquaint himself with each statute that relates to his ethical and other conduct as a special Government employee of his agency and of the Government. An agency shall direct the attention of its special Government employees, by specific reference in the agency regulations issued under this part, to each statute relating to the ethical and other conduct of special Government employees of that agency and to those statutory provisions listed in § 735.210 that are applicable to special Government employees.

Subpart D—Agency Regulations Governing Statements of Employment and Financial Interests

§ 735.401 Form and content of statements.

The statements of employment and financial interests required under this subpart for use by employees and special Government employees shall contain, as a minimum, the information required by the formats prescribed by the Commission in the Federal Personnel Manual. An agency shall not include questions on a statement of employment and financial interests that go beyond, or are in greater detail than, those included on the Commission's formats without the approval of the Commission.

§ 735.402 Specific provisions of agency regulations for employees.

Agency regulations issued under this subpart for employees, as a minimum, shall contain provisions covering the reporting requirements set forth in §§ 735.403 through 735.411.

§ 735.403 Employees required to submit statements.

Except as provided in § 735.404, each agency head shall require statements of employment and financial interests from:

(a) Employees paid at a level of the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code.

(b) Employees classified at GS-13 or above under section 5332 of title 5, United States Code, or at a comparable pay level under another authority, who are in positions identified in the agency's regulations as positions the incumbents of which are responsible for making a Government decision or taking a Government action in regard to:

- (1) Contracting or procurement;
- (2) Administering or monitoring grants or subsidies;
- (3) Regulating or auditing private or other non-Federal enterprise; or
- (4) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise.

(c) Employees classified at GS-13 or above under section 5332 of title 5, United States Code, or at a comparable pay level under another authority, who are in positions which the agency has determined have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and carry out the purpose of law, Executive order, this part, and the agency's regulations.

(d) Employees classified below GS-13 under section 5332 of title 5, United States Code, or at a comparable pay level under another authority, who are in positions which otherwise meet the criteria in paragraph (b) or (c) of this section, when the inclusion of the positions in the agency's regulations has been specifically justified by the agency in writing to the Commission as an exception that is essential to protect the integrity of the Government and avoid employee involvement in a possible conflicts-of-interest situation.

§ 735.403a Employee's complaint on filing requirement.

Agency regulations issued under this subpart shall inform employees of the opportunity for review through the agency's grievance procedure of a complaint by an employee that his position has been improperly included under the regulations of his agency as one requiring the submission of a statement of employment and financial interests.

§ 735.404 Employees not required to submit statements.

(a) Employees in positions that meet the criteria in paragraph (b) of § 735.403 may be excluded from the reporting requirement when the agency determines that:

- (1) The duties of a position are such that the likelihood of the incumbent's involvement in a conflicts-of-interest situation is remote;
- (2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and

financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government; or

(3) The use of an existing or alternative procedure approved by the Commission is adequate to prevent possible conflicts of interest.

(b) A statement of employment and financial interests is not required by this subpart from an agency head, a Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in that office, or a full-time member of a committee, board, or commission appointed by the President. These employees are subject to separate reporting requirements under section 401 of the Executive order.

§ 735.404a Interests not required to be reported.

Agency regulations issued under this subpart may exclude the reporting of any interest which has, by general rule or regulation published in the FEDERAL REGISTER under section 208(b) (2) of title 18, United States Code, been exempted as too remote or too inconsequential to affect the integrity of employees' services.

§ 735.405 Time and place for submission of employees' statements.

An employee required to submit a statement of employment and financial interests under the regulations of his agency shall submit that statement to the office designated in the agency regulations not later than:

(a) Ninety days after the effective date of the agency regulations issued under this part if employed on or before that effective date; or

(b) Thirty days after his entrance on duty, but not earlier than ninety days after the effective date, if appointed after that effective date.

§ 735.406 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year, except when the Commission authorizes a different date on a showing by an agency of necessity therefor. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts-of-interest provisions of section 208 of title 18, United States Code, or Subpart B of this part.

§ 735.407 Interests of employees' relatives.

The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, "member of an employee's immediate household" means

those blood relations who are residents of the employee's household.

§ 735.408 Information not known by employees.

If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his behalf.

§ 735.409 Information prohibited.

This subpart does not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 735.410 Confidentiality of employees' statements.

An agency shall hold each statement of employment and financial interests, and each supplementary statement, in confidence. To insure this confidentiality, an agency shall designate which employees are authorized to review and retain the statements. Employees so designated are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. An agency may not disclose information from a statement except as the Commission or the agency head may determine for good cause shown.

§ 735.411 Effect of employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or any other person to participate in a matter in which his or the other person's participation is prohibited by law, order, or regulation.

§ 735.412 Specific provisions of agency regulations for special Government employees.

(a) Agency regulations issued under this subpart for special Government employees, as a minimum, shall contain provisions covering the reporting requirements set forth in this section.

(b) Except as provided in paragraph (c) of this section, each agency head

shall require each special Government employee to submit a statement of employment and financial interests which reports:

(1) All other employment; and
(2) The financial interests of the special Government employee which the agency determines are relevant in the light of the duties he is to perform.

(c) An agency head may waive the requirement in paragraph (b) of this section for the submission of a statement of employment and financial interests in the case of a special Government employee who is not a consultant or an expert when the agency finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purpose of this paragraph, "consultant" and "expert" have the meanings given those terms by Chapter 304 of the Federal Personnel Manual, but do not include:

(1) A physician, dentist, or allied medical specialist whose services are procured to provide care and service to patients; or

(2) A veterinarian whose services are procured to provide care and service to animals.

(d) A statement of employment and financial interest required to be submitted under this section shall be submitted not later than the time of employment of the special Government employee as provided in the agency regulations. Each special Government employee shall keep his statement current throughout his employment with the agency by the submission of supplementary statements.

PART 752—ADVERSE ACTIONS BY AGENCIES

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Subpart D—Reversals of Adverse Actions

752.401	Agency action when Commission recommends restoration or other corrective action.
752.402	Agency reversal of certain adverse decisions.

AUTHORITY: The provisions of this Part 752 issued under 5 U.S.C. 1302, 3301, 3302, 7701, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, E.O. 10988; 3 CFR, 1959-1963 Comp., p. 521.

Subpart A—General Provisions**§ 752.101 Applicability.**

This part applies to discharges, suspensions, furloughs without pay, and reduction in rank or pay of employees of the Government of the United States and the government of the District of Columbia.

§ 752.102 Definitions.

In this part:

(a) Days means calendar days and not workdays.

(b) Appeal to the agency means an appeal under Part 771 of this chapter.

§ 752.103 General exclusions.

(a) *Employees.* The employees covered by this part are shown in Subparts B and C of this part. In no case, however, does any of this part apply to:

(1) A reemployed annuitant;

(2) An employee under the legislative or judicial branch of the Government unless he is occupying a position in the competitive service;

(3) An employee occupying a competitive position under a temporary appointment with a definite time limitation;

(4) An employee whose appointment is required by Congress to be confirmed by, or made with, the advice and consent of the United States Senate, except a postmaster;

(5) An employee currently serving a probationary or trial period;

(6) An employee in the excepted service who is not a preference eligible employee, except an employee with competitive status occupying a position in Schedule B of Part 213 of this chapter;

(7) An employee serving under a term appointment or an overseas limited term appointment on expiration of his appointment; or

(8) An employee who has not completed 1 year of current continuous employment and is serving under a special tenure appointment, a TAPER appointment, a temporary appointment of indefinite duration in the postal field service, or as a status quo employee.

(b) *Adverse actions.* The adverse actions covered by this part are shown in Subparts B and C of this part. In no case, however, does any of this part apply to:

(1) A decision of the Commission;

(2) An action taken by an agency pursuant to instructions from the Commission;

(3) A reduction-in-force action taken under Part 351 of this chapter;

(4) An action taken under section 7532 of title 5, United States Code, or any other statute which authorizes an agency to take suspension or separation action without regard to section 7501 of that title or any other statute; or

(5) An action terminating a temporary promotion within a maximum period of 2 years and returning the employee to the position from which he was temporarily promoted or reassigning or demoting him to a different position that is not at a lower grade or level than the

position from which he was temporarily promoted.

§ 752.104 General standards.

(a) An agency may not take an adverse action against an employee covered by this part except for such cause as will promote the efficiency of the service. Among the reasons that constitute "such cause as will promote the efficiency of the service" for this purpose are the reasons for disqualification of an applicant listed in § 731.201(b)-(g) of this title. These reasons may be based on preappointment factors as well as on postappointment factors.

(b) An agency may not take an adverse action against an employee covered by this part for political reasons, except when required by statute.

(c) An agency may not take an adverse action against an employee covered by this part that is based on discrimination because of sex, marital status, race, creed, color, national origin, or for physical handicap with respect to any position the duties of which may be efficiently performed by a person with the physical handicap.

§ 752.105 Agency records.

Each agency shall make a part of its records copies of the notice of proposed adverse action, any answer made by the employee, the notice of any agency hearing on the proposed adverse action and the report thereof, and the notice of decision.

Subpart B—Discharge, Suspension for More Than 30 Days, Furlough Without Pay, and Reduction in Rank or Pay**§ 752.201 Coverage.**

(a) *Employees covered.* This subpart applies to:

(1) (i) Any career, career-conditional, overseas limited, indefinite, or term employee, or any employee serving under a career or limited executive assignment, in a competitive position who is not serving a probationary or trial period, and (ii) any employee serving in a competitive position who has completed 1 year of current continuous employment except one serving under a temporary appointment with a definite time limitation.

(2) Any employee having a competitive status who occupies a position in Schedule B of Part 213 of this chapter under a nontemporary appointment; and

(3) Any preference eligible employee who has completed 1 year of current continuous employment in a position outside the competitive service.

(b) *Adverse actions covered.* This subpart applies to:

(1) Discharge;

(2) Suspension for more than 30 days;

(3) Furlough without pay; and

(4) Reduction in rank or pay, including that taken at the election of the agency after a position classification decision by the Commission.

(c) *Exclusions.* This subpart does not apply to an employee or adverse action excluded by § 752.103.

§ 752.202 Procedures.

(a) *Notice of proposed adverse action.* Except as provided in paragraph (c) of this section, an employee against whom adverse action is sought is entitled to at least 30 full days' advance written notice stating any and all reasons, specifically and in detail, for the proposed action.

(b) *Employee's answer.* Except as provided in paragraph (c) of this section, an employee is entitled to a reasonable time for answering charges and a notice of proposed adverse action and for furnishing affidavits in support of his answers. The reasonable time required depends on the facts and circumstances of the case, and shall be sufficient to afford the employee ample opportunity to prepare answers and secure affidavits. If the employee answers, the agency shall consider his answer in reaching its decision. The employee is entitled to answer personally, or in writing, or both personally and in writing. The right to answer personally includes the right to answer orally in person by being given a reasonable opportunity to make any representations which the employee believes might sway the final decision on his case, but does not include the right to a trial or formal hearing with examination of witnesses. When the employee requests an opportunity to answer personally, the agency shall make a representative or representatives available to hear his answer. The representative or representatives designated to hear the answer shall be persons who have authority either to make a final decision on the proposed adverse action or to recommend what final decision should be made.

(c) *Exceptions to notice period and opportunity to prepare answer.* (1) Advance written notice and opportunity to answer are not necessary in cases of furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or emergencies requiring immediate curtailment of activities.

(2) When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed, the agency is not required to give the employee the full 30 days' advance written notice, but shall give him such less number of days advance notice and opportunity to answer as under the circumstances is reasonable and can be justified.

(d) *Duty status during notice period.* Except as provided in paragraph (e) of this section, an employee against whom adverse action is proposed is entitled to be retained in an active duty status during the notice period. When circumstances are such that the retention of the employee in an active duty status in his position may result in damage to Government property or may be detrimental to the interests of the Government or injurious to the employee, his fellow workers, or the general public, the agency may temporarily assign him to duties in which these conditions will not exist or place him on leave with his consent.

(e) *Suspensions during notice period.* In an emergency case when, because of the circumstances described in paragraph (d) of this section, an employee cannot be kept in an active duty status during the notice period, the agency may suspend him. This suspension is a separate adverse action. An employee whose suspension under this paragraph is proposed is entitled, in connection with the suspension, to the following:

(1) If the suspension is for more than 30 days, to the procedures required by this subpart;

(2) If the suspension is for 30 days or less and the employee is covered under § 752.301, to the procedures required by Subpart C of this part; or

(3) If the suspension is for 30 days or less and the employee is in the excepted service and not covered by § 752.301, to a written notice at least 24 hours in advance of the effective date of the suspension. The agency shall include in the notice of suspension the reasons for not retaining the employee in an active duty status during the notice period. If the employee appeals from the final adverse decision, the Commission reviews the reasons for not retaining him in an active duty status to determine their consonance with the circumstances described in paragraph (d) of this section. The agency may place the employee in a non-duty status with pay for such time, not to exceed 5 days, as is necessary to effect the suspension.

(f) *Notice of adverse decision.* The employee is entitled to notice of the agency's decision at the earliest practicable date. The agency shall deliver the notice of decision to the employee at or before the time the action will be made effective. The notice shall be in writing, be dated, inform the employee of the reasons for the action, inform the employee of his right of appeal to the appropriate office of the Commission, and inform him of the time limit within which an appeal may be submitted as provided in § 752.203(b). The agency also shall inform the employee of any right of appeal to the agency.

§ 752.203 Appeal rights to the Commission.

(a) *Right of appeal.* An employee is entitled to appeal to the Commission from an adverse action covered by this subpart. The appeal shall be in writing and shall set forth the employee's reasons for contesting the adverse action, with such offer of proof and pertinent documents as he is able to submit.

(b) *Time limit.* (1) Except as provided in subparagraphs (2), (3), and (4) of this paragraph, an employee may submit an appeal at any time after receipt of the notice of adverse decision but not later than 15 calendar days after the adverse action has been effected.

(2) When a postmaster appointed by the President and confirmed by the U.S. Senate is notified of an adverse decision to discharge him and is continued in office until a successor can be installed, the time limit on an appeal is 15 calendar days after his receipt of the notice of

adverse decision, except when subparagraph (3) of this paragraph applies.

(3) (i) An appeal to the agency and an appeal to the Commission from the same original decision may not be processed concurrently.

(ii) An employee who appeals first to the Commission within the prescribed time limit forfeits his right of appeal to the agency.

(iii) When the employee appeals first to the agency within the prescribed time limit, he is entitled to appeal to the Commission only after, but not more than 15 calendar days later than:

(a) Receipt of the final agency appellate decision if the agency has only one appellate level; or

(b) Receipt of the first-level agency appellate decision, if the agency has more than one appellate level.

If no agency appellate decision has been made within 60 days from the date of filing the appeal to the agency, the employee may elect to terminate that appeal by appealing to the Commission.

(iv) An employee who appeals to the second agency appellate level forfeits his right of appeal to the Commission. An employee who appeals a first-level agency appellate decision to the Commission forfeits his right to appeal to the second agency appellate level.

(4) The Commission may extend the time limits in this paragraph when the appellant shows that he was not notified of the applicable time limit and was not otherwise aware of it, or that he was prevented by circumstances beyond his control from appealing within the time limit.

Subpart C—Suspensions of 30 Days or Less

§ 752.301 Coverage.

(a) *Employees covered.* This subpart applies to:

(1) (i) Any career, career-conditional, overseas limited, indefinite, or term employee, or any employee serving under a career or limited executive assignment, in a competitive position who is not serving a probationary or trial period, and (ii) any employee serving in a competitive position who has completed 1 year of current continuous employment except one serving under a temporary appointment with a definite time limitation.

(2) Any employee having a competitive status who occupies a position in Schedule B of Part 213 of this chapter under a nontemporary appointment.

(b) *Adverse actions covered.* This subpart applies to suspensions of 30 days or less.

(c) *Exclusions.* This subpart does not apply to an employee or adverse action excluded by § 752.103.

§ 752.302 Procedures.

(a) *Notice of proposed suspension.* An employee whose suspension is sought is entitled to an advance written notice stating the reasons, specifically and in detail, for the proposed action.

(b) *Employee's answer.* An employee is entitled to a reasonable time for filing

a written answer to the notice of proposed suspension and for furnishing affidavits in support of his answer. If the employee answers, the agency shall consider the answer in reaching its decision.

(c) *Notice of suspension.* The employee is entitled to notice of the agency's decision at the earliest practicable date. The agency shall deliver the notice of decision to the employee at or before the time the action will be made effective. The notice shall be in writing, inform the employee of the reasons for the suspension, inform the employee of his right of appeal to the appropriate office of the Commission, and inform him of the time limit within which an appeal may be submitted as provided in § 752.304(c).

§ 752.303 Emergency procedures.

In an emergency case, when circumstances are such that the retention of an employee in an active duty status in his position may result in damage to Government property or may be detrimental to the interests of the Government or injurious to the employee, his fellow workers, or the general public, the agency may require the employee to answer the charges and submit affidavits within such time as under the circumstances would be reasonable, but not less than 24 hours. When these circumstances require immediate action, the agency may place the employee in a non-duty status with pay for such time, not to exceed 5 days, as is necessary to effect the suspension.

§ 752.304 Appeal rights to the Commission.

(a) *Right of appeal.* An employee is entitled to appeal to the Commission from the agency's decision to suspend him. The appeal shall be in writing.

(b) *Scope of review.* (1) On appeal, the Commission reviews the procedures used in a suspension under this subpart. Its review does not include other matters except as provided in subparagraphs (2) and (3) of this paragraph.

(2) When an employee submits an affidavit to the Commission alleging that adverse action was taken against him for political reasons not required by statute, or resulted from discrimination because of sex or marital status, or from improper discrimination because of physical handicap, the Commission determines the validity of the allegation and takes appropriate action when indicated.

(3) When a suspension was imposed during the advance notice period of some adverse action covered by Subpart B, of this part, the Commission reviews the reasons for not retaining the employee in an active duty status if the employee appeals from the final adverse action.

(c) *Time limit.* An employee may submit an appeal at any time after receipt of the notice of adverse decision but not later than 15 calendar days after the suspension has been effected. The Commission may extend the time limit in this paragraph when the appellant shows that he was not notified of the time limit and was not otherwise aware of it, or that he was prevented by circumstances beyond his control from appealing within the time limit.

Subpart D—Reversals of Adverse Actions

§ 752.401 Agency action when Commission recommends restoration or other corrective action.

(a) It is mandatory that the agency take all corrective action recommended in the Commission's initial decision on an appeal unless it makes a timely appeal to the Board of Appeals and Review.

(b) The decision of the Board is final and compliance with its recommendation for corrective action is mandatory.

§ 752.402 Agency reversal of certain adverse decisions.

When an employee who has been reduced in grade or pay is restored to his former grade or rate of pay or to an intermediate grade or rate of pay as the result of an agency decision that its action under Subpart B of this part was unjustified or unwarranted, the agency shall make the restoration retroactively effective to the date of the improper action.

PART 754—ADVERSE ACTIONS BY THE COMMISSION

Sec.

- 754.101 Scope.
- 754.102 Notice of proposed action.
- 754.103 Answer.
- 754.104 Decision.
- 754.105 Appeal rights.

AUTHORITY: The provisions of this Part 754 issued under 5 U.S.C. 1302, 3301, 3302, 7701, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, E.O. 10988; 3 CFR, 1959-1963 Comp., p. 521.

§ 754.101 Scope.

(a) **Coverage.** This part sets forth the procedures to be followed when the Director of the Commission's Bureau of Personnel Investigations or his designee (referred to in this part as the Director), acting under authority of § 5.4 or § 731.302(b) of this chapter, instructs an agency to remove or take other disciplinary action against an employee in the competitive service who was appointed subject to investigation under § 731.301 of this chapter and who has currently served more than 1 year under other than a temporary appointment with a definite time limitation.

(b) **Definition.** In this part, "days" means calendar days and not workdays.

§ 754.102 Notice of proposed action.

The Director shall notify the employee in writing of the proposed action and of the charges against him. The notice shall state any and all reasons, specifically and in detail, for the proposed action. The Director shall send a copy of this notice to the employing agency. The employee is entitled to at least 30 full days' advance notice of the proposed action, and to be retained in an active duty status during the notice period.

§ 754.103 Answer.

(a) **Employee's answer.** An employee may answer the charges either orally in person, or in writing, or both, and furnish affidavits in support of his answer. The time limit for filing an answer is 15 days from the date the employee receives

the notice. The Director shall consider any answer that the employee makes in reaching his decision.

(b) **Agency's answer.** In actions proposed under § 5.4 of this chapter, the agency may also answer the notice of proposed adverse action. The time limit for filing an answer is 15 days from the date the agency receives a copy of the notice. The Director shall consider any answer that the employee makes in reaching his decision.

§ 754.104 Decision.

The Director shall notify the employee and the agency of his decision and inform him of his appeal rights. The decision shall be in writing, be dated, and inform the employee of the reasons for the decision.

§ 754.105 Appeal rights.

(a) An employee may appeal an adverse decision of the Director to the Appeals Examining Office. The appeal shall be in writing and shall set forth the employee's reasons for contesting the adverse decision, with such offer of proof and pertinent documents as he is able to submit.

(b) The time limit for filing an appeal is 15 days from the date the employee receives the notice of adverse decision. The Appeals Examining Office may waive this time limit for good cause.

(c) An employee who appeals under this section is entitled to be retained in an active duty status until action on his appeal is completed under Part 772 of this chapter.

PART 771—EMPLOYEE GRIEVANCES AND ADMINISTRATIVE APPEALS

Subpart A—[Reversed]

Subpart B—Administrative Appeals

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- 771.202 Definitions.
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- 771.229 Employee request for review.
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AUTHORITY: The provisions of this Part 771 issued under 5 U.S.C. 1302, 3301, 3302, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, E.O. 10987; 3 CFR, 1959-1963 Comp., p. 519.

Subpart A—[Reserved]

Subpart B—Administrative Appeals

DEFINITIONS AND COVERAGE

§ 771.201 Purpose.

This subpart sets forth the regulations under which each agency shall establish an agency appeals system, as required by Executive Order 10987, that will provide a simple, orderly method through which an employee may seek prompt administrative reconsideration of a decision to take adverse action against him.

§ 771.202 Definitions.

In this subpart:

(a) "Appeal" means a request by an employee for reconsideration of a decision to take adverse action against him.

(b) "Appellate decision" means a decision made by an appellate level which completes action on the appeal at that level by sustaining the original decision reversing the original decision, or modifying the original decision by substituting a less severe action.

(c) "Appellate level" means an agency administrative level with authority to act on an appeal which specifically includes the authority to sustain the original decision, reverse the original decision, and modify the original decision by substituting a less severe action.

(d) "Employee" includes a former employee of an agency.

(e) "Executive order" means Executive Order 10987, issued January 17, 1962.

(f) "Original decision" means a decision by an agency to take adverse action against an employee.

(g) "Days" means calendar days.

§ 771.203 Agency coverage.

(a) **Agencies covered.** Except as provided in paragraph (b) of this section, this subpart applies to Executive agencies and military departments as defined by sections 105 and 102 of title 5, United States Code; and to those portions of the legislative and judicial branches and of the government of the District of Columbia having positions in the competitive service.

(b) **Agencies not covered.** This subpart does not apply to the Central Intelligence Agency, the National Security Agency, the Federal Bureau of Investigation, the Atomic Energy Commission, and the Tennessee Valley Authority.

§ 771.204 Employee coverage.

(a) **Employees covered.** Except as provided in paragraphs (b) and (c) of this section, this subpart applies to:

(1) (i) Any career, career-conditional, overseas limited, indefinite, or term employee, or any employee serving under

a career or limited executive assignment, in a competitive position who is not serving a probationary or trial period, and (ii) any employee serving in a competitive position who has completed 1 year of current continuous employment except one serving under a temporary appointment with a definite time limitation; and

(2) An employee having a competitive status who occupies a position in Schedule B of Part 213 of this chapter under a nontemporary appointment.

(b) *Employees not covered.* This subpart does not apply to:

(1) A reemployed annuitant;
(2) An employee occupying a competitive position under a temporary appointment with a definite time limitation;
(3) An employee whose appointment is required by Congress to be confirmed by, or made with, the advice and consent of the United States Senate, except a postmaster;

(4) An employee currently serving a probationary or trial period;

(5) An employee in the excepted service, except an employee with competitive status occupying a position in Schedule B of Part 213 of this chapter;

(6) An employee serving under a term appointment on expiration of his term appointment; or

(7) An employee who has not completed 1 year of current continuous employment and is serving under a special tenure appointment, a TAPER appointment, a temporary appointment of indefinite duration in the postal field service or as a status quo employee.

(c) *Special exclusion.* This subpart does not apply to an employee otherwise included under paragraph (a) of this section when he is a member of a class of employees excluded from coverage by the Commission on the recommendation of the head of the agency concerned because the nature of the employee's work is such that inclusion under the agency appeals system is inappropriate.

§ 771.205 Adverse action coverage.

(a) *Actions covered.* Except as provided in paragraph (b) of this section, this Subpart B applies to:

(1) Discharge;
(2) Suspension for more than 30 days;
(3) Furlough without pay; and
(4) Reduction in rank or pay, including that taken at the election of the agency after a position classification decision by the Commission.

(b) *Actions not covered.* This Subpart B does not apply to:

(1) A decision of the Commission;
(2) An action taken by an agency pursuant to specific instructions from the Commission;
(3) A reduction-in-force action taken under Part 351 of this chapter;
(4) An action taken under section 7532 of title 5, United States Code, or any other statute which authorizes an agency to take suspension or separation action without regard to section 7501 of that title or any other statute; or
(5) An action terminating a temporary promotion within a maximum period of 2 years and returning the employee

to the position from which he was temporarily promoted or reassigning or demoting him to a different position that is not at a lower grade or level than the position from which he was temporarily promoted.

GENERAL REQUIREMENTS

§ 771.206 Establishment and publication.

(a) Each agency shall establish and administer an agency appeals system in accordance with the Executive order and this subpart. Each system shall contain provisions which incorporate into the system the requirements set forth in § 771.209 through 771.226.

(b) Each agency shall give its employees and representatives of recognized employee organizations an opportunity to express their views in the development of, operations under, or changes to, its appeals system.

(c) Each agency shall publish the provisions of its appeals system; make copies available to employees, their representatives, veterans organizations, and recognized employee organizations; and notify employees where a copy is available for review.

§ 771.207 Appellate levels.

An agency appeals system shall have one appellate level. However, with the approval of the Commission, an agency may have more than one appellate level when this is required by its delegations of authority or organization. In seeking the approval of the Commission, the agency shall submit a justification of its proposal and shall state the procedures it will follow in effecting the proposal. An agency may change the number or organizational location of approved appellate levels only with the concurrence of the Commission.

771.208 Employee appeal file.

When an employee files an appeal under an agency appeals system, the agency shall establish an employee appeal file separate from the Official Personnel Folder. The agency shall file in the employee appeal file all documents pertinent to the appeal, such as copies of the notice of proposed adverse action; the employee's reply, if any; the notice of original decision; the employee's appeal; any pertinent evidence developed during the appeal; the reasons for not granting a hearing when one was requested but not granted; the reasons for not producing witnesses at the hearing; the written summary or transcript of the hearing when a hearing was held; the report of the committee; and the notice of appellate decision or the notice of termination of the appeal.

THE APPEAL

§ 771.209 Right to appeal.

(a) *Entitlement.* An employee is entitled to appeal under the agency appeals system from the original decision. The agency shall accept and process a properly filed appeal in accordance with its appeals system.

(b) *Notice.* The notice of original decision shall inform the employee of:

(1) His right to appeal under the agency appeals system;

(2) The time limit within which an appeal may be filed under the system;

(3) Any appeal rights he may have to the Commission;

(4) The order of processing appeals as prescribed in § 771.219; and

(5) The person with whom, or the office with which, he must file his appeal under the system, and where he may obtain information on how to pursue his appeal.

§ 771.210 Contents of appeal.

An appeal shall be in writing; shall set forth clearly the basis for the appeal; and shall include the employee's request, if any, for a hearing when he is entitled to one.

§ 771.211 Time limit for filing appeal.

(a) An employee may submit an appeal at any time after receipt of the notice of original decision but not later than 15 calendar days after the adverse action has been effected.

(b) The agency may extend the time limit in this section (1) when the employee shows that he was not notified of the time limit and was not otherwise aware of it, or that he was prevented by circumstances beyond his control from appealing within the time limit, or (2) for other reasons considered sufficient by the agency.

§ 771.212 Presentation of appeal.

(a) An employee, in presenting his appeal under the agency appeals system, shall:

(1) Be assured freedom from restraint, interference, coercion, discrimination, or reprisal;

(2) Have the right to be accompanied, represented, and advised by a representative of his own choosing; and

(3) Be assured a reasonable amount of official time if he is otherwise in an active duty status.

(b) When the employee designates another employee of the agency as his representative, the representative, in presenting the appeal, shall:

(1) Be assured freedom from restraint, interference, coercion, discrimination, or reprisal; and

(2) Be assured a reasonable amount of official time if he is otherwise in an active duty status.

THE HEARING

§ 771.213 Right to a hearing.

(a) *Entitlement.* Except as provided in paragraph (b) of this section, an employee is entitled to a hearing on his appeal before a hearing committee. The employee is entitled to appear at the hearing personally or through or accompanied by his representative. The hearing may precede either the original decision or the appellate decision, at the agency's option. Only one hearing shall be held unless the agency determines that unusual circumstances require a second hearing.

(b) *Denial of hearing.* The agency may deny an employee a hearing on his appeal only (1) when a hearing is impracticable by reason of unusual location or other extraordinary circumstance, or (2) when the employee failed to request a hearing offered before the original decision.

(c) *Notice.* The agency shall notify an employee in writing before the original decision or before the appellate decision of (1) his right to a hearing, or (2) the reasons for the denial of a hearing.

§ 771.214 Hearing committee.

(a) A hearing committee consisting of one or more members shall preside at the hearing. The agency shall provide a method for selecting the committee that will insure that the members are fair, impartial, and objective. An individual who was responsible for reviewing or acting on the proposal or decision to take adverse action, or who will be responsible for reviewing or acting on the report of the committee, may not be a member of the committee.

(b) The agency shall establish reasonable time standards for the selection of the committee, for the conduct of the hearing, for completion of the report of the committee, and for decision on the appeal.

§ 771.215 Conduct of hearing.

(a) The hearing is not open to the public or the press. Attendance at a hearing is limited to persons determined by the hearing committee to have a direct connection with the appeal.

(b) The hearing is conducted so as to bring out pertinent facts, including the production of pertinent records.

(c) Rules of evidence are not applied, strictly, but the hearing committee shall exclude irrelevant or unduly repetitious testimony.

(d) Decisions on the admissibility of evidence or testimony are made by the chairman of the hearing committee without polling the committee, except that when a member objects to a decision of the chairman, a ruling on the admissibility of the evidence or testimony in question is by majority vote of the committee with minority views recorded.

(e) Testimony is under oath or affirmation.

(f) The chairman of the hearing committee shall give the parties opportunity to cross-examine witnesses.

§ 771.216 Witnesses.

(a) Both parties are entitled to produce witnesses.

(b) The agency shall make its employees available as witnesses before a hearing committee when (1) requested by the committee after consideration of a request by the employee or the agency and (2) it is administratively practicable to comply with the request of the committee. If the agency determines that it is not administratively practicable to comply with the request of the committee, it shall submit for inclusion in the employee appeal file its written reasons for the declination.

(c) Employees of the agency are in a duty status during the time they are made available as witnesses.

(d) The agency shall assure witnesses freedom from restraint, interference, coercion, discrimination, or reprisal in presenting their testimony.

§ 771.217 Record of hearing.

(a) The hearing committee shall prepare a verbatim transcript or written summary of the hearing, including all pertinent documents submitted to and accepted by the committee for its consideration. When the hearing is reported verbatim, the hearing committee shall make the transcript a part of the record of the proceedings. When the hearing is not reported verbatim, the hearing committee shall make a suitable summary of pertinent portions of the testimony. When agreed to in writing by the parties, the summary constitutes the report of the hearing and is made a part of the record of the proceedings. If the hearing committee and the parties fail to agree on the summary, the parties are entitled to submit written exceptions to any part of the summary, and those written exceptions and the summary constitute the report of the hearing and are made a part of the record of the proceedings.

(b) The employee is entitled to be furnished a copy of the transcript or summary at or before the time he is furnished a copy of the report of the committee.

§ 771.218 Report of committee.

(a) The hearing committee shall make a written report of its findings or its findings and recommendations. When the hearing is held before the original decision, the report is made to the agency official who is to make the original decision. When the hearing is held after the original decision, the report is made to the agency official who is to make the appellate decision.

(b) The agency shall furnish the employee a copy of the committee's report and a copy of the hearing record if this has not been furnished previously. The agency shall also furnish the employee's representative a copy of the committee's report.

PROCESSING THE APPEAL

§ 771.219 Order of processing appeals.

(a) An appeal to the agency and an appeal to the Commission from the same original decision may not be processed concurrently.

(b) An employee who appeals first to the Commission within the prescribed time limit forfeits his right of appeal to the agency.

(c) When the employee appeals first to the agency within the prescribed time limit, he is entitled to appeal to the Commission only after, but not more than 15 calendar days later than:

(1) Receipt of the final agency appellate decision, if the agency has only one appellate level; or

(2) Receipt of the first-level agency appellate decision, if the agency has more than one appellate level.

If no agency appellate decision has been made within 60 days from the date of filing the appeal to the agency, the employee may elect to terminate that appeal by appealing to the Commission.

(d) An employee who appeals to the second agency appellate level forfeits his right of appeal to the Commission.

(e) An employee who appeals a first-level agency appellate decision to the Commission forfeits his right to appeal to the second agency appellate level.

§ 771.220 Avoidance of delay.

The agency shall give each appeal full, impartial, and expeditious consideration and shall prescribe regulations designed to prevent unreasonable delay by the employee in pursuing his appeal and directing the appropriate officials of the agency to process appeals with dispatch.

§ 771.221 Termination of appeal.

The agency shall terminate an employee's appeal:

(a) At the employee's request;

(b) If the employee files an appeal to the Commission from the same original decision and the Commission accepts the appeal for adjudication; or

(c) For failure to prosecute if the employee does not furnish required information and duly proceed with the advancement of his appeal. However, instead of terminating for failure to prosecute, the agency may adjudicate the appeal if sufficient information for that purpose is available. The agency may reopen a closed appeal under this paragraph only on a showing by the employee that circumstances beyond his control prevented him from prosecuting his appeal.

§ 771.222 Allegations of discrimination.

When an employee alleges that the original decision was based in whole or in part on discrimination because of race, color, religion, sex, or national origin, the agency shall review that allegation under Executive Order 11246, as amended, and Part 713 of this chapter. The agency may make an appellate decision unfavorable to the employee only after it has made an initial finding on the issue of discrimination.

§ 771.223 Death of employee.

When an appeal is filed properly before the death of the employee, the agency shall process it to completion and adjudicate it. The agency official authorized to decide the appeal may provide for amendment of the agency's records to show retroactive restoration and the employee's continuance on the rolls in an active duty status to the date of death.

§ 771.224 Appellate review.

(a) *Authorized official.* The agency official authorized to decide the appeal shall be at a higher administrative level than the agency official who made the original decision, except that when the head of the agency made the original decision, he shall decide the appeal.

(b) *Scope.* The scope of the appellate review shall include, but shall not be limited to, (1) a review of the issues of

fact, and (2) a review of compliance with agency and Commission procedural requirements for effecting the adverse action.

§ 771.225 Appellate decision.

The authorized official shall consider the entire appellate record and, after that consideration, make an appellate decision.

§ 771.226 Notice of appellate decision or of termination of appeal.

The agency shall notify the employee and his representative promptly in writing of the appellate decision, or of the termination of the appeal, and of any appeal rights the employee may have under this chapter.

ADVISORY ARBITRATION

§ 771.227 Provision for advisory arbitration.

Subject to § 771.228, each agency may include provision for advisory arbitration, when appropriate, in its appeals system.

§ 771.228 Arbitration requirements.

(a) An agency may provide for advisory arbitration in its appeals system only through a negotiated agreement between the agency and an employee organization to which exclusive recognition has been granted.

(b) An employee may use advisory arbitration only if:

(1) He is employed in a unit represented by an employee organization which has negotiated an agreement for advisory arbitration with the employing agency;

(2) He specifically requests it; and

(3) The employee organization concurs in the use of advisory arbitration and agrees to pay one-half the cost of arbitration.

(c) Advisory arbitration may not relate to the content of agency policy, but is restricted to the propriety of an adverse action in a particular case.

(d) When advisory arbitration is provided for in a one-level appeals system or in the first level of a two-level system, (1) advisory arbitration serves as an alternate to the agency hearing committees; (2) the employee cannot use both advisory arbitration and the agency hearing committee, but must choose one or the other; and (3) if the employee uses advisory arbitration, he is entitled to a hearing before the arbitrator.

(e) When advisory arbitration is provided for in the second level of a two-level appeals system, (1) the employee is entitled to use both the agency hearing committee in the first level and advisory arbitration in the second level; and (2) the employee is not entitled to a hearing before the arbitrator as a matter of right, but the arbitrator may, in his discretion, hold a hearing of such scope as he considers necessary within the provisions of paragraph (f) of this section.

(f) When an arbitrator holds a hearing, he shall conduct and record it, and make a report of findings and recommendations, under the principles set forth in §§ 771.215, 771.217, and 771.218.

(g) Both parties at a hearing held by an arbitrator are entitled to produce witnesses.

(h) An agency shall make its employees available as witnesses at a hearing held in advisory arbitration under the principles set forth in § 771.216.

(i) An agency shall furnish copies of the hearing record and the arbitrator's report under the principles set forth in § 771.218.

(j) The award of an arbitrator is advisory only and may be either accepted or rejected by the agency official authorized to make the appellate decision, or the original decision when the hearing is held before the original decision is placed into effect.

COMMISSION ACTION

§ 771.229 Employee request for review.

The Commission does not act on a request by an employee for a review of the agency's action under the agency appeals system unless the employee otherwise has a right to appeal to the Commission from the same adverse action and the Commission has accepted the appeal for adjudication.

§ 771.230 Review of agency appeals systems.

From time to time the Commission reviews agency appeals systems. When it finds that an agency's system or operations do not conform with the requirements of the Executive order or this subpart, the Commission requires corrective action to bring the agency's system or operations into conformity.

PART 772—APPEALS TO THE COMMISSION

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—Commission's Appellate Review of Actions Against Employees

Sec.	
772.301	Coverage.
772.302	Failure to prosecute.
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772.304	Evidence.
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772.306	Decision on initial appeal.
772.307	Further appeal to the Board of Appeals and Review.
772.308	Appellate review by the Commissioners.

AUTHORITY: The provisions of this Part 772 issued under 5 U.S.C. 1302, 3301, 3302, 5115, 5338, 7512, 7701, 8347, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, E.O. 10988; 3 CFR, 1959-1963 Comp., p. 521.

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—Commission's Appellate Review of Actions Against Employees

§ 772.301 Coverage.

(a) *Agency-initiated actions.* Except as otherwise provided, this subpart applies to appeals to the Commission under Subpart H of Part 315 of this chapter, Subpart B of Part 330 of this chapter, Subpart I of Part 351 of this chapter, Subpart E of Part 531 of this chapter,

and Subparts B and C of Part 752 of this chapter.

(b) *Commission-initiated actions.* Except as otherwise provided, this subpart applies to appeals to the Commission from adverse actions effected under Part 754 of this chapter, and from decisions of the Bureau of Retirement and Insurance on applications for disability retirement effected under Part 831 of this chapter. In appeals, under Part 754 of this chapter, the Commission's Bureau of Personnel Investigations is deemed the "agency" as that term is used in this subpart.

§ 772.302 Failure to prosecute.

The Commission shall close an appeal for failure to prosecute if an appellant does not furnish required information and duly proceed with the advancement of his appeal. However, instead of closing for failure to prosecute, the Commission may adjudicate the appeal of sufficient information for that purpose is available. The Commission may reopen an appeal closed under this section only on a showing by the appellant that circumstances beyond his control prevented him from prosecuting his appeal.

§ 772.303 Death of appellant.

When an appeal under Subpart H of Part 315 of this chapter, Subpart I of Part 351 of this chapter, Subpart E of Part 531 of this chapter, or Subpart B or C of Part 752 of this chapter is filed properly before the death of an appellant, the Commission shall process it to completion and adjudicate it. The Commission, in recommending corrective action in the decision on such an appeal may provide for amendment of the agency's records to show retroactive restoration and the appellant's continuance on the rolls in an active duty status to the date of death.

§ 772.304 Evidence.

(a) *Coverage.* This section applies only to appeals under Subpart H of Part 315 of this chapter, Subparts B and C of Part 752 of this chapter, Part 754 of this chapter, and Subpart L of Part 831 of this chapter.

(b) *Evidence.* Statements of witnesses shall be by affidavit, when practicable, and relative to the adverse decision. It is the responsibility of both parties to the appeal to submit all evidence to the Chief, Appeals Examining Office, or to the regional director, as appropriate.

(c) *Availability of evidence and representations.* A representative of the Commission shall discuss all relevant representations and evidence with both parties and make the representations and evidence available to them for review. However, when adverse action has been taken, or decision on an application for disability retirement has been made, on the basis of a reported mental condition of the appellant or another condition of such a nature that a prudent physician would hesitate to inform a person suffering from it as to its exact nature and probable outcome, the representative of the Commission shall make the medical evidence available only to a duly licensed physician designated in

writing by the appellant or the appellant's representative.

§ 772.305 Hearings.

(a) *Coverage.* This section applies only to appeals under Subpart B of Part 752 of this chapter, Part 754 of this chapter, and Subpart L of Part 831 of this chapter.

(b) *Right to a hearing.* An appellant is entitled to a hearing before the office of the Commission having initial jurisdiction of the appeal. That office shall inform the appellant of his right to a hearing. If the appellant does not desire a hearing, he shall so advise that office in writing.

(c) *Hearing procedures.* (1) An appellant is entitled to appear at the hearing on his appeal personally or through or accompanied by his representative. The agency is also entitled to participate in the hearing. Both parties are entitled to produce witnesses. The Commission is not authorized to subpoena witnesses.

(2) An agency shall make its employees available as witnesses at the hearing when (i) requested by the Commission after consideration of a request by the appellant or the agency and (ii) it is administratively practicable to comply with the request of the Commission. If the agency determines that it is not administratively practicable to comply with the request of the Commission, it shall submit to the Commission its written reasons for the declination. Employees of the agency shall be in a duty status during the time they are made available as witnesses. Employees of the agency shall be free from restraint, interference, coercion, discrimination, or reprisal in presenting their testimony.

(3) Hearings are not open to the public or the press. Attendance at hearings is limited to persons determined by the Commission to have a direct connection with the appeal.

(4) A representative of the Commission shall conduct the hearing and shall afford the parties opportunity to introduce evidence (including testimony and statements by the appellant, his representative, representatives of the agency, and witnesses), and to cross-examine witnesses. Testimony is under oath or affirmation. Rules of evidence are not applied strictly, but the representative of the Commission shall exclude irrelevant or unduly repetitious testimony.

(5) The office of the Commission having initial jurisdiction of the appeal shall determine how the hearing will be reported. When the hearing is reported verbatim, that office shall make the transcript a part of the record of the proceedings and shall furnish a copy of the transcript to each party. When the hearing is not reported verbatim, the representative of the Commission who conducts the hearing shall make a suitable summary of pertinent portions of the testimony. When agreed to in writing by the parties, the summary constitutes the report of the hearing and is made a part of the record of the proceedings. Each party is entitled to be furnished a copy of the report of the

hearing. If the representative of the Commission and the parties fail to agree on the summary, the parties are entitled to submit written exceptions to any part of the summary which are made a part of the record of the proceedings for consideration in deciding the appeal.

§ 772.306 Decision on initial appeal.

(a) The office of the Commission having initial jurisdiction of the appeal, after making such investigation as it considers necessary, shall issue a written decision and send copies thereof to the appellant, his representative, and the agency. The decision on each appeal covered by this part shall contain findings, recommendations for any corrective action required, and notification of the right of either party to appeal to the Board of Appeals and Review. In addition, the decision on each appeal under Subpart H, Part 315, and Subparts B and C of Part 752, Part 754 of this chapter, and Subpart L of Part 831 of this chapter, shall include an analysis of the findings and a statement of the reasons for the conclusions reached. Except as provided in paragraph (b) of this section, the agency shall report, within 7 calendar days after receipt of the decision, that it has carried the decision into effect or that it is appealing the decision to the Board.

(b) When an employee makes a timely appeal to the Board of Appeals and Review under § 772.307 from a decision of the Appeals Examining Office affirming an adverse decision of the agency under Part 754 of this chapter or when an employee or agency makes a timely appeal under § 772.307 from a decision of the Appeals Examining Office or regional office affirming or reversing an adverse decision of the Bureau of Retirement and Insurance under Subpart L of Part 831 of this chapter, that decision may not be given effect until the Board of Appeals and Review has adjudicated the appeal.

§ 772.307 Further appeal to the Board of Appeals and Review.

(a) *Right of further appeal.* Both parties are entitled to appeal the decision on the initial appeal issued under § 772.306 to the Board of Appeals and Review, U.S. Civil Service Commission, Washington, D.C. 20415. An appeal to the Board of Appeals and Review shall be in writing, set forth the reasons for the appeal, and be filed with the Board within 15 calendar days after receipt of the decision on the initial appeal. The Board may extend the time limit in this paragraph when a party shows that circumstances beyond the control of the party prevented the filing of the appeal within the time limit.

(b) *Board procedures.* The Board of Appeals and Review shall review the record of the proceedings and all relevant written representations. There is no right to a hearing before the Board. The Board may, in its discretion, afford the parties an opportunity to appear personally and present oral arguments and representations.

(c) *Decision of the Board.* The Board of Appeals and Review shall issue a written decision and shall send copies thereof to the parties and to the employee's representative. The decision of the Board is final and there is no further right of appeal. When corrective action is recommended, the agency shall report promptly to the Board that the corrective action has been taken.

§ 772.308 Appellate review by the Commissioners.

The Commissioners may, in their discretion, when in their judgment such action appears warranted by the circumstances, reopen and reconsider any previous decision.

PART 831—RETIREMENT

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831.1206 Duty status.

AUTHORITY: The provisions of this Part 831 issued under 5 U.S.C. 8347, unless otherwise noted.

Subpart A—Administration and General Provisions

§ 831.101 Administration.

(a) The Commission has charge of the adjudication of all claims arising under subchapter III of chapter 83 of title 5, United States Code, and of all matters directly or indirectly concerned with these adjudications.

(b) In the adjudication of claims arising under subchapter III of chapter 83 of title 5, United States Code, the Commission shall consider and take appropriate action on counterclaims filed by the Government as set-offs against amounts in the Civil Service Retirement and Disability Fund.

§ 831.102 Basic records.

Every Federal department, agency, corporation or branch, whether executive, legislative, or judicial, and the District of Columbia Government (included in this part collectively in the term department or agency) having employees or Members of Congress (hereinafter referred to in this part as Members) subject to subchapter III of chapter 83 of title 5, United States Code, shall initiate and maintain retirement accounts for those employees and Members as prescribed in Federal Personnel Manual Supplement 831-1.

(5 U.S.C. 8334)

§ 831.103 Evidence

(a) Standard Form 2806 (Individual Retirement Record) is the basic record for action on all claims for annuity or refund, and those pertaining to deceased employees, deceased Members, or deceased annuitants.

(b) When the records of the department or agency concerned are lost, destroyed, or incomplete, the department or agency shall request the General Accounting Office, through the Commission, to furnish the data that it considers necessary for a proper determination of the rights of the claimant. When an official record cannot develop the required information, the department, agency, or the Commission should request inferior or secondary evidence which is then admissible.

§ 831.104 Applications.

Applications under subchapter III of chapter 83 of title 5, United States Code, shall be filed with the Commission and shall be on forms prescribed by the Commission.

§ 831.105 Computation of interest.

(a) The computation of interest is on the basis of 30 days to the month. Interest is computed for the actual calendar time involved in each case, but whenever applicable the rule of average applies.

(b) Interest is allowed on current deductions and deposits at the rate of 4

percent to December 31, 1947, and 3 percent thereafter, compounded annually, to December 31, 1956. However, if an employee or Member, before completing 5 years' civilian service, becomes separated from service or is transferred to a position in which he is not subject to subchapter III of chapter 83 of title 5, United States Code, interest is allowed after December 31, 1956, at the rate of 3 percent, compounded annually, to date of final separation or transfer.

(c) Interest at the rate of 3 percent, compounded annually, is allowed on voluntary contributions during periods of employment and, after the employee or Member has completed at least 5 years' civilian service, during periods of separation until beginning date of annuity or death, whichever is earlier; for refund purposes, interest terminates with the date of separation or of transfer to a position in which he is not subject to subchapter III of chapter 83 of title 5, United States Code.

(d) Interest at the rate of 4 percent to December 31, 1947, and at 3 percent thereafter, compounded annually, is charged on deposits from the midpoint of each service period for which deposit is involved, or from the date refund was paid, to the date of deposit or commencing date of annuity, whichever is earlier, except that interest is not charged for any period of separation from the service which began before October 1, 1956.

§ 831.106 Disclosure of information.

(a) (1) Except as provided in this section, the Commission shall not disclose information from the files, records, reports, and other papers and documents pertaining to a claim filed with the Commission, whether potential, pending, or adjudicated. This information is deemed privileged and confidential.

(2) If sufficient information is provided to assure positive identification, the Commission will confirm to any inquirer the fact that an individual is or is not on the retirement rolls and, if so, the type of annuity (employee or survivor) being paid.

(3) Except as provided in subparagraphs (4) and (5) of this paragraph, the Commission will disclose information from the files, records, reports, and other papers and documents to an employee or Member or his authorized representative in matters concerning the employee or Member. The term "authorized representative" means a person who has satisfied the Commission of his authority to act.

(4) When an individual contests the Commission's approval of the application of a department or agency for his retirement on a disability that is:

(i) Physical in nature, as distinguished from mental; and

(ii) Of a type concerning which the individual could be fully informed without the probability that the knowledge may affect him adversely,

he is entitled to review the case file, or have it reviewed by his physician or representative, and to a full report of the medical evidence in his file.

(5) When an individual's case involves a disability that is:

(i) A mental condition; or

(ii) Another condition of such a nature that a prudent physician would hesitate to inform an individual suffering from the condition of its exact nature and probable outcome,

the Commission will make available only to a licensed physician, designated in writing for that purpose by the individual or his representative, a full report of the medical evidence in his file including a copy of the resume of the reported behavior irregularities or manifestations of unsatisfactory service which is ordinarily furnished as background factual evidence to Government mental facilities, psychiatrists, or other physicians who conduct the official retirement medical examination.

(6) During the life of an employee, Member or annuitant, the Commission will furnish the name or address of a beneficiary designated by the employee, Member, or annuitant to the designator only, at his signed, written request.

(7) When an individual dies, the Commission shall disclose the information which might properly be disclosed to the individual, on proper request, to the person appointed as representative of the estate, to the person designated by the representative, or to a designated beneficiary. When a representative of the estate has not been appointed, the Commission shall recognize the individual's next of kin as the representative of the estate.

(8) The Commission shall furnish, to the court only and on order of the court or subpoena duces tecum addressed to the Chairman of the Commission, copies of documents or other records which are desired by or in behalf of a party to a suit in a U.S. Court or in any other court.

(9) The Commission will produce documents or records in a retirement file in a U.S. Court or other court when a process issued by the court requires it. Original records produced shall remain at all times in the custody of a representative of the Commission, and if offered or received in evidence, the representative shall request permission to substitute a copy so that the original record may remain intact in the file.

(10) The Commission may furnish the address of an individual as shown by its records to a police or court official on proper request, or the submission of a certified copy of:

(i) An indictment returned against the individual; or

(ii) A warrant for his arrest.

(11) The Commission shall disclose the amount of an individual's annuity or refund to a National, State, county, municipal, or other publicly recognized charitable or social-security administrative agency.

(12) Subject to the limitation regarding name and address of a beneficiary, the Commission will furnish in response to a proper request, all records or documents officially required by any department or agency of the Government, and

such records, documents, or other information as Members of Congress in their capacity as such may request for their official use.

(13) With the consent of an employee or Member, the Commission will disclose the amount of the annuity or refund paid to the employee or Member, and the factors used in determining the amount of the payment, to a person who makes proper inquiry. A "proper inquiry" is one that is in writing and includes the name of the employee or Member and sufficient information to make positive identification of his records. The Commission may waive the requirement that the inquiry be in writing. On receipt of a proper inquiry, the Commission will ask the employee or Member whether he consents to release of the information sought and will then advise the inquirer of the decision of the employee or Member. The Commission will furnish to the employee or Member a copy of any information released.

(b) On written request the Commission shall return, to the person entitled to them, certificates of discharge, adoption papers, marriage certificates, decrees of divorce, letters testamentary or of administration, birth or baptismal records, family records, personal letters, diaries, and other personal papers or articles which have been filed in a claim when they are no longer needed in the settlement of the claim. When papers returned constitute part of the material and essential evidence in a claim, the Commission shall retain in the file, photo or other copies of them or of such parts thereof as appear to have evidential value.

§ 831.107 Appeals.

(a) Except as provided in Subpart K of this part, a department, agency, or individual whose rights or interest under subchapter III of chapter 83 of title 5, United States Code, are adversely affected by a final action or order of the Bureau of Retirement and Insurance may appear to the Commission's Board of Appeals and Review from the action or order, as provided in this section, or as provided in § 831.1205 in the case of an appeal from a final action or order of the Bureau of Retirement and Insurance that involves an application for disability retirement filed by an employee or by an agency. As used in this section, "days" means calendar days and not workdays.

(b) The individual or his authorized representative may file the appeal with the Commission's Board of Appeals and Review. However, the Board shall not accept an appeal until the Bureau of Retirement and Insurance has completed action.

(c)(1) Except as provided in this paragraph, the time for filing an appeal is not later than 6 months from the date of mailing notice of the final action or order of which complaint is made.

(2) When the Bureau of Retirement and Insurance finds, on medical examination, that a disability annuitant has

recovered, or determines that he has been restored to earning capacity, the time for filing an appeal is not later than 90 days from the date of receipt of final notice of the proposed discontinuance of annuity. When the Bureau of Retirement and Insurance denies reinstatement of the disability annuity of a former disability annuitant, the time for filing an appeal is not later than 90 days from the date of receipt of final notice of the denial.

(3) When the Bureau of Retirement and Insurance allows one of simultaneously-contested claims and disallows another, the time for filing an appeal is not later than 60 days from the date of receipt of notice of the adverse decision. When an appeal is filed, the Commission shall notify, by certified letter, each party whose interest may be adversely affected by the decision on appeal. This notice shall inform the party of the filing of the appeal and of the substance thereof. Each party may file a brief or argument in answer within 30 days after receipt of notice of the appeal. A certified letter of appeal which is addressed to the last known post office address of a party is deemed sufficient evidence of notice even though it is returned unclaimed.

(d) Each appeal shall show the name and post office address of appellant, his retirement claim number, the date and substance of the action from which the appeal is taken, and full reasons for the appeal.

(e) When the Bureau of Retirement and Insurance decides that a party does not have a right to appeal or that this section does not authorize consideration of the appeal, the party may apply to the Commissioners for an order directing the Bureau to forward the record of the Board of Appeals and Review for adjudication as an appeal. The application shall be in writing and shall set forth fully and specifically the grounds on which it is based.

(f) Except as provided in this section, the Bureau of Retirement and Insurance shall execute the decision of the Board of Appeals and Review within 60 days from the date of receipt of notice of the decision, unless the Board sooner recalls the decision. The Board of Appeals and Review shall mail an explanation of its decision to the appellant or his authorized representative.

(g) In a simultaneously-contested claim referred to in paragraph (c)(4) of this section, the Bureau of Retirement and Insurance shall not execute the decision of the Board of Appeals and Review for 30 days. Within this period a party may file a motion for reconsideration.

(h) The Board of Appeals and Review will consider an appeal to review a decision of the Secretary of the Interior before July 21, 1930, or of the Administrator of Veterans' Affairs before September 1, 1934, on a civil service retirement case only when the Bureau of Retirement and Insurance has reconsidered the case on the basis of newly discovered material evidence. This section applies to the Bureau's decision on reconsideration.

§ 831.108 Computation of time.

In computing a period of time prescribed by this part, the day of the action or event after which the designated period of time begins to run is not included. The last day of the period is included unless it is a Saturday, a Sunday, or a legal holiday; in this event, the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

Subpart B—Coverage

§ 831.201 Exclusions from retirement coverage.

(a) The following groups of employees in the executive branch of the Government are excluded from subchapter III of chapter 83 of title 5, United States Code:

(1) Employees serving under appointments limited to 1 year or less.

(2) Intermittent employees—non-full-time employees without a prearranged regular tour of duty.

(3) Employees whose salary, pay, or compensation on an annual basis is \$12 a year or less.

(4) Member or patient employees in Government hospitals or homes.

(5) Employees paid on a contract or fee basis, except employees who are citizens of the United States who are appointed by contracts between the employees and the Federal employing authority which require their personal services and are paid on the basis of units of time.

(6) Employees paid on a piecework basis, except those whose work schedule provides for regular or full-time service.

(7) Intermittent alien employees engaged on work outside the continental limits of the United States.

(8) Employees serving under temporary appointments pending establishment of registers, or pending final determination of eligibility for permanent appointment.

(9) Acting postmasters, clerks in fourth-class post offices, substitutes rural carriers, and special-delivery messengers at second-, third-, and fourth-class post offices.

(10) Consular agents appointed under authority of section 551 of the Foreign Service Act of 1946 (22 U.S.C. 951).

(11) Employees serving under emergency-indefinite appointments not exceeding 5 years.

(12) United States citizens given "overseas limited appointments."

(13) Employees serving under nonpermanent appointments made pursuant to section 1 of Executive Order 10180 of November 13, 1950.

(14) Employees serving under nonpermanent appointments, designated as indefinite, made after January 23, 1955, the effective date of the repeal of Executive Order 10180.

(15) Employees serving under term appointments.

(16) Temporary employees of the Census Bureau employed under temporary limited appointments exceeding 1 year.

(b) Paragraph (a) of this section does not deny retirement coverage when (1) employment in an excluded category follows employment subject to subchapter III of chapter 83 of title 5, United States Code, without a break in service or after a separation from service of 3 days or less, except in the case of an alien employee whose duty station is located in a foreign country, (2) the employee is granted competitive status under legislation, Executive order, or the Civil Service rules and regulations, while he is serving in a position in the competitive service, or (3) the employee is granted merit status under 35 CFR Ch. I, Subchapter E.

(c) Members of the following boards and commissions of the government of the District of Columbia appointed on or after August 13, 1960, are excluded from subchapter III of chapter 83 of title 5, United States Code, except that this exclusion does not operate in the case of a member serving on August 13, 1960, who is reappointed on expiration of term without a break in service or after a separation from service of 3 days or less:

- Board of Accountancy.
- Board of Examiners and Registrars of Architects.
- Board of Barber Examiners.
- Boxing Commission.
- Board of Cosmetology.
- Board of Dental Examiners.
- Electrical Board.
- Commission on Licensure to Practice the Healing Arts.
- Board of Examiners in the Basic Sciences.
- Board of Examiners in Medicine and Osteopathy.
- Motion Picture Operators' Board.
- Nurses' Examining Board.
- Board of Optometry.
- Board of Pharmacy.
- Plumbing Board.
- Board of Podiatry Examiners.
- Board of Registration for Professional Engineers.
- Real Estate Commission.
- Refrigeration and Air Conditioning Board.
- Steam and Other Operating Engineers' Board.
- Undertakers' Committee.
- Board of Examiners of Veterinarian Medicine.

(d) The following groups of employees of the government of the District of Columbia, appointed on or after October 1, 1965, are excluded from subchapter III of chapter 83 of title 5, United States Code:

- (1) Employees serving under appointments limited to one year or less, except temporary teachers of the District of Columbia public school system.
- (2) Intermittent employees—non-full-time employees without a prearranged regular tour of duty.
- (3) Employees whose pay on an annual basis is \$12.00 per year or less.
- (4) Patient or inmate employees in District Government hospitals, homes or penal institutions.
- (5) Employees paid on a contract or fee basis.
- (6) Employees paid on a piecework basis, except those whose work schedule provides for regular or full-time service.

(7) Employees serving under temporary appointments pending establishment of registers, or pending final determination of eligibility for permanent appointment.

(e) Paragraph (d) of this section does not deny retirement coverage when (1) employment in an excluded category follows employment subject to subchapter III of chapter 83 of title 5, United States Code, without a break in service or after a separation from service of 3 days or less, or (2) the employee is granted competitive status under legislation, Executive order, or the civil service rules and regulations, while he is serving in a position in the competitive service.

(f) Also excluded are any temporary employees, appointed for one year or less, by the government of the District of Columbia under any program or project established pursuant to the Economic Opportunity Act of 1964 (42 U.S.C. 2701 et seq.), and summer trainees employed by the government of the District of Columbia in furtherance of the President's Youth Opportunity Campaign.

Subpart C—Credit for Service

§ 831.301 Military service.

(a) Periods of honorable active service in the Army, Navy, Marine Corps, Air Force, or Coast Guard of the United States, or, after June 30, 1960, in the Regular Corps or Reserve Corps of the Public Health Service, or, after June 30, 1961, as a commissioned officer of the Environmental Science Services Administration are credited under subchapter III of chapter 83 of title 5, United States Code, after the employee has completed 5 years' civilian service. Credit is not allowed for military service if the employee is receiving retired pay awarded for reasons other than (1) service-connected disability incurred in combat with an enemy of the United States, (2) service-connected disability caused by an instrumentality of war and incurred in line of duty during a period of war (as that term is used in chapter 11 of title 38, United States Code), or (3) under chapter 67 of title 10, United States Code.

(b) An applicant for annuity who is in receipt of retired pay which bars credit for his military service may elect to surrender the retired pay and to have his military service added to his period of civilian service for the purpose of obtaining a greater benefit in the form of annuity. When it appears on the adjudication of a claim for annuity that the employee will benefit from relinquishment of retired pay and inclusion of his military service, the Bureau of Retirement and Insurance shall so advise him and permit him to exercise the right of election.

(c) Military service performed by an individual after December 31, 1956 (other than military service covered by military leave with pay from a civilian position), is excluded from credit from and after the first day of the month in which the individual or his widow or his

child becomes entitled, or upon application would be entitled, to monthly old-age or survivors benefits under section 202 of the Social Security Act (42 U.S.C. 402) based on the individual's wages or self-employment income.

Subpart D—Voluntary Contributions

§ 831.401 Making of voluntary contributions.

(a) The option to make voluntary contributions to the Civil Service Retirement and Disability Fund for the purchase of additional annuity is limited to those employees or Members (1) serving subject to subchapter III of chapter 83 of title 5, United States Code, or (2) whose applications for retirement are being adjudicated by the Commission. To exercise this option, the employee or Member shall apply on the form prescribed by the Commission.

(b) Voluntary contributions may not be accepted from an employee or Member who (1) has not deposited amounts covering all civilian service performed by him since August 1, 1920, or (2) has previously received a refund of voluntary contributions and is not again employed subject to subchapter III of chapter 83 of title 5, United States Code, after a separation of more than 3 calendar days.

(c) An employee or Member shall forward his voluntary contributions to the U.S. Civil Service Commission, Washington, D.C. 20415, in the amount of \$25 or multiple thereof, by money order, draft, or check payable to the Commission. The total voluntary contributions may not exceed 10 percent of the aggregate annual basic pay received since August 1, 1920.

(d) An employee or Member may withdraw his voluntary contributions while he is still in the service, or after separation but before he receives any additional annuity based thereon. A person entitled to payment of lump-sum benefits under subchapter III of chapter 83 of title 5, United States Code, may withdraw the voluntary contributions on the death of an employee or Member or of a separated employee or Member not retired on annuity.

(e) The Commission shall maintain the record and account of voluntary contributions of each employee or Member exercising the option to make such contributions.

§ 831.402 Purchase of additional annuity.

(a) Voluntary contributions may be used to purchase only one of the following types of annuity:

- (1) Annuity without survivor benefit; or
- (2) Annuity payable during the life of the employee or Member with one-half of the annuity to be payable after his death to a person, named at time of retirement, during the life of the named person.

(b) Any natural person may be designated as survivor under paragraph (a) (2) of this section.

(c) If the employee or Member elects an annuity without survivor benefit, each \$100 credited to his voluntary contribution account, including interest, purchases additional annuity at the rate of \$7 per annum, plus 20 cents for each full year, if any, he is over age 55 at date of retirement.

(d) If the employee or Member elects an annuity with survivor benefit, each \$100 credited to his voluntary contribution account, including interest, purchases additional annuity at the rate of \$7 per annum, plus 20 cents for each full year, if any, he is over age 55 at date of retirement, multiplied by the following percentage; 90 percent of such amount if the named person is the same age or older than the annuitant, or is less than 5 years younger than the annuitant; 85 percent if the named person is 5 but less than 10 years younger; 80 percent if the named person is 10 but less than 15 years younger; 75 percent if the named person is 15 but less than 20 years younger; 70 percent if the named person is 20 but less than 25 years younger; 65 percent if the named person is 25 but less than 30 years younger; and 60 percent if the named person is 30 or more years younger.

Subpart E—Eligibility for Retirement

§ 831.501 Time for filing applications.

(a) An employee or Member who is retiring on account of age or optional retirement may file an application for annuity with the Commission within 30 days before, on, or at any time after he reaches the requisite retirement age. When the department or agency contemplates reemployment, the individual, the department, or agency shall submit it immediately to the Commission with a photo copy of Form 2806 or a complete resume of the applicant's service history, salary, and retirement deductions.

(b) An employee or Member who is retiring on account of voluntary or involuntary separation from the service may file an application for immediate or deferred annuity only after his separation from the service or not more than 30 days before the commencing date of his annuity.

(c) An employee or Member who is retiring on account of disability shall file an application for annuity with the Commission before his separation from the service or within 1 year thereafter. The Commission may waive this time limitation when the employee or Member was mentally incompetent on the date of separation or within 1 year thereafter; in such a case the individual or his representative may file the application with the Commission within 1 year after the date the individual is restored to competency, or a fiduciary is appointed, whichever is earlier. An application for annuity which is submitted on an inappropriate form, or on an appropriate form inadequately or incompletely executed, may be accepted as an informal claim.

(d) A department or agency shall file an application for retirement of an employee for disability before the employee's separation from the service.

§ 831.502 Disability retirement.

(a) When an applicant for retirement on account of disability establishes a prima facie case and legal grounds for rejection do not exist, the Commission shall order the applicant to appear for a medical examination before a medical officer of the United States or a qualified physician or surgeon or board of physicians or surgeons designated by the Commission. When the application is accompanied by a report of examination already made by a medical officer of the United States, or by other good and sufficient medical evidence, the Commission may not require another examination.

(b) (1) Each disability annuitant who is under 60 years of age shall be examined annually under direction of the Commission. When it appears in a particular case that the nature of the disability warrants the conclusion that it will continue for a certain period, the Commission may waive the requirement for regular annual examinations for that period. The Commission may order a medical or other examination in any case at any time to determine the facts relative to the nature and degree of disability of a disability annuitant. When the evidence shows that the disability is permanent in character, the Commission will order further examination only when warranted and will notify the annuitant accordingly.

(2) When a medical examination made in compliance with the direction of the Commission shows that a disability annuitant has recovered, the Commission shall discontinue the annuity at the expiration of 1 year from the date of the medical examination. When the disability annuitant is reemployed by a department or agency within the 1 year, the Commission shall discontinue the annuity from the date of the reemployment.

(3) When a recovered disability annuitant is not reemployed in a position in which he is subject to subchapter III of chapter 83 of title 5, United States Code, and, based on current medical examination, the Commission finds that he has again become disabled before becoming 62 years of age, due to recurrence of the disability for which originally retired, the Commission shall reinstate his disability annuity, of the same type and at the rate last payable, from the date of the medical examination. A current medical examination means a medical examination which was made not more than 90 days before its receipt in the Commission and which is acceptable to the Commission.

(c) (1) Each disability annuitant who is under 60 years of age shall report annually, in such detail as may be required by the Commission, his income from wages or self-employment, or both, for any period after retirement. If an annuitant fails to submit the report, the Commission may suspend annuity payments until entitlement to continuance of annuity is satisfactorily established.

(2) When, in each of two succeeding calendar years, a disability annuitant

has received income from wages or self-employment, or both, equaling at least 80 percent of the current rate of pay of the position from which he retired, his earning capacity is deemed restored and the Commission shall discontinue the annuity at the expiration of 1 year from the end of the 2-year period. When the disability annuitant is reemployed by a department or agency within the 1 year, the Commission shall discontinue the annuity from the date of the reemployment. The Commission presumes receipt of income equaling at least 80 percent of the current rate of pay of the position from which the disability annuitant retired, in respect to any calendar year for which the disability annuitant fails to report his income.

(3) When a disability annuitant whose earning capacity has been restored:

- (i) Is not reemployed in a position in which he is subject to subchapter III of chapter 83 of title 5, United States Code;
- (ii) Has not medically recovered from the disability from which retired; and
- (iii) The Commission finds that he has again lost his earning capacity, before becoming 62 years of age,

the Commission shall reinstate his disability annuity, of the same type and at the rate last payable, from the first of the year following the calendar year in which the earning capacity was lost. Earning capacity is deemed lost if during any complete calendar year the individual's income from wages or self-employment, or both, is less than 80 percent of the current rate of pay of the position from which he retired.

(d) Reinstatement of a disability annuity terminates, from reinstatement date, the right to any nondisability annuity which the annuitant may be receiving or entitled to receive, based on the same service, unless the annuitant elects in writing to retain instead the nondisability annuity. When the annuitant is employed in a department or agency in a position not subject to subchapter III of chapter 83 of title 5, United States Code, on the date of reinstatement of his disability annuity, the Commission shall suspend payment of the annuity until he is separated from the service.

§ 831.503 Automatic separation; exemption.

(a) When an employee meets the requirements for age retirement on any day within a month, he is subject to automatic separation at the end of that month. The department or agency shall notify the employee of the automatic separation at least 60 days in advance of the separation. If the department or agency falls through error to give timely notice, the employee may not be separated without his consent until the end of the month in which the notice expires.

(b) When a department or agency wishes to secure an exemption from automatic separation for one of its employees, other than a Presidential appointee, the department or agency head shall submit recommendation to that effect to the Commission.

(1) The recommendation shall contain (i) a statement that the employee is willing to remain in service, (ii) a recital of facts tending to establish that his retention would be in the public interest, (iii) the period for which the exemption is desired, which period may not exceed 1 year, and (iv) the reasons why the simpler method of retiring the employee and immediately reemploying him is not being used.

(2) The recommendation shall be accompanied by a medical certificate showing the employee's physical fitness to perform his work.

(c) The Commission may approve an exemption only before the automatic separation date applicable to the employee. For this reason, the department or agency shall forward the recommendation to the Commission at least 30 days before this separation date.

Subpart F—Types of Annuities

§ 831.601 Survivor benefits.

(a) The right to receive annuity with survivor benefit to widow or widower attaches to a married employee or Member retiring under any provision of subchapter III of chapter 83 of title 5, United States Code, unless he elects instead annuity without survivor benefit. An unmarried employee or Member in good health retiring under any provision (except section 8337) of that subchapter may elect, instead of annuity without survivor benefit, an annuity with survivor benefit to a named person having an insurable interest in him.

(b) An employee or Member may name only one natural person as survivor under this option. The Commission will not accept the designation of a contingent survivor annuitant, and such a designation is a nullity.

(c) The employee or Member shall communicate his choice of option over his signature on Standard Form 2801 for use in filing claim for annuity. Receipt of the communication in the Commission constitutes prima facie evidence of the existence of all the elements of an election. The election is considered made when the prima facie evidence becomes conclusive by final adjudication of the claim by the Commission.

(d) An employee or Member may name a new survivor in a proper case or change his election if, before the Commission finally adjudicates his claim, he notifies the Commission or the named survivor dies.

(e) When an election has been conclusively made under this section, the employee or Member may not revoke or change the election or name another survivor.

(f) The death of a named survivor after the final adjudication of the claim does not change the type of annuity, and payments to the former employee or Member continue as though the death had not occurred.

(g) When an employee or Member accepts annuity with survivor benefit, the annuity to the survivor commences on the day after the death of the retired employee or Member.

(h) The right to survivor annuity as student-child shall attach, where all other requirements are met, if the educational or training institution certifies that the child is regularly pursuing a full-time day or evening course of resident study or training. For this purpose a full-time course of resident study or training means a day or evening non-correspondence course which contemplates school attendance at the rate of at least 36 weeks per academic year with a subject load sufficient, if successfully completed, to attain the educational or training objective within the period generally accepted as minimum for completion, by a full-time day student, of the academic or training program concerned.

Subpart G—Computation of Annuities

§ 831.701 Effective dates of annuities.

(a) An annuity payable from the Civil Service Retirement and Disability Fund commences:

(1) The day after (i) separation, or (ii) pay ceases and the applicant meets the disability and service requirements, in case of disability retirement.

(2) The day after (i) separation, or (ii) pay ceases and the applicant meets the age and service requirements, in case of age retirement, optional retirement, or immediate retirement based on involuntary separation.

(3) The day after attainment of the specified age, in case of deferred retirement.

(b) Except as provided in § 831.502, annuity terminates on the day of death or from the date of any other terminating event in each case when, after September 5, 1960, the Commission (1) terminates the annuity, or (2) allows survivor annuity commencing the day after the annuitant's death.

(c) Annuity accrues on a daily basis, one-thirtieth of the monthly rate constituting the daily rate, with no accrual for the thirty-first day of any month, and with the last day of a 28-day month constituting 3 days (or the last day of a 29-day month 2 days) for accrual purposes.

Subpart H—Reemployment of Retired Employees

§ 831.801 Reemployment of annuitants.

(a) In this section, "annuitant" means a former employee who is receiving, or meets the legal requirements and is an applicant for, an annuity under subchapter III of chapter 83 of title 5, United States Code, based on his service.

(b) This section does not apply to an annuitant whose annuity was terminated before October 1, 1956, because of reemployment in a position wherein he acquired retirement coverage. Except as provided in paragraph (d) of this section, this section does not apply to an annuitant whose employment in an appointive or elective position began before October 1, 1956, unless he is again appointed or elected to such a position on or after that date.

(c) (1) When an annuitant who retired for disability and is found before becoming 60 years of age to be recovered or restored to earning capacity, or an annuitant whose annuity is based on involuntary separation for reasons other than age or misconduct or delinquency, becomes employed after September 30, 1956, in an appointive or elective position wherein he is not excluded from retirement coverage by statute or § 831.201:

(i) The department or agency shall take retirement deductions from his pay;

(ii) The Commission shall determine his future annuity rights under the law in effect at the date of his subsequent separation; and

(iii) The Commission shall terminate his annuity from the date of employment.

(2) When such an annuitant becomes employed after September 30, 1956, in an appointive or elective position wherein he is excluded from retirement coverage by statute or § 831.201:

(i) The department or agency shall not take retirement deductions from his pay; and

(ii) The Commission shall suspend his annuity from the date of employment to the date of his subsequent separation,

except that, when an annuitant whose annuity is based on involuntary separation for reasons other than age or misconduct or delinquency becomes employed after November 14, 1958, the Commission shall continue his annuity; the department or agency shall not take retirement deduction from his pay; and the department or agency shall deduct from his pay, except for lump-sum leave purposes, an amount equal to the annuity allocable to the period of actual employment.

(d) When an annuitant, other than an annuitant described in the first sentence of paragraph (c) of this section, becomes employed after September 30, 1956, in an appointive or elective position:

(1) The Commission shall continue his annuity;

(2) The department or agency shall not take retirement deductions from his pay; and

(3) The department or agency shall deduct from his pay, except for lump-sum leave purposes, an amount equal to the annuity allocable to the period of actual employment.

When such an annuitant, who was serving on July 31, 1956, or becomes employed after September 30, 1956, serves continuously for at least 1 year in full-time employment not excluded from coverage by section 8331(1) (i) and (ii) of title 5, United States Code, he is entitled to a supplemental annuity on termination of the employment by separation for more than 3 calendar days or by conversion to other than full-time status. The supplemental annuity is (i) computed under the formula provided by the law in effect at the date of termination of employment, (ii) based on all periods of full-time employment performed after

his retirement, with such periods considered as part of his total service, and (iii) based on the average basic pay (before annuity deduction) received during the periods of full-time employment. If the annuitant serves continuously for at least 5 years in full-time employment not excluded from coverage by section 8331(1) (i) and (ii) of title 5, United States Code, and his separation therefrom occurs after July 11, 1960, he may make deposit in the retirement fund covering such employment and elect, instead of the supplemental annuity described herein, to have his retirement rights redetermined under the law in effect at separation date. The supplemental or redetermined annuity commences the day after (a) separation from such employment, or (b) pay cases and the annuitant meets the service requirements. Employment is considered continuous unless interrupted by a separation from service exceeding 3 calendar days, but credit is not allowed for any period of separation or nonpay status which exceeds 3 calendar days.

Subpart I—[Reserved]

Subpart J—Death Benefits

§ 831.1001 Time for filing applications.

A survivor of a deceased employee, Member, or annuitant, or someone acting in his behalf, may file an application for annuity at any time after the death of the employee, Member, or annuitant.

§ 831.1002 Effective dates of survivor annuities.

(a) A survivor annuity payable from the Civil Service Retirement and Disability Fund commences the day after (1) death of the employee, Member, or annuitant, (2) attainment of age 50 where annuity is so deferred, or (3) claim is received in the Commission when annuity is authorized by section 2 of the act of June 25, 1958, 72 Stat. 218.

(b) A survivor's annuity terminates at the end of the month preceding death or any other terminating event.

(c) Survivor annuity accrues on a daily basis, one-thirtieth of the monthly rate constituting the daily rate, with no accrual for the 31st day of any month and with the last day of a 28-day month constituting 3 days (or the last day of a 29-day month 2 days) for accrual purposes.

§ 831.1003 Designation of beneficiary.

(a) The Designation of Beneficiary shall be in writing, signed and witnessed, and received in the Commission before the death of the designator.

(b) No change or cancellation of beneficiary in a last will or testament, or in any other document not witnessed and filed as required by this section, has any force or effect.

(c) A witness to a Designation of Beneficiary is ineligible to receive payment as a beneficiary.

(d) Any person, firm, corporation, or legal entity may be named as beneficiary.

(e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous bene-

fiary, and this right cannot be waived or restricted.

§ 831.1004 Designation of agent.

When a deceased employee, Member, or annuitant has not named a beneficiary and one of the next of kin entitled makes a claim for lump-sum benefit, other next of kin entitled to share in the lump-sum benefit may designate the one who made the claim to act as their agent to receive their distributive shares.

Subpart K—Prohibition on Payments of Annuities

§ 831.1101 Scope.

This subpart prescribes the procedures to be followed in determining whether payment of an annuity under subchapter III of chapter 83 of title 5, United States Code, is prohibited by subchapter II of that chapter.

§ 831.1102 Definitions.

As used in this subpart, "annuitant" means an individual who, on the basis of his service, or as a survivor annuitant, has met all the requirements of subchapter III of chapter 83 of title 5, United States Code, for title to an annuity and has filed claim therefor.

§ 831.1104 Notice.

When the Director, Bureau of Retirement and Insurance determines that subchapter II of chapter 83 of title 5, United States Code, appears to prohibit payment of annuity, he shall notify the annuitant in writing of his intention to withhold payment of the annuity. The notice shall set forth the reasons for this determination. The notice may be served by registered or certified mail and shall inform the annuitant that he is entitled to submit an answer and request a hearing.

§ 831.1105 Answer; request for hearing.

(a) The annuitant has 30 calendar days from the day he receives the notice within which to submit an answer and to request a hearing. The Director, Bureau of Retirement and Insurance, may extend this time limit for good cause shown. If the annuitant answers, he shall specifically admit, deny, or explain each fact alleged in the notice, unless he states that he is without knowledge. If a hearing is desired, the annuitant must file a specific request therefor with or as a part of his answer.

(b) An annuitant who fails to answer or to request a hearing within the time permitted under paragraph (a) of this section is considered to have waived his right to answer or to a hearing. If an annuitant neither answers nor requests a hearing within the time permitted, or answers but fails to request a hearing, the Director, Bureau of Retirement and Insurance, shall decide the case on the basis of the administrative record, including the notice and any documents, affidavits, or other relevant evidence. The decision of the Director, Bureau of Retirement and Insurance, shall (1) be served on the annuitant or his counsel by certified or registered mail; (2) include a statement of findings and con-

clusions with the reasons therefor; and (3) become the final decision of the Commission unless the case is appealed or reviewed pursuant to § 831.1111.

§ 831.1106 Hearing.

(a) The Commission's hearing examiner shall preside at any hearing held pursuant to this subpart, unless the Commission designates another presiding officer. The presiding officer shall fix the time and place of the hearing after giving due consideration to the convenience of the annuitant. The hearing is open to the public unless otherwise ordered by the Commission or the presiding officer.

(b) The hearing shall be recorded by an official reporter designated by the Commission. The Commission shall furnish to the annuitant, without charge, a copy of the transcript of the hearing.

§ 831.1107 Powers of presiding officers.

The presiding officer may:

(a) Administer oaths and affirmations;

(b) Rule upon offers of proof and receive relevant evidence;

(c) Fix the time and place of hearing;

(d) Regulate the course of the hearing;

(e) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing;

(f) Hold conferences for simplification of the issues, or for any other purpose;

(g) Dispose of procedural requests or similar matters;

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

(i) Make initial decisions; and

(j) Take any other action in the course of the proceeding consistent with the purposes of this subpart.

§ 831.1108 Witnesses.

(a) Witnesses shall testify under oath or affirmation and shall be subject to cross-examination.

(b) Each party is responsible for securing the attendance of his witnesses. The Commission has no power of subpoena in these cases.

§ 831.1109 Evidence.

(a) Rules of evidence are not strictly applied, but the presiding officer shall exclude irrelevant or unduly repetitious evidence.

(b) Each exhibit of a documentary character shall be submitted to the presiding officer, duly marked, and made a part of the record. An exhibit does not become evidence unless received in evidence by the presiding officer.

§ 831.1110 Initial decision.

(a) Upon completion of a hearing pursuant to § 831.1106, the presiding officer shall make and file an initial decision, a copy of which shall be served on each party or counsel by certified or registered mail.

(b) The initial decision shall include a statement of findings and conclusions, with the reasons therefor, and shall be based upon a consideration of the entire record.

(c) The initial decision shall become the final decision of the Commission unless the case is appealed or reviewed pursuant to § 831.1111.

§ 831.1111 Appeal and review.

(a) An appeal from an initial decision, or a decision of the Director, Bureau of Retirement and Insurance under § 831.1105(b), may be made to the Commission, with service on the other party, within 30 calendar days from the date of the decision. An appeal shall be in writing and shall state plainly and concisely the grounds for the appeal, with a specific reference to the record when issues of fact are raised. The other party may file an opposition to the appeal within 15 days after service on him. On notice to the parties, the Commission may extend the time limits prescribed in this paragraph.

(b) Within 30 calendar days from the date of an initial decision or a decision of the Director, Bureau of Retirement and Insurance the Commission, on its own motion, may direct that the record be certified to it for review.

§ 831.1112 Final decision.

(a) On appeal from or review of an initial decision or a decision of the Director, Bureau of Retirement and Insurance, the Commission shall decide the case on the record. The record shall include the notice, answer, transcript of testimony and exhibits, briefs, the initial decision or the decision of the Director, Bureau of Retirement and Insurance, the papers filed in connection with the appeal and opposition to the appeal and all other papers, requests and exceptions filed in the proceeding.

(b) The Commission may adopt, modify, or set aside the findings, conclusions, or order of the presiding officer or the Director, Bureau of Retirement and Insurance.

(c) The final decision of the Commission shall be in writing and include a statement of findings and conclusions, the reasons or basis therefor, and an appropriate order, and shall be served on the parties.

Subpart I—Disability Retirement on Application of an Agency and Disability Retirement Appeals

§ 831.1201 Scope.

This subpart prescribes the procedures to be followed by:

(a) An agency in filing an application for the disability retirement of an employee, and

(b) The Commission in approving or disapproving an application for the disability retirement of an employee filed by an employee or an agency.

§ 831.1202 General provisions.

(a) An employee may designate a representative to advise and assist him with respect to matters arising under this subpart. When an employee has not designated a representative and the agency considers the interests of the employee so require, the agency may designate a representative to receive

notices, determinations, decisions, or other written communications under this subpart. A notice, determination, decision, or document that is required to be served on an employee by this subpart shall also be served on the representative, and, if service on an employee cannot be obtained, service on the representative constitutes service on the employee. Service may be made personally or by mail.

(b) Reasons and findings that are required by this subpart to be given to an employee shall be specific and detailed except when the reasons or findings relate to details of a physical or mental condition about which a prudent physician would hesitate to inform the employee. In such a case only general reasons and findings are given to the employee and he is informed that, as provided in § 831.106(a)(5), a full report of the medical evidence in his file will be made to a licensed physician whom he or his representative designates in writing for that purpose.

(c) When an agency initiates action that may result in the agency filing an application for the disability retirement of an employee, the agency shall establish an employee retirement file separate from the Official Personnel Folder. The agency shall file in the employee retirement file all documents pertinent to the application, including any notice to report for fitness-for-duty examination, medical reports, notice of determination that filing of an application for disability retirement appears to be justified, the employee's answer together with any documentary evidence or affidavits he submits with his answer, the written summary of any oral answer together with any amendment or supplement to the summary, and the decision of the agency as to whether or not it will file an application for disability retirement.

(d) This subpart does not change basic requirements to comply with applicable laws, regulations, and executive orders intended to protect information involving the national security.

§ 831.1203 Agency action.

(a) *Fitness-for-duty examination.* When the agency has reason to believe an employee may be totally disabled within the meaning of paragraph (c) (1) of this section, and satisfactory medical evidence is not otherwise available, the agency may direct the employee to report for a fitness-for-duty examination. However, in the case of an employee with a suspected mental or emotional illness when the fitness-for-duty examination being considered is psychiatric, two of three agency officials (including a manager or supervisor, a personnel official, and a medical officer if available) must agree in the light of all available facts of the case that such an examination appears to be necessary. The employee is entitled to an advance written notice of the examination. The notice shall set forth the reasons for the examination and the general scope and character of the examination. An employee has the right to participate in the selection of another medical examiner if he

objects to the first. When the refusal to submit to the examination appears to be the result of a mental, emotional, or nervous condition, and the employee does not want to participate in the selection of another medical examiner, the agency shall make a finding to this effect and continue to process the application for retirement on the basis of other available evidence.

(b) *Notice of proposed determination and answer.* When an agency determines that filing of an application for the disability retirement of an employee appears to be justified, it shall notify him in writing of:

- (1) Its determination;
- (2) The reasons for this determination;
- (3) His right, or the right of his physician or representative to review the case file; and
- (4) His right to answer orally or in writing or both, and to submit affidavits or documentary evidence or both, within a reasonable time to an official designated to receive the answer.

The reasonable time required depends on the facts and circumstances in each case but may not be less than 15 calendar days. The official designated to receive the answer shall have authority either to make the decision or to recommend the decision. An oral reply to the previously designated agency official must be summarized in writing and included in the case file. A copy, approved or supplemented by the employee, must also be included in the case file. The employee has 5 calendar days from the day he received the summary within which to amend and supplement the summary.

(c) *Disability standards.* An agency shall file an application for the disability retirement of an employee only when it certifies that:

- (1) In its opinion the employee is totally disabled for useful and efficient service in the grade or class of position occupied (as shown by his performance or by a job-related factor) because of disease or injury not due to vicious habits, intemperance, or wilful misconduct on his part within 5 years before becoming so disabled; and
- (2) There is no suitable position vacant for which the employee is qualified and which he is willing to accept instead of retirement.

(d) *Decision.* The employee is entitled to a written decision from the agency at the earliest practicable date. The decision shall include a statement of findings and conclusions. When the decision is to file an application for disability retirement, the agency shall file the application and retirement file with the regional office of the Commission or the Bureau of Retirement and Insurance, as appropriate.

§ 831.1204 Notice of receipt of application.

(a) The Commission office that receives the application first reviews it for compliance with the procedures in § 831.1203. If there has not been compli-

PART 870—REGULAR LIFE INSURANCE

Subpart A—Administration and General Provisions

Sec. 870.101 Actions on the policy.

Subpart B—Coverage

870.201 Coverage.
870.202 Exclusions.
870.203 Effective dates of insurance coverage.
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Subpart C—Amount of Insurance

870.301 Amount of employee's insurance.
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870.401 Withholdings and contributions.

Subpart E—Termination and Conversion

870.501 Termination and conversion of insurance coverage.

Subpart F—Retired Employees

870.601 Eligibility for life insurance.
870.602 Amount of life insurance.

Subpart G—Employees' Compensation

870.701 Eligibility for life insurance.
870.702 Amount of life insurance.

Subpart H—[Reserved]

Subpart I—Order of Precedence and Designation of Beneficiary

870.901 Designation of beneficiary.

AUTHORITY: The provisions of this Part 870 issued under 5 U.S.C. 8716.

Subpart A—Administration and General Provisions

§ 870.101 Actions on the policy.

Life and accidental death and dismemberment benefits (referred to in this part as "regular insurance") shall be payable in accordance with a policy or policies purchased by the Commission from the Metropolitan Life Insurance Co., 1 Madison Avenue, New York, N.Y. 10010, pursuant to section 8709 of title 5, United States Code. Actions at law or in equity to recover on an insurance policy, in which there is not alleged any breach of any obligation undertaken by the United States, should be brought against the insurance company.

Subpart B—Coverage

§ 870.201 Coverage.

Except as provided in § 870.202, each employee as defined by section 8701 of title 5, United States Code, shall, at the time and subject to the conditions prescribed in this part, be insured for an amount of regular insurance as specified in §§ 870.301, 870.602, and 870.702.

§ 870.202 Exclusions.

(a) Employees, as defined by section 8701 of title 5, United States Code, in the following groups are excluded from the application of this part:

(1) An employee serving under appointment limited to 1 year or less, except an employee so appointed for full-time employment or part-time employment with a regular tour of duty,

without break in service or after a separation of 3 days or less, following service in which he was insured, and an acting postmaster.

(2) An employee whose employment is of uncertain or purely temporary duration, or who is employed for brief periods at intervals and an employee who is expected to work less than 6 months in each year, except an employee who is employed under a cooperative work-study program of at least 1 year's duration which requires the employee to be in pay status during not less than one-third of the total time required for completion of the program.

(3) An intermittent employee—a non-full-time employee without a pre-arranged regular tour of duty, except when the employee enters into such a status without break in service or after a separation of 3 days or less, following service in a position in which he was insured and to which he is expected to return.

(4) An employee whose pay on an annual basis is \$12 a year or less.

(5) A beneficiary or patient employee in a government hospital or home.

(6) An employee paid on a contract or fee basis, except an employee who is a citizen of the United States who is appointed by a contract between the employee and the Federal employing authority which requires his personal service and is paid on the basis of units of time.

(7) An employee paid on a piecework basis, except one whose work schedule provides for full-time service or part-time service with a regular tour of duty.

(b) The Commission shall make final determination regarding applicability of the above classifications to a specific employee or group of employees.

§ 870.203 Effective dates of insurance coverage.

(a) (1) An employee appointed, or transferred from a position wherein he is not insured, is insured at the time he actually enters on duty on his first day in a pay status, unless before the end of his first pay period he files with his employing office a waiver of regular insurance coverage, or had previously filed such a waiver which remains uncanceled.

(2) An employee transferring from a position wherein he is insured to another position wherein he is not excluded from coverage is insured at the beginning of the effective date of his transfer, unless before the end of his first pay period in the new position he files with his new employing office a waiver of regular insurance coverage.

(b) An employee who returns to duty and is in a pay status after a period of more than 12 months of nonpay status is insured at the time he actually enters on duty on his first day in a pay status, unless before the end of the first pay period he files with his employing office a waiver of regular insurance coverage, or had previously filed such waiver which remains uncanceled.

(c) An employee serving in cooperation with a non-Federal agency paid in whole or in part from non-Federal funds

ance, the Commission office remands the application to the agency and notifies the employee of the remand. If there has been compliance with the required procedures, the Commission office notifies the agency and the employee in writing that it has received the application. The same notice informs the employee that he is entitled to:

(1) Participate in the selection of a medical examiner when the Commission determines under § 831.502(a) that a medical examination is necessary;

(2) Be examined without cost to him; and

(3) Submit further relevant evidence as provided in the notice.

A regional medical officer will forward the file to the Bureau of Retirement and Insurance upon completion of his action.

(b) *Decision.* After considering the employee's retirement file, the Bureau of Retirement and Insurance either approves or disapproves the application. The Bureau's decision shall be in writing and a copy shall be given to the employee and the agency concerned. The decision shall set forth the Bureau's findings and conclusions and shall inform the employee and the agency of the right of appeal and hearing provided by § 831.1205.

§ 831.1205 Appeal and hearing.

(a) *Right of appeal and hearing.* An agency or an employee may appeal the decision of the Bureau of Retirement and Insurance that involves an application for disability retirement filed by an employee or by an agency to the Appeals Examining Office or a regional office of the Commission as appropriate. The appeal shall be in writing, set forth the reasons for the appeal, request a hearing if the appellant desires a hearing, and be filed with the appropriate office within 15 calendar days after receipt of the decision of the Bureau of Retirement and Insurance. The Appeals Examining Office or regional office of the Commission may extend this time limit for good cause shown.

(b) Subpart C of Part 772 of this chapter applies to appeals to the Commission from decisions of the Bureau of Retirement and Insurance involving applications for disability retirement.

§ 831.1206 Duty status.

An agency shall retain an employee in an active duty status until it receives the decision of the Bureau of Retirement and Insurance on an agency application for disability retirement, except that the agency on the basis of medical evidence may place an employee on leave with his consent, or without his consent when the circumstances are such that his retention in an active duty status may result in damage to Government property, or may be detrimental to the interests of the Government, or injurious to the employee, his fellow workers, or the general public. If the leave account of the employee is or becomes exhausted, any suspension or involuntary leave without pay shall be affected in accordance with applicable laws, Executive orders, and regulations.

may not be insured before the date that the Commission prescribes for the group of which he is a member following Commission approval of arrangements which are placed into effect and provide (1) that the required withholdings and contributions will be made from federally controlled funds and timely deposited into the Employees' Life Insurance Fund, or (2) that the cooperating non-Federal agency will, by written agreement with the Federal agency, make the required withholdings and contributions from non-Federal funds and will transmit the total of such amounts to the Federal agency for timely deposit into the Employees' Life Insurance Fund.

§ 870.204 Cancellation of waiver of insurance coverage.

(a) An insured employee may at any time cancel his regular insurance by filing with his employing office a waiver of insurance coverage. The waiver shall be effective and the employee's insurance ceases at the end of the pay period in which the waiver is received in the employing office.

(b) An employee who has filed a waiver of regular insurance coverage may cancel the waiver and become insured if (1) he is under age 50, (2) at least 1 year has elapsed since the effective date of such waiver, and (3) he furnishes satisfactory evidence of insurability.

(c) An employee who has complied with paragraph (b) of this section is insured at the time he actually enters on duty on his first day in a pay status in a position wherein he is not excluded from insurance by law or regulation, following the approval of his Request for Insurance by the Office of Federal Employees Group Life Insurance. The approval is revoked automatically and the employee is not insured unless he acquires such a duty and pay status effective within 31 days following the date of such approval.

§ 870.205 Appeals.

(a) A person may appeal an action of his employing office denying regular insurance coverage to the Bureau of Retirement and Insurance, U.S. Civil Service Commission, Washington, D.C. 20415.

(b) An appeal may be taken to the Commission's Board of Appeals and Review from the final action or order of the Bureau of Retirement and Insurance denying regular insurance coverage.

(c) The time for filing an appeal is not later than 6 months from the date of mailing notice of the final action or order of which complaint is made.

Subpart C—Amount of Insurance

§ 870.301 Amount of employee's insurance.

The amount of an employee's regular insurance is equal to the lowest multiple of \$1,000 which is not less than the current rate of his annual pay plus \$2,000 but in no event may the amount be less than \$10,000, nor more than the annual rate of pay for positions at Level II of the Executive Schedule under section 5313 of title 5, United States Code,

rounded to the next higher thousand, plus \$2,000.

§ 870.302 Annual rates of pay.

(a) An insured employee's annual pay is his annual basic pay rate as fixed by law or regulation.

(b) A pay rate of other than annual is converted to an annual rate by multiplying the prescribed rate by the number of pay units in a 52-week work year.

(c) The annual pay for a part-time employee is his basic pay applicable to his tour of duty in a 52-week work year.

(d) The annual pay for an employee who legally and concurrently serves in more than one position, other than as a substitute in the Postal Field Service, is the sum of the annual basic pay fixed by law or regulation for each position.

Subpart D—Withholdings and Contributions

§ 870.401 Withholdings and contributions.

(a) During any period in any part of which an insured employee is in a pay status there shall be withheld from the biweekly pay of such employee the sum of 27½ cents for each \$1,000 of his regular insurance. The amount withheld from the pay of an employee who is paid on other than a biweekly basis is determined at a proportionate rate, adjusted to the nearest cent.

(b) The amount withheld from the pay of an insured employee whose annual pay is paid during a period shorter than 52 workweeks is the sum obtained by converting the biweekly rate of 27½ cents for each \$1,000 of his regular insurance to an annual rate and prorating the annual rate over the number of installments of pay regularly paid during the year.

(c) The amount withheld from the pay of an insured employee whose amount of insurance changes during a pay period is based on the last amount of insurance in force during the pay period.

(d) For each period in which an employee is insured there shall be contributed from the respective appropriation or fund which is used for the payment of his pay (or, in the case of an elected official, from such appropriation or fund as may be available for payment of other pay of the same office or establishment) an amount equal to one-half the amount withheld from the employee's pay.

Subpart E—Termination and Conversion

§ 870.501 Termination and conversion of insurance coverage.

(a) Except as provided in §§ 870.601 and 870.701, the regular insurance of an insured employee stops on the date of his separation from the service, subject to a 31-day extension of regular life insurance coverage.

(b) The regular insurance of an insured employee who moves without a break in service to a position wherein

he is excluded from regular insurance stops on his last day on the roll in the former position, subject to a 31-day extension of regular life insurance coverage.

(c) Except as provided in paragraph (e) of this section and in §§ 870.601 and 870.701, the regular insurance of an insured employee continues without cost to the employee while he is in nonpay status for up to 12 months at which time it stops, subject to a 31-day extension of regular life insurance coverage. The 12 months nonpay status may be continuous or broken by periods of less than 4 consecutive months in pay status. If an employee has at least 4 consecutive months in pay status after a period of nonpay status he is entitled to begin the 12 months continuation of regular insurance anew. If after a return to duty he is not entitled to any further continuation of regular insurance in nonpay status because he has not had 4 consecutive months of pay status since exhausting his 12 months continuation in nonpay status, his regular insurance stops the last day of his last pay period in pay status. For the purposes of this paragraph, 4 consecutive months in pay status means any 4-month period during which the employee is in pay status for at least part of each pay period.

(d) The regular insurance of an insured person who enters on active duty or active duty for training as a member of a uniformed service stops, subject to a 31-day extension of regular life insurance coverage, on the day preceding his entrance on such duty, unless the period of such duty is covered by military leave with pay from his civilian position. This stopping of regular insurance coverage does not operate with respect to regular insurance granted before January 1, 1957, to commissioned officers of the Coast and Geodetic Survey or of the Regular or Reserve Corps of the Public Health Service.

(e) During the 31-day extension of regular life insurance coverage under this section a person may, upon application and without medical examination, convert all or any part of his regular life insurance to an individual policy of life insurance at rates applicable to his attained age and class of risk unless, within 3 calendar days after the date his regular insurance stopped, he returns to a position wherein he is not excluded from coverage.

Subpart F—Retired Employees

§ 870.601 Eligibility for life insurance.

(a) The regular life insurance of an insured employee who is separated from service is continued or reinstated without cost to him if he (1) is entitled to retirement on immediate annuity under a system legally established for the retirement of civilian employees of the Federal or District of Columbia Governments, (2) has had at least 12 years of creditable service or retires for disability, (3) has met all requirements for annuity (including filing of application where necessary), whether or not final administrative action has been taken,

and (4) has not exercised his right of conversion to an individual policy of life insurance under § 870.501(e).

(b) An immediate annuity is one which begins to accrue not later than 1 month after the date the insurance would otherwise stop.

(c) Creditable service is (1) civilian service allowable under the provisions of section 8332 of title 5, United States Code, and (2) honorable active service performed as a commissioned officer or enlisted man in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States if the individual at retirement has at least 5 years of such civilian service.

(d) If the annuity of an insured retired employee is terminated under any applicable law or regulation, his regular life insurance as a retired employee stops on the date of such termination.

(e) If an insured retired employee is appointed to a position wherein he is not excluded from insurance by law or regulation, the amount of his regular life insurance as a retired employee is suspended on the day preceding the first day in a pay status under the appointment, and unless he gives written notice that he desires not to be insured, is automatically reinstated upon his death in such amount as may be necessary to assure that the total of all regular insurance benefits paid after his death is not less than the amount which would have been paid if he had not been re-employed.

§ 870.602 Amount of life insurance.

The amount of a retired employee's regular life insurance is the amount based on his annual pay at the date his insurance would otherwise have stopped because of his separation from the service or completion of 12 months of nonpay status, reduced by 2 percent a month, effective at the beginning of the second calendar month after (a) such date, or (b) his 65th birthday, whichever is later, with a maximum reduction of 75 percent.

Subpart G—Employees' Compensation

§ 870.701 Eligibility for life insurance.

The regular life insurance of an insured employee who is separated from the service or completes 12 months of nonpay status, and who is receiving compensation for work injury under subchapter I of chapter 81 of title 5, United States Code, and is held by the Department of Labor to be unable to return to duty, shall be continued or reinstated without cost to him provided he has not, on or after May 28, 1956, exercised his right of conversion under § 870.501(e). This continued or reinstated insurance shall stop with no 31-day extension of regular life insurance coverage and no right of conversion, upon termination of the employee's compensation under subchapter I of chapter 81 of title 5, United States Code, or upon a finding by the Department of Labor that he is able to return to duty.

§ 870.702 Amount of life insurance.

The amount of regular life insurance of an employee whose insurance is continued while he is receiving compensation for work injury under subchapter I of chapter 81 of title 5, United States Code and is held by the Department of Labor to be unable to return to duty is the amount based on his annual pay at the date his regular insurance would otherwise have stopped because of his separation from the service or completion of 12 months of nonpay status.

Subpart H—[Reserved]

Subpart I—Order of Precedence and Designation of Beneficiary

§ 870.901 Designation of beneficiary.

(a) The designation of beneficiary shall be in writing, signed, and witnessed, and received in the employing office (or, in the case of (1) a retired employee and (2) an employee whose regular life insurance is continued while he is receiving compensation for work injury under subchapter I of chapter 81 of title 5, United States Code and who is held by the Department of Labor to be unable to return to duty, in the Commission) before the death of the designator.

(b) A change or cancellation of beneficiary in a last will or testament, or in any other document not witnessed and filed as required by this part, shall not have any force or effect.

(c) A witness to a designation of beneficiary is ineligible to receive payment as a beneficiary.

(d) Any person, firm, corporation, or legal entity (except an agency of the Federal or District of Columbia Governments) may be named as beneficiary.

(e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary, and this right cannot be waived or restricted.

(f) A designation of beneficiary is automatically canceled (1) on the day the employee transfers (except by mass transfer) to another agency, or (2) 31 days after the employee stops being insured.

PART 871—OPTIONAL LIFE INSURANCE

Subpart A—Administration and General Provisions

- Sec.
871.101 Actions on the policy.
871.102 Payment of benefits; designations of beneficiary.

Subpart B—Coverage

- 871.201 Eligibility.
871.202 Election or declination.
871.203 Effective date of insurance.
871.204 Declination.
871.205 Cancellation of declination.
871.206 Appeals.

Subpart C—Amount of Insurance

- 871.301 Amount of employee's insurance.

Subpart D—Withholdings

- 871.401 Withholdings.

Subpart E—Termination and Conversion

- Sec.
871.501 Termination and conversion of insurance.

Subpart F—Retired Employees and Employees Compensation

- 871.601 Amount of insurance.
871.602 Termination of annuity or compensation.
871.603 Waiver or suspension of annuity or compensation.
871.604 Reemployed retired employees.

AUTHORITY: The provisions of this Part 871 issued under 5 U.S.C. 8716. Interprets and applies 5 U.S.C. 8714a.

Subpart A—Administration and General Provisions

§ 871.101 Actions on the policy.

Optional life and accidental death and dismemberment benefits (referred to in this part as "optional insurance") shall be payable in accordance with an amendment to the policy purchased by the Commission from the Metropolitan Life Insurance Co., 1 Madison Avenue, New York, N.Y. 10010, pursuant to section 8709 of title 5, United States Code, to provide group insurance coverage (referred to in this part as "regular insurance"). Actions at law or in equity to recover on the policy, in which there is not alleged any breach of any obligations undertaken by the United States, should be brought against the insurance company.

§ 871.102 Payment of benefits; designations of beneficiary.

Optional insurance in force on a person at the date of his death shall be paid, on receipt of a valid claim, in the same order of precedence and under the same conditions as are applicable to regular insurance. A designation of beneficiary for regular insurance is also a designation of beneficiary for optional insurance unless the insured person specifies otherwise in his designation.

Subpart B—Coverage

§ 871.201 Eligibility.

Each employee, as defined in section 8701 of title 5, United States Code, who is insured for regular insurance and for whom an uncanceled declination of optional insurance is not in effect is eligible to elect the optional insurance, if his periodic pay, after all other deductions, is sufficient to cover the full cost thereof.

§ 871.202 Election or declination.

(a) Except as otherwise provided in paragraph (b) of this section, each employee shall, on the form entitled Election, Declination, or Waiver of Life Insurance Coverage, elect or decline the optional insurance within 31 days after becoming eligible, unless during earlier employment he filed an election or declination which remains in effect.

(b) On a determination by an employing office, within 6 months after a person becomes eligible, that he was unable, for cause beyond his control, to elect or decline the optional insurance within the prescribed time limit regulation, the

employee shall elect or decline the optional insurance within 31 days after he is advised of that determination. Optional insurance in that case is retroactive to the first day of the first pay period beginning after the date the person became eligible, or after February 14, 1968, whichever is later, and the person shall pay the full cost thereof from that date for the time that he is in a pay status or retired and under age 65.

(c) A person who does not file an Election, Declination, or Waiver of Life Insurance Coverage with his employing office (which, for a retired employee is the office that administers his retirement system, and, for an employee or former employee in receipt of compensation for work injury under subchapter I of chapter 81 of title 5, United States Code, is the Department of Labor) and who dies or suffers dismemberment does not have the optional insurance.

§ 871.203 Effective date of insurance.

(a) The effective date of an election of optional insurance is the first day an employee actually enters on duty in a pay status on or after the day the election is received in his employing office.

(b) An election of optional insurance remains in effect until canceled as provided in § 871.204. For an employee whose optional insurance has stopped for a reason other than declination or waiver, optional insurance is reinstated on the first day he actually enters on duty in a pay status in a position in which he again becomes eligible.

§ 871.204 Declination.

(a) An insured person may at any time cancel his optional insurance by filing with his employing office a declination of optional insurance or a waiver of regular insurance coverage.

(b) A cancellation of optional insurance becomes effective and optional insurance stops at the end of the pay period in which the declination or waiver is received in the employing office.

(c) A declination of optional insurance remains in effect until it is canceled as provided in § 871.205.

§ 871.205 Cancellation of declination.

(a) An employee who has declined the optional insurance may elect it if (1) he is under age 50, (2) at least 1 year has elapsed since the effective date of his last declination or waiver, and (3) he furnishes satisfactory evidence of insurability.

(b) The effective date of the optional insurance for an employee who has complied with paragraph (a) of this section is the first day he actually enters on duty in a pay status, on or after the day his election is received in his employing office following the approval of his Request for Insurance by the Office of Federal Employees Group Life Insurance. This approval is revoked automatically and the optional insurance does not become effective if the employee fails to submit his election or meet the pay and duty status requirement within 31 days following the date of the approval.

§ 871.206 Appeals.

(a) A person may appeal an action of his employing office denying optional insurance coverage to the Bureau of Retirement and Insurance, U.S. Civil Service Commission, Washington, D.C. 20415.

(b) An appeal may be taken to the Commission's Board of Appeals and Review from the final action or order of the Bureau of Retirement and Insurance denying optional insurance coverage.

(c) The time for filing an appeal is not later than six months from the date of mailing notice of the final action or order of which complaint is made.

Subpart C—Amount of Insurance

§ 871.301 Amount of employee's insurance.

The amount of an employee's optional insurance is \$10,000, except that an employee whose annual rate of pay (as defined in section 870.302 of this chapter) exceeds the sum of (1) the annual rate of pay for positions at Level II of the Executive Schedule under section 5313 of title 5, United States Code, plus (2) \$10,000, may elect optional insurance in an amount which, when added to the amount of his regular insurance, does not at any time exceed his annual rate of pay.

Subpart D—Withholdings

§ 871.401 Withholdings.

(a) During any period in any part of which an insured employee is in a pay status there shall be withheld from his pay the full cost of his optional insurance as specified in paragraph (c) of this section.

(b) For any period before the first of the month following his 65th birthday during which an insured retired employee (or employee or former employee in receipt of compensation for work injury) receives annuity (or compensation), there shall be withheld from his annuity (or compensation) the full cost of his optional life insurance as specified in paragraph (c) of this section.

(c) The biweekly full cost of the \$10,000 of optional insurance (and, for a person in receipt of annuity or compensation for work injury, of optional life insurance), until determined by the Commission on the basis of experience to be otherwise, is:

For persons under age 35.....	\$3.00
For persons ages 35 through 54.....	6.00
For persons age 55 or over.....	20.00

The amount withheld from a person paid on other than a biweekly period or insured for more than \$10,000 shall be determined at a proportionate rate, adjusted to the nearest cent.

(d) For the purposes of this section, a person is deemed to attain 35 years of age or 55 years of age on the first day of his first pay period beginning on or after January 1 of the year following the one in which his 35th or 55th birthday occurs.

(e) The amount withheld from the pay of an insured employee whose annual pay is paid during a period shorter

than 52 workweeks is the sum obtained by converting the biweekly rate for his age group to an annual rate and prorating the annual rate over the number of installments of pay regularly paid during the year.

Subpart E—Termination and Conversion

§ 871.501 Termination and conversion of insurance.

(a) The optional insurance of an insured employee stops when his regular insurance stops as provided in § 870.501 of this chapter subject to a 31-day extension of optional life insurance coverage.

(b) If, because of a declination or waiver, an insured employee has not had the optional insurance during the full period or periods of service during which it was available to him, his optional insurance stops, subject to a 31-day extension of optional life insurance coverage, on the date preceding the date his regular insurance is continued or reinstated under the provisions of § 870.601 (during retirement) or § 870.701 (while in receipt of compensation) of this chapter.

(c) The optional insurance of an insured person who remains in a pay status stops, subject to a 31-day extension of optional life insurance coverage, at the end of the pay period in which it is determined that his periodic pay, compensation for work injury, or annuity, after all other deductions, is insufficient to cover the full cost of the optional insurance.

(d) During the 31-day extension of optional life insurance coverage under this section, a person may, upon application and without medical examination, convert all or any part of his optional life insurance to an individual policy of life insurance at rates applicable to his attained age and class of risk unless, within 3 calendar days after the date his optional insurance stopped, he returns to a position wherein he is not excluded from coverage.

Subpart F—Retired Employees and Employees Compensation

§ 871.601 Amount of insurance.

A reduction in the amount of a retired employee's optional life insurance begins at the same time and continues at the same rate and to the same extent as his regular insurance. Optional life insurance which is continued while an employee or former employee is in receipt of compensation for work injury (referred to in this part as "compensation") continues at the full amount without reduction.

§ 871.602 Termination of annuity or compensation.

If the annuity or compensation for work injury paid to an insured person is terminated, or if the Department of Labor finds that an insured person receiving compensation for work injury is able to return to duty, optional life insurance held as a retired employee or

person receiving compensation stops, with no 31-day extension of coverage or right of conversion, on the date of that termination or finding.

§ 871.603 Waiver or suspension of annuity or compensation.

(a) Except as provided in paragraph (b) of this section, when annuity or compensation for work injury is waived or suspended, optional life insurance continues. When payment of annuity or compensation is resumed, the employing office shall withhold the full cost of the insurance for the period of waiver or suspension during which the person is under age 65.

(b) If suspension of annuity or compensation is because of reemployment, the reemploying office shall withhold the full cost of the insurance currently and the optional life insurance continues during reemployment.

§ 871.604 Reemployed retired employees.

(a) (1) A retired employee appointed to a position wherein he is not excluded from regular insurance by law or regulation is eligible for optional insurance as an employee. If he has optional life insurance as a retired employee, that insurance (and any withholdings therefor) is suspended on the day preceding his first day in a pay status under the appointment and, unless he files with his employing office a declaration of optional insurance (or waiver of regular insurance), he acquires optional insurance as an employee.

(2) Except as provided in paragraph (b) of this section, the optional insurance acquired as an employee stops, with no 31-day extension or right of conversion, on the date reemployment terminates and any suspended optional life insurance is reinstated on the day following termination of the reemployment.

(b) Optional insurance acquired during reemployment may be continued after termination of the reemployment if the retired employee qualifies for a supplemental annuity or acquires a new retirement right, continues his regular insurance, and has had optional insurance in force for the full period (or periods) of service during which it was available to him. If the optional insurance acquired during reemployment is so continued, any suspended optional life insurance stops with no 31-day extension of coverage or right of conversion.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

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Subpart A—Administration and General Provisions

§ 890.101 Definitions; time computations.

(a) In this part:

(1) Terms defined by section 8901 of title 5, United States Code, have the meanings there set forth.

(2) "Cancellation" means the act of filing a health benefits registration form terminating enrollment in a health benefits plan and electing not to be enrolled for the future by an enrolled employee or annuitant who is eligible to continue enrollment.

(3) "Change of enrollment" means the registration of an enrolled employee or annuitant to be enrolled for another plan or option, or for a different type of coverage (self alone or self and family), from that for which then enrolled.

(4) "Eligible" means eligible under the law and this part to be enrolled.

(5) "Employing office" means the office of an agency to which jurisdiction and responsibility for health benefits actions for the employee concerned have been delegated. For enrolled annuitants who are not also eligible employees, the office which has authority to approve payment of annuity or workmen's compensation for the annuitant concerned is the employing office.

(6) "Immediate annuity" means an annuity which begins to accrue not later than 1 month after the date enrollment under a health benefits plan would cease for an employee or member of family if he were not entitled to continue enrollment as an annuitant. Notwithstanding the foregoing, an annuity which commences on the birth of the posthumous child of an employee or annuitant is an immediate annuity.

(7) "Option" means a level of benefits. It does not include distinctions as to whether the members of the family are covered.

(8) "Pay period" means the biweekly pay period established pursuant to section 5504 of title 5, United States Code, for the employees to whom that section applies, the regular pay period for employees not covered by that section; and the period for which a single installment of annuity is customarily paid for annuitants.

(9) "Register" means to file with the employing office a properly completed health benefits registration form, either electing to be enrolled in a health benefits plan or electing not to be enrolled. "Register to be enrolled" means to register an election to be enrolled. "Enrolled" means to be enrolled in a health benefits plan approved by the Commission under this part.

(10) "Regular tour of duty" means a work schedule, prescribed in advance to continue indefinitely or for at least 6 months, of a certain number of hours or other time units in a day, week, biweekly pay period, month, or year.

(b) Whenever, in this part, a period of time is stated as a number of days or a number of days from an event, the period is computed in calendar days, excluding the day of the event. Whenever, in this part, a period of time is defined by beginning and ending dates, the period includes the beginning and ending dates.

§ 890.102 Coverage.

(a) Each employee, other than those excluded by paragraph (c) of this section, is eligible to be enrolled in a health benefits plan at the time and under the conditions prescribed in this part.

(b) An employee who serves in cooperation with non-Federal agencies and is paid in whole or in part from non-Federal funds may register to be enrolled within the period prescribed by the Commission for the group of which the employee is a member following approval by the Commission of arrangements providing that (1) the required withholdings and contributions will be made from Federally-controlled funds and timely deposited into the Employees Health Benefits Fund, or (2) the cooperating non-Federal agency will, by written agreement with the Federal agency, make the required withholdings and contributions from non-Federal funds and transmit them for timely deposit into the Employees Health Benefits Fund.

(c) The following employees are not eligible:

(1) An employee serving under an appointment limited to 1 year or less, except an acting postmaster.

(2) An employee whose employment is of uncertain or purely temporary duration, or who is employed for brief periods at intervals, and an employee who is expected to work less than 6 months in each year, except an employee having a career-conditional or career appointment, or appointed under Schedule B of Part 213 of this chapter, who is employed under a cooperative work-study program of at least 1 year's duration which requires the employee to be in pay status during not less than one-third of the

total time required for completion of the program.

(3) An intermittent employee—a non-full-time employee without a prearranged regular tour of duty.

(4) An employee whose pay on an annual basis is \$350 a year or less.

(5) A beneficiary or patient employee in a Government hospital or home.

(6) An employee paid on a contract or fee basis, except an employee who is a citizen of the United States who is appointed by a contract between the employee and the Federal employing authority which requires his personal service and is paid on the basis of units of time.

(7) An employee paid on a piecework basis, except one whose work schedule provides for full-time service or part-time service with a regular tour of duty.

(d) The Commission makes the final determination of the applicability of this section to a specific employee or group of employees.

§ 890.103 Employee appeals, corrections, and adjustments.

(a) An employee or annuitant may appeal a refusal of an employing office to permit him to register to enroll, or to change enrollment. The appeal shall be made in writing, within 30 days of the refusal, to the Bureau of Retirement and Insurance, United States Civil Service Commission, Washington, D.C. 20415.

(b) An employee or annuitant may appeal a refusal of the Bureau of Retirement and Insurance to permit him to register to enroll, or to change enrollment. The appeal shall be made in writing, within 90 days of the refusal, to the Board of Appeals and Review, United States Civil Service Commission, Washington, D.C. 20415.

(c) (1) The employing office may make prospective correction of administrative errors as to enrollment at any time.

(2) The Bureau of Retirement and Insurance may order correction of an error, mistake, or omission upon a showing satisfactory to the Bureau that it would be against equity and good conscience not to do so.

(3) The Bureau of Retirement and Insurance may order the termination of an employee's or annuitant's enrollment in a group-practice plan and permit his enrollment in another plan upon a showing satisfactory to the Bureau that the furnishing of adequate medical care is jeopardized by a seriously impaired relationship between a patient and the plan's medical staff.

(d) The Commission does not adjudicate individual claims for payment or service under health benefits plans, nor does it arbitrate or attempt to compromise disputes between an employee or annuitant and his carrier as to claims for payment or service.

§ 890.104 Legal actions.

An action to compel enrollment of an employee or annuitant not excluded by § 890.102(c) should be brought against the employing office. An action to recover on a claim for health benefits should be brought against the carrier of

the health benefits plan. An action to review the legality of the Commission's regulations or a decision made by the Commission should be brought against the United States Civil Service Commissioners, Washington, D.C. 20415.

Subpart B—Health Benefits Plans

§ 890.201 Minimum standards for health benefits plans.

(a) To be qualified to be approved by the Commission, a health benefits plan shall:

(1) Comply with chapter 89 of title 5, United States Code, and this part, as amended from time to time.

(2) Accept the enrollment, in accordance with this part, and without regard to age, race, sex, health status, or hazardous nature of employment, of each eligible employee and annuitant except that a plan which is sponsored or underwritten by an employee organization may not accept the enrollment of a person who is not a member of the organization, but it may not limit membership in the organization on account of these prohibited factors. The carrier may terminate the enrollment of an employee or of an annuitant, other than a survivor annuitant, in a health benefits plan sponsored or underwritten by an employee organization on account of termination of membership in the organization. A comprehensive medical plan need not enroll an employee or annuitant residing outside geographic areas specified by the plan. A carrier who wishes to terminate the enrollment of an employee or annuitant under this subparagraph may do so by notifying the employing office in writing, with a copy of the notice to the employee. The termination is effective at the end of the pay period in which the employing office receives the notice.

(3) Provide health benefits for each enrolled employee and annuitant and covered member of their families wherever they may be.

(4) Provide for conversion to a contract for health benefits regularly offered by the carrier, or an appropriate affiliate, for group conversion purposes, which shall be guaranteed renewable, subject to such amendments as apply to all contracts of this class, except that it may be canceled for fraud, overinsurance, or nonpayment of periodic charges. A carrier shall permit conversion within the time allowed by the temporary extensions of coverage provided under § 890.401 for each employee, annuitant, and member of family entitled to convert. When an employing office gives an employee written notice of his privilege of conversion, the carrier shall permit conversion at any time before (i) 15 days after the date of notice or (ii) 75 days after his enrollment is terminated, whichever is earlier. When the Commission requests an extension of time for conversion because of delayed determination of ineligibility for immediate annuity, the carrier shall permit conversion until the date specified by the Commission in its request for extension. On conversion, the contract becomes effective as of the day following the last

day of the temporary extension, and the employee, annuitant, or member of the family, as the case may be, shall pay the entire cost thereof directly to the carrier. The nongroup contract may not deny or delay any benefit covered by the contract for a person converting from a plan approved under this part except to the extent that benefits are continued under the health benefits plan from which he converts.

(5) Provide that each employee and annuitant who enrolls in the plan receive an identification card or cards or other evidence of his enrollment.

(6) Provide a standard rate structure which contains, for each option, one standard individual rate, and one standard family rate.

(7) Maintain statistical records regarding the plan, separately from those of any other activities conducted or benefits offered by the carrier sponsoring or underwriting the plan.

(8) Provide for a special reserve for the plan. The carrier shall account for amounts retained by it as reserves for the plan separately from reserves maintained by it for other plans. The carrier shall invest the special reserve and income derived from the investment of the special reserve shall be credited to the special reserve. If the contract is terminated or approval of the plan is withdrawn, the carrier shall return the special reserve to the Employees Health Benefits Fund. However, in the case of a group-practice plan, the carrier, without regard to the foregoing provisions of this subparagraph, shall follow such financial procedures as are mutually agreed on by the carrier and the Commission.

(9) Provide for continued enrollment to the end of the then current pay period of each employee and annuitant enrolled at the effective date of termination of a contract. The carrier is entitled to subscription charges for this continued enrollment.

(b) To be qualified to be approved by the Commission, a health benefits plan shall not:

(1) Deny a covered person a benefit provided by the plan for a service performed on or after the effective date of coverage solely because of a preexisting physical or mental condition.

(2) Require a waiting period for any covered person for benefits which it provides.

(3) Have more than two options.

(4) Have an initiation, service, enrollment, or other fee or charge in addition to the rate charged for the plan, except that a comprehensive medical plan may impose an additional charge to be paid directly by the employee or annuitant for certain medical supplies and services, if the supplies and services on which additional charges are imposed are clearly set forth in advance and are applicable to all employees and annuitants. This subparagraph does not apply to charges for membership in employee organizations sponsoring or underwriting plans.

(5) Subparagraphs (1) and (2) of this paragraph do not preclude a plan offering benefits for dentistry or cosmetic surgery, or both, limited to conditions

arising after the effective date of coverage.

(6) Subparagraphs (1) and (2) of this paragraph do not preclude a plan, with the approval of the Commission, from limiting benefits for services performed for a person who, on the effective date of enrollment or change of enrollment, is confined in a hospital or other institution so long as the person is continuously confined therein. In the previous sentence, the term, "continuously confined" means one or more periods of confinement without a break of 31 consecutive days between actual confinements except that a carrier, by agreement with the Commission, may provide that a shorter break terminates a continuous confinement. However, benefits for a person hospitalized on the effective date of enrollment may not be limited:

(i) If the enrollment or change is because of discontinuance of his former health benefits plan, in whole or in part, or

(ii) If the change of enrollment is pursuant to an order of the Bureau of Retirement and Insurance, or

(iii) If the services are provided for injuries suffered in an accident which occurred, or for an illness first diagnosed or treated, after the date an employee's or annuitant's employing office received a registration to change the covering enrollment from one plan or option to another.

§ 890.202 Minimum standards for health benefits carriers.

The carrier of an approved health benefits plan must meet the requirements of chapter 89 of title 5, United States Code, and the following requirements:

(a) It must be lawfully engaged in the business of supplying health benefits.

(b) It must have, in the judgment of the Commission, the financial resources and experience in the field of health benefits to carry out its obligations under the plan.

(c) It must keep such reasonable financial and statistical records and furnish such reasonable financial and statistical reports with respect to the plan as may be requested by the Commission.

(d) It must permit representatives of the Commission and of the General Accounting Office to audit and examine its records and accounts which pertain, directly or indirectly, to the plan at such reasonable times and places as may be designated by the Commission or the General Accounting Office.

(e) It must accept, subject to adjustment for error or fraud, in payment of its charges for health benefits for all employees and annuitants enrolled in its plan, the enrollment charges received by the Employees Health Benefits Fund less the amounts set aside for the administrative and contingency reserves prescribed in § 890.503. The Commission will pay over the amounts due each carrier at such times as are agreed on by the carrier and the Commission.

(f) A carrier which is an employee organization must continue coverage, without requirement of membership, of any eligible survivor annuitants.

§ 890.203 Application for approval of, and proposal of amendments to, health benefits plans.

(a) Application for approval of comprehensive medical plans may be made by letter to the United States Civil Service Commission, Washington, D.C. 20415. Approval of a plan will become effective on a date to be set by the Commission for the plan. An application received less than 6 months in advance of a contract period will not be approved for that contract period.

(b) Any proposal for change in a health benefits plan shall be in writing, specifically describe the change proposed, and be signed by an authorized official of the carrier. The Commission will review a proposal for change and notify the carrier whether it accepts the change and may make a counterproposal or at any time propose changes on its own motion. The Commission will not consider until after the expiration of the then current contract period any proposal for change which is received less than 6 months before the expiration of the then current contract period, except that changes in subscription charges for the ensuing contract period may be proposed not less than 4 months before the expiration of the then current contract period.

§ 890.205 Withdrawal of approval of health benefits plans.

(a) The Commissioners may withdraw their approval of a health benefits plan or carrier.

(b) Before withdrawing approval, the Commissioners shall cause to be sent, by certified mail, a notice to the carrier stating that they intend to withdraw their approval, and giving the reasons therefor. The carrier is entitled to reply in writing within 15 days of its receipt of the notice, stating the reasons why approval should not be withdrawn.

(c) On receipt of the reply, or in the absence of a timely reply, the Commissioners shall set a time and place for hearing. The Commissioners shall conduct the hearing or designate a representative to do so, unless the carrier waives hearing. The carrier shall be given notice thereof, by certified mail, at least 15 days in advance of the hearing. The carrier is entitled to appear by representative and present oral and written evidence and argument in opposition to the proposed action.

(d) The Commissioners shall make their decision on the record and communicate it to the carrier by certified mail. The Commissioners may set a future effective date for withdrawal of their approval.

(e) The Commissioners, in their discretion, may reinstate approval on a finding that the reasons for withdrawing approval no longer exist.

Subpart C—Registration and Enrollment

§ 890.301 Opportunities to register to enroll and change enrollment.

(a) *Initial registration.* Except as otherwise provided in this part, each employee who becomes eligible shall reg-

ister within 31 days after becoming eligible.

(b) *Belated registration.* When an employing office determines that an employee was unable, for cause beyond his control, to register to be enrolled or to change his enrollment within the time limits prescribed by this section, that office shall accept his registration within 31 days after it advises him of that determination.

(c) *Re-registration.* An employee whose enrollment was terminated under § 890.304(a)(4), or because he had a break in service of more than 3 days, or because he was furloughed by reason of reduction in force, shall register within 31 days after his return to pay status.

(d) *Open season.* (1) Not less often than once every 3 years, the Commission by regulation shall provide every employee an opportunity for enrollment and change of enrollment, on such terms and conditions as it may prescribe.

(e) *Change in family status.* An enrolled employee or annuitant may register to change his enrollment from self alone to self and family, or from one plan or option to another, or both, and an employee, if registered not to be enrolled, may register to be enrolled, at any time during the period beginning 31 days before a change in marital status and ending 60 days after the change in marital status. An enrolled employee or annuitant may change his enrollment from self alone to self and family within 60 days after any other change in family status.

(f) *Change to self alone.* An employee or annuitant may register at any time to change his enrollment from self and family to self alone. An employee or annuitant who is covered by the enrollment of another under this part may register to be enrolled for self alone within 31 days after a registration to change the covering enrollment has been filed under authority of this paragraph.

(g) *Loss of coverage under Federal programs.* (1) An employee who is not enrolled, but is covered by chapter 55 of title 10, United States Code (referred to in this paragraph as Medicare) or by an enrollment under Part 891 of this chapter, may register to be enrolled within 31 days after termination of coverage under Medicare or the enrollment, other than because of death, and within 60 days after termination, because of death, of Medicare or the enrollment.

(2) An employee who is not enrolled but is covered by the enrollment of another under this part, may register to be enrolled within 31 days after termination of his coverage under the other's enrollment, other than because of death or cancellation, and within 60 days after termination, because of death, of the other's enrollment.

(3) An employee annuitant who was covered by the enrollment of another under this part and had been covered (including enrollment in his own right) under this part since his first opportunity or for the 5 years immediately preceding his retirement, whichever is shorter, may register to enroll within 31 days after the termination of the

covering enrollment, other than by cancellation.

(h) *Move from area served by comprehensive medical plan.* If a comprehensive medical plan limits full service to a geographic area, an employee or annuitant enrolled in that plan who moves outside the full service area or, if already living outside full service area, moves further from the full service area, may register at any time after the move, to be enrolled in another health benefits plan.

(i) *Termination by employee organization plan.* An employee or annuitant who is enrolled in a health benefits plan sponsored or underwritten by an employee organization and whose membership in the employee organization is terminated, may register, if the plan terminates his enrollment, within 31 days after termination of his enrollment in the employee organization plan, to be enrolled in another health benefits plan. However, the employee or annuitant may not change his enrollment from self alone to self and family.

(j) *Transfer to or from overseas post of duty.* An employee who is transferred from a post of duty within the several States or the District of Columbia to a post of duty outside the several States and the District of Columbia, or the reverse, may register to be enrolled or to change his enrollment with respect to whether his family is covered, or the health benefits plan or option in which he is enrolled, or both, within the period beginning 31 days before the date he leaves the old post of duty and ending 31 days after he arrives at the new post of duty. An annuitant who is eligible to continue health benefits may register to change enrollment with respect to whether his family is covered, or the health benefits plan or option in which he is enrolled, or both, within 60 days after retirement or the death of the employee on whose service title to annuity is based, if the employee is stationed at a post of duty outside the several States and the District of Columbia at the time of his retirement or death, as the case may be.

(k) *Termination of plan in which enrolled.* If a plan is discontinued in whole or part, each employee and annuitant whose enrollment is thereby terminated may enroll in another plan. If the discontinuance is at the end of a contract period which is immediately preceded by an open season, the time for enrollment is the open season. Otherwise the Commission shall establish, by order, a time and effective date for enrollment. Persons who fail to change enrollment within the time set are considered to have canceled their enrollments upon termination of the plan in which enrolled, except that if one option of a plan is discontinued, enrolled employees and annuitants who do not change plans will be considered enrolled in the remaining option of the plan.

(l) *On reaching 19.* An employee who is not registered to be enrolled may register to be enrolled within 31 days after he becomes 19 years of age.

(m) *On return from a uniformed service.* An employee who enters on duty in

a uniformed service for a period of time not limited to 30 days or less may register to be enrolled or to change his enrollment within 31 days after he is restored to a civilian position pursuant to Part 353 of this chapter or other similar authority; and an annuitant who enters on duty in a uniformed service for a period of time not limited to 30 days or less may register to change his enrollment within 31 days after he is separated from the uniformed service.

(n) *On becoming eligible for benefits under Title XVIII of the Social Security Act.* An enrolled employee or annuitant may register, at any time after he meets statutory requirements for eligibility under Title XVIII of the Social Security Act, to change his enrollment from high option to low option within the same plan.

(o) *Change in employment status.* If an employee or annuitant is entitled to provide coverage for another by a self-and-family enrollment, but both are enrolled for self alone, he may change his enrollment to self and family within 31 days after the other enrollment is terminated by a change in employment status which results in loss of eligibility.

(p) *Sole survivor.* When an employee or annuitant enrolled for self and family dies, leaving a survivor annuitant who is entitled to continue the enrollment in a health benefits plan, and it is apparent from available records that the survivor annuitant is the sole survivor entitled to continue enrollment in the health benefits plan, the office of the retirement system which is acting as employing office shall change the enrollment from self and family to self alone, effective on the commencing date of annuity for the survivor annuitant. On request of the survivor annuitant made within 31 days after the first installment of annuity is paid, the office of the retirement system which is acting as employing office shall rescind the action retroactive to the effective date of the action, with corresponding adjustment in withholdings and contributions.

(q) *Annuity insufficient to pay withholdings.* If the annuity of an annuitant or of all annuitants in a family is not sufficient to pay the withholdings for the plan in which the annuitants are enrolled, the employing office shall notify the annuitant of the plans available at a cost not in excess of the annuity. The annuitant may register to be enrolled in another plan whose cost is no greater than his annuity.

(r) *Registration by proxy.* In the discretion of the employing office, a representative of the employee or annuitant having a written authorization to do so may register for him.

§ 890.302 Coverage of family members.

(a) *Family enrollment.* An employee or annuitant who enrolls for self and family includes in his enrollment all members of his family who are eligible to be covered by his enrollment, but no person may be covered by two enrollments.

(b) *Child incapable of self-support.* When an employee or annuitant enrolls

for a family which includes a child incapable of self-support who has become 22 years of age, the employing office shall require the employee or annuitant to submit a certificate of the physician that the child is incapable of self-support because of a physical or mental disability which existed before the child became 22 years of age, and can be expected to continue for more than 1 year. The certificate shall include a statement of the name of the child, the nature of his disability, the period of time it has existed, and its probable future course and duration. The certificate shall be signed by the physician and show his office address. When an employee or annuitant is enrolled for a family which includes a child under 22 years of age who is incapable of self-support because of a physical or mental disability, the employing office shall require the employee or annuitant to submit the certificate on or before the date the child becomes 22 years of age. However, the employing office may accept otherwise satisfactory evidence of incapacity not timely filed.

(c) *Renewal of certificates of incapacity.* The employing office shall require the employee or annuitant who has submitted a certificate of incapacity to renew that certificate on the expiration of the minimum period of disability certified.

(d) *Determination of incapacity.* The employing office shall make determinations of incapacity.

§ 890.303 Continuation of enrollment.

(a) *On transfer.* Except as otherwise provided by this part, the registration of an employee or annuitant eligible to continue enrollment continues without change when he (1) moves from one employing office to another, without a break in service of more than 3 days, whether the personnel action is designated as a transfer or not, or (2) changes from one employing office to another by reason of reemployment, if he is an annuitant, or by reason of retirement under conditions making him eligible to continue enrollment. For the purpose of this part, an employee is considered to have enrolled at his first opportunity if he registered to be enrolled during the first of the periods set forth in § 890.301 in which he was eligible to register or was covered at that time by the enrollment of another employee, or registered to be enrolled effective not later than December 31, 1964.

(b) *Change of enrolled employees to certain excluded positions.* Employees and annuitants enrolled under this part who move, without a break in service or after a separation of 3 days or less, to an employment in which they are excluded by § 890.102(c), continue to be enrolled so long as they are employed, unless excluded by subparagraphs (4), (5), (6), or (7) of § 890.102(c).

(c) *On death.* The enrollment of a deceased employee or annuitant who is enrolled for self and family is transferred automatically to his eligible survivor annuitants. The enrollment is considered to be that of the survivor annuitant from whose annuity all or the greatest por-

tion of the withholding for health benefits is made. It covers members of the family of the deceased employee or annuitant. A remarried spouse is not a member of the family of the deceased employee or annuitant unless annuity under section 8341 of title 5, United States Code continues after remarriage.

(d) *Survivor annuitants.* If an employee who is entitled to health benefits coverage as a survivor annuitant elects to enroll or to continue to be enrolled under his eligibility as an employee, and is thereafter separated without entitlement to continued enrollment based on his own service, he is entitled to reinstatement of his employee-acquired enrollment on application to his retirement office. Reinstatement is effective immediately after termination of his employee-acquired enrollment if the application is received by the retirement office within 60 days of separation; otherwise reinstatement is effective on the first day of the first pay period after receipt of the application. The retirement office shall withhold from the annuity that the former employee receives as a survivor annuitant, the amounts necessary to pay his share of the cost of the enrollment.

(e) *In nonpay status.* (1) Except as provided in section 8906(e)(2) of title 5, United States Code in regard to an employee on leave without pay to serve as a full-time officer or employee of an employee organization, the enrollment of an employee continues without cost to the employee while he is in nonpay status for up to 365 days. The 365 days' nonpay status may be continuous or broken by periods of less than 4 consecutive months in pay status. If an employee has at least 4 consecutive months in pay status after a period of nonpay status he is entitled to begin the 365 days' continuation of enrollment anew. For the purposes of this paragraph, 4 consecutive months in pay status means any 4-month period during which the employee is in pay status for at least part of each pay period.

(2) However, in the case of an employee having a career-conditional or career appointment, or appointed under Schedule B of Part 213 of this chapter, who is employed under a cooperative work-study program of at least 1 year's duration which requires the employee to be in pay status during not less than one-third of the total time required for completion of the program, his enrollment continues without cost to him while he is in nonpay status so long as he is participating in the cooperative work-study program.

§ 890.304 Termination of enrollment.

(a) *Employees.* An employee's enrollment terminates, subject to the temporary extension of coverage for conversion, at midnight of the earliest of the following dates:

(1) The last day of the pay period in which he is (i) furloughed by reason of reduction in force, or (ii) separated from the service other than by retirement under conditions entitling him to continue his enrollment.

(2) The last day of the pay period in which his employment status changes so that he is excluded from enrollment.

(3) The last day of the pay period in which he dies, unless he leaves a member of the family entitled to continue enrollment as a survivor annuitant.

(4) The day on which the continuation of enrollment under § 890.303(e) expires, or, if he is not entitled to any further continuation because he has not had 4 consecutive months of pay status since exhausting his 365 days' continuation of coverage in nonpay status, the last day of his last pay period in pay status.

(5) The day he is separated, furloughed, or placed on leave of absence in accordance with the provisions of Part 353 of this chapter or other similar authority for the purpose of performing duty not limited to 30 days or less in a uniformed service.

(b) *Annuity.* (1) If the annuity of an annuitant or of all survivor annuitants in a family is not sufficient to pay the withholdings for the plan in which the annuitants are enrolled, and the annuitant does not, or cannot, elect a plan under § 890.301(p) at a cost to him not in excess of the annuity, the employing office shall terminate the annuitant's enrollment effective as of the end of the last period for which withholding was made. Each annuitant whose enrollment is so terminated is entitled to a 31-day extension of coverage for conversion.

(2) An annuitant's enrollment terminates, subject to the temporary extension of coverage for conversion, at midnight of the last day of the pay period in which he dies, unless he leaves a member of the family entitled to continue enrollment as a survivor annuitant, or, if his enrollment is not terminated by death, at midnight of the earliest of the following dates:

(i) The last day of the last pay period for which he is entitled to annuity, unless he is eligible for continued enrollment as an employee in which case his enrollment continues without change.

(ii) The last day of the pay period in which his title to compensation under subchapter I of chapter 81 of title 5, United States Code, terminates, or in which he is held by the Secretary of Labor to be able to return to duty, unless he is eligible for continued enrollment as an employee or as an annuitant under a retirement system for civilian employees in which case his enrollment continues without change.

(iii) The day he enters on active duty in a uniformed service for the purpose of performing duty not limited to 30 days or less.

(c) *Coverage of members of the family.* The coverage of a member of the family of an enrolled employee or annuitant terminates, subject to the temporary extension of coverage for conversion, at midnight of the earlier of the following dates:

(1) The day on which he ceases to be a member of the family.

(2) The day the employee or annuitant ceases to be enrolled, unless the member is entitled, as a survivor annui-

tant, to continued enrollment, or is entitled to continued coverage under the enrollment of another.

(d) *Cancellation.* An enrolled employee or annuitant may register to cancel his enrollment at any time by filing with his employing office a properly completed health benefits registration form. The cancellation becomes effective on the last day of the pay period after the pay period in which the health benefits registration form canceling his enrollment is received by his employing office, except that the cancellation of an employee or annuitant having a monthly or 4-weekly pay period becomes effective at the end of the pay period in which the health benefits registration form is received if the form is received not less than 15 days before the end of the pay period. He and the members of his family are not entitled to the temporary extension of coverage for conversion or to convert to an individual contract for health benefits.

§ 890.305 Reinstatement of enrollment after military service.

The enrollment of an employee or annuitant whose enrollment was terminated because he entered on duty in a uniformed service for a period of time not limited to 30 days or less is reinstated automatically on the day the employee is restored to a civilian position pursuant to Part 353 of this chapter or other similar authority or on the day the annuitant is separated from the uniformed service, as the case may be.

§ 890.306 Effective dates.

(a) *Change to self alone.* The effective date of a change of enrollment under § 890.301(f) is the first day of the first pay period after the health benefits registration form is received by the employing office, except that at the request of the employee or annuitant and upon a showing satisfactory to the employing office that there was no family member eligible for coverage by the family enrollment, the change may be made effective as of the first day of the pay period following the one in which there were no family members.

(b) *Annuity required to change enrollment.* The effective date of an annuitant's change to a lower cost enrollment under § 890.301(p) is immediately upon termination of his prior enrollment.

(c) *Generally.* The effective date of any other enrollment or change of enrollment is the first day of the first pay period which begins after the health benefits registration form is received by the employing office and which follows a pay period during any part of which the employee or annuitant is in pay or annuity status.

§ 890.307 Waiver or suspension of annuity or compensation.

(a) Except as provided in paragraph (b) of this section, when annuity or compensation is entirely waived or suspended, the annuitant's enrollment continues for not more than 3 months (not more than 12 weeks for annuitants whose compensation under subchapter I of

chapter 81 of title 5, United States Code, is paid each 4 weeks). If the waiver or suspension continues beyond this period, the annuitant's enrollment is terminated, subject to the temporary extension of coverage for conversion, effective at the end of the period. It is reinstated automatically when payment of annuity or compensation is resumed, and the employing office shall make the withholding for the period of suspension or waiver during which enrollment was continued.

(b) If suspension of annuity or compensation is because of reemployment, the reemploying office shall make the withholding currently and enrollment continues during reemployment.

Subpart D—Temporary Extension of Coverage and Conversion

§ 890.401 Temporary extension of coverage and conversion.

(a) *Thirty-one day extension and conversion.* An employee or annuitant whose enrollment is terminated other than by cancellation of the enrollment or discontinuance of his plan, in whole or part, and a member of the family whose coverage is terminated other than by cancellation of the enrollment or discontinuance of the plan under which he is covered, in whole or part, is entitled to a 31-day extension of coverage for self alone or self and family, as the case may be, without contributions by the enrolled person or the Government, during which he is entitled to exercise the right of conversion provided for by this part. A change from self and family to self alone operates as a cancellation as to the members of the family. The 31-day extension of coverage and the right of conversion for any person ends on the effective date of a new enrollment under this part which covers the person.

(b) *Continuation of benefits.* (1) Any person who has been granted a 31-day extension of coverage in accordance with paragraph (a) of this section and who is confined in a hospital or other institution for care or treatment on the 31st day of the temporary extension is entitled to continuation of the benefits of the plan during the continuance of the confinement but not beyond the 60th day after the end of the temporary extension.

(2) Any person whose enrollment has been changed from one plan to another, or from one option of a plan to the other option of that plan, unless because of the discontinuance of the plan in whole or part or pursuant to an order of the Bureau of Retirement and Insurance, and who is confined in a hospital or other institution for care or treatment on the last day of enrollment under the prior plan or option, is entitled to a continuation of the benefits of the prior plan or option during the continuance of the confinement, but not beyond the 91st day after the last day of enrollment in the prior plan or option. The plan or option to which enrollment has been changed shall not pay benefits with respect to that person while that person is entitled to continuance of benefits under the prior plan or option.

Subpart E—Contributions and Withholdings

§ 890.501 Government contributions.

(a) The Government contribution for all plans, except those for which another contribution is set by paragraph (b) of this section, for each enrolled employee who is paid biweekly, is the amount provided in section 8906 of title 5, United States Code, plus 4 percent of that amount.

(b) The biweekly Government contribution for each employee or annuitant enrolled in a plan whose total enrollment charge is less than twice the appropriate contribution listed in paragraph (a) of this section is 50 percent of the enrollment charge.

(c) The Government contribution for annuitants and for employees who are not paid biweekly is a percentage of that fixed by paragraphs (a) and (b) of this section proportionate to the length of the pay period, rounding fractions of a cent to the nearest cent.

(d) The Government contribution for employees whose annual pay is paid during a period shorter than 52 workweeks is determined on an annual basis and prorated over the number of installments of pay regularly paid during the year.

(e) The employing office shall not make a contribution for an employee or annuitant for periods for which withholding is not made.

§ 890.502 Employee withholdings.

(a) The employing office shall make the withholding required from enrolled survivor annuitants from the annuity of any surviving spouse. If that annuity is less than the withholding required, the employing office shall make the withholding to the extent necessary from the annuity of the youngest child, and, if necessary, from the annuity of the next older child, in succession, until the withholding is satisfied.

(b) The employing office shall not withhold from an employee who is in nonpay status, or from an annuitant for periods for which he does not receive annuity.

(c) Withholding for employees whose annual pay is paid during a period shorter than 52 workweeks is determined on an annual basis and prorated over the number of installments of pay regularly paid during the year.

§ 890.503 Reserves.

(a) The enrollment charge consists of the rate approved by the Commission for payment to the plan for each employee or annuitant enrolled, plus 4 percent, of which one part is for an administrative reserve and three parts are for a contingency reserve for the plan.

(b) The administrative reserve is credited with the one one-hundred-and-fourth of the enrollment charge set aside for the administrative reserve. The administrative reserve is available for payment of administrative expenses of the Commission incurred under this part, and for such other purposes as may be authorized by law.

(c) (1) The contingency reserve for each plan is credited with (i) the three one-hundred-and-fourths of the enrollment charge set aside for the contingency reserve from the enrollment charges for employees and annuitants enrolled for that plan, (ii) amounts transferred in accordance with law from other contingency reserves and the administrative reserve, (iii) income from investment of the reserve, (iv) its proportionate share of the income from investment of the administrative reserve, and (v) any return of reserves of the plan. The preferred minimum balance for the contingency reserve is 1 month's subscription charges at the average monthly rate paid from the Employees Health Benefits Fund for the plan during the most recent contract period.

(2) Except as provided by subparagraphs (3) and (4) of this paragraph, when, as of the end of a contract period, the total of all the reserves held by a carrier for the plan amounts to less than the total of the last 5 months' subscription charges paid from the fund to the carrier for the plan, the carrier is entitled to payment from the contingency reserve of the lesser of: An amount equal to the difference between the total of the last 5 months' subscription charges paid from the fund to the carrier for the plan and the total of the reserves held by the carrier for the plan, or an amount equal to the excess, if any, of the contingency reserve over the preferred minimum balance. The Commission shall authorize this payment after receipt of the accounting report for the contract period. The carrier shall credit the amount so paid to the special reserve for the plan.

(3) If more than 50 percent of the enrollees in a plan are stationed at posts of duty outside the United States, its possessions, and the Commonwealth of Puerto Rico, when the special reserve held by the carrier for the plan at the end of a contract period amounts to less than one-sixth of the last year's subscription charges paid from the fund to the carrier for the plan, the carrier is entitled to payment from the contingency reserve of the lesser of: An amount equal to the difference between one-sixth of the last year's subscription charges paid from the fund to the carrier for the plan and the total of the special reserve held by the carrier for the plan, or an amount equal to the excess, if any, of the contingency reserve over the preferred minimum balance. The Commission shall authorize this payment after receipt of the account report for the contract period. The carrier shall credit the amount so paid to the special reserve for the plan.

(4) The Commission may, by agreement with the carrier, approve community rating for a group-practice plan. If the contingency reserve of the carrier of a community rated plan exceeds the preferred minimum balance, the carrier may request the Commission to pay a portion of the reserve not greater than the excess of the contingency reserve over the preferred minimum balance. The carrier shall state the reason for the re-

quest. The Commission will decide whether to allow the request in whole or in part and will advise the plan of its decision.

PART 891—RETIRED FEDERAL EMPLOYEES HEALTH BENEFITS

Subpart A—Administration and General Provisions

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891.502 Standards for carrier of uniform plan.

AUTHORITY: The provisions of this Part 891 issued under sec. 9, 74 Stat. 851.

Subpart A—Administration and General Provisions

§ 891.101 Relationship to Part 890 of this chapter.

This part does not apply to the Federal Employees Health Benefits Program which is governed by Part 890 of this chapter. Part 890 of this chapter does not apply to the Retired Federal Employees Health Benefits Program which is governed by this part.

§ 891.102 Definitions.

In this part:

(a) "Annuity" means the periodic payment due a former employee or his survivors by reason of past service, but does not include compensation paid under subchapter I of chapter 81 of title 5, United States Code.

(b) "Annuity period" means the period for which an installment of annuity is paid.

(c) "Bureau of Employees' Compensation" means the Bureau of Employees' Compensation, Department of Labor.

(d) "Carrier" means a voluntary association, corporation, partnership, or other nongovernmental organization which lawfully offers a health benefits plan.

(e) "Compensation" means monthly compensation paid under subchapter I of chapter 81 of title 5, United States Code, and includes compensation payable every 4 weeks.

(f) "Elect" means to file with the retirement office under which retired or with the Bureau of Employees' Compensation, as the case may be, a properly completed form, prescribed by the Commission for the purpose, giving notice of intention (1) to subscribe to the uniform plan, (2) to receive a Government

contribution toward the cost of a private health benefits plan, or (3) not to participate in the program.

(g) "Employee" means an appointive or elective officer or employee in or under the executive, judicial, or legislative branch of the United States Government, including a Government-owned or controlled corporation (but not including any corporation under the supervision of the Farm Credit Administration, of which corporation any member of the board of directors is elected or appointed by private interests), or of the government of the District of Columbia, and includes an Official Reporter of Debates of the Senate and a person employed by the Official Reporters of Debates of the Senate in connection with the performance of their official duties, and an employee of Gallaudet College, but does not include (1) a member of a "uniformed service" as that term is defined in section 1072 of title 10, United States Code, (2) a noncitizen employee whose permanent-duty station is located outside a State of the United States or the District of Columbia, or (3) an employee of the Tennessee Valley Authority.

(h) "Government" means the Government of the United States of America and the government of the District of Columbia.

(i) "Health benefits plan" means an individual or group insurance policy or contract, medical or hospital service arrangement, membership or subscription contract, or similar agreement provided by a carrier for a stated periodic premium or subscription charge for the purpose of providing, paying for, or reimbursing expenses for hospital care, surgical or medical diagnosis, care, and treatment, drugs and medicines, remedial care, or other medical supplies and services, or any combination of these.

(j) "Immediate annuity" means (1) as applied to a retired employee, an annuity which begins to accrue not later than 1 month after the date of the separation from the service on which title to the annuity is based; and (2) as applied to a survivor, an annuity which begins to accrue not later than 1 month (i) after the date of death of the employee or annuitant whose service forms the basis for the annuity, or (ii) after the birth of a posthumous child of such an employee or annuitant.

(k) "Member of family" means a former employee's spouse and any unmarried child (1) under 19 years of age (including (i) an adopted child, and (ii) a stepchild or recognized natural child who lives with the former employee in a regular parent-child relationship or did so at the time of the former employee's death); or (2) regardless of age who is incapable of self-support because of mental or physical disability that existed before the child became 19 years of age. As used in this paragraph, "former employee" means the former employee on whose service title to annuity is based.

(l) "Private health benefits plan" means a health benefits plan other than the uniform plan.

(m) "Retired employee" includes (1) a former employee retired under subchapter III of chapter 83 of title 5, United States Code, or other retirement system for civilian employees of the Government (not including the social security system), (2) an employee or former employee receiving compensation under subchapter I of chapter 81 of title 5, United States Code, and (3) persons who are entitled to annuity or compensation as members of the family of a deceased employee or of a deceased retired employee qualifying under subparagraphs (1) and (2) of this paragraph.

(n) "Retirement office" means (1) any office responsible for the administration of a retirement system for civilian employees of the Government; and (2) the Bureau of Employees' Compensation.

(o) "Service" means service which is creditable for the purposes of subchapter III of chapter 83 of title 5, United States Code.

(p) "Survivor" means a person who is entitled to annuity or compensation as a member of the family of a deceased employee or deceased retired employee.

(q) "Uniform plan" means the health benefits plan for which the Commission contracts pursuant to section 3, 74 Stat. 849.

§ 891.103 Eligibility.

(a) *General conditions of eligibility.*

(1) A retired employee who is enrolled or covered by the enrollment of another under Part 890 of this chapter, or who is covered by the election of another retired employee under this part, is ineligible to subscribe to the uniform plan or to receive a Government contribution toward the cost of a private health benefits plan.

(2) A retired employee is ineligible to subscribe to the uniform plan if his annuity or compensation is not sufficient to cover the necessary withholding.

(b) *Retired employees (other than survivors) entitled to annuity.* A retired employee (other than a survivor) who is entitled to an annuity is eligible for the benefits provided by this part if—

(1) He retired before his first pay period beginning after June 30, 1960;

(2) He retired on immediate annuity;

(3) He had at least 12 years of creditable service, or retired under a disability provision of his retirement system;

(4) He retired from employment which was not in the Tennessee Valley Authority or in a corporation under the supervision of the Farm Credit Administration, of which corporation any member of the board of directors was elected or appointed by private interests; and

(5) At the time of retirement, he was a citizen, or a noncitizen having a permanent-duty station within the several States or the District of Columbia on the day before retirement.

For the purpose of this paragraph, an employee is considered to have retired before his first pay period beginning after June 30, 1960, if his annuity began to accrue before his first pay period

after June 30, 1960, or if he was eligible under paragraph (d) of this section until the date his annuity began to accrue.

(c) *Survivors entitled to annuity.* A survivor who is entitled to annuity is eligible for the benefits provided by this part if he is:

(1) In receipt of immediate annuity as the survivor of (i) an employee who died before his first pay period beginning after June 30, 1960; or (ii) a retired employee whose annuity began to accrue before his first pay period beginning after June 30, 1960;

(2) The survivor of (i) an employee who had at least 5 years' creditable service, (ii) a former employee who retired having at least 12 years' creditable service and received an immediate annuity, or (iii) a former employee who retired under a disability provision of his retirement system; and

(3) Not receiving annuity as the survivor of a person who at the time of the retirement or death, as the case may be, on which annuity is based, was an employee of the Tennessee Valley Authority or of any corporation under the jurisdiction of the Farm Credit Administration of which corporation any member of the board of directors was elected or appointed by private interests, or was a noncitizen having a permanent-duty station outside the several States and the District of Columbia.

(d) *Retired employees (other than survivors) entitled to compensation.* A retired employee (other than a survivor) who is entitled to compensation is eligible for the benefits provided by this part if—

(1) He is receiving monthly compensation for an injury sustained or illness contracted before his first pay period beginning after June 30, 1960;

(2) He is held by the Secretary of Labor to be unable to return to duty;

(3) He is receiving compensation based on employment which was not in the Tennessee Valley Authority or in a corporation under the supervision of the Farm Credit Administration, of which corporation any member of the board of directors was elected or appointed by private interests; and

(4) At the time of sustaining the injury or contracting the illness, as the case may be, on which compensation is based, he was a citizen, or a noncitizen having a permanent-duty station within the several States or the District of Columbia at that time.

(e) *Family members entitled to compensation.* A member of a family who is receiving compensation is eligible for the benefits provided by this part if he is:

(1) A survivor beneficiary of (i) an employee who completed 5 years of service and died as a result of injury or illness which is compensable under subchapter I of chapter 81 of title 5, United States Code, and which was sustained or contracted before his first pay period beginning after June 30, 1960, or (ii) a former employee who was separated after having completed at least 5 years of service and who died while receiving monthly compensation under that subchapter on

account of injury sustained or illness contracted before his first pay period beginning after June 30, 1960, and who has been held by the Secretary of Labor to have been unable to return to duty; and

(2) Not receiving compensation as the survivor of a person who at the time of sustaining the injury or contracting the illness, as the case may be, on which compensation is based, was an employee of the Tennessee Valley Authority or of any corporation under the jurisdiction of the Farm Credit Administration of which corporation any member of the board of directors was elected or appointed by private interests, or was a noncitizen having a permanent-duty station outside the several States and the District of Columbia.

(f) *Determinations of eligibility.* The Bureau of Retirement and Insurance of the Commission, on request, shall determine the eligibility of a retired employee, or class of retired employees, to make the elections and receive the Government contributions provided for by this part.

§ 891.104 Responsibilities of retirement offices.

(a) The Bureau of Employees' Compensation is responsible only for retired employees who are receiving compensation from the Bureau and is responsible even though the retired employee has retired under another retirement office from which he is not currently receiving annuity. If the retired employee is currently receiving annuity from another retirement office, that retirement office, rather than the Bureau of Employees' Compensation, will have the responsibilities imposed on retirement offices by this part for that retired employee.

(b) Retirement offices are responsible, in accordance with regulations and instructions issued by the Commission, for withholding from the annuity or compensation of each retired employee within the jurisdiction of the retirement office who elects to subscribe to the uniform plan his share of the cost, for forwarding the amount withheld to the Retired Federal Employees Health Benefits Fund, and for reporting to the Commission amounts required for Government contribution for these retired employees.

(c) Retirement offices are responsible, in accordance with regulations and instructions issued by the Commission, for reporting to the Commission amounts required for Government contributions to retired employees within the jurisdiction of the retirement office who have elected to receive a Government contribution toward the cost of a private health benefits plan, and for paying the Government contributions to these retired employees.

(d) Retirement offices are responsible for advising retired employees within the jurisdiction of the retirement office of the rights and obligations of retired employees under this part.

(e) When one or more of the family members is a child 19 years of age or older who is incapable of self-support

because of mental or physical disability which existed before the child became 19 years of age, the appropriate retirement office shall obtain the necessary evidence and make a determination of incapacity.

(f) Retirement offices are responsible, in accordance with regulations and instructions issued by the Commission, for verifying continuing eligibility of retired employees to receive Government contributions.

§ 891.105 Appeals.

(a) A retired employee may appeal any determination by the Bureau of Retirement and Insurance that he is not eligible to make an election or to receive a Government contribution under this part. The appeal shall be made in writing, within 90 calendar days of the determination, to the Board of Appeals and Review, U.S. Civil Service Commission, Washington, D.C. 20415.

(b) The Commission may order correction of administrative errors at any time.

(c) The Commission does not adjudicate individual claims for payment or service under health benefits plans, nor does it arbitrate or attempt to compromise disputes between retired employees and carriers as to claims for payment or service.

Subpart B—Election and Change of Election

§ 891.201 Election.

(a) The original period for election by each eligible retired employee was during the months of March and April, 1961. Failure to elect when eligible to do so is deemed an election not to participate in the program unless the failure is determined by the retirement office to be for cause beyond the control of the retired employee. In any case in which annuity or compensation is being paid to a payee in behalf of a retired employee, the payee shall make the election for the retired employee.

(b) (1) A retired employee may elect to participate in the program for self alone or for self and family.

(2) Survivors, if actually or constructively living in the same household, have only one right of election among them. The election shall be made by the payee. The fact that one payee is receiving annuity or compensation for all members of the family is prima facie evidence that they are living in the same household. The existence of more than one payee is prima facie evidence that each payee and the survivors in whose behalf the payee is receiving annuity or compensation constitute a separate household, and each payee may elect for the survivors in whose behalf he is receiving annuity or compensation, but where a family is receiving annuity or compensation through more than one payee, one payee, with the consent of the other payees, may elect for the whole family.

(3) A retired employee may not be covered under more than one election.

(4) A retired employee who is entitled to more than one annuity or to compensation and annuity is entitled to only one election.

TABLE OF REQUIRED CHANGES

Event requiring change	Type of election to which requirement applies	Change required	Effective date of change
(1) Loss of member of family by death or otherwise, leaving only one person covered by the election.	Election for self and family for uniform or private health benefits plan.	Change to self alone.....	First day of month following the event requiring change. Changes in withholdings and contributions are effective for annuity or compensation accruing for the month in which the event requiring change occurs.
(2) Termination of subscription to a private health benefits plan for all persons covered by the election but the retired employee making the election. ¹	Election for self and family for private health benefits plan.	do.....	Do.
(3) Termination of subscription to a private health benefits plan for all persons covered by the election. ¹	Election for self alone or for self and family for private health benefits plan.	Change to not participating (optional change may be made in accordance with paragraph (c) of this section).	Do.

¹ If the termination is immediately succeeded by a similar subscription in another private health benefits plan a change of election is not required, but the retired employee shall file a certificate of the new carrier that he is a subscriber. A form for the certificate may be obtained from the retirement office.

(c) A retired employee may change his election in accordance with the following table by notifying the appropriate retirement office at any time:

TABLE OF OPTIONAL CHANGES

Change permitted	Type of election from which changing	Effective date of change
1) Change to not participating.....	Election for self alone or self and family for uniform or private health benefits plan.	First day of month specified in notice to retirement office, or first day of month following receipt of notice by retirement office, whichever is later. Changes in withholdings and contributions are effective for annuity or compensation accruing for the month preceding the effective date of the change.
(2) Change from basic and major medical to basic only or to major medical only.	Election for self alone or self and family for uniform plan (basic and major medical).	Do.
(3) Change to self alone in same plan.	Election for self and family for uniform or private health benefits plan.	Do.
(4) Change to private health benefits plan for self alone or self and family.	Election for self alone or self and family for uniform plan.	Do.
(5) Change to self and family in same plan.	Election for self alone for uniform or private health benefits plan.	First day of fourth month following month in which notice is received by retirement office. Changes in withholdings and contributions are effective for annuity or compensation accruing for the third month following month in which notice is received by the retirement office.
(6) Change from major medical only to basic or to basic and major medical.	Election for self alone or self and family for uniform plan (major medical only).	Do.
(7) Change to self alone or self and family for uniform (basic only) or private health benefits plan.	Election not to participate.....	Do.

(c) Each retired employee who elects to receive a Government contribution toward the cost of a private health benefits plan shall file with his election a certificate of the carrier, on the form prescribed by the Commission for the purpose, that he is a subscriber to a health benefits plan. The Commission, or the appropriate retirement office, at any time may require that a retired employee renew the certificate, or may take such other action as it considers desirable to verify the continuing eligibility of the retired employee to receive a Government contribution. The appropriate retirement office may suspend the Government contribution when there is a reasonable doubt of the retired employee's continuing eligibility to receive the Government contribution.

(d) In the discretion of the retirement office, a representative of the retired employee having a written authorization to do so may elect for him.

(e) A person who was not eligible, during the months of March and April 1961, to elect to subscribe to the uniform plan or to receive a Government contribution toward the cost of a private health benefits plan, may apply to the appropriate retirement office when he becomes eligible. If the retirement office determines that he is eligible, it shall notify the retired employee that he is eligible to make an election in accordance with paragraphs (a) to (d) of this section within 60 days of the date of the notice. If the retirement office determines that a retired employee was unable, for cause beyond his control, to make an election within the time limits prescribed by this section, it shall notify the retired employee that he is eligible to make an election in accordance with paragraphs (a) to (d) of this section within 60 days of the date of the notice. Elections made under this paragraph are effective, for a retired employee receiving annuity and a survivor receiving compensation, on the first day of the third month following the month in which the retirement office receives the election. Withholdings and contributions are effective for months beginning on and after the first day of the second month following the month in which the retirement office receives the election. For any other retired employee receiving compensation, changes of election made under this paragraph are effective on the first day of the third 4-week period following the 4-week period in which the Bureau of Employees' Compensation receives the election, and withholdings and contributions are effective beginning with the second 4-week period following receipt of the election. This paragraph does not apply to retired employees who have been, at any time, covered by the election of another under this part.

§ 891.202 Change of election.

(a) When used in this section, "month" includes the 4-week period for which a retired employee (other than a survivor) receives compensation.

(b) A retired employee shall change his election in accordance with the following table:

(d) Two changes may be made by the same notice. Example: A retired employee originally elected to receive a Government contribution for self and family toward the cost of a private health benefits plan. The subscription to the private health benefits plans is terminated March 15, 1962. He notifies the retirement office of the termination and at the same time notifies the retirement office that he wishes to elect the uniform plan (basic only) for self and family. The retirement office receives the notice March 22, 1962. His election becomes an election not to participate on April 1, 1962, and the Government contribution is not added to the annuity or compensation accrued for March 1962. On July 1, 1962, the family is covered by the basic coverage of the uniform plan, and withholdings and contributions are made for the annuity or compensation accruing in June 1962.

Subpart C—Suspension and Termination

§ 891.301 Suspension and termination.

(a) When used in this section, "month" includes the 4-week period for which a retired employee (other than a survivor) receives compensation.

(b) When compensation is entirely suspended or annuity is entirely waived or suspended, Government contributions are suspended. If the election is to subscribe to the uniform plan, and the annuity or compensation is suspended, or the annuity is waived to the extent that the retired employee's share of the cost cannot be withheld, withholdings and Government contributions are suspended, but the subscription continues.

(c) If the waiver or suspension covers 3 months or less, Government contributions and withholdings for the period of waiver or suspension shall be made when

annuity payment is resumed. If the waiver or suspension covers more than 3 months, the retired employee's election is terminated effective at the end of the third month of waiver or suspension. A terminated election is renewed when annuity or compensation payment is resumed. When a terminated election is renewed pursuant to this paragraph, withholdings and Government contributions shall be made for the first 3 months of the waiver or suspension. Withholdings and Government contributions shall be made for annuity or compensation accruing after the election is renewed.

(d) If title of a retired employee to annuity or compensation is terminated, his eligibility under this part is terminated.

(e) If the eligibility of a retired employee is terminated and other members of the same family continue to be eligible under this part, the election of the former retired employee continues for the remainder of the family unless and until changed in accordance with § 891.202.

Subpart D—Contributions and Withholdings

§ 891.401 Government contributions.

(a) The Commission shall pay, through the retirement office, \$3.50 monthly to each retired employee receiving annuity and to each survivor receiving compensation who elects to receive a Government contribution toward the cost of a private health benefits plan in which he is a subscriber for self alone, and \$7.00 monthly to each retired employee receiving annuity and to each survivor receiving compensation who so elects toward the cost of a private health benefits plan in which he is a subscriber for self and family. The Commission shall pay, through the Bureau of Employees' Compensation \$3.27 each 4-week period to each retired employee, other than a survivor, who is receiving compensation and who elects to receive a Government contribution toward the cost of a private health benefits plan in which he is a subscriber for self alone, and \$6.53 each 4-week period to each who so elects toward the cost of a private health benefits plan in which he is a subscriber for self and family. The Commission shall not pay, in any case, more than the cost of the private health benefits plan each month or 4-week period, as the case may be.

(b) The Commission shall contribute to the cost of the uniform plan \$3.50 monthly for each retired employee receiving annuity and each survivor receiving compensation, and \$3.27 each 4-week period for any other retired employee receiving compensation, for an election for self alone; and \$7.00 monthly for each retired employee receiving annuity and each survivor receiving compensation, and \$6.53 each 4-week period for any other retired employee receiving compensation, for an election for self and family. Election to subscribe to the uniform plan constitutes agreement by the retired employee that the retirement office may withhold from his annuity or

compensation his share of the cost of the plan, as provided by this part.

(c) The Government shall contribute to the Retired Federal Employees Health Benefits Fund 2 percent of the total Government contribution authorized by this section, for payment of expenses incurred by the Commission in administering this part.

§ 891.402 Withholdings.

The appropriate retirement office shall withhold from the annuity or compensation of each of its retired employees who has elected to subscribe to the uniform plan so much as is necessary to pay his share of the cost of his subscription. The withholdings shall be forwarded, in accordance with the Commission's instructions, to the Retired Employees Health Benefits Fund.

Subpart E—Standards for Uniform Plan and Carrier

§ 891.501 Standards for uniform plan.

The uniform plan shall be open to all eligible retired employees and members of their families, without regard to race, sex, health status, or age. It shall not deny or limit benefits because of any preexisting condition. It shall offer a choice among basic coverage only, major medical coverage only, and basic plus major medical coverage. It shall provide a 31-day extension of coverage on termination of subscription other than by change of election or termination of the contract. A person confined in hospital for care or treatment on the 31st day of the extension of coverage shall be entitled to continuation of the benefits of the contract during the continuance of the confinement, but not beyond the 60th day following the end of the extension of coverage. The uniform plan shall be experience-rated.

§ 891.502 Standards for carrier of uniform plan.

In the most recent year for which data are available, the carrier of the uniform plan shall have made at least 1 percent of all group health insurance benefit payments in the United States. If the carrier is an insurance company, it must be licensed to issue group health insurance in all the States of the United States and the District of Columbia.

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

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Subpart B—Appointment, Pay, and Removal of Hearing Examiners

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Subpart A—Motor Vehicle Operators

AUTHORITY: The provisions of this Subpart A issued under 5 U.S.C. 3301, 3302, 7301, 40 U.S.C. 491, E.O. 10577; 3 CFR, 1954-1958 Comp., p. 218, E.O. 11222; 3 CFR, 1964-1965 Comp., p. 306.

§ 930.101 Purpose.

The purpose of this subpart is to govern agencies in authorizing employees to operate Government-owned motor vehicles for official purposes within the States of the Union, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

§ 930.102 Definitions.

In this subpart:

(a) "Agency" means a department, independent establishment, or other unit of the executive branch of the Federal Government, including a wholly owned Government corporation, in the States of the Union, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(b) "Employee" means an employee of an agency in either the competitive or excepted service or an enrollee of the Job Corps established by section 102 of the Economic Opportunity Act of 1964 (42 U.S.C. 2712).

(c) "Federal medical officer" means a physician who is a Government employee, civilian or military, paid on a salary basis.

(d) "Identification card" means the United States Government Motor Ve-

hicle Operator's Identification Card, Standard Form 46, which names the types of Government-owned vehicles the holder is authorized to operate.

(e) "Incidental operator" means an employee in other than an operator position who is required to operate a Government-owned motor vehicle in order properly to carry out his assigned duties.

(f) "Motor vehicle" means a vehicle, self-propelled, or drawn by mechanical power, designed and operated principally for highway transportation of property or passengers, but does not include a vehicle (1) designed or used for military field training, combat, or tactical purposes; (2) used principally within the confines of a regularly established military post, camp, or depot; or (3) regularly used by an agency in the performance of investigative, law enforcement, or intelligence duties if the head of the agency determines that exclusive control of the vehicle is essential to the effective performance of those duties.

(g) "Operator" means an employee who is regularly required to operate Government-owned motor vehicles. This includes a chauffeur, mounted messenger, truck driver, garageman-driver, and guard-driver.

(h) "Practical road test" means the Commission's Test No. 347.

(i) "State license" means a valid driver's license of the State, District of Columbia, Puerto Rico, or territory or possession of the United States in which the employee is domiciled or principally employed.

§ 930.103 Coverage.

This subpart governs agencies in authorizing their employees to operate Government-owned motor vehicles for official purposes within the States of the Union, the District of Columbia, Puerto Rico, and the territories or possessions of the United States.

§ 930.104 Reports required.

An agency shall submit to the Commission, on request, (a) a copy of agency orders and directives issued in compliance with this subpart, and (b) such other reports as the Commission may require for adequate administration and evaluation of the motor vehicle operator program.

§ 930.105 Commission standards and procedures required.

An agency shall adopt and use the Commission's minimum standards and testing procedures in filing competitive and excepted operator positions unless the Commission authorizes, on agency request, the use of alternate standards and procedures which meet the objectives of the motor vehicle operator program.

§ 930.106 Competitive operator position.

An agency may fill competitive operator positions by any of the methods normally authorized for filling competitive positions. The experience and training requirements for competitive operator positions shall include (a) an experience requirement, (b) a safe driving record,

(c) the possession of a State license, and (d) except as provided in § 930.107, a practical road test.

§ 930.107 Waiver of practical road test.

The Commission, on agency request, may waive the practical road test requirement when qualified examiners or test facilities are not available in the area and the operator position is to be filled by (a) temporary appointment pending establishment of a register, (b) temporary limited appointment, (c) noncompetitive temporary appointment, (d) reinstatement, (e) position change, or (f) transfer.

§ 930.108 Details.

An agency may detail an employee to a competitive operator position for 30 days or less when he possesses a State license. For details exceeding 30 days, the employee shall meet the Commission's requirement applicable to position change and transfer.

§ 930.109 Excepted operator position.

In filling an excepted operator position, an agency shall apply the provisions of §§ 930.106 and 930.107 which apply to the filling of a competitive operator position by appointment procedures of like nature.

§ 930.110 Incidental operator.

(a) To qualify as an incidental operator, an employee shall (1) meet the physical standards established by the Commission; (2) qualify on a road test determined by the agency to be appropriate; and (3) possess a State license.

(b) An agency head or his designated representative may waive the road test, but only when in his opinion it is impractical to apply it, and then only for an employee whose competence as a driver has been established by his past driving record.

(c) An agency head or his designated representative may waive the requirement for possession of a State license only under the circumstances set out in, and in accordance with, a specific authorization by the Commission to the agency concerned.

§ 930.111 Identification card.

(a) An agency shall issue an identification card in accordance with this subpart to each employee who operates a Government-owned motor vehicle.

(b) The Commission may grant exceptions to the requirement in paragraph (a) of this section to certain employees who otherwise meet the requirements of this subpart when it finds these exceptions are in the interest of good administration.

§ 930.112 To whom issued.

(a) Each agency shall issue an identification card to:

(1) Each employee who qualifies for and is assigned to an operator position;

(2) Each employee who qualifies as an incidental operator; and

(3) Other employees who qualify in accordance with the requirements for incidental operator in § 930.110.

(b) An agency may issue an identification card without regard to the requirements in §§ 930.106 and 930.110:

(1) To an employee in an operator position under temporary appointment or detail not exceeding 1 month;

(2) For 1 month or less, to an employee in an operator position in order to permit completion of special testing approved by the Commission in a particular selection program; and

(3) For 1 month or less, to other employees who are taking training to satisfy requirements as operators or incidental operators or under such circumstances as in the judgment of the agency is necessary in the interests of the Government.

An agency may issue an identification card under authority of this paragraph only to an employee who is in possession of a State license, except when this requirement is waived under § 930.110(c). An identification card issued under this paragraph shall include the time restriction imposed.

§ 930.113 Contents of identification card.

(a) An identification card shall show:

(1) Each type of motor vehicle authorized to be operated by the identification card holder;

(2) Any restriction imposed on the holder; and

(3) The date of expiration.

(b) An agency may use the "Other Record" space on the identification card for relevant data such as an award for safe driving or a record of arrest.

§ 930.114 Identification card in possession.

(a) An employee shall have an identification card in his possession at all times while driving a Government-owned motor vehicle.

(b) The Commission may grant exceptions to the requirement in paragraph (a) of this section.

(c) The holder of an identification card shall surrender the card when he leaves the issuing agency or moves to a position in which the driving of a Government-owned vehicle is not necessary.

§ 930.115 Renewal and reissuance of identification cards.

(a) An identification card is valid for not more than 3 years, and is renewable for additional periods of not more than 3 years each.

(b) An agency may renew or reissue an identification card only after the agency head or his designated representative has determined that the employee concerned continues to meet prescribed physical standards and continues to demonstrate competence in driving the motor vehicle to which assigned.

§ 930.116 State license in possession.

(a) An employee shall have a State license in his possession at all times while driving a Government-owned motor vehicle on a public highway.

(b) The Commission may grant exceptions to the requirement in paragraph (a) of this section.

§ 930.117 Periodic physical testing.

At least once every 3 years each agency, in accordance with standards and procedures established by the Commission, shall provide for testing the physical fitness of each employee who operates a Government-owned vehicle.

§ 930.118 Adverse actions.

An agency shall take any adverse action against an operator or an incidental operator in accordance with applicable laws and regulations. Agency orders and directives shall include the following reasons among those constituting sufficient cause for an adverse action against an operator or an incidental operator:

- (a) The employee is convicted of operating under the influence of narcotics.
- (b) The employee is convicted of leaving the scene of an accident without making himself known.
- (c) A Federal medical officer finds the employee fails to meet the required physical standards.
- (d) The employee's State license is revoked.
- (e) The employee's State license is suspended. However, the agency may continue the employee in his position for operation of Government-owned motor vehicles on other than public highways for not to exceed 45 days from the date of suspension of the State license.

Subpart B—Appointment, Pay, and Removal of Hearing Examiners

AUTHORITY: The provisions of this Subpart B issued under 5 U.S.C. 1305, 3105, 3344, 5362, 7521.

GENERAL PROVISIONS

§ 930.201 Coverage.

- (a) This subpart applies to persons appointed under section 3105 of title 5, United States Code, for proceedings required to be conducted in accordance with sections 556 and 557 of that title, and to hearing examiner positions.
- (b) Except as otherwise provided in this subpart, the rules and regulations applicable to positions in the competitive service apply to hearing examiner positions.

§ 930.202 Definitions.

- In this subpart:
 - (a) "Agency" has the meaning given it by section 551 of title 5, United States Code.
 - (b) "Detail" means the temporary assignment of an employee from one position to another position without change in his civil service or pay status. The assignment to a hearing examiner of a case of the level of difficulty that would ordinarily be assigned to a hearing examiner of a different grade does not of itself constitute a detail within the meaning of this subpart.
 - (c) "Hearing examiner position" means a position in which any portion of the duties includes those which require the appointment of a hearing examiner under section 3105 of title 5, United States Code.
 - (d) "Promotion" means a change in grade from one position to a higher

graded position, whether newly created, or left vacant because of promotion, demotion, transfer, reassignment, retirement, separation of the last incumbent, or a change resulting from the assignment of work of higher grade than the work of the position to which the examiner was absolutely appointed.

(e) "Reinstatement" means reemployment authorized on the basis of the appointee's absolute status as hearing examiner after separation from a hearing examiner position.

(f) "Removal" means an involuntary change in the status of a hearing examiner, including discharge, demotion, and suspension from the position of hearing examiner and demotion, reassignment, and promotion to a position other than that of hearing examiner.

§ 930.203 Appointment.

(a) *Eligible rating.* An applicant for a hearing examiner position who meets the minimum entrance requirements for entrance to the examination and attains a numerical rating determined by the Commission as sufficient to produce an adequate register is eligible for appointment.

(b) *Prior approval.* An agency may make an appointment to a hearing examiner position only with the prior approval of the Commission, except when it makes its selection from a certificate of eligibles furnished by the Commission. An appointment is subject to investigation in accordance with §§ 731.201 and 731.303 of this chapter and subject to security clearance by the agency.

(c) *Probationary and career-conditional periods.* The requirement of a probationary and career-conditional period before absolute appointment does not apply to an appointment to a hearing examiner position.

(d) *Appointment of incumbents of newly classified hearing examiner positions.* An agency may appoint as a hearing examiner an employee who is serving in a position which is classified as a hearing examiner position on the basis of legislation, Executive order, or decision of a court if:

- (1) He has a competitive status or was serving in an excepted position under a permanent appointment;
- (2) He was serving in the position on the date of the legislation, Executive order, or decision of the court on which the classification of the position is based;
- (3) The Commission receives a recommendation for his appointment from the agency concerned not later than 6 months after classification of the position on the basis of the legislation, Executive order, or decision of the court; and
- (4) The Commission approves his qualifications for the position. In an emergency situation, when the needs of the service require it, the Commission may authorize the conditional appointment of an employee to a hearing examiner position pending final decision on his eligibility for absolute appointment under this paragraph.

(e) *Appointment of legislative and judicial employees.* An agency may ap-

point a former employee of the legislative or judicial branch to a hearing examiner position if he passes such suitable noncompetitive examination as the Commission prescribes and is otherwise eligible under the provisions of section 3304(c) of title 5, United States Code.

(f) *Appointment of incumbents of nonhearing examiner positions.* Except as provided in paragraphs (c) and (d) of this section, an agency may not appoint an employee who is serving in a position other than a hearing examiner position to a hearing examiner position, except by selection from a certificate of eligibles furnished by the Commission from the open competitive register.

§ 930.204 Promotion.

When the Commission classifies an occupied hearing examiner position at a higher grade, the Commission shall direct the promotion of the incumbent hearing examiner and the promotion is effective on the date named by the Commission.

§ 930.205 Reassignment.

An agency may reassign a hearing examiner who is serving under absolute appointment from one hearing examiner position to another hearing examiner position with the prior approval of the Commission on a noncompetitive basis in accordance with regular civil service procedures.

§ 930.206 Transfer.

- (a) With the prior approval of the Commission, an agency may transfer a hearing examiner with a promotion only after he has established his eligibility at the higher grade in accordance with all current examination requirements.
- (b) An agency may transfer a hearing examiner from one hearing examiner position to another hearing examiner position, when this does not involve a promotion, with the prior approval of the Commission on a noncompetitive basis in accordance with regular civil service procedures.

§ 930.207 Reinstatement.

- (a) Except as provided in paragraph (b) of this section, an agency may reinstate a person who has reinstatement status and who has served with absolute status as a hearing examiner under section 3105 of title 5, United States Code, only after (1) he has established his eligibility at the grade to which he is to be reinstated in accordance with all current examination requirements, and (2) he demonstrates that his experience satisfies all current qualification requirements. Reinstatement is subject to investigation by, and the prior approval of, the Commission.
- (b) A person whose reinstatement is proposed need only demonstrate that his experience satisfies all current qualification requirements if (1) he left his former hearing examiner position for a Government position of equal or superior rank, and (2) he is being reinstated by the agency on whose rolls he formerly served as a hearing examiner.

§ 930.208 Restoration.

Parts 352 and 353 of this chapter governing reemployment rights and restoration after military service apply to reemployment and restoration to hearing examiner positions.

§ 930.209 Detail and assignment to other duties.

(a) An agency may not detail an employee who is not a hearing examiner to a hearing examiner position.

(b) An agency may assign a hearing examiner (by detail or otherwise) to perform duties that are not duties of a hearing examiner without the prior approval of the Commission only when:

(1) The other duties are not inconsistent with the duties and responsibilities of a hearing examiner;

(2) The assignment is to last no longer than 120 days; and

(3) The hearing examiner has not had an aggregate of more than 120 days of those assignments within the preceding 12 months.

(c) On a showing by an agency that it is in the public interest to do so, the Commission may authorize a waiver of subparagraphs (2) and (3) of paragraph (b) of this section.

§ 930.210 Pay.

(a) The Commission shall classify hearing examiner positions in accordance with the regulations and procedures adopted by the Commission for classifications under chapter 51 of title 5, United States Code. The Commission shall make these classifications independently of agency recommendations and ratings.

(b) A hearing examiner is entitled to within-grade increases in accordance with Part 531 of this chapter, except that the requirement that his work be of an acceptable level of competence as determined by the head of his agency does not apply.

(c) An agency shall not grant a quality increase under section 5336(a) of title 5, United States Code, to a hearing examiner.

(d) Upon appointment, a hearing examiner shall be paid at the minimum rate of the grade approved by the Commission unless he is eligible for a higher rate because of prior service.

§ 930.211 Performance rating.

An agency shall not rate the performance of a hearing examiner.

§ 930.212 Rotation of examiners.

Insofar as practicable, an agency shall assign its hearing examiners in rotation to cases.

§ 930.213 Use of examiners of other agencies.

At the request of an agency that is occasionally or temporarily insufficiently staffed, the Commission shall provide for the temporary use by the agency of the services of a hearing examiner of another agency. The Commission, with the consent of the agency in which a hearing examiner is employed, shall select the examiner to be used, and shall name the date on which the examiner is to be made

available to the agency in need of his services.

§ 930.214 Separation.

(a) *Removal.* An agency may remove a hearing examiner only for good cause, established and determined by the Commission, after opportunity for a hearing and on the record thereof as provided in §§ 930.221 through 930.234.

(b) *Status during removal proceedings.* In exceptional cases when there are circumstances by reason of which the retention of a hearing examiner in his position, pending adjudication of the existence of good cause for his removal, would be detrimental to the interests of the Government, the agency shall either assign the hearing examiner to duties in which these conditions would not exist, or place him on annual leave for the period that will be covered by the annual leave to his credit. An agency may take action under this paragraph only with the prior approval of the Commission.

(c) *Exceptions from procedures.* The procedures in this subpart governing the removal of hearing examiners do not apply in making dismissals requested by the Commission under § 5.2 and § 5.4 of this chapter, nor to dismissals made by agencies in the interest of national security.

§ 930.215 Reduction in force.

(a) *Service date.* The service date for the purpose of reductions in force of hearing examiners reflects the length of Federal Government service.

(b) *Determination of tenure groups.* In determining retention standing in a reduction in force, each agency shall classify its hearing examiners in groups and subgroups according to tenure of employment and veteran preference in the manner prescribed in Part 351 of this chapter. However, as hearing examiners are not given performance ratings, the provisions in Part 351 of this chapter referring to the effect of performance ratings on retention standing are not applicable to hearing examiners.

(c) *Status of hearing examiners who are reached in reduction in force.* (1) The Commission, on request of a hearing examiner who has been notified he is to be separated, furloughed, or demoted because of a reduction in force, shall place his name on:

(i) The Commission's priority referral list for the grade in which he last served and for all lower grades; and

(ii) The open competitive hearing examiner register, ahead of all other eligibles, for the grade from which he was separated, furloughed, or demoted as a hearing examiner and for all lower grades. When more than one hearing examiner is affected, the Commission shall rate the qualifications of the several examiners and relative standing at the top of the register is based on these ratings.

(2) A hearing examiner may file a request under subparagraph (1) of this paragraph at any time after the receipt of the reduction-in-force notice but not later than 90 days after the date of separation, furlough, or demotion. He shall

file with his request a Standard Form 171 and a copy of the reduction-in-force notice.

(3) When there is no hearing examiner on the agency's reemployment priority list, but there is a hearing examiner who has been placed on the priority referral list (subparagraph (1)(i) of this paragraph) or on the top of the open competitive register for priority certification (subparagraph (1)(ii) of this paragraph), the agency may fill a vacant hearing examiner position only by selection from the priority referral list or the register, unless it obtains the prior approval of the Commission under § 930.203(b), § 930.204, § 930.205, § 930.206, or § 930.207.

(4) Referral, certification, and selection of hearing examiners from the agency's reemployment priority list, the Commission's priority referral list, or the open competitive register are made without regard to selective certification procedures applied in original appointment.

(d) *Retention preference regulations.* The reduction-in-force regulations for use in in reduction in force (Part 351 of this chapter), except as modified by this section, apply to reductions in force of hearing examiners.

HEARINGS IN REMOVAL CASES; RULES OF PRACTICE**§ 930.221 Letter of charges.**

An agency shall initiate removal proceedings against a hearing examiner by filing with the General Counsel of the Commission a letter of charges (original and four copies) which shall set forth specifically and in detail the reasons that are alleged to constitute good cause for the hearing examiner's removal.

§ 930.222 Service.

The Commission, through its General Counsel, shall serve a copy of the letter of charges on the hearing examiner named therein. Service shall be by registered mail.

§ 930.223 Answer.

(a) When a respondent desires to contest the proceedings he shall file an answer (original and four copies) to the letter of charges with the Commission within 15 days of the service of the copy of the letter of charges. The respondent shall specifically admit, deny, or explain each of the reasons alleged in the letter of charges unless he is without knowledge, in which case he shall so state. The Commission shall serve a copy of the answer on the agency.

(b) Failure of respondent to file answer within the time limit is deemed to authorize the Commission, without further notice to the respondent, to proceed in regular course on the reasons set forth in the letter of charges.

§ 930.224 Appearance.

A respondent may appear for himself or by an attorney at law who is admitted to practice before the Federal courts, or before the courts of any State or territory of the United States. An attorney shall file a written notice of appearance. The notice of appearance shall state the

court to which the attorney is admitted to practice and the date of that admission.

§ 930.225 Notice of hearing.

After the filing of answer or other appropriate response, the Commission shall fix a time and place for hearing and shall notify the parties.

§ 930.226 Hearing.

(a) The Commission, a member of the Commission, or one or more hearing examiners appointed under section 3105 of title 5, United States Code shall preside at any hearing under this subpart.

(b) Hearings are open to the public unless otherwise ordered by the Commission.

(c) The Commission shall designate an official reporter who shall record the hearing under the supervision of the presiding officer. The official reporter's transcript of the hearing is the sole official transcript of the hearing. The Commission shall make the official transcript a part of the record. The official reporter shall supply each party with a transcript at a rate not in excess of the maximum rate fixed by the contract between the Commission and the reporter.

§ 930.227 Burden of proof.

(a) The agency initiating removal proceedings has the general burden of proof, and the proponent of any factual proposition is required to sustain the burden of proof with reference thereto.

(b) Objections to evidence shall be stated briefly and shall include the grounds relied on. The transcript shall not include argument on objections except as ordered by the presiding officer. Rulings on objections shall appear in the record.

§ 930.228 Motions.

The presiding officer shall act on motions, or he may refer them to the Commission for decision. Each ruling by the presiding officer is subject to review by the Commission on its adjudication of the case.

§ 930.229 Subpenas.

The presiding officer or a member of the Commission may issue subpenas requiring the attendance of witnesses or the production of documentary evidence from any place in the United States, at any designated place of hearing. Application for subpenas may be made either to the presiding officer or to the Commission.

§ 930.230 Witnesses and fees.

A party at whose instance a witness appears shall pay witness fees and mileage. A witness may appear voluntarily without subpena.

§ 930.231 Proposed findings and conclusions before presiding officer.

At the termination of a hearing, the presiding officer shall fix a time within which parties may submit to him proposed findings, conclusions, or reasons therefor (or briefs which may contain the same). Each party shall furnish copies of briefs or proposals to other

parties to the proceeding (certifying to the Commission that this has been done) and shall deliver to the presiding officer an original and two copies.

§ 930.232 Recommended decision.

(a) The presiding officer, as soon as practicable after receipt of the transcript of the hearing and of proposed findings and conclusions, or briefs, shall make and file a recommended decision.

(b) The presiding officer shall send a copy of the recommended decision to each party to the proceeding. Any party, within 10 days after receipt of the copy of the recommended decision, may submit:

(1) Exceptions to it or to any omission from it; and

(2) Additional proposals for findings and conclusions with reasons therefor.

The party making the submission shall furnish copies to the other parties (certifying to the Commission that this has been done), and shall file the original and two copies with the presiding officer.

§ 930.233 Commission's adjudication.

On receipt of exceptions and additional proposals, or expiration of time therefor, the presiding officer shall prepare the files of the proceeding and shall transmit them to the Commission, certifying that the record submitted is complete. The Commission shall consider the entire record and decide the issues in accordance with what it considers to be the applicable law and the greater weight of the evidence.

§ 930.234 Report of action taken.

An agency shall take action in accordance with the Commission's decision not later than 10 days after receipt thereof, and shall report to the Commission without delay, the action taken.

PART 990—GENERAL AND MISCELLANEOUS

Subpart A—Claims and Appeals of Veterans; Recognition of Representatives

Sec.	
990.101	Appearance.
990.102	Agents.
990.103	Recognition of service organizations.
990.104	Accredited representatives of service organizations.
990.105	Designation of service organizations as representatives.
990.106	General provisions.

AUTHORITY: The provisions of this Part 990 issued under 5 U.S.C. 1302, 3315, 7512, 7701.

Subpart A—Claims and Appeals of Veterans; Recognition of Representatives

§ 990.101 Appearance.

A preference eligible who has filed with the Commission a claim or an appeal under section 3502, 3503, or 7701 of title 5, United States Code, may appear in a proceeding in connection therewith either personally or by a representative. The representative may be a person designated by the preference eligible, that person being referred to in this part as agent; or a service organization designated by the preference eligible and approved by the Commission.

§ 990.102 Agents.

A competent person of good moral character and of good repute who is a citizen of the United States, or who has declared his intention to become a citizen of the United States, may be designated as an agent. A person (other than a Member of Congress) claiming to act as an agent shall submit a written statement from the preference eligible (CSC Form 307) authorizing him to represent the preference eligible in his claim or appeal. A written statement is not required of a Member of Congress claiming to act as an agent to represent a preference eligible in his claim or appeal.

§ 990.103 Recognition of service organizations.

A service organization approved by the Commission may be recognized in the presentation of claims or appeals under section 3502, 3503, or 7701 of title 5, United States Code, when the proper officers thereof make application for recognition, and as a part of the application agree and certify that neither the organization nor its representatives will charge claimants or appellants a fee or compensation for their services, except expenses actually incurred with the consent of the claimant. In requesting recognition, the following information shall be supplied:

(a) Statement outlining the purpose of the organization and need thereof, and manner in which the preference eligible will be benefited by the recognition.

(b) Names, titles, and addresses of officers.

(c) Number of posts or chapters, and States in which located.

(d) Names, titles, and addresses of full-time paid employees who are qualified to act as accredited representatives.

(e) Copy of constitution or charter and bylaws of the organization.

§ 990.104 Accredited representatives of service organizations.

(a) Each recognized service organization shall file with the Commission, on the prescribed form (CSC Form 306), the name of any officer whom it desires to be recognized as its accredited representative and the Commission office or offices to which recognition is to be extended in the presentation of claims or appeals. In proposing a candidate for recognition as a representative, the organization, through its appropriate officer, shall certify to the following:

(1) That the candidate is a citizen of the United States, of good character and reputation, is qualified by training or experience to assist in the presentation of claims, and is a member or employee of the organization.

(2) That he is not employed in any civil or military department or agency of the United States, and is not a retired member of the Regular Army, Navy, Air Force, Marine Corps, Coast Guard, or Public Health Service.

(3) Whether the candidate is a preference eligible and, if so, that he was honorably discharged from active service.

(b) A single application (CSC Form 306) shall be filed with the central office of the Commission for recognition before (1) the central office only, (2) two or more regional offices, or (3) the central office and one or more regional offices. Application shall be filed with the regional office where the candidate is to serve when recognition before only one regional office is requested. Application Form 306 shall be retained by the approving office of the Commission.

(c) The central office or regional director, as the case may be, is responsible for determining the qualifications of a candidate of a service organization for recognition. Normally, the candidate of a service organization will be approved. However, if there is doubt as to the qualifications or suitability of a candidate, appropriate investigation may be made to resolve the doubts. If it is determined that the candidate is qualified, duplicate copies of a letter of notice to that effect shall be issued to the veterans organization concerned, with an Identification Card (CSC Form 308) in the candidate's name signed by the appropriate official in the central office or the regional director. One copy of the letter of approval shall be retained by the organization and the other forwarded to the candidate with the Identification Card 308 countersigned by the appropriate officer of the organization. When approval is made by the central office, a copy of the letter of approval shall be sent to each regional office before which recognition of the candidate is approved. When approval is made by a regional office, a copy of the letter of approval shall be sent to the central office of the Commission. Each regional office shall maintain a record of all accredited representatives approved for recognition before that regional office. The central office shall maintain a record of all accredited representatives approved by all regional directors and the central office. If the regional director's determination is

adverse, or the case is one of doubtful aspect, the entire matter may be referred to the Commission's central office, at the regional director's option, where it will be handled in the same manner as a request for recognition ordinarily handled by the central office.

(d) Recognition may be canceled at the request of the organization. The central office or regional director may cancel or suspend a recognition for cause. When a regional director cancels or suspends a recognition, a report of the facts shall be made to the central office. Notice of cancellation or suspension shall be supplied in the same manner as a notice of recognition.

(e) Nominations for accredited representatives of national service organizations are acceptable only if approved by the certifying officer, national headquarters, of the organization.

(f) Letters of recognition issued by the central office to national and field officers of recognized organizations constitute authorization for their recognition in claims or appeals in any regional office within their respective assignments. Letters of recognition issued by a regional director constitute authorization for the accredited representatives to present claims or appeals in any regional office within their respective assignments.

(g) When a representative has been recognized, a card shall be prepared in the office which approves the recognition, showing his name, address, organization, and date of recognition. Copies of this card shall be filed in the central office of the Commission, and in the regional office by which he is recognized or in which he is authorized to act.

§ 990.105 Designation of service organizations as representatives.

(a) Before a service organization may be recognized in an individual claim or appeal, there shall be filed a designation duly executed by the claimant or appellant, specifically conferring on the organization the authority to represent him

in the presentation of his claim or appeal, and to receive information in connection therewith. This designation shall be on the form prescribed by the Commission (CSC Form 307) and shall be presented to the office concerned, to be filed in connection with the claim or appeal. The designation shall be signed by the claimant or appellant.

(b) On receipt and approval of the designation, the service organization named therein shall be recognized as the sole agency for the presentation of the claim or appeal covered thereby, and no other organization shall be recognized in the presentation of that claim or appeal. The designation made by the claimant may be revoked by him at any time and a subsequent designation made, naming another organization. A subsequently executed designation constitutes a revocation of any existing designation. A designation may also be revoked by the organization named therein.

§ 990.106 General provisions.

(a) Nothing in this subpart permits the unauthorized practice of law in any place or the giving of any service except the authorized participation in agency proceedings by agents or accredited representatives who have been approved by the Commission.

(b) This subpart does not apply to adjudications of charges of political activity on the part of officers or employees in the competitive service, or of officers or employees of a State or local government, nor to adjudications of the existence of good cause for the removal of hearing examiners appointed under section 3105 of title 5 United States Code.

UNITED STATES CIVIL
SERVICE COMMISSION,

[SEAL]

JAMES C. SPRY,
Executive Assistant to the
Commissioners.

AUGUST 29, 1968.

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